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Bharatiya Nyaya Sanhita, 2023

भारतीय न्याय संहिता, 2023

(Upon enforcement would repeal - Indian Penal Code, 1860)
(Enforcement date - 1st July 2024)

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FOREWORD

Manupatra Information Solutions Pvt. Ltd. has released this e-book of Bharatiya Nyaya Sanhita, 2023 in an e-book format for ecological reasons. The team at Manupatra is committed to deliver such content and legal-tech solutions that drive the change and development in the field of law.

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DETAILS OF THE ACT

Act Title (English):	Bharatiya Nyaya Sanhita, 2023
Act Title (Hindi):	भारतीय न्याय संहिता, 2023
Enactment Date:	25th December, 2023
Act Number:	45 of 2023
Act Year:	2023
Preamble:	An Act to consolidate and amend the provisions relating to offences and for matters connected therewith or incidental thereto.
Enforcement Date:	1st July 2024
Act Repealed: **(from the date of enforcement)**	The Indian Penal Code, 1860 (45 of 1860)

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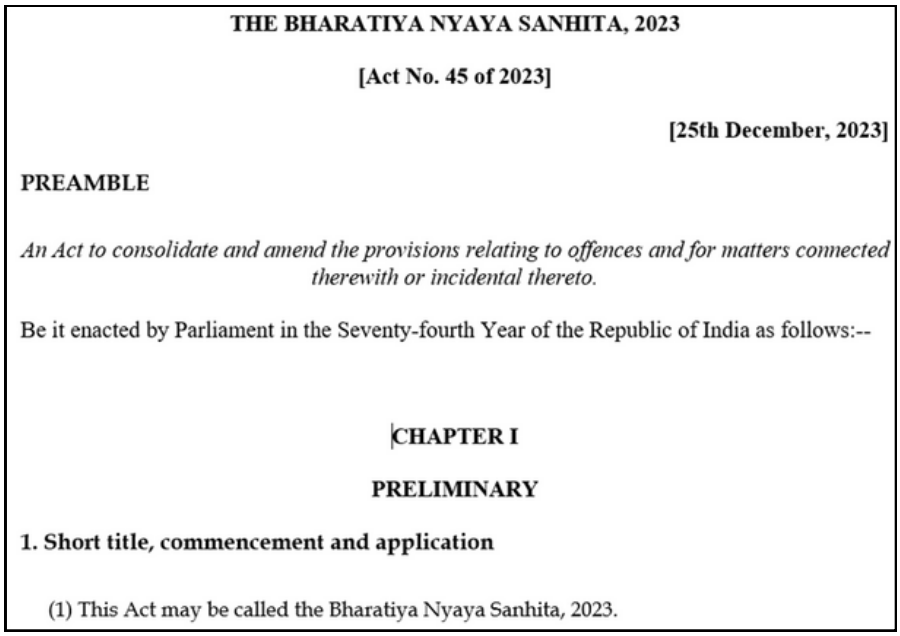
GUIDE ON HOW TO MAKE THE MOST OF THIS E-BOOK!

01

The e-book has the complete Bharatiya Nyaya Sanhita, 2023.



THE BHARATIYA NYAYA SANHITA, 2023

[Act No. 45 of 2023]

[25th December, 2023]

PREAMBLE

An Act to consolidate and amend the provisions relating to offences and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Seventy-fourth Year of the Republic of India as follows:--

CHAPTER I

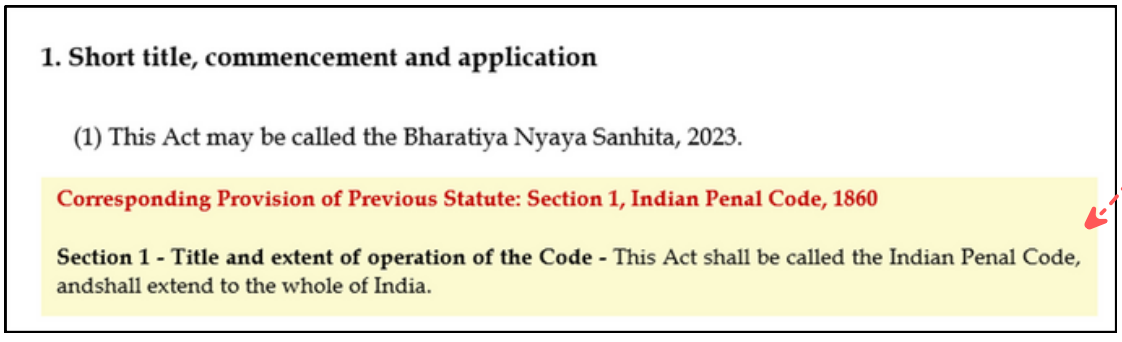
PRELIMINARY

1. Short title, commencement and application

(1) This Act may be called the Bharatiya Nyaya Sanhita, 2023.

02

Below the provisions of the new statute, you will find yellow boxes.



1. Short title, commencement and application

(1) This Act may be called the Bharatiya Nyaya Sanhita, 2023.

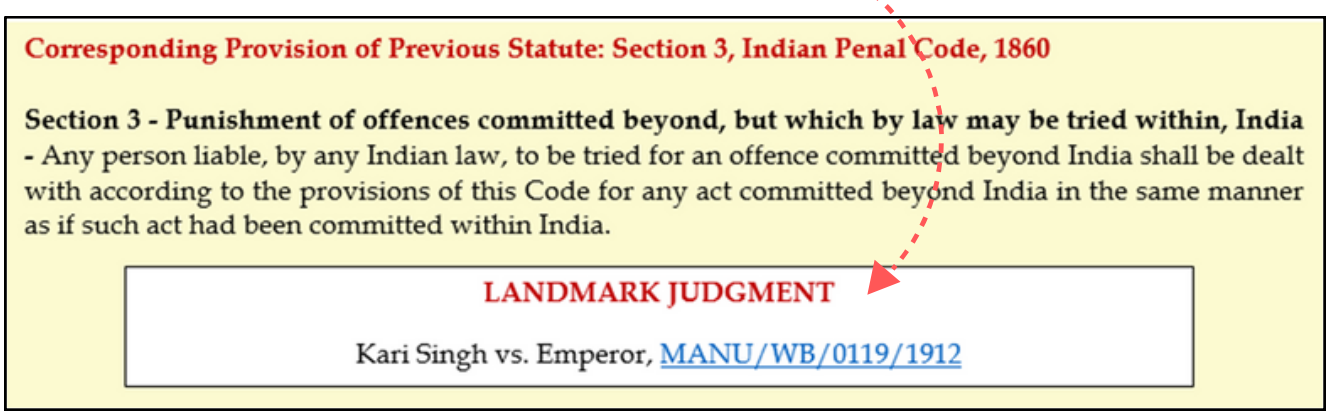
Corresponding Provision of Previous Statute: Section 1, Indian Penal Code, 1860

Section 1 - Title and extent of operation of the Code - This Act shall be called the Indian Penal Code, andshall extend to the whole of India.

These yellow boxes contain the corresponding provision of the Indian Penal Code, 1860. These provisions cater to the same/similar notion or topic as the new statute.

03

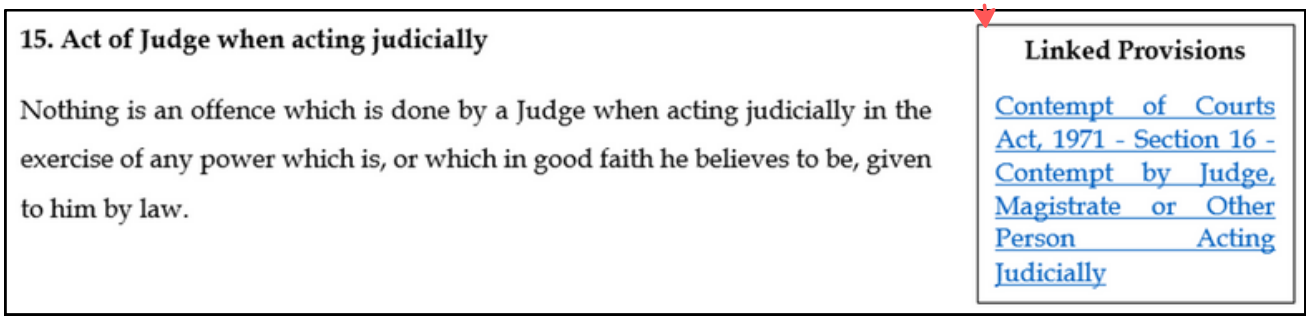
In some of these yellow boxes, landmark decisions of the corresponding provision from the Indian Penal Code, 1860 are present.



Simply click on the link and read the entire judgment.

04

For a lot of the provisions, you will find a box of linked provisions on the side. These are the provisions that can be read as related or connected to the provision of the Bharatiya Nyaya Sanhita, 2023. You can read the entire provision by just clicking on the link!



THE BHARATIYA NYAYA SANHITA, 2023

Of right of private defence

CHAPTER IV - OF ABETMENT, CRIMINAL CONSPIRACY AND ATTEMPT

Of abetment

THE BHARATIYA NYAYA SANHITA, 2023

[Act No. 45 of 2023]

[25th December, 2023]

PREAMBLE

An Act to consolidate and amend the provisions relating to offences and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Seventy-fourth Year of the Republic of India as follows:--

CHAPTER I

PRELIMINARY

1. Short title, commencement and application

(1) This Act may be called the Bharatiya Nyaya Sanhita, 2023.

Corresponding Provision of Previous Statute: Section 1, Indian Penal Code, 1860

Section 1 - Title and extent of operation of the Code - This Act shall be called the Indian Penal Code, andshall extend to the whole of India.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Sanhita.

(3) Every person shall be liable to punishment under this Sanhita and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within India.

Corresponding Provision of Previous Statute: Section 2, Indian Penal Code, 1860

Section 2 - Punishment of offences committed within India - Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within India.

Back to Index

LANDMARK JUDGMENT

Mobarik Ali Ahmed vs. The State of Bombay, MANU/SC/0043/1957

(4) Any person liable, by any law for the time being in force in India, to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Sanhita for any act committed beyond India in the same manner as if such act had been committed within India.

Corresponding Provision of Previous Statute: Section 3, Indian Penal Code, 1860

Section 3 - Punishment of offences committed beyond, but which by law may be tried within, India - Any person liable, by any Indian law, to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India.

LANDMARK JUDGMENT

Kari Singh vs. Emperor, MANU/WB/0119/1912

(5) The provisions of this Sanhita shall also apply to any offence committed by-

(a) any citizen of India in any place without and beyond India;

(b) any person on any ship or aircraft registered in India wherever it may be;

(c) any person in any place without and beyond India committing offence targeting a computer resource located in India.

Explanation.--In this section, the word "offence" includes every act committed outside India which, if committed in India, would be punishable under this Sanhita.

Illustration

A, who is a citizen of India, commits a murder in any place without and beyond India. He can be tried and convicted of murder in any place in India in which he may be found.

Back to Index

Corresponding Provision of Previous Statute: Section 4, Indian Penal Code, 1860

Section 4 - Extension of Code to extra-territorial offences - The provisions of this Code apply also to any offence committed by—

(1) any citizen of India in any place without and beyond India;

(2) any person on any ship or aircraft registered in India wherever it may be.

(3) any person in any place without and beyond India committing offence targeting a computer resource located in India.

Explanation.—In this section—

(a) the word "offence" includes every act committed outside India which, if committed in India, would be punishable under this Code;

(b) the expression "computer resource" shall have the meaning assigned to it in clause (k) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

Illustration

A, who is a citizen of India, commits a murder in Uganda. He can be tried and convicted of murder in any place in India in which he may be found.

LANDMARK JUDGMENT

Central Bank of India vs. Ram Narain, MANU/SC/0066/1954

(6) Nothing in this Sanhita shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India or the provisions of any special or local law.

Corresponding Provision of Previous Statute: Section 5, Indian Penal Code, 1860

Section 5 - Certain laws not to be affected by this Act - Nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India or the provisions of any special or local law.

2. Definitions

In this Sanhita, unless the context otherwise requires,--

(1) "act" denotes as well a series of acts as a single act;

Corresponding Provision of Previous Statute: Section 33, Indian Penal Code, 1860

Section 33 - "Act". "Omission" - The word "act" denotes as well as series of acts as a single act: the word "omission" denotes as well a series of omissions as a single omission.

LANDMARK JUDGMENT

Shishpal and Ors. vs. The State (NCT of Delhi), MANU/DE/1347/2014

(2) "animal" means any living creature, other than a human being;

Corresponding Provision of Previous Statute: Section 47, Indian Penal Code, 1860

Section 44 - "Animal"- The word "animal" denotes any living creature, other than a human being.

(3) "child" means any person below the age of eighteen years;

(4) "counterfeit".--A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

Explanation 1.--It is not essential to counterfeiting that the imitation should be exact.

Explanation 2.--When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised;

Corresponding Provision of Previous Statute: Section 28, Indian Penal Code, 1860

Section 28 - "Counterfeit" - A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

Explanation 1.—It is not essential to counterfeiting that the imitation should be exact.

Explanation 2.—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised

Back to Index

(5) "Court" means a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially;

Corresponding Provision of Previous Statute: Section 20, Indian Penal Code, 1860

Section 20 - "Court of Justice"- The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

Illustration

A Panchayat acting under Regulation VII, 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice

(6) "death" means the death of a human being unless the contrary appears from the context;

Corresponding Provision of Previous Statute: Section 46, Indian Penal Code, 1860

Section 46 - "Death"- The word "death" denotes the death of a human being unless the contrary appears from the context.

(7) "dishonestly" means doing anything with the intention of causing wrongful gain to one person or wrongful loss to another person;

Corresponding Provision of Previous Statute: Section 24, Indian Penal Code, 1860

Section 24 - "Dishonestly"- Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

LANDMARK JUDGMENT

Union of India (UOI) through its Secretary Ministry of Defence vs. Rabinder Singh, MANU/SC/1140/2011

(8) "document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, and includes electronic and digital record, intended to be used, or which may be used, as evidence of that matter.

Back to Index

Explanation 1.--It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in a Court or not.

Illustrations

(a) A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

(b) A cheque upon a banker is a document.

(c) A power-of-attorney is a document.

(d) A map or plan which is intended to be used or which may be used as evidence, is a document.

(e) A writing containing directions or instructions is a document.

Explanation 2.--Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

Illustration

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and shall be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature;

Corresponding Provision of Previous Statute: Section 29, Indian Penal Code, 1860

Section 29 - "Document" - The word "document" denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Back to Index

Explanation 1.—It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power-of-attorney is a document.

A map or plan which is intended to be used or which may be used as evidence, is a document.

A writing containing directions or instructions is a document

Explanation 2.—Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

(9) "fraudulently" means doing anything with the intention to defraud but not otherwise;

Corresponding Provision of Previous Statute: Section 25, Indian Penal Code, 1860

Section 25 - "Fraudulently" - A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

LANDMARK JUDGMENT

Pyare Lal Bhargava vs. State of Rajasthan, MANU/SC/0152/1962

(10) "gender".--The pronoun "he" and its derivatives are used of any person, whether male, female or transgender.

Explanation.-- "transgender" shall have the meaning assigned to it in clause (k) of section 2 of the Transgender Persons (Protection of Rights) Act, 2019 (40 of 2019);

Corresponding Provision of Previous Statute: Section 8, Indian Penal Code, 1860

Section 8 - Gender - The pronoun "he" and its derivatives are used of any person, whether male or female.

Back to Index

(11) "good faith".--Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention;

Corresponding Provision of Previous Statute: Section 52, Indian Penal Code, 1860

Section 52 - "Good faith" - Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.

(12) "Government" means the Central Government or a State Government;

Corresponding Provision of Previous Statute: Section 17, Indian Penal Code, 1860

Section 17 - "Government" - The word "Government" denotes the Central Government or the Government of a State.

(13) "harbour" includes supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting a person by any means, whether of the same kind as those enumerated in this clause or not, to evade apprehension;

Corresponding Provision of Previous Statute: Section 52A, Indian Penal Code, 1860

Section 52A - "Harbour" - Except in section 157, and in section 130 in the case in which the harbour is given by the wife or husband of the person harboured, the word "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension.

(14) "injury" means any harm whatever illegally caused to any person, in body, mind, reputation or property;

Corresponding Provision of Previous Statute: Section 44, Indian Penal Code, 1860

Section 44 - "Injury"- The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

(15) "illegal" and "legally bound to do".--The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which

Corresponding Provision of Previous Statute: Section 43, Indian Penal Code, 1860

Section 43 - "Illegal". "Legally bound to do" - The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

Back to Index

(16) "Judge" means a person who is officially designated as a Judge and includes a person,--

(i) who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or

(ii) who is one of a body or persons, which body of persons is empowered by law to give such a judgment.

Illustration

A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge;

Corresponding Provision of Previous Statute: Section 19, Indian Penal Code, 1860

Section 19 - "Judge" - The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person. who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body or persons, which body of persons is empowered by law to give such a judgment.

Illustrations

(a) A Collector exercising jurisdiction in a suit under Act 10 of 1859 is a Judge.

(b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appear, is a Judge.

(c) A member of a panchayat which has power, under 4Regulation VII, 1816, of the Madras Code, to try and determine suits, is a Judge.

(d) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

(17) "life" means the life of a human being, unless the contrary appears from the context;

Corresponding Provision of Previous Statute: Section 45, Indian Penal Code, 1860

Section 45 - "Life" - The word "life" denotes the life of a human being, unless the contrary appears from the context.

Back to Index

(18) "local law" means a law applicable only to a particular part of India;

Corresponding Provision of Previous Statute: Section 42, Indian Penal Code, 1860

Section 42 - "Local law" - A "local law" is a law applicable only to a particular part of India.

(19) "man" means male human being of any age;

Corresponding Provision of Previous Statute: Section 10, Indian Penal Code, 1860

Section 10 - "Man"."Woman" - The word "man" denotes a male human being of any age; the word "woman" denotes a female human being of any age.

(20) "month" and "year".--Wherever the word "month" or the word "year" is used, it is to be understood that the month or the year is to be reckoned according to the Gregorian calendar;

(21) "movable property" includes property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth;

Corresponding Provision of Previous Statute: Section 22, Indian Penal Code, 1860

Section 22 - "Movable property" - The words "movable property" are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

(22) "number".--Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number;

Linked Provisions

General Clauses Act, 1897 - Section 13 - Gender and Number

Corresponding Provision of Previous Statute: Section 9, Indian Penal Code, 1860

Section 9 – Number - Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

(23) "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorised by law to be made before a public servant or to be used for the purpose of proof, whether in a Court or not;

Linked Provisions

Indian Marine Act, 1887 - Section 56 - Oaths

Back to Index

Corresponding Provision of Previous Statute: Section 51, Indian Penal Code, 1860

Section 51 – "Oath" - The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorised by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not.

(24) "offence".--Except in the Chapters and sections mentioned in sub-clauses (a) and (b), the word "offence" means a thing made punishable by this Sanhita, but--

(a) in Chapter III and in the following sections, namely, sub-sections (2), (3), (4) and (5) of section 8, sections 9, 49, 50, 52, 54, 55, 56, 57, 58, 59, 60, 61, 119, 120, 123, sub-sections (7) and (8) of section 127, 222, 230, 231, 240, 248, 250, 251, 259, 260, 261, 262, 263, sub-sections (6) and (7) of section 308 and sub-section (2) of section 330, the word "offence" means a thing punishable under this Sanhita, or under any special law or local law; and

(b) in sub-section (1) of section 189, sections 211, 212, 238, 239, 249, 253 and sub-section (1) of section 329, the word "offence" shall have the same meaning when the act punishable under the special law or local law is punishable under such law with imprisonment for a term of six months or more, whether with

Corresponding Provision of Previous Statute: Section 40, Indian Penal Code, 1860

Section 40 – "Offence" - Except in the Chapters and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV, Chapter VA and in the following sections, namely, sections 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 118, 119 and 120 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

And in sections 141, 176, 177, 201, 202, 212, 216 and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine

(25) "omission" denotes as well as a series of omissions as a single omission;

Corresponding Provision of Previous Statute: Section 33, Indian Penal Code, 1860

Section 33 – "Act". "Omission" - The word "act" denotes as well as series of acts as a single act: the word "omission" denotes as well a series of omissions as a single omission.

Back to Index

(26) "person" includes any company or association or body of persons, whether incorporated or not;

Corresponding Provision of Previous Statute: Section 11, Indian Penal Code, 1860

Section 11 – "Person" - The word "person" includes any Company or Association or body of persons, whether incorporated or not.

(27) "public" includes any class of the public or any community;

Corresponding Provision of Previous Statute: Section 12, Indian Penal Code, 1860

Section 12 – "Public" - The word "public" includes any class of the public or any community.

(28) "public servant" means a person falling under any of the descriptions, namely:--

(a) every commissioned officer in the Army, Navy or Air Force;

(b) every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(c) every officer of a Court including a liquidator, receiver or commissioner whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorised by a Court to perform any of such duties;

(d) every assessor or member of a panchayat assisting a Court or public servant;

(e) every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court, or by any other competent public authority;

(f) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Back to Index

(g) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

(h) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government;

(i) every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

(j) every person who holds any office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(k) every person--

(i) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(ii) in the service or pay of a local authority as defined in clause (31) of section 3 of the General Clauses Act, 1897 (10 of 1897), a corporation established by or under a Central or State Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013).

Explanation.--

Back to Index

(a) persons falling under any of the descriptions made in this clause are public servants, whether appointed by the Government or not;

(b) every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation is a public servant;

(c) "election" means an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under any law for the time being in force.

Illustration

A Municipal Commissioner is a public servant;

Corresponding Provision of Previous Statute: Section 21, Indian Penal Code, 1860

Section 21 – "Public servant" - The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely:—

Second.—Every Commissioned Officer in the Military, Naval or Air Forces of India;

Third.—Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

Fourth.—Every officer of a Court of Justice (including a liquidator, receiver or commissioner) whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorised by a Court of Justice to perform any of such duties;

Fifth.—Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

Sixth.—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth.—Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth.—Every officer whose duty it is as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating tothe pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the

Back to Index

Government

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

Eleventh.—Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

Twelfth.—Every person—

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).

Illustration

A Municipal Commissioner is a public servant.

Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

Explanation 3.—The word "election" denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.

Explanation 3.—The word "election" denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.

(29) "reason to believe".--A person is said to have "reason to believe" a thing, if

he has sufficient cause to believe that thing but not otherwise;

Corresponding Provision of Previous Statute: Section 26, Indian Penal Code, 1860

Section 26 – "Reason to believe" - A person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing but not otherwise.

(30) "special law" means a law applicable to a particular subject;

Corresponding Provision of Previous Statute: Section 41, Indian Penal Code, 1860

Section 41 – "Special law" - A "special law" is a law applicable to a particular subject.

Back to Index

(31) "valuable security" means a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security";

Corresponding Provision of Previous Statute: Section 30, Indian Penal Code, 1860

Section 30 – "Valuable security" - The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the unlawful holder of it, the endorsement is a "valuable security".

(32) "vessel" means anything made for the conveyance by water of human beings or of property;

Corresponding Provision of Previous Statute: Section 48, Indian Penal Code, 1860

Section 48 – "Vessel" - The word "vessel" denotes anything made for the conveyance by water of human beings or of property.

(33) "voluntarily".--A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustration

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery and thus causes the death of a person. Here, A may not have intended to cause death; and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily;

Back to Index

Corresponding Provision of Previous Statute: Section 39, Indian Penal Code, 1860

Section 39 – "Voluntarily" - A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustration

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery and thus causes the death of a person. Here, A may not have intended to cause death, and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

(34) "will" means any testamentary document;

Corresponding Provision of Previous Statute: Section 31, Indian Penal Code, 1860

Section 31 – "A will" - The words "a will" denote any testamentary document.

(35) "woman" means a female human being of any age;

Corresponding Provision of Previous Statute: Section 10, Indian Penal Code, 1860

Section 10 – "Man"."Woman" - The word "man" denotes a male human being of any age; the word "woman" denotes a female human being of any age.

(36) "wrongful gain" means gain by unlawful means of property to which the person gaining is not legally entitled;

Corresponding Provision of Previous Statute: Section 23, Indian Penal Code, 1860

Section 23 – "Wrongful gain" - "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

(37) "wrongful loss" means the loss by unlawful means of property to which the person losing it is legally entitled;

Corresponding Provision of Previous Statute: Section 23, Indian Penal Code, 1860

Section 23 – "Wrongful gain" - "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

(38) "gaining wrongfully" and "losing wrongfully".--A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property; and

Corresponding Provision of Previous Statute: Section 23, Indian Penal Code, 1860

Section 23 – "Wrongful gain" - "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

Back to Index

(39) words and expressions used but not defined in this Sanhita but defined in the Information Technology Act, 2000 (21 of 2000) and the Bharatiya Nagarik Suraksha Sanhita, 2023 shall have the meanings respectively assigned to them in that Act and Sanhita.

3. General explanations

(1) Throughout this Sanhita every definition of an offence, every penal provision, and every Illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled "General Exceptions", though those exceptions are not repeated in such definition, penal provision, or Illustration.

Illustrations

(a) The sections in this Sanhita, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(b) A, a police officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it".

Corresponding Provision of Previous Statute: Section 6, Indian Penal Code, 1860

Section 6 – Definitions in the Code to be understood subject to exceptions - Throughout this Code every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled "General Exceptions", though those exceptions are not repeated in such definition, penal provision, or illustration.

Illustrations

(a) The sections, in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

Back to Index

(b) A, a police-officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it".

(2) Every expression which is explained in any Part of this Sanhita, is used in every Part of this Sanhita in conformity with the explanation.

Corresponding Provision of Previous Statute: Section 7, Indian Penal Code, 1860

Section 7 – Sense of expression once explained - Every expression which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation.

(3) When property is in the possession of a person's spouse, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Sanhita.

Explanation.--A person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk or servant within the meaning of this sub-section.

Corresponding Provision of Previous Statute: Section 27, Indian Penal Code, 1860

Section 27 – "Property in possession of wife, clerk or servant" - When property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Explanation.—A person employed temporarily or on a particular occasion in the capacity of a clerk, or servant, is a clerk or servant within the meaning of this section.

(4) In every Part of this Sanhita, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

Corresponding Provision of Previous Statute: Section 32, Indian Penal Code, 1860

Section 32 – Words referring to acts include illegal omissions - In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

(5) When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

Corresponding Provision of Previous Statute: Section 34, Indian Penal Code, 1860

Section 34 – Acts done by several persons in furtherance of common intention - When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

Back to Index

LANDMARK JUDGMENT

Mahbub Shah vs. Emperor, MANU/PR/0013/1945
Barendra Kumar Ghosh vs. Emperor, MANU/PR/0064/1924

(6) Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

Corresponding Provision of Previous Statute: Section 35, Indian Penal Code, 1860

Section 35 – When such an act is criminal by reason of its being done with a criminal knowledge or Intention - Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

(7) Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Illustration

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

Corresponding Provision of Previous Statute: Section 36, Indian Penal Code, 1860

Section 36 – Effect caused partly by act and partly by omission - Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Illustration

A intentionally causes Z's death, partly by illegally omitting to give Z food, and party by beating Z. A has committed murder.

(8) When an offence is committed by means of several acts, whoever intentionally cooperates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Back to Index

Illustrations

(a) A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects the several doses of poison so administered to him. Here A and B intentionally cooperate in the commission of murder and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.

(b) A and B are joint jailors, and as such have the charge of Z, a prisoner, alternatively for six hours at a time. A and B, intending to cause Z's death, knowingly cooperate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(c) A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food; in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or cooperation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder, but, as A did not cooperate with B. A is guilty only of an attempt to commit murder.

Corresponding Provision of Previous Statute: Section 37, Indian Penal Code, 1860

Section 37 – Co-operation by doing one of several acts constituting an offence - When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Illustrations

(a) A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.

(b) A and B are joint jailors, and as such have the charge of Z, a prisoner, alternatively for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B, are guilty of the murder of Z.

Back to Index

(c) A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food; in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder, but, as A did not co-operate with B. A is guilty only of an attempt to commit murder.

(9) Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Illustration

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

Corresponding Provision of Previous Statute: Section 38, Indian Penal Code, 1860

Section 38 – Persons concerned in criminal act may be guilty of different offences - Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Illustration

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

Back to Index

CHAPTER II

OF PUNISHMENTS

4. Punishments

The punishments to which offenders are liable under the provisions of this Sanhita are--

(a) Death;

(b) Imprisonment for life;

(c) Imprisonment, which is of two descriptions, namely:--

(1) Rigorous, that is, with hard labour;

(2) Simple;

(d) Forfeiture of property;

(e) Fine;

(f) Community Service.

Corresponding Provision of Previous Statute: Section 53, Indian Penal Code, 1860

Section 53 – Punishments - The punishments to which offenders are liable under the provisions of this Code are –

First,—Death;

Secondly.—Imprisonment for life;

Fourthly.—Imprisonment, which is of two descriptions, namely:—

(1) Rigorous, that is, with hard labour;

(2) Simple;

Fifthly.—Forfeiture of property;

Sixthly.—Fine.

Back to Index

5. Commutation of sentence

The appropriate Government may, without the consent of the offender, commute any punishment under this Sanhita to any other punishment in accordance with section 474 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

Explanation.--For the purposes of this section the expression "appropriate Government" means,--

(a) in cases where the sentence is a sentence of death or is for an offence against any law relating to a matter to which the executive power of the Union extends, the Central Government; and

Corresponding Provision of Previous Statute: Section 54, Indian Penal Code, 1860

Section 54 – Commutation of sentence of death - In every case in which sentence of death shall have been passed, the appropriate Government may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

(b) in cases where the sentence (whether of death or not) is for an offence against any law relating to a matter to which the executive power of the State extends, the Government of the State within which the offender is sentenced.

Corresponding Provision of Previous Statute: Section 55, Indian Penal Code, 1860

Section 55 – Commutation of sentence of imprisonment for life - In every case in which sentence of imprisonment for life shall have been passed, the appropriate Government may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

Section 55A - Definition of "appropriate Government" - In sections fifty-four and fifty-five the expression "appropriate Government" means,—

(a) in cases where the sentence is a sentence of death or is for an offence against any law relating to a matter to which the executive power of the Union extends, the Central Government; and

(b) in cases where the sentence (whether of death or not) is for an offence against any law relating to a matter to which the executive power of the State extends, the Government of the State within which the offender is sentenced.

Back to Index

6. Fractions of terms of punishment

In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years unless otherwise provided.

Corresponding Provision of Previous Statute: Section 57, Indian Penal Code, 1860

Section 57 – Fractions of terms of punishment - In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years.

7. Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple

In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

Corresponding Provision of Previous Statute: Section 60, Indian Penal Code, 1860

Section 60 – Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple – In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

8. Amount of fine, liability in default of payment of fine, etc

(1) Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

Corresponding Provision of Previous Statute: Section 63, Indian Penal Code, 1860

Section 63 – Amount of fine - Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

(2) In every case of an offence--

(a) punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment;

Back to Index

(b) punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine, it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, in which imprisonment shall be in excess of any other imprisonment to which he may

Corresponding Provision of Previous Statute: Section 64, Indian Penal Code, 1860

Section 64 – Sentence of imprisonment for non-payment of fine - In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine.

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

(3) The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

Corresponding Provision of Previous Statute: Section 65, Indian Penal Code, 1860

Section 65 – Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable - The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

(4) The imprisonment which the Court imposes in default of payment of a fine or in default of community service may be of any description to which the offender might have been sentenced for the offence.

Corresponding Provision of Previous Statute: Section 66, Indian Penal Code, 1860

Section 66 – Description of imprisonment for non-payment of fine - The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

(5) If the offence is punishable with fine or community service, the imprisonment which the Court imposes in default of payment of the fine or in default of community service shall be simple, and the term for which the Court

Back to Index

directs the offender to be imprisoned, in default of payment of fine or in default of community service, shall not exceed,--

(a) two months when the amount of the fine does not exceed five thousand rupees;

(b) four months when the amount of the fine does not exceed ten thousand rupees; and

(c) one year in any other case.

Corresponding Provision of Previous Statute: Section 67, Indian Penal Code, 1860

Section 67 – Imprisonment for non-payment of fine, when offence punishable with fine only - If the offence be punishable with fine only, the imprisonment which the Court imposes in default of payment of the fine shall be simple, and] the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

(6) (a) The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law;

(b) If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Illustration

A is sentenced to a fine of one thousand rupees and to four months' imprisonment in default of payment. Here, if seven hundred and fifty rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seven hundred and fifty rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If five hundred rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be

Back to Index

discharged as soon as the two months are completed. If five hundred rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

(7) The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

Corresponding Provision of Previous Statute: Section 70, Indian Penal Code, 1860

Section 70 – Fine leviable within six years, or during imprisonment. Death not to discharge property from liability - The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

9. Limit of punishment of offence made up of several offences

(1) Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

(2) Where--

(a) anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished; or

(b) several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.

Back to Index

Illustrations

(a) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b) But, if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

Corresponding Provision of Previous Statute: Section 71, Indian Penal Code, 1860

Section 71 – Limit of punishment of offence made up of several offences - Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.

Illustrations

(a) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b) But, if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

10. Punishment of person guilty of one of several offences, judgment stating that it is doubtful of which

In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which

Back to Index

of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

Corresponding Provision of Previous Statute: Section 72, Indian Penal Code, 1860

Section 72 – Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which - In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

11. Solitary confinement

Whenever any person is convicted of an offence for which under this Sanhita the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, namely:--

(a) a time not exceeding one month if the term of imprisonment shall not exceed six months;

(b) a time not exceeding two months if the term of imprisonment shall exceed six months and shall not exceed one year;

(c) a time not exceeding three months if the term of imprisonment shall exceed one year.

Corresponding Provision of Previous Statute: Section 73, Indian Penal Code, 1860

Section 73 – Solitary confinement - Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say—

a time not exceeding one month if the term of imprisonment shall not exceed six months; a time not exceeding two months if the term of imprisonment shall exceed six months and shall not exceed one year;

a time not exceeding three months if the term of imprisonment shall exceed one year.

Back to Index

12. Limit of solitary confinement

In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 11 - Solitary confinement

Corresponding Provision of Previous Statute: Section 74, Indian Penal Code, 1860

Section 74 – Limit of solitary confinement - In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods, and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

13. Enhanced punishment for certain offences after previous conviction

Whoever, having been convicted by a Court in India, of an offence punishable under Chapter X or Chapter XVII of this Sanhita with imprisonment of either description for a term of three years or upwards, shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to imprisonment for life, or to imprisonment of either description for a term which may extend to ten years.

Linked Provisions

Burma Salt Act, 1917 - Section 15 - Enhanced Punishment after Previous Conviction

Coast Guard Act, 1978 - Section 87 - Evidence of Previous Convictions and General Character

Code on Social Security, 2020 - Section 134 - Enhanced Punishment in Certain Cases after Previous Conviction 2020 Amendment: Date of Enforcement Not Notified

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 - Section 14AA -

Back to Index

Enhanced Punishment in Certain Cases after Previous Conviction

Employees' State Insurance Act, 1948 - Section 85A - Enhanced Punishment in Certain Cases after Previous Conviction

Factories Act, 1934 - Section 61 - Enhanced Penalty in Certain Cases after Previous Conviction

Factories Act, 1948 - Section 94 - Enhanced Penalty after Previous Conviction

Motor Transport Workers' Act, 1961 - Section 33 - Enhanced Penalty after Previous Conviction

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 31 - Enhanced Punishment for Offences after Previous Conviction

Opium Act, 1878 - Section 9G - Enhanced Punishment after Previous Conviction

Plantations Labour Act, 1951 - Section 37 - Enhanced Penalty after Previous Conviction

Back to Index

The Water (Prevention and Control of Pollution) Act, 1974 - Section 45 - Enhanced Penalty after Previous Conviction

Corresponding Provision of Previous Statute: Section 75, Indian Penal Code, 1860

Section 75 – Enhanced punishment for certain offences under Chapter XII or Chapter XVII after previous conviction - Whoever, having been convicted,—

(a) by a Court in India, of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards,

shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to imprisonment for life, or to imprisonment of either description for a term which may extend to ten years.

Back to Index

CHAPTER III

GENERAL EXCEPTIONS

14. Act done by a person bound, or by mistake of fact believing himself bound, by law

Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Illustrations

(a) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

(b) A, an officer of a Court, being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 15 - Act of Judge when acting judicially

Bharatiya Nyaya Sanhita, 2023 - Section 16 - Act done pursuant to judgment or order of Court

Bharatiya Nyaya Sanhita, 2023 - Section 17 - Act done by a person justified, or by mistake of fact believing himself justified, by law

Bharatiya Nyaya Sanhita, 2023 - Section 18 - Accident in doing a lawful act

Bharatiya Nyaya Sanhita, 2023 - Section 19 - Act without criminal intent and to prevent other harm

Bharatiya Nyaya Sanhita, 2023 - Section 20 - Act of Child under seven years of age

Bharatiya Nyaya Sanhita, 2023 – Section 21 - Act of Child above seven and under twelve years of age, of immature understanding

Back to Index

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 30 - Act done in good faith for benefit of person without consent

Bharatiya Nyaya Sanhita, 2023 - Section 31 - Communication made in good faith

Bharatiya Nyaya Sanhita, 2023 - Section 32 - Act to which a person is compelled by threats

Bharatiya Nyaya Sanhita, 2023 - Section 33 - Act causing slight harm

Bharatiya Nyaya Sanhita, 2023 - Section 34 - Things done in private defence

Corresponding Provision of Previous Statute: Section 76, Indian Penal Code, 1860

Section 76 – Act done by a person bound, or by mistake of fact believing himself bound, by law -

Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Illustrations

(a) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

(b) A, an officer of a Court of Justice, being ordered by that Court to arrest Y and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

15. Act of Judge when acting judicially

Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

Linked Provisions

Contempt of Courts Act, 1971 - Section 16 - Contempt by Judge, Magistrate or Other Person Acting Judicially

Back to Index

Corresponding Provision of Previous Statute: Section 77, Indian Penal Code, 1860

Section 77 – Act of Judge when acting judicially - Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

16. Act done pursuant to judgment or order of Court

Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court; if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

Corresponding Provision of Previous Statute: Section 78, Indian Penal Code, 1860

Section 78 – Act done pursuant to the judgment or order of Court - Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

17. Act done by a person justified, or by mistake of fact believing himself justified, by law

Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

Illustration

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

Corresponding Provision of Previous Statute: Section 79, Indian Penal Code, 1860

Section 79 – Act done by a person justified, or by mistake of fact believing himself justified, by law - Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

Illustration

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment exerted in

Back to Index

good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

LANDMARK JUDGMENT

Chirangi vs. State, MANU/MH/0166/1952

18. Accident in doing a lawful act

Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Illustration

A is at work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

Corresponding Provision of Previous Statute: Section 80, Indian Penal Code, 1860

Section 80 – Accident in doing a lawful act - Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Illustration

A is at work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

LANDMARK JUDGMENT

State of Orissa vs. Khora Ghasi, MANU/OR/0088/1978

19. Act likely to cause harm, but done without criminal intent, and to prevent other harm

Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Back to Index

Explanation.--It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations

(a) A, the captain of a vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B, with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down the boat C.

(b) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

Corresponding Provision of Previous Statute: Section 81, Indian Penal Code, 1860

Section 81 – Act likely to cause harm, but done without criminal intent, and to prevent other harm - Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Explanation.—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations

(a) A, the captain of a steam vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B, with twenty or thirty

Back to Index

passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down C.

(b) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

LANDMARK JUDGMENT

R. v Dudley (Thomas), MANU/UKWQ/0002/1884

20. Act of a child under seven years of age

Nothing is an offence which is done by a child under seven years of age.

Corresponding Provision of Previous Statute: Section 82, Indian Penal Code, 1860

Section 82 – Act of a child under seven years of age - Nothing is an offence which is done by a child under seven years of age.

LANDMARK JUDGMENT

R. v. Dudley (Thomas), MANU/UKWQ/0002/1884

21. Act of a child above seven and under twelve years of age of immature understanding

Nothing is an offence which is done by a child above seven years of age and under twelve years of age, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

Corresponding Provision of Previous Statute: Section 83, Indian Penal Code, 1860

Section 83 – Act of a child above seven and under twelve of immature understanding - Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

22. Act of a person of unsound mind

Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 34 -Things done in private defence

Back to Index

Corresponding Provision of Previous Statute: Section 84, Indian Penal Code, 1860

Section 84 – Act of a person of unsound mind - Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

LANDMARK JUDGMENT

Amrit Bhushan Gupta vs. Union of India (UOI) and Ors.,
MANU/SC/0087/1976

23. Act of a person incapable of judgment by reason of intoxication caused against his will

Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Linked Provisions

Air Force Act, 1950 - Section 48 – Intoxication

Army Act, 1950 - Section 48 – Intoxication

Border Security Force Act, 1968 - Section 26 – Intoxication

Air Force Act 1950 - Section 46 - Certain Forms of Disgraceful Conduct

Indo-Tibetan Border Police Force Act, 1992 - Section 29 – Intoxication

Sashastra Seema Bal Act, 2007 - Section 29 – Intoxication

Bharatiya Nyaya Sanhita, 2023 - Section 24 - Offence requiring intent or knowledge done by intoxicated person

Corresponding Provision of Previous Statute: Section 85, Indian Penal Code, 1860

Section 85 – Act of a person incapable of judgment by reason of intoxication caused against his will -

Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Back to Index

LANDMARK JUDGMENT

Basdev vs. The State of Pepsu, MANU/SC/0027/1956

24. Offence requiring a particular intent or knowledge committed by one who is intoxicated

In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

Linked Provisions

Sashastra Seema Bal Act, 2007 - Section 29 – Intoxication

Bharatiya Nyaya Sanhita, 2023 - Section 18 -Accident in doing a lawful act

Corresponding Provision of Previous Statute: Section 86, Indian Penal Code, 1860

Section 86 – Offence requiring a particular intent or knowledge committed by one who is intoxicated - In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

LANDMARK JUDGMENT

Basdev vs. The State of Pepsu, MANU/SC/0027/1956

25. Act not intended and not known to be likely to cause death or grievous hurt, done by consent

Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 14 - Act of Judge when acting judicially

Bharatiya Nyaya Sanhita, 2023 - Section 15 - Act of Judge when acting judicially

Bharatiya Nyaya Sanhita, 2023 - Section 16 - Act done pursuant to judgment or order of Court

Bharatiya Nyaya Sanhita, 2023 - Section 17

Back to Index

Illustration

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

-Act done by a person justified, or by mistake of fact believing himself justified, by law

Bharatiya Nyaya Sanhita, 2023 - Section 18 -Accident in doing a lawful act

Bharatiya Nyaya Sanhita, 2023 - Section 19 -Act without criminal intent and to prevent other harm

Bharatiya Nyaya Sanhita, 2023 - Section 20 -Act of Child under seven years of age

Bharatiya Nyaya Sanhita, 2023 - Section 21 -Act of Child above seven and under twelve years of age, of immature understanding

Bharatiya Nyaya Sanhita, 2023 - Section 22 - Act of person of unsound mind

Bharatiya Nyaya Sanhita, 2023 - Section 23 -Act of person incapable of judgement by reason of intoxication

Bharatiya Nyaya Sanhita, 2023 - Section 24 -Offence requiring intent or knowledge done by intoxicated person

Bharatiya Nyaya Sanhita, 2023 - Section 26 - Act not intended to cause death or grievous hurt done in good faith

Bharatiya Nyaya Sanhita, 2023 - Section 27 -Act done in good faith for benefit of Child or person of unsound mind

Bharatiya Nyaya Sanhita, 2023 - Section 28 -Consent under fear or misconception

Bharatiya Nyaya Sanhita, 2023 - Section 29 - Exclusion of acts which are offences independent of harm caused

Bharatiya Nyaya Sanhita, 2023 - Section 30 - Act done in good faith for benefit of person without consent

Bharatiya Nyaya Sanhita, 2023 - Section 31 - Communication made in good faith

Bharatiya Nyaya Sanhita, 2023 - Section 32 - Act to which a person is compelled by threats

Bharatiya Nyaya Sanhita, 2023 - Section 33 - Act causing slight harm

Bharatiya Nyaya Sanhita, 2023 - Section 34 - Things done in private defence

Corresponding Provision of Previous Statute: Section 87, Indian Penal Code, 1860

Section 87 – Act not intended and not known to be likely to cause death or grievous hurt, done by Consent - Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Back to Index

Illustration

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

26. Act not intended to cause death, done by consent in good faith for person's benefit

Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustration

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under the painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 14 - Act of Judge when acting judicially

Bharatiya Nyaya Sanhita, 2023 - Section 15 - Act of Judge when acting judicially

Bharatiya Nyaya Sanhita, 2023 - Section 16 - Act done pursuant to judgment or order of Court

Bharatiya Nyaya Sanhita, 2023 - Section 17 - Act done by a person justified, or by mistake of fact believing himself justified, by law

Bharatiya Nyaya Sanhita, 2023 - Section 18 - Accident in doing a lawful act

Bharatiya Nyaya Sanhita, 2023 - Section 19 - Act without criminal intent and to prevent other harm

Bharatiya Nyaya Sanhita, 2023 - Section 20 - Act of Child under seven years of age

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 21 - Act of Child above seven and under twelve years of age, of immature understanding

Bharatiya Nyaya Sanhita, 2023 - Section 22 - Act of person of unsound mind

Bharatiya Nyaya Sanhita, 2023 - Section 23 - Act of person incapable of judgement by reason of intoxication

Bharatiya Nyaya Sanhita, 2023 - Section 24 - Offence requiring intent or knowledge done by intoxicated person

Bharatiya Nyaya Sanhita, 2023 - Section 25 - Act not intended to be likely to cause death or grievous hurt done by consent

Bharatiya Nyaya Sanhita, 2023 - Section 27 - Act done in good faith for benefit of Child or person of unsound mind

Bharatiya Nyaya Sanhita, 2023 - Section 28 - Consent under fear or misconception

Bharatiya Nyaya Sanhita, 2023 - Section 29 - Exclusion of acts which are offences independent of harm caused

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 30 - Act done in good faith for benefit of person without consent

Bharatiya Nyaya Sanhita, 2023 - Section 31 - Communication made in good faith

Bharatiya Nyaya Sanhita, 2023 - Section 32 - Act to which a person is compelled by threats

Bharatiya Nyaya Sanhita, 2023 - Section 33 - Act causing slight harm

Bharatiya Nyaya Sanhita, 2023 - Section 34 - Things done in private defence

Corresponding Provision of Previous Statute: Section 88, Indian Penal Code, 1860

Section 88 – Act not intended to cause death, done by consent in good faith for person's benefit - Nothing, which is not intented to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustration

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under the painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

27. Act done in good faith for benefit of child or person of unsound mind, by, or by consent of guardian

Nothing which is done in good faith for the benefit of a person under twelve years of age, or person of unsound mind, by, or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person:

Linked Provisions

Parsi Marriage and Divroce Act, 1865 - Section 45 - Settlement of Wife's Property for Benefit of Children

Bharatiya Nyaya Sanhita, 2023 - Section 14

Back to Index

Provided that this exception shall not extend to--

(a) the intentional causing of death, or to the attempting to cause death;

(b) the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

(c) the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

(d) the abetment of any offence, to the committing of which offence it would not extend.

Illustration

A, in good faith, for his child's benefit without his child's consent, has his child cut for the stone by a surgeon knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, in as much as his object was the cure of the child.

- Act of Judge when acting judicially

Bharatiya Nyaya Sanhita, 2023 - Section 15 - Act of Judge when acting judicially

Bharatiya Nyaya Sanhita, 2023 - Section 16 - Act done pursuant to judgment or order of Court

Bharatiya Nyaya Sanhita, 2023 - Section 17 - Act done by a person justified, or by mistake of fact believing himself justified, by law

Bharatiya Nyaya Sanhita, 2023 - Section 18 Accident in doing a lawful act

Bharatiya Nyaya Sanhita, 2023 - Section 19 - Act without criminal intent and to prevent other harm

Bharatiya Nyaya Sanhita, 2023 - Section 20 - Act of Child under seven years of age

Bharatiya Nyaya Sanhita, 2023 - Section 21 - Act of Child above seven and under twelve years of age, of immature understanding

Bharatiya Nyaya Sanhita, 2023 - Section 22 - Act of person of unsound mind

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 23 - Act of person incapable of judgement by reason of intoxication

Bharatiya Nyaya Sanhita, 2023 - Section 24 - Offence requiring intent or knowledge done by intoxicated person

Bharatiya Nyaya Sanhita, 2023 - Section 25 - Act not intended to be likely to cause death or grievous hurt done by consent

Bharatiya Nyaya Sanhita, 2023 - Section 26 - Act not intended to cause death or grievous hurt done in good faith

Bharatiya Nyaya Sanhita, 2023 - Section 28 - Consent under fear or misconception

Bharatiya Nyaya Sanhita, 2023 - Section 29 -Exclusion of acts which are offences independent of harm caused

Bharatiya Nyaya Sanhita, 2023 - Section 30 - Act done in good faith for benefit of person without consent

Bharatiya Nyaya Sanhita, 2023 - Section 31 - Communication made in good faith

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 32 - Act to which a person is compelled by threats

Bharatiya Nyaya Sanhita, 2023 - Section 33 - Act causing slight harm

Bharatiya Nyaya Sanhita, 2023 - Section 34 - Things done in private defence

Corresponding Provision of Previous Statute: Section 89, Indian Penal Code, 1860

Section 89 – Act done in good faith for benefit of child or insane person, by or by consent of guardian - Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person: Provided -

Provisos - *First*.- That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

Secondly. – That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly. – That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt; or the curing of any grievous disease or infirmity;

Fourthly. – That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustration

A, in good faith, for his child's benefit without his child's consent, has his child cut for the stone by a surgeon knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

28. Consent known to be given under fear or misconception

Linked Provisions

Indian Contract Act, 1872 - Section 13 - 'Consent' Defined

A consent is not such a consent as is intended by any section of this Sanhita,--

(a) if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to

Back to Index

believe, that the consent was given in consequence of such fear or misconception; or

(b) if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

(c) unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Indian Contract Act, 1872 - Section 14 - 'Free Consent' Defined

New Delhi Municipal Council Act, 1994 - Section 344 - Consent Ordinarily To Be Obtained

Bharatiya Nyaya Sanhita, 2023 - Section 14 - Act of Judge when acting judicially

Bharatiya Nyaya Sanhita, 2023 - Section 15 - Act of Judge when acting judicially

Bharatiya Nyaya Sanhita, 2023 - Section 16 - Act done pursuant to judgment or order of Court

Bharatiya Nyaya Sanhita, 2023 - Section 17 - Act done by a person justified, or by mistake of fact believing himself justified, by law

Bharatiya Nyaya Sanhita, 2023 - Section 18 - Accident in doing a lawful act

Bharatiya Nyaya Sanhita, 2023 - Section 19 - Act without criminal intent and to prevent other harm

Bharatiya Nyaya Sanhita, 2023 - Section 20 - Act of Child under seven years of age

Back to Index

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 30 - Act done in good faith for benefit of person without consent

Bharatiya Nyaya Sanhita, 2023 - Section 31 - Communication made in good faith

Bharatiya Nyaya Sanhita, 2023 - Section 32 - Act to which a person is compelled by threats

Bharatiya Nyaya Sanhita, 2023 - Section 33 - Act causing slight harm

Bharatiya Nyaya Sanhita, 2023 - Section 34 - Things done in private defence

Corresponding Provision of Previous Statute: Section 90, Indian Penal Code, 1860

Section 90 – Consent known to be given under fear or misconception - A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person - if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child - unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

29. Exclusion of acts which are offences independently of harm caused

The exceptions in sections 25, 26 and 27 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 14 - Act of Judge when acting judicially

Bharatiya Nyaya Sanhita, 2023 - Section 15 - Act of Judge when acting judicially

Back to Index

Illustration

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence "by reason of such harm"; and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

Bharatiya Nyaya Sanhita, 2023 - Section 16 - Act done pursuant to judgment or order of Court

Bharatiya Nyaya Sanhita, 2023 - Section 17 - Act done by a person justified, or by mistake of fact believing himself justified, by law

Bharatiya Nyaya Sanhita, 2023 - Section 18 - Accident in doing a lawful act

Bharatiya Nyaya Sanhita, 2023 - Section 19 - Act without criminal intent and to prevent other harm

Bharatiya Nyaya Sanhita, 2023 - Section 20 - Act of Child under seven years of age

Bharatiya Nyaya Sanhita, 2023 - Section 21 - Act of Child above seven and under twelve years of age, of immature understanding

Bharatiya Nyaya Sanhita, 2023 - Section 22 - Act of person of unsound mind

Bharatiya Nyaya Sanhita, 2023 - Section 23 - Act of person incapable of judgement by reason of intoxication

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 24 - Offence requiring intent or knowledge done by intoxicated person

Bharatiya Nyaya Sanhita, 2023 - Section 26 - Act not intended to cause death or grievous hurt done in good faith

Bharatiya Nyaya Sanhita, 2023 - Section 27 - Act done in good faith for benefit of Child or person of unsound mind

Bharatiya Nyaya Sanhita, 2023 - Section 28 - Consent under fear or misconception

Bharatiya Nyaya Sanhita, 2023 - Section 25 -Act not intended to be likely to cause death or grievous hurt done by consent

Bharatiya Nyaya Sanhita, 2023 - Section 30 - Act done in good faith for benefit of person without consent

Bharatiya Nyaya Sanhita, 2023 - Section 31 - Communication made in good faith

Bharatiya Nyaya Sanhita, 2023 - Section 32 - Act to which a person is compelled by threats

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 33 - Act causing slight harm

Bharatiya Nyaya Sanhita, 2023 - Section 34 - Things done in private defence

Corresponding Provision of Previous Statute: Section 91, Indian Penal Code, 1860

Section 91 – Exclusion of acts which are offences independently of harm cause - The exceptions in sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence "by reason of such harm"; and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

30. Act done in good faith for benefit of a person without consent

Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit:

Provided that this exception shall not extend to--

(a) the intentional causing of death, or the attempting to cause death;

(b) the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 14 - Act of Judge when acting judicially

Bharatiya Nyaya Sanhita, 2023 - Section 15 - Act of Judge when acting judicially

Bharatiya Nyaya Sanhita, 2023 - Section 16 - Act done pursuant to judgment or order of Court

Bharatiya Nyaya Sanhita, 2023 - Section 17 - Act done by a person justified, or by mistake of fact believing himself justified, by law

Back to Index

(c) the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

(d) the abetment of any offence, to the committing of which offence it would not extend.

Illustrations

(1) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(2) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's bullet gives Z a mortal wound. A has committed no offence.

(3) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is no time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(4) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation.--Mere pecuniary benefit is not benefit within the meaning of sections 26, 27 and this section.

Bharatiya Nyaya Sanhita, 2023 - Section 18 - Accident in doing a lawful act

Bharatiya Nyaya Sanhita, 2023 - Section 19 - Act without criminal intent and to prevent other harm

Bharatiya Nyaya Sanhita, 2023 - Section 20 - Act of Child under seven years of age

Bharatiya Nyaya Sanhita, 2023 - Section 21 - Act of Child above seven and under twelve years of age, of immature understanding

Bharatiya Nyaya Sanhita, 2023 - Section 22 - Act of person of unsound mind

Bharatiya Nyaya Sanhita, 2023 - Section 23 - Act of person incapable of judgement by reason of intoxication

Bharatiya Nyaya Sanhita, 2023 - Section 24 - Offence requiring intent or knowledge done by intoxicated person

Bharatiya Nyaya Sanhita, 2023 - Section 26 - Act not intended to cause death or grievous hurt done in good faith

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 27 - Act done in good faith for benefit of Child or person of unsound mind

Bharatiya Nyaya Sanhita, 2023 - Section 28 - Consent under fear or misconception

Bharatiya Nyaya Sanhita, 2023 - Section 29 -Act not intended to be likely to cause death or grievous hurt done by consent

Bharatiya Nyaya Sanhita, 2023 - Section 25 - Act done in good faith for benefit of person without consent

Bharatiya Nyaya Sanhita, 2023 - Section 31 - Communication made in good faith

Bharatiya Nyaya Sanhita, 2023 - Section 32 - Act to which a person is compelled by threats

Bharatiya Nyaya Sanhita, 2023 - Section 33 - Act causing slight harm

Bharatiya Nyaya Sanhita, 2023 - Section 34 - Things done in private defence

Corresponding Provision of Previous Statute: Section 92, Indian Penal Code, 1860

Section 92 – Act done in good faith for benefit of a person without consent - Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit: Provided —

Back to Index

Provisos. *First*.—That this exception shall not extend to the intentional causing of death, or the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustrations

(a) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(b) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(c) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is no time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(d) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house stop, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation.—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89 and 92.

31. Communication made in good faith

No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Illustration

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 351 - Criminal intimidation

Bharatiya Nyaya Sanhita, 2023 - Section 14 - Act of Judge when acting judicially

Bharatiya Nyaya Sanhita, 2023 - Section 15 - Act of Judge when acting judicially

Back to Index

Back to Index

- Offence requiring intent or knowledge done by intoxicated person

Bharatiya Nyaya Sanhita, 2023 - Section 26 - Act not intended to cause death or grievous hurt done in good faith

Bharatiya Nyaya Sanhita, 2023 - Section 27 -Act done in good faith for benefit of Child or person of unsound mind

Bharatiya Nyaya Sanhita, 2023 - Section 28 - Consent under fear or misconception

Bharatiya Nyaya Sanhita, 2023 - Section 29 -Exclusion of acts which are offences independent of harm caused

Bharatiya Nyaya Sanhita, 2023 - Section 30 - Act done in good faith for benefit of person without consent

Bharatiya Nyaya Sanhita, 2023 - Section 25 - Act not intended to be likely to cause death or grievous hurt done by consent

Bharatiya Nyaya Sanhita, 2023 - Section 32 - Act to which a person is compelled by threats

Bharatiya Nyaya Sanhita, 2023 - Section 33 - Act causing slight harm

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 34 - Things done in private defence

Corresponding Provision of Previous Statute: Section 93, Indian Penal Code, 1860

Section 93 – Communication made in good faith - No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Illustration

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

Explanation.—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89 and 92.

32. Act to which a person is compelled by threats

Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence:

Provided that the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1.--A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2.--A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law; for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

Linked Provisions

Copyright Act, 1957 - Section 60 - Remedy In The Case Of Groundless Threat of Legal Proceedings

Unlawful Activities (Prevention) Act, 1967 - Section 22 - Punishment for Threatening Witness

Bharatiya Nyaya Sanhita, 2023 - Section 308(6) - Extortion

Bharatiya Nyaya Sanhita, 2023 - Section 14 - Act of Judge when acting judicially

Bharatiya Nyaya Sanhita, 2023 - Section 15 - Act of Judge when acting judicially

Bharatiya Nyaya Sanhita, 2023 - Section 16 - Act done pursuant to judgment or order of Court

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 17 - Act done by a person justified, or by mistake of fact believing himself justified, by law

Bharatiya Nyaya Sanhita, 2023 - Section 18 - Accident in doing a lawful act

Bharatiya Nyaya Sanhita, 2023 - Section 19 - Act without criminal intent and to prevent other harm

Bharatiya Nyaya Sanhita, 2023 - Section 20 - Act of Child under seven years of age

Bharatiya Nyaya Sanhita, 2023 - Section 21 - Act of Child above seven and under twelve years of age, of immature understanding

Bharatiya Nyaya Sanhita, 2023 - Section 22 - Act of person of unsound mind

Bharatiya Nyaya Sanhita, 2023 - Section 23 - Act of person incapable of judgement by reason of intoxication

Bharatiya Nyaya Sanhita, 2023 - Section 24 - Offence requiring intent or knowledge done by intoxicated person

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 26 - Act not intended to cause death or grievous hurt done in good faith

Bharatiya Nyaya Sanhita, 2023 - Section 27 - Act done in good faith for benefit of Child or person of unsound mind

Bharatiya Nyaya Sanhita, 2023 - Section 28 - Consent under fear or misconception

Bharatiya Nyaya Sanhita, 2023 - Section 29 - Exclusion of acts which are offences independent of harm caused

Bharatiya Nyaya Sanhita, 2023 - Section 30 - Act done in good faith for benefit of person without consent

Bharatiya Nyaya Sanhita, 2023 - Section 31 - Communication made in good faith

Bharatiya Nyaya Sanhita, 2023 - Section 25 - Act not intended to be likely to cause death or grievous hurt done by consent

Bharatiya Nyaya Sanhita, 2023 - Section 33 - Act causing slight harm

Bharatiya Nyaya Sanhita, 2023 - Section 34 - Things done in private defence

Back to Index

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 216 - Procedure for witnesses in case of threatening, etc.

Bharatiya Sakshya Act, 2023 - Section 22- Confession caused by inducement, threat, coercion or promise, when irrelevant in criminal proceeding

Corresponding Provision of Previous Statute: Section 94, Indian Penal Code, 1860

Section 94 – Act to which a person is compelled by threats - Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence: Provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2.—A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law; for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

33. Act causing slight harm

Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

of right of private defence

of right of private defence

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 14 - Act of Judge when acting judicially

Bharatiya Nyaya Sanhita, 2023 - Section 15 - Act of Judge when acting judicially

Bharatiya Nyaya Sanhita, 2023 - Section 16 - Act done pursuant to judgment or order of Court

Back to Index

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 26 - Act not intended to cause death or grievous hurt done in good faith

Bharatiya Nyaya Sanhita, 2023 - Section 27 - Act done in good faith for benefit of Child or person of unsound mind

Bharatiya Nyaya Sanhita, 2023 - Section 28 - Consent under fear or misconception

Bharatiya Nyaya Sanhita, 2023 - Section 29 -Exclusion of acts which are offences independent of harm caused

Bharatiya Nyaya Sanhita, 2023 - Section 30 - Act done in good faith for benefit of person without consent

Bharatiya Nyaya Sanhita, 2023 - Section 31 - Communication made in good faith

Bharatiya Nyaya Sanhita, 2023 - Section 32 - Act to which a person is compelled by threats

Bharatiya Nyaya Sanhita, 2023 - Section 25 - Act not intended to be likely to cause death or grievous hurt done by consent

Bharatiya Nyaya Sanhita, 2023 - Section 34 - Things done in private defence

Corresponding Provision of Previous Statute: Section 95, Indian Penal Code, 1860

Section 95 – Act causing slight harm - Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

LANDMARK JUDGMENT

Amish Devgan vs. Union of India (UOI) and Ors., MANU/SC/0921/2020

of right of private defence

34. Things done in private defence

Nothing is an offence which is done in the exercise of the right of private defence.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 14 - Act of Judge when acting judicially

Bharatiya Nyaya Sanhita, 2023 - Section 15 - Act of Judge when acting judicially

Bharatiya Nyaya Sanhita, 2023 - Section 16 - Act done pursuant to judgment or order of Court

Bharatiya Nyaya Sanhita, 2023 - Section 17 - Act done by a person justified, or by mistake of fact believing himself justified, by law

Bharatiya Nyaya Sanhita, 2023 - Section 18 - Accident in doing a lawful act

Bharatiya Nyaya Sanhita, 2023 - Section 19 - Act without criminal intent and to prevent other harm

Back to Index

Back to Index

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 40 - Commencement and continuance of the right of private defence of the body

Bharatiya Nyaya Sanhita, 2023 - Section 41 - Commencement and continuance of the right of private defence of the body

Bharatiya Nyaya Sanhita, 2023 - Section 43 - Commencement and continuance of the right of private defence of property

Bharatiya Nyaya Sanhita, 2023 - Section 44 - Right of private defence against deadly assault

Corresponding Provision of Previous Statute: Section 96, Indian Penal Code, 1860

Section 96 – Things done in private defence - Nothing is an offence which is done in the exercise of the right of private defence.

LANDMARK JUDGMENT

Kashi Ram and Ors. vs. State of Rajasthan, MANU/SC/0649/2008

35. Right of private defence of body and of property

Every person has a right, subject to the restrictions contained in section 37, to defend--

(a) his own body, and the body of any other person, against any offence affecting the human body;

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 36 - Right of private defence against act of person of unsound mind

Bharatiya Nyaya Sanhita, 2023 - Section 37 - Act against which there is no private defence

Back to Index

(b) the property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

Bharatiya Nyaya Sanhita, 2023 - Section 38 - When right of private defence of the body extends to causing death

Bharatiya Nyaya Sanhita, 2023 - Section 40 - Commencement and continuance of the right of private defence of the body

Bharatiya Nyaya Sanhita, 2023 - Section 41 - Commencement and continuance of the right of private defence of the body

Bharatiya Nyaya Sanhita, 2023 - Section 43 - Commencement and continuance of the right of private defence of property

Bharatiya Nyaya Sanhita, 2023 - Section 44 - Right of private defence against deadly assault

Corresponding Provision of Previous Statute: Section 97, Indian Penal Code, 1860

Section 97 – Right of private defence of the body and of property - Every person has a right, subject to the restrictions contained in section 99, to defend—

First.—His own body, and the body of any other person, against any offence affecting the human body;

Secondly.—The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

36. Right of private defence against act of a person of unsound mind, etc

When an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the

Linked Provisions

The Juvenile Justice Act, 1986 - Section 48 - Committal to Approved

Back to Index

unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Place of Juvenile or Child Suffering From Dangerous Diseases and His Future Disposal

Navy Act, 1957 - Section 180 - Application of Sections 171 To 179 to Persons of Unsound Mind

Bharatiya Nyaya Sanhita, 2023 - Section 22 - Act of person of unsound mind

Bharatiya Nyaya Sanhita, 2023 - Section 312 - Attempt to commit robbery or dacoity when armed with deadly weapon

Illustrations

(a) Z, a person of unsound mind, attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(b) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

Corresponding Provision of Previous Statute: Section 98, Indian Penal Code, 1860

Section 98 – Right of private defence against the act of a person of unsound mind, etc. - When an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations

(a) Z, under the influence of madness, attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(b) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

37. Acts against which there is no right of private defence

(1) There is no right of private defence,--

Back to Index

(a) against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act, may not be strictly justifiable by law;

(b) against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law;

(c) in cases in which there is time to have recourse to the protection of the public authorities.

(2) The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1.--A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant.

Explanation 2.--A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

Corresponding Provision of Previous Statute: Section 99, Indian Penal Code, 1860

Section 99 – Acts against which there is no right of private defence - There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office though that direction may not be strictly justifiable by law.

Back to Index

There is no right of private defence in cases in which there is time to have recourse to protection of the public authorities.

Extent to which the right may be exercised.—The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose ofdefence.

Explanation 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

38. When right of private defence of body extends to causing death

The right of private defence of the body extends, under the restrictions specified in section 37, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:--

(a) such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

(b) such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

(c) an assault with the intention of committing rape;

(d) an assault with the intention of gratifying unnatural lust;

(e) an assault with the intention of kidnapping or abducting;

(f) an assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release;

Back to Index

(g) an act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act.

Corresponding Provision of Previous Statute: Section 100, Indian Penal Code, 1860

Section 100 – When the right of private defence of the body extends to causing death - The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:—

First.—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly.—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly.—An assault with the intention of committing rape;

Fourthly.—An assault with the intention of gratifying unnatural lust;

Fifthly.—An assault with the intention of kidnapping or abducting;

Sixthly.—An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

LANDMARK JUDGMENT

State of U.P. vs. Ram Swarup and Ors., MANU/SC/0218/1974

39. When such right extends to causing any harm other than death

If the offence be not of any of the descriptions specified in section 38, the right of private defence of the body does not extend to the voluntary ca using of death to the assailant, but does extend, under the restrictions specified in section 37, to the voluntary causing to the assailant of any harm other than death.

Corresponding Provision of Previous Statute: Section 101, Indian Penal Code, 1860

Section 101 – When such right extends to causing any harm other than death - If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99 to the voluntary causing to the assailant of any harm other than death.

LANDMARK JUDGMENT

James Martin vs. State of Kerala, MANU/SC/1051/2003

Back to Index

40. Commencement and continuance of right of private defence of body

The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit

Corresponding Provision of Previous Statute: Section 102, Indian Penal Code, 1860

Section 102 – Commencement and continuance of the right of private defence of the body - The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

41. When right of private defence of property extends to causing death

The right of private defence of property extends, under the restrictions specified in section 37, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:--

(a) robbery;

(b) house-breaking after sunset and before sunrise;

(c) mischief by fire or any explosive substance committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property;

(d) theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 309(1) - Robbery

Bharatiya Nyaya Sanhita, 2023 - Section 311 - Robbery, or dacoity, with attempt to cause death or grievous hurt

Bharatiya Nyaya Sanhita, 2023 - Section 309(2) - Robbery

Bharatiya Nyaya Sanhita, 2023 - Section 309(4) - Robbery

Bharatiya Nyaya Sanhita, 2023 - Section 331(8) - Punishment for house-trespass or house-breaking

Bharatiya Nyaya Sanhita, 2023 - Section 326 - Mischief by injury, fire or explosive substance, etc.

Bharatiya Nyaya Sanhita, 2023 - Section 324(2) - Mischief

Back to Index

Corresponding Provision of Previous Statute: Section 103, Indian Penal Code, 1860

Section 103 – When the right of private defence of property extends to causing death - The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:—

First.—Robbery;

Secondly.—House-breaking by night;

Thirdly.—Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling or as a place for the custody of property;

Fourthly.—Theft, mischief or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised

LANDMARK JUDGMENT

James Martin vs. State of Kerala, MANU/SC/1051/2003

42. When such right extends to causing any harm other than death

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 39 - When such right extends to causing any harm other than death

If the offence, the committing of which, or the attempting to commit which occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions specified in section 41, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions specified in section 37, to the voluntary causing to the wrong-doer of any harm other than death.

Corresponding Provision of Previous Statute: Section 104, Indian Penal Code, 1860

Section 104 – When such right extends to causing any harm other than death - If the offence, the committing of which, or the attempting to commit which occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

43. Commencement and continuance of right of private defence of property

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 41 - When the right of private defence of property extends to causing death

The right of private defence of property,--

(a) commences when a reasonable apprehension of danger to the property commences;

Back to Index

(b) against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered;

(c) against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues;

(d) against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief;

(e) against house-breaking after sunset and before sunrise continues as long as the house-trespass which has been begun by such house-breaking continues.

Corresponding Provision of Previous Statute: Section 105, Indian Penal Code, 1860

Section 105 – Commencement and continuance of the right of private defence of property - The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

44. Right of private defence against deadly assault when there is risk of harm to innocent person

If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 36 - Right of private defence against act of person of unsound mind

Bharatiya Nyaya Sanhita, 2023 - Section 37 - Act against which there is no private defence

Back to Index

Illustration

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

Bharatiya Nyaya Sanhita, 2023 - Section 38 - When right of private defence of the body extends to causing death

Bharatiya Nyaya Sanhita, 2023 - Section 40 - Commencement and continuance of the right of private defence of the body

Bharatiya Nyaya Sanhita, 2023 - Section 41 - Commencement and continuance of the right of private defence of the body

Bharatiya Nyaya Sanhita, 2023 - Section 43 - Commencement and continuance of the right of private defence of property

Bharatiya Nyaya Sanhita, 2023 - Section 44 - Right of private defence against deadly assault

Bharatiya Nyaya Sanhita, 2023 - Section 34 -Things done in private defence

Bharatiya Nyaya Sanhita, 2023 - Section 35 - Right of private defence of body and property

Corresponding Provision of Previous Statute: Section 106, Indian Penal Code, 1860

Section 106 – Right of private defence against deadly assault when there is risk of harm to innocent Person - If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Illustration

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

Back to Index

CHAPTER IV

OF ABETMENT, CRIMINAL CONSPIRACY AND ATTEMPT

of abetment

45. Abetment of a thing

A person abets the doing of a thing, who--

(a) instigates any person to do that thing; or

(b) engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

(c) intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.--A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorised by a warrant from a Court to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.--Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Linked Provisions

Black Money (Undisclosed Foreign Income & Assets & Imposition of Tax Act, 2015 - Section 53 – Punishment for Abetment

Army Act, 1950 - Section 66 - Abetment of Offences That Have Been Committed

The Bonded Labour System (Abolition) Act, 1976 - Section 20 - Abetment to Be An Offence

Border Security Force Act, 1968 - Section 43 - Abetment of Offences That Have Been Committed

Coast Guard Act, 1978 - Section 46 - Abetment of Offences That Have Been Committed

Companies (Profits) Surtax Act, 1964 - Section 22 - Abetment of False Returns, Etc

The Electricity Act, 2003 - Section 150 – Abetment

Back to Index

Essential Commodities Act, 1955 - Section 8 - Attempts and Abetment

Expenditure-tax Act, 1987 - Section 28 - Abetment of False Returns, Etc

Extradition Act, 1962 - Section 26 - Abetment of Extradition Offences

Hotel Receipts Tax Act, 1980 - Section 30 - Abetment of False Return, Etc Income Tax Act, 1961 - Section 278 - Abetment of False Return, Etc.

Air Force Act, 1950 - Section 68 - Abetment of offences that have been committed.

Bharatiya Nyaya Sanhita, 2023 - Section 160 - Abetment of mutiny, if mutiny is committed in consequence thereof

Bharatiya Nyaya Sanhita, 2023 - Section 161 -Abetment of assault by soldier, sailor or airman on his superior officer, when in execution of His office

Bharatiya Nyaya Sanhita, 2023 - Section 162 - Abetment of such assault, if the assault committed

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 163 - Abetment of desertion of soldier, sailor or airman

Bharatiya Nyaya Sanhita, 2023 - Section 166 - Abetment of act of insubordination by soldier, sailor or airman

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 22 - Sentences which High Courts and Sessions Judges may pass

Bharatiya Sakshya Act, 2023 - Section 117 - Presumption as to abetment of suicide by a married woman

Air Force Act, 1950 - Section 69 - Abetment of offences punishable with death and not committed.

Air Force Act, 1950 - Section 70 - Abetment of offences punishable with imprisonment and not committed.

Corresponding Provision of Previous Statute: Section 107, Indian Penal Code, 1860

Section 107 – Abetment of a thing - A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Back to Index

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

46. Abettor

A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.--The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.--To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations

(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.--It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Linked Provisions

Explosive Substances Act, 1908 - Section 6 - Punishment of Abettors

Bharatiya Nyaya Sanhita, 2023 - Section 50 - Punishment if abetted person does act with different intention

Bharatiya Nyaya Sanhita, 2023 - Section 51 -Liability of abettor when one act abetted and different act done

Bharatiya Nyaya Sanhita, 2023 - Section 52 - Abettor when liable to cumulative punishment

Bharatiya Nyaya Sanhita, 2023 - Section 53 - Liability of abettor when act abettor different from intended

Bharatiya Nyaya Sanhita, 2023 - Section 54 – A bettor present when offence is committed

Back to Index

Illustrations

(a) A, with a guilty intention, abets a child or a person of unsound mind to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(c) A instigates B to set fire to a dwelling-house. B, in consequence of his unsoundness of mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.--The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Back to Index

Illustration

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.--It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder.

Corresponding Provision of Previous Statute: Section 108, Indian Penal Code, 1860

Section 108 – Abettor - A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations

(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Back to Index

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor or any guilty intention or knowledge.

Illustrations

(a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(c) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conpiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder.

Back to Index

47. Abetment in India of offences outside India

A person abets an offence within the meaning of this Sanhita who, in India, abets the commission of any act without and beyond India which would constitute an offence if committed in India.

Illustration

A, in India, instigates B, a foreigner in country X, to commit a murder in that country, A is guilty of abetting murder.

Corresponding Provision of Previous Statute: Section 108A, Indian Penal Code, 1860

Section 108A – Abetment in India of offences outside India - A person abets an offence within the meaning of this Code who, in India, abets the commission of any act without and beyond India which would constitute an offence if committed in India.

Illustration

A, in India, instigates B, a foreigner in Goa, to commit a murder in Goa, A is guilty of abetting murder.

48. Abetment outside India for offence in India

A person abets an offence within the meaning of this Sanhita who, without and beyond India, abets the commission of any act in India which would constitute an offence if committed in India.

Illustration

A, in country X, instigates B, to commit a murder in India, A is guilty of abetting murder.

49. Punishment of abetment if act abetted is committed in consequence and where no express provision is made for its punishment

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Sanhita for the

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

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

Illustrations

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

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

Corresponding Provision of Previous Statute: Section 109, Indian Penal Code, 1860

Section 109 – Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment - Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

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

Illustrations

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

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

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

Back to Index

50. Punishment of abetment if person abetted does act with different intention from that of abettor

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

Corresponding Provision of Previous Statute: Section 110, Indian Penal Code, 1860

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

51. Liability of abettor when one act abetted and different act done

When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it:

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

Illustrations

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

Back to Index

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

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

Corresponding Provision of Previous Statute: Section 111, Indian Penal Code, 1860

Section 111 – Liability of abettor when one act abetted and different act done - When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it: Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

Illustrations

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

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

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

52. Abettor when liable to cumulative punishment for act abetted and for act done

If the act for which the abettor is liable under section 51 is committed in addition to the act abetted, and constitute a distinct offence, the abettor is liable to punishment for each of the offences.

Back to Index

Illustration

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

Corresponding Provision of Previous Statute: Section 112, Indian Penal Code, 1860

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

Illustration

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

53. Liability of abettor for an effect caused by act abetted different from that intended by abettor

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

Illustration

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

Back to Index

Corresponding Provision of Previous Statute: Section 113, Indian Penal Code, 1860

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

Illustration

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

54. Abettor present when offence is committed

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

Corresponding Provision of Previous Statute: Section 114, Indian Penal Code, 1860

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

55. Abetment of offence punishable with death or imprisonment for life

Whoever abets the commission of an offence punishable with death or imprisonment for life, shall, if that offence be not committed in consequence of the abetment, and no express provision is made under this Sanhita for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Linked Provisions

Air Force Act, 1950 - Section 69 - Abetment of Offences Punishable With Death And Not Committed

Army Act, 1950 - Section 67 - Abetment of Offences Punishable With Death And Not Committed

Border Security Force Act, 1968 - Section 44 - Abetment of Offences Punishable With Death And Not Committed

Back to Index

Illustration

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

Coast Guard Act, 1978 - Section 47 - Abetment of Offences Punishable With Death And Not Committed

Indo-Tibetan Border Police Force Act, 1992 - Section 47 - Abetment of Offences Punishable With Death And Not Committed

Bharatiya Nyaya Sanhita, 2023 - Section 62 - Attempt

Corresponding Provision of Previous Statute: Section 115, Indian Penal Code, 1860

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

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

Illustration

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

56. Abetment of offence punishable with imprisonment

Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made under this Sanhita for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for that offence, or with both; and if the abettor or the person abetted is a public servant, whose duty it is to prevent

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 62 – Attempt

Air Force Act, 1950 - Section 70 - Abetment of Offences Punishable With Imprisonment And Not Committed

Back to Index

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

Illustrations

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

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

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

Army Act, 1950 - Section 68 - Abetment of Offences Punishable With Imprisonment And Not Committed.

Assam Rifles Act, 2006 - Section 54 - Abetment of Offences Punishable With Imprisonment And Not Committed

Border Security Force Act, 1968 - Section 45 - Abetment of Offences Punishable With Imprisonment And Not Committed

Coast Guard Act, 1978 - Section 48 - Abetment of Offences Punishable With Imprisonment And Not Committed

Indo-Tibetan Border Police Force Act, 1992 - Section 48 - Abetment of Offences Punishable With Imprisonment And Not Committed

Sashastra Seema Bal Act, 2007 - Section 48 - Abetment of Offences Punishable With Imprisonment And Not Committed

Corresponding Provision of Previous Statute: Section 116, Indian Penal Code, 1860

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

if abettor or person abetted be a public servant whose duty it is to prevent offence.—and if the abettor or

Back to Index

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

Illustrations

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

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

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

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

57. Abetting commission of offence by public or by more than ten persons

Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to seven years and with fine.

Illustration

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

Corresponding Provision of Previous Statute: Section 117, Indian Penal Code, 1860

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

Illustration

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

Back to Index

58. Concealing design to commit offence punishable with death or imprisonment for life

Whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or imprisonment for life, voluntarily conceals by any act or omission, or by the use of encryption or any other information hiding tool, the existence of a design to commit such offence or makes any representation which he knows to be false respecting such design shall,--

(a) if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years; or

(b) if the offence be not committed, with imprisonment of either description, for a term which may extend to three years, and shall also be liable to fine.

Illustration

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

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 59 - Public servant concealing design

Bharatiya Nyaya Sanhita, 2023 - Section 60 - Concealing design to commit offence punishable with imprisonment

Corresponding Provision of Previous Statute: Section 118, Indian Penal Code, 1860

Section 118 – Concealing design to commit offence punishable with death or imprisonment for life - Whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or imprisonment for life, voluntarily conceals by any act or omission or by the use of encryption or any other information hiding tool, the existence of a design to commit such offence or makes any representation which he knows to be false respecting such design;

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

Illustration

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

59. Public servant concealing design to commit offence which it is his duty to prevent

Whoever, being a public servant, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent, voluntarily conceals, by any act or omission or by the use of encryption or any other information hiding tool, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design shall,--

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

(b) if the offence be punishable with death or imprisonment for life, with imprisonment of either description for a term which may extend to ten years; or

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

Illustration

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to so facilitate the commission of that offence.

Here A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provision of this section.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 60 - Concealing design to commit offence punishable with imprisonment

Bharatiya Nyaya Sanhita, 2023 - Section 58 - Concealing design to commit Offence punishable with death or imprisonment for life

Back to Index

Corresponding Provision of Previous Statute: Section 119, Indian Penal Code, 1860

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

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

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

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

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

Illustration

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

60. Concealing design to commit offence punishable with imprisonment

Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design shall,--

(a) if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth; and

(b) if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 58 - Concealing design to commit Offence punishable with death or imprisonment for life

Bharatiya Nyaya Sanhita, 2023 - Section 59 - Public servant concealing design

Back to Index

Corresponding Provision of Previous Statute: Section 120, Indian Penal Code, 1860

Section 120 – Concealing design to commit offence punishable with imprisonment - Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

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

of criminal conspiracy

61. Criminal conspiracy

(1) When two or more persons agree with the common object to do, or cause to be done--

(a) an illegal act; or

(b) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.--It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

(2) Whoever is a party to a criminal conspiracy,--

(a) to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Sanhita for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence;

Linked Provisions

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 29 - Punishment For Abetment And Criminal Conspiracy

Trade Unions Act, 1926 - Section 17 - Criminal Conspiracy In Trade Disputes

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 217 - Prosecution for offences against the State and for criminal conspiracy to commit such offence

Back to Index

(b) other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

Corresponding Provision of Previous Statute: Section 120A, Indian Penal Code, 1860

Section 120A – Definition of criminal conspiracy - When two or more persons agree to do, or cause to be done,—

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

LANDMARK JUDGMENT

State through Superintendent of Police, CBI/SIT vs. Nalini and Ors., MANU/SC/0945/1999

Section 120B - Punishment of criminal conspiracy - (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

LANDMARK JUDGMENT

Gian Singh vs. State of Punjab and Ors., MANU/SC/0781/2012

of attempt

62. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment

Linked Provisions

Air Force Act, 1950 - Section 69 - Abetment of Offences Punishable With Death And Not Committed

Whoever attempts to commit an offence punishable by this Sanhita with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the

Back to Index

Air Force Act, 1950 - Section 70 - Abetment of Offences Punishable with Imprisonment and not Committed

Border Security Force Act, 1968 - Section 44 - Abetment of Offences Punishable with Death and not Committed

Border Security Force Act, 1968 - Section 45 - Abetment of Offences Punishable with Imprisonment and not Committed

Coast Guard Act, 1978 - Section 47 - Abetment of Offence Punishable with Death and Nnot Committed

Coast Guard Act, 1978 - Section 48 - Abetment of Offences Punishable with Imprisonment and not Committed

Indo-Tibetan Border Police Force Act, 1992 - Section 48 - Abetment of Offences Punishable with Imprisonment and not Committed

Indo-Tibetan Border Police Force Act, 1992 - Section 47 - Abetment of Offences Punishable with Death and not Committed

Sashastra Seema Bal Act, 2007 - Section 47 - Abetment of Offences

Back to Index

offence, shall, where no express provision is made by this Sanhita for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations

(a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

Punishable with Death and not Committed

Sashastra Seema Bal Act, 2007 - Section 48 - Abetment of Offences Punishable with Imprisonment and not Committed

Air Force Act, 1950 - Section 67 – Attempt

Air Force Act, 1950 - Section 68 - Abetment of Offences That Have Been Committed

Bharatiya Nyaya Sanhita, 2023 - Section 55 - Abetment of offence punishable with death or imprisonment for life

Bharatiya Nyaya Sanhita, 2023 - Section 56 - Abetment of offence punishable with imprisonment

Bharatiya Nyaya Sanhita, 2023 - Section 192 -Wantonly giving provocation with intent to cause riot-if rioting be committed; if not committed

Corresponding Provision of Previous Statute: Section 511, Indian Penal Code, 1860

Section 511 – Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment - Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.

Back to Index

Illustrations

(a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

LANDMARK JUDGMENT

Asgarali Pradhania vs. Emperor, MANU/WB/0154/1933

Back to Index

CHAPTER V

OF OFFENCES AGAINST WOMAN AND CHILD

Of sexual offences

63. Rape

A man is said to commit "rape" if he--

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:--

(i) against her will;

(ii) without her consent;

(iii) with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt;

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 64 - Punishment for rape

Bharatiya Nyaya Sanhita, 2023 - Section 65(1)

Bharatiya Nyaya Sanhita, 2023 - Section 70(1) - Gangrape

Bharatiya Nyaya Sanhita, 2023 - Section 65(2) - Rape on woman under 12 years of age

Bharatiya Nyaya Sanhita, 2023 - Section 67 - Sexual intercourse during separation

Bharatiya Nyaya Sanhita, 2023 - Section 68 -Sexual intercourse by person in authority

Bharatiya Nyaya Sanhita, 2023 - Section 71- Repeat Offenders

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 52 -Examination of person accused of rape by medical practitioner

Back to Index

(iv) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;

(v) with her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent;

(vi) with or without her consent, when she is under eighteen years of age;

(vii) when she is unable to communicate consent.

Explanation 1.--For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.--Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.--A medical procedure or intervention shall not constitute rape.

Exception 2.--Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 184 -Medical examination of the victim of rape

Bharatiya Sakshya Act, 2023 - Section 120 - Presumption as to absence of consent in certain prosecution for rape

Corresponding Provision of Previous Statute: Section 375, Indian Penal Code, 1860

Section 375 – Rape - A man is said to commit "rape" if he—

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

Back to Index

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent.

Explanation 1.—For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

LANDMARK JUDGMENT

Sakshi and Ors. vs. Union of India (UOI) and Ors., MANU/SC/0523/2004

Independent Thought vs. Union of India (UOI) and Ors., MANU/SC/1298/2017

64. Punishment for rape

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 63 - Rape

(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

Back to Index

(2) Whoever,--

(a) being a police officer, commits rape,--

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central Government or a State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g) commits rape during communal or sectarian violence; or

(h) commits rape on a woman knowing her to be pregnant; or

(i) commits rape, on a woman incapable of giving consent; or

Back to Index

(j) being in a position of control or dominance over a woman, commits rape on such woman; or

(k) commits rape on a woman suffering from mental or physical disability; or

(l) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(m) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.--For the purposes of this sub-section,--

(a) "armed forces" means the naval, army and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861(5 of 1861) ;

(d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

Back to Index

Corresponding Provision of Previous Statute: Section 376, Indian Penal Code, 1860

Section 376 – Punishment for rape - (1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,—

(a) being a police officer, commits rape—

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g) commits rape during communal or sectarian violence; or

(h) commits rape on a woman knowing her to be pregnant; or

(j) commits rape, on a woman incapable of giving consent; or

(k) being in a position of control or dominance over a woman, commits rape on such woman; or

(l) commits rape on a woman suffering from mental or physical disability; or

(m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(n) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.—For the purposes of this sub-section,—

(a) "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary

Back to Index

forces that are under the control of the Central Government or the State Government;

(b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861 (5 of 1861);

(d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

65. Punishment for rape in certain cases

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 63 - Rape

(1) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

Corresponding Provision of Previous Statute: Section 376(3), Indian Penal Code, 1860

Section 376(3) – Rape - Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

(2) Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death:

Back to Index

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

Corresponding Provision of Previous Statute: Section 376AB, Indian Penal Code, 1860

Section 376A - Punishment for rape on woman under twelve years of age - Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

66. Punishment for causing death or resulting in persistent vegetative state of victim

Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 64 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 63 - Rape

Bharatiya Nyaya Sanhita, 2023 - Section 64 - Punishment for rape

Bharatiya Nyaya Sanhita, 2023 - Section 65(1) - Rape on woman under 16 years of age

Corresponding Provision of Previous Statute: Section 376A, Indian Penal Code, 1860

Section 376A - Punishment for causing death or resulting in persistent vegetative state of victim - Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.

67. Sexual intercourse by husband upon his wife during separation

Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 63 - Rape

be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

Explanation.--In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 63.

Corresponding Provision of Previous Statute: Section 376B, Indian Penal Code, 1860

Section 376B - Sexual intercourse by husband upon his wife during separation - Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

Explanation.—In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

68. Sexual intercourse by a person in authority

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 66 - Rape causing death or persistent vegetative state

Whoever, being--

(a) in a position of authority or in a fiduciary relationship; or

(b) a public servant; or

(c) superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or

(d) on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.

Back to Index

Explanation 1.--In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 63.

Explanation 2.--For the purposes of this section, Explanation 1 to section 63 shall also be applicable.

Explanation 3.--"Superintendent", in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.

Explanation 4.--The expressions "hospital" and "women's or children's institution" shall respectively have the same meanings as in clauses (b) and (d) of the Explanation to sub-section (2) of section 64.

Corresponding Provision of Previous Statute: Section 376C, Indian Penal Code, 1860

Section 376C - Sexual intercourse by a person in authority - Whoever, being—

(a) in a position of authority or in a fiduciary relationship; or

(b) a public servant; or

(c) superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or
(d) on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.

Explanation 1.—In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

Explanation 2.—For the purposes of this section, Explanation 1 to section 375 shall also be applicable.

Explanation 3.—"Superintendent", in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.

Explanation 4.—The expressions "hospital" and "women's or children's institution" shall respectively have the same meaning as in Explanation to sub-section (2) of section 376.

Back to Index

69. Sexual intercourse by employing deceitful means, etc

Whoever, by deceitful means or by making promise to marry to a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Explanation.--"deceitful means" shall include inducement for, or false promise of employment or promotion, or marrying by suppressing identity.

70. Gang rape

(1) Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

Corresponding Provision of Previous Statute: Section 376D, Indian Penal Code, 1860

Section 376D - Gang rape - Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

Back to Index

LANDMARK JUDGMENT

Bhupinder Sharma vs. State of Himachal Pradesh, MANU/SC/0825/2003

(2) Where a woman under eighteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

71. Punishment for repeat offenders

Whoever has been previously convicted of an offence punishable under section 64 or section 65 or section 66 or section 70 and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 64 - Punishment for rape

Bharatiya Nyaya Sanhita, 2023 - Section 65(1) - Rape on woman under 16 years of age

Bharatiya Nyaya Sanhita, 2023 - Section 65(2) - Rape on woman under 12 years of age

Bharatiya Nyaya Sanhita, 2023 - Section 66 - Rape causing death or persistent vegetative state

Bharatiya Nyaya Sanhita, 2023 - Section 70 (1) - Gang Rape

Back to Index

Corresponding Provision of Previous Statute: Section 376E, Indian Penal Code, 1860

Section 376E - Punishment for repeat offenders - Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376AB or section 376D or section 376DA or section 376DB, and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.

72. Disclosure of identity of victim of certain offences, etc

Linked Provisions

Juvenile Justice (Care and Protection of Children) Act, 2015 – Section 74 - Prohibition On Disclosure Of Identity of Children

(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 64 or section 65 or section 66 or section 67 or section 68 or section 69 or section 70 or section 71 is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is--

(a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or

(b) by, or with the authorisation in writing of, the victim; or

(c) where the victim is dead or a child or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim:

Provided that no such authorisation shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation.

Explanation.--For the purposes of this sub-section, "recognised welfare institution or organisation" means a social welfare institution or organisation

Back to Index

recognised in this behalf by the Central Government or the State Government.

Corresponding Provision of Previous Statute: Section 228A, Indian Penal Code, 1860

Section 228A - Disclosure of identity of the victim of certain offences, etc –

(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is—

(a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or

(b) by, or with the authorisation in writing of, the victim; or

(c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next-of-kin of the victim:

Provided that no such authorisation shall be given by the next-of-kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation.

Explanation.—For the purposes of this sub-section, "recognised means a social welfare institution or organisation recognised Government.

(3) Whoever prints or publishes any matter in relation to any offence referred to in sub-section (1) without the previous permission with imprisonment of either description for a term which may extend fine.

Explanation.—The printing or publication of the judgment does not amount to an offence within the meaning of this section.

73. Printing or publishing any matter relating to Court proceedings without permission

Whoever prints or publishes any matter in relation to any proceeding before a Court with respect to an offence referred to in section 72 without the previous permission of such Court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Explanation.--The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.

Back to Index

Of criminal force and assault against woman

74. Assault or use of criminal force to woman with intent to outrage her modesty

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 354, Indian Penal Code, 1860

Section 354 - Assault or criminal force to woman with intent to outrage her modesty - Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.

LANDMARK JUDGMENT

Sakshi and Ors. vs. Union of India (UOI) and Ors., MANU/SC/0523/2004

75. Sexual harassment

(1) A man committing any of the following acts:--

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or

(ii) a demand or request for sexual favours; or

(iii) showing pornography against the will of a woman; or

(iv) making sexually coloured remarks,

shall be guilty of the offence of sexual harassment.

Linked Provisions

POCSO Act - Section 11 - Sexual Harassment

POCSO Act - Section 12 - Punishment for Sexual Harassment

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 - Section 3 - Prevention of Sexual Harassment

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 - Section 9 - Complaint Of Sexual Harassment

Back to Index

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 354A, Indian Penal Code, 1860

Section 354A - Sexual harassment and punishment for sexual harassment –

(1) A man committing any of the following acts—

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or
(ii) a demand or request for sexual favours; or
(iii) showing pornography against the will of a woman; or
(iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

LANDMARK JUDGMENT

Vishaka and Ors. vs. State of Rajasthan and Ors., MANU/SC/0786/1997

76. Assault or use of criminal force to woman with intent to disrobe

Whoever assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 129 - Criminal Force

Bharatiya Nyaya Sanhita, 2023 - Section 130 -Assault

Corresponding Provision of Previous Statute: Section 354B, Indian Penal Code, 1860

Section 354B - Assault or use of criminal force to woman with intent to disrobe - Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

Back to Index

77. Voyeurism

Whoever watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanation 1.--For the purposes of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2.--Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

Corresponding Provision of Previous Statute: Section 354C, Indian Penal Code, 1860

Section 354C – Voyeurism - Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanation 1.—For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Back to Index

Explanation 2.—Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

78. Stalking

(1) Any man who--

(i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

(ii) monitors the use by a woman of the internet, e-mail or any other form of electronic communication, commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that--

(i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 354D, Indian Penal Code, 1860

Section 354D – Stalking – (1) Any man who—

(i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

Back to Index

(ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

(i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

79. Word, gesture or act intended to insult modesty of a woman

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 351 - Criminal intimidation

Whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object in any form, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.

Corresponding Provision of Previous Statute: Section 509, Indian Penal Code, 1860

Section 509 – Word, gesture or act intended to insult the modesty of a woman - Whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.

Of offences relating to marriage

80. Dowry death

Linked Provisions

The Dowry Prohibition Act, 1961 - Section 2 - Definition Of 'Dowry'

Bharatiya Nyaya Sanhita, 2023 - Section 85 -Husband or relative of

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in

Back to Index

connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.--For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

husband of a woman subjecting her to cruelty

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 194 - Police to enquire and report on suicide, etc.

Bharatiya Sakshya Act, 2023 - Section 117 - Presumption as to abetment of suicide by a married woman

Bharatiya Sakshya Act, 2023 - Section 118 - Presumption as to dowry death

Corresponding Provision of Previous Statute: Section 304B, Indian Penal Code, 1860

Section 304B – Dowry death –

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

81. Cohabitation caused by man deceitfully inducing belief of lawful marriage

Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Back to Index

Corresponding Provision of Previous Statute: Section 493, Indian Penal Code, 1860

Section 493 – Cohabitation caused by a man deceitfully inducing a belief of lawful marriage - Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

82. Marrying again during lifetime of husband or wife

Linked Provisions

Special Marriage Act, 1954 - Section 15 - Registration of Marriages Celebrated in Other forms.

Special Marriage Act, 1954 - Section 43 - Penalty On Married Person Marrying Again Under This Act

(1) Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception.--This sub-section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

(2) Whoever commits the offence under sub-section (1) having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 494, Indian Penal Code, 1860

Section 494 – Marrying again during lifetime of husband or wife - Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception.—This section does not extend to any person whose marriage with such husband or wife been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the

life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

Section 495 - Same offence with concealment of former marriage from person with whom subsequent marriage is contracted - Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

LANDMARK JUDGMENT

Sarla Mudgal and Ors. vs. Union of India (UOI) and Ors.,
MANU/SC/0290/1995

83. Marriage ceremony fraudulently gone through without lawful marriage

Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 496, Indian Penal Code, 1860

Section 496 – Marriage ceremony fraudulently gone through without lawful marriage - Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

84. Enticing or taking away or detaining with criminal intent a married woman

Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Back to Index

Corresponding Provision of Previous Statute: Section 498, Indian Penal Code, 1860

Section 498 – Enticing or taking away or detaining with criminal intent a married woman – Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

85. Husband or relative of husband of a woman subjecting her to cruelty

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Linked Provisions

Divorce Act, 1869 - Section 52 - Competence Of Husband And Wife To Give Evidence As To Cruelty Or Deser-tion

Hindu Marriage Act, 1955 - Section 13 – Divorce

Protection of Women from Domestic Violence Act, 2005 - Section 3 - Definition Of Domestic Violence

Dissolution of Muslim Marriages Act, 1939 - Section 2 - Grounds For Decree For Dissolution Of Marriage

Divorce Act, 1869 - Section 10 - Grounds For Dissolution Of Marriage

Bharatiya Nyaya Sanhita, 2023 - Section 108 - Abetment of suicide

Bharatiya Sakshya Act, 2023 - Section 117 - Presumption as to abetment of suicide by a married woman

Back to Index

Corresponding Provision of Previous Statute: Section 498A, Indian Penal Code, 1860

Section 498A – Husband or relative of husband of a woman subjecting her to cruelty - Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, "cruelty" means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

LANDMARK JUDGMENT

Arnesh Kumar vs. State of Bihar, MANU/SC/0559/2014

86. Cruelty defined

For the purposes of section 85, "cruelty" means--

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

87. Kidnapping, abducting or inducing woman to compel her marriage, etc

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description

Back to Index

for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Sanhita or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.

Corresponding Provision of Previous Statute: Section 366, Indian Penal Code, 1860

Section 366 – Kidnapping, abducting or inducing woman to compel her marriage, etc - Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall alsobe liable to fine;

and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.

LANDMARK JUDGMENT

Thakorlal D. Vadgama vs. The State of Gujarat, MANU/SC/0191/1973

Of causing miscarriage, etc.

88. Causing miscarriage

Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.--A woman who causes herself to miscarry, is within the meaning of this section.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 89 - Causing miscarriage without woman's consent

Bharatiya Nyaya Sanhita, 2023 - Section 90 -Death caused by act done with intent to cause miscarriage

Back to Index

Corresponding Provision of Previous Statute: Section 312, Indian Penal Code, 1860

Section 312 – Causing miscarriage - Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

LANDMARK JUDGMENT

Asgarali Pradhania vs. Emperor, MANU/WB/0154/1933

89. Causing miscarriage without woman's consent

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 88 - Causing miscarriage

Whoever commits the offence under section 88 without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 313, Indian Penal Code, 1860

Section 313 – Causing miscarriage without woman's consent - Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

90. Death caused by act done with intent to cause miscarriage

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 89 - Causing miscarriage without woman's consent

Bharatiya Nyaya Sanhita, 2023 - Section 88 - Causing miscarriage

Bharatiya Nyaya Sanhita, 2023 - Section 91 - Act done with intent to prevent child being born alive or to cause to die after birth

(1) Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(2) Where the act referred to in sub-section (1) is done without the consent of the woman, shall be punishable either with imprisonment for life, or with the punishment specified in said sub-section.

Explanation.--It is not essential to this offence that the offender should know that the act is likely to cause death.

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 90 -Death caused by act done with intent to cause miscarriage

Corresponding Provision of Previous Statute: Section 314, Indian Penal Code, 1860

Section 314 – Death caused by act done with intent to cause miscarriage - Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

if act done without woman's consent.—and if the act is done without the consent of the woman, shall be punished either with imprisonment for life, or with the punishment above mentioned.

Explanation.—It is not essential to this offence that the offender should know that the act is likely to cause death.

91. Act done with intent to prevent child being born alive or to cause to die after birth

Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the

Corresponding Provision of Previous Statute: Section 315, Indian Penal Code, 1860

Section 315 – Act done with intent to prevent child being born alive or to cause it to die after birth - Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

92. Causing death of quick unborn child by act amounting to culpable homicide

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 100 - Culpable homicide

Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the

Back to Index

death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Illustration

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

Corresponding Provision of Previous Statute: Section 316, Indian Penal Code, 1860

Section 316 – Causing death of quick unborn child by act amounting to culpable homicide – Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Illustration

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

Of offences against child

93. Exposure and abandonment of child under twelve years of age, by parent or person having care of it

Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Back to Index

Explanation.--This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

Corresponding Provision of Previous Statute: Section 317, Indian Penal Code, 1860

Section 317 – Exposure and abandonment of child under twelve years, by parent or person having care of it - Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

94. Concealment of birth by secret disposal of dead body

Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 318, Indian Penal Code, 1860

Section 318 – Concealment of birth by secret disposal of dead body - Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child die before or after or during its birth, intentionally conceals or endeavors to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

95. Hiring, employing or engaging a child to commit an offence

Whoever hires, employs or engages any child to commit an offence shall be punished with imprisonment of either description which shall not be less than three years but which may extend to ten years, and with fine; and if the offence be committed shall also be punished with the punishment provided for that offence as if the offence has been committed by such person himself.

Back to Index

Explanation.--Hiring, employing, engaging or using a child for sexual exploitation or pornography is covered within the meaning of this section.

96. Procuration of child

Whoever, by any means whatsoever, induces any child to go from any place or to do any act with intent that such child may be, or knowing that it is likely that such child will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 366A, Indian Penal Code, 1860

Section 366A – Procuration of minor girl - Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

97. Kidnapping or abducting child under ten years of age with intent to steal from its person

Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 137(1) - Kidnapping

Bharatiya Nyaya Sanhita, 2023 - Section 138 - Abduction

Bharatiya Nyaya Sanhita, 2023 - Section 303(1) - Theft

Corresponding Provision of Previous Statute: Section 369, Indian Penal Code, 1860

Section 369 – Kidnapping or abducting child under ten years with intent to steal from its person - Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

98. Selling child for purposes of prostitution, etc

Whoever sells, lets to hire, or otherwise disposes of any child with intent that such child shall at any age be employed or used for the purpose of prostitution

Linked Provisions

The Immoral Traffic (Prevention) Act, 1956 - Section 5 - Procuring,

Back to Index

or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such child will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation 1.--When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation 2.--For the purposes of this section "illicit intercourse" means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.

Inducing Or Taking Person For The Sake Of Prostitution

The Immoral Traffic (Prevention) Act, 1956 - Section 6 - Detaining A Person In Premises Where Prostitution Is Carried On

The Immoral Traffic (Prevention) Act, 1956 - Section 8 - Seducing Or Soliciting For Purpose Of Prostitution

The Immoral Traffic (Prevention) Act, 1956 - Section 5 - Procuring, Inducing Or Taking Person For The Sake Of Prostitution

Bharatiya Nyaya Sanhita, 2023 - Section 98 -Selling child for purposes of prostitution, etc

Bharatiya Nyaya Sanhita, 2023 - Section 99 -Buying child for purposes of prostitution, etc

Corresponding Provision of Previous Statute: Section 372, Indian Penal Code, 1860

Section 372 – Selling minor for purposes of prostitution, etc - Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation I.—When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the

Back to Index

purpose of prostitution.

Explanation II.—For the purposes of this section "illicit intercourse" means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasimarital relation.

99. Buying child for purposes of prostitution, etc

Whoever buys, hires or otherwise obtains possession of any child with intent that such child shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such child will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to fourteen years, and shall also be liable to fine.

Explanation 1.--Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

Explanation 2.--"Illicit intercourse" has the same meaning as in section 98.

Corresponding Provision of Previous Statute: Section 373, Indian Penal Code, 1860

Section 373 – Buying minor for purposes of prostitution, etc - Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation I.—Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

Explanation II.—"Illicit intercourse" has the same meaning as in section 372.

Back to Index

CHAPTER VI

OF OFFENCES AFFECTING THE HUMAN BODY

Of offences affecting life

100. Culpable homicide

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations.

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1.--A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 102 - Culpable homicide by causing death of person other than person whose death was intended

Bharatiya Nyaya Sanhita, 2023 - Section 105 - Punishment for culpable homicide not amounting to murder

Bharatiya Nyaya Sanhita, 2023 - Section 110 - Attempt to commit culpable homicide

Back to Index

Explanation 2.--Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.--The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

Corresponding Provision of Previous Statute: Section 299, Indian Penal Code, 1860

Section 299 – Culpable homicide - Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1.—A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

LANDMARK JUDGMENT

State of Andhra Pradesh vs. Rayavarapu Punnayya and Ors., MANU/SC/0180/1976

Back to Index

101. Murder

Except in the cases hereinafter excepted, culpable homicide is murder,--

(a) if the act by which the death is caused is done with the intention of causing death; or

(b) if the act by which the death is caused is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or

(c) if the act by which the death is caused is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

(d) if the person committing the act by which the death is caused, knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 103 - Punishment for murder

Bharatiya Nyaya Sanhita, 2023 - Section 104 - Punishment for murder by life-convict

Bharatiya Nyaya Sanhita, 2023 - Section 109 -Attempt to murder

Bharatiya Nyaya Sanhita, 2023 - Section 140(1) - Kidnapping or abducting in order to murder or for ransom etc.

Bharatiya Nyaya Sanhita, 2023 - Section 310(3) - Dacoity

Back to Index

cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1.--Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident:

Provided that the provocation is not,--

(a) sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person;

(b) given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant;

(c) given by anything done in the lawful exercise of the right of private defence.

Explanation.--Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, in as much as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

Back to Index

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, in as much as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, in as much as the provocation was giving by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.--Culpable homicide is not murder if the offender in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Back to Index

Illustration

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.--Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.--Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.--It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.--Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration

A, by instigation, voluntarily causes Z, a child to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

Corresponding Provision of Previous Statute: Section 300, Indian Penal Code, 1860

Section 300 – Murder - Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

Back to Index

2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

4thly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1.—When culpable homicide is not murder.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Back to Index

Illustrations

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was giving by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Back to Index

Illustration

A, by instigation, voluntarily causes Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

LANDMARK JUDGMENT

Kapur Singh vs. State of Pepsu, MANU/SC/0150/1954

102. Culpable homicide by causing death of person other than person whose death was intended

If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 100 - Culpable homicide

Bharatiya Nyaya Sanhita, 2023 - Section 105 - Punishment for culpable homicide not amounting to murder

Corresponding Provision of Previous Statute: Section 301, Indian Penal Code, 1860

Section 301 – Culpable homicide by causing death of person other than person whose death was Intended - If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

LANDMARK JUDGMENT

Emperor vs. Mushnooru Suryanarayana Murthy, MANU/TN/0083/1912

103. Punishment for murder

(1) Whoever commits murder shall be punished with death or imprisonment for life, and shall also be liable to fine.

(2) When a group of five or more persons acting in concert commits murder on the ground of race, caste or community, sex, place of birth, language, personal belief or any other similar ground each member of such group shall be punished with death or with imprisonment for life, and shall also be liable to fine.

Back to Index

Corresponding Provision of Previous Statute: Section 302, Indian Penal Code, 1860

Section 302 – Punishment for murder - Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

LANDMARK JUDGMENT

Bachan Singh and Ors. vs. State of Punjab and Ors., MANU/SC/0356/1982

104. Punishment for murder by life-convict

Whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death or with imprisonment for life, which shall mean the remainder of that person's natural life.

Corresponding Provision of Previous Statute: Section 303, Indian Penal Code, 1860

Section 303 – Punishment for murder by life-convict - Whoever, being under sentence of imprisonment for life, commits murder shall be punished with death.

105. Punishment for culpable homicide not amounting to murder

Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which shall not be less than five years but which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years and with fine, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

Corresponding Provision of Previous Statute: Section 304, Indian Penal Code, 1860

Section 304 – Punishment for culpable homicide not amounting to murder - Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

Back to Index

LANDMARK JUDGMENT

K.M. Nanavati vs. State of Maharashtra, MANU/SC/0147/1961

106. Causing death by negligence

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 281 - Rash driving or riding on a public way

(1) Whoever causes death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if such act is done by a registered medical practitioner while performing medical procedure, he shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Explanation.--For the purposes of this sub-section, "registered medical practitioner" means a medical practitioner who possesses any medical qualification recognised under the National Medical Commission Act, 2019 (30 of 2019) and whose name has been entered in the National Medical Register or a State Medical Register under that Act.

Corresponding Provision of Previous Statute: Section 304A, Indian Penal Code, 1860

Section 304A – Causing death by negligence - Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

LANDMARK JUDGMENT

Cherubin Gregory vs. The State of Bihar, MANU/SC/0080/1963

(2) Whoever causes death of any person by rash and negligent driving of vehicle not amounting to culpable homicide, and escapes without reporting it to a police officer or a Magistrate soon after the incident, shall be punished with imprisonment of either description of a term which may extend to ten years, and shall also be liable to fine.

Back to Index

107. Abetment of suicide of child or person of unsound mind

If any child, any person of unsound mind, any delirious person or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 108 - Abetment of suicide

Bharatiya Nyaya Sanhita, 2023 - Section 45 -Abetment of a thing

Bharatiya Sakshya Act, 2023 - Section 117 - Presumption as to abetment of suicide by a married woman

Corresponding Provision of Previous Statute: Section 305, Indian Penal Code, 1860

Section 305 – Abetment of suicide of child or insane person - If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

108. Abetment of suicide

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Linked Provisions

Bharatiya Sakshya Act, 2023 - Section 117 - Presumption as to abetment of suicide by a married woman

Corresponding Provision of Previous Statute: Section 306, Indian Penal Code, 1860

Section 306 – Abetment of suicide - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

109. Attempt to murder

(1) Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 101- Murder

Bharatiya Nyaya Sanhita, 2023 - Section 62 - Attempt

Back to Index

caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

(2) When any person offending under sub-section (1) is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death or with imprisonment for life, which shall mean the remainder of that person's natural life.

Illustrations

(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

(b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of sub-section (1).

(d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

Corresponding Provision of Previous Statute: Section 307, Indian Penal Code, 1860

Section 307 – Attempt to murder - Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to Imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life-convicts.— When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

Back to Index

Illustrations

(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

(b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of] this section.

(d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

LANDMARK JUDGMENT

Om Parkash vs. The State of Punjab, MANU/SC/0125/1961

110. Attempt to commit culpable homicide

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 62 – Attempt

Bharatiya Nyaya Sanhita, 2023 - Section 100 - Culpable homicide

Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Illustration

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death, he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

Corresponding Provision of Previous Statute: Section 308, Indian Penal Code, 1860

Section 308 – Attempt to commit culpable homicide - Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend

Back to Index

to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Illustration

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

111. Organised crime

(1) Any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offence, cyber-crimes, trafficking of persons, drugs, weapons or illicit goods or services, human trafficking for prostitution or ransom, by any person or a group of persons acting in concert, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, or by any other unlawful means to obtain direct or indirect material benefit including a financial benefit, shall constitute organised crime.

Explanation.--For the purposes of this sub-section,--

(i) "organised crime syndicate" means a group of two or more persons who, acting either singly or jointly, as a syndicate or gang indulge in any continuing unlawful activity;

(ii) "continuing unlawful activity" means an activity prohibited by law which is a cognizable offence punishable with imprisonment of three years or more, undertaken by any person, either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence, and includes economic offence;

Back to Index

(iii) "economic offence" includes criminal breach of trust, forgery, counterfeiting of currency-notes, bank-notes and Government stamps, hawala transaction, mass-marketing fraud or running any scheme to defraud several persons or doing any act in any manner with a view to defraud any bank or financial institution or any other institution or organisation for obtaining monetary benefits in any form.

(2) Whoever commits organised crime shall,--

(a) if such offence has resulted in the death of any person, be punished with death or imprisonment for life, and shall also be liable to fine which shall not be less than ten lakh rupees;

(b) in any other case, be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.

(3) Whoever abets, attempts, conspires or knowingly facilitates the commission of an organised crime, or otherwise engages in any act preparatory to an organised crime, shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.

(4) Any person who is a member of an organised crime syndicate shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.

(5) Whoever, intentionally, harbours or conceals any person who has committed the offence of an organised crime shall be punished with imprisonment for a term which shall not be less than three years but which

Back to Index

may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees:

Provided that this sub-section shall not apply to any case in which the harbour or concealment is by the spouse of the offender.

(6) Whoever possesses any property derived or obtained from the commission of an organised crime or proceeds of any organised crime or which has been acquired through the organised crime, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than two lakh rupees.

(7) If any person on behalf of a member of an organised crime syndicate is, or at any time has been in possession of movable or immovable property which he cannot satisfactorily account for, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for ten years and shall also be liable to fine which shall not be less than one lakh rupees.

112. Petty organised crime

(1) Whoever, being a member of a group or gang, either singly or jointly, commits any act of theft, snatching, cheating, unauthorised selling of tickets, unauthorised betting or gambling, selling of public examination question papers or any other similar criminal act, is said to commit petty organised crime.

Explanation.--For the purposes of this sub-section "theft" includes trick theft, theft from vehicle, dwelling house or business premises, cargo theft, pick pocketing, theft through card skimming, shoplifting and theft of Automated Teller Machine.

Back to Index

(2) Whoever commits any petty organised crime shall be punished with imprisonment for a term which shall not be less than one year but which may extend to seven years, and shall also be liable to fine.

113. Terrorist act

(1) Whoever does any act with the intent to threaten or likely to threaten the unity, integrity, sovereignty, security, or economic security of India or with the intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,--

(a) by using bombs, dynamite or other explosive substance or inflammable substance or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substance (whether biological, radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause,--

(i) death of, or injury to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

(iv) damage to, the monetary stability of India by way of production or smuggling or circulation of counterfeit Indian paper currency, coin or of any other material; or

(v) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

Back to Index

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatening to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or an international or inter-governmental organisation or any other person to do or abstain from doing any act, commit a terrorist act.

Explanation.--For the purpose of this sub-section,--

(a) "public functionary" means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as public functionary;

(b) "counterfeit Indian currency" means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates or compromises with the key security features of Indian currency.

(2) Whoever commits a terrorist act shall,--

(a) if such offence has resulted in the death of any person, be punished with death or imprisonment for life, and shall also be liable to fine;

(b) in any other case, be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

(3) Whoever conspires or attempts to commit, or advocates, abets, advises or incites, directly or knowingly facilitates the commission of a terrorist act or any act preparatory to the commission of a terrorist act, shall be punished with

Back to Index

imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Whoever organises or causes to be organised any camp or camps for imparting training in terrorist act, or recruits or causes to be recruited any person or persons for commission of a terrorist act, shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

(5) Any person who is a member of an organisation which is involved in terrorist act, shall be punished with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

(6) Whoever voluntarily harbours or conceals, or attempts to harbour or conceal any person knowing that such person has committed a terrorist act shall be punished with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and shall also be liable to fine:

Provided that this sub-section shall not apply to any case in which the harbour or concealment is by the spouse of the offender.

(7) Whoever knowingly possesses any property derived or obtained from commission of any terrorist act or acquired through the commission of any terrorist act shall be punished with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

Explanation.--For the removal of doubts, it is hereby declared that the officer not below the rank of Superintendent of Police shall decide whether to register the case under this section or under the Unlawful Activities (Prevention) Act, 1967 (37 of 1967).

Back to Index

Of hurt

114. Hurt

Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 115(1) - Voluntarily causing hurt

Bharatiya Nyaya Sanhita, 2023 - Section 115(2) - Voluntarily causing hurt

Bharatiya Nyaya Sanhita, 2023 - Section 118(1) - Voluntarily causing hurt or grievous hurt by dangerous weapons or means

Bharatiya Nyaya Sanhita, 2023 - Section 119(1) - Voluntarily causing hurt or grievous hurt to extort property, or to constrain to an illegal to an act

Bharatiya Nyaya Sanhita, 2023 - Section 123 - Causing hurt by means of poison, etc., with intent to commit an offence

Bharatiya Nyaya Sanhita, 2023 - Section 120(1) - Voluntarily causing hurt or grievous hurt to extort confession, or to compel restoration of property

Bharatiya Nyaya Sanhita, 2023 - Section 121(1) - Voluntarily

Back to Index

causing hurt or grievous hurt to deter public servant from his duty

Bharatiya Nyaya Sanhita, 2023 - Section 122(1) - Voluntarily causing hurt or grievous hurt on provocation

Bharatiya Nyaya Sanhita, 2023 - Section 125 -Act endangering life or personal safety of others

Bharatiya Nyaya Sanhita, 2023 - Section 307 - Theft after preparation made for causing death, hurt or restraint in order to committing of theft

Bharatiya Nyaya Sanhita, 2023 - Section 309(4) – Robbery

Bharatiya Nyaya Sanhita, 2023 - Section 324(6) – Mischief

Bharatiya Nyaya Sanhita, 2023 - Section 331(5) - Punishment for house-trespass or house-breaking

Bharatiya Nyaya Sanhita, 2023 - Section 331(6) - Punishment for house-trespass or house-breaking

Indian Railways Act, 1890 - Section 127 - Maliciously hurting or attempting to hurt

Back to Index

persons travelling by railway.

Metro Railway (Operations and Maintenance) Act, 2002 - Section 76 - Maliciously Hurting or Attempting to Hurt Persons Travelling By Metro Railway

Railways Act, 1989 - Section 152 - Maliciously Hurting or Attempting to Hurt Persons Travelling By Railway

Corresponding Provision of Previous Statute: Section 319, Indian Penal Code, 1860

Section 319 – Hurt - Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

115. Voluntarily causing hurt

(1) Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt".

(2) Whoever, except in the case provided for by sub-section (1) of section 122 voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 114 - Hurt

Bharatiya Nyaya Sanhita, 2023 - Section 118(1) - Voluntarily causing hurt or grievous hurt by dangerous weapons or means

Bharatiya Nyaya Sanhita, 2023 - Section 119(1) - Voluntarily causing hurt or grievous hurt to extort property, or to constrain to an illegal to an act

Bharatiya Nyaya Sanhita, 2023 - Section 123 - Causing hurt by means of poison, etc.,

Back to Index

with intent to commit an offence

Bharatiya Nyaya Sanhita, 2023 - Section 120(1) - Voluntarily causing hurt or grievous hurt to extort confession, or to compel restoration of property

Bharatiya Nyaya Sanhita, 2023 - Section 121(1) - Voluntarily causing hurt or grievous hurt to deter public servant from his duty

Bharatiya Nyaya Sanhita, 2023 - Section 122(1) - Voluntarily causing hurt or grievous hurt on provocation

Bharatiya Nyaya Sanhita, 2023 - Section 125 -Act endangering life or personal safety of others

Bharatiya Nyaya Sanhita, 2023 - Section 307 - Theft after preparation made for causing death, hurt or restraint in order to committing of theft

Bharatiya Nyaya Sanhita, 2023 - Section 309(4) – Robbery

Bharatiya Nyaya Sanhita, 2023 - Section 324(6) – Mischief

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 333 - House-trespass after preparation for hurt, assault or wrongful restraint

Bharatiya Nyaya Sanhita, 2023 - Section 331(5) - Punishment for house-trespass or house-breaking

Bharatiya Nyaya Sanhita, 2023 - Section 331(6) - Punishment for house-trespass or house-breaking

Indian Railways Act, 1890 - Section 127 - Maliciously hurting or attempting to hurt persons travelling by railway

Metro Railway (Operations and Maintenance) Act, 2002 - Section 76 - Maliciously Hurting or Attempting to Hurt Persons Travelling By Metro Railway

Railways Act, 1989 - Section 152 - Maliciously Hurting or Attempting to Hurt Persons Travelling By Railway

Corresponding Provision of Previous Statute: Section 321, Indian Penal Code, 1860

Section 321 – Voluntarily causing hurt - Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt"

Back to Index

Section 323 - Punishment for voluntarily causing hurt.—Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

116. Grievous hurt

The following kinds of hurt only are designated as "grievous", namely:--

(a) Emasculation;

(b) Permanent privation of the sight of either eye;

(c) Permanent privation of the hearing of either ear;

(d) Privation of any member or joint;

(e) Destruction or permanent impairing of the powers of any member or joint;

(f) Permanent disfiguration of the head or face;

(g) Fracture or dislocation of a bone or tooth;

(h) Any hurt which endangers life or which causes the sufferer to be during the space of fifteen days in severe bodily pain, or unable to follow his ordinary pursuits.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 117(1) - Voluntarily causing grievous hurt

Bharatiya Nyaya Sanhita, 2023 - Section 117(2) - Voluntarily causing grievous hurt

Bharatiya Nyaya Sanhita, 2023 - Section 118(2) - Voluntarily causing hurt or grievous hurt by dangerous weapons or means

Bharatiya Nyaya Sanhita, 2023 - Section 119(2) - Voluntarily causing hurt or grievous hurt to extort property, or to constrain to an illegal to an act

Bharatiya Nyaya Sanhita, 2023 - Section 120(2) - Voluntarily causing hurt or grievous hurt to extort confession, or to compel restoration of property

Bharatiya Nyaya Sanhita, 2023 - Section 121(2) - Voluntarily causing hurt or grievous hurt to deter public servant from his duty

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 122(2) - Voluntarily causing hurt or grievous hurt on provocation

Bharatiya Nyaya Sanhita, 2023 - Section 140(4) - Kidnapping or abducting in order to murder or for ransom etc.

Bharatiya Nyaya Sanhita, 2023 - Section 125 -Act endangering life or personal safety of others

Bharatiya Nyaya Sanhita, 2023 - Section 308(4)- Extortion

Bharatiya Nyaya Sanhita, 2023 - Section 308(5) – Extortion

Bharatiya Nyaya Sanhita, 2023 - Section 311 - Robbery, or dacoity, with attempt to cause death or grievous hurt

Bharatiya Nyaya Sanhita, 2023 - Section 331(7) - Punishment for house-trespass or house-breaking

Bharatiya Nyaya Sanhita, 2023 - Section 324(2) – Mischief

Bharatiya Nyaya Sanhita, 2023 - Section 124(1) - Voluntarily causing grievous hurt by use of acid, etc.

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 331(8) - Punishment for house-trespass or house-breaking

Motor Vehicles Act, 1988 - Section 164 - Payment Of Compensation In Case Of Death Or Grievous Hurt, Etc

Corresponding Provision of Previous Statute: Section 320, Indian Penal Code, 1860

Section 320 – Grievous hurt - The following kinds of hurt only are designated as "grievous":—

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

LANDMARK JUDGMENT

Rameshwar Mahton and Ors. vs. The State, MANU/BH/0085/1957

117. Voluntarily causing grievous hurt

(1) Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt"..

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 116 - Grevious Hurt

Bharatiya Nyaya Sanhita, 2023 - Section 117(2) - Voluntarily causing grievous hurt

Back to Index

Explanation.--A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration

A, intending of knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of fifteen days. A has voluntarily caused grievous hurt.

Bharatiya Nyaya Sanhita, 2023 - Section 118(2) - Voluntarily causing hurt or grievous hurt by dangerous weapons or means

Bharatiya Nyaya Sanhita, 2023 - Section 119(2) - Voluntarily causing hurt or grievous hurt to extort property, or to constrain to an illegal to an act

Bharatiya Nyaya Sanhita, 2023 - Section 120(2) - Voluntarily causing hurt or grievous hurt to extort confession, or to compel restoration of property

Bharatiya Nyaya Sanhita, 2023 - Section 121(2) - Voluntarily causing hurt or grievous hurt to deter public servant from his duty

Bharatiya Nyaya Sanhita, 2023 - Section 122(2) - Voluntarily causing hurt or grievous hurt on provocation

Bharatiya Nyaya Sanhita, 2023 - Section 140(4) - Kidnapping or abducting in order to murder or for ransom etc.

Bharatiya Nyaya Sanhita, 2023 - Section 125 - Act endangering life or personal safety of others

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 331(7) - Punishment for house-trespass or house-breaking

Bharatiya Nyaya Sanhita, 2023 - Section 331(8) - Punishment for house-trespass or house-breaking

Bharatiya Nyaya Sanhita, 2023 - Section 124(1) - Voluntarily causing grievous hurt by use of acid, etc.

Motor Vehicles Act, 1988 - Section 164 - Payment Of Compensation In Case Of Death Or Grievous Hurt, Etc

Corresponding Provision of Previous Statute: Section 322, Indian Penal Code, 1860

Section 322 – Voluntarily causing grievous hurt - Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt".

Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration

A, intending of knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

(2) Whoever, except in the case provided for by sub-section (2) of section 122, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 117(1) - Voluntarily causing grievous hurt

Bharatiya Nyaya Sanhita, 2023 - Section 116 - Grevious Hurt

Back to Index

Corresponding Provision of Previous Statute: Section 325, Indian Penal Code, 1860

Section 325 – Punishment for voluntarily causing grievous hurt - Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

LANDMARK JUDGMENT

In Re: Palani Goundan, MANU/TN/0025/1919

(3) Whoever commits an offence under sub-section (1) and in the course of such commission causes any hurt to a person which causes that person to be in permanent disability or in persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life.

(4) When a group of five or more persons acting in concert, causes grievous hurt to a person on the ground of his race, caste or community, sex, place of birth, language, personal belief or any other similar ground, each member of such group shall be guilty of the offence of causing grievous hurt, and shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

118. Voluntarily causing hurt or grievous hurt by dangerous weapons or means

(1) Whoever, except in the case provided for by sub-section (1) of section 122, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 114 - Hurt

Bharatiya Nyaya Sanhita, 2023 - Section 115(1) - Voluntarily causing hurt

Back to Index

extend to three years, or with fine which may extend to twenty thousand rupees, or with both.

Corresponding Provision of Previous Statute: Section 324, Indian Penal Code, 1860

Section 324 – Voluntarily causing hurt by dangerous weapons or means - Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

LANDMARK JUDGMENT

State through Superintendent of Police, CBI/SIT vs. Nalini and Ors., MANU/SC/0945/1999

(2) Whoever, except in the case provided for by sub-section (2) of section 122, voluntarily causes grievous hurt by any means referred to in sub-section (1), shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than one year but which may extend to ten years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 117(1) Voluntarily causing grievous hurt

Bharatiya Nyaya Sanhita, 2023 - Section 116 - Grevious Hurt

Corresponding Provision of Previous Statute: Section 326, Indian Penal Code, 1860

Section 326 – Voluntarily causing grievous hurt by dangerous weapons or means - Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

LANDMARK JUDGMENT

Laxmi vs. Union of India (UOI) and Ors., MANU/SC/0428/2015

Back to Index

119. Voluntarily causing hurt or grievous hurt to extort property, or to constrain to an illegal act

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 115(1) - Voluntarily causing hurt

Bharatiya Nyaya Sanhita, 2023 - Section 114 - Hurt

(1) Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 327, Indian Penal Code, 1860

Section 327 – Voluntarily causing hurt to extort property, or to constrain to an illegal to an act - Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 116 - Grevious Hurt

Bharatiya Nyaya Sanhita, 2023 - Section 117(1) - Voluntarily causing grievous hurt

(2) Whoever voluntarily causes grievous hurt for any purpose referred to in sub-section (1), shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 329, Indian Penal Code, 1860

Section 329 – Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act - Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Back to Index

120. Voluntarily causing hurt or grievous hurt to extort confession, or to compel restoration of property

(1) Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Illustrations

(a) A, a police officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(b) A, a police officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(c) A, a revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 115(1) - Voluntarily causing hurt

Bharatiya Nyaya Sanhita, 2023 - Section 114 - Hurt

Corresponding Provision of Previous Statute: Section 330, Indian Penal Code, 1860

Section 330 – Voluntarily causing hurt to extort confession, or to compel restoration of property - Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Illustrations

(a) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

Back to Index

(b) A, a police-officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(c) A, a revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(d) A, a zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

(2) Whoever voluntarily causes grievous hurt for any purpose referred to in sub-section (1), shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 117(1) - Voluntarily causing grievous hurt

Bharatiya Nyaya Sanhita, 2023 - Section 116 - Grevious Hurt

Corresponding Provision of Previous Statute: Section 331, Indian Penal Code, 1860

Section 331 – Voluntarily causing grievous hurt to extort confession, or to compel restoration of Property - Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

121. Voluntarily causing hurt or grievous hurt to deter public servant from his duty

(1) Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 115(1) - Voluntarily causing hurt

Bharatiya Nyaya Sanhita, 2023 - Section 114 - Hurt

Back to Index

Corresponding Provision of Previous Statute: Section 331, Indian Penal Code, 1860

Section 332 – Voluntarily causing hurt to deter public servant from his duty - Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

(2) Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to ten years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 117(1) - Voluntarily causing grievous hurt

Bharatiya Nyaya Sanhita, 2023 - Section 116 - Grevious Hurt

Corresponding Provision of Previous Statute: Section 333, Indian Penal Code, 1860

Section 333 – Voluntarily causing grievous hurt to deter public servant from his duty – Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

122. Voluntarily causing hurt or grievous hurt on provocation

(1) Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 115(1) - Voluntarily causing hurt

Bharatiya Nyaya Sanhita, 2023 - Section 114 - Hurt

Corresponding Provision of Previous Statute: Section 334, Indian Penal Code, 1860

Section 334 – Voluntarily causing hurt on provocation - Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Back to Index

(2) Whoever voluntarily causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine which may extend to ten thousand rupees, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 117(1) - Voluntarily causing grievous hurt

Bharatiya Nyaya Sanhita, 2023 - Section 116 - Grevious Hurt

Explanation.--This section is subject to the same proviso as Exception 1 of section 101.

Corresponding Provision of Previous Statute: Section 335, Indian Penal Code, 1860

Section 335 – Voluntarily causing grievous hurt on provocation – Whoever voluntarily causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Explanation.—The last two sections are subject to the same provisos as Exception 1, section 300.

123. Causing hurt by means of poison, etc., with intent to commit an offence

Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 115(1) - Voluntarily causing hurt

Bharatiya Nyaya Sanhita, 2023 - Section 114 - Hurt

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 368 - Procedure in case of person of unsound mind tried before Court

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 369 - Release of person of unsound mind pending investigation or trial

Back to Index

Corresponding Provision of Previous Statute: Section 328, Indian Penal Code, 1860

Section 328 – Causing hurt by means of poison, etc., with intent to commit and offence – Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

124. Voluntarily causing grievous hurt by use of acid, etc

(1) Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt or causes a person to be in a permanent vegetative state shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 116 - Grevious Hurt

Bharatiya Nyaya Sanhita, 2023 - Section 117(1) - Voluntarily causing grievous hurt

Bharatiya Nyaya Sanhita, 2023 - Section 124(2) - Voluntarily causing grievous hurt by use of acid, etc.

Corresponding Provision of Previous Statute: Section 326A, Indian Penal Code, 1860

Section 326A – Voluntarily causing grievous hurt by use of acid, etc. - Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

Back to Index

(2) Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 124(1) - Voluntarily causing grievous hurt by use of acid, etc.

Explanation 1.--For the purposes of this section, "acid" includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Explanation 2.--For the purposes of this section, permanent or partial damage or deformity or permanent vegetative state shall not be required to be irreversible.

Corresponding Provision of Previous Statute: Section 326B, Indian Penal Code, 1860

Section 326B – Voluntarily throwing or attempting to throw acid - Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Explanation 1.—For the purposes of section 326A and this section, "acid" includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Explanation 2.—For the purposes of section 326A and this section, permanent or partial damage or

125. Act endangering life or personal safety of others

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 125 -Act endangering life or personal safety of others

Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months or with fine which may extend to two thousand five hundred rupees, or with both, but--

Back to Index

(a) where hurt is caused, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both;

(b) where grievous hurt is caused, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both.

Bharatiya Nyaya Sanhita, 2023 - Section 115(1) - Voluntarily causing hurt

Bharatiya Nyaya Sanhita, 2023 - Section 114 - Hurt

Bharatiya Nyaya Sanhita, 2023 - Section 117(1) - Voluntarily causing grievous hurt

Bharatiya Nyaya Sanhita, 2023 - Section 116 - Grevious Hurt

Corresponding Provision of Previous Statute: Section 336, Indian Penal Code, 1860

Section 336 – Act endangering life or personal safety of others - Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months or with fine which may extend to two hundred and fifty rupees, or with both.

Section 337 - Causing hurt by act endangering life or personal safety of others - Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Section 338 - Causing grievous hurt by act endangering life or personal safety of others – Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Of wrongful restraint and wrongful confinement

126. Wrongful restraint

(1) Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 126(2) - Wrongful restraint

Back to Index

Exception.--The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

Illustration

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

Bharatiya Nyaya Sanhita, 2023 - Section 333 -House-trespass after preparation for hurt, assault or wrongful restraint

Bharatiya Nyaya Sanhita, 2023 - Section 331(5) - Punishment for house-trespass or house-breaking

Bharatiya Nyaya Sanhita, 2023 - Section 331(6) - Punishment for house-trespass or house-breaking

Corresponding Provision of Previous Statute: Section 339, Indian Penal Code, 1860

Section 339 – Wrongful restraint - Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception. — The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

Illustration

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

(2) Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 126(2) - Wrongful restraint

Corresponding Provision of Previous Statute: Section 341, Indian Penal Code, 1860

Section 341 – Punishment for wrongful restraint - Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

LANDMARK JUDGMENT

Keso Sahu and Ors. vs. Saligram Shah, MANU/OR/0129/1977

Back to Index

127. Wrongful confinement

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 135 - Abetment of desertion of soldier, sailor or airman

(1) Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings beyond certain circumscribing limits, is said "wrongfully to confine" that person.

Illustrations

(a) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(b) A places men with firearms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

(2) Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

(3) Whoever wrongfully confines any person for three days, or more, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both.

(4) Whoever wrongfully confines any person for ten days or more, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine which shall not be less than ten thousand rupees.

(5) Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any term of imprisonment to which he may be liable under any other section of this Chapter and shall also be liable to fine.

Back to Index

(6) Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to three years in addition to any other punishment to which he may be liable for such wrongful confinement and shall also be liable to fine.

(7) Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security or of constraining the person confined or any person interested in such person to do anything illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

(8) Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 340, Indian Penal Code, 1860

Section 340 – Wrongful confinement - Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings beyond certain circumscribing limits, is said "wrongfully to confine" that person.

Illustrations

(a) A causes Z to go within a walled space, and locks Z in Z. is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

Back to Index

(b) A places men with firearms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

Of criminal force and assault

128. Force

A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling:

Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the following three ways, namely:--

(a) by his own bodily power;

(b) by disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person;

(c) by inducing any animal to move, to change its motion, or to cease to move.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 134 - Assault or criminal force in attempt to commit theft of property carried by a person

Bharatiya Nyaya Sanhita, 2023 - Section 135 -Assault or criminal force in attempt wrongfully to confine a person

Bharatiya Nyaya Sanhita, 2023 - Section 76 - Assault or criminal force with intent to disrobe

Bharatiya Nyaya Sanhita, 2023 - Section 129 - Criminal Force

Bharatiya Nyaya Sanhita, 2023 - Section 133 - Assault or criminal force with intent to dishonor person, otherwise than on grave provocation

Bharatiya Nyaya Sanhita, 2023 - Section 132- Assault or criminal force to deter public servant from discharge of His duty

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 131 - Punishment for assault or criminal force otherwise than on grave provocation

Bharatiya Nyaya Sanhita, 2023 - Section 74 - Assault or use of criminal force to woman to outrage her modesty

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 148 - Dispersal of assembly by use of civil force

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 147 - Enforcement of order of maintenance

Corresponding Provision of Previous Statute: Section 349, Indian Penal Code, 1860

Section 349 – Force - A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.

129. Criminal force

Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 128 - Force

Back to Index

injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations

(a) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other action on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.

(b) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z.

(c) Z is riding in a palanquin. A, intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence. A has used criminal force to Z.

(d) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z.

Bharatiya Nyaya Sanhita, 2023 - Section 131 - Punishment for assault or criminal force otherwise than on grave provocation

Bharatiya Nyaya Sanhita, 2023 - Section 132 - Assault or criminal force to deter public servant from discharge of His duty

Bharatiya Nyaya Sanhita, 2023 - Section 74 -Assault or use of criminal force to woman to outrage her modesty

Bharatiya Nyaya Sanhita, 2023 - Section 133 - Assault or criminal force with intent to dishonor person, otherwise than on grave provocation

Bharatiya Nyaya Sanhita, 2023 - Section 134 - Assault or criminal force in attempt to commit theft of property carried by a person

Bharatiya Nyaya Sanhita, 2023 - Section 135 -Assault or criminal force in attempt wrongfully to confine a person

Bharatiya Nyaya Sanhita, 2023 - Section 136 - Assault or criminal force on grave provocation

Back to Index

(e) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z, or Z's clothes, A has used force to Z, and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

Bharatiya Nyaya Sanhita, 2023 - Section 76 - Assault or criminal force with intent to disrobe

(f) A intentionally pulls up a woman's veil. Here A intentionally uses force to her, and if he does so without her consent intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.

(g) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling; A has therefore intentionally used force to Z; and if he has done this without Z's consent intending or knowing it to be likely that he may thereby cause injury, fear or annoyance to Z, A has used criminal force.

(h) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

Corresponding Provision of Previous Statute: Section 350, Indian Penal Code, 1860

Section 350 - Criminal force - Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations

(a) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is

produced without any other action on any person's part. A has therefore intentionally used force to Z; and if

Back to Index

he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.

(b) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z.

(c) Z is riding in a palanquin. A, intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence. A has used criminal force to Z.

(d) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z.

(e) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z, or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

(f) A intentionally pulls up a woman's veil. Here A intentionally uses force to her, and if he does so without her consent intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.

(g) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling; A has therefore intentionally used force to Z; and if he has done this without Z's consent intending or knowing it to be likely that he may thereby cause injury, fear or annoyance to Z, A has used criminal force.

(h) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

130. Assault

Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 131 - Punishment for assault or criminal force otherwise than on grave provocation

Back to Index

Explanation.--Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Illustrations

(a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(b) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(c) A takes up a stick, saying to Z, "I will give you a beating". Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

Bharatiya Nyaya Sanhita, 2023 - Section 132 - Assault or criminal force to deter public servant from discharge of His duty

Bharatiya Nyaya Sanhita, 2023 - Section 133 - Assault or criminal force with intent to dishonor person, otherwise than on grave provocation

Bharatiya Nyaya Sanhita, 2023 - Section 134 - Assault or criminal force in attempt to commit theft of property carried by a person

Bharatiya Nyaya Sanhita, 2023 - Section 135 -Assault or criminal force in attempt wrongfully to confine a person

Bharatiya Nyaya Sanhita, 2023 - Section 136 - Assault or criminal force on grave provocation

Bharatiya Nyaya Sanhita, 2023 - Section 74 -Assault or use of criminal force to woman to outrage her modesty

Bharatiya Nyaya Sanhita, 2023 - Section 44 - Right of private defence against deadly assault

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 151 - Assaulting President, Governor, etc., with intent to compel or restrain exercise of any lawful power

Bharatiya Nyaya Sanhita, 2023 - Section 161 - Abetment of assault by soldier, sailor or airman on his superior officer, when in execution of His office

Bharatiya Nyaya Sanhita, 2023 - Section 162 - Abetment of such assault, if the assault committed

Bharatiya Nyaya Sanhita, 2023 - Section 195 - Assaulting or obstructing public servant suppressing riot

Bharatiya Nyaya Sanhita, 2023 - Section 333 -House-trespass after preparation for hurt, assault or wrongful restraint

Bharatiya Nyaya Sanhita, 2023 - Section 331(5) - Punishment for house-trespass or house-breaking

Bharatiya Nyaya Sanhita, 2023 - Section 331(6) - Punishment for house-trespass or house-breaking

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 76 - Assault or criminal force with intent to disrobe

National Security Guard Act, 1986 - Section 22 - Assault And Obstruction

POCSO Act - Section 3 - Penetrative Sexual Assault

POCSO Act - Section 4 - Punishment For Penetrative Sexual Assault

POCSO Act - Section 5 - Aggravated Penetrative Sexual Assault

POCSO Act - Section 6 - Punishment For Aggravated Penetrative Sexual Assault

POCSO Act - Section 7 - Sexual AssaultPOCSO Act - Section 8 - Punishment For Sexual Assault

POCSO Act - Section 9 - Aggravated Sexual Assault

POCSO Act - Section 10 - Punishment For Aggravated Sexual Assault

National Security Guard Act, 1986 - Section 22 - Assault And Obstruction

POCSO Act - Section 3 - Penetrative Sexual Assault

Back to Index

Corresponding Provision of Previous Statute: Section 351, Indian Penal Code, 1860

Section 351 – Assault - Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Illustrations

(a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.
(b) (b) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.
(c) (c) A takes up a stick, saying to Z, "I will give you a beating". Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

131. Punishment for assault or criminal force otherwise than on grave provocation

Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

Explanation 1.--Grave and sudden provocation will not mitigate the punishment for an offence under this section,--

(a) if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence; or

(b) if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant; or

(c) if the provocation is given by anything done in the lawful exercise of the right of private defence.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 129 - Criminal Force

Bharatiya Nyaya Sanhita, 2023 - Section 130 -Assault

Bharatiya Nyaya Sanhita, 2023 - Section 136 - Assault or criminal force on grave provocation

Back to Index

Explanation 2.--Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

Corresponding Provision of Previous Statute: Section 352, Indian Penal Code, 1860

Section 352 – Punishment for assault or criminal force otherwise than on grave provocation – Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Explanation.—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

132. Assault or criminal force to deter public servant from discharge of his duty

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 129 - Criminal Force

Bharatiya Nyaya Sanhita, 2023 - Section 130 -Assault

Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 353, Indian Penal Code, 1860

Section 353 – Assault or criminal force to deter public servant from discharge of his duty – Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person to the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

133. Assault or criminal force with intent to dishonour person, otherwise than on grave provocation

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 129 - Criminal Force

Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given

Back to Index

by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Bharatiya Nyaya Sanhita, 2023 - Section 130 -Assault

Bharatiya Nyaya Sanhita, 2023 - Section 79 - Word, gesture or act intended to insult the modesty of a woman

Corresponding Provision of Previous Statute: Section 355, Indian Penal Code, 1860

Section 355 – Assault or criminal force with intent to dishonour person, otherwise than on grave Provocation - Whoever assaults or uses criminal force to any person, intending thereby to dishonor that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

134. Assault or criminal force in attempt to commit theft of property carried by a person

Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 129 - Criminal Force

Bharatiya Nyaya Sanhita, 2023 - Section 130 -Assault

Bharatiya Nyaya Sanhita, 2023 - Section 303(1) - Theft

Corresponding Provision of Previous Statute: Section 356, Indian Penal Code, 1860

Section 356 – Assault or criminal force in attempt to commit theft of property carried by a person - Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

135. Assault or criminal force in attempt to wrongfully confine a person

Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 129 - Criminal Force

Bharatiya Nyaya Sanhita, 2023 - Section 130 -Assault

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 127 - Wrongful Confinenment

Corresponding Provision of Previous Statute: Section 357, Indian Penal Code, 1860

Section 357 – Assault or criminal force in attempt wrongfully to confine a person - Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

136. Assault or criminal force on grave provocation

Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

Explanation.--This section is subject to the same Explanation as section 131 of kidnapping, abduction, slavery and forced labour

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 129 - Criminal Force

Bharatiya Nyaya Sanhita, 2023 - Section 130 - Assault

Bharatiya Nyaya Sanhita, 2023 - Section 131 - Punishment for assault or criminal force otherwise than on grave provocation

Bharatiya Nyaya Sanhita, 2023 - Section 133 - Assault or criminal force with intent to dishonor person, otherwise than on grave provocation

Corresponding Provision of Previous Statute: Section 358, Indian Penal Code, 1860

Section 358 – Assault or criminal force on grave provocation - Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.
Explanation.—The last section is subject to the same Explanation as section 352.

137. Kidnapping

(1) Kidnapping is of two kinds: kidnapping from India, and kidnapping from lawful guardianship--

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 137(2) - Kidnapping

Back to Index

(a) whoever conveys any person beyond the limits of India without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from India;

(b) whoever takes or entices any child or any person of unsound mind, out of the keeping of the lawful guardian of such child or person of unsound mind, without the consent of such guardian, is said to kidnap such child or person from lawful guardianship.

Explanation.--The words "lawful guardian" in this clause include any person lawfully entrusted with the care or custody of such child or other person.

Exception.--This clause does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

Bharatiya Nyaya Sanhita, 2023 - Section 140(1) - Kidnapping or abducting in order to murder or for ransom etc.

Bharatiya Nyaya Sanhita, 2023 - Section 140(2) - Kidnapping or abducting in order to murder or for ransom etc.

Bharatiya Nyaya Sanhita, 2023 - Section 140(3) - Kidnapping or abducting in order to murder or for ransom etc.

Bharatiya Nyaya Sanhita, 2023 - Section 140(4) - Kidnapping or abducting in order to murder or for ransom etc.

Bharatiya Nyaya Sanhita, 2023 - Section 87 - Kidnapping, abducting, inducing woman to compel her marriage etc.

Juvenile Justice (Care and Protection of Children) Act, 2015 - Section 84 - Kidnapping And Abduction of Child

Bharatiya Nyaya Sanhita, 2023 - Section 97 -Kidnapping or abducting child under ten years of age to steal from its person

Back to Index

Guardians and Wards Act, 1890 - Section 7 - Power Of The Court To Make Orders As To Guardianship

Hindu Minority and Guardianship Act, 1956 - Section 7 - Natural Guardianship of Adopted Son

Hindu Widows' Remarriage Act, 1856 - Section 3 - Guardianship of Children of Deceased Husband On The Remarriage of His Widow.

Corresponding Provision of Previous Statute: Section 359, Indian Penal Code, 1860

Section 359 – Kidnapping - Kidnapping is of two kinds: kidnapping from India, and kidnapping from lawful guardianship.

Section 361 - Kidnapping from lawful guardianship - Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.—The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.—This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

LANDMARK JUDGMENT

S. Varadarajan vs. State of Madras, MANU/SC/0081/1964

(2) Whoever kidnaps any person from India or from lawful guardianship shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 137(1) - Kidnapping

Back to Index

Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 24 - Removal of Disqualification On The Findings of an Offence

Juvenile Justice (Care and Protection of Children) Act, 2015 - Section 76 - Employment of Child For Begging

The Juvenile Justice Act, 1986 - Section 42 - Employment Of Juveniles For Begging

Corresponding Provision of Previous Statute: Section 363, Indian Penal Code, 1860

Section 363 – Punishment for kidnapping - Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

LANDMARK JUDGMENT

Thakorlal D. Vadgama vs. The State of Gujarat, MANU/SC/0191/1973

138. Abduction

Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

Linked Provisions

Juvenile Justice (Care and Protection of Children) Act, 2015 - Section 84 - Kidnapping And Abduction of Child

Bharatiya Nyaya Sanhita, 2023 - Section 140(1) - Kidnapping or abducting in order to murder or for ransom etc.

Bharatiya Nyaya Sanhita, 2023 - Section 140(3) - Kidnapping or abducting in order to

Back to Index

murder or for ransom etc.

Bharatiya Nyaya Sanhita, 2023 - Section 140(4) - Kidnapping or abducting in order to murder or for ransom etc.

Bharatiya Nyaya Sanhita, 2023 - Section 87 -Kidnapping, abducting, inducing woman to compel her marriage etc.

Bharatiya Nyaya Sanhita, 2023 - Section 137(1) - Kidnapping

Bharatiya Nyaya Sanhita, 2023 - Section 97 -Kidnapping or abducting child under ten years of age to steal from its person

Corresponding Provision of Previous Statute: Section 362, Indian Penal Code, 1860

Section 362 – Abduction - Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person

139. Kidnapping or maiming a child for purposes of begging

(1) Whoever kidnaps any child or, not being the lawful guardian of such child, obtains the custody of the child, in order that such child may be employed or used for the purposes of begging shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever maims any child in order that such child may be employed or used for the purposes of begging shall be punishable with imprisonment

Back to Index

which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine.

(3) Where any person, not being the lawful guardian of a child employs or uses such child for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of such child in order that such child might be employed or used for the purposes of begging.

(4) In this section "begging" means--

(i) soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortune telling, performing tricks or selling articles or otherwise;

(ii) entering on any private premises for the purpose of soliciting or receiving alms;

(iii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;

(iv) using such child as an exhibit for the purpose of soliciting or receiving alms.

Corresponding Provision of Previous Statute: Section 363A, Indian Penal Code, 1860

Section 363A – Kidnapping or maiming a minor for purposes of begging –

(1) Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that suchminor may be employed or used for the purposes of begging shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(2) Whoever maims any minor in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment for life, and shall also be liable to fine.

(3) Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise

Back to Index

obtained the custody of that minor in order that the minor might be employed or used for the purposes of begging.

(4) In this section,—

(a) "begging" means—

(i) soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortunetelling, performing tricks or selling articles or otherwise;

(ii) entering on any private premises for the purpose of soliciting or receiving alms;

(iii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;

(iv) using a minor as an exhibit for the purpose of soliciting or receiving alms;

(b) "minor" means—

(i) in the case of a male, a person under sixteen years of age; and

(ii) in the case of a female, a person under eighteen years of age.

140. Kidnapping or abducting in order to murder or for ransom, etc

(1) Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations

(a) A kidnaps Z from India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(b) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 137(1) - Kidnapping

Bharatiya Nyaya Sanhita, 2023 - Section 138 - Abduction

Bharatiya Nyaya Sanhita, 2023 - Section 101- Murder

Corresponding Provision of Previous Statute: Section 364, Indian Penal Code, 1860

Section 364 – Kidnapping or abducting in order to murder - Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Back to Index

Illustrations

(a) A kidnaps Z from India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(b) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

(2) Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 137(1) - Kidnapping

Corresponding Provision of Previous Statute: Section 364A, Indian Penal Code, 1860

Section 364A – Kidnapping for ransom, etc. - Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.

(3) Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 137(1) - Kidnapping

Bharatiya Nyaya Sanhita, 2023 - Section 138 - Abduction

Bharatiya Nyaya Sanhita, 2023 - Section 127 - Wrongful Confinenment

Corresponding Provision of Previous Statute: Section 365, Indian Penal Code, 1860

Section 365 – Kidnapping or abducting with intent secretly and wrongfully to confine person – Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Back to Index

(4) Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 137(1) - Kidnapping

Bharatiya Nyaya Sanhita, 2023 - Section 138 - Abduction

Bharatiya Nyaya Sanhita, 2023 - Section 116 - Grevious Hurt

Corresponding Provision of Previous Statute: Section 367, Indian Penal Code, 1860

Section 367 – Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc. - Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

141. Importation of girl or boy from foreign country

Whoever imports into India from any country outside India any girl under the age of twenty-one years or any boy under the age of eighteen years with intent that girl or boy may be, or knowing it to be likely that girl or boy will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 366B, Indian Penal Code, 1860

Section 366B – Importation of girl from foreign country - Whoever imports into India from any country outside India or from the State of Jammu and Kashmir any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

142. Wrongfully concealing or keeping in confinement, kidnapped or abducted person

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 137(1) - Kidnapping

Bharatiya Nyaya Sanhita, 2023 - Section

Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same

Back to Index

intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

138 - Abduction

Bharatiya Nyaya Sanhita, 2023 - Section 127 - Wrongful

Corresponding Provision of Previous Statute: Section 368, Indian Penal Code, 1860

Section 368 – Wrongfully concealing or keeping in confinement, kidnapped or abducted person - Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

143. Trafficking of person

Linked Provisions

Constitution of India - Article 23 - Prohibition of Traffic in Human Beings And Forced Labour

Bharatiya Nyaya Sanhita, 2023 - Section 144 - Exploitation of a trafficked person

(1) Whoever, for the purpose of exploitation recruits, transports, harbours, transfers, or receives a person or persons, by--

(a) using threats; or

(b) using force, or any other form of coercion; or

(c) by abduction; or

(d) by practising fraud, or deception; or

(e) by abuse of power; or

(f) by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1.--The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, beggary or forced removal of organs.

Explanation 2.--The consent of the victim is immaterial in determination of the offence of trafficking.

Back to Index

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a child, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(5) Where the offence involves the trafficking of more than one child, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

(6) If a person is convicted of the offence of trafficking of a child on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

(7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 370, Indian Penal Code, 1860

Section 370 – Trafficking of person –

(1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by —

First. — using threats, or

Secondly. — using force, or any other form of coercion, or

Back to Index

Thirdly.—by abduction, or

Fourthly.—by practising fraud, or deception, or

Fifthly.—by abuse of power, or

Sixthly.—by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1.—The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.—The consent of the victim is immaterial in determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

(6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

(7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

144. Exploitation of a trafficked person

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 143 - Trafficking of person

(1) Whoever, knowingly or having reason to believe that a child has been trafficked, engages such child for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.

(2) Whoever, knowingly or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than

Back to Index

three years, but which may extend to seven years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 370A, Indian Penal Code, 1860

Section 370A – Exploitation of a trafficked person - (1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

(2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.

145. Habitual dealing in slaves

Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with imprisonment for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 140(4) - Kidnapping or abducting in order to murder or for ransom etc.

Corresponding Provision of Previous Statute: Section 371, Indian Penal Code, 1860

Section 371 – Habitual dealing in slaves - Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with imprisonment for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

146. Unlawful compulsory labour

Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Linked Provisions

Protection of Civil Rights Act, 1955 - Section 7A - Unlawful Compulsory Labour To Be Deemed To Be A Practice Of "Untouchability"

Corresponding Provision of Previous Statute: Section 374, Indian Penal Code, 1860

Section 374 – Unlawful compulsory labour - Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Back to Index

CHAPTER VII

OF OFFENCES AGAINST THE STATE

147. Waging, or attempting to wage war, or abetting waging of war, against Government of India

Whoever wages war against the Government of India, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life and shall also be liable to fine.

Illustration

A joins an insurrection against the Government of India. A has committed the offence defined in this section.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 149 - Collecting arms, etc., with intention of waging war against Government of India

Bharatiya Nyaya Sanhita, 2023 - Section 150 - Concealing with intent to facilitate design to wage war

Bharatiya Nyaya Sanhita, 2023 - Section 153 - Waging war against Government of any foreign State at peace with Government of India

Bharatiya Nyaya Sanhita, 2023 - Section 148 - Conspiracy to commit offences punishable by section 147

Corresponding Provision of Previous Statute: Section 121, Indian Penal Code, 1860

Section 121 – Waging or attempting to wage war or abetting waging of war against the Government of India - Whoever wages war against the Government of India, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life and shall also be liable to fine.

Illustration

A joins an insurrection against the Government of India. A has committed the offence defined in this section.

Back to Index

148. Conspiracy to commit offences punishable by section 147

Whoever within or without and beyond India conspires to commit any of the offences punishable by section 147, or conspires to overawe, by means of criminal force or the show of criminal force, the Central Government or any State Government, shall be punished with imprisonment for life, or with imprisonment of either description which may extend to ten years, and shall also be liable to fine.

Explanation.--To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 147 - Waging, or Attempting to wage war, or abetting waging of war, against Government of India

Corresponding Provision of Previous Statute: Section 121A, Indian Penal Code, 1860

Section 121A – Conspiracy to commit offences punishable by section 121 - Whoever within or without India conspires to commit any of the offences punishable by section 121, or conspires to overawe, by means of criminal force or the show of criminal force, the Central Government or any State Government, shall be punished with imprisonment for life, or with imprisonment of either description which may extend to ten years, and shall also be liable to fine.

Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.

149. Collecting arms, etc., with intention of waging war against Government of India

Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Government of India, shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 147 - Waging, or Attempting to wage war, or abetting waging of war, against Government of India

Bharatiya Nyaya Sanhita, 2023 - Section 150 - Concealing with intent to facilitate design to wage war

Bharatiya Nyaya Sanhita, 2023 - Section 153 - Waging war against

Back to Index

Government of any foreign State at peace with Government of India

Corresponding Provision of Previous Statute: Section 122, Indian Penal Code, 1860

Section 122 – Collecting arms, etc., with intention of waging war against the Government of India - Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Government of India, shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years, 15 and shall also be liable to fine.

150. Concealing with intent to facilitate design to wage war

Whoever by any act, or by any illegal omission, conceals the existence of a design to wage war against the Government of India, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 147 - Waging, or Attempting to wage war, or abetting waging of war, against Government of India

Bharatiya Nyaya Sanhita, 2023 - Section 149 - Collecting arms, etc., with intention of waging war against Government of India

Bharatiya Nyaya Sanhita, 2023 - Section 153 - Waging war against Government of any foreign State at peace with Government of India

Corresponding Provision of Previous Statute: Section 123, Indian Penal Code, 1860

Section 123 – Concealing with intent to facilitate design to wage war - Whoever, by any act, or by any illegal omission, conceals the existence of a design to wage war against the Government of India, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Back to Index

151. Assaulting President, Governor, etc., with intent to compel or restrain exercise of any lawful power

Whoever, with the intention of inducing or compelling the President of India, or Governor of any State, to exercise or refrain from exercising in any manner any of the lawful powers of such President or Governor, assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, such President or Governor, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 124, Indian Penal Code, 1860

Section 124 – Assaulting President, Governor, etc., with intent to compel or restrain the exercise of any lawful power - Whoever, with the intention of inducing or compelling the President of India, or Governor of any State, to exercise or refrain from exercising in any manner any of the lawful powers of such President or Governor,

assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, such President or Governor,

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

LANDMARK JUDGMENT

Kedar Nath Singh vs. State of Bihar, MANU/SC/0074/1962

152. Act endangering sovereignty, unity and integrity of India

Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years, and shall also be liable to fine.

Back to Index

Explanation.--Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section do not constitute an offence under this section.

153. Waging war against Government of any foreign State at peace with Government of India

Whoever wages war against the Government of any foreign State at peace with the Government of India or attempts to wage such war, or abets the waging of such war, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 147 - Waging, or Attempting to wage war, or abetting waging of war, against Government of India

Bharatiya Nyaya Sanhita, 2023 - Section 149 -Collecting arms, etc., with intention of waging war against Government of India

Bharatiya Nyaya Sanhita, 2023 - Section 150 - Concealing with intent to facilitate design to wage war

Bharatiya Nyaya Sanhita, 2023 - Section 154 - Committing depredation on territories of foreign State at peace with Government of India

Bharatiya Nyaya Sanhita, 2023 - Section 155 - Receiving property taken by war or depredation mentioned in sections 153 and 154

Back to Index

Corresponding Provision of Previous Statute: Section 125, Indian Penal Code, 1860

Section 125 – Waging war against any Asiatic Power in alliance with the Government of India - Whoever wages war against the Government of any Asiatic Power in alliance or at peace with the Government of India or attempts to wage such war, or abets the waging of such war, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.

154. Committing depredation on territories of foreign State at peace with Government of India

Whoever commits depredation, or makes preparations to commit depredation, on the territories of any foreign State at peace with the Government of India, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used or intended to be used in committing such depredation, or acquired by such depredation.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 153 - Waging war against Government of any foreign State at peace with Government of India

Bharatiya Nyaya Sanhita, 2023 - Section 155 - Receiving property taken by war or depredation mentioned in sections 153 and 154

Corresponding Provision of Previous Statute: Section 126, Indian Penal Code, 1860

Section 126 – Committing depredation on territories of Power at peace with the Government of India - Whoever commits depredation, or makes preparations to commit depredation, on the territories of any Power in alliance or at peace with the Government of India, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used or intended to be used in committing such depredation, or acquired by such depredation.

155. Receiving property taken by war or depredation mentioned in sections 153 and 154

Whoever receives any property knowing the same to have been taken in the commission of any of the offences mentioned in sections 153 and 154, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 153 - Waging war against Government of any foreign State at peace with Government of India

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 154 - Committing depredation on territories of foreign State at peace with Government of India

Corresponding Provision of Previous Statute: Section 127, Indian Penal Code, 1860

Section 127 – Receiving property taken by war or depredation mentioned in sections 125 and 126 - Whoever receives any property knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

156. Public servant voluntarily allowing prisoner of State or war to escape

Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 157 - Public servant negligently suffering such prisoner to escape

Bharatiya Nyaya Sanhita, 2023 - Section 158 - Aiding escape of, rescuing or harbouring such prisoner

Collection of Statistics Act, 2008 - Section 29 - Public Servants

Bharatiya Nyaya Sanhita, 2023 - Section 2(28) - Public Servant

Bharatiya Nyaya Sanhita, 2023 - Section 259 - Intentional omission to apprehend on part of public servant bound to apprehend

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 260 - Intentional omission to apprehend on part of public servant bound to apprehend person under sentence or lawfully committed

Bharatiya Nyaya Sanhita, 2023 - Section 264 - Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise provided for

Corresponding Provision of Previous Statute: Section 128, Indian Penal Code, 1860

Section 128 – Public servant voluntarily allowing prisoner of State or war to escape - Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

157. Public servant negligently suffering such prisoner to escape

Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

Linked Provisions

Collection of Statistics Act, 2008 - Section 29 - Public Servants

Bharatiya Nyaya Sanhita, 2023 - Section 2(28) - Public Servant

Bharatiya Nyaya Sanhita, 2023 - Section 158 - Aiding escape of, rescuing or harbouring such prisoner

Bharatiya Nyaya Sanhita, 2023 - Section 261 - Escape from confinement or custody negligently suffered by public servant

Back to Index

Corresponding Provision of Previous Statute: Section 129, Indian Penal Code, 1860

Section 129 – Public servant negligently suffering such prisoner to escape - Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

158. Aiding escape of, rescuing or harbouring such prisoner

Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.--A State prisoner or prisoner of war, who is permitted to be at large on his parole within certain limits in India, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 259 - Intentional omission to apprehend on part of public servant bound to apprehend

Bharatiya Nyaya Sanhita, 2023 - Section 260 - Intentional omission to apprehend on part of public servant bound to apprehend person under sentence or lawfully committed

Bharatiya Nyaya Sanhita, 2023 - Section 264 - Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise provided for

Bharatiya Nyaya Sanhita, 2023 - Section 156 - Public servant voluntarily allowing prisoner of State or war to escape

Corresponding Provision of Previous Statute: Section 130, Indian Penal Code, 1860

Section 130 – Aiding escape of, rescuing or harbouring such prisoner - Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A State prisoner or prisoner of war, who is permitted to be at large on his parole within certain limits in India, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

Back to Index

CHAPTER VIII

OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

159. Abetting mutiny, or attempting to seduce a soldier, sailor or airman from his duty

Whoever abets the committing of mutiny by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India or attempts to seduce any such officer, soldier, sailor or airman from his allegiance or his duty, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Linked Provisions

Air Force Act, 1950 - Section 37 – Mutiny

Army Act, 1950 - Section 37 – Mutiny

Border Security Force Act, 1968 - Section 17 – Mutiny

Coast Guard Act, 1978 - Section 17 – Mutiny

Air Force Act, 1950 - Section 35 - Offences Punishable More Severely On Active Service Than At Other Times

Indo-Tibetan Border Police Force Act, 1992 - Section 19 – Mutiny

National Security Guard Act, 1986 - Section 17 – Mutiny

Navy Act, 1957 - Section 42 - Mutiny Defined

Navy Act, 1957 - Section 43 - Punishment For Mutiny

Sashastra Seema Bal Act, 2007 - Section 19 – Mutiny

Air Force Act, 1950 - Section 57 - Falsifying Official Documents And False Declaration

Back to Index

Army Act, 1950 - Section 40 – Abetment

Bharatiya Nyaya Sanhita, 2023 - Section 160 - Abetment of mutiny, if mutiny is committed in consequence thereof

Corresponding Provision of Previous Statute: Section 131, Indian Penal Code, 1860

Section 131 – Abetting mutiny, or attempting to seduce a soldier, sailor or airman from his duty - Whoever abets the committing of mutiny by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India or attempts to seduce any such officer, soldier, sailor or airman from his allegiance or his duty, shall be punished with imprisonment for life, or withimprisonment of either description for a term which may extend to ten years, and shall also be liable tofine.

Explanation.—In this section the words "officer", "soldier", "sailor" and "airman" include anyperson subject to the Army Act, the Army Act, 1950 (46 of 1950), the Naval Discipline Act, the Indian Navy (Discipline) Act,1934 (34 of 1934) the Air Force Act or the Air Force Act, 1950 (45 of1950), as the case may be.

160. Abetment of mutiny, if mutiny is committed in consequence thereof

Whoever abets the committing of mutiny by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, shall, if mutiny be committed in consequence of that abetment, be punished with death or with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Linked Provisions

Air Force Act, 1950 - Section 37 – Mutiny

Army Act, 1950 - Section 37 – Mutiny

Border Security Force Act, 1968 - Section 17 – Mutiny

Coast Guard Act, 1978 - Section 17 – Mutiny

Air Force Act, 1950 - Section 35 - Offences Punishable More Severely On Active Service Than At Other Times

Indo-Tibetan Border Police Force Act, 1992 - Section 19 – Mutiny

Back to Index

National Security Guard Act, 1986 - Section 17 – Mutiny

Navy Act, 1957 - Section 42 - Mutiny Defined

Navy Act, 1957 - Section 43 - Punishment For Mutiny

Sashastra Seema Bal Act, 2007 - Section 19 – Mutiny

Air Force Act, 1950 - Section 68 - Abetment of Offences That Have Been Committed

Army Act, 1950 - Section 66 - Abetment of Offences That Have Been Committed

Border Security Force Act, 1968 - Section 43 - Abetment of Offences That Have Been Committed

Coast Guard Act, 1978 - Section 46 - Abetment of Offences That Have Been Committed

Indo-Tibetan Border Police Force Act, 1992 - Section 46 - Abetment of Offences That Have Been Committed

Corresponding Provision of Previous Statute: Section 132, Indian Penal Code, 1860

Section 132 – Abetment of mutiny, if mutiny is committed in consequence thereof - Whoever abets the committing of mutiny by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, shall, if mutiny be committed in consequence of that abetment, be punished with death or with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Back to Index

161. Abetment of assault by soldier, sailor or airman on his superior officer, when in execution of his office

Whoever abets an assault by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 162 - Abetment of such assault, if the assault committed

Corresponding Provision of Previous Statute: Section 133, Indian Penal Code, 1860

Section 133 – Abetment of assault by soldier, sailor or airman on his superior officer, when in execution of his office - Whoever abets an assault by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

162. Abetment of such assault, if assault committed

Whoever abets an assault by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 161 - Abetment of assault by soldier, sailor or airman on his superior officer, when in execution of His office

Bharatiya Nyaya Sanhita, 2023 - Section 130 -Assault

Army Act, 1950 - Section 66 - Abetment of Offences That Have Been Committed

Border Security Force Act, 1968 - Section 43 - Abetment of Offences That Have Been Committed

Coast Guard Act, 1978 - Section 46 - Abetment of Offences That Have Been Committed

Indo-Tibetan Border Police Force Act, 1992 - Section 46 - Abetment of Offences That Have Been Committed

Indian Air Force Act, 1932 - Section 57 - Falsifying Official Documents And False Declaration

Army Act, 1950 - Section 40 - Abetment

Corresponding Provision of Previous Statute: Section 134, Indian Penal Code, 1860

Section 134 – Abetment of such assault, if the assault is committed - Whoever abets an assault by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

163. Abetment of desertion of soldier, sailor or airman

Whoever abets the desertion of any officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Linked Provisions

National Security Guard Act, 1986 - Section 18 - Desertion and aiding desertion

Border Security Force Act, 1968 - Section 18 - Desertion and aiding desertion

Army Act, 1950 - Section 38 - Desertion and aiding desertion

Air Force Act, 1952 - Section 38 - Desertion and aiding desertion

Coast Guard Act, 1978 - Section 16 - Deserting post and neglect of duty

Indo-Tibetan Border Police Force Act, 1992 - Section 20 - Desertion and aiding desertion

Navy Act, 1957 - Section 41 - Deserting post and neglect of duty

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 164 - Harbouring deserter

Bharatiya Nyaya Sanhita, 2023 - Section 165 - Deserter concealed on board merchant vessel through negligence of master

Corresponding Provision of Previous Statute: Section 135, Indian Penal Code, 1860

Section 135 – Abetment of desertion of soldier, sailor or airman - Whoever abets the desertion of any officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

164. Harbouring deserter

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 2(13) - "Harbour"

Bharatiya Nyaya Sanhita, 2023 - Section 163 - Abetment of desertion of soldier, sailor or airman

Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, has deserted, harbours such officer, soldier, sailor or airman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Exception.--This provision does not extend to the case in which the harbour is given by the spouse of the deserter.

Corresponding Provision of Previous Statute: Section 136, Indian Penal Code, 1860

Section 136 – Harbouring deserter - Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, has deserted, harbours such officer, soldier, sailor or airman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Exception.—This provision does not extend to the case in which the harbour is given by a wife to her husband.

165. Deserter concealed on board merchant vessel through negligence of master

The master or person in charge of a merchant vessel, on board of which any deserter from the Army, Navy or Air Force of the Government of India is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding three thousand rupees, if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

Corresponding Provision of Previous Statute: Section 137, Indian Penal Code, 1860

Section 137 – Deserter concealed on board merchant vessel through negligence of master - The master or person in charge of a merchant vessel, on board of which any deserter from the Army, Navy or Air Force of

Back to Index

the Government of India is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

166. Abetment of act of insubordination by soldier, sailor or airman

Whoever abets what he knows to be an act of insubordination by an officer, soldier, sailor or airman, in the Army, Navy or Air Force, of the Government of India, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 138, Indian Penal Code, 1860

Section 138 – Abetment of act of insubordination by soldier, sailor or airman - Whoever abets what he knows to be an act of insubordination by an officer, soldier, sailor or airman, in the Army, Navy or air Force, of the Government of India, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

167. Persons subject to certain Acts

No person subject to the Air Force Act, 1950 (45 of 1950), the Army Act, 1950 (46 of 1950) and the Navy Act, 1957 (62 of 1957), or shall be subject to punishment under this Sanhita for any of the offences defined in this Chapter.

Corresponding Provision of Previous Statute: Section 139, Indian Penal Code, 1860

Section 139 – Persons subject to certain Acts - No person subject to the Army Act, the Army Act, 1950 (46 of 1950), the Naval Discipline Act, the Indian Navy (Discipline) Act, 1934 (34 of 1934), the Air Force Act or the Air Force Act, 1950 (45 of 1950), is subject to punishment under this Code for any of the offences defined in this Chapter.

168. Wearing garb or carrying token used by soldier, sailor or airman

Whoever, not being a soldier, sailor or airman in the Army, Naval or Air service of the Government of India, wears any garb or carries any token resembling any garb or token used by such a soldier, sailor or airman with the intention that it may be believed that he is such a soldier, sailor or airman, shall be punished with imprisonment of either description for a term which may

Back to Index

extend to three months, or with fine which may extend to two thousand rupees, or with both.

Corresponding Provision of Previous Statute: Section 140, Indian Penal Code, 1860

Section 140 – Wearing garb or carrying token used by soldier, sailor or airman - Whoever, not being a soldier, sailor or airman in the Military, Naval or Air service of the Government of India, wears any garb or carries any token resembling any garb or token used by such a soldier, sailor or airman with the intention that it may be believed that he is such a soldier, sailor or airman, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Back to Index

CHAPTER IX

OF OFFENCES RELATING TO ELECTIONS

169. Candidate, electoral right defined

For the purposes of this Chapter--

(a) "candidate" means a person who has been nominated as a candidate at any election;

(b) "electoral right" means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election.

Corresponding Provision of Previous Statute: Section 171A, Indian Penal Code, 1860

Section 171A – "Candidate", "Electoral right" defined - For the purposes of this Chapter—

(a) "candidate" means a person who has been nominated as a candidate at any election;

(b) "electoral right" means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election.

170. Bribery

Linked Provisions

Indian Telegraph Act, 1885 - Section 31 – Bribery

Bharatiya Nyaya Sanhita, 2023 - Section 173 - Punishment for bribery

(1) Whoever--

(i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right,

commits the offence of bribery:

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

Back to Index

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

Corresponding Provision of Previous Statute: Section 171B, Indian Penal Code, 1860

Section 171B – Bribery - (1) Whoever—

(i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right, commits the offence of bribery:

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

171. Undue influence at elections

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 174 - Punishment for undue influence or personation at an election

(1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever--

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind; or

Back to Index

(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action or the mere exercise or a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

Corresponding Provision of Previous Statute: Section 171C, Indian Penal Code, 1860

Section 171C – Undue influence at elections - (1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever—

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action, or the mere exercise or a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

172. Personation at elections

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 174 - Punishment for undue influence or personation at an election

Whoever at an election applies for a voting paper on votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election:

Provided that nothing in this section shall apply to a person who has been authorised to vote as proxy for an elector under any law for the time being in force in so far as he votes as a proxy for such elector.

Back to Index

Corresponding Provision of Previous Statute: Section 171D, Indian Penal Code, 1860

Section 171D – Personation at elections - Whoever at an election applies for a voting paper on votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election:

Provided that nothing in this section shall apply to a person who has been authorised to vote as proxy for an elector under any law for the time being in force in so far as he votes as a proxy for such elector.

173. Punishment for bribery

Linked Provisions

Indian Telegraph Act, 1885 - Section 31 – Bribery

Bharatiya Nyaya Sanhita, 2023 - Section 170 -Bribery

Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both:

Provided that bribery by treating shall be punished with fine only.

Explanation.--"Treating" means that form of bribery where the gratification consists in food, drink, entertainment, or provision.

Corresponding Provision of Previous Statute: Section 171E, Indian Penal Code, 1860

Section 171E – Punishment for bribery - Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both: Provided that bribery by treating shall be punished with fine only.

Explanation.—"Treating" means that form of bribery where the gratification consists in food, drink, entertainment, or provision.

174. Punishment for undue influence or personation at an election

Linked Provisions

The Representation of People Act, 1951 - Section 123(2) - Corrupt Practices

Indian Contract Act, 1872 - Section 16 - 'Undue Influence' Defined

Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 171 - Undue influence at elections

Corresponding Provision of Previous Statute: Section 171F, Indian Penal Code, 1860

Section 171F – Punishment for undue influence or personation at an election - Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.

175. False statement in connection with an election

Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

Corresponding Provision of Previous Statute: Section 171G, Indian Penal Code, 1860

Section 171G – False statement in connection with an election - Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

176. Illegal payments in connection with an election

Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to ten thousand rupees:

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

Back to Index

Corresponding Provision of Previous Statute: Section 171H, Indian Penal Code, 1860

Section 171H – Illegal payments in connection with an election - Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees:

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

177. Failure to keep election accounts

Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five thousand rupees.

Corresponding Provision of Previous Statute: Section 171I, Indian Penal Code, 1860

Section 171I – Failure to keep election accounts - Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.of the candidate.

Back to Index

CHAPTER X

OF OFFENCES RELATING TO COIN, CURRENCY-NOTES, BANK-NOTES, AND GOVERNMENT STAMPS

178. Counterfeiting coin, Government stamps, currency-notes or bank-notes

Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any coin, stamp issued by Government for the purpose of revenue, currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.--For the purposes of this Chapter,--

(1) the expression "bank-note" means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for money;

(2) "coin" shall have the same meaning as assigned to it in section 2 of the Coinage Act, 2011 (11 of 2011) and includes metal used for the time being as money and is stamped and issued by or under the authority of any State or Sovereign Power intended to be so used;

(3) a person commits the offence of "counterfeiting Government stamp" who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination;

(4) a person commits the offence of counterfeiting coin who intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin; and

Linked Provisions

Coinage Act, 2011 - Section 2(a) - "Coin"

Bharatiya Nyaya Sanhita, 2023 - Section 181 - Making or possessing instruments or materials for forging or counterfeiting coin, Government stamp, currency notes or bank-notes

Coinage Act, 2011 - Section 10 - Power To Certain Persons To Cut Counterfeit Coins

Bharatiya Nyaya Sanhita, 2023 - Section 182 - Possession of forged or counterfeit coin, Government stamp, currency-notes or bank-notes

Bharatiya Nyaya Sanhita, 2023 - Section 178 - Counterfeiting coin, government stamps, currency- notes or bank-notes

Bharatiya Nyaya Sanhita, 2023 - Section

Back to Index

(5) the offence of "counterfeiting coin" includes diminishing the weight or alteration of the composition, or alteration of the appearance of the coin.

179 - Using as genuine, forged or counterfeit coin, Government stamp, currency-notes or bank notes

Bharatiya Nyaya Sanhita, 2023 - Section 180 - Possession of forged or counterfeit coin, Government stamp, currency-notes or bank-notes

Bharatiya Nyaya Sanhita, 2023 - Section 184 - Using Government stamp known to have been before used

Indian Stamp Act, 1899 - Section 2(26)

Bharatiya Nyaya Sanhita, 2023 - Section 181 - Making or possessing instruments or materials for forging or counterfeiting coin, Government stamp, currency notes or bank-notes

Corresponding Provision of Previous Statute: Section 230, Indian Penal Code, 1860

Section 230 – "Coin" defined - Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.

Indian coin.—Indian coin is metal stamped and issued by the authority of the Government of India in order to be used as money; and metal which has been so stamped and issued shall continue to be Indian coin for the purposes of this Chapter, notwithstanding that it may have ceased to be used as money.

Illustrations

(a) Cowries are not coin.

Back to Index

(b) Lumps of unstamped copper, though used as money, are not coin.

(c) Medals are not coin, in as much as they are not intended to be used as money.

(d) The coin denominated as the Company's rupee is Indian coin.

(e) The "Farukhabad rupee", which was formerly used as money under the authority of the Government of India, is Indian coin although it is no longer so used.

Section 231 - Counterfeiting coin - Whoever counterfeits or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A person commits this offence who intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

Section 232 - Counterfeiting Indian coin - Whoever counterfeits, or knowingly performs any part of the process of counterfeiting Indian coin, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 246 - Fraudulently or dishonestly diminishing weight or altering composition of coin – Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation.—A person who scoops out part of the coin and puts anything else into the cavity alters the composition of that coin.

Section 247 - Fraudulently or dishonestly diminishing weight or altering composition of Indian coin - Whoever fraudulently or dishonestly performs on any Indian coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 248 - Altering appearance of coin with intent that it shall pass as coin of different description - Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Section 249 - Altering appearance of Indian coin with intent that it shall pass as coin of different description - Whoever performs on any Indian coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine

Back to Index

Section 255 - Counterfeiting Government stamp - Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

Section 489A - Counterfeiting currency-notes or bank-notes - Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—For the purposes of this section and of sections 489B, 489C, 489D and 489E, the expression "bank-note" means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for money.

179. Using as genuine, forged or counterfeit coin, Government stamp, currency-notes or bank-notes

Whoever imports or exports, or sells or delivers to, or buys or receives from, any other person, or otherwise traffics or uses as genuine, any forged or counterfeit coin, stamp, currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Linked Provisions

Coinage Act, 2011 - Section 2(a) - "Coin"

Bharatiya Nyaya Sanhita, 2023 - Section 178 - Counterfeiting coin, government stamps, currency- notes or bank-notes

Bharatiya Nyaya Sanhita, 2023 - Section 180 - Possession of forged or counterfeit coin, Government stamp, currency-notes or bank-notes

Bharatiya Nyaya Sanhita, 2023 - Section 182 - Possession of forged or counterfeit

Back to Index

coin, Government stamp, currency-notes or bank-notes

Corresponding Provision of Previous Statute: Section 250, Indian Penal Code, 1860

Section 250 - Delivery of coin, possessed with knowledge that it is altered - Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Section 251 - Delivery of Indian coin, possessed with knowledge that it is altered - Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 258 - Sale of counterfeit Government stamp - Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 260 - Using as genuine a Government stamp known to be counterfeit - Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Section 489B – Using as genuine, forged or counterfeit currency-notes or bank-notes - Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

180. Possession of forged or counterfeit coin, Government stamp, currency-notes or bank-notes

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 178 - Counterfeiting coin, government stamps, currency- notes or bank-

Whoever has in his possession any forged or counterfeit coin, stamp, currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used

Back to Index

as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.--If a person establishes the possession of the forged or counterfeit coin, stamp, currency-note or bank-note to be from a lawful source, it shall not constitute an offence under this section.

notes

Bharatiya Nyaya Sanhita, 2023 - Section 180 - Possession of forged or counterfeit coin, Government stamp, currency-notes or bank-notes

Bharatiya Nyaya Sanhita, 2023 - Section 179 - Using as genuine, forged or counterfeit coin, Government stamp, currency-notes or bank notes

Bharatiya Nyaya Sanhita, 2023 - Section 181 - Making or possessing instruments or materials for forging or counterfeiting coin, Government stamp, currency notes or bank-notes

Bharatiya Nyaya Sanhita, 2023 - Section 182 - Possession of forged or counterfeit coin, Government stamp, currency-notes or bank-notes

Corresponding Provision of Previous Statute: Section 242, Indian Penal Code, 1860

Section 242 - Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof - Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Back to Index

Section 252 - Possession of coin by person who knew it to be altered when he became possessed thereof - Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the section 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Section 253 - Possession of Indian coin by person who knew it to be altered when he became possessed thereof - Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the section 247 or 249 has been committed having known at the time of becoming possessed thereof, that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Section 259 - Having possession of counterfeit Government stamp - Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use, or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 489C - Possession of forged or counterfeit currency-notes or bank-notes - Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

181. Making or possessing instruments or materials for forging or counterfeiting coin, Government stamp, currency-notes or bank-notes

Whoever makes or mends, or performs any part of the process of making or mending, or buys or sells or disposes of, or has in his possession, any machinery, die, or instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any coin, stamp issued by Government for the purpose of revenue, currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 178 - Counterfeiting coin, government stamps, currency- notes or bank-notes

Bharatiya Nyaya Sanhita, 2023 - Section 188 - Unlawfully taking coining instrument from mint

Bharatiya Nyaya Sanhita, 2023 - Section 179 - Using as genuine, forged or counterfeit coin, Government stamp, currency-notes or

Back to Index

bank notes

Bharatiya Nyaya Sanhita, 2023 - Section 180 - Possession of forged or counterfeit coin, Government stamp, currency-notes or bank-notes

Bharatiya Nyaya Sanhita, 2023 - Section 181 - Making or possessing instruments or materials for forging or counterfeiting coin, Government stamp, currency notes or bank-notes

Corresponding Provision of Previous Statute: Section 233, Indian Penal Code, 1860

Section 233 - Making or selling instrument for counterfeiting coin - Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Section 235 - Possession of instrument or material for the purpose of using the same for counterfeiting Coin - Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if Indian coin.—and if the coin to be counterfeited is Indian coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 256 - Having possession of instrument or material for counterfeiting Government stamp - Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 257 - Making or selling instrument for counterfeiting Government stamp - Whoever makes or performs any part of the process of making, or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished.

Back to Index

Section 489D - Making or possessing instruments or materials for forging or counterfeiting currency notes or bank-notes - Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

182. Making or using documents resembling currency-notes or bank-notes

(1) Whoever makes, or causes to be made, or uses for any purpose whatsoever, or delivers to any person, any document purporting to be, or in any way resembling, or so nearly resembling as to be calculated to deceive, any currency-note or bank-note shall be punished with fine which may extend to three hundred rupees.

(2) If any person, whose name appears on a document the making of which is an offence under sub-section (1), refuses, without lawful excuse, to disclose to a police officer on being so required the name and address of the person by whom it was printed or otherwise made, he shall be punished with fine which may extend to six hundred rupees.

(3) Where the name of any person appears on any document in respect of which any person is charged with an offence under sub-section (1) or on any other document used or distributed in connection with that document it may, until the contrary is proved, be presumed that the person caused the document to be made.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 181 - Making or possessing instruments or materials for forging or counterfeiting coin, Government stamp, currency notes or bank-notes

Bharatiya Nyaya Sanhita, 2023 - Section 178 - Counterfeiting coin, government stamps, currency- notes or bank-notes

Bharatiya Nyaya Sanhita, 2023 - Section 179 - Using as genuine, forged or counterfeit coin, Government stamp, currency-notes or bank notes

Bharatiya Nyaya Sanhita, 2023 - Section 180 - Possession of forged or counterfeit coin, Government stamp, currency-notes or bank-notes

Back to Index

Corresponding Provision of Previous Statute: Section 489E, Indian Penal Code, 1860

Section 489E - Making or using documents resembling currency-notes or bank-notes - (1) Whoever makes, or causes to be made, or uses for any purpose whatsoever, or delivers to any person, any document purporting to be, or in any way resembling, or so nearly resembling as to be calculated to deceive, any currency-note or bank-note shall be punished with fine which may extend to one hundred rupees.

(2) If any person, whose name appears on a document the making of which is an offence under sub-section (1), refuses, without lawful excuse, to disclose to a police-officer on being so required the name and address of the person by whom it was printed or otherwise made, he shall be punished with fine which may extend to two hundred rupees.

(3) Where the name of any person appears on any document in respect of which any person is charged with an offence under sub-section (1) or on any other document used or distributed in connection with that document it may, until the contrary is proved, be presumed that that person caused the document to be made.

183. Effacing writing from substance bearing Government stamp, or removing from document a stamp used for it, with intent to cause loss to Government

Whoever, fraudulently or with intent to cause loss to the Government, removes or effaces from any substance, bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 185 - Erasure of mark denoting that stamp has been used

Corresponding Provision of Previous Statute: Section 261, Indian Penal Code, 1860

Section 261 - Effacing writing from substance bearing Government stamp, or removing from document a stamp used for it, with intent to cause loss to Government - Whoever, fraudulently or with intent to cause loss to the Government, removes or effaces from any substance, bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Back to Index

184. Using Government stamp known to have been before used

Whoever, fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 178 - Counterfeiting coin, government stamps, currency- notes or bank-notes

Corresponding Provision of Previous Statute: Section 262, Indian Penal Code, 1860

Section 262 - Using Government stamp known to have been before used - Whoever, fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

185. Erasure of mark denoting that stamp has been used

Whoever, fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue, any mark, put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession or sells or disposes of any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 183 - Effacing writing from substance bearing Government stamp, or removing from document a stamp used for it, with intent to cause loss to Government

Corresponding Provision of Previous Statute: Section 263, Indian Penal Code, 1860

Section 263 - Erasure of mark denoting that stamp has been used - Whoever, fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue, any mark, put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession or sells or disposes of any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

186. Prohibition of fictitious stamps

(1) Whoever—

Back to Index

(a) makes, knowingly utters, deals in or sells any fictitious stamp, or knowingly uses for any postal purpose any fictitious stamp; or

(b) has in his possession, without lawful excuse, any fictitious stamp; or

(c) makes or, without lawful excuse, has in his possession any die, plate, instrument or materials for making any fictitious stamp,

shall be punished with fine which may extend to two hundred rupees.

(2) Any such stamp, die, plate, instrument or materials in the possession of any person for making any fictitious stamp may be seized and, if seized shall be forfeited.

(3) In this section "fictitious stamp" means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage, or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(4) In this section and also in sections 178 to 181 (both inclusive), and sections 183 to 185 (both inclusive) the word "Government", when used in connection with, or in reference to any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in clause (12) of section 2, be deemed to include the person or persons authorised by law to administer executive Government in any part of India or in any foreign country.

Corresponding Provision of Previous Statute: Section 263A, Indian Penal Code, 1860

Section 263A - Prohibition of fictitious stamps - (1) Whoever—

(a) makes, knowingly utters, deals in or sells any fictitious stamp, or knowingly uses for any postal purpose any fictitious stamp, or

(b) has in his possession, without lawful excuse, any fictitious stamp, or

(c) makes or, without lawful excuse, has in his possession any die, plate, instrument or materials for making any fictitious stamp, shall be punished with fine which may extend to two hundred rupees.

(2) Any such stamps, die, plate, instrument or materials in the possession of any person for making any fictitious stamp may be seized and, if seized shall be forfeited.

Back to Index

(3) In this section "fictitious stamp" means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage, or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(4) In this section and also in sections 255 to 263, both inclusive, the word "Government", when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorized by law to administer executive government in any part of India, and also in any part of Her Majesty's dominions or in any foreign country.

187. Person employed in mint causing coin to be of different weight or composition from that fixed by law

Whoever, being employed in any mint lawfully established in India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 244, Indian Penal Code, 1860

Section 244 - Person employed in mint causing coin to be of different weight or composition from that fixed by law - Whoever, being employed in any mint lawfully established in India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

188. Unlawfully taking coining instrument from mint

Whoever, without lawful authority, takes out of any mint, lawfully established in India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 245, Indian Penal Code, 1860

Section 245 - Unlawfully taking coining instrument from mint - Whoever, without lawful authority, takes out of any mint, lawfully established in India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Back to Index

CHAPTER XI

OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY

189. Unlawful assembly

(1) An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is-

(a) to overawe by criminal force, or show of criminal force, the Central Government or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

(b) to resist the execution of any law, or of any legal process; or

(c) to commit any mischief or criminal trespass, or other offence; or

(d) by means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

(e) by means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.--An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

(2) Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly and such member shall be punished with

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 130 - Order to be made

Bharatiya Nyaya Sanhita, 2023 - Section 2(13) - "Harbour"

Bharatiya Nyaya Sanhita, 2023 - Section 189(5) - Unlawful Assembly

Bharatiya Nyaya Sanhita, 2023 - Section 189(3) - Unlawful Assembly

Back to Index

imprisonment of either description for a term which may extend to six months, or with fine, or with both.

(3) Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

(4) Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

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

Explanation.--If the assembly is an unlawful assembly within the meaning of sub-section (1), the offender shall be punishable under sub-section (3).

(6) Whoever hires or engages, or employs, or promotes, or connives at the hiring, engagement or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly in pursuance of such hiring, engagement or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

(7) Whoever harbours, receives or assembles, in any house or premises in his occupation or charge, or under his control any persons knowing that such persons have been hired, engaged or employed, or are about to be hired,

Back to Index

engaged or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

(8) Whoever is engaged, or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in sub-section (1), shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

(9) Whoever, being so engaged or hired as referred to in sub-section (8), goes armed, or engages or offers to go armed, with any deadly weapon or with anything which used as a weapon of offence is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 141, Indian Penal Code, 1860

Section 141 - Unlawful assembly - An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is—

First.—To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

Second.—To resist the execution of any law, or of any legal process; or

Third.—To commit any mischief or criminal trespass, or other offence; or Fourth.—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

Section 142 - Being member of unlawful assembly - Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

Section 143 – Punishment - Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Back to Index

Section 144 - Joining unlawful assembly armed with deadly weapon - Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 145 - Joining or continuing in unlawful assembly, knowing it has been commanded to disperse - Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extent to two years, or with fine, or with both.

Section 150 - Hiring, or conniving at hiring, of persons to join unlawful assembly - Whoever hires or engages, or employs, or promotes, or connives at the hiring, engagement or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly in pursuance of such hiring, engagement or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

Section 151 - Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse - Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation.—If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

Section 157 - Harbouring persons hired for an unlawful assembly - Whoever harbours, receives or assembles, in any house or premises in his occupation or charge, or under his control any persons knowing that such persons have been hired, engaged or employed, or are about to be hired, engaged or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Section 158 - Being hired to take part in an unlawful assembly or riot - Whoever is engaged, or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both,

or to go armed.—and whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon or with anything which used as a weapon of offence is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Back to Index

190. Every member of unlawful assembly guilty of offence committed in prosecution of common object

If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Corresponding Provision of Previous Statute: Section 149, Indian Penal Code, 1860

Section 149 - Every member of unlawful assembly guilty of offence committed in prosecution of common Object - If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

LANDMARK JUDGMENT

Mala Singh and Ors. vs. State of Haryana, MANU/SC/0175/2019

191. Rioting

(1) Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

(2) Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

(3) Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 146, Indian Penal Code, 1860

Section 146 – Rioting - Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

LANDMARK JUDGMENT

Lakshman Singh and Ors. vs. State of Bihar, MANU/SC/0471/2021

Section 147 - Punishment for rioting - Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 148 - Rioting, armed with deadly weapon - Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

192. Wantonly giving provocation with intent to cause riot-if rioting be committed; if not committed

Whoever malignantly, or wantonly by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 153, Indian Penal Code, 1860

Section 153 – Wantonly giving provocation with intent to cause riot - if rioting be committed - if not committed - Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

193. Liability of owner, occupier, etc., of land on which an unlawful assembly or riot takes place

(1) Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall

Back to Index

be punishable with fine not exceeding one thousand rupees, if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the officer in charge at the nearest police station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

Corresponding Provision of Previous Statute: Section 154, Indian Penal Code, 1860

Section 154 – Owner or occupier of land on which an unlawful assembly is held - Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees, if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police-station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

Section 155 - Liability of person for whose benefit riot is committed - Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

Section 156 - Liability of agent of owner or occupier for whose benefit riot is committed - Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

(2) Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place or who claims any interest in such land, or in the subject of any dispute which

Back to Index

gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

(3) Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

194. Affray

(1) When two or more persons, by fighting in a public place, disturb the public peace, they are said to commit an affray.

(2) Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

Corresponding Provision of Previous Statute: Section 159, Indian Penal Code, 1860

Section 159 – Affray - When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray".

Section 160 - Punishment for committing affray - Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

Back to Index

195. Assaulting or obstructing public servant when suppressing riot, etc

(1) Whoever assaults or obstructs any public servant or uses criminal force on any public servant in the discharge of his duty as such public servant in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which shall not be less than twenty-five thousand rupees, or with both.

(2) Whoever threatens to assault or attempts to obstruct any public servant or threatens or attempts to use criminal force to any public servant in the discharge of his duty as such public servant in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Linked Provisions

National Security Guard Act, 1986 - Section 22 - Assault And Obstruction

Bharatiya Nyaya Sanhita, 2023 - Section 130 -Assault

Bharatiya Nyaya Sanhita, 2023 - Section 2(28) - Public Servant

Corresponding Provision of Previous Statute: Section 152, Indian Penal Code, 1860

Section 152 – Assaulting or obstructing public servant when suppressing riot, etc - Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens, or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

196. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony

(1) Whoever--

(a) by words, either spoken or written, or by signs or by visible representations or through electronic communication or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities; or

Back to Index

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity; or

(c) organises any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 153A, Indian Penal Code, 1860

Section 153A – Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony - (1) Whoever—

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, or

Back to Index

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Offence committed in place of worship, etc.—Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

LANDMARK JUDGMENT

Ramesh vs. Union of India (UOI) and Ors., MANU/SC/0404/1988

197. Imputations, assertions prejudicial to national integration

(1) Whoever, by words either spoken or written or by signs or by visible representations or through electronic communication or otherwise,--

(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India; or

(b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied, or deprived of their rights as citizens of India; or

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or

Back to Index

feelings of enmity or hatred or ill-will between such members and other persons; or

(d) makes or publishes false or misleading information, jeopardising the sovereignty, unity and integrity or security of India,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 153B, Indian Penal Code, 1860

Section 153B – Imputations, assertions prejudicial to national integration - (1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,—

(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied, or deprived of their rights as citizens of India, or

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1), in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

Back to Index

CHAPTER XII

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

198. Public servant disobeying law, with intent to cause injury to any person

Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 2(28) - Public Servant

Bharatiya Nyaya Sanhita, 2023 - Section 2(14) - "Injury

Bharatiya Nyaya Sanhita, 2023 - Section 199 - Public servant disobeying direction under law

Corresponding Provision of Previous Statute: Section 166, Indian Penal Code, 1860

Section 166 – Public servant disobeying law, with intent to cause injury to any person - Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

199. Public servant disobeying direction under law

Whoever, being a public servant,--

(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter; or

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 198 - Public servant disobeying law, with intent to cause injury to any person

Back to Index

(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation; or

(c) fails to record any information given to him under sub-section (1) of section 173 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in relation to cognizable offence punishable under section 64, section 65, section 66, section 67, section 68, section 70, section 71, section 74, section 76, section 77, section 79, section 124, section 143 or section 144,

shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.

Bharatiya Nyaya Sanhita, 2023 - Section 2(28) - Public Servant

Bharatiya Nyaya Sanhita, 2023 - Section 255 - Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture

Corresponding Provision of Previous Statute: Section 166A, Indian Penal Code, 1860

Section 166A – Public servant disobeying direction under law - Whoever, being a public servant,—

(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or

(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or

(c) fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to cognizable offence punishable under section 326A, section 326B, section 354, section 354B, section 370, section 370A, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509, shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.

200. Punishment for non-treatment of victim

Whoever, being in charge of a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any other person, contravenes the provisions of section 397 of the Bharatiya Nagarik Suraksha Sanhita, 2023, shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 166B, Indian Penal Code, 1860

Section 166B – Punishment for non-treatment of victim - Whoever, being in charge of a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any other person,

Back to Index

contravenes the provisions of section 357C of the Code of Criminal Procedure, 1973 (2 of 1974), shall be punished with imprisonment for a term which may extend to one year or with fine or with both

201. Public servant framing an incorrect document with intent to cause injury

Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 2(28) - Public Servant

Bharatiya Nyaya Sanhita, 2023 - Section 2(14) - "Injury

Bharatiya Nyaya Sanhita, 2023 - Section 256 - Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture

Corresponding Provision of Previous Statute: Section 167, Indian Penal Code, 1860

Section 167 – Public servant framing an incorrect document with intent to cause injury - Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record] in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

202. Public servant unlawfully engaging in trade

Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both or with community service.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 2(28) - Public Servant

Corresponding Provision of Previous Statute: Section 168, Indian Penal Code, 1860

Section 168 – Public servant unlawfully engaging in trade - Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Back to Index

203. Public servant unlawfully buying or bidding for property

Whoever, being a public servant, and being legally bound as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 2(28) - Public Servant

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 527 - Public servant concerned in sale not to purchase or bid for property

Corresponding Provision of Previous Statute: Section 169, Indian Penal Code, 1860

Section 169 – Public servant unlawfully buying or bidding for property - Whoever, being a public servant, and being legally bound as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

204. Personating a public servant

Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description for a term which shall not be less than six months but which may extend to three years and with fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 2(28) - Public Servant

Bharatiya Nyaya Sanhita, 2023 - Section 268 - Personation of an assessor

Corresponding Provision of Previous Statute: Section 170, Indian Penal Code, 1860

Section 170 – Personating a public servant - Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

205. Wearing garb or carrying token used by public servant with fraudulent intent.

Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 2(28) - Public Servant

Back to Index

servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five thousand rupees, or with both.

Collection of Statistics Act, 2008 - Section 29 - Public Servants

Corresponding Provision of Previous Statute: Section 171, Indian Penal Code, 1860

Section 171 – Wearing garb or carrying token used by public servant with fraudulent intent - Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

Back to Index

CHAPTER XIII

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

206. Absconding to avoid service of summons or other proceeding

Whoever absconds in order to avoid being served with a summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order,--

(a) shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both;

(b) where such summons or notice or order is to attend in person or by agent, or to produce a document or an electronic record in a Court shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

Corresponding Provision of Previous Statute: Section 172, Indian Penal Code, 1860

Section 172 – Absconding to avoid service of summons or other proceeding - Whoever absconds in order to avoid being served with a summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the summons or notice or order is to attend in person or by agent, or to produce a document or an electronic record in a Court of Justice], with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

207. Preventing service of summons or other proceeding, or preventing publication thereof

Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, or intentionally prevents the lawful affixing to any place of any such summons, notice or order or intentionally removes any such summons, notice or order from any place to which it is lawfully affixed or intentionally

Back to Index

prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made,--

(a) shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both;

(b) where the summons, notice, order or proclamation is to attend in person or by agent, or to produce a document or electronic record in a Court, with simple imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

Corresponding Provision of Previous Statute: Section 173, Indian Penal Code, 1860

Section 173 – Preventing service of summons or other proceeding, or preventing publication thereof -

Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, or intentionally prevents the lawful affixing to any place of any such summons, notice or order,

or intentionally removes any such summons, notice or order from any place to which it is lawfully affixed,

or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent, or to produce a document or electronic record in a Court of Justice with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

208. Non-attendance in obedience to an order from public servant

Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,--

Linked Provisions

Collection of Statistics Act, 2008 - Section 29 - Public Servants

Bharatiya Nyaya Sanhita, 2023 - Section 2(28) - Public Servant

Back to Index

(a) shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both;

(b) where the summons, notice, order or proclamation is to attend in person or by agent in a Court with simple imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

Illustrations

(a) A, being legally bound to appear before a High Court, in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(b) A, being legally bound to appear before a District Judge, as a witness, in obedience to a summons issued by that District Judge intentionally omits to appear. A has committed the offence defined in this section.

Corresponding Provision of Previous Statute: Section 174, Indian Penal Code, 1860

Section 174 – Non-attendance in obedience to an order from public servant - Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same,

intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations

(a) A, being legally bound to appear before the High Court at Calcutta, in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(b) A, being legally bound to appear before a District Judge, as a witness, in obedience to a summons issued by that District Judge intentionally omits to appear. A has committed the offence defined in this section.

209. Non-appearance in response to a proclamation under section 84 of Bharatiya Nagarik Suraksha Sanhita, 2023

Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both, or with community service, and where a declaration has been made under sub-section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 90 - Issue of warrant in lieu of, or in addition to, summons

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 84 - Proclamation for person absconding

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 203 - Offence committed on journey or voyage

Corresponding Provision of Previous Statute: Section 174A, Indian Penal Code, 1860

Section 174A – Non-appearance in response to a proclamation under section 82 of Act 2 of 1974 - Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub-section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

210. Omission to produce document or electronic record to public servant by person legally bound to produce it

Whoever, being legally bound to produce or deliver up any document or electronic record to any public servant, as such, intentionally omits so to produce or deliver up the same,--

(a) shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both;

(b) and where the document or electronic record is to be produced or delivered up to a Court with simple imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 211 - Omission to give notice or information to public servant by person legally bound to give it

Back to Index

Illustration

A, being legally bound to produce a document before a District Court, intentionally omits to produce the same. A has committed the offence defined in this section.

Corresponding Provision of Previous Statute: Section 175, Indian Penal Code, 1860

Section 175 – Omission to produce document to public servant by person legally bound to produce it - Whoever, being legally bound to produce or deliver up any document or electronic record to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the document or electronic record is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustration

A, being legally bound to produce a document before a District Court, intentionally omits to produce the same. A has committed the offence defined in this section.

211. Omission to give notice or information to public servant by person legally bound to give it

Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law,--

(a) shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both;

(b) where the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it

Back to Index

(c) where the notice or information required to be given is required by an order passed under section 394 of the Bharatiya Nagarik Suraksha Sanhita, 2023 with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Corresponding Provision of Previous Statute: Section 176, Indian Penal Code, 1860

Section 176 – Omission to give notice or information to public servant by person legally bound to give It - Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees,

or with both; or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

or, if the notice or information required to be given is required by an order passed under sub-section (1) of section 565 of the Code of Criminal Procedure, 1898 (5 of 1898), with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

212. Furnishing false information

Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false,--

(a) shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both;

(b) where the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 216 - False statement on oath or affirmation to public servant or person authorised to administer an oath or affirmation

Bharatiya Nyaya Sanhita, 2023 - Section 217 - False information, with intent to cause public servant to use his lawful power to the injury of another person

Back to Index

Illustrations

(a) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(b) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being legally bound to give early and punctual information of the above fact to the officer of the nearest police station, wilfully misinforms the police officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in this section.

Explanation.--In section 211 and in this section the word "offence" include any act committed at any place out of India, which, if committed in India, would be punishable under any of the following sections, namely, 103, 105, 307, sub-sections (2), (3) and (4) of section 309, sub-sections (2), (3), (4) and (5) of section 310, 311, 312, clauses (f) and (g) of section 326, sub-sections (4), (6), (7) and (8) of section 331, clauses (a) and (b) of section 332 and the word "offender" includes any person who is alleged to have been guilty of any such act.

Corresponding Provision of Previous Statute: Section 177, Indian Penal Code, 1860

Section 177 – Furnishing false information - Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations

(a) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

Back to Index

(b) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound under clause 5, section VII, Regulation III, 1821, of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police-station, wilfully misinforms the police officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the latter part of this section.

Explanation.—In section 176 and in this section the word "offence" includes any act committed at any place out of India, which, if committed in India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and the word "offender" includes any person who is alleged to have been guilty of any such act.

213. Refusing oath or affirmation when duly required by public servant to make it

Whoever refuses to bind himself by an oath or affirmation to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 2(28) - Public Servant

Bharatiya Nyaya Sanhita, 2023 - Section 2(23) -"Oath"

Corresponding Provision of Previous Statute: Section 178, Indian Penal Code, 1860

Section 178 – Refusing oath or affirmation when duly required by public servant to make it – Whoever refuses to bind himself by an oath or affirmation to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

214. Refusing to answer public servant authorised to question

Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 2(28) - Public Servant

Corresponding Provision of Previous Statute: Section 179, Indian Penal Code, 1860

Section 179 – Refusing to answer public servant authorised to question - Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Back to Index

215. Refusing to sign statement

Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to three thousand rupees, or with both.

Corresponding Provision of Previous Statute: Section 180, Indian Penal Code, 1860

Section 180 – Refusing to sign statement - Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

216. False statement on oath or affirmation to public servant or person authorised to administer an oath or affirmation

Whoever, being legally bound by an oath or affirmation to state the truth on any subject to any public servant or other person authorised by law to administer such oath or affirmation, makes, to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 2(28) - Public Servant

Bharatiya Nyaya Sanhita, 2023 - Section 2(23) -"Oath"

Bharatiya Nyaya Sanhita, 2023 - Section 217 - False information, with intent to cause public servant to use his lawful power to the injury of another person

Corresponding Provision of Previous Statute: Section 181, Indian Penal Code, 1860

Section 181 – False statement on oath or affirmation to public servant or person authorised to administer an oath or affirmation - Whoever, being legally bound by an oath or affirmation to state the truth on any subject to any public servant or other person authorized by law to administer such oath or affirmation, makes, to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Back to Index

217. False information, with intent to cause public servant to use his lawful power to injury of another person

Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant--

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him; or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.

Illustrations

(a) A informs a Magistrate that Z, a police officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(c) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that in consequence of

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 2(28) - Public Servant

Bharatiya Nyaya Sanhita, 2023 - Section 2(14) - "Injury

Back to Index

this information the police will make enquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section.

Corresponding Provision of Previous Statute: Section 182, Indian Penal Code, 1860

Section 182 – False information, with intent to cause public servant to use his lawful power to the injury of another person - Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations

(a) A informs a Magistrate that Z, a police-officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(c) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that in consequence of this information the police will make enquiries and institute searches in the village to the annoyance of the villages or some of them. A has committed an offence under this section.

218. Resistance to taking of property by lawful authority of a public servant

Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 221 - Obstructing public servant in discharge of public functions

Corresponding Provision of Previous Statute: Section 183, Indian Penal Code, 1860

Section 183 – Resistance to the taking of property by the lawful authority of a public servant – Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Back to Index

219. Obstructing sale of property offered for sale by authority of public servant

Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 221 - Obstructing public servant in discharge of public functions

Corresponding Provision of Previous Statute: Section 184, Indian Penal Code, 1860

Section 184 – Obstructing sale of property offered for sale by authority of public servant – Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

220. Illegal purchase or bid for property offered for sale by authority of public servant

Whoever, at any sale of property held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 221 - Obstructing public servant in discharge of public functions

Corresponding Provision of Previous Statute: Section 185, Indian Penal Code, 1860

Section 185 – Illegal purchase or bid for property offered for sale by authority of public servant - Whoever, at any sale of property held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Back to Index

221. Obstructing public servant in discharge of public functions

Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two thousand and five hundred rupees, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 218 - Resistance to the taking of property by the lawful authority of a public servant

Bharatiya Nyaya Sanhita, 2023 - Section 219 -Obstructing sale of property offered for sale by authority of public servant

Bharatiya Nyaya Sanhita, 2023 – Section 220 - Illegal purchase or bid for property offered for sale by authority of public servant

Corresponding Provision of Previous Statute: Section 186, Indian Penal Code, 1860

Section 186 – Obstructing public servant in discharge of public functions - Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

222. Omission to assist public servant when bound by law to give assistance

Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance,--

(a) shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two thousand and five hundred rupees, or with both;

(b) and where such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process

Back to Index

lawfully issued by a Court or of preventing the commission of an offence, or suppressing a riot, or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Corresponding Provision of Previous Statute: Section 187, Indian Penal Code, 1860

Section 187 – Omission to assist public servant when bound by law to give assistance - Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or suppressing a riot, or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

223. Disobedience to order duly promulgated by public servant

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,--

(a) shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand and five hundred rupees, or with both;

(b) and where such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

Back to Index

Explanation.--It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

Corresponding Provision of Previous Statute: Section 188, Indian Penal Code, 1860

Section 188 – Disobedience to order duly promulgated by public servant - Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simpleimprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

224. Threat of injury to public servant

Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall

Back to Index

be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 189, Indian Penal Code, 1860

Section 189 – Threat of injury to public servant - Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

225. Threat of injury to induce person to refrain from applying for protection to public servant

Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 190, Indian Penal Code, 1860

Section 190 – Threat of injury to induce person to refrain from applying for protection to public Servant - Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

226. Attempt to commit suicide to compel or restrain exercise of lawful power

Whoever attempts to commit suicide with the intent to compel or restrain any public servant from discharging his official duty shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both, or with community service.

CHAPTER XIV

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

227. Giving false evidence

Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1.--A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.--A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations

(a) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(b) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(c) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief,

Linked Provisions

The Administrator-General's Act, 1913 - Section 51 - False Evidence

Administrators-General Act, 1963 - Section 50 - Power To Make Rules

Air Force Act, 1950 - Section 120 - Prohibition Of Second Trial

Army Act, 1950 - Section 60 - False Evidence

Border Security Force Act, 1968 - Section 38 - False Evidence

Marine Act, 1887 - Section 35 - False Evidence

Indo-Tibetan Border Police Force Act, 1992 - Section 41 - False Evidence

National Security Guard Act, 1986 - Section 37 - False Evidence

Sashastra Seema Bal Act, 2007 - Section 41 - False Evidence

Back to Index

and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(d) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.

(e) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

Bharatiya Nyaya Sanhita, 2023 - Section 22- Punishment for false evidence

Bharatiya Nyaya Sanhita, 2023 - Section 230 - Giving false evidence with intent to procure conviction of capital offence

Bharatiya Nyaya Sanhita, 2023 - Section 231 - Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment

Bharatiya Nyaya Sanhita, 2023 - Section 232 - Threatening any person to give false evidence

Corresponding Provision of Previous Statute: Section 191, Indian Penal Code, 1860

Section 191 – Giving false evidence - Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations

(a) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

Back to Index

(b) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(c) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(d) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.

(e) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

228. Fabricating false evidence

Whoever causes any circumstance to exist or makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding is said "to fabricate false evidence".

Illustrations

(a) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(b) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court. A has fabricated false evidence.

Linked Provisions

The Administrator-General's Act, 1913 - Section 51 - False Evidence

Administrators-General Act, 1963 - Section 50 - Power To Make Rules

Air Force Act, 1950 - Section 120 - Prohibition Of Second Trial

Army Act, 1950 - Section 60 - False Evidence

Border Security Force Act, 1968 - Section 38 - False Evidence

Marine Act, 1887 - Section 35 - False Evidence

Indo-Tibetan Border Police Force Act, 1992 - Section 41 - False Evidence

Back to Index

(c) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the police are likely to search. A has fabricated false evidence.

Bharatiya Nyaya Sanhita, 2023 - Section 230 - Giving false evidence with intent to procure conviction of capital offence

Bharatiya Nyaya Sanhita, 2023 - Section 231 - Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment

Corresponding Provision of Previous Statute: Section 192, Indian Penal Code, 1860

Section 192 – Fabricating false evidence - Whoever causes any circumstance to exist or makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement,] intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding is said "to fabricate false evidence".

Illustrations

(a) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(b) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(c) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the police are likely to search. A has fabricated false evidence.

229. Punishment for false evidence

(1) Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either

Linked Provisions

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Back to Index

description for a term which may extend to seven years, and shall also be liable to fine which may extend to ten thousand rupees.

(2) Whoever intentionally gives or fabricates false evidence in any case other than that referred to in sub-section (1), shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine which may extend to five thousand rupees.

Explanation 1.--A trial before a Court-martial is a judicial proceeding.

Explanation 2.--An investigation directed by law preliminary to a proceeding before a Court, is a stage of a judicial proceeding, though that investigation may not take place before a Court.

Illustration

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.--An investigation directed by a Court according to law, and conducted under the authority of a Court, is a stage of a judicial proceeding, though that investigation may not take place before a Court.

Illustration

A, in an enquiry before an officer deputed by a Court to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidenc

- Section 14 - Punishment For False Or Malicious Complaint And False Evidence

Bharatiya Nyaya Sanhita, 2023 - Section 227 - Giving false Evidence

Bharatiya Nyaya Sanhita, 2023 - Section 228 - Fabricating false evidence

Companies Act, 2013 - Section 449 - Punishment For False Evidence

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 383 - Summary procedure for trial for giving false evidence

Corresponding Provision of Previous Statute: Section 193, Indian Penal Code, 1860

Section 193 – Punishment for false evidence - Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any

other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.—A trial before a Court-martial is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A as given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration

A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

230. Giving or fabricating false evidence with intent to procure conviction of capital offence

(1) Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by the law for the time being in force in India shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine which may extend to fifty thousand rupees.

(2) If an innocent person be convicted and executed in consequence of false evidence referred to in sub-section (1), the person who gives such false evidence shall be punished either with death or the punishment specified in sub-section (1).

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 227 - Giving false Evidence

Bharatiya Nyaya Sanhita, 2023 - Section 228 -Fabricating false evidence

Bharatiya Nyaya Sanhita, 2023 - Section 231 - Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment

Corresponding Provision of Previous Statute: Section 194, Indian Penal Code, 1860

Section 194 – Giving or fabricating false evidence with intent to procure conviction of capital offence - Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by the law for the time being in force

in India shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;

if innocent person be thereby convicted and executed.—and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

231. Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment

Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which by the law for the time being in force in India is not capital, but punishable with imprisonment for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Illustration

A gives false evidence before a Court, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to imprisonment for life or imprisonment, with or without fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 227 - Giving false Evidence

Bharatiya Nyaya Sanhita, 2023 - Section 228 - Fabricating false evidence

Bharatiya Nyaya Sanhita, 2023 - Section 230 - Giving false evidence with intent to procure conviction of capital offence

Corresponding Provision of Previous Statute: Section 195, Indian Penal Code, 1860

Section 195 – Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment - Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which by the law for the time being in force in India is not capital, but punishable with imprisonment for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Illustration

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to imprisonment for life or imprisonment, with or without fine.

Back to Index

232. Threatening any person to give false evidence

(1) Whoever threatens another with any injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested, with intent to cause that person to give false evidence shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

(2) If innocent person is convicted and sentenced in consequence of false evidence referred to in sub-section (1), with death or imprisonment for more than seven years, the person who threatens shall be punished with the same punishment and sentence in the same manner and to the same extent such innocent person is punished and sentenced.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 228 - Fabricating false evidence

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 216 - Procedure for witnesses in case of threatening, etc.

Corresponding Provision of Previous Statute: Section 195A, Indian Penal Code, 1860

Section 195A – Threatening any person to give false evidence - Whoever threatens another with any injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested, with intent to cause that person to give false evidence shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both;

and if innocent person is convicted and sentenced in consequence of such false evidence, with death or imprisonment for more than seven years, the person who threatens shall be punished with the same punishment and sentence in the same manner and to the same extent such innocent person is punished and sentenced.

233. Using evidence known to be false

Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

Corresponding Provision of Previous Statute: Section 196, Indian Penal Code, 1860

Section 196 – Using evidence known to be false - Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

Back to Index

234. Issuing or signing false certificate

Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

Corresponding Provision of Previous Statute: Section 197, Indian Penal Code, 1860

Section 197 – Issuing or signing false certificate - Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

235. Using as true a certificate known to be false

Linked Provisions

Air Force Act, 1950 - Section 57 - Falsifying Official Documents And False Declaration

Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Corresponding Provision of Previous Statute: Section 198, Indian Penal Code, 1860

Section 198 – Using as true a certificate known to be false - Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

236. False statement made in declaration which is by law receivable as evidence

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 237 - Using as true such declaration knowing it to be false

Whoever, in any declaration made or subscribed by him, which declaration any Court or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

Corresponding Provision of Previous Statute: Section 199, Indian Penal Code, 1860

Section 199 – False statement made in declaration which is by law receivable as evidence - Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant

or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

237. Using as true such declaration knowing it to be false

Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation.--A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of section 236 and this section.

Linked Provisions

Air Force Act, 1950 - Section 57 - Falsifying Official Documents And False Declaration

Air Force Act, 1950 - Section 116 - Composition Of Summary General Court-Martial

Bharatiya Nyaya Sanhita, 2023 - Section 236 - False statement made in declaration which is by law receivable as evidence

Corresponding Provision of Previous Statute: Section 200, Indian Penal Code, 1860

Section 200 – Using as true such declaration knowing it to be false - Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation.—A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 and 200.

238. Causing disappearance of evidence of offence, or giving false information to screen offender

Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false shall,--

Back to Index

(a) if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

(b) if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

(c) if the offence is punishable with imprisonment for any term not extending to ten years, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Illustration

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

Corresponding Provision of Previous Statute: Section 201, Indian Penal Code, 1860

Section 201 – Causing disappearance of evidence of offence, or giving false information to screen Offender - Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,

if a capital offence.—shall, if the offence which he knows or believes to have been committed is punishable with death be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life.—and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years' imprisonment.—and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Back to Index

Illustration

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

LANDMARK JUDGMENT

State through Superintendent of Police, CBI/SIT vs. Nalini and Ors., MANU/SC/0945/1999

239. Intentional omission to give information of offence by person bound to inform

Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Corresponding Provision of Previous Statute: Section 202, Indian Penal Code, 1860

Section 202 – Intentional omission to give information of offence by person bound to inform - Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

240. Giving false information respecting an offence committed

Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.--In sections 238 and 239 and in this section the word "offence" includes any act committed at any place out of India, which, if committed in India, would be punishable under any of the following sections, namely, 103, 105, 307, sub-sections (2), (3) and (4) of section 309, sub-sections (2), (3), (4) and (5) of section 310, 311, 312, clauses (f) and (g) of section 326, sub-sections (4), (6), (7) and (8) of section 331, clauses (a) and (b) of section 332.

Back to Index

Corresponding Provision of Previous Statute: Section 203, Indian Penal Code, 1860

Section 203 – Giving false information respecting an offence committed - Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—In sections 201 and 202 and in this section the word "offence" includes any act committed at any place out of India, which, if committed in India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.

241. Destruction of document or electronic record to prevent its production as evidence

Whoever secretes or destroys any document or electronic record which he may be lawfully compelled to produce as evidence in a Court or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document or electronic record with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

Corresponding Provision of Previous Statute: Section 204, Indian Penal Code, 1860

Section 204 – Destruction of document to prevent its production as evidence - Whoever secretes or destroys any document or electronic record which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document or electronic record with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

242. False personation for purpose of act or proceeding in suit or prosecution

Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be

Back to Index

issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 205, Indian Penal Code, 1860

Section 205 – False personation for purpose of act or proceeding in suit or prosecution - Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

243. Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution

Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court in a civil suit, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

Corresponding Provision of Previous Statute: Section 206, Indian Penal Code, 1860

Section 206 – Fraudulent removal or concealment of property to prevent its seizure as forfeited or in Execution - Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both.

244. Fraudulent claim to property to prevent its seizure as forfeited or in execution

Whoever fraudulently accepts, receives or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any

Back to Index

interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 207, Indian Penal Code, 1860

Section 207 – Fraudulent claim to property to prevent its seizure as forfeited or in execution – Whoever fraudulently accepts, receives or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practices any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

245. Fraudulently suffering decree for sum not due

Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due or for a larger sum than is due to such person or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustration

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of

any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

Corresponding Provision of Previous Statute: Section 208, Indian Penal Code, 1860

Section 208 – Fraudulently suffering decree for sum not due - Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due or for a larger sum than is due to such person or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustration

A institutes a suit against Z. Z knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

246. Dishonestly making false claim in Court

Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Linked Provisions

Disaster Management Act, 2005 - Section 52 - Punishment for false claim

Metro Railway (Operations and Maintenance) Act, 2002 - Section 80 - Penalty for making a false claim for compensation

Corresponding Provision of Previous Statute: Section 209, Indian Penal Code, 1860

Section 209 – Dishonesty making false claim in Court - Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine

247. Fraudulently obtaining decree for sum not due

Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 247 - Fraudulently obtaining decree for sum not due

Back to Index

such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 210, Indian Penal Code, 1860

Section 210 – Fraudulently obtaining decree for sum not due - Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

248. False charge of offence made with intent to injure

Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person,--

(a) shall be punished with imprisonment of either description for a term which may extend to five years, or with fine which may extend to two lakh rupees, or with both;

(b) if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for ten years or upwards, shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 211, Indian Penal Code, 1860

Section 211 – False charge of offence made with intent to injure - Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

and if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Back to Index

249. Harbouring offender

Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment shall,--

(a) if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;

(b) if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

(c) if the offence is punishable with imprisonment which may extend to one year, and not to ten years, be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Explanation.--"Offence" in this section includes any act committed at any place out of India, which, if committed in India, would be punishable under any of the following sections, namely, 103, 105, 307, sub-sections (2), (3) and (4) of section 309, sub-sections (2), (3), (4) and (5) of section 310, 311, 312, clauses (f) and (g) of section 326, sub-sections (4), (6), (7) and (8) of section 331, clauses (a) and (b) of section 332 and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in India.

Exception.--This section shall not extend to any case in which the harbour or concealment is by the spouse of the offender.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 253 - Harbouring offender escaped from custody or whose apprehension has been ordered

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 27A - Punishment for financing illicit traffic and harbouring offenders

Official Secrets Act, 1923 - Section 13 - Restriction on trial of Offences

Bharatiya Nyaya Sanhita, 2023 - Section 2(13) - "Harbour"

Back to Index

Illustration

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to imprisonment for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

Corresponding Provision of Previous Statute: Section 212, Indian Penal Code, 1860

Section 212 – Harbouring offender - Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment,

if a capital offence.—shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment.—and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

"Offence" in this section includes any act committed at any place out of India, which, if committed in India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in India.

Exception.—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

Illustration

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to imprisonment for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

LANDMARK JUDGMENT

State through Superintendent of Police, CBI/SIT vs. Nalini and Ors., MANU/SC/0945/1999

250. Taking gift, etc., to screen an offender from punishment

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 251 - Offering gift or

Whoever accepts or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any

other person, in consideration of his concealing an offence or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment shall,--

(a) if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

(b) if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

(c) if the offence is punishable with imprisonment not extending to ten years, be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

restoration of property in consideration of screening offender

Bharatiya Nyaya Sanhita, 2023 - Section 252 - Taking gift to help to recover stolen property, etc.

Corresponding Provision of Previous Statute: Section 213, Indian Penal Code, 1860

Section 213 – Taking gift, etc., to screen an offender from punishment - Whoever accepts or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

if a capital offence.—shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment.—and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Back to Index

251. Offering gift or restoration of property in consideration of screening offender

Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or restores or causes the restoration of any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment shall,--

(a) if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

(b) if the offence is punishable with imprisonment for life or with imprisonment which may extend to ten years, be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

(c) if the offence is punishable with imprisonment not extending to ten years, be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Exception.--The provisions of this section and section 250 do not extend to any case in which the offence may lawfully be compounded.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 250 - Taking gift, etc. to screen an offender from punishment

Bharatiya Nyaya Sanhita, 2023 - Section 252 - Taking gift to help to recover stolen property, etc.

Corresponding Provision of Previous Statute: Section 214, Indian Penal Code, 1860

Section 214 – Offering gift or restoration of property in consideration of screening offender – Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or restores or causes the restoration of any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

if a capital offence.—shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment.—and if the offence is punishable with imprisonment for life or with imprisonment which may extend to ten years, shall be punished with

Back to Index

imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Exception.—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.

252. Taking gift to help to recover stolen property, etc

Whoever takes or agrees or consents to take any gratification under pretence or on account of helping any person to recover any movable property of which he shall have been deprived by any offence punishable under this Sanhita, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 250 - Taking gift, etc. to screen an offender from punishment

Bharatiya Nyaya Sanhita, 2023 - Section 251 - Offering gift or restoration of property in consideration of screening offender

Corresponding Provision of Previous Statute: Section 215, Indian Penal Code, 1860

Section 215 – Taking gift to help to recover stolen property, etc. - Whoever takes or agrees or consents to take any gratification under pretence or on account of helping any person to recover any movable property of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

253. Harbouring offender who has escaped from custody or whose apprehension has been ordered

Whenever any person convicted of or charged with an offence, being in lawful custody for that offence, escapes from such custody, or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, namely:--

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 2(13) - "Harbour"

Bharatiya Nyaya Sanhita, 2023 - Section 249 - Harbouring offender

Official Secrets Act, 1923 - Section 13 - Restriction on trial of Offences

Back to Index

(a) if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

Bharatiya Nyaya Sanhita, 2023 - Section 254 - Penalty for harbouring robbers or dacoits

(b) if the offence is punishable with imprisonment for life or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine;

(c) if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

Explanation.--"Offence" in this section includes also any act or omission of which a person is alleged to have been guilty out of India, which, if he had been guilty of it in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India, and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in India.

Exception.--The provisions of this section do not extend to the case in which the harbour or concealment is by the spouse of the person to be apprehended.

Corresponding Provision of Previous Statute: Section 216, Indian Penal Code, 1860

Section 216 – Harbouring offender who has escaped from custody or whose apprehension has been ordered - Whenever any person convicted of a charged with an offence, being in lawful custody for that offence, escapes from such custody, or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say,

if a capital offence.—if the offence for which the person was in custody or is ordered to be

Back to Index

apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment.—if the offence is punishable with imprisonment for life or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine; and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

"Offence" in this section includes also any act or omission of which a person is alleged to have been guilty out of India, which, if he had been guilty of it in India, would have been punishable as an offence, and for which he is, under any law relating to extradition,

or otherwise, liable to be apprehended or detained in custody in India, and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in India.

Exception.—The provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

LANDMARK JUDGMENT

State through Superintendent of Police, CBI/SIT vs. Nalini and Ors.
MANU/SC/0945/1999

254. Penalty for harbouring robbers or dacoits

Whoever, knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity, or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Explanation.--For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without India.

Exception.--The provisions of this section do not extend to the case in which the harbour is by the spouse of the offender.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 2(13) - "Harbour"

Bharatiya Nyaya Sanhita, 2023 - Section 249 - Harbouring offender

Official Secrets Act, 1923 - Section 13 - Restriction on trial of Offences

Bharatiya Nyaya Sanhita, 2023 - Section 253 - Harbouring offender escaped from custody or whose apprehension has been ordered

Back to Index

Corresponding Provision of Previous Statute: Section 216A, Indian Penal Code, 1860

Section 216A – Penalty for harbouring robbers or dacoits - Whoever, knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity, or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without India.

Exception.—This provision does not extend to the case in which the harbour is by the husband or wife of the offender.

255. Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 256 - Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture

Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 217, Indian Penal Code, 1860

Section 217 – Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture - Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

256. Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 255 - Public servant disobeying direction of law with intent to save

Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or

knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

person from punishment or property from forfeiture

Bharatiya Nyaya Sanhita, 2023 - Section 201 - Public servant framing an incorrect document with intent to cause injury

Corresponding Provision of Previous Statute: Section 218, Indian Penal Code, 1860

Section 218 – Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture - Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

257. Public servant in judicial proceeding corruptly making report, etc., contrary to law

Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 256 - Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture

Bharatiya Nyaya Sanhita, 2023 - Section 201 - Public servant framing an incorrect document with intent to cause injury

Corresponding Provision of Previous Statute: Section 219, Indian Penal Code, 1860

Section 219 – Public servant in judicial proceeding corruptly making report, etc., contrary to law - Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Back to Index

258. Commitment for trial or confinement by person having authority who knows that he is acting contrary to law

Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 220, Indian Penal Code, 1860

Section 220 – Commitment for trial or confinement by person having authority who knows that he is acting contrary to law - Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

259. Intentional omission to apprehend on part of public servant bound to apprehend

Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished,--

(a) with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death; or

(b) with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for,

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 3(7) - General Explanations and expressions

Bharatiya Nyaya Sanhita, 2023 - Section 264 - Omission to apprehend, or sufferance of escape, onpart of public servant, in cases not otherwise provided for

Bharatiya Nyaya Sanhita, 2023 - Section 156 - Public servant voluntarily allowing prisoner of State or war to escape

Back to Index

an offence punishable with imprisonment for life or imprisonment for a term which may extend to ten years; or

(c) with imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

Bharatiya Nyaya Sanhita, 2023 - Section 157 - Public servant negligently suffering such prisoner to escape

Bharatiya Nyaya Sanhita, 2023 - Section 260 - Intentional omission to apprehend on part of public servant bound to apprehend person under sentence or lawfully committed

Bharatiya Nyaya Sanhita, 2023 - Section 261 - Escape from confinement or custody negligently suffered by public servant

Corresponding Provision of Previous Statute: Section 221, Indian Penal Code, 1860

Section 221 – Intentional omission to apprehend on the part of public servant bound to apprehend - Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say:—

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death; or

with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for life or imprisonment for a term which may extend to ten years; or

with imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

260. Intentional omission to apprehend on part of public servant bound to apprehend person under sentence or lawfully committed

Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court for

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 239 - Intentional omission to give information of offence

Back to Index

any offence or lawfully committed to custody, intentionally omits to apprehend such person, or intentionally suffers such person to escape or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished,--

(a) with imprisonment for life or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death; or

(b) with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement or who ought to have been apprehended, is subject, by a sentence of a Court, or by virtue of a commutation of such sentence, to imprisonment for life or imprisonment for a term of ten years, or upwards; or

(c) with imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement or who ought to have been apprehended, is subject by a sentence of a Court to imprisonment for a term not extending to ten years or if the person was lawfully committed to custody.

by person bound to inform

Bharatiya Nyaya Sanhita, 2023 - Section 259 - Intentional omission to apprehend on part of public servant bound to apprehend

Bharatiya Nyaya Sanhita, 2023 - Section 261 - Escape from confinement or custody negligently suffered by public servant

Bharatiya Nyaya Sanhita, 2023 - Section 156 - Public servant voluntarily allowing prisoner of State or war to escape

Bharatiya Nyaya Sanhita, 2023 - Section 157 - Public servant negligently suffering such prisoner to escape

Bharatiya Nyaya Sanhita, 2023 - Section 264 - Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise provided for

Corresponding Provision of Previous Statute: Section 222, Indian Penal Code, 1860

Section 222 – Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed - Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence or lawfully committed to custody, intentionally omits to apprehend such person, or intentionally suffers such person to escape or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say: —

Back to Index

with imprisonment for life or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death; or

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to imprisonment for life or with imprisonment of either description for a term which may extend to three years,

or with fine, or with both, if the person in confinement, or who ought to have been apprehended is subject, by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years or if the person was lawfully committed to custody.

261. Escape from confinement or custody negligently suffered by public servant

Whoever, being a public servant legally bound as such public servant to keep in confinement any person charged with or convicted of any offence or lawfully committed to custody, negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 264 - Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise provided for

Bharatiya Nyaya Sanhita, 2023 - Section 260 - Intentional omission to apprehend on part of public servant bound to apprehend person under sentence or lawfully committed

Bharatiya Nyaya Sanhita, 2023 - Section 259 - Intentional omission to apprehend on part of public servant bound to apprehend

Bharatiya Nyaya Sanhita, 2023 - Section 156 - Public servant voluntarily allowing prisoner of State or war to escape

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 157 - Public servant negligently suffering such prisoner to escape

Corresponding Provision of Previous Statute: Section 223, Indian Penal Code, 1860

Section 223 – Escape from confinement or custody negligently suffered by public servant - Whoever, being a public servant legally bound as such public servant to keep in confinement any person charged with or convicted of any offence or lawfully committed to custody, negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

262. Resistance or obstruction by a person to his lawful apprehension

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 263 - Resistance or obstruction to lawful apprehension of another person

Bharatiya Nyaya Sanhita, 2023 - Section 265 - Resistance or obstruction to lawful apprehension or escape or rescue in cases not otherwise provided for

Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.--The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

Corresponding Provision of Previous Statute: Section 224, Indian Penal Code, 1860

Section 224 – Resistance or obstruction by a person to his lawful apprehension - Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

263. Resistance or obstruction to lawful apprehension of another person

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 262 - Resistance or

Whoever, intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to

Back to Index

rescue any other person from any custody in which that person is lawfully detained for an offence,--

(a) shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; or

(b) if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with imprisonment for life or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; or

(c) if the person to be apprehended or rescued, or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; or

(d) if the person to be apprehended or rescued, or attempted to be rescued, is liable under the sentence of a Court or by virtue of a commutation of such a sentence, to imprisonment for life, or imprisonment for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; or

(e) if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

obstruction by a person to his lawful apprehension

Bharatiya Nyaya Sanhita, 2023 - Section 265 - Resistance or obstruction to lawful apprehension or escape or rescue in cases not otherwise provided for

Corresponding Provision of Previous Statute: Section 225, Indian Penal Code, 1860

Section 225 – Resistance or obstruction to lawful apprehension of another person - Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with imprisonment for life or imprisonment for a term

Back to Index

which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is liable under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to imprisonment for life, or imprisonment, for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

264. Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise provided for

Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 259, section 260 or section 261, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished--

(a) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and

(b) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 225A, Indian Penal Code, 1860

Section 225A – Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise, provided for - Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222 or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished —

(a) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and

(b) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Back to Index

265. Resistance or obstruction to lawful apprehension or escape or rescue in cases not otherwise provided for

Whoever, in any case not provided for in section 262 or section 263 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 225B, Indian Penal Code, 1860

Section 225B – Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for - Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

266. Violation of condition of remission of punishment

Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

Linked Provisions

Air Force Act, 1950 - Section 178 - Cancellation Of Conditional Pardon, Release On Parole Or Remission

Army Act, 1950 - Section 180 - Cancellation Of Conditional Pardon, Release On Parole Or Remission

Border Security Force Act - Section 129 - Cancellation Of Conditional Pardon, Release On Parole Or Remission

Back to Index

National Security Guard Act, 1986 - Section 125 - Cancellation Of Conditional Pardon, Release On Parole Or Remission

Corresponding Provision of Previous Statute: Section 227, Indian Penal Code, 1860

Section 227 – Violation of condition of remission of punishment - Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

267. Intentional insult or interruption to public servant sitting in judicial proceeding

Whoever, intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Corresponding Provision of Previous Statute: Section 228, Indian Penal Code, 1860

Section 228 – Intentional insult or interruption to public servant sitting in judicial proceeding – Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

268. Personation of assessor

Whoever, by personation or otherwise, shall intentionally cause, or knowingly suffer himself to be returned, empanelled or sworn as an assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled or sworn, or knowing himself to have been so returned, empanelled or sworn contrary to law, shall voluntarily serve as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Back to Index

Corresponding Provision of Previous Statute: Section 229, Indian Penal Code, 1860

Section 229 – Personation of a juror or assessor - Whoever, by personation or otherwise, shall intentionally cause, or knowingly suffer himself to be returned, empanelled or sworn as a juryman or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled or sworn, or knowing himself to have been so returned, empanelled or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

269. Failure by person released on bail bond or bond to appear in Court

Whoever, having been charged with an offence and released on bail bond or on bond, fails without sufficient cause (the burden of proving which shall lie upon him), to appear in Court in accordance with the terms of the bail or bond, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Explanation.--The punishment under this section is--

(a) in addition to the punishment to which the offender would be liable on a conviction for the offence with which he has been charged; and

(b) without prejudice to the power of the Court to order forfeiture of the bond.

Corresponding Provision of Previous Statute: Section 229A, Indian Penal Code, 1860

Section 229A – Failure by person released on bail or bond to appear in court - Whoever, having been charged with an offence and released on bail or on bond without sureties, fails without sufficient cause (the burden of proving which shall lie upon him), to appear in court in accordance with the terms of the bail or bond, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Explanation.—The punishment under this section is—

(a) in addition to the punishment to which the offender would be liable on a conviction for the offence with which he has been charged; and

(b) without prejudice to the power of the court to order forfeiture of the bond.

Back to Index

CHAPTER XV

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS

270. Public nuisance

A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right but a common nuisance is not excused on the ground that it causes some convenience or advantage.

Linked Provisions

Code of Civil Procedure, 1908 - Section 91 - Public Nuisances And Other Wrongful Acts Affecting The Public

Bharatiya Nyaya Sanhita, 2023 - Section 292 - Punishment For Public Nuisance In Cases Not Otherwise Provided For

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 162 -Magistrate may prohibit repetition or continuance of public nuisance

Corresponding Provision of Previous Statute: Section 268, Indian Penal Code, 1860

Section 268 – Public nuisance - A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

271. Negligent act likely to spread infection of disease dangerous to life

Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 272 - Malignant act likely to spread infection of disease dangerous to life

Corresponding Provision of Previous Statute: Section 269, Indian Penal Code, 1860

Section 269 – Negligent act likely to spread infection of disease dangerous to life - Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

272. Malignant act likely to spread infection of disease dangerous to life

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 271 - Negligent act likely to spread infection of disease dangerous to life

Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 270, Indian Penal Code, 1860

Section 270 – Malignant act likely to spread infection of disease dangerous to life - Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

273. Disobedience to quarantine rule

Whoever knowingly disobeys any rule made by the Government for putting any mode of transport into a state of quarantine, or for regulating the intercourse of any such transport in a state of quarantine or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 271, Indian Penal Code, 1860

Section 271 – Disobedience to quarantine rule - Whoever knowingly disobeys any rule made and promulgated by the Government for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall bepunished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

274. Adulteration of food or drink intended for sale

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 275 - Sale of noxious food or drink

Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or

knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Prevention of Food Adulteration Act, 1954 - Section 2(ia) - "Adulterated"

Corresponding Provision of Previous Statute: Section 272, Indian Penal Code, 1860

Section 272 – Adulteration of food or drink intended for sale - Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

275. Sale of noxious food or drink

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 274 - Adulteration of food or drink intended for sale

Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Corresponding Provision of Previous Statute: Section 273, Indian Penal Code, 1860

Section 273 – Sale of noxious food or drink - Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

276. Adulteration of drugs

Linked Provisions

Drugs and Cosmetics Act, 1940 - Section 9A - Adulterated Drugs

Drugs and Cosmetics Act, 1940 - Section 17A - Adulterated Drugs

Drugs and Cosmetics Act, 1940 - Section 33EE - Adulterated Drugs

Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

Back to Index

Bharatiya Nyaya Sanhita, 2023 - Section 277 - Sale of adulterated drugs

Corresponding Provision of Previous Statute: Section 274, Indian Penal Code, 1860

Section 274 – Adulteration of drugs - Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

277. Sale of adulterated drugs

Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Linked Provisions

Drugs and Cosmetics Act, 1940 - Section 9A - Adulterated Drugs

Drugs and Cosmetics Act, 1940 - Section 17A - Adulterated Drugs

Drugs and Cosmetics Act, 1940 - Section 33EE - Adulterated Drugs

Bharatiya Nyaya Sanhita, 2023 - Section 276 - Adulteration of drugs

Corresponding Provision of Previous Statute: Section 275, Indian Penal Code, 1860

Section 275 – Sale of adulterated drugs - Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

278. Sale of drug as a different drug or preparation

Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment

Linked Provisions

Drugs and Cosmetics Act, 1940 - Section 3(b) - Drugs

Back to Index

of either description for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Corresponding Provision of Previous Statute: Section 276, Indian Penal Code, 1860

Section 276 – Sale of drug as a different drug or preparation - Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

279. Fouling water of public spring or reservoir

Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Corresponding Provision of Previous Statute: Section 277, Indian Penal Code, 1860

Section 277 – Fouling water of public spring or reservoir - Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

280. Making atmosphere noxious to health

Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to one thousand rupees.

Corresponding Provision of Previous Statute: Section 278, Indian Penal Code, 1860

Section 278 – Making atmosphere noxious to health - Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

Back to Index

281. Rash driving or riding on a public way

Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Linked Provisions

Motor Vehicles Act, 1988 - Section 184 - Driving Dangerously

Bharatiya Nyaya Sanhita, 2023 - Section 106(1) - Causing death by negligence

Corresponding Provision of Previous Statute: Section 279, Indian Penal Code, 1860

Section 279 – Making atmosphere noxious to health - Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

282. Rash navigation of vessel

Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

Linked Provisions

Ferries Act, 1878 - Section 28 - Penalty For Rash Navigation And Stacking Of Timber

Bharatiya Nyaya Sanhita, 2023 - Section 2(32) - "vessel"

Corresponding Provision of Previous Statute: Section 280, Indian Penal Code, 1860

Section 280 – Rash navigation of vessel - Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

283. Exhibition of false light, mark or buoy

Whoever exhibits any false light, mark or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, and with fine which shall not be less than ten thousand rupees.

Corresponding Provision of Previous Statute: Section 281, Indian Penal Code, 1860

Section 281 – Exhibition of false light, mark or buoy - Whoever exhibits any false light, mark or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punishedwith imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

284. Conveying person by water for hire in unsafe or overloaded vessel

Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Corresponding Provision of Previous Statute: Section 282, Indian Penal Code, 1860

Section 282 – Conveying person by water for hire in unsafe or overloaded vessel - Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

285. Danger or obstruction in public way or line of navigation

Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to five thousand rupees.

Corresponding Provision of Previous Statute: Section 283, Indian Penal Code, 1860

Section 283 – Danger or obstruction in public way or line of navigation - Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished, with fine which may extend to two hundred rupees.

286. Negligent conduct with respect to poisonous substance

Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance, shall be punished with imprisonment of either description for a term which may

extend to six months, or with fine which may extend to five thousand rupees, or with both.

Corresponding Provision of Previous Statute: Section 284, Indian Penal Code, 1860

Section 284 – Negligent conduct with respect to poisonous substance - Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person, or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against probable danger to human life from such poisonous substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

287. Negligent conduct with respect to fire or combustible matter

Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

Corresponding Provision of Previous Statute: Section 285, Indian Penal Code, 1860

Section 285 – Negligent conduct with respect to fire or combustible matter - Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

288. Negligent conduct with respect to explosive substance

Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Back to Index

Corresponding Provision of Previous Statute: Section 286, Indian Penal Code, 1860

Section 286 – Negligent conduct with respect to explosive substance - Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

289. Negligent conduct with respect to machinery

Whoever does, with any machinery, any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Corresponding Provision of Previous Statute: Section 287, Indian Penal Code, 1860

Section 287 – Negligent conduct with respect to machinery - Whoever does, with any machinery, any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

290. Negligent conduct with respect to pulling down, repairing or constructing buildings, etc

Whoever, in pulling down, repairing or constructing any building, knowingly or negligently omits to take such measures with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Back to Index

Corresponding Provision of Previous Statute: Section 288, Indian Penal Code, 1860

Section 288 – Negligent conduct with respect to pulling down or repairing buildings - Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

291. Negligent conduct with respect to animal

Whoever knowingly or negligently omits to take such measures with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Corresponding Provision of Previous Statute: Section 289, Indian Penal Code, 1860

Section 289 – Negligent conduct with respect to animal - Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

292. Punishment for public nuisance in cases not otherwise provided for

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 270 - Public Nuisance

Whoever commits a public nuisance in any case not otherwise punishable by this Sanhita shall be punished with fine which may extend to one thousand rupees.

Corresponding Provision of Previous Statute: Section 290, Indian Penal Code, 1860

Section 290 – Punishment for public nuisance in cases not otherwise provided for - Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

293. Continuance of nuisance after injunction to discontinue

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 152 - Conditional order for removal of nuisance

Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a

Back to Index

term which may extend to six months, or with fine which may extend to five thousand rupees or with both.

Corresponding Provision of Previous Statute: Section 291, Indian Penal Code, 1860

Section 291 – Continuance of nuisance after injunction to discontinue - Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

294. Sale, etc., of obscene books, etc

Linked Provisions

Information Technology Act, 2000 - Section 67 - Punishment For Publishing Or Transmitting Obscene Material In Electronic Form

Bharatiya Nyaya Sanhita, 2023 - Section 295 - Sale, etc., of obscene objects to child

(1) For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, including display of any content in electronic form shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

(2) Whoever--

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever in whatever manner; or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation; or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the

Back to Index

purposes aforesaid, made produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation; or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person; or

(e) offers or attempts to do any act which is an offence under this section,

shall be punished on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to five thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to ten thousand rupees.

Exception.--This section does not extend to--

(a) any book, pamphlet, paper, writing, drawing, painting, representation or figure--

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern; or

(ii) which is kept or used bona fide for religious purposes;

(b) any representation sculptured, engraved, painted or otherwise represented on or in--

(i) any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958); or

Back to Index

(ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

Corresponding Provision of Previous Statute: Section 292, Indian Penal Code, 1860

Section 292 – Sale, etc., of obscene books, etc. –

(1) For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

(2) Whoever—

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offence under this section, shall be punished on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees.

Exception.—This section does not extend to—

(a) any book, pamphlet, paper, writing, drawing, painting, representation or figure—

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern, or

(ii) which is kept or used bona fide for religious purposes;

(b) any representation sculptured, engraved, painted or otherwise represented on or in—

(i) any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), or

(ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

LANDMARK JUDGMENT

Ranjit D. Udeshi vs. State of Maharashtra, MANU/SC/0080/1964

295. Sale, etc., of obscene objects to child

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 294 - Sale, etc., of obscene books, etc.

Whoever sells, lets to hire, distributes, exhibits or circulates to any child any such obscene object as is referred to in section 294, or offers or attempts so to do, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees.

Corresponding Provision of Previous Statute: Section 293, Indian Penal Code, 1860

Section 293 – Sale, etc., of obscene objects to young person - Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees.

296. Obscene acts and songs

Whoever, to the annoyance of others,--

(a) does any obscene act in any public place; or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

Back to Index

Corresponding Provision of Previous Statute: Section 294, Indian Penal Code, 1860

Section 294 – Obscene acts and songs - Whoever, to the annoyance of others,

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both

(1) Whoever keeps any office or place for the purpose of drawing any lottery not being a State lottery or a lottery authorised by the State Government, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

(2) Whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear from doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to five thousand rupees.

Corresponding Provision of Previous Statute: Section 294A, Indian Penal Code, 1860

Section 294A – Keeping lottery office - Whoever keeps any office or place for the purpose of drawing any lottery not being a State lottery or a lottery authorised by the State Government, shall be punished withimprisonment of either description for a term which may extend to six months, or with fine, or with both.And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anythingfor the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot,number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.

Back to Index

CHAPTER XVI

OF OFFENCES RELATING TO RELIGION

298. Injuring or defiling place of worship with intent to insult religion of any class

Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 196 - Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony

Corresponding Provision of Previous Statute: Section 295, Indian Penal Code, 1860

Section 295 – Injuring or defiling place of worship, with intent to insult the religion of any class - Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledgethat any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

299. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs

Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or through electronic means or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 302 - Uttering words, etc., with deliberate intent to wound religious feelings of any person

Corresponding Provision of Previous Statute: Section 295A, Indian Penal Code, 1860

Section 295A – Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs - Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Back to Index

300. Disturbing religious assembly

Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 196 - Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony

Corresponding Provision of Previous Statute: Section 296, Indian Penal Code, 1860

Section 296 – Disturbing religious assembly - Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

301. Trespassing on burial places, etc.

Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sepulchre, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 196 - Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony

Bharatiya Nyaya Sanhita, 2023 - Section 329(1) - Criminal trespass and house trespass

Corresponding Provision of Previous Statute: Section 297, Indian Penal Code, 1860

Section 297 – Trespassing on burial places, etc - Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby,

commits any trespass in any place of worship or on any place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any

human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both

302. Uttering words, etc., with deliberate intent to wound religious feelings of any person

Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 196 - Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony

Bharatiya Nyaya Sanhita, 2023 - Section 299 - Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs

Corresponding Provision of Previous Statute: Section 298, Indian Penal Code, 1860

Section 298 – Uttering words, etc., with deliberate intent to wound religious feelings - Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Back to Index

CHAPTER XVII

OF OFFENCES AGAINST PROPERTY

Of theft

303. Theft

(1) Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1.--A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.--A moving effected by the same act which affects the severance may be a theft.

Explanation 3.--A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4.--A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.--The consent mentioned in this section may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Linked Provisions

The Electricity Act, 2003 - Section 135 - Theft of Electricity

The Electricity Act, 2003 - Section 136 - Theft of Electric Lines And Materials

Indian Electricity Act, 1910 - Section 39 - Theft of Energy

Information Technology Act, 2000 - Section 66C - Punishment For Identity Theft

Railway Property (Unlawful Possession) Act, 1966 - Section 3 - Penalty For Theft, Dishonest Misappropriation Or Unlawful Possession Of Railway Property

Bharatiya Nyaya Sanhita, 2023 - Section 134 - Assault or criminal force in attempt to commit theft of property carried by a person

Bharatiya Nyaya Sanhita, 2023 - Section

Back to Index

Illustrations

(a) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(b) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent. A has committed theft as soon as Z's dog has begun to follow A.

(c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(d) A being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(e) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(f) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(g) A finds a ring lying on the highroad, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides

305 - Theft in a dwelling house, or means of transportation or place of worship, etc

Bharatiya Nyaya Sanhita, 2023 - Section 306 - Theft by clerk or servant of property in possession of master

Bharatiya Nyaya Sanhita, 2023 - Section 307 - Theft after preparation made for causing death, hurt or restraint in order to committing of theft

Indian Post Office Act, 1898 - Section 52 - Penalty For Theft, Dishonest Misappropriation, Secretion, Destruction, Or Throwing Away Of Postal Articles

Bharatiya Nyaya Sanhita, 2023 - Section 328 - Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 57 - Person arrested to be taken before Magistrate or officer in charge of police station

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 58 - Person arrested not to be

Back to Index

the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(i) A delivers his watch to Z, a jeweler, to be regulated. Z carries it to his shop. A, not owing to the jeweler any debt for which the jeweler might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, in as much as what he did was not done dishonestly.

(j) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, in as much as he takes it dishonestly.

(k) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property in as much as he takes it dishonestly.

(l) A takes an article belonging to Z out of Z's possession without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

(m) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

detained more than twenty- four hours

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 59 - Police to report apprehensions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 463 - Warrant for levy of fine issued by a Court in any territory to which this Sanhita does not extend

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 464 - Suspension of execution of sentence of imprisonment

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 60 - Discharge of person apprehended

Back to Index

(n) A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z her husband. Here it is probable that A may conceive that Z's wife is authorised to give away alms. If this was A's impression, A has not committed theft.

(o) A is the paramour of Z's wife. She gives a valuable property, which A knows to belong to her husband Z, and to be such property as she has no authority from Z to give. If A takes the property dishonestly, he commits theft.

(p) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of Z's possession. Here, as A does not take dishonestly, he does not commit theft.

(2) Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both and in case of second or subsequent conviction of any person under this section, he shall be punished with rigorous imprisonment for a term which shall not be less than one year but which may extend to five years and with fine:

Provided that in cases of theft where the value of the stolen property is less than five thousand rupees, and a person is convicted for the first time, shall upon return of the value of property or restoration of the stolen property, shall be punished with community service.

Corresponding Provision of Previous Statute: Section 378, Indian Penal Code, 1860

Section 378 – Theft - Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1.—A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving effected by the same act which effects the severance may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal,

Back to Index

and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations

(a) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(b) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(d) A being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(e) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(f) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(g) A finds a ring lying on the highroad, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(i) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(j) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(k) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property inasmuch as he takes it dishonestly.

(l) A takes an article belonging to Z out of Z's possession without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefor committed theft.

(m) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's

Back to Index

Express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(n) A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z her husband. Here it is probable that A may conceive that Z's wife is authorised to give away alms. If this was A's impression, A has not committed theft.

(o) A is the paramour of Z's wife. She gives a valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(p) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

LANDMARK JUDGMENT

K.N. Mehra vs. The State of Rajasthan, MANU/SC/0030/1957

Section 379 - Punishment for theft - Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

304. Snatching

(1) Theft is snatching if, in order to commit theft, the offender suddenly or quickly or forcibly seizes or secures or grabs or takes away from any person or from his possession any movable property.

(2) Whoever commits snatching, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

305. Theft in a dwelling house, or means of transportation or place of worship, etc

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 303(1) - Theft

Whoever commits theft--

(a) in any building, tent or vessel used as a human dwelling or used for the custody of property; or

(b) of any means of transport used for the transport of goods or passengers; or

Back to Index

(c) of any article or goods from any means of transport used for the transport of goods or passengers; or

(d) of idol or icon in any place of worship; or

(e) of any property of the Government or of a local authority,

shall be punished with imprisonment of either description for a term which

Corresponding Provision of Previous Statute: Section 380, Indian Penal Code, 1860

Section 380 – Theft in dwelling house, etc. - Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

306. Theft by clerk or servant of property in possession of master

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 303(1) - Theft

Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 381, Indian Penal Code, 1860

Section 381 – Theft by clerk or servant of property in possession of master - Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

307. Theft after preparation made for causing death, hurt or restraint in order to committing of theft

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 303(1) - Theft

Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Back to Index

Illustrations

(a) A commits theft on property in Z's possession; and while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.

(b) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

Corresponding Provision of Previous Statute: Section 382, Indian Penal Code, 1860

Section 382 – Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft - Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations

(a) A commits theft on property in Z's possession; and while committing this theft, he has a loaded pistol under his garment having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.

(b) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

Of extortion

308. Extortion

(1) Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property, or valuable security or anything signed or sealed which may be converted into a valuable security, commits extortion.

Linked Provisions

Air Force Act, 1950 - Section 53 - Extortion And Corruption

Army Act, 1950 - Section 53 - Extortion And Corruption

Border Security Force Act, 1968 - Section 31 - Extortion And Corruption

Back to Index

Illustrations

(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security. A has committed extortion.

(e) A threatens Z by sending a message through an electronic device that "Your child is in my possession, and will be put to death unless you send me one lakh rupees." A thus induces Z to give him money. A has committed extortion.

(2) Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

(3) Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

(4) Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other,

Indo-Tibetan Border Police Force Act, 1992 - Section 34 - Extortion And Corruption

National Security Guard Act, 1986 - Section 30 - Extortion And Corruption

Sashastra Seema Bal Act, 2007 - Section 34 - Extortion And Corruption

Bharatiya Nyaya Sanhita, 2023 - Section 308 - Extortion

Back to Index

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(5) Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(6) Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit, an offence punishable with death or with imprisonment for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(7) Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with imprisonment for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 383, Indian Penal Code, 1860

Section 383 – Extortion - Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property, or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion".

Illustrations

(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z sings and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z

Back to Index

under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z sings and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security. A has committed extortion.

LANDMARK JUDGMENT

Jadunandan Singh and Ors. vs. Emperor, MANU/BH/0133/1940

Section 384 - Punishment for extortion - Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

LANDMARK JUDGMENT

A.R. Antulay vs. R.S. Nayak and Ors., MANU/SC/0002/1988

Section 385 - Putting person in fear of injury in order to commit extortion - Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 386 - Extortion by putting a person in fear of death or grievous hurt - Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 387 - Putting person in fear of death or of grievous hurt, in order to commit extortion - Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 388 - Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc. - Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with imprisonment for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with imprisonment for life.

Section 389 - Putting person in fear or accusation of offence, in order to commit extortion - Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit, an offence punishable with death or with imprisonment for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with imprisonment for life

Back to Index

Of robbery and dacoity

309. Robbery

(1) In all robbery there is either theft or extortion.

(2) Theft is robbery if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

(3) Extortion is robbery if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.--The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations

(a) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b) A meets Z on the high road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 303(1) - Theft

Bharatiya Nyaya Sanhita, 2023 - Section 308(1) - Extortion

Bharatiya Nyaya Sanhita, 2023 - Section 309(2) - Robbery

Bharatiya Nyaya Sanhita, 2023 - Section 309(3) - Robbery

Bharatiya Nyaya Sanhita, 2023 - Section 309(4) - Robbery

Bharatiya Nyaya Sanhita, 2023 - Section 311 - Robbery, or dacoity, with attempt to cause death or grievous hurt

Bharatiya Nyaya Sanhita, 2023 - Section 312 -Attempt to commit robbery or dacoity when armed with deadly weapon

Bharatiya Nyaya Sanhita, 2023 - Section 115(1) - Voluntarily causing hurt

Bharatiya Nyaya Sanhita, 2023 - Section 114 - Hurt

Back to Index

(c) A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(d) A obtains property from Z by saying--"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees". This is extortion, and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.

(4) Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

(5) Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

(6) If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 390, Indian Penal Code, 1860

Section 390 – Robbery - In all robbery there is either theft or extortion.

When theft is robbery.—Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery.—Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Back to Index

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations

(a) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b) A meets Z on the high road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(c) A meets Z and Z's child on the high road. A takes the child, and threatens to filing it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(d) A obtains property from Z by saying "Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees". This is extortion, and punishable as such: but it is not robbery, unless Z is put in fear of the instant death of his child.

Section 392 - Punishment for robbery - Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

Section 393 - Attempt to commit robbery - Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Section 394 - Voluntarily causing hurt in committing robbery - If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

310. Dacoity

(1) When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit dacoity.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 309(1) - Robbery

Bharatiya Nyaya Sanhita, 2023 - Section 101- Murder

(2) Whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

(3) If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which shall not be less than ten years, and shall also be liable to fine.

(4) Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

(5) Whoever is one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

(6) Whoever belongs to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Bharatiya Nyaya Sanhita, 2023 - Section 317(3) - Stolen Property

Bharatiya Nyaya Sanhita, 2023 - Section 311 - Robbery, or dacoity, with attempt to cause death or grievous hurt

Bharatiya Nyaya Sanhita, 2023 - Section 312 -Attempt to commit robbery or dacoity when armed with deadly weapon

Corresponding Provision of Previous Statute: Section 391, Indian Penal Code, 1860

Section 391 – Dacoity - When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

LANDMARK JUDGMENT

Ghamandi and Ors. vs. State, MANU/UP/0180/1968

Section 395 - Punishment for dacoity - Whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Section 396 - Dacoity with murder - If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Back to Index

.**Section 399 - Making preparation to commit dacoity -** Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Section 400 - Punishment for belonging to gang of dacoits - Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Section 402 - Assembling for purpose of committing dacoity - Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

311. Robbery, or dacoity, with attempt to cause death or grievous hurt

If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 310(1) - Dacoity

Bharatiya Nyaya Sanhita, 2023 - Section 309(1) - Robbery

Bharatiya Nyaya Sanhita, 2023 - Section 116 - Grevious Hurt

Corresponding Provision of Previous Statute: Section 397, Indian Penal Code, 1860

Section 397 - Robbery, or dacoity, with attempt to cause death or grievous hurt - If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

312. Attempt to commit robbery or dacoity when armed with deadly weapon

If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 310(1) - Dacoity

Bharatiya Nyaya Sanhita, 2023 - Section 309(1) - Robbery

Back to Index

Corresponding Provision of Previous Statute: Section 398, Indian Penal Code, 1860

Section 398 - Attempt to commit robbery or dacoity when armed with deadly weapon - If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

313. Punishment for belonging to gang of robbers, etc

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 303(1) - Theft

Whoever belongs to any gang of persons associated in habitually committing theft or robbery, and not being a gang of dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 401, Indian Penal Code, 1860

Section 401 - Punishment for belonging to gang of thieves - Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Of criminal misappropriation of property

314. Dishonest misappropriation of property

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 315 - Dishonest misappropriation of property possessed by deceased person at the time of His death

Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which shall not be less than six months but which may extend to two years and with fine.

Illustrations

(a) A takes property belonging to Z out of Z's possession, in good faith believing at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the

Back to Index

impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(c) A and B, being, joint owners of a horse. A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1.--A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustration

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2.--A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it; it is sufficient if, at

Back to Index

the time of appropriating it, he does not believe it to be his own property, or in good faith believe that the real owner cannot be found.

Illustrations

(a) A finds a rupee on the high road, not knowing to whom the rupee belongs, A picks up the rupee. Here A has not committed the offence defined in this section.

(b) A finds a letter on the road, containing a bank-note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(c) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person, who has drawn the cheque, appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(d) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(e) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(f) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

Corresponding Provision of Previous Statute: Section 403, Indian Penal Code, 1860

Section 403 - Dishonest misappropriation of property - Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Back to Index

Illustrations

(a) A takes property belonging to Z out of Z's possession, in good faith believingat the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(c) A and B, being, joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustration

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security or a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believe that the real owner cannot be found.

Illustrations

(a) A finds a rupee on the high road, not knowing to whom the rupee belongs, A picks up the rupee. Here A has not committed the offence defined in this section.

(b) A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(c) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person, who has drawn the cheque, appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(d) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(e) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

Back to Index

(f) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

315. Dishonest misappropriation of property possessed by deceased person at the time of his death

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 314 - Dishonest misappropriation of property

Whoever dishonestly misappropriates or converts to his own use any property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine, and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

Corresponding Provision of Previous Statute: Section 404, Indian Penal Code, 1860

Section 404 - Dishonest misappropriation of property possessed by deceased person at the time of his Death - Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine, and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

Back to Index

Of criminal breach of trust

316. Criminal breach of trust

(1) Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits criminal breach of trust.

Explanation 1.--A person, being an employer of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) or not who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2.--A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948) shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Linked Provisions

Religious Endowments Act, 1863 - Section 20 - Proceedings for criminal breach of trust

Religious Endowments Act, 1863 - Section 14 - Persons Interested May Singly Sue In Case of Breach of Trust, Etc.

Religious Endowments Act, 1863 - Section 20 - Proceedings For Criminal Breach of Trust

Government of India Act, 1833 - Section 80 - Disobedience of Orders & Breach of Trust By Officers or Servants or The Company In India, Misdemeanors

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 57 - Person arrested to be taken before Magistrate or officer in charge of police station

Back to Index

Illustrations

(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse-keeper Z going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Kolkata, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits one lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in illustration (c), not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 58 - Person arrested not to be detained more than twenty- four hours

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 59 - Police to report apprehensions

Back to Index

(2) Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

(3) Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(4) Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(5) Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 405, Indian Penal Code, 1860

Section 405 - Criminal breach of trust - Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

Explanation 1.—A person, being an employer of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) or not who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of

Back to Index

1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Illustrations

(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse-keeper. Z going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, thought Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

LANDMARK JUDGMENT

R.K. Dalmia vs. Delhi Administration, MANU/SC/0110/1962

Section 406 - Punishment for criminal breach of trust - Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 407 - Criminal breach of trust by carrier, etc. - Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 408 - Criminal breach of trust by clerk or servant - Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Back to Index

LANDMARK JUDGMENT

Ambika Prasad Mishra vs. State of U.P. and Ors., MANU/SC/0581/1980

Section 409 - Criminal breach of trust by public servant, or by banker, merchant or agent - Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Of receiving stolen property

317. Stolen property

(1) Property, the possession whereof has been transferred by theft or extortion or robbery or cheating, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as stolen property, whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without India, but, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

(2) Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

(3) Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 252 - Taking gift to help to recover stolen property, etc.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 96 - When search-warrant may be issued

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 101- Power to compel restoration of abducted females

Back to Index

(4) Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(5) Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 410, Indian Penal Code, 1860

Section 410 - Stolen property - Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as "stolen property", whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without India. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

Section 411 - Dishonestly receiving stolen property - Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 412 - Dishonestly receiving property stolen in the commission of a dacoity - Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or hasreason to believe to have been stolen, shall be punished with imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Section 413 - Habitually dealing in stolen property - Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 414 - Assisting in concealment of stolen property - Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Back to Index

Of cheating

318. Cheating

(1) Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat.

Explanation.--A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

Linked Provisions

Information Technology Act, 2000 - Section 66D - Punishment For Cheating By Personation By Using Computer Resource

Bharatiya Nyaya Sanhita, 2023 - Section 336 - Forgery

Bharatiya Nyaya Sanhita, 2023 - Section 319 - Cheating by personation

Back to Index

(e) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

(2) Whoever cheats shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

(3) Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Back to Index

(4) Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 415, Indian Penal Code, 1860

Section 415 – Cheating - Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamond articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f) A Intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats

Back to Index

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LANDMARK JUDGMENT

Akhil Kishore Ram vs. Emperor, MANU/BH/0100/1937

Section 417 - Punishment for cheating - Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Section 418 - Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect - Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 420 - Cheating and dishonestly inducing delivery of property - Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

319. Cheating by personation

(1) A person is said to cheat by personation if he cheats by pretending to be some other person, or by knowingly substituting one person for or another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.--The offence is committed whether the individual personated is a real or imaginary person.

Illustrations

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 318(1) - Cheating

Information Technology Act, 2000 - Section 66D - Punishment For Cheating By Personation By Using Computer Resource

The Standard of Weights and Measures (Enforcement) Act, 1985 - Section 55.

Bharatiya Nyaya Sanhita, 2023 - Section 242 -False personation for purpose of act or proceeding in suit or prosecution

Back to Index

(2) Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Bharatiya Nyaya Sanhita, 2023 - Section 174 - Punishment for undue influence or personation at an election

Official Secrets Act, 1923 - Section 6 - Unauthorised Use Of Uniforms,Falsification OfReports, Forgery, Personation And False Documents

The Indian Christian Marriage Act, 1872 - Section 67 - Forbidding, By False Personation, Issue Of Certificate By Marriage Registrar

Companies Act, 2013 - Section 57 - Punishment For Personation Of Shareholder

Companies Act, 2013 - Section 38 - Punishment For Personation For Acquisition, Etc., Of Securities

Aadhaar Act, 2016 - Section 34 - Penalty For Impersonation At Time Of Enrolment

Aadhaar Act, 2016 - Section 36 - Penalty For Impersonation

Aadhaar Act, 2016 - Section 35 - Penalty For Impersonation Of

Back to Index

Aadhaar Number Holder By Changing Demographic Information Or Biometric Information

Collection of Statistics Act, 2008 - Section 21 - Penalty for impersonation of employees

Companies Act, 1956 - Section 68A - Personation For Acquisition, Etc., Of Shares

Companies Act, 1956 - Section 116 - Penalty For Personation Of Shareholder

Corresponding Provision of Previous Statute: Section 416, Indian Penal Code, 1860

Section 416 – Cheating by personation - A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for or another, or representing that he or any other person is a person other than he or such other person really is. Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustrations

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.
(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

Section 419 - Punishment for cheating by personation - Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Of fraudulent deeds and dispositions of property

320. Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors

Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 323 - Dishonest or fraudulent removal or concealment of property

Back to Index

consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which shall not be less than six months but which may extend to two years, or with fine, or with both.

Bharatiya Nyaya Sanhita, 2023 - Section 243 - Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution

321. Dishonestly or fraudulently preventing debt being available for creditors

Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 422, Indian Penal Code, 1860

Section 422 – Dishonestly or fraudulently preventing debt being available for creditors - Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

322. Dishonest or fraudulent execution of deed of transfer containing false statement of consideration

Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 423, Indian Penal Code, 1860

Section 423 – Dishonest or fraudulent execution of deed of transfer containing false statement of Consideration - Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or

Back to Index

instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

323. Dishonest or fraudulent removal or concealment of property

Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 320 - Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors

Bharatiya Nyaya Sanhita, 2023 - Section 243 - Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution

Corresponding Provision of Previous Statute: Section 424, Indian Penal Code, 1860

Section 424 – Dishonest or fraudulent removal or concealment of property - Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Of mischief

324. Mischief

(1) Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits mischief.

Explanation 1.--It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 325 - Mischief by killing or maiming animal

Bharatiya Nyaya Sanhita, 2023 - Section 326 -Mischief by injury, fire or explosive substance, etc

Bharatiya Nyaya Sanhita, 2023 - Section 327 - Mischief with

Back to Index

cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.--Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations

(a) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.

(b) A introduces water into an ice-house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(c) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(e) A having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

(f) A causes a ship to be cast away, intending thereby to cause damage to Z who has lent money on bottomry on the ship. A has committed mischief.

(g) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

intent to destroy or make unsafe a rail, aircraft, decked vessel or one of twenty tons burden

Bharatiya Nyaya Sanhita, 2023 - Section 328 - Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc

Bharatiya Nyaya Sanhita, 2023 - Section 324(6) – Mischief

Bharatiya Nyaya Sanhita, 2023 - Section 353 - Statement conducing to public mischief

Indian Telegraph Act, 1885 – Section 33 - Power To Employ Additional Police In Places Where Mischief To Telegraphs Is Repeatedly Committed

Prevention of Damage to Public Property Act, 1984 - Section 3 - Mischief Causing Damage To Public Property

Prevention of Damage to Public Property Act, 1984 - Section 4 - Mischief Causing Damage To Public Property By Fire Or Explosive Substance

Back to Index

(h) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

(2) Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

(3) Whoever commits mischief and thereby causes loss or damage to any property including the property of Government or Local Authority shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

(4) Whoever commits mischief and thereby causes loss or damage to the amount of twenty thousand rupees and more but less than one lakh rupees shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

(5) Whoever commits mischief and thereby causes loss or damage to the amount of one lakh rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

(6) Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Prevention of Destruction and Loss of Property Act, 1981 - Section 2 - Punishment For Committing Mischief In Respect Of Property

National Highways Act, 1956 - Section 8B - Punishment For Mischief By Injury To National Highway

Corresponding Provision of Previous Statute: Section 425, Indian Penal Code, 1860

Section 425 – Mischief - Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

Explanation 1 - It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether belongs

Back to Index

to that person or not.

Explanation 2 - Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations

(a) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.

(b) A introduces water in to an ice-house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(c) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(e) A having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

(f) A causes a ship to be cast away, intending thereby to cause damage to Z who has lent money on bottomry on the ship. A has committed mischief.

(g) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(h) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

Section 426 - Punishment for mischief - Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Section 440 - Mischief committed after preparation made for causing death or hurt - Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

325. Mischief by killing or maiming animal

Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 324(1) - Mischief

Back to Index

Corresponding Provision of Previous Statute: Section 428, Indian Penal Code, 1860

Section 428 – Mischief by killing or maiming animal of the value of ten rupees - Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of the ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 429 – Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty Rupees - Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

326. Mischief by injury, inundation, fire or explosive substance, etc.

Whoever commits mischief by,--

(a) doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both;

(b) doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both;

(c) doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both;

(d) destroying or moving any sign or signal used for navigation of rail, aircraft or ship or other thing placed as a guide for navigators, or by any act which

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 324(1) – Mischief

National Highways Act, 1956 - Section 8B - Punishment For Mischief By Injury To National Highway

Prevention of Damage to Public Property Act, 1984 - Section 3 - Mischief Causing Damage To Public Property

Prevention of Destruction and Loss of Property Act, 1981 - Section 2 - Punishment For Committing Mischief In Respect Of Property

Back to Index

renders any such sign or signal less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both;

(e) destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both;

(f) fire or any explosive substance intending to cause, or knowing it to be likely that he will thereby cause, damage to any property including agricultural produce, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

(g) fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 430, Indian Penal Code, 1860

Section 430 - Mischief by injury to works of irrigation or by wrongfully diverting water - Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Section 431 - Mischief by injury to public road, bridge, river or channel - Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Section 432 - Mischief by causing inundation or obstruction to public drainage attended with damage - Whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Back to Index

Section 433 - Mischief by destroying, moving or rendering less useful a light-house or sea-mark - Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Section 434 - Mischief by destroying or moving, etc., a land-mark fixed by public authority - Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Section 435 - Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees - Whoever commits mischief by fire or any explosive substance intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards or (where the property is agricultural produce) ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

Section 436 - Mischief by fire or explosive substance with intent to destroy house, etc - Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with [2][imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

327. Mischief with intent to destroy or make unsafe a rail, aircraft, decked vessel or one of twenty tons burden

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 324(1) - Mischief

(1) Whoever commits mischief to any rail, aircraft, or a decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that rail, aircraft or vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(2) Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in sub-section (1), shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Back to Index

Corresponding Provision of Previous Statute: Section 437, Indian Penal Code, 1860

Section 437 - Mischief with intent to destroy or make unsafe a decked vessel or one of twenty tons Burden - Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 438 - Punishment for the mischief described in section 437 committed by fire or explosive Substance - Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

328. Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 324(1) - Mischief

Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 439, Indian Penal Code, 1860

Section 439 - Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc. - Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Of criminal trespass

329. Criminal trespass and house-trespass

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 330 - Lurking house trespass and housebreaking

(1) Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or

Back to Index

annoy any such person or with intent to commit an offence is said to commit criminal trespass.

(2) Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit house-trespass.

Explanation.--The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

(3) Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five thousand rupees, or with both.

(4) Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

Bharatiya Nyaya Sanhita, 2023 - Section 329(3) - Criminal trespass and house trespass

Bharatiya Nyaya Sanhita, 2023 - Section 334 - Dishonestly breaking open receptacle containing property

Bharatiya Nyaya Sanhita, 2023 - Section 332 -House-trespass in order to commit offence

Bharatiya Nyaya Sanhita, 2023 - Section 333 - House-trespass after preparation for hurt, assault or wrongful restraint

Corresponding Provision of Previous Statute: Section 441, Indian Penal Code, 1860

Section 441 - Criminal trespass - Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence,
is said to commit "criminal trespass".

Section 442 - House-trespass - Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass".

***Explanation* -** The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

Section 447 - Punishment for criminal trespass - Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Section 448 - Punishment for house-trespass - Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Back to Index

330. House-trespass and house-breaking

(1) Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit lurking house-trespass.

(2) A person is said to commit house-breaking who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or having committed an offence therein, he quits the house or any part of it in any of the following ways, namely:--

(a) if he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass;

(b) if he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building;

(c) if he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened;

(d) if he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass;

(e) if he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault;

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 329 - Criminal trespass and house trespass

Bharatiya Nyaya Sanhita, 2023 - Section 330 - Lurking house trespass and housebreaking

Bharatiya Nyaya Sanhita, 2023 - Section 331 - Punishment for house-trespass or house-breaking

Back to Index

(f) if he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation.--Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations

(a) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(b) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(c) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(d) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(e) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(f) A finds the key of Z's house door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(g) Z is standing in his doorway. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

Back to Index

(h) Z, the door-keeper of Y, is standing in Y's doorway. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

Corresponding Provision of Previous Statute: Section 443, Indian Penal Code, 1860

Section 443 - Lurking house-trespass - Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass".

Section 444 - Lurking house-trespass by night - Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night".

Section 445 - House-breaking - A person is said to commit "house-breaking" who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:-

First. – If he enters or quits through a passage made by himself, or by any abettor of the housetrespass, in order to the committing of the house-trespass.

Secondly. – If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly. – If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly. – If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly. – If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly. — If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.
Explanation - Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations

(a) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(b) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-reaking.

(c) A commits house-trespass by entering Z's house through a window. This is house-breaking.

Back to Index

(d) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(e) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(f) A finds the key of Z's house door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(g) Z is standing in his doorway. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(h) Z, the door-keeper of Y, is standing in Y's doorway. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

331. Punishment for house-trespass or house-breaking

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 330 - Lurking house trespass and housebreaking

(1) Whoever commits lurking house-trespass or house-breaking, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

(2) Whoever commits lurking house-trespass or house-breaking after sunset and before sunrise, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

(3) Whoever commits lurking house-trespass or house-breaking, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

(4) Whoever commits lurking house-trespass or house-breaking after sunset and before sunrise, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

Back to Index

(5) Whoever commits lurking house-trespass, or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of wrongful restraint, shall be punished with imprisonment of either description or a term which may extend to ten years, and shall also be liable to fine.

(6) Whoever commits lurking house-trespass or house-breaking after sunset and before sunrise, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

(7) Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(8) If, at the time of the committing of lurking house-trespass or house-breaking after sunset and before sunrise, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass or house-breaking after sunset and before sunrise, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 453, Indian Penal Code, 1860

Section 453 - Punishment for lurking house-trespass or house-breaking - Whoever commits lurking house-trespass or house-breaking, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Section 454 - Lurking house-trespass or house-breaking in order to commit offence punishable with Imprisonment - Whoever commits lurking house-trespass or house-breaking, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for

Back to Index

a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

Section 455 - Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful Restraint - Whoever commits lurking house-trespass, or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of wrongful restraint, shall be punished with imprisonment of either description or a term which may extend to ten years, and shall also be liable to fine.

Section 456 - Punishment for lurking house-trespass or house-breaking by night - Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Section 457 - Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment - Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

Section 458 - Lurking house-trespass or house-breaking by night after preparation for hurt, assault, or wrongful restraint - Whoever commits lurking house-trespass by night, or house-breaking by night, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Section 459 - Grievous hurt caused whilst committing lurking house-trespass or house-breaking - Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, shall be punished with [1][imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 460 - All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them - If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurkking house-trespass by night or house-breaking by night, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine

332. House-trespass in order to commit offence

Whoever commits house-trespass in order to the committing of any offence--

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 329(2) - Criminal trespass and house trespass

Back to Index

(a) punishable with death, shall be punished with imprisonment for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine;

(b) punishable with imprisonment for life, shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine;

(c) punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine:

Provided that if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

Bharatiya Nyaya Sanhita, 2023 - Section 329(4) - Criminal trespass and house trespass

Bharatiya Nyaya Sanhita, 2023 - Section 332 -House-trespass in order to commit offence

Bharatiya Nyaya Sanhita, 2023 - Section 333 -House-trespass after preparation for hurt, assault or wrongful restraint

Corresponding Provision of Previous Statute: Section 449, Indian Penal Code, 1860

Section 449 - House-trespass in order to commit offence punishable with death - Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with imprisonment for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine

Section 450 - House-trespass in order to commit offence punishable with imprisonment for life - Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment for life, shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Section 451 - House-trespass in order to commit offence punishable with imprisonment - Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

333. House-trespass after preparation for hurt, assault or wrongful restraint

Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 329(4) - Criminal trespass and house trespass

Bharatiya Nyaya Sanhita, 2023 – Section 329(2) - Criminal

Back to Index

trespass and house trespass

Bharatiya Nyaya Sanhita, 2023 - Section 332 -House-trespass in order to commit offence

Bharatiya Nyaya Sanhita, 2023 - Section 329(2) - Criminal trespass and house trespass

Corresponding Provision of Previous Statute: Section 452, Indian Penal Code, 1860

Section 452 - House-trespass alter preparation for hurt, assault or wrongful restraint - Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting and person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

334. Dishonestly breaking open receptacle containing property

(1) Whoever dishonestly or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 329 - Criminal trespass and house trespass

(2) Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 461, Indian Penal Code, 1860

Section 461 - Dishonestly breaking open receptacle containing property - Whoever dishonestly or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 462 - Punishment for same offence when committed by person entrusted with custody - Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Back to Index

CHAPTER XVIII

OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

335. Making a false document

A person is said to make a false document or false electronic record--

(A) Who dishonestly or fraudulently--

(i) makes, signs, seals or executes a document or part of a document;

(ii) makes or transmits any electronic record or part of any electronic record;

(iii) affixes any electronic signature on any electronic record;

(iv) makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

(B) Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

(C) Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 336 - Forgery

Bharatiya Nyaya Sanhita, 2023 - Section 337 - Forgery of record of Court or of public register, etc.

Bharatiya Nyaya Sanhita, 2023 - Section 338 - Forgery of valuable security, will, etc.

Bharatiya Nyaya Sanhita, 2023 - Section 341 - Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 338

The National Service Act, 1972 - Section 25 - False Statement And Forgery

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine

Back to Index

of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Illustrations

(a) A has a letter of credit upon B for rupees 10,000, written by Z. A, in order to defraud B, adds cipher to the 10,000, and makes the sum 1,00,000 intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(b) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B and thereby of obtaining from B the purchase-money. A has committed forgery.

(c) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(d) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable and authorises B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(e) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

f) Z's will contains these words--"I direct that all my remaining property be equally divided between A, B and C." A dishonestly scratches out B's name,

Back to Index

intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(g) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words "Pay to Z or his order" and signing the endorsement. B dishonestly erases the words "Pay to Z or his order", and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(h) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(i) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(j) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(k) A without B's authority writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery in as much as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.

Explanation 1.--A man's signature of his own name may amount to forgery.

Back to Index

Illustrations

(a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(b) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(c) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable; here A has committed forgery.

(d) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate, to Z at a nominal rent and for a long period and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(e) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors; and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2.--The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real

Back to Index

person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

Explanation 3.--For the purposes of this section, the expression "affixing electronic signature" shall have the meaning assigned to it in clause (d) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

Corresponding Provision of Previous Statute: Section 464, Indian Penal Code, 1860

Section 464 - Making a false document - A person is said to make a false document or false electronic Record –

First. – Who dishonestly or fraudulently –

(a) makes, signs, seals or executes a document or part of a document;
(b) makes or transmits any electronic record or part of any electronic record;
(c) affixes any electronic signature on any electronic record;
(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, singed, sealed, executed or affixed; or

Secondly. – Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly. – Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Illustrations

(a) A has a letter of credit upon B for rupees 10,000, written by Z. A, in order to defraud B, adds cipher to the 10,000, and makes the sum 1,00,000 intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(b) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z

Back to Index

to A, with the intention of selling the estate to B and thereby of obtaining from B the purchase-money. A has committed forgery.

(c) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(d) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(e) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(f) Z's will contains these words—"I direct that all my remaining property be equally divided between A, B and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(g) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words "Pay to Z or his order" and signing the endorsement. B dishonestly erases the words "Pay to Z or his order", and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(h) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(i) Z dictates his will to A. A intentionally writes down a different legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(j) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(k) A without B's authority writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.
Explanation 1. – A man's signature of his own name may amount to forgery.

Illustrations

(a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(b) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had

been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(c) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable; here A has committed forgery.

(d) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate, to Z at a nominal rent and for a long period and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(e) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors; and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2. – The making of a false document in the name of a fictious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration

A draws a bill of exchange upon a fictious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

Explanation 3. – For the purposes of this section, the expression "affixing electronic signature" shall have the meaning assigned to it in clause (d) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

336. Forgery

(1) Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Linked Provisions

The Official Secrets Act, 1923 - Section 6 - Unauthorised Use Of Uniforms, Falsification Of Reports, Forgery, Personation And False Documents

The National Service Act, 1972 - Section 25 - False Statement And Forgery

Back to Index

(2) Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

(3) Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(4) Whoever commits forgery, intending that the document or electronic record forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Bharatiya Nyaya Sanhita, 2023 - Section 335 - Making a false document

Bharatiya Nyaya Sanhita, 2023 - Section 337 - Forgery of record of Court or of public register, etc.

Bharatiya Nyaya Sanhita, 2023 - Section 338 - Forgery of valuable security, will, etc.

Bharatiya Nyaya Sanhita, 2023 - Section 341 - Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 338

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine

Corresponding Provision of Previous Statute: Section 463, Indian Penal Code, 1860

Section 463 - Forgery - Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Section 465 - Punishment for forgery - Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 468 - Forgery for purpose of cheating - Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 469 - Forgery for purpose of harming reputation - Whoever commits forgery, intending that the document or electronic record forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Back to Index

337. Forgery of record of Court or of public register, etc

Whoever forges a document or an electronic record, purporting to be a record or proceeding of or in a Court or an identity document issued by Government including voter identity card or Aadhaar Card, or a register of birth, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.--For the purposes of this section, "register" includes any list, data or record of any entries maintained in the electronic form as defined in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 336 - Forgery

Bharatiya Nyaya Sanhita, 2023 - Section 335 - Making a false document

Bharatiya Nyaya Sanhita, 2023 - Section 339 - Having possession of document described in section 337 or section 338, knowing it to be forged and intending to use it as genuine.

Bharatiya Nyaya Sanhita, 2023 - Section 342 - Counterfeiting device or mark used for authenticating documents described in section 338, or possessing counterfeit marked material

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine

Corresponding Provision of Previous Statute: Section 466, Indian Penal Code, 1860

Section 466 - Forgery of record of Court or of public register, etc. - Whoever forges a document or an electronic record, purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation. – For the purposes of this section, "register" includes any list, data or record of any entries maintained in the electronic form as defined in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

Back to Index

338. Forgery of valuable security, will, etc

Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 336 - Forgery

Bharatiya Nyaya Sanhita, 2023 - Section 335 - Making a false document

Bharatiya Nyaya Sanhita, 2023 - Section 339 - Having possession of document described in section 337 or section 338, knowing it to be forged and intending to use it as genuine.

Bharatiya Nyaya Sanhita, 2023 - Section 342 - Counterfeiting device or mark used for authenticating documents described in section 338, or possessing counterfeit marked material

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine

Bharatiya Nyaya Sanhita, 2023 - Section 341 - Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 338

Back to Index

Corresponding Provision of Previous Statute: Section 467, Indian Penal Code, 1860

Section 467 - Forgery of valuable security, will, etc. - Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

339. Having possession of document described in section 337 or section 338, knowing it to be forged and intending to use it as genuine

Whoever has in his possession any document or electronic record, knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document or electronic record is one of the description mentioned in section 337 of this Sanhita, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 338, shall be punished with imprisonment for life, or with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 336 - Forgery

Bharatiya Nyaya Sanhita, 2023 - Section 335 - Making a false document

Bharatiya Nyaya Sanhita, 2023 - Section 338 - Forgery of valuable security, will, etc.

Corresponding Provision of Previous Statute: Section 474, Indian Penal Code, 1860

Section 474 - Having possession of document described in section 466 or 467, knowing it to be forged and intending to use it genuine - Whoever has in his possession any document or electronic record, knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document or electronic record is one of the description mentioned in section 466 of this Code, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with imprisonment for life, or with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine.

340. Forged document or electronic record and using it as genuine

(1) A false document or electronic record made wholly or in part by forgery is designated a forged document or electronic record.

(2) Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged

Linked Provisions

The Official Secrets Act, 1923 - Section 6 - Unauthorised Use Of Uniforms, Falsification of Reports, Forgery, Personation And False Documents

Back to Index

document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

Bharatiya Nyaya Sanhita, 2023 - Section 336 - Forgery

Bharatiya Nyaya Sanhita, 2023 - Section 335 - Making a false document

Bharatiya Nyaya Sanhita, 2023 - Section 339 - Having possession of document described in section 337 or section 338, knowing it to be forged and intending to use it as genuine.

Bharatiya Nyaya Sanhita, 2023 - Section 337 - Forgery of record of Court or of public register, etc.

Bharatiya Nyaya Sanhita, 2023 - Section 338 - Forgery of valuable security, will, etc.

Corresponding Provision of Previous Statute: Section 470, Indian Penal Code, 1860

Section 470 - Forged document - A false document or electronic record made wholly or in part by forgery is designated "a forged document or electronic record".

Section 471 - Using as genuine a forged document or electronic record - Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

341. Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 338

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 336 - Forgery

(1) Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 338 of

Back to Index

this Sanhita, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(2) Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this Chapter other than section 338, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(3) Whoever possesses any seal, plate or other instrument knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. ss

(4) Whoever fraudulently or dishonestly uses as genuine any seal, plate or other instrument knowing or having reason to believe the same to be counterfeit, shall be punished in the same manner as if he had made or counterfeited such seal, plate or other instrument.

Bharatiya Nyaya Sanhita, 2023 - Section 335 - Making a false document

Bharatiya Nyaya Sanhita, 2023 - Section 338 - Forgery of valuable security, will, etc.

Bharatiya Nyaya Sanhita, 2023 - Section 341 - Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 338

Bharatiya Nyaya Sanhita, 2023 - Section 337 - Forgery of record of Court or of public register, etc.

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine

Corresponding Provision of Previous Statute: Section 472, Indian Penal Code, 1860

Section 472 - Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 467 - Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467 of this Code, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 473 - Making or possessing counterfeit seal, etc., with intent to commit forgery punishable otherwise - Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this Chapter other than section 467, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Back to Index

342. Counterfeiting device or mark used for authenticating documents described in section 338, or possessing counterfeit marked material

(1) Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document described in section 338, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(2) Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document or electronic record other than the documents described in section 338, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 341 - Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 338

Bharatiya Nyaya Sanhita, 2023 - Section 342 - Counterfeiting device or mark used for authenticating documents described in section 338, or possessing counterfeit marked material

Bharatiya Nyaya Sanhita, 2023 - Section 338 - Forgery of valuable security, will, etc.

Bharatiya Nyaya Sanhita, 2023 - Section 336 - Forgery Bharatiya Nyaya Sanhita, 2023 - Section 335 - Making a false document

Bharatiya Nyaya Sanhita, 2023 - Section 337 - Forgery of record of Court or of public register, etc. Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine

Corresponding Provision of Previous Statute: Section 475, Indian Penal Code, 1860

Section 475 - Counterfeiting device or mark used for authenticating documents described in section 467, or possessing counterfeit marked material - Whoever counterfeits upon, or in the substance of, any material,

Back to Index

any device or mark used for the purpose of authenticating any document described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 476 - Counterfeiting device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material - Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document or electronic record other than the documents described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

343. Fraudulent cancellation, destruction, etc., of will, authority to adopt, or valuable security

Linked Provisions

Indian Succession Act, 1925 - Section 61 - Will Obtained By Fraud, Coercion or Importunity

Bharatiya Nyaya Sanhita, 2023 - Section 338 - Forgery of valuable security, will, etc.

Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys or defaces, or attempts to cancel, destroy or deface, or secretes or attempts to secrete any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect of such document, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 477, Indian Penal Code, 1860

Section 477 - Fraudulent cancellation, destruction, etc., of will, authority to adopt, or valuable security - Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys or defaces, or attempts to cancel, destroy or deface, or secretes or attempts to secrete any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect of such document, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

344. Falsification of accounts

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 336 - Forgery

Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any book, electronic record, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or

Back to Index

wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book, electronic record, paper, writing, valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.--It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed.

Corresponding Provision of Previous Statute: Section 477A, Indian Penal Code, 1860

Section 477A - Falsification of accounts - Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any book, electronic record, paper, writing valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in. any such book, electronic record, paper, writing]valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Of property marks

345. Property mark

(1) A mark used for denoting that movable property belongs to a particular person is called a property mark.

(2) Whoever marks any movable property or goods or any case, package or other receptacle containing movable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 347 -Counterfeiting a property mark

Bharatiya Nyaya Sanhita, 2023 - Section 348 -Making or possession of any instrument for counterfeiting a property mark

Bharatiya Nyaya Sanhita, 2023 - Section 349 -Selling goods marked with a counterfeit property mark

Back to Index

(3) Whoever uses any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Bharatiya Nyaya Sanhita, 2023 - Section 346 - Tampering with property mark with intent to cause injury

Corresponding Provision of Previous Statute: Section 479, Indian Penal Code, 1860

Section 479 - Property mark - A mark used for denoting that movable property belongs to a particular person is called a property mark.

Section 481 - Using a false property mark - Whoever marks any movable property or goods or any case, package or other receptacle containing movable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

Section 482 - Punishment for using a false property mark - Whoever uses any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

346. Tampering with property mark with intent to cause injury

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 345 - Property mark

Whoever removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 489, Indian Penal Code, 1860

Section 489 - Tampering with property mark with intent to cause injury - Whoever removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

347. Counterfeiting a property mark

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 345 - Property mark

Bharatiya Nyaya Sanhita, 2023 - Section 347 - Counterfeiting a property mark

(1) Whoever counterfeits any property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

(2) Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been

Back to Index

manufactured by a particular person or at a particular time or place, or that the property is of a particular quality or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Bharatiya Nyaya Sanhita, 2023 - Section 348 - Making or possession of any instrument for counterfeiting a property mark

Corresponding Provision of Previous Statute: Section 483, Indian Penal Code, 1860

Section 483 - Counterfeiting a property mark used by another - Whoever counterfeits any property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 484 - Counterfeiting a mark used by a public servant - Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place, or that the property is of a particular quality or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

348. Making or possession of any instrument for counterfeiting a property mark

Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a property mark, or has in his possession a property mark for the purpose of denoting that any goods belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 345 - Property mark

Bharatiya Nyaya Sanhita, 2023 - Section 347 - Counterfeiting a property mark

Corresponding Provision of Previous Statute: Section 485, Indian Penal Code, 1860

Section 485 - Making or possession of any instrument for counterfeiting a property mark – Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a property mark, or has in his possession a property mark for the purpose of denoting that any goods belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

349. Selling goods marked with a counterfeit property mark

Whoever sells, or exposes, or has in possession for sale, any goods or things with a counterfeit property mark affixed to or impressed upon the same or to

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 350 -Making a false mark upon any receptacle containing goods

or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves--

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark; and

(b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or

(c) that otherwise he had acted innocently, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 486, Indian Penal Code, 1860

Section 486 - Selling goods marked with a counterfeit property mark - Whoever sells, or exposes, or has in possession for sale, any goods or things with a counterfeit property mark affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and

(b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(c) that otherwise he had acted innocently,

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

350. Making a false mark upon any receptacle containing goods

(1) Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 350 -Making a false mark upon any receptacle containing goods

Back to Index

acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

(2) Whoever makes use of any false mark in any manner prohibited under sub-section (1) shall, unless he proves that he acted without intent to defraud, be punished as if he had committed the offence under sub-section (1).

Corresponding Provision of Previous Statute: Section 487, Indian Penal Code, 1860

Section 487 - Making a false mark upon any receptacle containing goods - Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 488 - Punishment for making use of any such false mark - Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

Back to Index

CHAPTER XIX

OF CRIMINAL INTIMIDATION, INSULT, ANNOYANCE, DEFAMATION, ETC..

351. Criminal intimidation

(1) Whoever threatens another by any means, with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.--A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration

A, for the purpose of inducing B to resist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

(2) Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

(3) Whoever commits the offence of criminal intimidation by threatening to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 352 - Intentional insult with intent to provoke breach of peace

Bharatiya Nyaya Sanhita, 2023 - Section 353 - Statement conducing to public mischief

Bharatiya Nyaya Sanhita, 2023 - Section 354 - Act caused by inducing person to believe that he will be rendered an object of Divine displeasure

Bharatiya Nyaya Sanhita, 2023 - Section 79 -Word, gesture, act intended to insult modesty of a woman

Bharatiya Nyaya Sanhita, 2023 - Section 355 -Misconduct in public by drunken person

Back to Index

(4) Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence under sub-section (1).

Corresponding Provision of Previous Statute: Section 503, Indian Penal Code, 1860

Section 503 - Criminal intimidation - Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration

A, for the purpose of inducing B to resist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

Section 506 - Punishment for criminal intimidation - Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc. - and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Section 507 - Criminal intimidation by an anonymous communication - Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

352. Intentional insult with intent to provoke breach of peace

Whoever intentionally insults in any manner, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 351 - Criminal intimidation

Bharatiya Nyaya Sanhita, 2023 - Section 353 - Statement conducing to public mischief

Back to Index

Corresponding Provision of Previous Statute: Section 504, Indian Penal Code, 1860

Section 504 - Intentional insult with intent to provoke breach of the peace - Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

353. Statements conducing to public mischief

(1) Whoever makes, publishes or circulates any statement, false information, rumour, or report, including through electronic means--

(a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the Army, Navy or Air Force of India to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever makes, publishes or circulates any statement or report containing false information, rumour or alarming news, including through electronic means, with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 351 - Criminal intimidation

Bharatiya Nyaya Sanhita, 2023 - Section 355 -Misconduct in public by drunken person

Back to Index

(3) Whoever commits an offence specified in sub-section (2) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

Exception.--It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, false information, rumour or report, has reasonable grounds for believing that such statement, false information, rumour or report is true and makes, publishes or circulates it in good faith and without any such intent as aforesaid.

Corresponding Provision of Previous Statute: Section 505, Indian Penal Code, 1860

Section 505 - Statements conducing to public mischief –

(1) Whoever makes, publishes or circulates any statement, rumour or report,—

(a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the Army,Navy or Air Force of India to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

(2) Statements creating or promoting enmity, hatred or ill-will between classes.—Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(3) Offence under sub-section (2) committed in place of worship, etc.—Whoever commits an offence specified in sub-section (2) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

Exception.—It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it in good faith and without any such intent as aforesaid.

Back to Index

354. Act caused by inducing person to believe that he will be rendered an object of Divine displeasure

Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do, by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Illustrations

(a) A sits dharna at Z's door with the intention of causing it to be believed that, by so sitting, he renders Z an object of Divine displeasure. A has committed the offence defined in this section.

(b) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this section.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 351 - Criminal intimidation

Corresponding Provision of Previous Statute: Section 508, Indian Penal Code, 1860

Section 508 - Act caused by inducing person to believe that he will be rendered an object of the Divine displeasure - Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do, by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Illustrations

(a) A sits dhurna at Z's door with the intention of causing it to be believed that, by so sitting, he renders Z an object of Divine displeasure. A has committed the offence defined in this section.

(b) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this section.

Back to Index

355. Misconduct in public by a drunken person

Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to one thousand rupees, or with both or with community service.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 353 - Statement conducing to public mischief

Bharatiya Nyaya Sanhita, 2023 - Section 351 - Criminal intimidation

Corresponding Provision of Previous Statute: Section 510, Indian Penal Code, 1860

Section 510 - Misconduct in public by a drunken person - Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

Of defamation

356. Defamation

(1) Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes in any manner, any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.--It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.--It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.--An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Linked Provisions

Foreign Relations Act, 1932, 1932 - Section 2 - Power Of Central Government To Prosecute In Certain Cases Of Defamation

Foreign Relations Act, 1932- Section 4 - Proof Of Status Of Persons Defamed

Bharatiya Nyaya Sanhita, 2023 - Section 356 - Defammation

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 222 - Prosecution for defamation

Back to Index

Explanation 4.--No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 219 - Prosecution for offences against marriage

Illustrations

(a) A says--"Z is an honest man; he never stole B's watch"; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it falls within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

Exception 1.--It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Exception 2.--It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Exception 3.--It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Back to Index

Illustration

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Exception 4.--It is not defamation to publish substantially true report of the proceedings of a Court, or of the result of any such proceedings.

Explanation.--A Magistrate or other officer holding an inquiry in open Court preliminary to a trial in a Court, is a Court within the meaning of the above section.

Exception 5.--It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations

(a) A says--"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest". A is within this exception if he says this in good faith, in as much as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(b) But if A says--"I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, in as much as the opinion which expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

Back to Index

Exception 6.--It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.--A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z--"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind." A is within the exception, if he says this in good faith, in as much as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says "I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not within this exception, in as much as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Exception 7.--It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with

Back to Index

that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders, a parent censuring in good faith a child in the presence of other children; a school master, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier are within this exception.

Exception 8.--It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustration

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father-A is within this exception.

Exception 9.--It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Illustrations

(a) A, a shopkeeper, says to B, who manages his business--"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is

Back to Index

within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

Exception 10.--It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

(2) Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both or with community service.

(3) Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

(4) Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 499, Indian Penal Code, 1860

Section 499 – Defamation - Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the fellings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Back to Index

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loothsome state, or in a state generally considered as disgraceful.

Illustrations

(a) A says—"Z is an honest man; he never stole B's watch"; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.
(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.
(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

First Exception.—Imputation of truth which public good requires to be made or published.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.—Public conduct of public servants.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception.—Conduct of any person touching any public question.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Illustration

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception.—Publication of reports of proceedings of courts.—It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.—A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception.—Merits of case decided in Court or conduct of witnesses and others concerned.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations

(a) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no farther.

(b) But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, inasmuch as the opinion which express of Z's character, is an opinion not founded on Z's conduct as a witness.

Sixth Exception.—Merits of public performance.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z - "Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind". A is within the exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says "I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine". A is not within this exception, in as much as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception.—Censure passed in good faith by person having lawful authority over another - It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders, a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier- are within this exception.

Eighth Exception.—Accusation preferred in good faith to authorised person - It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustration

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father-A is within this exception.

Ninth Exception.—Imputation made in good faith by person for protection of his or other's interests - It is not defamation to make an imputation on the character of another provided that the imputation be made in

Back to Index

good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Illustrations

(a) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

Tenth Exception.—Caution intended for good of person to whom conveyed or for public good.— It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

LANDMARK JUDGMENT

C.L. Sagar (Advocate) vs. Ms. Mayawati, D/o Sri Prabhu Dayal and Anr., MANU/UP/1177/2002

Section 500 - Punishment for defamation - Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Section 501 - Printing or engraving matter known to be defamatory - Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Section 502 - Sale of printed or engraved substance containing defamatory matter - Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Of breach of contract to attend on and supply wants of helpless person

357. Breach of contract to attend on and supply wants of helpless person

Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprison ment of either description for a term which may

Linked Provisions

Factoring Regulation Act, 2011 - Section 18 - Breach of Contract

Indian Contract Act, 1872 - Section 73 - Compensation For Loss or Damage Caused By Breach of Contract

Back to Index

extend to three months, or with fine which may extend to five thousand rupees, or with both.

Corresponding Provision of Previous Statute: Section 313, Indian Penal Code, 1860

Section 491 - Breach of contract to attend on and supply wants of helpless person - Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

Back to Index

CHAPTER XX

REPEAL AND SAVINGS

358. Repeal and savings

(1) The Indian Penal Code (45 of 1860) is hereby repealed.

(2) Notwithstanding the repeal of the Code referred to in sub-section (1), it shall not affect,--

(a) the previous operation of the Code so repealed or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Code so repealed; or

(c) any penalty, or punishment incurred in respect of any offences committed against the Code so repealed; or

(d) any investigation or remedy in respect of any such penalty, or punishment; or

(e) any proceeding, investigation or remedy in respect of any such penalty or punishment as aforesaid, and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty may be imposed as if that Code had not been repealed.

(3) Notwithstanding such repeal, anything done or any action taken under the said Code shall be deemed to have been done or taken under the corresponding provisions of this Sanhita.

(4) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of the repeal.

Back to Index

STATEMENT OF OBJECTS AND REASONS

1. In the year 1834, the first Indian Law Commission was constituted under the Chairmanship of Lord Thomas Babington Macaulay to examine the jurisdiction, power and rules of the existing Courts as well as the police establishments and the laws in force in India.

2. The Commission suggested various enactments to the Government. One of the important recommendations made by the Commission was on, the Indian Penal Code, which was enacted in 1860 and the said Code is still continuing in the country with some amendments made thereto from time to time.

3. The Government considered it expedient and necessary to review the existing criminal laws with an aim to strengthen law and order and also focus on simplifying legal procedure so that ease of living is ensured to the common man. The Government also considered to make existing laws relevant to the contemporary situation and provide speedy justice to common man. Accordingly, various stakeholders were consulted keeping in mind contemporary needs and aspirations of the people with a view to create a legal structure which is citizen centric and to secure life and liberty of the citizens.

4. It is proposed to enact a new law, by repealing the Indian Penal Code, to streamline provisions relating to offences and penalties. It is proposed to provide first time community service as one of the punishments for petty offences. The offences against women and children, murder and offences against the State have been given precedence. Some offences have been made gender neutral. In order to deal effectively with the problem of organised crimes and terrorist activities, new offences of terrorist acts and organised crime have been added in the Bill with deterrent punishments. A new offence on acts of armed rebellion, subversive activities, separatist activities or endangering sovereignty or unity and integrity of India has also been added. The fines and punishments for various offences have also been suitably enhanced.

Back to Index

5. Accordingly, a Bill, namely, the Bharatiya Nyaya Sanhita, 2023 was introduced in the Lok Sabha on 11th August, 2023. The Bill was referred to the Department-related Parliamentary Standing Committee on Home Affairs for its consideration and report. The Committee after deliberations made its recommendations in its report submitted on 10th November, 2023. The recommendations made by the Committee have been considered by the Government and it has been decided to withdraw the Bill pending in Lok Sabha and introduce a new Bill incorporating therein those recommendations made by the Committee that have been accepted by the Government.

6. The Notes on Clauses explains the various provisions of the Bill.

7. The Bill seeks to achieve the above objectives.

LINKED PROVISIONS

Linked Provisions of Section 2(22) of Bharatiya Nyaya Sanhita, 2023:

General Clauses Act, 1897 - Section 13 - Gender and Number:

In all Central Acts and Regulations, unless there is anything repugnant in the subject or context,—

(1) words importing the masculine gender shall be taken to include females; and

(2) words in the singular shall include the plural, and vice versa.

Go Back to Section 2(22), Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 2(23) of Bharatiya Nyaya Sanhita, 2023:

Indian Marine Act, 1887 - Section 56 – Oaths:

(1) Before an Indian Marine Court proceeds to try a prisoner, an oath shall be made by every member of the Court in the prescribed manner.

(2) An oath shall be made in the prescribed manner by any person who gives evidence or acts as an interpreter before an Indian Marine Court.

Go Back to Section 2(23), Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 13 of Bharatiya Nyaya Sanhita, 2023:

Burma Salt Act, 1917 - Section 15 - Enhanced Punishment after Previous Conviction:

If any person, after having been previously convicted of an offence punishable under section 9 or section 10, or section 13 read with section 9, or under a similar provision in any enactment repealed by this Act, is subsequently convicted of an offence punishable under

one of those sections he shall be liable to twice the punishment which might be imposed on a first conviction under this Act;

Provided that nothing in this section shall prevent any offence which might otherwise have been tried summarily under Chapter XXII of the Code of Criminal Procedure from being so tried.

Coast Guard Act, 1978 - Section 87 - Evidence of Previous Convictions and General Character:

(1) When any person subject to this Act has been convicted by a Coast Guard Court of any offence, such court may inquire into, and receive, and record evidence of any previous convictions of such person, either by a Coast Guard Court or by a criminal court, or any previous award of punishment under section 57 or section 57A, and may further inquire into and record the general character of such person and such other matters as may be prescribed.

(2) Evidence received under this section may be either oral, or in the shape of entries in, or certified extracts from, books of Coast Guard Courts or other official records; and it shall not be necessary to give notice before trial to the person tried, that evidence as to his previous convictions or character will be received.

Code on Social Security, 2020 - Section 134 - Enhanced Punishment in Certain Cases after Previous Conviction 2020 Amendment: Date of Enforcement not Notified:

Whoever, having been convicted by a court of an offence punishable under this Code, commits the same offence shall, for second, or every subsequent such offence, be punishable with imprisonment for a term which may extend to two years and with fine of two lakh rupees:

Provided that where such second or subsequent offence is for failure by the employer to pay any contribution, charges, cess, maternity benefit, gratuity or compensation which under this Code he is liable to pay, he shall, for such second or subsequent offence, be punishable with imprisonment for a term which may extend to three years but which shall not be less than two years and shall also be liable to fine of three lakh rupees.

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 - Section 14AA - Enhanced Punishment in Certain Cases after Previous Conviction:

Whoever, having been convicted by a Court of an offence punishable under this Act, the Scheme or the Pension Scheme or the Insurance Scheme, commits the same offence shall be subject for every such subsequent offence to imprisonment for a term which may extend to five years, but which shall not be less than two two years, and shall also be liable to a fine of twenty-five thousand rupees.

Employees' State Insurance Act, 1948 - Section 85A - Enhanced Punishment in Certain Cases After Previous Conviction:

Whoever, having been convicted by a court of an offence punishable under this Act, commits the same offence shall, for every such subsequent offence, be punishable with imprisonment for a term which may extend to two years and with fine of five thousand rupees:

Provided that where such subsequent offence is for failure by the employer to pay any contribution which under this Act he is liable to pay, he shall, for every such subsequent offence, be punishable with imprisonment for a term which may extend to five years but which shall not be less than two years and shall also be liable to fine of twenty five thousand rupees.

Factories Act, 1934 - Section 61 - Enhanced Penalty in Certain Cases After Previous Conviction:

If any person who has been convicted of any offence punishable under clauses (b) to (g) inclusive of section 60 is again guilty of an offence involving a contravention of the same provision, he shall be punishable on the second conviction with fine which may extend to seven hundred and fifty rupees and shall not be less than one hundred rupees, and if he is again so guilty, shall be punishable on the third or any subsequent conviction with fine which may extend to one thousand rupees and shall not be less than two hundred and fifty rupees:

Provided that for the purposes of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished:

Provided further that the Court, if it is satisfied that there are exceptional circumstances warranting such a course, may, after recording its reasons in writing, impose a smaller fine than is required by this section.

Factories Act, 1948 - Section 94 - Enhanced Penalty after Previous Conviction:

(1) If any person who has been convicted of any offence punishable under section 92 is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to three years or with fine which shall not be less than ten thousand rupees but which may extend to two lakh rupees or with both:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a fine of less than ten thousand rupees:

Provided further that where contravention of any of the provisions of Chapter IV or any rule made thereunder or under section 87 has resulted in an accident causing death or

serious bodily injury, the fine shall not be less than thirty-five thousand rupees in the case of an accident causing death and ten thousand rupees in the case of an accident causing serious bodily injury.

(2) For the purposes of sub-section (1) no cognizance shall be taken of any conviction made more than two years before the commission or the offence for which the person is subsequently being convicted.

Motor Transport Workers' Act, 1961 - Section 33 - Enhanced Penalty after Previous Conviction:

If any person who has been convicted of any offence punishable under this Act is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both:

Provided that, for the purposes of this section, no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 31 - Enhanced Punishment for offences after Previous Conviction:

(1) If any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under this Act is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence punishable under this Act with the same amount of punishment shall be punished for the second and every subsequent offence with rigorous imprisonment for a term which may extend to one and one-half times of the

maximum term of imprisonment and also be liable to fine which shall extend to one and one-half times of the maximum amount of fine.

(2) Where the person referred to in sub-section (1) is liable to be punished with a minimum term of imprisonment and to a minimum amount of fine, the minimum punishment for such person shall be one and one-half times of the maximum term of imprisonment and one and one-half times of the maximum amount of fine:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding the fine for which a person is liable.

(3) Where any person is convicted by a competent court of criminal jurisdiction outside India under any corresponding law, such person, in respect of such conviction, shall be dealt with for the purposes of sub-sections (1) and (2) as if he had been convicted by a court in India.

Opium Act, 1878 - Section 9G - Enhanced Punishment After Previous Conviction:

Whoever, having been convicted of an offence punishable under section 9, 9A, 9B, 9C, 9D, 9E, or 9F, shall be guilty of any offence punishable under any of these sections, shall be liable for each such subsequent offence to twice the punishment which might be imposed on a first conviction under this Act:

Provided that nothing in this section shall prevent any offence, which might otherwise have been tried summarily under Chapter XXII of the Code of Criminal Procedure, 1898 (Act V of 1898) from being so tried.

Plantations Labour Act, 1951 - Section 37 - Enhanced Penalty after Previous Conviction:

If any person who has been convicted of any offence punishable under this Act is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment which may extend to one year, or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both:

Provided that for the purposes of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.

The Water (Prevention and Control of Pollution) Act, 1974 - Section 45 - Enhanced Penalty after Previous Conviction:

If any person who has been convicted of any offence under section 24 or section 25 or section 26 is again found guilty of an offence involving a contravention of the same provision, he shall, on the second and on every subsequent conviction, be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine:

Provided that for the purpose of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.

Go Back to Section 13, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 15 of Bharatiya Nyaya Sanhita, 2023:

Contempt of Courts Act, 1971 - Section 16 - Contempt By Judge, Magistrate or Other Person Acting Judicially:

(1) Subject to the provisions of any law for the time being in force, a judge, magistrate or other person acting judicially shall also be liable for contempt of his own court or of any other court in the same manner as any other individual is liable and the provisions of this Act shall, so far as may be, apply accordingly.

(2) Nothing in this section shall apply to any observation or remarks made by a judge, magistrate or other person acting judicially, regarding a subordinate court in an appeal or revision pending before such judge, magistrate or other person against the order or judgement of the subordinate court.

Go Back to Section 15, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 23 of Bharatiya Nyaya Sanhita, 2023:

Air Force Act, 1950 - Section 48 – Intoxication:

(1) Any person subject to this Act who is found in a state of intoxication, whether on duty or not, shall, on conviction by court-martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and if he is not an officer, be liable, subject to the provisions of sub-section (2), to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

(2) Where an offence of being intoxicated is committed by a person other than an officer when not on active service or not on duty, the period of imprisonment awarded shall not exceed six months.

Army Act, 1950 - Section 48 – Intoxication:

(1) Any person subject to this Act who is found in a state of intoxication, whether on duty or not, shall, on conviction by court- martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and, if he is not an officer, be liable, subject to the provisions of sub- section (2), to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

(2) Where an offence of being intoxicated is committed by a person other than an officer when not on active service or not on duty, the period of imprisonment awarded shall not exceed six months.

Border Security Force Act, 1968 - Section 26 – Intoxication:

Any person subject to this Act who is found in a state of intoxication, whether on duty or not, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to six months or such less punishment as is in this Act mentioned.

Air Force Act 1950 - Section 46 – Certain forms of disgraceful conduct.:

Any person subject to this Act who commits any of the following offences, that is to say,—

(a) is guilty of any disgraceful conduct of a cruel, indecent or unnatural kind; or

(b) malingers, or feigns, or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity; or

(c) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or that person,

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Indo-Tibetan Border Police Force Act, 1992 - Section 29 – Intoxication:

(1) Any person subject to this Act who is found in a state of intoxication, whether on duty or not, shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to six months or such less punishment as is in this Act mentioned.

(2) For the purposes of sub-section (1), a person shall be deemed to be in a state of intoxication if, owing to the influence of alcohol or any drug whether alone, or any combination with any other substance, he is unfit to be entrusted with his duty or with any duty which he may be called upon to perform or, behaves in a disorderly manner or in a manner likely to bring discredit to the Force.

Sashastra Seema Bal Act, 2007 - Section 29 – Intoxication:

(1) Any person subject to this Act who is found in a state of intoxication, whether on duty or not, shall, on conviction by a Froce Court, be liable to suffer imprisonment for a term which may extend to six months or such less punishment as is in this Act mentioned.

(2) For the purposes of sub-section (1), a person shall be deemed to be in a state of intoxication if, owing to the influence of alcohol or any drug whether alone, or any combination with any other substance, he is unfit to be entrusted with his duty or with any duty which he may be called upon to perform or, behaves in a disorderly manner or in a manner likely to bring discredit to the Force

Go Back to Section 23, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 24 of Bharatiya Nyaya Sanhita, 2023:

Sashastra Seema Bal Act, 2007 - Section 29 – Intoxication:

(1) Any person subject to this Act who is found in a state of intoxication, whether on duty or not, shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to six months or such less punishment as is in this Act mentioned.

(2) For the purposes of sub-section *(1)*, a person shall be deemed to be in a state of intoxication if, owing to the influence of alcohol or any drug whether alone, or any combination with any other substance, he is unfit to be entrusted with his duty or with any duty which he may be called upon to perform or, behaves in a disorderly manner or in a manner likely to bring discredit to the Force.

Go Back to Section 24, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 27 of Bharatiya Nyaya Sanhita, 2023:

Parsi Marriage and Divroce Act, 1865 - Section 45 - Settlement of Wife's Property For Benefit of Children:

In any case in which the Court shall pronounce a decree of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the Court that the wife is entitled to any property either in possession or re version the Court may order such settlement as it shall think reasonable to be made of such property or any part thereof for the benefit of the children of the marriage or any of them.

Go Back to Section 27, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 28 of Bharatiya Nyaya Sanhita, 2023:

Indian Contract Act, 1872 - Section 13 - 'Consent' Defined:

Two or more persons are said to consent when they agree upon the same thing in the same sense.

Indian Contract Act, 1872 - Section 14 - 'Free Consent' Defined:

Consent is said to be free when it is not caused by—

(1) coercion, as defined in section 15, or

(2) undue influence, as defined in section 16, or

(3) fraud, as defined in section 17, or

(4) misrepresentation, as defined in section 18, or

(5) mistake, subject to the provisions of sections 20, 21 and 22.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

New Delhi Municipal Council Act, 1994 - Section 344 - Consent ordinarily To Be Obtained:

Save as otherwise provided in this Act, rules, regulations or any bye-law made thereunder, no land or building shall be entered without the consent of the occupier, or if there is no occupier, of the owner thereof and no such entry shall be made without giving the said owner or occupier, as the case may be, not less than twenty-four hours' written notice of the intention to make such entry.

Provided that no such notice shall be necessary if the place to be inspected is a factory or workshop or trade premises or a place used for any of the purposes specified in section 327 or a stable for horses or a shed for cattle or a latrine or urinal or a work under construction, or for the purpose of ascertaining whether any animal intended for human consumption is slaughtered in that place in contravention of this Act or any bye-law made thereunder.

Go Back to Section 28, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 32 of Bharatiya Nyaya Sanhita, 2023:

Copyright Act, 1957 - Section 60 - Remedy In The Case of Groundless Threat of Legal Proceedings:

Where any person claiming to be the owner of copyright in any work, by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of an alleged infringement of the copyright, any person aggrieved thereby may, notwithstanding anything contained in section 34 of the Specific Relief Act, 1963 (47 of 1963), institute a declaratory suit that the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making such threats and may in any such suit--

(a) obtain an injunction against the continuance of such threats; and

(b) recover such damages, if any, as he has sustained by reason of such threats:

Provided that this section does not apply if the person making such threats, with due diligence, commences and prosecutes an action for infringement of the copyright claimed by him.

Unlawful Activities (Prevention) Act, 1967 - Section 22 - Punishment For Threatening Witness:

Whoever threatens any person who is a witness or any other person in whom such witness may be interested, with violence, or wrongfully restrains or confines the witness, or any other person in whom the witness may be interested, or does any other unlawful act with intent to cause any of the said acts, shall be punishable with imprisonment which may extend to three years, and shall also be liable to fine.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 216 - Procedure for witnesses in case of threatening, etc.:

A witness or any other person may file a complaint in relation to an offence under section 232 of the Bharatiya Nyaya Sanhita, 2023.

Bharatiya Sakshya Act, 2023 - Section 22- Confession caused by inducement, threat, coercion or promise, when irrelevant in criminal proceeding:

A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat, coercion or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him:

Provided that if the confession is made after the impression caused by any such inducement, threat, coercion or promise has, in the opinion of the Court, been fully removed, it is relevant:

Provided further that if such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

Go Back to Section 32, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 36 of Bharatiya Nyaya Sanhita, 2023:

The Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 48 - Committal To Approved Place of Juvenile or Child Suffering From Dangerous Diseases and His Future Disposal:

(1) When a juvenile or the child who has been brought before a competent authority under this Act, is found to be suffering from a disease requiring prolonged medical treatment or physical or mental complaint that will respond to treatment, the competent authority may send the juvenile or the child to any place recognised to be an approved place in accordance with the rules made under this Act for such period as it may think necessary for the required treatment.

Navy Act, 1957 - Section 180 - Application of Sections 171 To 179 To Persons of Unsound Mind:

The provisions of sections 171 to 179 shall, so far as they can be made applicable, also apply in the case of an officer or sailor subject to naval law who is ascertained in the prescribed manner to be of unsound mind notwithstanding anything contained in the Indian Lunacy

Act, 1912 (4 of 1912), or who, while on active service, is officially reported missing, as if the said officer or sailor had died on the day on which his unsoundness of mind is so ascertained or, as the case may be, on the day on which he is officially reported missing:

Provided that in the case of an officer or sailor so reported missing, no action shall be taken to dispose of the property under sections 171, 172 and 175 until such time as a certificate under the regulations made under this Act is issued by or under the authority of the Chief of the Naval Staff or other prescribed person that he is confirmed or presumed to be dead.

Go Back to Section 36, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 45 of Bharatiya Nyaya Sanhita, 2023:

Black Money (Undisclosed Foreign Income & Assets & Imposition of Tax Act, 2015 - Section 53 – Punishment for Abetment:

If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to tax payable under this Act which is false and which he either knows to be false or does not believe to be true or to commit an offence under sub-section (1) of section 51, he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.

Army Act, 1950 - Section 66 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 64 inclusive shall, on conviction by court-martial, if the Act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

The Bonded Labour System (Abolition) Act, 1976 - Section 20 - Abetment To Be An offence:

Whoever abets any offence punishable under this Act shall, whether or not the offence abetted is committed, be punishable with the same punishment as is provided for the offence which has been abetted.

Explanation,—For the purpose of this Act, "abetment" has the meaning assigned to it in the Indian Penal Code (45 of 1860).

Border Security Force Act, 1968 - Section 43 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 14 to 41 (both inclusive) shall, on conviction by a Security Force Court, if the Act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

Coast Guard Act, 1978 - Section 46 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 15 to 44 (both inclusive), shall, on conviction by a Coast Guard Court, if the act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment provided for that offence or such less punishment as is in this Act mentioned.

Companies (Profits) Surtax Act, 1964 - Section 22 - Abetment of False Returns, Etc:

If a person makes or induces in any manner another person to make and deliver any account, statement or declaration relating to chargeable profits liable to surtax which is false and which he either knows to be false or does not believe to be true, he shall be punishable with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

The Electricity Act, 2003 - Section 150 – Abetment:

(1) Whoever abets an offence punishable under this Act, shall, notwithstanding anything contained in the Indian Penal Code, be punished with the punishment provided for the offence.

(2) Without prejudice to any penalty or fine which may be imposed or prosecution proceeding which may be initiated under this Act or any other law for the time being in force, if any officer or other employee of the Board or the licensee enters into or acquiesces in any agreement to do, abstains from doing, permits, conceals or connives at any act or thing whereby any theft of electricity is committed, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Notwithstanding anything contained in sub-section (1) of section 135, subsection (1) of section 136, section 137 and section 138, the license or certificate of competency or permit or such other authorisation issued under the rules made or deemed to have been made under this Act to any person who acting as an electrical contractor, supervisor or worker abets the commission of an offence punishable under sub-section (1) of section 135, sub-section (1) of section 136, section 137, or section 138, on his conviction for such abetment, may also be cancelled by the licensing authority:

Provided that no order of such cancellation shall be made without giving such person an opportunity of being heard.

Explanation.--For the purposes of this sub-section, "licencing authority" means the officer who for the time being in force is issuing or renewing such licence or certificate of competency of permit or such other authorisation.

Essential Commodities Act, 1955 - Section 8 - Attempts and Abetment:

Any person who attempts to contravene, or abets a contravention of, any order made under section 3 shall be deemed to have contravened that order.

Expenditure-tax Act, 1987 - Section 28 - Abetment of False Returns, Etc:

If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to any chargeable expenditure which is false and which he either knows to be false or does not believe to be true or to commit an offence under section 25, he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years arid with fine.

Extradition Act, 1962 - Section 26 - Abetment of Extradition offences:

A fugitive criminal who is accused or convicted of abetting conspiring, attempting to commit, incit-ing or participating as an accomplice in the commission of any extradition offence shall be deemed for the purposes of this Act to be accused or convicted of having committed such offence and shall be liable to be arrested and surrendered accordingly.

Hotel Receipts Tax Act, 1980 - Section 30 - Abetment of False Return, Etc:

If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to any chargeable receipts which is false and which

he either knows to be false or does not believe to be true or to commit an offence under sub-section (1) of section 26, he shall be punishable,—

(a) in a case where the amount of tax, penalty or interest which would have been evaded, if the declaration, account or statement had been accepted as true, or which is willfully attempted to be evaded, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(b) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

Income Tax Act, 1961 - Section 278 - Abetment of False Return, Etc.:

If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to any income or any fringe benefits chargeable to tax which is false and which he either knows to be false or does not believe to be true or to commit an offence under sub-section (1) of section 276C, he shall be punishable,—

(i) in a case where the amount of tax, penalty or interest which would have been evaded, if the declaration, account or statement had been accepted as true, or which is wilfully attempted to be evaded, exceeds twenty-five hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to two years and with fine.

Air Force Act, 1950 - Section 68 – Abetment of offences that have been committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 66 inclusive, shall, on conviction by court-martial, if the act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

Air Force Act, 1950 - Section 69 - Abetment of offences punishable with death and not committed:

Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 34, 37 and sub-section (1) of section 38 shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Air Force Act, 1950 - Section 70 - Civil offences:

Subject to the provisions of section 72, any person subject to this Act who at any place in or beyond India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section shall be liable to be tried by a court-martial and, on conviction, be punishable as follows, that is to say,—

(a) if the offence is one which would be punishable under any law in force in India with death or with transportation, he shall be liable to suffer any punishment, other than whipping, assigned for the offence, by the aforesaid law and such less punishment as is in this Act mentioned; and

(b) in any other case, he shall be liable to suffer any punishment other than whipping "assigned for the offence by any law in force in India, or imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 22 -Sentences which High Courts and Sessions Judges may pass:

(1) A High Court may pass any sentence authorised by law.

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorised by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

Bharatiya Sakshya Act, 2023 -Section 117 - Presumption as to abetment of suicide by a married woman:

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.—For the purposes of this section, "cruelty" shall have the same meaning as in section 86 of the Bharatiya Nyaya Sanhita, 2023.

Go Back to Section 45, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 46 of Bharatiya Nyaya Sanhita, 2023:

Explosive Substances Act, 1908 - Section 6 - Punishment of Abettors:

Any person who by the supply or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any offence under this Act shall be punished with the punishment provided for the offence.

Go Back to Section 46, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 55 of Bharatiya Nyaya Sanhita, 2023:

Air Force Act, 1950 - Section 69 - Abetment of offences Punishable With Death and Not Committed:

Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 34, 37 and sub-section (1) of section 38 shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Army Act, 1950 - Section 67 - Abetment of offences Punishable With Death and Not Committed:

Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 34, 37 and sub- section (1) of section 38 shall, on conviction by court- martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to

suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Border Security Force Act, 1968 - Section 44 - Abetment of offences Punishable With Death and Not Committed:

Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 14, 17 and sub-section (1) of section 18 shall, on conviction by a Security Force Court, if that offence be not committed on consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Coast Guard Act, 1978 - Section 47 - Abetment of offences Punishable With Death and Not Committed:

Any person subject to this Act, who abets the commission of an offence punishable with death under section 17 shall, on conviction by a Coast Guard Court, if that offence be not committed in consequence of that abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Indo-Tibetan Border Police Force Act, 1992 - Section 47 - Abetment of offences Punishable With Death and Not Committed:

Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 16, 19 and sub-section (1) of section 20 shall, on conviction by a Force Court, if that offence be not committed in consequence of the abetment, and on express provision is made by this Act for the punishment of such abetment, be liable to

suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Go Back to Section 55, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 56 of Bharatiya Nyaya Sanhita, 2023:

Air Force Act, 1950 - Section 70 - Abetment of offences Punishable With Imprisonment and Not Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 66 inclusive and punishable with imprisonment shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Army Act, 1950 - Section 68 - Abetment of offences Punishable With Imprisonment and Not Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 64 inclusive and punishable with imprisonment shall, on conviction by court- martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Assam Rifles Act, 2006 - Section 54 - Abetment of offences Punishable With Imprisonment and Not Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 21 to 50 (both inclusive) and punishable with imprisonment shall, on conviction by an Assam Rifles Court, if that offence, be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned

Border Security Force Act, 1968 - Section 45 - Abetment of offences Punishable With Imprisonment and Not Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 14 to 41 (both inclusive) and punishable with imprisonment shall, on conviction by a Security Force Court, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Coast Guard Act, 1978 - Section 48 - Abetment of offences Punishable With Imprisonment and Not Committed:

Any person subject to this Act, who abets the commission of an offence punishable with death under section 17 shall, on conviction by a Coast Guard Court, if that offence be not committed in consequence of that abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Indo-Tibetan Border Police Force Act, 1992 - Section 48 - Abetment of offences Punishable With Imprisonment and Not Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 16 to 44 (both inclusive) and punishable with imprisonment shall, on conviction by a Force Court, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to onehalf of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Sashastra Seema Bal Act, 2007 - Section 48 - Abetment of offences Punishable With Imprisonment and Not Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 16 to 44 (both inclusive) and punishable with imprisonment shall, on conviction by a Force Court, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Go Back to Section 56, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 61 of Bharatiya Nyaya Sanhita, 2023:

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 29 - Punishment For Abetment and Criminal Conspiracy:

(1) Whoever abets, or is a party to a criminal conspiracy to commit an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything

contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which--

(a) would constitute an offence if committed within India; or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.

Trade Unions Act, 1926 - Section 17 - Criminal Conspiracy In Trade Disputes:

No office-bearer or member of a Registered Trade Union shall be liable to punishment under sub-section (2) of section 120B of the Indian Penal Code, 1860 (45 of 1860) in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union as is specified in section 15, unless the agreement is an agreement to commit an offence.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 217 - Prosecution for offences against the State and for criminal conspiracy to commit such offence:

(1) No Court shall take cognizance of--

(a) any offence punishable under Chapter VII or under section 196, section 299 or sub-section (1) of section 353 of the Bharatiya Nyaya Sanhita, 2023; or

(b) a criminal conspiracy to commit such offence; or

(c) any such abetment, as is described in section 47 of the Bharatiya Nyaya Sanhita, 2023, except with the previous sanction of the Central Government or of the State Government.

(2) No Court shall take cognizance of--

(a) any offence punishable under section 197 or sub-section (2) or sub-section (3) of section 353 of the Bharatiya Nyaya Sanhita, 2023; or

(b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.

(3) No Court shall take cognizance of the offence of any criminal conspiracy punishable under sub-section (2) of section 61 of the Bharatiya Nyaya Sanhita, 2023, other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of section 215 apply, no such consent shall be necessary.--

(4) The Central Government or the State Government may, before according sanction under sub-section (1) or sub-section (2) and the District Magistrate may, before according sanction under sub-section (2) and the State Government or the District Magistrate may, before giving consent under sub-section (3), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 174.

Go Back to Section 61, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 62 of Bharatiya Nyaya Sanhita, 2023:

Air Force Act, 1950 - Section 69 - Abetment of offences Punishable With Death and Not Committed:

Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 34, 37 and sub-section (1) of section 38 shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Air Force Act, 1950 - Section 70 - Abetment of offences Punishable With Imprisonment and Not Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 66 inclusive and punishable with imprisonment shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Border Security Force Act, 1968 - Section 44 - Abetment of offences Punishable With Death and Not Committed:

Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 14, 17 and sub-section (1) of section 18 shall, on conviction by a Security Force Court, if that offence be not committed on consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to

suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Border Security Force Act, 1968 - Section 45 - Abetment of offences Punishable With Imprisonment and Not Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 14 to 41 (both inclusive) and punishable with imprisonment shall, on conviction by a Security Force Court, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Coast Guard Act, 1978 - Section 47 - Abetment of offence Punishable With Death and Not Committed:

Any person subject to this Act, who abets the commission of an offence punishable with death under section 17 shall, on conviction by a Coast Guard Court, if that offence be not committed in consequence of that abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Coast Guard Act, 1978 - Section 48 - Abetment of offences Punishable With Imprisonment and Not Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 15 to 44 (both inclusive) and punishable with imprisonment shall, on conviction by a Coast Guard Court, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable

to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Indo-Tibetan Border Police Force Act, 1992 - Section 48 - Abetment of offences Punishable With Imprisonment and Not Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 16 to 44 (both inclusive) and punishable with imprisonment shall, on conviction by a Force Court, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Indo-Tibetan Border Police Force Act, 1992 - Section 47 - Abetment of offences Punishable With Death and Not Committed:

Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 16, 19 and sub-section (1) of section 20 shall, on conviction by a Force Court, if that offence be not committed in consequence of the abetment, and on express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Sashastra Seema Bal Act, 2007 - Section 47 - Abetment of offences Punishable With Death and Not Committed:

Any person subject to this Act who abets the commission of any of the offences punishable with death, under sections 16, 19 and sub-section *(1)* of section 20 shall, on conviction by a

Force Court, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Sashastra Seema Bal Act, 2007 - Section 48 - Abetment of offences Punishable With Imprisonment and Not Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 16 to 44 (both inclusive) and punishable with imprisonment shall, on conviction by a Force Court, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Air Force Act, 1950 - Section 67 – Attempt:

Any person subject to this Act who attempts to commit any of the offences specified in sections 34 to 66 inclusive, and in such attempt does any act towards the commission of the offence shall, on conviction by court-martial, where no express provision is made by this Act for the punishment of such attempt, be liable, 28 if the offence attempted to be committed is punishable with death, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

if the offence attempted to be committed is punishable with imprisonment, to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Air Force Act, 1950 - Section 68 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 66 inclusive, shall, on conviction by court-martial, if the act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

Go Back to Section 62, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 63 of Bharatiya Nyaya Sanhita, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 52 -Examination of person accused of rape by medical practitioner:

(1) When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometres from the place where the offence has been committed, by any other registered medical practitioner, acting at the request of any police officer, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

(2) The registered medical practitioner conducting such examination shall, without any delay, examine such person and prepare a report of his examination giving the following particulars, namely:--

(i) the name and address of the accused and of the person by whom he was brought;

(ii) the age of the accused;

(iii) marks of injury, if any, on the person of the accused;

(iv) the description of material taken from the person of the accused for DNA profiling; and

(v) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report.

(5) The registered medical practitioner shall, without any delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 193 as part of the documents referred to in clause (a) of sub-section (6) of that section.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 184 -Medical examination of the victim of rape:

(1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

(2) The registered medical practitioner, to whom such woman is sent, shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely:--

(i) the name and address of the woman and of the person by whom she was brought;

(ii) the age of the woman;

(iii) the description of material taken from the person of the woman for DNA profiling;

(iv) marks of injury, if any, on the person of the woman;

(v) general mental condition of the woman; and

(vi) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall, within a period of seven days forward the report to the investigating officer who shall forward it to the Magistrate referred to in section 193 as part of the documents referred to in clause (a) of sub-section (6) of that section.

(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.

Explanation.--For the purposes of this section, "examination" and "registered medical practitioner" shall have the same meanings as respectively assigned to them in section 51.

Bharatiya Sakshya Act, 2023 - Section 120 - Presumption as to absence of consent in certain prosecution for rape:

In a prosecution for rape under sub-section (2) of section 64 of the Bharatiya Nyaya Sanhita, 2023, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.

Explanation. – In this section, "sexual intercourse" shall mean any of the acts mentioned in section 63 of the Bharatiya Nyaya Sanhita, 2023.

Go Back to Section 63, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 72 of Bharatiya Nyaya Sanhita, 2023:

Juvenile Justice (Care and Protection of Children) Act, 2015 - Section74 - Prohibition on Disclosure of Identity of Children:

(1) No report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published:

Provided that for reasons to be recorded in writing, the Board or Committee, as the case may be, holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the best interest of the child.

(2) The Police shall not disclose any record of the child for the purpose of character certificate or otherwise in the pending case or in the case which has been closed or disposed of.

(3) Any person contravening the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to two lakh rupees or both.

Go Back to Section 72, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 75 of Bharatiya Nyaya Sanhita, 2023:

The Protection of Children From Sexual offences Act, 2012 - Section 11 - Sexual Harassment:

A person is said to commit sexual harassment upon a child when such person with sexual intent,—

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefore.

Explanation. – Any question which involves "sexual intent" shall be a question of fact.

The Protection of Children From Sexual offences Act, 2012 - Section 12 - Punishment For Sexual Harassment:

Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 - Section 3 - Prevention of Sexual Harassment:

(1) No woman shall be subjected to sexual harassment at any workplace.

(2) The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment: --

(i) implied or explicit promise of preferential treatment in her employment; or

(ii) implied or explicit threat of detrimental treatment in her employment: or

(iii) implied or explicit threat about her present or future employment status; or

(iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or

(v) humiliating treatment likely to affect her health or safety.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 - Section 9 - Complaint of Sexual Harassment:

(1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that where such complaint cannot be made in writing, the Presiding officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

Go Back to Section 75, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 80 of Bharatiya Nyaya Sanhita, 2023:

The Dowry Prohibition Act, 1961 - Section 2 - Definition of 'Dowry':

In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly--

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation II.--The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 194 - Police to enquire and report on suicide, etc.:

(1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule made by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forwarded to the District Magistrate or the Sub-divisional Magistrate within twenty-four hours.

(3) When--

(i) the case involves suicide by a woman within seven years of her marriage; or

(ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or

(iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or

(iv) there is any doubt regarding the cause of death; or

(v) the police officer for any other reason considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical person appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate.

Bharatiya Sakshya Act, 2023 - Section 117 - Presumption as to abetment of suicide by a married woman:

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard

to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation. – For the purposes of this section, "cruelty" shall have the same meaning as in section 86 of the Bharatiya Nyaya Sanhita, 2023.

Bharatiya Sakshya Act, 2023 - Section 118 - Presumption as to dowry death:

When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death, such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation. – For the purposes of this section, "dowry death" shall have the same meaning as in section 80 of the Bharatiya Nyaya Sanhita, 2023.

Go Back to Section 80, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 82 of Bharatiya Nyaya Sanhita, 2023:

Special Marriage Act, 1954 - Section 15 - Registration of marriages celebrated in other forms:

Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnized under the Special Marriage Act, 1872 (III of 1872) or under this Act, may be registered under this Chapter by a Marriage officer in the territories to which this Act extends if the following conditions are fulfilled, namely:--

(a) a ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since;

(b) neither party has at the time of registration more than one spouse living;

(c) neither party is an idiot or a lunatic at the time of registration;

(d) the parties have completed the age of twenty-one years at the time of registration;

(e) the parties are not within the degrees of prohibited relationship:

Provided that in the case of a marriage celebrated before the commencement of this Act, this condition shall be subject to any law, custom or usage having the force of law governing each of them which permits of a marriage between the two; and

(f) the parties have been residing within the district of the Marriage officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage.

Special Marriage Act, 1954 - Section 43 - Penalty On Married Person Marrying Again Under This Act:

Save as otherwise provided in Chapter III, every person who, being at the time married, procures, a marriage of himself or herself to be solemnized under this Act shall be deemed to have committed an offence under section 494 or section 495 of the Indian Penal Code, 1860 (45 of 1860), as the case may be, and the marriage so solemnized shall be void.

Go Back to Section 82, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 84 of Bharatiya Nyaya Sanhita, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 198 - Place of inquiry or trial:

(a) When it is uncertain in which of several local areas an offence was committed; or

(b) where an offence is committed partly in one local area and partly in another; or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one; or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

Go Back to Section 84, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 85 of Bharatiya Nyaya Sanhita, 2023:

Divorce Act, 1869 - Section 52 - Competence of Husband and Wife To Give Evidence As To Cruelty or Desertion:

On any petition presented, by a husband or a wife, praying that his or her marriage may be dissolved by reason of his wife or her husband, as the case may be, having been guilty of adultery, cruelty or desertion the husband and wife re-spectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

Hindu Marriage Act, 1955 - Section 13 – Divorce:

(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

(i) has, after the solemnization of the marriage, had voluntary sexual inter-course with any person other than his or her spouse; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

(ii) has ceased to be a Hindu by conversion to another religion; or

(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation.-

In this clause,-

(a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or

(v) has been suffering from venereal disease in a communicable form; or

vi) has renounced the world by entering any religious order; or

(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive;

Explanation.-In this sub-section, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

(1A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground-

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution or conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,-

(i) in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner:

Provided that in either case the other wife is alive at the time of the presentation of the petition; or

(ii) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality; or

(iii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) (or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898)], a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards;

(iv) that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

Explanation.-This clause applies whether the marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976).

Protection of Women from Domestic Violence Act, 2005 - Section 3 - Definition of Domestic Violence:

For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it -

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.--For the purposes of this section,--

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes-

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.-For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

Dissolution of Muslim Marriages Act, 1939 - Section 2 - Grounds For Decree For Dissolution of Marriage:

A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely.--

(i) that the whereabouts of the husband have not been known for a period of four years;

(ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years;

(iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards;

(iv) that the husband has failed to perform, without reasonable cause his marital obligations for a period of three years;

(v) that the husband was impotent at the time of the marriage and continues to be so;

(vi) that the husband has been insane for a period of two years or is suffering from a virulent venereal disease;

(vii) that she having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years:

Provided that the marriage has not been consummated:.--

(viii) that the husband treats her with cruelty, that is to say.--

(a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or

(b) associates with women of evil repute or leads an infamous life, or

(c) attempts to force her to lead an immoral life, or

(d) disposes of her property or prevents her exercising her legal rights over it, or

(e) obstructs her in the observance of her religious profession or practice, or

(f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Quran;

(ix) or any other ground which is recognised as valid for the dissolution of marriages under Muslim law:

Provided that.--

(a) no decree shall be passed on ground (iii) until the sentence has become final;

(b) a decree passed on ground (i) shall not take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorised agent within that period and satisfies the Court that he is prepared to perform his conjugal duties, the Court shall set aside the said decree; and

(c) before passing a decree on ground (v) the Court shall on application by the husband, make an order requiring the husband to satisfy the Court, within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground.

Divorce Act, 1869 - Section 10 - Grounds For Dissolution of Marriage:

(1) Any marriage solemnized, whether before or after the commencement of the Indian Divorce (Amendment) Act, 2001, may, on a petition presented to the Dis-trict Court either by the husband or the wife, be dissolved on the ground that since the solemnization of the marriage, the respondent --

(i) has committed adultery; or

(ii) has ceased to be Christian by conversion to another religion; or

(iii) has been incurably of unsound mind for a continuous period of not less than two years immediately preceding the presentation of the petition; or

(v) has, for a period of not less than two years immediately preceding the presentation of the petition, been suffering from venereal disease in a communi-cable form; or

(vi) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent if the respondent had been alive; or

(vii) has wilfully refused to consummate the marriage and the marriage has not therefore been consummated; or

(viii) has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of the decree against the respondent; or

(ix) has deserted the petitioner for at least two years immediately preced-ing the presentation of the petition; or

(x) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent.

(2) A wife may also present a petition for the dissolution of her marriage on the ground that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality."

Bharatiya Sakshya Act, 2023 - Section 117 - Presumption as to abetment of suicide by a married woman:

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide

within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation. – For the purposes of this section, "cruelty" shall have the same meaning as in section 86 of the Bharatiya Nyaya Sanhita, 2023.

Go Back to Section 85, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 98 of Bharatiya Nyaya Sanhita, 2023:

The Immoral Traffic (Prevention) Act, 1956 - Section 5 - Procuring, Inducing or Taking Person For The Sake of Prostitution:

(1) Any person who-

(a) procures or attempts to procure a person, whether with or without his consent, for the purpose of prostitution; or

(b) induces a person to go from any place, with the intent that he may for the purpose of prostitution become the inmate of, or frequent, a brothel; or

(c) takes or attempts to take a person, or causes a person to be taken, from one place to another with a view to his carrying on, or being brought up to carry on prostitution; or

(d) causes or induces a person to carry on prostitution;

shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-Section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:

Provided that if the person in respect of whom an offence committed under this sub-Section,-

(i) is a child, the punishment provided under this sub-Section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and

(ii) is a minor, the punishment provided under this sub-Section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years;

(3) An offence under this Section shall be triable-

(a) in the place from which a person is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such person is made; or

(b) in the place to which he may have gone as a result of the inducement or to which he is taken or caused to be taken or an attempt to take him is made.

The Immoral Traffic (Prevention) Act, 1956 - Section 6 - Detaining A Person In Premises Where Prostitution Is Carried On:

(1) Any person who detains any other person, whether with or without his consent,-

(a) in any brothel, or

(b) in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person, shall be punishable on conviction, with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under sub-section (1).

(2A) Where a child or minor found in a brothel, is on medical examination, detected to have been sexually abused, it shall be presumed, unless the contrary is proved, that the child or minor has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes.

(3) A person shall be presumed to detain a woman or girl in a brothel or in or upon any premises for the purpose of sexual intercourse with a man other than her lawful husband, if such person, with intent to compel or induce her to remain there,-

(a) withholds from her any jewellery, wearing apparel, money or other property belonging to her, or

(b) threatens her with legal proceedings if she takes away with her any jewellery, wearing apparel, money or other property lent or supplied to her by or by the direction of such person.

(4) Notwithstanding any law to the contrary, no suit, prosecution or other legal proceeding shall lie against such woman or girl at the instance of the person by whom she has been detained, for the recovery of any jewellery, wearing apparel or other property alleged to have been lent or supplied to or for such woman or girl or to have been pledged by such woman or girl or for the recovery of any money alleged to be payable by such woman or girl.

The Immoral Traffic (Prevention) Act, 1956 - Section 8 - Seducing or Soliciting For Purpose of Prostitution:

Whoever, in any public place or within sight of, and in such manner as to be seen or heard from, any public place, whether from within any building or house or not-

(a) by words, gestures, willful exposure of his person (whether by sitting by a window or on the balcony of a building or house or in any other way), or otherwise tempts or endeavours to tempt, or attracts or endeavours to attract the attention of, any person for the purpose of prostitution; or

(b) solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution,

shall be punishable on first conviction with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to one year, and also with line which may extend to five hundred rupees:

Provided that where an offence under this section is committed by a man, he shall be punishable with imprisonment for a period of not less than seven days but which may extend to three months.

But, a man who commits any of offences under this section, shall be punishable with imprisonment for not less than 7 days but upto 3 months.

Go Back to Section 98, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 107 of Bharatiya Nyaya Sanhita, 2023:

Bharatiya Sakshya Act, 2023 - Section 117 - Presumption as to abetment of suicide by a married woman:

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard

to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation. – For the purposes of this section, "cruelty" shall have the same meaning as in section 86 of the Bharatiya Nyaya Sanhita, 2023.

Go Back to Section 107, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 108 of Bharatiya Nyaya Sanhita, 2023:

Bharatiya Sakshya Act, 2023 - Section 117 - Presumption as to abetment of suicide by a married woman:

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation. – For the purposes of this section, "cruelty" shall have the same meaning as in section 86 of the Bharatiya Nyaya Sanhita, 2023.

Go Back to Section 108, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 114 of Bharatiya Nyaya Sanhita, 2023:

Indian Railways Act, 1890 - Section 127 - Maliciously hurting or attempting to hurt persons travelling by railway:

If a person unlawfully throws or causes to fall or strike at, against, into or upon any rolling-stock forming part of a train any wood, stone or other matter or thing with intent, or with

knowledge that he is likely, to endanger the safety of any person being in or upon such rolling-stock or in or upon any other rolling-stock forming part of the same train, he shall be punished with transportation for life or with imprisonment for a term which may extend to ten years.

Metro Railway (Operations and Maintenance) Act, 2002 - Section 76 - Maliciously Hurting or Attempting to Hurt Persons Travelling By Metro Railway:

If any person unlawfully throws or causes to fall or strike at, against, into or upon any rolling stock forming part of a train, any wood, stone or other matter or thing with intent, or with knowledge that it is likely to endanger the safety of any person being in or upon such rolling stock or in or upon any other rolling stock forming part of the same train, he shall be punishable with imprisonment for life or with imprisonment for a term which may extend to ten years.

Railways Act, 1989 - Section 152 - Maliciously Hurting or Attempting to Hurt Persons Travelling By Railway:

If any person unlawfully throws or causes to fall or strike at, against, into or upon any rolling stock forming part of a train, any wood, stone or other matter or thing with intent, or with knowledge that he is likely to endanger the safety of any person being in or upon such rolling stock or in or upon any other rolling stock forming part of the same train, he shall be punishable with imprisonment for life, or with imprisonment for a term which may extend to ten years.

Go Back to Section 114, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 115 of Bharatiya Nyaya Sanhita, 2023:

Indian Railways Act, 1890 - Section 127 - Maliciously hurting or attempting to hurt persons travelling by railway:

If a person unlawfully throws or causes to fall or strike at, against, into or upon any rolling-stock forming part of a train any wood, stone or other matter or thing with intent, or with knowledge that he is likely, to endanger the safety of any person being in or upon such rolling-stock or in or upon any other rolling-stock forming part of the same train, he shall be punished with transportation for life or with imprisonment for a term which may extend to ten years.

Metro Railway (Operations and Maintenance) Act, 2002 - Section 76 - Maliciously Hurting or Attempting to Hurt Persons Travelling By Metro Railway:

If any person unlawfully throws or causes to fall or strike at, against, into or upon any rolling stock forming part of a train, any wood, stone or other matter or thing with intent, or with knowledge that it is likely to endanger the safety of any person being in or upon such rolling stock or in or upon any other rolling stock forming part of the same train, he shall be punishable with imprisonment for life or with imprisonment for a term which may extend to ten years.

Railways Act, 1989 - Section 152 - Maliciously Hurting or Attempting to Hurt Persons Travelling By Railway:

If any person unlawfully throws or causes to fall or strike at, against, into or upon any rolling stock forming part of a train, any wood, stone or other matter or thing with intent, or with knowledge that he is likely to endanger the safety of any person being in or upon such rolling stock or in or upon any other rolling stock forming part of the same train, he

shall be punishable with imprisonment for life, or with imprisonment for a term which may extend to ten years.

Go Back to Section 115, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 116 of Bharatiya Nyaya Sanhita, 2023:

Motor Vehicles Act, 1988 - Section 164 - Payment of Compensation In Case of Death or Grievous Hurt, Etc.:

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a compensation, of a sum of five lakh rupees in case of death or of two and a half lakh rupees in case of grievous hurt to the legal heirs or the victim, as the case may be.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or grievous hurt in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or of the vehicle concerned or of any other person.

(3) Where, in respect of death or grievous hurt due to an accident arising out of the use of motor vehicle, compensation has been paid under any other law for the time being in force, such amount of compensation shall be reduced from the amount of compensation payable under this section.

Go Back to Section 116, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 117(1) of Bharatiya Nyaya Sanhita, 2023:

Motor Vehicles Act, 1988 - Section 164 - Payment of Compensation In Case of Death or Grievous Hurt, Etc.:

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a compensation, of a sum of five lakh rupees in case of death or of two and a half lakh rupees in case of grievous hurt to the legal heirs or the victim, as the case may be.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or grievous hurt in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or of the vehicle concerned or of any other person.

(3) Where, in respect of death or grievous hurt due to an accident arising out of the use of motor vehicle, compensation has been paid under any other law for the time being in force, such amount of compensation shall be reduced from the amount of compensation payable under this section.

Go Back to Section 117(1), Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 123 of Bharatiya Nyaya Sanhita, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 368 - Procedure in case of person of unsound mind tried before Court:

(1) If at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such

unsoundness of mind and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.

(2) If during trial, the Magistrate or Court of Session finds the accused to be of unsound mind, he or it shall refer such person to a psychiatrist or clinical psychologist for care and treatment, and the psychiatrist or clinical psychologist, as the case may be, shall report to the Magistrate or Court whether the accused is suffering from unsoundness of mind:

Provided that if the accused is aggrieved by the information given by the psychiatrist or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board which shall consist of--

(a) head of psychiatry unit in the nearest Government hospital; and

(b) a faculty member in psychiatry in the nearest Government medical college.

(3) If the Magistrate or Court is informed that the person referred to in sub-section (2) is a person of unsound mind, the Magistrate or Court shall further determine whether the unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate or Court shall record a finding to that effect and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if the Magistrate or Court finds that no prima facie case is made out against the accused, he or it shall, instead of postponing the trial, discharge the accused and deal with him in the manner provided under section 369:

Provided that if the Magistrate or Court finds that a prima facie case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the trial for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused.

(4) If the Magistrate or Court finds that a prima facie case is made out against the accused and he is incapable of entering defence by reason of intellectual disability, he or it shall not hold the trial and order the accused to be dealt with in accordance with section 369.

Bharatiya Nagarik Suraksha Sanhita, 2023 -Section 369 - Release of person of unsound mind pending investigation or trial:

(1) Whenever a person if found under section 367 or section 368 to be incapable of entering defence by reason of unsoundness of mind or intellectual disability, the Magistrate or Court, as the case may be, shall, whether the case is one in which bail may be taken or not, order release of such person on bail:

Provided that the accused is suffering from unsoundness of mind or intellectual disability which does not mandate in-patient treatment and a friend or relative undertakes to obtain regular out-patient psychiatric treatment from the nearest medical facility and to prevent from doing injury to himself or to any other person.

(2) If the case is one in which, in the opinion of the Magistrate or Court, as the case may be, bail cannot be granted or if an appropriate undertaking is not given, he or it shall order the accused to be kept in such a place where regular psychiatric treatment can be provided, and shall report the action taken to the State Government:

Provided that no order for the detention of the accused in a public mental health establishment shall be made otherwise than in accordance with such rules as the State Government may have made under the Mental Healthcare Act, 2017 (10 of 2017).

(3) Whenever a person is found under section 367 or section 368 to be incapable of entering defence by reason of unsoundness of mind or intellectual disability, the Magistrate or Court, as the case may be, shall keeping in view the nature of the act committed and the extent of unsoundness of mind or intellectual disability, further determine if the release of the accused can be ordered:

Provided that--

(a) if on the basis of medical opinion or opinion of a specialist, the Magistrate or Court, as the case may be, decide to order discharge of the accused, as provided under section 367 or section 368, such release may be ordered, if sufficient security is given that the accused shall be prevented from doing injury to himself or to any other person;

(b) if the Magistrate or Court, as the case may be, is of the opinion that discharge of the accused cannot be ordered, the transfer of the accused to a residential facility for persons with unsoundness of mind or intellectual disability may be ordered wherein the accused may be provided care and appropriate education and training.

Go Back to Section 123, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 128 of Bharatiya Nyaya Sanhita, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 148 - Dispersal of assembly by use of civil force:

(1) Any Executive Magistrate or officer in charge of a police station or, in the absence of such officer in charge, any police officer, not below the rank of a sub-inspector, may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Executive Magistrate or police officer referred to in sub-section (1), may proceed to disperse such assembly by force, and may require the assistance of any person, not being an officer or member of the armed forces and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form

part of it, in order to disperse such assembly or that they may be punished according to law.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 147 - Enforcement of order of maintenance:

A copy of the order of maintenance or interim maintenance and expenses of proceedings, as the case may be, shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance for the maintenance or the allowance for the interim maintenance and expenses of proceeding, as the case may be, is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance, or as the case may be, expenses, due.

Go Back to Section 128, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 130 of Bharatiya Nyaya Sanhita, 2023:

National Security Guard Act, 1986 - Section 22 - Assault and Obstruction:

Any person subject to this Act who commits any of the following offences, that is to say,-

(a) being concerned in any quarrel, affray or disorder, refuses to obey any officer, though of inferior rank, who orders him into arrest, or uses criminal force to, or assaults any such officer; or

(b) uses criminal force to, or assaults any person, whether subject to this Act or not, in whose custody he is lawfully placed, and whether he is or is not his superior officer; or

(c) resists an escort whose duty it is to apprehend him or have him in charge; or

(d) breaks out of barracks, camp or quarters; or

(e) refuses to obey any general, local or other order,

shall, on conviction by a Security Guard Court, be liable to suffer imprisonment for a term which may extend, in the case of offences specified in clauses (d) and (e), to two years, and in the case of the offences specified in the other clauses, to ten years, or in either case such less punishment as is in this Act mentioned.

Protection of Children from Sexual offences Act, 2012 - Section 3 - Penetrative Sexual Assault:

A person is said to commit "penetrative sexual assault" if—

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

Protection of Children from Sexual offences Act, 2012 - Section 4 - Punishment For Penetrative Sexual Assault:

Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

Protection of Children from Sexual offences Act, 2012 - Section 5 - Aggravated Penetrative Sexual Assault:

(a) Whoever, being a police officer, commits penetrative sexual assault on a child —

(i) within the limits of the police station or premises at which he is appointed; or

(ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known as, or identified as, a police officer; or

(b) whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child—

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the forces or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where the said person is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits penetrative sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or

(g) whoever commits gang penetrative sexual assault on a child.

Explanation. – When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(j) whoever commits penetrative sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (b) of section 2 of the Mental Health Act, 1987 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or

(ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;

(iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or Infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or

(k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or

(l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or

(m) whoever commits penetrative sexual assault on a child below twelve years; or

(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or

(o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or

(p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or

(q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or

(r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or

(s) whoever commits penetrative sexual assault on a child in the course of communal or sectarian violence; or

(t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or

(u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public,

is said to commit aggravated penetrative sexual assault.

Protection of Children from Sexual offences Act, 2012 - Section 6 - Punishment For Aggravated Penetrative Sexual Assault:

Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

Protection of Children from Sexual offences Act, 2012- Section 7 - Sexual Assault:

Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

Protection of Children from Sexual offences Act, 2012 - Section 8 - Punishment For Sexual Assault:

Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

Protection of Children from Sexual offences Act, 2012- Section 9 - Aggravated Sexual Assault:

(a) Whoever, being a police officer, commits sexual assault on a child—

(i) within the limits of the police station or premises where he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known as, or identified as a police officer; or

(b) whoever, being a member of the armed forces or security forces, commits sexual assault on a child—

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the security or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits sexual assault on a child in that institution; or

(g) whoever commits gang sexual assault on a child.

Explanation. – when a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(h) whoever commits sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(j) whoever commits sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (l) of section 2of the Mental Health Act, 1987 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or

(ii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or

(k) whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child; or

(l) whoever commits sexual assault on the child more than once or repeatedly; or

(m) whoever commits sexual assault on a child below twelve years; or

(n) whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits sexual assault on such child; or

(o) whoever, being in the ownership or management or staff, of any institution providing services to the child, commits sexual assault on the child in such institution; or

(p) whoever, being in a position of trust or authority of a child, commits sexual assault on the child in an institution or home of the child or anywhere else; or

(q) whoever commits sexual assault on a child knowing the child is pregnant; or

(r) whoever commits sexual assault on a child and attempts to murder the child; or

(s) whoever commits sexual assault on a child in the course of communal or sectarian violence; or

(t) whoever commits sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or

(u) whoever commits sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated sexual assault.

Protection of Children from Sexual offences Act, 2012 - Section 10 - Punishment For Aggravated Sexual Assault:

Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Go Back to Section 130, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 137(1) of Bharatiya Nyaya Sanhita, 2023:

Juvenile Justice (Care and Protection of Children) Act, 2015 - Section 84 - Kidnapping and Abduction of Child:

For the purposes of this Act, the provisions of sections 359 to 369 of the Indian Penal Code (45 of 1860), shall mutatis mutandis apply to a child or a minor who is under the age of eighteen years and all the provisions shall be construed accordingly.

Guardians and Wards Act, 1890 - Section 7 - Power of The Court To Make orders As To Guardianship:

(1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made—

(a) appointing a guardian of his person or property or both, or (b) declaring a person to be such a guardian,

the Court may make an order accordingly.

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.

(3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.

Hindu Minority and Guardianship Act, 1956 - Section 7 - Natural Guardianship of Adopted Son:

The natural guardianship of an adopted son who is a minor passes, on adoption, to the adoptive father and after him to the adoptive mother.

Hindu Widows' Remarriage Act, 1856 - Section 3 - Guardianship of Children of Deceased Husband On The Remarriage of His Widow:

On the re-marriage of a Hindu widow, if neither the widow nor any other person has been expressly constituted by the will or testamentary disposition of the deceased husband the guardian of his children the father or paternal grandfather or the mother or paternal grandmother, of the deceased husband, or any male relative of the deceased husband, may petition the highest Court having original jurisdiction in civil cases in the place where the deceased husband was domiciled at the time of his death for the appointment of some proper person to be guardian of the said children, and thereupon it shall be lawful for the said Court, if it shall think fit, to appoint such guardian, who when appointed shall be entitled to have the care and custody of the said children, or of any of them during their minority, in the place of their mother; and in making such appointment the Court shall be guided, so far as may be by the laws and rules in force touching the guardianship of children who have neither father nor mother:

Provided that, when the said children have not property of their own sufficient for their support and proper education whilst minors, no such appointment shall be made otherwise than with the consent of the mother unless the proposed guardian shall have given security for the support and proper education of the children whilst minors.

Go Back to Section 137, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 137(2) of Bharatiya Nyaya Sanhita, 2023:

Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 24 - Removal of Disqualification On The Findings of An offence:

(1) Notwithstanding anything contained in any other law for the time being in force, a child who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attached to a conviction of an offence under such law:

Provided that in case of a child who has completed or is above the age of sixteen years and is found to be in conflict with law by the Children's Court under clause (i) of sub-section (1) of section 19, the provisions of sub-section (1) shall not apply.

(2) The Board shall make an order directing the Police, or by the Children's court to its own registry that the relevant records of such conviction shall be destroyed after the expiry of the period of appeal or, as the case may be, a reasonable period as may be prescribed:

Provided that in case of a heinous offence where the child is found to be in conflict with law under clause (i) of sub-section (1) of section 19, the relevant records of conviction of such child shall be retained by the Children's Court.

Juvenile Justice (Care and Protection of Children) Act, 2015 - Section 76 - Employment of Child For Begging:

(1) Whoever employs or uses any child for the purpose of begging or causes any child to beg shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees:

Provided that, if for the purpose of begging, the person amputates or maims the child, he shall be punishable with rigorous imprisonment for a term not less than seven years which may extend up to ten years, and shall also be liable to fine of five lakh rupees.

(2) Whoever, having the actual charge of, or control over the child, abets the commission of an offence under sub-section (1), shall be punishable with the same punishment as provided for in sub-section (1) and such person shall be considered to be unfit under sub-clause (v) of clause (14) of section 2:

Provided that the said child, shall not be considered a child in conflict with law under any circumstances, and shall be removed from the charge or control of such guardian or custodian and produced before the Committee for appropriate rehabilitation.

The Juvenile Justice Act, 1986 - Section 42 - Employment of Juveniles For Begging:

(1) Whoever employs or uses any juvenile for the purposes of begging or causes any juvenile to beg shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) Whoever, having the actual charge of, or control over, a juvenile abets the commission of the offence punishable under sub-section (1), shall be punishable with imprisonment for a term which may extend to one year and shall also be liable to fine.

(3) Tile offence punishable under this section shall be cognizable.

Go Back to Section 137(2), Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 138 of Bharatiya Nyaya Sanhita, 2023:

Juvenile Justice (Care and Protection of Children) Act, 2015 - Section 84 - Kidnapping and Abduction of Child:

For the purposes of this Act, the provisions of sections 359 to 369 of the Indian Penal Code (45 of 1860), shall mutatis mutandis apply to a child or a minor who is under the age of eighteen years and all the provisions shall be construed accordingly.

Go Back to Section 138, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 143 of Bharatiya Nyaya Sanhita, 2023:

Constitution of India - Article 23 - Prohibition of Traffic In Human Beings and Forced Labour:

(1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Go Back to Section 143, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 146 of Bharatiya Nyaya Sanhita, 2023:

Protection of Civil Rights Act, 1955 - Section 7A - Unlawful Compulsory Labour To Be Deemed To Be A Practice of "Untouchability":

(1)Whoever compels any person, on the ground of "untouchability", to do any scavenging or sweeping or to remove any carcass or to flay any animal, or to remove the umbilical cord or to do any other job of a similar nature shall be deemed to have enforced a disability arising out of "untouchability".

(2)Whoever is deemed under sub-section (1) to have enforced a disability arising out of "untouchability" shall be punishable with imprisonment for a term which shall not be less than three months and not more than six months and also with fine which shall not be less than one hundred rupees and not more than five hundred rupees.

Explanation-- For the purposes of this section, "compulsion" includes a threat of social or economic boycott.

Go Back to Section 146, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 156 of Bharatiya Nyaya Sanhita, 2023:

Collection of Statistics Act, 2008 - Section 29 - Public Servants:

Any statistics officer and any person authorised for the collection of statistics or preparation of official statistics under the provisions of this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860(45 of 1860).

Go Back to Section 156, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 157 of Bharatiya Nyaya Sanhita, 2023:

Collection of Statistics Act, 2008 - Section 29 - Public Servants:

Any statistics officer and any person authorised for the collection of statistics or preparation of official statistics under the provisions of this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860(45 of 1860).

Go Back to Section 157, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 159 of Bharatiya Nyaya Sanhita, 2023:

Air Force Act, 1950 - Section 37 – Mutiny:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) begins, incites, causes, or conspires with any other persons to cause, any mutiny in the military, naval or air forces of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny; does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to commit such mutiny or any such conspiracy, does not, without delay, give information thereof to his commanding or other superior officer; or

(e) endeavours to seduce any person in the military, naval or air forces of India from his duty or allegiance to the Union;

shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.

Army Act, 1950 - Section 37 – Mutiny:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) begins, incites, causes, or conspires with any other person to cause any mutiny in the military, naval or air forces of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d)knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny, or of any such conspiracy, does not, without delay, give information thereof to his commanding or mentioned.

Border Security Force Act, 1968 - Section 17 – Mutiny:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) begins, incites, causes or conspires with any other person to cause any mutiny in the Force or in the military, naval or air forces of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his Commandant or other superior officer; or

(e) endeavours to seduce any person in the Force or in the military, naval or air forces of India or any forces co-operating therewith from his duty or allegiance to the Union,

shall, on conviction by a Security Force Court, be liable to suffer death or such less punishment as is in this Act mentioned.

Coast Guard Act, 1978 - Section 17 – Mutiny:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) begins, incites, causes or conspires with any other person to cause any mutiny in the Coast Guard or in the military, naval or air forces of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not without delay, give information thereof to his Commanding officer or other superior officer; or

(e) endeavours to seduce any person in the Coast Guard or in the military, naval or air forces of India or any forces co-operating therewith from his duty or allegiance to the Union,

shall, on conviction by a Coast Guard Court, be liable to suffer death or such less punishment as is in this Act mentioned:

Provided that a sentence of death awarded under this section shall not be carried out unless it is confirmed by the Central Government.

Air Force Act, 1950 - Section 35 - offences Punishable More Severely On Active Service Than At Other Times:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) forces a safeguard, or forces or uses criminal force to a sentry; or

(b) breaks into any house or other place in search of plunder; or

(c) being a sentry sleeps upon his post, or is intoxicated; or

(d) without orders from his superior officer leaves his guard, piquet, patrol or post; or

(e) intentionally or through neglect occasions a false alarm in camp or quarters; or spreads reports calculated to create unnecessary alarm or despondency; or

(f) makes known the parole, watchword or countersign to any person not entitled to receive it; or knowingly gives a parole, watchword or countersign different from what he received: or

(g) without due authority alters or interferes with any air signal;

shall, on conviction by court-martial,

if he commits any such offence when on active service, be liable to suffer imprisonment for a term, which may extend to fourteen years or such less punishment as is in this Act mentioned; and

if he commits any such offence when not on active service, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Indo-Tibetan Border Police Force Act, 1992 - Section 19 – Mutiny:

Any person subject to this Act who commits any of the following offences, that is to say,-

(a) begins, incites, causes or conspires with any other person to cause any mutiny in the Force or in the military, naval or air force of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not without delay, give information thereof to his commanding officer or other superior officer; or

(e) endeavours, to seduce any person in the Force or in the military, naval or air force of India or any forces co-operating therewith from his duty or allegiance to the Union,

shall, on conviction by a Force Court, be liable to suffer death or such less punishment as is in this Act mentioned.

National Security Guard Act, 1986 - Section 17 – Mutiny:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) begins, incites, causes or conspires with any other person to cause any mutiny in the security Guard or in the military, naval, air forces or any other armed force of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his Commander or other superior officer; or

(e) endeavours to seduce any person in the Security Guard or in the military, naval, air forces or any other armed force of India or any forces co-operating therewith from his duty or allegiance to the Union,

shall, on conviction by a Security Guard Court, be liable to suffer death or such less punishment as is in this Act mentioned.

Navy Act, 1957 - Section 42 - Mutiny Defined:

Mutiny means any assembly or combination of two or more persons subject to naval law, the Army Act, 1950, or the Air Force Act, 1950, or between persons two at least of whom are subject to naval law or any such Act,--

(a) to overthrow or resist lawful authority in the Navy, regular Army or Air Force or any part of any one or more of them or any forces co-operating therewith or any part thereof; or

(b) to disobey such authority in such circumstances as to make the disobedience subversive of discipline or with the object of avoiding any duty or service against, or in connection with operations against, the enemy; or

(c) to show contempt to such authority in such circumstances as to make such conduct subversive of discipline; or

(d) to impede the performance of any duty or service in the Navy, regular Army or Air Force or any part of any one or more of them or any forces co-operating therewith or any part thereof.

Navy Act, 1957 - Section 43 - Punishment For Mutiny:

Every person subject to naval law, who,--

(a) joins in a mutiny; or

(b) begins, incites, causes or conspires with any other persons to cause, a mutiny; or

(c) endeavours to incite any person to join in a mutiny or to commit an act of mutiny; or

(d) endeavours to seduce any person in the regular Army, Navy or Air Force from his allegiance to the Constitution or loyalty to the State or duty to his superior officers or uses any means to compel or induce any such person to abstain from acting against the enemy or discourage such person from acting against the enemy; or

(e) does not use his utmost exertions to suppress 1[or prevent] a mutiny; or

(f) willfully conceals any traitorous or mutinous practice or design or any traitorous words spoken against the State; or

(g) knowing or having reason to believe in the existence of any mutiny or of any intention to mutiny does not without delay give information thereof to the commanding officer of his ship or other superior officer; or

(h) utters words of sedition or mutiny; shall be punished with death or such other punishment as is hereinafter mentioned.

Sashastra Seema Bal Act, 2007 - Section 19 – Mutiny:

Any person subject to this Act who commits any of the following offences, namely:--

(a) begins, incites, causes or conspires with any other person to cause any mutiny in the Force or in the military, naval or air force of India or any forces cooperating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his commanding officer or other superior officer; or

(e) endeavours to seduce any person in the Force or in the military, naval or air force of India or any forces co-operating therewith from his duty or allegiance to the Union,

shall, on conviction by a Force Court, be liable to suffer death or such less punishment as is in this Act mentioned.

Air Force Act, 1950 - Section 57 - Falsifying official Documents and False Declaration:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) in any report, return, list, certificate; book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of, any false or fraudulent statement; or

(b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c) knowingly and. with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Army Act, 1950 – Section 66 – Abetment of offences that have been committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 64 inclusive shall, on conviction by court-martial, if the Act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

Army Act, 1950 - Section 67 - Abetment of offences punishable with death and not committed:

Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 34, 37 and sub-section (1) of section 38, shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Army Act, 1950 - Section 68 - Abetment of offences punishable with imprisonment and not committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 64 inclusive and punishable with imprisonment shall, on conviction by courl-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Go Back to Section 159, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 160 of Bharatiya Nyaya Sanhita, 2023:

Air Force Act, 1950 - Section 37 – Mutiny:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) begins, incites, causes, or conspires with any other persons to cause, any mutiny in the military, naval or air forces of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny; does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to commit such mutiny or any such conspiracy, does not, without delay, give information thereof to his commanding or other superior officer; or

(e) endeavours to seduce any person in the military, naval or air forces of India from his duty or allegiance to the Union;

shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.

Army Act, 1950 - Section 37 – Mutiny:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) begins, incites, causes, or conspires with any other person to cause any mutiny in the military, naval or air forces of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d)knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny, or of any such conspiracy, does not, without delay, give information thereof to his commanding or mentioned.

Border Security Force Act, 1968 - Section 17 – Mutiny:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) begins, incites, causes or conspires with any other person to cause any mutiny in the Force or in the military, naval or air forces of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his Commandant or other superior officer; or

(e) endeavours to seduce any person in the Force or in the military, naval or air forces of India or any forces co-operating therewith from his duty or allegiance to the Union,

shall, on conviction by a Security Force Court, be liable to suffer death or such less punishment as is in this Act mentioned.

Coast Guard Act, 1978 - Section 17 – Mutiny:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) begins, incites, causes or conspires with any other person to cause any mutiny in the Coast Guard or in the military, naval or air forces of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not without delay, give information thereof to his Commanding officer or other superior officer; or

(e) endeavours to seduce any person in the Coast Guard or in the military, naval or air forces of India or any forces co-operating therewith from his duty or allegiance to the Union,

shall, on conviction by a Coast Guard Court, be liable to suffer death or such less punishment as is in this Act mentioned:

Provided that a sentence of death awarded under this section shall not be carried out unless it is confirmed by the Central Government.

Air Force Act, 1950 - Section 35 - offences Punishable More Severely On Active Service Than At Other Times:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) forces a safeguard, or forces or uses criminal force to a sentry; or

(b) breaks into any house or other place in search of plunder; or

(c) being a sentry sleeps upon his post, or is intoxicated; or

(d) without orders from his superior officer leaves his guard, piquet, patrol or post; or

(e) intentionally or through neglect occasions a false alarm in camp or quarters; or spreads reports calculated to create unnecessary alarm or despondency; or

(f) makes known the parole, watchword or countersign to any person not entitled to receive it; or knowingly gives a parole, watchword or countersign different from what he received: or

(g) without due authority alters or interferes with any air signal;

shall, on conviction by court-martial,

if he commits any such offence when on active service, be liable to suffer imprisonment for a term, which may extend to fourteen years or such less punishment as is in this Act mentioned; and

if he commits any such offence when not on active service, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Indo-Tibetan Border Police Force Act, 1992 - Section 19 – Mutiny:

Any person subject to this Act who commits any of the following offences, that is to say,-

(a) begins, incites, causes or conspires with any other person to cause any mutiny in the Force or in the military, naval or air force of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not without delay, give information thereof to his commanding officer or other superior officer; or

(e) endeavours, to seduce any person in the Force or in the military, naval or air force of India or any forces co-operating therewith from his duty or allegiance to the Union,

shall, on conviction by a Force Court, be liable to suffer death or such less punishment as is in this Act mentioned.

National Security Guard Act, 1986 - Section 17 – Mutiny:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) begins, incites, causes or conspires with any other person to cause any mutiny in the security Guard or in the military, naval, air forces or any other armed force of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his Commander or other superior officer; or

(e) endeavours to seduce any person in the Security Guard or in the military, naval, air forces or any other armed force of India or any forces co-operating therewith from his duty or allegiance to the Union,

shall, on conviction by a Security Guard Court, be liable to suffer death or such less punishment as is in this Act mentioned.

Navy Act, 1957 - Section 42 - Mutiny Defined:

Mutiny means any assembly or combination of two or more persons subject to naval law, the Army Act, 1950, or the Air Force Act, 1950, or between persons two at least of whom are subject to naval law or any such Act,--

(a) to overthrow or resist lawful authority in the Navy, regular Army or Air Force or any part of any one or more of them or any forces co-operating therewith or any part thereof; or

(b) to disobey such authority in such circumstances as to make the disobedience subversive of discipline or with the object of avoiding any duty or service against, or in connection with operations against, the enemy; or

(c) to show contempt to such authority in such circumstances as to make such conduct subversive of discipline; or

(d) to impede the performance of any duty or service in the Navy, regular Army or Air Force or any part of any one or more of them or any forces co-operating therewith or any part thereof.

Navy Act, 1957 - Section 43 - Punishment For Mutiny:

Every person subject to naval law, who,--

(a) joins in a mutiny; or

(b) begins, incites, causes or conspires with any other persons to cause, a mutiny; or

(c) endeavours to incite any person to join in a mutiny or to commit an act of mutiny; or

(d) endeavours to seduce any person in the regular Army, Navy or Air Force from his allegiance to the Constitution or loyalty to the State or duty to his superior officers or uses any means to compel or induce any such person to abstain from acting against the enemy or discourage such person from acting against the enemy; or

(e) does not use his utmost exertions to suppress or prevent a mutiny; or

(f) willfully conceals any traitorous or mutinous practice or design or any traitorous words spoken against the State; or

(g) knowing or having reason to believe in the existence of any mutiny or of any intention to mutiny does not without delay give information thereof to the commanding officer of his ship or other superior officer; or

(h) utters words of sedition or mutiny; shall be punished with death or such other punishment as is hereinafter mentioned.

Sashastra Seema Bal Act, 2007 - Section 19 – Mutiny:

Any person subject to this Act who commits any of the following offences, namely:--

(a) begins, incites, causes or conspires with any other person to cause any mutiny in the Force or in the military, naval or air force of India or any forces cooperating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his commanding officer or other superior officer; or

(e) endeavours to seduce any person in the Force or in the military, naval or air force of India or any forces co-operating therewith from his duty or allegiance to the Union,

shall, on conviction by a Force Court, be liable to suffer death or such less punishment as is in this Act mentioned.

Air Force Act, 1950 - Section 68 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 66 inclusive, shall, on conviction by court-martial, if the Act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

Army Act, 1950 - Section 66 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 64 inclusive shall, on conviction by court-martial, if the Act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

Border Security Force Act, 1968 - Section 43 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 14 to 41 (both inclusive) shall, on conviction by a Security Force Court, if the Act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

Coast Guard Act, 1978 - Section 46 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 15 to 44 (both inclusive), shall, on conviction by a Coast Guard Court, if the act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment provided for that offence or such less punishment as is in this Act mentioned.

Indo-Tibetan Border Police Force Act, 1992 - Section 46 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 16 to 44 (both inclusive) shall, on conviction by a Force Court, if the act abetted is committed in consequence of the abetment and no express provision is made by the Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

Army Act, 1950 - Section 67 - Abetment of offences punishable with death and not committed:

Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 34, 37 and sub-section (1) of section 38, shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Army Act, 1950 - Section 68 - Abetment of offences punishable with imprisonment and not committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 64 inclusive and punishable with imprisonment shall, on conviction by courl-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Go Back to Section 160, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 161 of Bharatiya Nyaya Sanhita, 2023:

Army Act, 1950 - Section 40 - Striking or threatening superior officers:

Any person

(b) uses threatening language to such officer, or

(c) uses insubordinate language to such officer,

shall, on conviction by court-martial, if such officer is at the time in the execution of his office or, if the offence is committed on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act

Provided that in the case of an offence specified in clause (c), the imprisonment

Air Force Act, 1950 - Section 40 - Striking or threatening superior officers:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) uses criminal force to, or assaults his superior officer, or

(b) uses threatening language to such officer; or

(c) uses insubordinate language to such officer

shall, or, conviction by court-martial,

if such officer is at the time in the execution of his office or, if the offence is committed on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

in other cases, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned:

Provided that in the case of an offence specified in clause (c), the imprisonment shall not exceed five years.

Coast Guard Act, 1978 - Section 19 - Striking or threatening superior officers:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) uses criminal force to or assaults his superior officer; or

(b) uses threatening language to such officer; or

(c) uses insubordinate language to such officer; or

(d) behaves with contempt to such officer,

shall, on conviction by a Coast Guard Court, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

Provided that in the case of offences specified in clauses (c) and (d), the imprisonment shall not exceed five years.

Navy Act, 1957 - Section 45 - Striking superior officers:

Every person subject to naval law who commits any of the following offences, that is to say,--

(a)strikes or attempts to strike his superior officer; or

(b)draws or lifts up any weapon against such officer; or

(c)uses or attempts to use any violence against such officer;

shall be punished.--

if the offence is committed on active service with imprisonment for a term which may extend to ten years or such other punishment as is hereinafter mentioned; and

in any other case, with imprisonment for a term which may extend to five years or such other punishment as is hereinafter mentioned.

Indo-Tibetan Border Police Force Act, 1992 - Section 22 - Striking or threatening superior officer:

Any person subject to this Act who commits any of the following offences, that is to say,-

(a) uses criminal force to or assaults his superior officer; or

(b) uses threatening language to such officer; or

(c) uses insubordinate language to such officer,

shall, on conviction by a Force Court,-

(i) if such officer is at the time in the execution of his office or, if the offence is committed on active duty, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

(ii) in other cases be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned:

Provided that in the case of an offence specified in clause (c), the imprisonment shall not exceed five years.

National Security Guard Act, 1986 - Section 20 - Striking or threatening superior officer:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) uses criminal force to or assaults his superior officer; or

(b) uses threatening language to such officer; or

(c) uses insubordinate language to such officer, shall, on conviction by a Security Guard Court,--

(i) if such officer is at the time in the execution of his office or, if the offence is committed on active duty, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

(ii) in other cases, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned:

Provided that in the case of any offence specified in clause (c), the imprisonment shall not exceed five years.

Sashastra Seema Bal Act, 2007 - Section 22 - Striking or threatening superior officer:

Any person subject to this Act who commits any of the following offences, namely:--

(a) uses criminal force to or assaults his superior officer; or

(b) uses threatening language to such officer; or

(c) uses insubordinate language to such officer, shall, on conviction by a Force Court,--

(i) if such officer is at the time in the execution of his office or, if the offence is committed on active duty, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

(ii) in other cases, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned:

Provided that in the case of an offence specified in clause (c), the imprisonment shall not exceed five years.

Border Security Force Act, 1968 - Section 20 - Striking or threatening superior officer:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a)uses criminal force to or assaults his superior officer; or

(b)uses threatening language to such officer; or

(c)uses insubordinate language to such officer;

shall, on conviction by a Security Force Court,--

(A)if such officer is at the time in the execution of his office or, if the offence is committed on active duty, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

(B)in other cases, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned:

Provided that in the case of an offence specified in clause (c), the imprisonment shall not exceed five years.

Go Back to Section 161, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 162 of Bharatiya Nyaya Sanhita, 2023:

Army Act, 1950 - Section 66 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 64 inclusive shall, on conviction by court-martial, if the Act abetted is

committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

Border Security Force Act, 1968 - Section 43 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 14 to 41 (both inclusive) shall, on conviction by a Security Force Court, if the Act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

Coast Guard Act, 1978 - Section 46 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 15 to 44 (both inclusive), shall, on conviction by a Coast Guard Court, if the act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment provided for that offence or such less punishment as is in this Act mentioned.

Indo-Tibetan Border Police Force Act, 1992 - Section 46 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 16 to 44 (both inclusive) shall, on conviction by a Force Court, if the act abetted is committed in consequence of the abetment and no express provision is made by the Act

for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

Indian Air Force Act, 1932 - Section 57 - Falsifying official Documents and False Declaration:

Any person subject to this Act who commits any of the following offences, that is to say,-

(a) in any report, return list, certificate, book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of, any false or fraudulent statement; or

(b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c) knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement, shall, on conviction by Court-Martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Border Security Force Act, 1968 - Section 20 - Striking or threatening superior officer:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a)uses criminal force to or assaults his superior officer; or

(b)uses threatening language to such officer; or

(c)uses insubordinate language to such officer;

shall, on conviction by a Security Force Court,--

(A)if such officer is at the time in the execution of his office or, if the offence is committed on active duty, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

(B)in other cases, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned:

Provided that in the case of an offence specified in clause (c), the imprisonment shall not exceed five years.

Army Act, 1950 - Section 40 - Striking or threatening superior officers:

Any person

(b) uses threatening language to such officer, or

(c) uses insubordinate language to such officer,

shall, on conviction by court-martial, if such officer is at the time in the execution of his office or, if the offence is committed on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act

Provided that in the case of an offence specified in clause (c), the imprisonment

Go Back to Section 162, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 163 of Bharatiya Nyaya Sanhita, 2023:

National Security Guard Act, 1986 - Section 18 - Desertion and aiding desertion:

(1)Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by a Security Guard Court,--

(i)if he commits the offence when on active duty or when under orders for active duty, be liable to suffer death or such less punishment as is in this Act mentioned; and

(ii)if he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(2)Any person subject to this Act who knowingly harbours any such deserter shall, on conviction by a Security Guard Court, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

(3)Any person subject to this Act who, being cognizant of any desertion or attempt at desertion of a person subject to this Act, does not forthwith give notice to his own or some other superior officer, or take any steps in his power to cause such person to be apprehended, shall, on conviction by a Security Guard Court, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned. (4) For the purposes of this Act, a person deserts,--

(a)if he absents from his unit or the place of duty at any time with the intention of not reporting back to such unit or place, or who, at any time and under any circumstances when absent from his unit or place of duty, does any act which shows that he has an intention of not reporting to such unit or place of duty;

(b)if he absents himself without leave with intent to avoid any active duty.

Border Security Force Act, 1968 - Section 18 - Desertion and aiding desertion:

1) Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by a Security Force Court,--

(a) if he commits the offence when on active duty or when under order for active duty, be liable to suffer death or such less punishment as is in this Act mentioned; and

(b) if he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who knowingly harbours any such deserter shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(3) Any person subject to this Act who, being cognizant of any desertion or attempt at desertion of a person subject to this Act, does not forthwith give notice to his own or some other superior officer, or take any steps in his power to cause such person to be apprehended, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

Army Act, 1950 - Section 38 - Desertion and aiding desertion:

subject to this Act who deserts or attempts to desert the service orders for active service, be liable to suffer death or such less punishment as is in this Act mentioned; and

if he commits the offence under any other' circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

subject to this Act who, knowingly harbours any such deserter mentioned.

subject to this Act, who, being cognizant of any desertion or attempt at desertion of a person subject to this Act, does not forthwith give notice to his own or some his power to cause such person to be apprehended, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

Air Force Act, 1952 - Section 38 - Desertion and aiding desertion:

(1)Any person subject to this Act who deserts or attempts to desert the service shall on conviction by court-martial,

if he commits the offence on active service or when under orders for active service, be liable to suffer death or such less punishment as is in this Act mentioned; and

if he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(2)Any person subject to this Act who knowingly harbours any such deserter shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(3)Any person subject to this Act who, being cognizant of any desertion or attempt at desertion of a person subject to this Act, does not forthwith give notice to his own or some other superior officer, or take any steps in his power to cause such person to be

apprehended, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

Coast Guard Act, 1978 - Section 16 - Deserting post and neglect of duty:

Any person subject to this Act, who,--

(a) treacherously holds correspondence with, or communicates intelligence to, an offender; or

(b) willfully fails to make known to the proper authorities any information he may have received from an offender; or

(c) assists the offender in any manner; or

(d) having been captured by an offender, voluntarily serves with or aids him,

shall, on conviction by a Coast Guard Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Explanation.-- For the purposes of this section, "offender" includes--

(a) all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of any person subject to this Act to take action; and

(b) any person or persons engaged in smuggling, unlawful exploration or exploitation or any other unlawful activity in the maritime zones of India.

Indo-Tibetan Border Police Force Act, 1992 - Section 20 - Desertion and aiding desertion:

(1) Any person subject to this Act deserts or attempts to desert the service shall, on conviction by a Force Court-

(a) if he commits the offence when on active duty or when under orders for active duty, be liable to suffer death or such less punishment as is in this Act mentioned; and

(b) if he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who knowingly harbours any such deserter shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in the Act mentioned.

(3) Any reason subject to this Act who, being cognizant of any desertion or attempt at desertion of a person subject to this Act, does not forthwith give notice to his own or some other superior officer, or take any steps in his power to cause such pension to be apprehended, shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

(4) For the purposes of this Act, a person deserts,-

(a) if he absents from his unit or the place of duty at any time with the intention of not reporting back to such unit or place, or who, at any time and under any circumstances when absent from his unit or place of duty, does any act which shows that he has an intention of not reporting to such unit or place of duty;

(b) if he absents himself without leave with intent to avoid any active duty.

Navy Act, 1957 - Section 41 - Deserting post and neglect of duty:

Every person subject to naval law, who,--

(a) deserts his post; or

(b) sleeps upon his watch; or

(c) fails to perform or negligently performs the duty imposed on him; or

(d) willfully conceals any words, practice or design tending to the hindrance of the naval service;

shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

Go Back to Section 163, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 170 of Bharatiya Nyaya Sanhita, 2023:

Indian Telegraph Act, 1885 - Section 31 – Bribery:

A telegraph officer shall be deemed a public servant within the meaning of sections 161, 162, 163, 164 and 165 of the Indian Penal Code, 1860 (45 of 1860); and in the definition of "legal remuneration" contained in the said section 161, the word "Government" shall, for the purposes of this Act, be deemed to include a person licensed under this Act.

Go Back to Section 170, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 173 of Bharatiya Nyaya Sanhita, 2023:

Indian Telegraph Act, 1885 - Section 31 – Bribery:

A telegraph officer shall be deemed a public servant within the meaning of sections 161, 162, 163, 164 and 165 of the Indian Penal Code, 1860 (45 of 1860); and in the definition of "legal remuneration" contained in the said section 161, the word "Government" shall, for the purposes of this Act, be deemed to include a person licensed under this Act.

Go Back to Section 173, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 174 of Bharatiya Nyaya Sanhita, 2023:

The Representation of People Act, 1951 - Section 123(2) - Corrupt Practices:

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right:

Provided that--

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who-

(i) thereatens any candidate or any elector, or any person in whom a candidate or an elector interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

Indian Contract Act, 1872 - Section 16 - 'Undue Influence' Defined:

(1) A Contract is said to be induced by `undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another-

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall be upon the person in a position to dominate the will of the other.

(4) Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872 (1 of 1872).

Illustrations

(a) A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(b) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services, B employs undue influence.

(c) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(d) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts

the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

Go Back to Section 174, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 178 of Bharatiya Nyaya Sanhita, 2023:

Coinage Act, 2011 - Section 2(a) - "Coin":

"coin" means any coin which is made of any metal or any other material stamped by the Government or any other authority empowered by the Government in this behalf and which is a legal tender including commemorative coin and Government of India one rupee note.

Explanation. – For the removal of doubts, it is hereby clarified that a "coin" does not include the credit card, debit card, postal order and e-money issued by any bank, post office or financial institution;

Coinage Act, 2011 - Section 10 - Power To Certain Persons To Cut Counterfeit Coins:

Where any coin minted or issued by or under the authority of the Government is tendered to any person authorised by the Government under section 9 and such person has reason to believe that the coin is counterfeit, he shall by himself or through another person cut or break the coin, and the tenderer shall bear the loss caused by such cutting or breaking.

Indian Stamp Act, 1899 - Section 2(26):

"stamp" means any mark, seal or endorsement by any agency or person duly authorised by the State Government, and includes an adhesive or impressed stamp, for the purposes of duty chargeable under this Act.

Go Back to Section 178, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 179 of Bharatiya Nyaya Sanhita, 2023:

Coinage Act, 2011 - Section 2(a) - "Coin":

"coin" means any coin which is made of any metal or any other material stamped by the Government or any other authority empowered by the Government in this behalf and which is a legal tender including commemorative coin and Government of India one rupee note.

Explanation. – For the removal of doubts, it is hereby clarified that a "coin" does not include the credit card, debit card, postal order and e-money issued by any bank, post office or financial institution;

Go Back to Section 179, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 189 of Bharatiya Nyaya Sanhita, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 130 - order to be made:

When a Magistrate acting under section 126, section 127, section 128 or section 129, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force and the number of sureties, after considering the sufficiency and fitness of sureties.

Go Back to Section 189, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 195 of Bharatiya Nyaya Sanhita, 2023:

National Security Guard Act, 1986 - Section 22 - Assault and Obstruction:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) being concerned in any quarrel, affray or disorder, refuses to obey any officer, though of inferior rank, who orders him into arrest, or uses criminal force to, or assaults any such officer; or

(b) uses criminal force to, or assaults any person, whether subject to this Act or not, in whose custody he is lawfully placed, and whether he is or is not his superior officer; or

(c) resists an escort whose duty it is to apprehend him or have him in charge; or

(d) breaks out of barracks, camp or quarters; or

(e) refuses to obey any general, local or other order,

shall, on conviction by a Security Guard Court, be liable to suffer imprisonment for a term which may extend, in the case of offences specified in clauses (d) and (e), to two years, and in the case of the offences specified in the other clauses, to ten years, or in either case such less punishment as is in this Act mentioned.

Go Back to Section 195, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 203 of Bharatiya Nyaya Sanhita, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 Section 527 - Public servant concerned in sale not to purchase or bid for property

A public servant having any duty to perform in connection with the sale of any property under this Sanhita shall not purchase or bid for the property.

Go Back to Section 203, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 205 of Bharatiya Nyaya Sanhita, 2023:

Collection of Statistics Act, 2008 - Section 29 - Public Servants:

Any statistics officer and any person authorised for the collection of statistics or preparation of official statistics under the provisions of this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Go Back to Section 205, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 208 of Bharatiya Nyaya Sanhita, 2023:

Collection of Statistics Act, 2008 - Section 29 - Public Servants:

Any statistics officer and any person authorised for the collection of statistics or preparation of official statistics under the provisions of this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Go Back to Section 208, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 209 of Bharatiya Nyaya Sanhita, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 90 - Issue of warrant in lieu of, or in addition to, summons:

A Court may, in any case in which it is empowered by this Sanhita to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest--

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 84 - Proclamation for person absconding:

(1) 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.

(2) The proclamation shall be published as follows:--

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(4) 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.

(5) 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).

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 203 - offence committed on journey or voyage:

When an offence is committed whilst the person by or against whom, or the thing in respect of which, the offence is committed is in the course of performing a journey or voyage, the offence may be inquired into or tried by a Court through or into whose local jurisdiction that person or thing passed in the course of that journey or voyage.

Go Back to Section 209, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 227 of Bharatiya Nyaya Sanhita, 2023:

The Administrator-General's Act, 1913 - Section 51 - False Evidence:

Whoever, during any examination authorised by this Act, makes upon oath a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

Administrators-General Act, 1963 - Section 50 - Power To Make Rules:

(1) The Government shall make rules for carrying into effect the objects of this Act and for regulating the proceedings of the Administrator General.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for--

(a) the accounts to be kept by the Administrator General and the audit and inspection thereof,

(b) the safe custody, deposit and investment of assets and securities which come into the hands of the Administrator General,

(c) the remittance of sums of money in the hands of the Administrator General, in cases in which such remittances are required,

(d) subject to the provisions of this Act, the fees to be paid under this Act, and the collection and accounting for any such fees,

(e) the statements, schedules and other documents to be submitted to the Government or to any other authority by the Administrator General, and the publication of such statements, schedules or other documents,

(f) the realization of the cost of preparing any such statements, schedules or other such documents,

(g) the manner in which and the person by whom the costs of and incidental to any audit under the provisions of this Act are to be determined and defrayed,

(h) the manner in which summonses issued under the provisions of section 46 are to be served and the payment of the expenses of any persons summoned or examined under the provisions of this Act and of any expenditure incidental to such examination, and

(i) any matter in this Act directed to be prescribed.

(3) All rules made under this Act shall be published in the official Gazette and, on such publication, shall have effect as if enacted in this Act.

Air Force Act, 1950 - Section 120 - Prohibition of Second Trial:

When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been dealt with under section 82 or section 86, he shall not be liable to be tried again for the same offence by a court-martial or dealt with under the said sections.

Army Act, 1950 - Section 60 - False Evidence:

Any person subject to this Act who, having been duly sworn or affirmed before any court-martial or other court competent under this Act to admin-ister an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Border Security Force Act, 1968 - Section 38 - False Evidence:

Any person subject to this Act who, having been duly sworn or affirmed before any Security Force Court or other court competent under this Act to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Marine Act, 1887 - Section 35 - False Evidence:

A person subject to this Act who, when examined on oath before an Indian Marine Court or a commanding officer exercising jurisdiction under this Act, intentionally gives false evidence, shall suffer imprisonment for a term which may extend to seven years.

Indo-Tibetan Border Police Force Act, 1992 - Section 41 - False Evidence:

Any person subject to this Act who, having been duly sworn or affirmed before any Force Court or other court competent under this Act to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

National Security Guard Act, 1986 - Section 37 - False Evidence:

Any person subject to this Act who, having been duly sworn or affirmed before any Security Guard Court, or before any officer competent under this Act to administer oath or affirmation or before a Court of inquiry constituted under this Act, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by a Security Guard Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Sashastra Seema Bal Act, 2007 - Section 41 - False Evidence:

Any person subject to this Act who, having been duly sworn or affirmed before any Force Court or other court competent under this Act to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Go Back to Section 227, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 228 of Bharatiya Nyaya Sanhita, 2023:

The Administrator-General's Act, 1913 - Section 51 - False Evidence:

Whoever, during any examination authorised by this Act, makes upon oath a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

Administrators-General Act, 1963 - Section 50 - Power To Make Rules:

(1) The Government shall make rules for carrying into effect the objects of this Act and for regulating the proceedings of the Administrator General.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for--

(a) the accounts to be kept by the Administrator General and the audit and inspection thereof,

(b) the safe custody, deposit and investment of assets and securities which come into the hands of the Administrator General,

(c) the remittance of sums of money in the hands of the Administrator General, in cases in which such remittances are required,

(d) subject to the provisions of this Act, the fees to be paid under this Act, and the collection and accounting for any such fees,

(e) the statements, schedules and other documents to be submitted to the Government or to any other authority by the Administrator General, and the publication of such statements, schedules or other documents,

(f) the realization of the cost of preparing any such statements, schedules or other such documents,

(g) the manner in which and the person by whom the costs of and incidental to any audit under the provisions of this Act are to be determined and defrayed,

(h) the manner in which summonses issued under the provisions of section 46 are to be served and the payment of the expenses of any persons summoned or examined under the provisions of this Act and of any expenditure incidental to such examination, and

(i) any matter in this Act directed to be prescribed.

(3) All rules made under this Act shall be published in the official Gazette and, on such publication, shall have effect as if enacted in this Act.

Air Force Act, 1950 - Section 120 - Prohibition of Second Trial:

When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been dealt with under section 82 or section 86,

he shall not be liable to be tried again for the same offence by a court-martial or dealt with under the said sections.

Army Act, 1950 - Section 60 - False Evidence:

Any person subject to this Act who, having been duly sworn or affirmed before any court-martial or other court competent under this Act to admin-ister an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Border Security Force Act, 1968 - Section 38 - False Evidence:

Any person subject to this Act who, having been duly sworn or affirmed before any Security Force Court or other court competent under this Act to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Marine Act, 1887 - Section 35 - False Evidence:

A person subject to this Act who, when examined on oath before an Indian Marine Court or a commanding officer exercising jurisdiction under this Act, intentionally gives false evidence, shall suffer imprisonment for a term which may extend to seven years.

Indo-Tibetan Border Police Force Act, 1992 - Section 41 - False Evidence:

Any person subject to this Act who, having been duly sworn or affirmed before any Force Court or other court competent under this Act to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

National Security Guard Act, 1986 - Section 37 - False Evidence:

Any person subject to this Act who, having been duly sworn or affirmed before any Security Guard Court, or before any officer competent under this Act to administer oath or affirmation or before a Court of inquiry constituted under this Act, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by a Security Guard Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Sashastra Seema Bal Act, 2007 - Section 41 - False Evidence:

Any person subject to this Act who, having been duly sworn or affirmed before any Force Court or other court competent under this Act to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Go Back to Section 228, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 229 of Bharatiya Nyaya Sanhita, 2023:

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 - Section 14 - Punishment For False or Malicious Complaint and False Evidence:

(1) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District officer, as the case may be, to take action against the woman or the person who has made the complaint under sub-section (1) or sub-section (2) of section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed:

Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section:

Provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.

Companies Act, 2013 - Section 449 - Punishment for False Evidence:

Save as otherwise provided in this Act, if any person intentionally gives false evidence--

(a) upon any examination on oath or solemn affirmation, authorised under this Act; or

(b) in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act,

he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten lakh rupees.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 383 -Summary procedure for trial for giving false evidence:

(1) If, at the time of delivery of any judgment or final order disposing of any judicial proceeding, a Court of Session or Magistrate of the first class expresses an opinion to the effect that any witness appearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to one thousand rupees, or with both.

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

(3) Nothing in this section shall affect the power of the Court to make a complaint under section 379 for the offence, where it does not choose to proceed under this section.

(4) Where, after any action is initiated under sub-section (1), it is made to appear to the Court of Session or Magistrate of the first class that an appeal or an application for revision has been preferred or filed against the judgment or order in which the opinion referred to in that sub-section has been expressed, it or he shall stay further proceedings of the trial until the disposal of the appeal or the application for revision, as the case may be, and thereupon the further proceedings of the trial shall abide by the results of the appeal or application for revision.

Go Back to Section 229, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 232 of Bharatiya Nyaya Sanhita, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 216 - Procedure for witnesses in case of threatening, etc.:

A witness or any other person may file a complaint in relation to an offence under section 232 of the Bharatiya Nyaya Sanhita, 2023.

Go Back to Section 232, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 235 of Bharatiya Nyaya Sanhita, 2023:

Air Force Act, 1950 - Section 57 - Falsifying official Documents and False Declaration:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) in any report, return, list, certificate; book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of, any false or fraudulent statement; or

(b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c) knowingly and. with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Go Back to Section 235, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 237 of Bharatiya Nyaya Sanhita, 2023:

Air Force Act, 1950 - Section 57 - Falsifying official Documents and False Declaration:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) in any report, return, list, certificate; book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of, any false or fraudulent statement; or

(b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c) knowingly and. with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Air Force Act, 1950 - Section 116 - Composition of Summary General Court-Martial:

A, summary, general court-mar-tial shall consist of not less than three officers.

Go Back to Section 237, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 246 of Bharatiya Nyaya Sanhita, 2023:

Disaster Management Act, 2005 - Section 52 - Punishment for false claim:

Whoever knowingly makes a claim which he knows or has reason to believe to be false for obtaining any relief, assistance, repair, reconstruction or other benefits consequent to disaster from any officer of the Central Government, the State Government, the National Authority, the State Authority or the District Authority, shall, on conviction be punishable with imprisonment for a term which may extend to two years, and also with fine.

Metro Railway (Operations and Maintenance) Act, 2002 - Section 80 - Penalty for making a false claim for compensation:

If any person requiring compensation from the metro railway administration under Chapter X makes a claim which is false or which he knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Go Back to Section 246, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 249 of Bharatiya Nyaya Sanhita, 2023:

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 27A - Punishment for financing illicit traffic and harbouring offenders:

Whoever indulges in financing, directly or indirectly, any of the activities specified in sub-clauses (i) to (v) of 2[clause (viiib) of section 2 or harbours any person engaged in any of the aforementioned activities, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

official Secrets Act, 1923 - Section 13 - Restriction on trial of offences:

(1) No court (other than that of a Magistrate of the first class specially empowered in this behalf by the Appropriate Government which is inferior to that of a District or Presidency Magistrate, shall try any offence under this Act.

(2) If any person under trial before a Magistrate for an offence under this Act at any time before a charge is framed, claims to be tried by the Court of Session, the Magistrate shall, if he does not discharge the accused, commit the case for trial by that court, notwithstanding that it is not a case exclusively triable by that court.

(3) No court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from, the Appropriate Government or some-officer empowered by the Appropriate Government in this behalf:

(4) For the purposes of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which the same actually was committed or at any place in India in which the offender may be found.

(5) In this section, the appropriate Government means--

(a) in relation to any offences under section 5 not connected with a prohibited place or with a foreign power, the State Government; and

(b) in relation to any other offence, the Central Government.

Go Back to Section 249, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 253 of Bharatiya Nyaya Sanhita, 2023:

official Secrets Act, 1923 - Section 13 - Restriction on trial of offences:

(1) No court (other than that of a Magistrate of the first class specially empowered in this behalf by the Appropriate Government which is inferior to that of a District or Presidency Magistrate, shall try any offence under this Act.

(2) If any person under trial before a Magistrate for an offence under this Act at any time before a charge is framed, claims to be tried by the Court of Session, the Magistrate shall, if he does not discharge the accused, commit the case for trial by that court, notwithstanding that it is not a case exclusively triable by that court.

(3) No court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from, the Appropriate Government or some-officer empowered by the Appropriate Government in this behalf:

(4) For the purposes of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which the same actually was committed or at any place in India in which the offender may be found.

(5) In this section, the appropriate Government means--

(a) in relation to any offences under section 5 not connected with a prohibited place or with a foreign power, the State Government; and

(b) in relation to any other offence, the Central Government.

Go Back to Section 253, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 254 of Bharatiya Nyaya Sanhita, 2023:

official Secrets Act, 1923 - Section 13 - Restriction on trial of offences:

(1) No court (other than that of a Magistrate of the first class specially empowered in this behalf by the Appropriate Government which is inferior to that of a District or Presidency Magistrate, shall try any offence under this Act.

(2) If any person under trial before a Magistrate for an offence under this Act at any time before a charge is framed, claims to be tried by the Court of Session, the Magistrate shall,

if he does not discharge the accused, commit the case for trial by that court, notwithstanding that it is not a case exclusively triable by that court.

(3) No court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from, the Appropriate Government or some-officer empowered by the Appropriate Government in this behalf:

(4) For the purposes of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which the same actually was committed or at any place in India in which the offender may be found.

(5) In this section, the appropriate Government means--

(a) in relation to any offences under section 5 not connected with a prohibited place or with a foreign power, the State Government; and

(b) in relation to any other offence, the Central Government.

Go Back to Section 254, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 266 of Bharatiya Nyaya Sanhita, 2023:

Air Force Act, 1950 - Section 178 - Cancellation of Conditional Pardon, Release On Parole or Remission:

(1) If any condition on which a person has been pardoned or released on parole or a punishment has been remitted is, in the opinion of the authority which granted the pardon, release or remission, not fulfilled, such authority may cancel the pardon, release or remission, and thereupon the sentence of, the Court shall be carried into effect as if such pardon, release or remission had not been granted.

(2) A person whose sentence of transportation, imprisonment or detention is carried into effect under the provisions of sub-section (1), shall undergo only the unexpired portion of his sentence.

Army Act, 1950 - Section 180 - Cancellation of Conditional Pardon, Release On Parole or Remission:

(1) If any condition on which a person has been pardoned or released on parole or a punishment has been remitted is, in the opinion of the authority which granted the pardon, release or remission, not fulfilled, such authority may cancel the pardon, release or remission, and thereupon the sentence of the court shall be carried into effect as if such pardon, release or remission had not been granted.

(2) A person whose sentence of transportation* or imprisonment is carried into effect under the provisions of sub-section (1) shall undergo only the unexpired portion of his sentence.

Border Security Force Act - Section 129 - Cancellation of Conditional Pardon, Release On Parole or Remission:

(1) If any condition on which a person has been pardoned or released on parole or a punishment has been remitted is, in the opinion of the authority which granted the pardon, release or remission, not fulfilled, such authority may cancel the pardon, release or remission, and thereupon the sentence of the court shall be carried into effect as if such pardon, release or remission had not been granted.

(2) A person whose sentence of imprisonment is carried into effect under the provisions of sub-section (1) shall undergo only the unexpired portion of his sentence.

Border Security Force Act, 1968 Section 129: Cancellation of conditional pardon, release on parole or remission:

(1) If any condition on which a person has been pardoned or released on parole or a punishment has been remitted is, in the opinion of the authority which granted the pardon, release or remission, not fulfilled, such authority may cancel the pardon, release or remission, and thereupon the sentence of the court shall be carried into effect as if such pardon, release or remission had not been granted.

(2) A person whose sentence of imprisonment is carried into effect under the provisions of sub-section (1) shall undergo only the unexpired portion of his sentence.

National Security Guard Act, 1986 - Section 125 - Cancellation of Conditional Pardon, Release On Parole or Remission:

Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil prison, a warrant in accordance with such order shall be forwarded by the officer making the order or his staff officer or such other person as may be prescribed, to the officer in charge of the prison in which such person is confined.

Go Back to Section 266, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 270 of Bharatiya Nyaya Sanhita, 2023:

Code of Civil Procedure, 1908 - Section 91 - Public Nuisances and Other Wrongful Acts Affecting The Public:

(1) In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted,--

(a) by the Advocate-General, or

(b) with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 162 -Magistrate may prohibit repetition or continuance of public nuisance:

A District Magistrate or Sub-divisional Magistrate, or any other Executive Magistrate or Deputy Commissioner of Police empowered by the State Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Bharatiya Nyaya Sanhita, 2023, or any special or local law.

Go Back to Section 270, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 274 of Bharatiya Nyaya Sanhita, 2023:

Prevention of Food Adulteration Act, 1954 - Section 2(ia) - "Adulterated":

an article of food shall be deemed to be adulterated --

(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be;

(b) if the article contains any other substance which affects, or if the article is so processed as to affect, injuriously the nature, substance or quality thereof;

(c) if any inferior or cheaper substance has been substituted wholly or in part for the article so as to affect injuriously the nature, substance or quality thereof;

(d) if any constituent of the article has been wholly or in part abstracted so as to affect injuriously the nature, substance or quality thereof;

(e) if the article has been prepared, packed or kept under in sanitary conditions whereby it has become contaminated or injurious to health;

(f) if the article consists wholly or in part of any filthy, putrid, rotten, decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption;

(g) if the article is obtained from a diseased animal;

(h) if the article contains any poisonous or other ingredient which renders it injurious to health;

(i) if the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health;

(j) if any colouring matter other than that prescribed in respect thereof is present in the article, or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits of variability;

(k) if the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits;

(l) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability, which renders it injurious to health;

(m) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health:

Provided that, where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability, in either case, solely due to natural causes and beyond the

control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause.

Explanation: Where two or more articles of primary food are mixed together and the resultant article of food--

(a) is stored, sold or distributed under a name which denotes the ingredients thereof; and

(b) is not injurious to health,

then, such resultant article shall not be deemed to be adulterated within the meaning of this clause;

Go Back to Section 274, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 276 of Bharatiya Nyaya Sanhita, 2023:

Drugs and Cosmetics Act, 1940 - Section 9A - Adulterated Drugs:

For the purposes of this Chapter, a drug shall be deemed to be adulterated,--

(a) if it consists, in whole or in part, of any filthy, putrid or decomposed substance; or

(b) if it has been prepared, packed or stored under insanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or

(c) if its container is composed in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(d) if it bears or contains, for purposes of colouring only, a colour other than one which is prescribed; or

(e) if it contains any harmful or toxic substance which may render it injurious to health; or

(f) if any substance has been mixed therewith so as to reduce its quality or strength.

Drugs and Cosmetics Act, 1940 - Section 17A - Adulterated Drugs:

For the purposes of this Chapter, a drug shall be deemed to be adulterated,--

(a) if it consists in whole or in part, of any filthy, putrid or decomposed substance; or

(b) if it has been prepared, packed or stored under in sanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or

(c) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(d) if it bears or contains, for purposes of colouring only, a colour other than one which is prescribed; or

(e) if it contains any harmful or toxic substance which may render it injurious to health; or

(f) if any substance! has been mixed therewith so as to reduce its quality or strength.

Drugs and Cosmetics Act, 1940 - Section 33EE - Adulterated Drugs:

For the purposes of this Chapter, an Ayurvedic, Siddha or Unani drug shall be deemed to be adulterated,--

(a) if it consists, in whole or in part, of any filthy, putrid or decomposed Substance; or

(b) if it has been prepared, packed or stored under unsanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or

(c) if its container is composed, in whole or in part, of any poisonous or deleterious Substance which may render the contents injurious to health; or

(d) if it bears or contains, for purposes of colouring only, a colour other than one which is prescribed; or

(e) if it contains any harmful or toxic Substance which may render it injurious to health; or

(f) if any substance has been mixed therewith so as to reduce its quality or strength.

Explanation.--For the purpose of clause (a), a drug shall not be deemed to consist, in whole or in part, of any decomposed substance only by reason of the fact that such decomposed substance is the result of any natural decomposition of the drug:

Provided that such decomposition is not due to any negligence on the part of the manufacturer of the drug or the dealer thereof and that it does not render the drug injurious to health.

Go Back to Section 276, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 277 of Bharatiya Nyaya Sanhita, 2023:

Drugs and Cosmetics Act, 1940 - Section 9A - Adulterated Drugs:

For the purposes of this Chapter, a drug shall be deemed to be adulterated,--

(a) if it consists, in whole or in part, of any filthy, putrid or decomposed substance; or

(b) if it has been prepared, packed or stored under insanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or

(c) if its container is composed in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(d) if it bears or contains, for purposes of colouring only, a colour other than one which is prescribed; or

(e) if it contains any harmful or toxic substance which may render it injurious to health; or

(f) if any substance has been mixed therewith so as to reduce its quality or strength.

Drugs and Cosmetics Act, 1940 - Section 17A - Adulterated Drugs:

For the purposes of this Chapter, a drug shall be deemed to be adulterated,--

(a) if it consists in whole or in part, of any filthy, putrid or decomposed substance; or

(b) if it has been prepared, packed or stored under in sanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or

(c) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(d) if it bears or contains, for purposes of colouring only, a colour other than one which is prescribed; or

(e) if it contains any harmful or toxic substance which may render it injurious to health; or

(f) if any substance! has been mixed therewith so as to reduce its quality or strength.

Drugs and Cosmetics Act, 1940 - Section 33EE - Adulterated Drugs:

For the purposes of this Chapter, an Ayurvedic, Siddha or Unani drug shall be deemed to be adulterated,--

(a) if it consists, in whole or in part, of any filthy, putrid or decomposed Substance; or

(b) if it has been prepared, packed or stored under unsanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or

(c) if its container is composed, in whole or in part, of any poisonous or deleterious Substance which may render the contents injurious to health; or

(d) if it bears or contains, for purposes of colouring only, a colour other than one which is prescribed; or

(e) if it contains any harmful or toxic Substance which may render it injurious to health; or

(f) if any substance has been mixed therewith so as to reduce its quality or strength.

Explanation.--For the purpose of clause (a), a drug shall not be deemed to consist, in whole or in part, of any decomposed substance only by reason of the fact that such decomposed substance is the result of any natural decomposition of the drug:

Provided that such decomposition is not due to any negligence on the part of the manufacturer of the drug or the dealer thereof and that it does not render the drug injurious to health.

Go Back to Section 277, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 278 of Bharatiya Nyaya Sanhita, 2023:

Drugs and Cosmetics Act, 1940 - Section 3(b) – Drugs:

includes—

(i) all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals, including preparations applied on human body for the purpose of repelling insects like mosquitoes;

(ii) such substances (other than food) intended to affect the structure or any function of human body or intended to be used for the destruction of vermin or insects which cause disease in human beings or animals, as may be specified from time to time by the Central Government by notification in the official Gazette;]

(iii) all substances intended for use as components of a drug including empty gelatin capsules; and

(iv) such devices intended for internal or external use in the diagnosis, treatment, mitigation or prevention of disease or disorder in human beings or animals, as may be specified from time to time by the Central Government by notification in the official Gazette, after consultation with the Board.

Go Back to Section 278, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 281 of Bharatiya Nyaya Sanhita, 2023:

Motor Vehicles Act, 1988 - Section 184 - Driving Dangerously:

Whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public, or which causes a sense of alarm or distress to the occupants of the vehicle, other road users, and persons near roads, having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable for the first offence with imprisonment for a term which may extend to one year but shall not be less than six months or with fine which shall not be less than one thousand rupees but may extend to five thousand rupees, or with both, and for any second or subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine of ten thousand rupees, or with both.

Explanation.-- For the purpose of this section,--

(a) jumping a red light;

(b) violating a stop sign;

(c) use of handheld communications devices while driving;

(d) passing or overtaking other vehicles in a manner contrary to law;

(e) driving against the authorised flow of traffic; or

(f) driving in any manner that falls far below what would be expected of a competent and careful driver and where it would be obvious to a competent and careful driver that driving in that manner would be dangerous, shall amount to driving in such manner which is dangerous to the public.

Go Back to Section 281, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 282 of Bharatiya Nyaya Sanhita, 2023:

Northern India Ferries Act, 1878 - Section 28 - Penalty For Rash Navigation and Stacking of Timber:

Whoever navigates, anchors, moors or fastens any vessel or raft, or stacks any timber, in a manner so rash or negligent as to damage a public ferry, shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both; and the toll-collector or lessee of the tolls of such ferry or any of his assistants, may seize and detain such vessel, raft or timber pending the inquiry and assessment hereinafter mentioned.

Go Back to Section 282, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 293 of Bharatiya Nyaya Sanhita, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 152 - Conditional order for removal of nuisance:

(1) Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers—

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

(b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

(c) that the construction of any building, or, the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or

(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure,

substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order—

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or

(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or

(v) to fence such tank, well or excavation; or

(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order,

or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation.—A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.

Go Back to Section 293, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 294 of Bharatiya Nyaya Sanhita, 2023:

Information Technology Act, 2000 - Section 67 - Punishment For Publishing or Transmitting Obscene Material In Electronic Form:

Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.

Go Back to Section 294, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 303 of Bharatiya Nyaya Sanhita, 2023:

The Electricity Act, 2003 - Section 135 - Theft of Electricity:

(1) Whoever, dishonestly,--

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier, as the case may be; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity; or

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorised,

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use--

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 Kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:

Provided also that if it is provided that any artificial means or means not authorised by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that

any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorised for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hour from the time of such disconnect:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause., restore the supply line of electricity within forty-eight hours of such deposit or payment;

(2) Any officer of the licensee or supplier as the case may be, authorised in this behalf by the State Government may--

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been or is being, used unauthorised;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been or is being, used for unauthorised use of electricity;

(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow

the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

PROVIDED that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.

The Electricity Act, 2003 - Section 136 - Theft of Electric Lines and Materials:

(1) Whoever, dishonestly--

(a) cuts or removes or takes away or transfers any electric line, material or meter from a tower, pole, any other installation or place of installation or any other place, or site where it may be rightfully or lawfully stored, deposited, kept, stocked, situated or located, including during transportation, without the consent of the licensee or the owner, as the case may be, whether or not the act is done for profit or gain; or

(b) stores, possesses or otherwise keeps in his premises, custody or control, any electric line, material or meter without the consent of the owner, whether or not the act is committed for profit or gain; or

(c) loads, carries, or moves from one place to another any electric line, material or meter without the consent of its owner, whether or not the act is done for profit or gain,

is said to have committed an offence of theft of electric lines and materials, and shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(2) If a person, having been convicted of an offence punishable under sub-section (1) is again guilty of an offence punishable under that sub-section, he shall be punishable for the second or subsequent offence for a term of imprisonment which shall not be less than six months but which may extend to five years and shall also be liable to fine which shall not be less than ten thousand rupees.

Indian Electricity Act, 1910 - Section 39 - Theft of Energy:

Whoever dishonestly abstracts, consumes or uses any energy shall be punishable with imprisonment for a term which may extend to three years, or with fine which shall not be less than one thousand rupees, or with both: and if it is proved that any artificial means or means not authorised by the licensee exist for the abstraction, consumption or use of energy by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of energy has been dishonestly caused by such consumer.

Information Technology Act, 2000 - Section 66C - Punishment For Identity Theft:

Whoever, fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine with may extend to rupees one lakh Rupees.

Railway Property (Unlawful Possession) Act, 1966 - Section 3 - Penalty For Theft, Dishonest Misappropriation or Unlawful Possession of Railway Property:

Whoever commits theft, or dishonestly misappropriates or is found, or is proved to have been, in possession of any railway property reasonably suspected of having been stolen or unlawful obtained shall, unless he proves that the railway property came into his possession lawfully, be punishable--

(a) for the first offence, with imprisonment for a term which may extend to five years, or with fine, or with both and in the absence of special and adequate reasons to be mentioned in the judgment of the Court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees;

(b) for the second or a subsequent offence, with imprisonment for a term which may extend to five years and also with fine and in the absence of special and adequate reasons to be mentioned in the judgment of the Court, such imprisonment shall not be less than two years and such fine shall not be less than two thousand rupees.

Explanation.-For the purposes of this section, "theft" and "dishonest misappropriation" shall have the same meanings as assigned to them respectively in section 378 and section 403 of the Indian Penal Code.'.(45 of 1860.)

Indian Post office Act, 1898 - Section 52 - Penalty For Theft, Dishonest Misappropriation, Secretion, Destruction, or Throwing Away of Postal Articles:

Whoever, being an officer of the Post office, commits theft in respect of, or dishonestly misappropriates, or, for any purpose whatsoever, secretes, destroys or throws away, any postal article in course of transmission by post or anything contained therein, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be punishable with fine.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 57 - Person arrested to be taken before Magistrate or officer in charge of police station:

A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 58 - Person arrested not to be detained more than twenty- four hours:

No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 187, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court, whether having jurisdiction or not.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 59 - Police to report apprehensions:

officers in charge of police stations shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 463 - Warrant for levy of fine issued by a Court in any territory to which this Sanhita does not extend:

Notwithstanding anything in this Sanhita or in any other law for the time being in force, when an offender has been sentenced to pay a fine by a Criminal Court in any territory to

which this Sanhita does not extend and the Court passing the sentence issues a warrant to the Collector of a district in the territories to which this Sanhita extends, authorising him to realise the amount as if it were an arrear of land revenue, such warrant shall be deemed to be a warrant issued under clause (b) of sub-section (1) of section 461 by a Court in the territories to which this Sanhita extends, and the provisions of sub-section (3) of the said section as to the execution of such warrant shall apply accordingly.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 464 - Suspension of execution of sentence of imprisonment:

(1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the fine is not paid forthwith, the Court may--

(a) order that the fine shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three installments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days;

(b) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a bond or bail bond, as the Court thinks fit, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the installments thereof, as the case may be, is to be made; and if the amount of the fine or of any installment, as the case may be, is not realised on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once.

(2) The provisions of sub-section (1) shall be applicable also in any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded and the money is not paid forthwith; and, if the person against whom the order

has been made, on being required to enter into a bond such as is referred to in that sub-section, fails to do so, the Court may at once pass sentence of imprisonment.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 60 - Discharge of person apprehended:

No person who has been arrested by a police officer shall be discharged except on his bond, or bail bond, or under the special order of a Magistrate.

Go Back to Section 303, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 308 of Bharatiya Nyaya Sanhita, 2023:

Air Force Act, 1950 - Section 53 - Extortion and Corruption:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) commits extortion; or

(b) without proper authority extracts from any person money, provisions or services.

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

Army Act, 1950 - Section 53 - Extortion and Corruption:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) commits extortion; or

(b) without proper authority exacts from any person money, provisions or service,

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

Border Security Force Act, 1968 - Section 31 - Extortion and Corruption:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) commits extortion; or

(b) without proper authority exacts from any person money, provisions or service,

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

Indo-Tibetan Border Police Force Act, 1992 - Section 34 - Extortion and Corruption:

Any person subject to this Act who commits any of the following offences, that is to say,—

(a) commits extortion; or

(b) without proper authority exacts from any person money, provisions or service,

shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

National Security Guard Act, 1986 - Section 30 - Extortion and Corruption:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) commits extortion; or

(b) without proper authority exacts from any person money, provisions or service,

shall, on conviction by a Security Guard Court, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

Sashastra Seema Bal Act, 2007 - Section 34 - Extortion and Corruption:

Any person subject to this Act who commits any of the following offences, namely:--

(a) commits extortion; or

(b) without proper authority exacts from any person money, provisions or service,

shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned

Go Back to Section 308, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 316 of Bharatiya Nyaya Sanhita, 2023:

Religious Endowments Act, 1863 - Section 20 - Proceedings for criminal breach of trust:

No suit or proceeding before any Civil Court under the preceding sections shall in any way affect or interfere with any proceeding in a Criminal Court for criminal breach of trust.

Religious Endowments Act, 1863 - Section 14 - Persons Interested May Singly Sue In Case of Breach of Trust, Etc.:

Any person or persons interested in any mosque, temple or religious establishment, or in the per-formance of the worship or of the service thereof, or the trusts relating thereto, may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court the trustee, manager or superintendent of such mosque, temple or religious establishment or the member of any committee appointed under this Act, for any misfeasance, breach of trust or neglect of duty, committed by such trustee, manager, superintendent or member of such committee, in respect of the trusts vested in, or confided to, them respectively;

Powers of Civil Court.-and the Civil Court may direct the specific performance of any act by such trustee, manager, superintendent or member of a committee,

and may decree damages and costs against such trustee, manager, superintendent or member of a committee,

and may also direct the removal of such trustee, manager, superintendent or member of a committee.

Government of India Act, 1833 - Section 80 - Disobedience of orders & Breach of Trust By officers or Servants or The Company In India, Misdemeanors:

every willful disobeying, and every willful omitting, forbearing, or neglecting to execute the orders or instructions of the said court of directors by any governor general of India, governor, member of council, or commander in chief, or by any other of the officers or servants of the said company, unless in cases of necessity (the burthen of the proof of which necessity shall be on the person so disobeying or omitting, forbearing or neglecting, to execute such orders or instructions as aforesaid), and every willful breach of the trust and duty of any office or employment by any such governor general, governor, member of council, or commander in chief, or any of the officers or servants of the said company, shall be deemed and taken to be a misdemeanor at law, and shall or may be proceeded against and punished as such by virtue of this Act.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 57 - Person arrested to be taken before Magistrate or officer in charge of police station:

A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 58 - Person arrested not to be detained more than twenty- four hours:

No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 187, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court, whether having jurisdiction or not.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 59 - Police to report apprehensions:

officers in charge of police stations shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Go Back to Section 316, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 317 of Bharatiya Nyaya Sanhita, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 96 - When search-warrant may be issued:

(1) Where--

(a) any Court has reason to believe that a person to whom a summons order under section 94 or a requisition under sub-section (1) of section 95 has been, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition; or

(b) such document or thing is not known to the Court to be in the possession of any person; or

(c) the Court considers that the purposes of any inquiry, trial or other proceeding under this Sanhita will be served by a general search or inspection, it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

(3) Nothing contained in this section shall authorise any Magistrate other than a District Magistrate or Chief Judicial Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the postal authority.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 101- Power to compel restoration of abducted females:

Upon complaint made on oath of the abduction or unlawful detention of a woman, or a female child for any unlawful purpose, a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class may make an order for the immediate restoration of such woman to her liberty, or of such female child to her parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

Go Back to Section 317, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 318 of Bharatiya Nyaya Sanhita, 2023:

Information Technology Act, 2000 - Section 66D - Punishment For Cheating By Personation By Using Computer Resource:

Whoever, by means for any communication device or computer resource cheats by personating, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupee.

Go Back to Section 318, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 319 of Bharatiya Nyaya Sanhita, 2023:

Information Technology Act, 2000 - Section 66D - Punishment For Cheating By Personation By Using Computer Resource:

Whoever, by means for any communication device or computer resource cheats by personating, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupee.

The Standard of Weights and Measures (Enforcement) Act, 1985 - Section 55 - Penalty for personation of officials:

Whoever personates in any way the Controller, Additional Controller or an Inspector or any other officer authorised by the Controller, shall be punished with imprisonment for a term which may extend to three years.

official Secrets Act, 1923 - Section 6 - Unauthorised Use of Uniforms, Falsification of Reports, Forgery, Personation and False Documents:

(1) If any person for the purpose of gaining admission or of assisting any other person to gain admission to a prohibited place or for any other purpose prejudicial to the safety of the State--

(a) uses or wears, without lawful authority, any naval, military, air force, police or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or

(b) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or

(c) forges, alters, or tampers with any passport or any naval, military, air force, police, or official pass, permit, certificate, licence, or other document of a similar character (hereinafter in this section referred to as an official document) or knowingly uses or has in his possession any such forged, altered, or irregular official document; or

(d) personates, or falsely represents himself to be, a person holding, or in the employment of a person holding, office under Government, or to be or not to be a person to whom an official document or secret official code or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code or pass word, whether for himself or any other person, knowingly makes any false statement; or

(e) uses, or has in his possession or under his control, without the authority of the department of the Government or the authority concerned, any die, seal or stamp of or belonging to, or used, made or provided by any department of the Government, or by any diplomatic, naval, military, or air force authority appointed by or acting under the authority of Government, or any die, seal or stamp so nearly resembling any such die, seal or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp, or knowingly uses, or has in his possession or under his control, any such counterfeited die, seal or stamp,

he shall be guilty of an offence under this section.

(2) If any person for any purpose prejudicial to the safety of the State--

(a) retains any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or willfully fails to comply with any directions issued by any department of the Government or any person authorised by such department with regard to the return or disposal thereof; or

(b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code or pass word so issued, for, without lawful authority or excuse, has in his possession any official document or secret official code or pass word issued for the use of some person other than himself, or, on obtaining possession of any official document by finding or otherwise, willfully fails to restore it to the person or authority by whom or for whose use it was issued, or to a police officer; or

(c) without lawful authority or excuse, manufactures or sells, or has in his possession for sale, any such die, seal or stamp as aforesaid,

he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(4) The provisions of sub-section (2) of section 3 shall apply, for the purpose of proving a purpose prejudicial to the safety of the State, to any prosecution for an offence under this section relating to the naval, military or air force affairs of Government, or to any secret official code in like manner as they apply, for the purpose of proving a purpose prejudicial to the safety or interests of the State, to prosecutions for offences punishable under that section

The Indian Christian Marriage Act, 1872 - Section 67 - Forbidding, By False Personation, Issue of Certificate By Marriage Registrar:

Whoever forbids the issue, by a Marriage Registrar, of a certificate, by falsely representing himself to be a parson whose consent to the marriage is required by law, knowing or believing such representation to be false, or not hiving reason to believe it to be true, shall be deemed guilty of the offence described in section 205 of the Indian Penal Code (45 of 1860).

Companies Act, 2013 - Section 57 - Punishment for Personation of Shareholder:

If any person deceitfully personates as an owner of any security or interest in a company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Companies Act, 2013 - Section 38 - Punishment for Personation for Acquisition, Etc., of Securities:

(1) Any person who--

(a) makes or abets making of an application in a fictitious name to a company for acquiring, or subscribing for, its securities; or

(b) makes or abets making of multiple applications to a company in different names or in different combinations of his name or surname for acquiring or subscribing for its securities; or

(c) otherwise induces directly or indirectly a company to allot, or register any transfer of, securities to him, or to any other person in a fictitious name,

shall be liable for action under section 447.

(2) The provisions of sub-section (1) shall be prominently reproduced in every prospectus issued by a company and in every form of application for securities.

(3) Where a person has been convicted under this section, the Court may also order disgorgement of gain, if any, made by, and seizure and disposal of the securities in possession of, such person.

(4) The amount received through disgorgement or disposal of securities under subsection (3) shall be credited to the Investor Education and Protection Fund.

Aadhaar Act, 2016 - Section 34 - Penalty For Impersonation At Time of Enrolment:

Whoever impersonates or attempts to impersonate another person, whether dead or alive, real or imaginary, by providing any false demographic information or biometric information, shall be punishable with imprisonment for a term which may extend to three years or with a fine which may extend to ten thousand rupees or with both.

Aadhaar Act, 2016 - Section 35 - Penalty For Impersonation of Aadhaar Number Holder By Changing Demographic Information or Biometric Information:

Whoever, with the intention of causing harm or mischief to an Aadhaar number holder, or with the intention of appropriating the identity of an Aadhaar number holder changes or attempts to change any demographic information or biometric information of an Aadhaar number holder by impersonating or attempting to impersonate another person, dead or alive, real or imaginary, shall be punishable with imprisonment for a term which may

extend to three years and shall also be liable to a fine which may extend to ten thousand rupees.

Aadhaar Act, 2016 - Section 36 - Penalty For Impersonation:

Whoever, not being authorised to collect identity information under the provisions of this Act, by words, conduct or demeanour pretends that he is authorised to do so, shall be punishable with imprisonment for a term which may extend to three years or with a fine which may extend to ten thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees or with both.

Collection of Statistics Act, 2008 - Section 21 - Penalty for impersonation of employees:

Whoever, not being authorised to collect statistics under the provisions of this Act, by words, conduct or demeanor pretends that he is authorised to do so, shall be punishable with simple imprisonment for a term which may extend to six months or with a fine which may extend to two thousand rupees or, in the case of a company, with a fine which may extend to ten thousand rupees or with both.

Companies Act, 1956 - Section 68A - Personation For Acquisition, Etc., of Shares:

(1) Any person who -

(a) makes in a fictitious name an application to a company for acquiring, or subscribing for, any shares therein, or

(b) otherwise induces a company to allot, or register any transfer of, shares therein to him, or any other person in a fictitious name, shall be punishable with imprisonment for a term which may extend to five years.

(2) The provisions of sub-section (1) shall be prominently reproduced in every prospectus issued by the company and in every form of application for shares which is issued by the company to any person.

Companies Act, 1956 - Section 116 - Penalty For Personation of Shareholder:

If any person deceitfully personates an owner of any share or interest in a company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or attempts to obtain any such share or interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner, he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

Go Back to Section 319, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 324 of Bharatiya Nyaya Sanhita, 2023:

Indian Telegraph Act, 1885 - Section 33 - Power To Employ Additional Police In Places Where Mischief To Telegraphs Is Repeatedly Committed:

(1) Whenever it appears to the State Government that any act causing or likely to cause wrongful damage to any telegraph is repeatedly and maliciously committed in any place, and that the employment of an additional police- force in that place is thereby rendered necessary, the State Government may send such additional police-force as it thinks fit to the place, and employ the same therein so long as, in the opinion of that Government, the necessity of doing so continues.

(2) The inhabitants of the place shall be charged with the cost of the additional police-force, and the District Magistrate shall, subject to the orders of the State Government, assess the proportion in which the cost shall be paid by the inhabitants according to his judgment of their respective means.

(3) All moneys payable under sub-section (2) shall be recoverable either under the warrant of a Magistrate by distress and sale of the movable property of the defaulter within the local limits of his jurisdiction, or by suit in any competent court.

(4) The State Government may, by order in writing, define the limits of any place for the purposes of this section.

Prevention of Damage to Public Property Act, 1984 - Section 3 - Mischief Causing Damage To Public Property:

(1) Whoever commits mischief by doing any act in respect of any public properly,otherthan public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.

(2) Whoever commits mischief by doing any act in respect of any public property being-

(a) any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy;

(b) any oil installations;

(c)any sewage works;

(d) any mine or factory;

(e) any means of public transportation or of tele-communications, or any building, installation or otherproperty used in connection therewith.

shall be punished with rigorous imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine:

Provided that the court may, for reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than six months.

Prevention of Damage to Public Property Act, 1984 - Section 4 - Mischief Causing Damage To Public Property By Fire or Explosive Substance:

Whoever commits an offence under sub-section (1) or sub-section (2) of section 3 by fire or explosive substance shall be punished with rigorous imprisonment for a term which shall not be less than one year, but which may extend to ten years with fine:

Provided that the court may, for special reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than one year.

Prevention of Destruction and Loss of Property Act, 1981 - Section 2 - Punishment For Committing Mischief In Respect of Property:

Whoever,--

(a) commits or attempts to commit, or instigates, incites or otherwise abets the commission of mischief within the meaning of section 425 of the Indian Penal Code, 1860 (Central Act 45 of 1860) and causes loss or damage to any property; or

(b) causes loss or damage to any property in any area during the period when an assembly of five or more persons in such area is prohibited by or under any law for the time being in force, or when such assembly is deemed as an unlawful assembly under section 141 of the Indian Penal Code, 1860 (Central Act 45 of 1860),

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine which may extend to two thousand rupees:

Provided that the court may for reasons to be recorded in writing, impose lesser punishment.

National Highways Act, 1956 - Section 8B - Punishment For Mischief By Injury To National Highway:

Whoever commits mischief by doing any act which renders or which he knows to be likely to render any national highway referred to in sub-section (1) of section 8A impassable or less safe for traveling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with a fine, or with both.

Go Back to Section 324, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 326 of Bharatiya Nyaya Sanhita, 2023:

National Highways Act, 1956 - Section 8B - Punishment For Mischief By Injury To National Highway:

Whoever commits mischief by doing any act which renders or which he knows to be likely to render any national highway referred to in sub-section (1) of section 8A impassable or less safe for traveling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with a fine, or with both.

Prevention of Damage to Public Property Act, 1984 - Section 3 - Mischief Causing Damage To Public Property:

(1) Whoever commits mischief by doing any act in respect of any public properly,otherthan public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.

(2) Whoever commits mischief by doing any act in respect of any public property being-

(a) any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy;

(b) any oil installations;

(c)any sewage works;

(d) any mine or factory;

(e) any means of public transportation or of tele-communications, or any building, installation or otherproperty used in connection therewith.

shall be punished with rigorous imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine:

Provided that the court may, for reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than six months.

Prevention of Destruction and Loss of Property Act, 1981 - Section 2 - Punishment For Committing Mischief In Respect of Property:

Whoever,--

(a) commits or attempts to commit, or instigates, incites or otherwise abets the commission of mischief within the meaning of section 425 of the Indian Penal Code, 1860 (Central Act 45 of 1860) and causes loss or damage to any property; or

(b) causes loss or damage to any property in any area during the period when an assembly of five or more persons in such area is prohibited by or under any law for the time being in force, or when such assembly is deemed as an unlawful assembly under section 141 of the Indian Penal Code, 1860 (Central Act 45 of 1860),

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine which may extend to two thousand rupees:

Provided that the court may for reasons to be recorded in writing, impose lesser punishment.

Go Back to Section 326, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 335 of Bharatiya Nyaya Sanhita, 2023:

The National Service Act, 1972 - Section 25 - False Statement and Forgery:

(1) if any qualified person--

(a) on whom an enlistment notice has been served under this Act and in respect of whom no postponement certificate is in force or no application or appeal for postponement of national service is pending, fails or omits to render the service which he is required by such notice to render, or

(b) having commenced to render national service, leaves that service without obtaining a discharge under section 17.

he shall be punished with imprisonment for a term which may extend to five years and also with fine which may extend to two thousand rupees. (2) Any person who--

(a) in giving any information for the purposes of this Act, knowingly or recklessly makes a statement which is false in material particulars or which he does not believe to be true, or

(b) (i) with the intention of deceiving, forges or uses or lends or allows to be used for any person any certificate issued under this Act, or

(ii) makes, or has in his possession, any document so closely resembling any certificate so issued as to be calculated to deceive,

shall be punished with imprisonment for a term not exceeding three years, or with fine not exceeding one thousand rupees, or with both.

Go Back to Section 335, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 336 of Bharatiya Nyaya Sanhita, 2023:

The official Secrets Act, 1923 - Section 6 - Unauthorised Use of Uniforms, Falsification of Reports, Forgery, Personation and False Documents:

(1) If any person for the purpose of gaining admission or of assisting any other person to gain admission to a prohibited place or for any other purpose prejudicial to the safety of the State--

(a) uses or wears, without lawful authority, any naval, military, air force, police or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or

(b) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or

(c) forges, alters, or tampers with any passport or any naval, military, air force, police, or official pass, permit, certificate, licence, or other document of a similar character (hereinafter in this section referred to as an official document) or knowingly uses or has in his possession any such forged, altered, or irregular official document; or

(d) personates, or falsely represents himself to be, a person holding, or in the employment of a person holding, office under Government, or to be or not to be a person to whom an official document or secret official code or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code or pass word, whether for himself or any other person, knowingly makes any false statement; or

(e) uses, or has in his possession or under his control, without the authority of the department of the Government or the authority concerned, any die, seal or stamp of or belonging to, or used, made or provided by any department of the Government, or by any diplomatic, naval, military, or air force authority appointed by or acting under the authority of Government, or any die, seal or stamp so nearly resembling any such die, seal or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp, or knowingly uses, or has in his possession or under his control, any such counterfeited die, seal or stamp,

he shall be guilty of an offence under this section.

(2) If any person for any purpose prejudicial to the safety of the State--

(a) retains any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or willfully fails to comply with any directions issued by any department of the Government or any person authorised by such department with regard to the return or disposal thereof; or

(b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code or pass word so issued, for, without lawful authority or excuse, has in his possession any official document or secret official code or pass word issued for the use of some person other than himself, or, on obtaining possession of any official document by finding or otherwise, willfully fails to restore it to the person or authority by whom or for whose use it was issued, or to a police officer; or

(c) without lawful authority or excuse, manufactures or sells, or has in his possession for sale, any such die, seal or stamp as aforesaid,

he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(4) The provisions of sub-section (2) of section 3 shall apply, for the purpose of proving a purpose prejudicial to the safety of the State, to any prosecution for an offence under this section relating to the naval, military or air force affairs of Government, or to any secret official code in like manner as they apply, for the purpose of proving a purpose prejudicial to the safety or interests of the State, to prosecutions for offences punishable under that section

The National Service Act, 1972 - Section 25 - False Statement and Forgery:

(1) if any qualified person--

(a) on whom an enlistment notice has been served under this Act and in respect of whom no postponement certificate is in force or no application or appeal for postponement of national service is pending, fails or omits to render the service which he is required by such notice to render, or

(b) having commenced to render national service, leaves that service without obtaining a discharge under section 17.

he shall be punished with imprisonment for a term which may extend to five years and also with fine which may extend to two thousand rupees. (2) Any person who--

(a) in giving any information for the purposes of this Act, knowingly or recklessly makes a statement which is false in material particulars or which he does not believe to be true, or

(b) (i) with the intention of deceiving, forges or uses or lends or allows to be used for any person any certificate issued under this Act, or

(ii) makes, or has in his possession, any document so closely resembling any certificate so issued as to be calculated to deceive,

shall be punished with imprisonment for a term not exceeding three years, or with fine not exceeding one thousand rupees, or with both.

Go Back to Section 336, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 340 of Bharatiya Nyaya Sanhita, 2023:

The official Secrets Act, 1923 - Section 6 - Unauthorised Use of Uniforms, Falsification of Reports, Forgery, Personation and False Documents:

(1) If any person for the purpose of gaining admission or of assisting any other person to gain admission to a prohibited place or for any other purpose prejudicial to the safety of the State--

(a) uses or wears, without lawful authority, any naval, military, air force, police or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or

(b) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or

(c) forges, alters, or tampers with any passport or any naval, military, air force, police, or official pass, permit, certificate, licence, or other document of a similar character

(hereinafter in this section referred to as an official document) or knowingly uses or has in his possession any such forged, altered, or irregular official document; or

(d) personates, or falsely represents himself to be, a person holding, or in the employment of a person holding, office under Government, or to be or not to be a person to whom an official document or secret official code or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code or pass word, whether for himself or any other person, knowingly makes any false statement; or

(e) uses, or has in his possession or under his control, without the authority of the department of the Government or the authority concerned, any die, seal or stamp of or belonging to, or used, made or provided by any department of the Government, or by any diplomatic, naval, military, or air force authority appointed by or acting under the authority of Government, or any die, seal or stamp so nearly resembling any such die, seal or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp, or knowingly uses, or has in his possession or under his control, any such counterfeited die, seal or stamp,

he shall be guilty of an offence under this section.

(2) If any person for any purpose prejudicial to the safety of the State--

(a) retains any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or willfully fails to comply with any directions issued by any department of the Government or any person authorised by such department with regard to the return or disposal thereof; or

(b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code or pass word so issued, for, without lawful authority or excuse, has in his possession any official document or secret official code or pass word issued for the use of some person other than himself, or, on obtaining possession

of any official document by finding or otherwise, willfully fails to restore it to the person or authority by whom or for whose use it was issued, or to a police officer; or

(c) without lawful authority or excuse, manufactures or sells, or has in his possession for sale, any such die, seal or stamp as aforesaid,

he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(4) The provisions of sub-section (2) of section 3 shall apply, for the purpose of proving a purpose prejudicial to the safety of the State, to any prosecution for an offence under this section relating to the naval, military or air force affairs of Government, or to any secret official code in like manner as they apply, for the purpose of proving a purpose prejudicial to the safety or interests of the State, to prosecutions for offences punishable under that section.

Go Back to Section 340, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 343 of Bharatiya Nyaya Sanhita, 2023:

Indian Succession Act, 1925 - Section 61 - Will Obtained By Fraud, Coercion or Importunity:

A Will or any part of a Will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

Illustrations

(i) A, falsely and knowingly, represents to the testator, that the testator's only child is dead, or that he has done some undutiful act and thereby induces the testator to make a will in his, A 's favour; such Will has been obtained by fraud, and is invalid.

(ii) A, by fraud and deception, prevails upon the testator to bequeath a legacy to him. The bequest is void.

(iii) A, being a prisoner by lawful authority, makes his will. The will is not invalid by reason of the imprisonment.

(iv) A threatens to shoot B, or to burn his house or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B, in consequence, makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(v) A, being of sufficient intellect, if undisturbed by the influence of others, to make a will yet being so much under the control of B that he is not a free agent, makes a Will dictated by B. It appears that he would not have executed the will but for fear of B. The Will is invalid.

(vi) A, being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a Will of a certain purport and does so merely to purchase peace and in submission to B. The Will is invalid.

(vii) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a Will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition makes his Will in the manner recommended by B. The Will is not rendered invalid by the intercession and persuasion of B.

(viii) A with a view to obtaining a legacy from B, pays him attention and flatters him and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery makes his Will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

Go Back to Section 343, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 356 of Bharatiya Nyaya Sanhita, 2023:

Foreign Relations Act, 1932, 1932 - Section 2 - Power of Central Government To Prosecute In Certain Cases of Defamation:

Where an offence falling under Chapter XXI of the Indian Penal Code is committed against a Ruler of a State outside but adjoining India, or against the consort or son or principal Minister of such Ruler, the Central Government may make, or authorize any person to make, complaint in writing of such offence, and notwithstanding anything contained in Section 198 of the Code of Criminal Procedure, 1898, any Court competent in other respects to take cognizance of such offence may take cognizance thereof on such complaint.

Foreign Relations Act, 1932- Section 4 - Proof of Status of Persons Defamed:

Where in any trial of an offence upon a complaint under Section 2, or in any proceeding before a High Court arising out of Section 3, there is a question whether any person is a Ruler of any State, or is the consort or son or principal Minister of such Ruler a certificate under the hand of a Secretary to the Central Government that such person is such Ruler, consort, son or principal Minister shall be conclusive proof of that fact.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 222 - Prosecution for defamation:

(1) No Court shall take cognizance of an offence punishable under section 356 of the Bharatiya Nyaya Sanhita, 2023 except upon a complaint made by some person aggrieved by the offence:

Provided that where such person is a child, or is of unsound mind or is having intellectual disability or is from sickness or infirmity unable to make a complaint, or is a woman who,

according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Sanhita, when any offence falling under section 356 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions, a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction--

(a) of the State Government,--

(i) in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(ii) in the case of any other public servant employed in connection with the affairs of the State;

(b) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 219 - Prosecution for offences against marriage:

(1) No Court shall take cognizance of an offence punishable under sections 81 to 84 (both inclusive) of the Bharatiya Nyaya Sanhita, 2023 except upon a complaint made by some person aggrieved by the offence:

Provided that--

(a) where such person is a child, or is of unsound mind or is having intellectual disability requiring higher support needs, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf;

(b) where such person is the husband and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorised by the husband in accordance with the provisions of sub-section (4) may make a complaint on his behalf;

(c) where the person aggrieved by an offence punishable under section 82 of the Bharatiya Nyaya Sanhita, 2023 is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister, or, with the leave of the Court, by any other person related to her by blood, marriage or adoption.

(2) For the purposes of sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 84 of the Bharatiya Nyaya Sanhita, 2023.

(3) When in any case falling under clause (a) of the proviso to sub-section (1), the complaint is sought to be made on behalf of a child or of a person of unsound mind by a person who has not been appointed or declared by a competent authority to be the guardian of the child, or of the person of unsound mind, and the Court is satisfied that there is a guardian so appointed or declared, the Court shall, before granting the application for leave, cause notice to be given to such guardian and give him a reasonable opportunity of being heard.

(4) The authorisation referred to in clause (b) of the proviso to sub-section (1), shall be in writing, shall be signed or otherwise attested by the husband, shall contain a statement to the effect that he has been informed of the allegations upon which the complaint is to be founded, shall be countersigned by his Commanding officer, and shall be accompanied by a certificate signed by that officer to the effect that leave of absence for the purpose of making a complaint in person cannot for the time being be granted to the husband.

(5) Any document purporting to be such an authorisation and complying with the provisions of sub-section (4), and any document purporting to be a certificate required by that sub-section shall, unless the contrary is proved, be presumed to be genuine and shall be received in evidence.

(6) No Court shall take cognizance of an offence under section 64 of the Bharatiya Nyaya Sanhita, 2023, where such offence consists of sexual intercourse by a man with his own

wife, the wife being under eighteen years of age, if more than one year has elapsed from the date of the commission of the offence.

(7) The provisions of this section apply to the abetment of, or attempt to commit, an offence as they apply to the offence.

Go Back to Section 356, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 357 of Bharatiya Nyaya Sanhita, 2023:

Factoring Regulation Act, 2011 - Section 18 - Breach of Contract:

If the assignor commits any breach of the original contract with the debtor, such breach shall not entitle the debtor to recover from the assignee any sum paid by the debtor to the assignor or the assignee pursuant to the factoring transactions:

Provided that nothing contained in this section shall affect the rights of the debtor to claim from the assignor any loss or damages caused to him by reason of breach of the original contract.

Indian Contract Act, 1872 - Section 73 - Compensation for Loss or Damage Caused by Breach of Contract:

When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation.-In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Illustrations

(a) A contracts to sell and deliver 50 maunds of saltpeter to B, at a certain price to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpeter of like quality at the time when the saltpeter ought to have been delivered.

(b) A hires B's ship to go to Bombay, and there take on board, on the first of January, a cargo which A is to provide and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(c) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(d) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.

(e) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(f) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(g) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freights rise, and, on the first of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the first of January.

(h) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

(i) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount

of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(j) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(k) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(l) A, a builder, contracts to erect and finish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down and has to be re-built by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house for the rent lost, and for the compensation made to C.

(m) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be

not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(n) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(o) A contracts to deliver 50 maunds of saltpeter to B on the first of January, at a certain price. B afterwards, before the first of January, contracts to sell the saltpeter to C at a price higher than the market price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the first of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(p) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.

(q) A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. B is entitled to receive from A, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(r) A, a ship-owner, contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the first of January, and B pays to A, by way of deposit, one-half of his passage-money. The ship does not sail on the first of January, and B, after being in consequence detained in Calcutta for some time and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money.

A is liable to repay to B his deposit, with interest, and the expense to which he is put by his detention in Calcutta, and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

Go Back to Section 357, Bharatiya Nyaya Sanhita, 2023

Back to Section 2 of Indian Penal Code, 1860

MANU/SC/0043/1957

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 200 of 1956

Decided On: 06.09.1957

Mobarik Ali Ahmed Vs. The State of Bombay

Hon'ble Judges/Coram:

B. Jagannadhadas, Parakulangara Govinda Menon and Syed Jaffer Imam, JJ.

JUDGMENT

B. Jagannadhadas, J.

1. This is an appeal by special leave. The appellant before us was convicted by the learned Presidency Magistrate. Third Court, Esplanade, Bombay, for the offence of cheating under s. 420 read with s. 34 of the Indian Penal Code on three counts of cheating, viz., the first relating to a sum of Rs. 81,000, the second relating to a sum of Rs. 2,30,000, and the third relating to a sum of Rs. 2,36,900.

He was sentenced by the learned Magistrate to two years rigorous imprisonment and a fine of Rs. 1,000 on the first count, to twenty-two months rigorous imprisonment and a fine of Rs. 1,000 on the second count, and two months rigorous imprisonment on the third count. It was directed that the substantive sentences only on the second and third counts are to run concurrently.

2. The prosecution was initiated on a private complaint filed by one Luis Antonio Correa on June 30, 1952, against four persons of whom the appellant was designated therein as the first accused and one Santram as the fourth accused and two other persons, A.A. Rowji and S.A. Rowji, as second and third accused respectively. Bailable warrants were issued against all the four by the learned Magistrate but it appears that warrants could not be executed against accused 2, 3 and 4.
They were reported as absconding. The trial was accordingly separated as against them and proceeded only as against (the first accused) the appellant herein. The convictions and sentences have been confirmed on appeal by the High Court at Bombay.

3. The complainant is a businessman from Goa and was the director of a firm in Goa which was trading in the name of Colonial Limitada doing business in import and export. At the relevant time there was severe scarcity of rice in Goa. The complainant was accordingly anxious to import rice urgently into Goa. He got into touch with a friend of his by name Rosario Carvalho in Bombay who was doing business as a commission agent.

Carvalho in his turn got into touch with one Jasawalla who was also doing business of commission agent at Bombay in the name of Universal Supply Corporation. This Jasawalla was previously in correspondence with the appellant about business in rice. The appellant was at the time in Karachi and was doing business in the name of Atlas Industrial and Trading Corporation and also in the name of Ifthiar Ahmed & Co. The telegraphic address of the complainant was Colodingco and that of the appellant was Ifthy.

As a result of exchange of telegrams, letters and telephone messages between Jasawalla and the appellant on one side, Jasawalla and the complainant on the other, followed up by direct contacts between the appellant and the complainant through telephone, telegrams and letters, a contract was brought about for purchase, by the complainant from the appellant, of 1,200 tons of rice at the rate of Pounds 51 per ton, to be shipped from Karachi to Goa.

The contract appears originally to have been for payment of the price in sterling at Karachi. But it is the prosecution case (which has been accepted by both the courts below) that a subsequent arrangement was arrived at between the parties by which the payment was to be made in Bombay in Indian currency, in view of the difficulties experienced in opening a letter of credit in a Bank at Karachi through the Portuguese Bank at Goa.

It is also the prosecution case, which has been accepted, that the understanding was that 25% of the price was to be paid as advance by the complainant to Jasawalla as the agent of the appellant for this purpose and that on receiving intimation thereof the appellant was to ship the rice and that the balance of the purchase money was to be paid on presentation of the shipping documents. It appears that at a later stage the quantity of rice to be supplied was raised to 2,000 tons and advance to be paid to 50% of the total stipulated price.

It is also the prosecution case that the appellant represented at various stages by telephone talks, telegrams, and letters, to Jasawalla as well as to the complainant directly that he had adequate stock of rice and that he had reserved shipping space in certain steamers which were about to leave for Goa and that he was in a position to ship the rice on being satisfied that the requisite advance was paid. It is in evidence that on receiving such assurances, the complainant paid moneys as shown below to Jasawalla and obtained receipts from him, purporting to be the agent of the appellant.

On July 23, 1951

Rs. 81,000

On August 28, 1951

Rs. 2,30,000

On August 29, 1951

Rs. 2,36,900

4. All these amounts are held to have been received by the appellant in due course. It is admitted, however, that no rice was in fact shipped to the complainant and the amounts have not been returned back to the complainant. The defence of the appellant is to the effect that the amounts were not in fact paid to any person who was his agent and not in fact received by him at all and that he was unable to supply the rice as the complainant did not comply with the terms of the contract by opening a letter of credit at Karachi or paying him in Pakistani currency.

This defence has not been accepted and the appellant has been found guilty as charged by the courts below. He was therefore convicted and sentenced as above stated.

5. It is necessary to set out somewhat in detail the essential facts held to have been proved by the courts below to appreciate the legal contentions that have been urged before us. As previously stated, the complainant got into touch with his friend Carvalho of Bombay to help him in getting rice for consumption in Goa and Carvalho in turn contacted Jasawalla for the purpose.

Before that time, Jasawalla, in the course of his usual business, had received a letter, Ex. O, dated June 5, 1951, from the appellant offering that he would be prepared to do business in rice if a letter of credit is opened or cash payment is made in Karachi. Carvalho came to know of this from Jasawalla and informed the complainant. Jasawalla also wrote a letter to the complainant. The complainant sent a telegram showing his willingness to open credit, if 1,200 tons of rice could be shipped to Goa.

Jasawalla wrote a letter, Ex. P, dated June 6, 1951, to the appellant quoting the telegram of the complainant and asking for an offer. The appellant by his letter dated June 10 to Jasawalla, offered to supply as much rice as he wanted and demanded 25% cash payment as advance. After some tripartite correspondence, the appellant by his letter dated June 26, agreed to accept money in Bombay, at the price of Pounds 51 per ton of rice. Jasawalla by telegram dated July 5, 1951, informed the appellant that the Goa party accepted the 25% arrangement.

The appellant by a letter dated July 7, accepted the offer but wanted 50% deposit and gave time till the 10th, suggesting that since the rice was scarce the deal must be finished at once. Jasawalla intimated this to the complainant and asked him to start at once with money and informed him that if there was delay the party at the other end would claim damages. The appellant did not get any information for the next few days.

He accordingly sent one Santram (accused 4 in the complaint) to Bombay as his agent for discussing the matter in question and authorising him to fix the deal on the spot. Santram appears to have fixed the bargain for shipping 1,200 tons of rice on the complainant paying an advance sum of Rs. 1,50,000 at Bombay as 25% deposit towards the price of the said 1,200 tons of rice. On receipt of this information the appellant wrote a letter dated July 12, to Jasawalla wherein he confirmed the arrangement arrived at by Santram.

Jasawalla was thereupon taken by Santram to accused 2 and 3. They were introduced to him as the agents of the appellant who were to receive the moneys in this transaction on appellant's behalf. At the same time the appellant was also writing letters to Jasawalla which seem to indicate that he was trying to shift his position by asking for 50% as advance deposit. For a few days thereafter the complainant did not turn up at Bombay with the funds and the appellant by his telegram dated July 16, asked Jasawalla why there is no further information about the transaction.

By a telegram dated July 17, he informed Jasawalla that S.S. Olinda was sailing in a few days and that it would be too late to ship the rice and that the matter should be hurried up. On July 18, the complainant sent a telegram to Jasawalla informing him that he was coming with funds and that if the rice was not shipped it may be shipped by S.S. Olinda which was about to start on July 21. The appellant also sent a telegram to Jasawalla on July 18, asking why the deal was not coming on and that he had already reserved space by the steamer of the 21st.

On July 19 again Jasawalla received a telegram from the appellant informing him definitely that space was reserved in the steamer. The complainant also sent a telegram to Jasawalla on the same day informing him that he was coming and that at least 500 tons must be shipped at once. The complainant arrived at Bombay on July 20. The indent, Ex. A, was prepared in triplicate and signed by the complainant on the same day.

The complainant brought cheques and drafts to the tune of Rs. 81,000. It would appear that at this stage the complainant was asking that he should be allowed (for the time being) to deposit only Rs. 50,000 as deposit for a shipment of 500 tons. But appellant insisted that Rs. 1,50,000 should be paid as advance for 1,200 tons. On or about July 21, the appellant sent a letter to Jasawalla with a pro-forma receipt for Rs. 1,50,000 signed by him to be made use of by Jasawalla in whatever manner he thought proper in connection with the transaction then under way.

The said receipt was shown to the complainant who was shown also the other correspondence that was received from the appellant. Jasawalla by his letter dated July 22, to the appellant confirmed the shipment of the deal of 1,200 tons of rice and intimated that some portion of the money was immediately ready and some portion would be brought in a day or two, totalling over Rs. 80,000 and that the balance would be paid after hearing about shipment of 1,200 tons.

This was agreed to by the appellant. On July 23, Jasawalla telephoned to the appellant that he was going to pay the money to accused 2 as directed by the appellant. In the afternoon of that very day the parties went to the office of accused 2 and there was again a further conversation on the phone with the appellant who, on the phone, conveyed the assurance that payment to accused 2 would be as good as payment to himself.

The complainant and Carvalho were hearing both the morning and afternoon talks between the appellant and Jasawalla, on a second line. Thereupon the complainant paid the sum of Rs. 81,000 to Jasawalla who passed a receipt (Ex. B) therefor on behalf of the appellant and the said amount was passed on to accused 2. The fact of this payment was intimated to the appellant by telephone as well as by a telegram. A letter was also written on July 24 to the appellant referring to the telephone calls and telegram and informing him that the amount was paid.

He was also asked therein to ship the rice at once promising that the balance will be paid in a week. On July 23 itself the appellant sent a telegram saying that he had received the messages and was trying to book 1,000 tons. According to the prosecution case the appellant having received the sum of Rs. 81,000 as above, changed his front from July 24, 1951. The facts held to have been proved in respect of this change of front may now be stated.

6. On July 24, 1951, the appellant sent to Jasawalla a telegram mentioning difficulties created by the Exchange Controller in shipping the goods. When Jasawalla conveyed his protest and insisted upon the shipping of the goods at once, the appellant sent a telegram on July 25, informing him that the difficulties were of a minor character and that the space for shipping was already booked. Jasawalla by his telegram of the same date asked for confirmation of loading of 1,200 tons by S.S. Olinda and requested him that if the full quantity could not be loaded, a portion thereof might be sent immediately.

The appellant by his letter dated July 26, acknowledged Jasawalla's letter dated 23rd (informing him about the payment of Rs. 81,000) and intimated that the rice would be shipped by the next steamer S.S. Umaria sailing for Malaya and that the said steamer can touch Goa if the quantity of rice to be shipped is raised to 2,000 tons. By a letter dated July 26, Jasawalla protested against the new condition. The complainant sent a letter dated July 27, to Jasawalla asking whether the rice was shipped by S.S. Olinda or not.

On July 27, the appellant sent a telegram to Jasawalla asking for bank-guarantee (for payment of balance). It does not appear that any question of bank-guarantee was raised in the correspondence between the parties, after Santram (accused 4) fixed up the deal on the footing of payment of advance of Rs. 1,50,000, in cash at Bombay by way of 25% deposit. On receiving this letter raising the question of bank-guarantee, Jasawalla wrote back on the 27th to the appellant about the change of front and charging him with cheating and not fulfilling his part of the contract after receiving the money.

By a letter dated July 30 and also a telegram of the same date the appellant replied to Jasawalla wherein he promised to send the rice by S.S. Umaria and also threatened to break off negotiations if the parties had no confidence in him. Jasawalla thereupon asked the appellant by telegram to fix the sailing date of S.S. Umaria and inform him. The appellant wrote back on August 1, admitting receipt of letters from Jasawalla and attempting to pacify him.

Jasawalla replied thanking him and asked for a clear date of the sailing of S.S. Umaria. By that time Jasawalla had made enquiries with Mackinons & Mackenzie (shipping agents) and was informed that no shipping space had been reserved by the appellant and found the statement of the appellant in this behalf to be false. Jasawalla sent copies of this correspondence between him and the appellant to the complainant.

That correspondence indicated the appellant's position to be that the rice would be shipped by S. S. Umaria only if the load could be increased to 2,000 tons and that the appellant stated that he got the sailing of S.S. Umaria delayed by two days for the purpose. The complainant thereupon informed Jasawalla that he was prepared to accept the new deal for 2,000 tons. Jasawalla by his telegram dated August 2, to the appellant confirmed this new arrangement and by another telegram dated August 3, asked the appellant to hurry up with the shipment.

Thereafter the appellant raised a fresh matter. On August 6, the appellant sent a direct telegram to the complainant and asked him to request the Portuguese Pro-Consul at Karachi to obtain exchange-guarantee. Between August 7 and 12, several letters and telegrams passed between the complainant and Jasawalla on the one hand and the appellant on the other. As a result of efforts made in this interval, it appears that the Pro-Consul, Mr. Alphonso, was prepared to give the exchange-guarantee of the State Bank of Pakistan for payment in sterling of the price of rice.

The appellant then by his letter dated August 13, informed Jasawalla that the State Bank was not insisting on exchange guarantee but that it would be sufficient if a certificate was issued by the Portuguese authority that the rice was required for replenishing the ration shops in Goa. A similar letter was also written by the appellant on August 14, to the complainant. Thereupon the complainant and Jasawalla approached the concerned

authority at Goa, viz., one Mr. Campos, the Trade Agent to the Portuguese Government. Mr. Campos thereupon sent telegrams on August 16, to the State Bank of Pakistan, to the Pro-Consul, Mr. Alphonso, and to the appellant certifying that rice was required for replenishing the ration shops in Goa.

7. After this there was a further change of tactics by the appellant. By a telegram dated August 20, 1951, the appellant informed the complainant that the papers before the Government were ready and that he had done his best but that payment must be made. In reply the complainant sent a telegram to the appellant on the same date stating that he did not understand the contents of his telegram and promised to send the balance on loading.

The complainant also informed Jasawalla about these telegrams exchanged between him and the appellant. This was followed up by some further correspondence between the parties on August 22. The appellant sent telegrams both to the complainant and to Jasawalla demanding 90% deposit as advance and threatened to break off if it was not complied with. Thereupon Jasawalla sent a telegram on the 22nd to the complainant to come to Bombay.

He informed the appellant the same day that the complainant was coming down to Bombay to arrange for 50% deposit and asked the appellant to start loading. On the 24th he wrote also a letter to the appellant to the effect that the complainant would pay 50% advance minus the amount already paid and informed him that the complainant would fly to Karachi to supervise the loading. The appellant thereupon sent a telegram dated the 25th informing Jasawalla that everything was ready but hinted about the opening of a letter of credit.

Again on August 27, the appellant sent a telegram to Jasawalla that stocks could not be released unless the arrangement was fulfilled, i.e., 90% amount was paid. The complainant came to Bombay with drafts and cheques to the tune of about Rs. 4,75,000 and contacted Jasawalla. He contacted also the appellant on phone. He paid the sum of Rs. 2,30,000 on August 28, 1951, to Jasawalla who passed a receipt, Ex. F, therefor, on behalf of the appellant.

On August 29, the complainant paid another sum of Rs. 2,36,900 to Jasawalla who passed a receipt, Ex. G, therefore, on behalf of the appellant. It is the case of the prosecution that both these were also passed on to the second accused and through him to the appellant and that the appellant acknowledged receipt of these amounts in his correspondence and that case has been also accepted. On the 29th itself the appellant sent a telegram to Jasawalla as follows:

"Part consignment received, rest tomorrow, Pentakota for the 1st certain goods required alongside."

8. On receiving this telegram Jasawalla informed him by a telegram dated August 31, that he was shocked that no space was reserved, though everything had been done on his side. The appellant sent a reply by telegram dated September 1, 1951, protesting against the language used by Jasawalla in the telegram and informed him that space was reserved but the Company could not wait as the goods could not be shipped.

On September 5, the appellant informed Jasawalla by a letter that space was reserved by S.S. Pentakota and that everything was ready for shipment. Meanwhile the complainant feeling very nervous and anxious about the fulfilment of the transaction proceeded in person to Karachi on September 4. According to the complainant he stayed at Karachi for about two weeks. He was shown some godowns containing rice bags suggesting that they belonged to the appellant and were ready for shipment.

But he was not afforded any opportunity for verifying that the stock was intended for shipment in respect of his transaction. The complainant went to Karachi on a Visa for three months. But after a stay of less than two weeks he was served with a quit-order from the Pakistan Government on September 18, and was bundled out of Karachi. It is the complainant's impression that this was manoeuvred by the appellant. On his return back, correspondence was again resumed between the appellant and the complainant.

By a letter dated September 21, the appellant promised to ship the goods by S.S. Ismalia which would not be sailing in September but would leave on October 3. On September 23, the appellant sent another letter stating that S.S. Ismalia was arriving on October 3 and not on September 26. On October 3, the appellant wrote another letter to the complainant informing him that S.S. Ismalia was not available.

The complainant thereafter sent a telegram to the appellant dated September 29, calling upon him to ship the goods by S.S. Shahjehan if S.S. Ismalia was not available. The complainant by a further letter dated October 1, called upon the appellant to ship the rice at once. By a telegram dated October 2, the appellant informed the complainant that S.S. Shahjehan was arriving the next day and that he would wire the position. By his telegram dated the 3rd, he informed the complainant that the loading had commenced. On October 6, the complainant received another telegram from the appellant that he would not ship per S.S. Shahjehan until demands in his letter dated September 29 are complied with.

It is the complainant's case that no such letter was ever received by him. Jasawalla also informed the appellant that no letter dated September 29 was received. By telegram dated October 8, 1951, Jasawalla called upon the appellant to refund the money and cancel the contract. On October 12, the appellant sent a telegram which conveyed a suggestion that he would ship rice by S.S. Shahjehan arriving on October 19, instead of October 9.

There were some further telegrams exchanged. Finally the complainant sent a telegram on October 26, calling upon the appellant to ship rice immediately or refund the money.

This was followed by further exchange of correspondence which ultimately resulted in a letter by the appellant to the complainant dated November 17, denying all the allegations made against him.

9. The above facts were held to have been proved by the courts below on the basis of a good deal of correspondence between the parties consisting of telegrams and letters and supported by the oral evidence mainly of three persons, viz., (1) the complainant, (2) Jasawalla, and (3) an ex-employee of the appellant at Karachi by name Sequeria. All this evidence has been accepted by the courts below after full consideration of the various comments and criticisms against acceptability of the same.

10. In a case of this kind a question may well arise at the outset whether the evidence discloses only a breach of civil liability or a criminal offence. That of course would depend upon whether the complainant in parting with his money to the tune of about Rs. 5 1/2 lakhs acted on the representations of the appellant and in belief of the truth thereof and whether those representations, when made were in fact false to the knowledge of the appellant and whether the appellant had a dishonest intention from the outset.

Both the courts below have found these facts specifically against the appellant in categorical terms. These being questions of fact are no longer open to challenge in this Court before us in an appeal on special leave.

11. Learned counsel for the appellant accordingly raised before us the following contentions:

1. the appellant is a Pakistani national, who, during the entire period of the commission of the offence never stepped into India and was only at Karachi. Hence he committed no offence punishable under the Indian Penal Code and cannot be tried by an Indian Court.

2. The appellant was brought over from England, where he happened to be, by virtue of extradition proceedings in connection with another offence, the trial for which was then pending in the Sessions Court at Bombay and accordingly he could not be validly tried and convicted for a different offence like the present.

3. The various telegrams and letters relied upon by the prosecution were held to have been proved on legally inadmissible material.

4. The charge being under s. 420 read with s. 34 of the Indian Penal Code for alleged conjoint acts of the appellant along with the persons designated as accused 2, 3 and 4, in the complaint and the said three accused not being before the Court and the appellant not having been in Bombay at the time, the conviction is unsustainable.

12. We have heard elaborate arguments on all these matters but have felt satisfied that there is no substance in contentions 2, 3 and 4 above. Accordingly we did not call upon the counsel for the State to reply to the same. It is, therefore, unnecessary to deal with them at any length. They will be disposed of in the first instance.

13. To understand contention 3, it is convenient to take the letters and telegrams separately. The letters which have been relied on for the prosecution fall under the following categories.

1. Letters from the appellant either to Jasawalla or to the complainant.

2. Letters to the appellant from Jasawalla or the complainant.

14. Most of the letters from the appellant relied upon bear what purport to be his signatures. A few of them are admitted by the appellant. There are also a few letters without signatures. Both the complainant and Jasawalla speak to the signatures on the other letters. The objection of the learned counsel for the appellant is that neither of them has actually seen the appellant write any of the letters nor are they shown to have such intimate acquaintance with his correspondence, as to enable them to speak to the genuineness of these signatures.

Learned trial Judge as well as the learned Judges of the High Court have found that there were sufficient number of admitted or proved letters which might well enable Jasawalla and the complainant to identify the signatures of the appellant in the disputed letters. They also laid stress substantially on the contents of the various letters, in the context of the other letters and telegrams to which they purport to be replies and which form the chain of correspondence as indicating the genuineness of the disputed letters.

Learned counsel objected to this approach on a question of proof. We are, however, unable to see any objection. The proof of the genuineness of a document is proof of the authorship of the document and is proof of a fact like that of any other fact. The evidence relating thereto may be direct or circumstantial. It may consist of direct evidence of a person who saw the document being written or the signature being affixed. It may be proof of the handwriting of the contents, or of the signature, by one of the modes provided in Sections 45 and 47 of the Indian Evidence Act.

It may also be proved by internal evidence afforded by the contents of the document. This last mode of proof by the contents may be of considerable value where the disputed document purports to be a link in a chain of correspondence, some links in which are proved to the satisfaction of the court. In such a situation the person who is the recipient of the document, be it either a letter or a telegram, would be in a reasonably good position both with reference to his prior knowledge of the writing or the signature of the alleged

sender, limited though it may be, as also his knowledge of the subject matter of the chain of correspondence, to speak to its authorship.

In an appropriate case the court may also be in a position to judge whether the document constitutes a genuine link in the chain of correspondence and thus to determine its authorship.

We are unable, therefore, to say that the approach adopted by the courts below in arriving at the conclusion that the letters are genuine is open to any serious legal objection. The question, if any, can only be as to the adequacy of the material on which the conclusion as to the genuineness of the letters is arrived at. That however is a matter which we cannot permit to be canvassed before us.
15. A few of the letters said to have been received from the appellant, as stated above, do not bear his signatures. There were held to have been proved by the circumstantial evidence as pointed out and we see no objection thereto.

16. The next objection is as regards the letters said to have been sent by Jasawalla and the complainant to the appellant. Jasawalla and the complainant have produced copies of the originals. It has been contended that these copies are inadmissible. But such a contention is obviously untenable. The appellant cannot be expected to produce them, if true, since he disputes them. There is also the evidence of his ex-employee, Sequeria, that the originals were received but taken away by his son.

The main contention in respect of these letters is that there is no proof that they were received by the appellant at Karachi. It is contended that evidence given by either Jasawalla or the complainant that the originals were written and posted is not relevant to show that the same have been received. It is urged that the proof of mere posting of a letter is not presumptive evidence of the receipt thereof by the addressee unless there is also proof that the original had not been returned from the Dead Letter Office.

Illustration (b) to s. 16 of the Indian Evidence Act, 1872, is relied on for the purpose and it is urged that a combination of the two facts is required to raise such a presumption. We are quite clear that the illustration only means that each one of these facts is relevant. It cannot be read as indicating that without a combination of these facts no presumption can arise. Indeed that section with the illustrations thereto has nothing to do with presumptions but only with relevance. Some cases relating to this have been cited before us. We have considered the same but it is unnecessary to deal with them.

17. Next taking the question relating to telegrams the main objection is as to the proof of the genuineness of the various telegrams said to have been received from the appellant. In this case since we are largely concerned with the nature and contents of the representations said to have been made by the accused to the complainant or to Jasawalla,

it is obvious that what are relevant or important are the telegraphic messages delivered to the complainant or Jasawalla provided the authorship of the original is made out.

These messages have been proved by producing the messages actually handed over to either of these persons or the transit copies of the originals recorded at the receiving end. The real objection, however, appears to be that there is no proof as to the appellant having been the author of these messages. It is true that under s. 88 of the Evidence Act there is a presumption only that the message received by the addressee corresponds with the message delivered for transmission at the office of origin.

There is no presumption as to the person who delivered such a message for transmission. But here again proof of authorship of the message need not be direct and may be circumstantial as has been explained above in the case of letters. The contents of the messages received, in the context of the chain of correspondence may well furnish proof of the authorship of the messages at the dispatching end. A number of other minor objections have been also raised before us connected with the proof of these telegrams.

They have all been fully dealt with by one of the learned Judges of the High Court. Most of these objections are unsubstantial and it is enough to say that we are in general agreement with the conclusions of the High Court in this matter.

18. As regards both the letters and the telegrams considerable argument was attempted before us as to the mode in which they were let in for proof in the course of the examination of the witnesses. But in the absence of any clear indication on the record that any objection in that behalf was seriously taken, we could not permit any challenge in this behalf.

19. We may add that as regards the main objection both in respect of letters as well as telegrams, viz., the use of the contents of the disputed documents, for proof thereof there is this that could be said, viz., in view of the fact that quite a large number of the documents are not admitted and only a few have been held to be admitted or indubitably proved it may have been a question open before the Court of appeal whether the internal evidence with reference to such a large mass of correspondence substantial portion of which is disputed was adequate to arrive at a satisfactory conclusion as to the genuineness of these documents.

That question is not open before us. But even if we were inclined to go into this, it was well nigh impossible, having regard to the fact that most of the documents relied upon by the trial court as well as the appellate court have not been printed in the record before us. However, there is no reason to think that the learned Judges who have considered the matter very elaborately have not come to a satisfactory conclusion.

They have acted not merely on the internal evidence of the documents but also on the oral evidence of three main witnesses, viz., the complainant, Jasawalla and Sequeria, each set of evidence having been considered as affirmative of the other and in the aggregate as proving the authorship of the disputed documents.

20. The fourth contention raised by the appellant's counsel relates to the validity of the conviction under s. 420/34 of the Indian Penal Code. Learned counsel argued that persons designated as accused 2, 3 and 4 in the complaint, were all in Bombay and the appellant in Karachi and that therefore no conjoint offence could be committed by them within the meaning of s. 34 of the Indian Penal Code.

He relies upon the dictum in Shreekantiah Ramayya Munipalli v. The State of Bombay MANU/SC/0050/1954: 1955CriLJ857 to the effect that it is essential that the accused should join in the "actual doing" of the act and not merely in planning its perpetration. We do not think that that case or the dictum therein relied on, have any bearing on the facts of the present case. It is also necessary to observe that what in fact has been found in this case is the commission of the offence by the appellant himself. Though the trial Magistrate and one of the learned Judges of the High Court referred to the conviction as a conviction under s. 420/34 of the Indian Penal Code, the actual findings support a conviction of the appellant under s. 420 itself. Such a conviction would be valid though the charge is under s. 420 read with s. 34 of the Indian Penal Code. (See Willie (William) Slaney v. The State of Madhya Pradesh MANU/SC/0038/1955: 1956CriLJ291, unless prejudice is shown to have occurred.

21. Thus there is no substance in contentions 3 and 4.

22. Contention No. 2 arises under the following circumstances. It appears that the appellant was previously undergoing trial in the Court of the Sessions Judge at Bombay for the offences of forgery and fraud and was on bail in connection with that trial. While thus on bail he fled away first to Pakistan and from there to England. The Indian authorities made an application to the Metropolitan Magistrate, Bow Street, under the Fugitive Offenders Act, for his being arrested and surrendered.

That application was granted by the Magistrate. Thereupon the appellant moved the Queens Bench Division of the High Court in England for a writ of habeas corpus challenging the validity of his arrest and surrender to the Indian authorities. Judgment of Lord Goddard C.J. dealing with this matter is reported as Re. Government of India and Mubarak Ali Ahmed [1952] 1 All E.R. 1060.. The application was dismissed and the order for surrender made under the Fugitive Offenders Act was upheld. It appears that when he was brought back to Bombay and was in jail custody with reference to the resumed sessions trial, the complainant got to know about it and filed his complaint on June 30, 1952.

The Presidency Magistrate took it on his file and issued warrant against the accused and had him brought up before his court in due course for trial (presumably after the sessions trial was completed). The objection raised before us is that the appellant having been surrendered by the order of the Metropolitan Magistrate only for the sessions trial which was pending against him in Bombay, he could not be tried for any other offence said to have been committed by him in India. Learned Counsel relies on s. 3(2) of the English Extradition Act, 1870 (33 & 34 Vict. c. 52) which shows that it is contemplated thereby that a fugitive criminal who has been surrendered under the Extradition Act in respect of a particular offence should not be tried for any other offence until he has been restored or has been given an opportunity of returning.

This section, however, has no bearing in the present case, since, as already stated, the appellant was surrendered under the Fugitive Offenders Act which contains no analogous provision. Section 8 of the Fugitive Offenders Act only provides for an optional repatriation of the surrendered person at his request if he is acquitted of the offence for which he is surrendered. Learned counsel urges that the principle underlying s. 3(2) of the English Extradition Act is a general one and that it should be applied by analogy also to a surrender under the Fugitive Offenders Act.

We are unable to accede to that contention. It may also be mentioned that even if his arrest in India for the purpose of a trial in respect of a fresh offence is considered not to be justified, this by itself cannot vitiate the conviction following upon his trial. This is now well-settled by a series of cases. (See Parbhu v. Emperor MANU/PR/0035/1944; Lumbhardar Zutshi v. The King A.I.R. 1950 P.C. 26.; and H.N. Rishbud v. The State of Delhi MANU/SC/0049/1954: 1955CriLJ526. This contention must accordingly be overruled.

23. We are left, therefore, with the first contention raised by the learned counsel for the appellant which is the only substantial question that has been raised before us requiring careful consideration.

24. The first contention is raised on the assumption that the appellant is a Pakistani national. At the outset, it may be stated that it is doubtful whether in fact the appellant at the time of the offence could be considered a Pakistani national. The complainant asserted in his complaint, that he came to know the appellant to be an Indian citizen and described him as hailing from Hyderabad (Deccan) and as having absconded to Pakistan and from there to England. In a long written-statement filed after the prosecution closed its case, the appellant himself gave details of his previous history from the year 1928. He stated that he became a Graduate with Honours from the Punjab University in 1928, that he joined the Indian Finance Service and served in various capacities and at various places, that he ultimately resigned from the Government service in 1943 and joined an industrial concern at Hyderabad (Deccan), that he did a lot of business there and that he entered into a large business contract with the Government of Hyderabad, which was revived by

the Military Government after the Police Action. He winds up the narration of his previous history with the following significant statement.

"The contract was satisfactorily fulfilled prior to my migration to Pakistan in July, 1950."
25. This is a categorical statement of the appellant himself which shows that he continued to be in India till July 1950. If so, it appears prima facie that by virtue of Art. 5 of the Constitution read with Art. 7 thereof, he was a citizen of India on the date of the Constitution and continued to be so at the date of the offence in July-August, 1951, unless he shows that under Art. 9 of the Constitution, he voluntarily acquired the citizenship of a foreign State. Prima facie mere migration to Pakistan is not enough to show that he had lost Indian citizenship.

This question has not been considered or dealt with in the courts below, probably because it was not properly raised at the early stages. Being a fundamental objection to jurisdiction this should have been raised at the trial by the appellant (accused), at any rate, soon after the charge was framed. We might well have declined, therefore, to permit the question of jurisdiction in this specific form to be argued before us. But the learned Judges of the High Court have entertained it and dealt with it on the stated assumption that the appellant is a Pakistani national. To overrule the objection at this stage without finally deciding whether the appellant continues to be an Indian citizen (after remanding for additional finding, if need be,) would not be fair or satisfactory. In the circumstances we have felt it desirable to allow arguments to proceed on the same assumption which the High Court has made. We, therefore, proceed to deal with it.

26. The learned Judges of the High Court decided against the objection of the appellant as to the jurisdiction of the court to try him for the alleged offence relying on s. 179 of the Code of Criminal Procedure which provides as follows:

"When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued."
27. In view of the above provision, the learned Judges say as follows:

"Even upon the footing that the representations were made, or the deception was practised by the appellant, while he was in Pakistan, the consequence of the deception, namely, the delivery of the property, took place in Bombay."
28. They held that the appellant could, therefore, be tried in Bombay in respect of the delivery of the money in Bombay. The argument of the learned counsel for the appellant is that s. 179 of the Code of Criminal Procedure proceeds on the assumption that the person to be tried is substantively liable for an offence under the Indian Penal Code and that s. 179 prescribes the place of trial but does not create the liability. He urges that since the appellant is a Pakistani national who was not physically present at Bombay at any

stage of the commission of the offence, the Indian Penal Code has no application to him. He is therefore not liable for an offence under the Penal Code and hence is not triable under s. 179 of the Code of Criminal Procedure. It appears from s. 5(1) of the Code of Criminal Procedure that the provisions of the said Code relating to the place of trial assume the existence of substantive liability under the Indian Penal Code or under any other law. Section 5(1) says that

"all offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained."
Now the point raised by the learned counsel is that to hold a person in the position of appellant substantively liable for the offence charged against him in the circumstances of this case, would be to give extraterritorial operation to the provisions of the Indian Penal Code. He contends that such extra-territorial operation can only be by reason of specific legislation in this behalf and does not arise from any general provisions of the Indian Penal Code.

29. To deal with this contention, it is necessary to appreciate clearly the basic facts found in this case. The offence of cheating under s. 420 of the Penal Code as defined in s. 415 of the Code has two essential ingredients, viz., (1) deceit, i.e., dishonest or fraudulent misrepresentation to a person, and (2) the inducing of that person thereby to deliver property.

In the present case the volume of evidence set out above and the facts found to be true show that the appellant though at Karachi was making, representations to the complainant through letters, telegrams and telephone talks, some times directly to the complainant and some times through Jasawalla, that he had ready stock of rice, that he had reserved shipping space and that on receipt of money he would be in a position to ship the rice forthwith.

These representations were made to the complainant at Bombay, notwithstanding that the appellant was making the representations from Karachi. The position is quite clear where the representations were made through the trunk phone. The statement of the appellant at the Karachi-end of the telephone becomes a representation to the complainant only when it reaches cognition of the complainant at the Bombay-end. This indeed has not been disputed.

It makes no difference in principle if the representations have in some stages been conveyed by telegrams or by letters to the complainant directly or to some one of the appellant's agents, including Jasawalla in that category. There is also no question that it is as a result of these representations that the complainant parted with his money to the tune of about Rs. 5½ lakhs on three different dates. It has been found that the representations were made without being supported by the requisite facts and that this

was so to the knowledge of the appellant and that the representations were so made with an initial dishonest intention.

On these facts it is clear that all the ingredients necessary for finding the offence of cheating under s. 420 read with s. 415 have occurred at Bombay. In that sense the entire offence was committed at Bombay and not merely the consequence, viz., delivery of money, which was one of the ingredients of the offence. Learned counsel for the appellant has not seriously contested this position.

But he urges that even so the appellant who was not corporeally present in India at the relevant time does not fall within the purview of the Indian Penal Code. Now there can be no doubt that prima facie the Indian Penal Code is intended to deal with all unlawful acts and omissions defined to be offences and committed within India and to provide for the punishment thereof the person or persons found guilty therefor. This is implicit in the preamble and s. 2 of the Indian Penal Code.

What is, therefore, to be seen is whether there is any reasons to think that a foreigner not corporeally present at the time of the commission of the offence does not fall within the range of persons punishable therefore under the Code. It appears to us that the answer must be in the negative unless there is any recognised legal principle on which such exclusion can be founded or the language of the Code compels such a construction.

It is strenuously urged that to consider a foreigner guilty under the Penal Code for an offence committed in India though attributable to him and to punish him therefor in a case where he is not corporeally present in India for the commission of the offence, would be to give extraterritorial operation to the Indian Penal Code and that an interpretation which brings such extra-territorial operation must be avoided.

The case of the Privy Council in Macleod v. Attorney-General for New South Wales (1891) A.C. 455. is relied upon. But this argument is based on a misconception. The fastening of criminal liability on a foreigner in respect of culpable acts or omissions in India which are juridically attributable to him notwithstanding that he is corporeally present outside India at the time, is not to give any extra-territorial operation to the law; for it is in respect of an offence, whose locality is in India, that the liability is fastened on the person and the punishment is awarded by the law, if his presence in India for the trial can be secured.

That this is part of the ordinary jurisdiction of a Municipal Court is well-recognised in the common law of England as appears from Halsbury's Laws of England (Third Edition) Vol. 10, p. 318. Paragraph 580 therein shows that the exercise of criminal jurisdiction at common law is limited to crimes committed within the territorial limits of England and para. 581 states the jurisdiction in respect of acts outside English territory as follows:

"For the purposes of criminal jurisdiction, an act may be regarded as done within English territory, although the person who did the act may be outside the territory; for instance, a person who, being abroad procures an innocent agent or uses the post office to commit a crime in England is deemed to commit an act in England. If a person, being outside England, initiates an offence, part of the essential elements of which take effect in England, he is amenable to English jurisdiction. It appears that even though the person who has initiated such an offence is a foreigner, he can be tried if he subsequently comes to England."

30. Thus the exercise of criminal jurisdiction in such cases under the common law is exercise of municipal jurisdiction and much more so in a case like the present, where all the ingredients of the offence occur within the municipal territory.

31. It would be desirable at this stage to notice certain well-recognised concepts of International Law bearing on such a situation. Wheaton in his book on Elements of International Law (Fourth Edition) at p. 183, dealing with criminal jurisdiction states as follows:

"By the Common Law of England, which has been adopted, in this respect, in the United States, criminal offences are considered as altogether local, and are justiciable only by the courts of that country where the offence is committed."

32. At p. 182 thereof it is stated as follows:

"The judicial power of every independent State, extends (with the qualifications mentioned earlier) to the punishment of all offences against the municipal laws of the State, by whomsoever committed, within the territory."

33. In Hackworth's Digest of International Law (1941 Edition), Vol. II, at p. 188 there is reference to opinions of certain eminent American Judges. It is enough to quote the following dictum of Holmes J. noticed therein:

"Acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a State in punishing the cause of the harm as if he had been present at the effect, if the State should succeed in getting him within its power."

34. In Hyde's International Law (Second Edition), Vol. I, at p. 798, the following quotation from the judgment of the permanent Court of International Justice dated September 7, 1927, in the case relating to S.S. Lotus [Publications, Permanent Court of International Justice, Series A, Nos. 10, 23.] is very instructive:

"It is certain that the courts of many countries, even of countries which have given their criminal legislation a strictly territorial character, interpret criminal law in the sense that offences, the authors of which at the moment of commission are in the territory of another State, are nevertheless to be regarded as having been committed in the national territory, if one of the constituent elements of the offence, and more especially its effects, have taken place there."

35. This quotation is also noticed in Openheim's International Law (Eighth Ed.), Vol. I at p. 332 in the foot-note. In noticing the provisions of International Law in this context we are conscious that what we have to deal with in the present case is a question merely of municipal law and not of any International Law. But as is seen above, the principles recognised in International Law in this behalf are virtually based on the recognition of those principles in the municipal law of various countries and is really part of the general jurisprudence relating to criminal responsibility under municipal law.

No doubt some of the above dicta have reference to offences actually committed outside the State by foreigners and treated as offences committed within the State by specific legislation. But the principle emerging therefrom is clear that once it is treated as committed within the State the fact that he is a foreigner corporeally present outside at the time of such commission is no objection to the exercise of municipal jurisdiction under the municipal law. This emphasises the principle that exercise of criminal jurisdiction depends on the locality of the offence and not on the nationality of the alleged offender (except in a few specified cases such as ambassadors, Princes etc.).

36. Learned counsel for the appellant has relied on various passages in the judgment of Cockburn C.J. in the well-known case The Queen v. Keyn (Franconia's case) (1876) 2 Ex.D. 63.. Fourteen learned Judges participated in that case and the case appears to have been argued twice. Eight of them including Cockburn C.J. formed the majority. Undoubtedly there are various passages in the judgment of Cockburn C.J. which prima facie seem capable of being urged in favour of the appellant's contention. In particular the following passage at p. 235 may be noticed:

"The question is not whether the death of the deceased, which no doubt took place in a British ship, was the act of the defendant in such ship, but whether the defendant, at the time the act was done, was himself within British jurisdiction."
37. The learned Chief Justice, however, recognised at p. 237 that there were certain American decisions to the contrary. Now the main debate in that case was whether the sea up to three mile limit from the shore is part of British territory or whether in respect of such three mile limit only limited and defined extra territorial British jurisdiction extended which did not include the particular criminal jurisdiction under consideration.

In respect of this question, as a result of the judgment, the Parliament had to enact the Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict., c. 73) which in substance overruled the view of the majority and of the learned Chief Justice on this point. The main principle of criminal jurisdiction, however, relevant for our purpose was enunciated in the minority judgment of Amphlett, J.A., at p. 118, that "it is the locality of the offence that determines the jurisdiction" implying by contrast that it is not the nationality of the offender.

38. The question, however, that still remains for consideration is whether there is anything in the language of the sections of the Indian Penal Code relating to the general scheme of the Code which compels the construction that the various sections of the Penal Code are not intended to apply to a foreigner who has committed an offence in India while not being corporeally present therein at the time.

For this purpose we are not concerned with such of the sections of the Penal Code, if any, which indicate the actual presence of the culprit as a necessary ingredient of the offence. Of course, for such offences a foreigner ex hypothesi not present at the time in India cannot be guilty. The only general sections of the Indian Penal Code which indicate its scheme in this behalf are Sections 2, 3, and 4 and as they stand at present, they are as follows:

"2. Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within India.

3. Any person liable, by any Indian law, to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India.

4. The Provisions of this Code apply also to any offence committed by -

(1) any citizen of India in any place without and beyond India;

(2) any person on any ship or aircraft registered in India wherever it may be.

Explanation:- In this section the word 'offence' includes every act committed outside India which, if committed in India, would be punishable under this Code."

39. Sections 3 and 4 deal with offences committed beyond the territorial limits of India and s. 2 obviously and by contrast refers to offences committed within India. It appears clear that it is s. 2 that has to be looked to determine the liability and punishment of persons who have committed offences within India. The section asserts categorically that every person shall be liable to punishment under the Code for every act or omission contrary to the provisions of the Code and of which he shall be guilty within India.

This recognises the general principle of criminal jurisdiction over persons with reference to the locality of the offence committed by them, being within India. The use of the phrase "every person" in s. 2 as contrasted with the use of the phrase "any person" s. 3 as well as s. 4(2) of the Code is indicative of the idea that to the extent that the guilty for an offence committed within India can be attributed to a person, every such person without exception is liable for punishment under the Code.

Learned counsel for the appellant suggests that the phrase "within India" towards the end of s. 2 must be read with the phrase "every person" at the commencement thereof. But this is far-fetched and untenable. The plain meaning of the phrase "every person" is that it comprehends all persons without limitation and irrespective of nationality, allegiance, rank, status, caste, colour or creed.

This section must be understood as comprehending every person without exception barring such as may be specially exempt from criminal proceedings or punishment thereunder by virtue of the Constitution (See Art. 361(2) of the Constitution) or any statutory provisions or some well-recognised principle of international law, such as foreign sovereigns, ambassadors, diplomatic agents and so forth, accepted in the municipal law.

40. Learned counsel drew our attention to a number of sections in the Penal Code, viz., Sections 108A, 177, 203, 212, 216, 216A and 236. The argument based on reference to these sections is that wherever the legislature in framing the Penal Code wanted to legislate about anything that has reference to something done outside India it has specifically said so and that therefore it may be expected that if it was intended that the Penal Code would refer to a person actually present outside India at the time of the commission of the offence, it would have specifically said so. We are unable to accept this argument.

These sections have reference to particular difficulties which arose with reference to what may be called, a related offence being committed in India in the context of the principal offence itself having been committed outside India - that is for instance, abetment, giving false information and harbouring within India in respect of offences outside India. Questions arose in such cases as to whether any criminal liability would arise with reference to the related offence, the principal offence itself not being punishable in India and these sections were intended to rectify the lacunae.

On the other hand, a reference to s. 3 of the Code clearly indicates that it is implicit therein that a foreigner who commits an offence within India is guilty and can be punished as such without any limitation as to his corporeal presence in India at the time. For if it were not so, the legal fiction implicit in the phrase "as if such act had been committed within India" in s. 3 would not have been limited to the supposition that such act had been committed within India, but would have extended also to a fiction as to his physical presence at the time in India.

41. In the argument before us, there has been some debate as to what exactly is the implication of the clause "of which he shall be guilty within India" in s. 2 of the Code. It is unnecessary to come to any definite conclusion in respect thereto. But it is clear that it does not support the contention of the appellant's counsel. We have, therefore, no doubt that on a plain reading of s. 2 of the Penal Code, the Code does apply to a foreigner who

has committed an offence within India notwithstanding that he was corporeally present outside.

42. It has next been urged before us that the exercise of jurisdiction over a foreigner by municipal courts depends on the theory of temporary allegiance to the State by reason of his entry into the State, which carries with it the protection of its laws and therefore his submission thereto. Dicta from some of the decided cases have been cited before us. It is unnecessary to deal with any of those cases.

On an examination of those cases it will be found that allegiance, temporary or otherwise, has not been laid down anywhere as a limiting principle in respect of criminal jurisdiction, which is primarily concerned with questions of security of the State and of the citizens of the State.

43. A number of early cases of the High Courts in India have been brought to our notice as bearing on the question now under consideration. (See Reg. v. Elmstone, Whitwell (1870) 7 Bom. H.C.R. 89; Reg. v. Pirtai [(1873) 10 Bom. H.C.R. 356.]; Mussummat Kishen Kour v. The Crown [(1878) 13 P.R. 49 (Criminal Judgments).]; and Gokaldas Amarsee v. Emperor (1934) 35 Cr.L.J. 585.. As against them may be noticed the case in Emperor v. Chhotalal Babar (1912) I.L.R. 36 Bom. 524..

It is unnecessary to consider them at any length. Undoubtedly some of them seem to support the view pressed before us on behalf of the appellant that criminal jurisdiction cannot extend to foreigners outside the State. These, however, are decisions rendered at a time when the competence of the Indian Legislature was considered somewhat limited, under the influence of the decisions like those in Macleod's case [(1891) A.C. 455.] in spite of the decision in Queen v. Burah (1878) 3 A.C. 889..

However that may be these concepts are no longer tenable after India became a Dominion by the Indian Independence Act of 1947 and after it become an independence free sovereign republic under the present Constitution. It is enough to refer to the case of Croft v. Dunphy (1933) A.C. 156. and to the decision of Spens, C.J., in Governor-General v. Raleigh Investment MANU/FE/0015/1944.

In the latter case Spens, C.J., indicates that there has been considerable change in the concept of the doctrine of extra-territorial legislation, subsequent to Macleod's case (1891) A.C. 455. and the criticism of Macleod's case (1891) A.C. 455. in certain Canadian decisions and of the Privy Council itself has been adverted to.

44. Learned counsel invited our attention to a passage from the report of the Indian Law Commissioners quoted at p. 274 of Ratanlal's Law of Crimes (Eighteenth Ed.). It is enough to say that though this quotation may be valuable as a matter of history, it cannot be a legitimate guide for the construction of the section. That construction must be based on

the meaning of the words used, to be gathered according to the ordinary rules of interpretation and in consonance with the generally accepted principles of exercise of criminal jurisdiction.

It is not necessary and indeed not permissible to construe the Indian Penal Code at the present day in accordance with the notions of criminal jurisdiction prevailing at the time when the Code was enacted. The notions relating to this matter have very considerably changed between then and now during nearly a century that has elapsed. It is legitimate to construe the Code with reference to the modern needs, wherever this is permissible, unless there is anything in the Code or in any particular section to indicate the contrary.

45. After giving our careful consideration to the questions raised before us, we are clearly of the opinion that even on the assumption that the appellant has ceased to be an Indian citizen and was a Pakistani national at the time of the commission of the offence, he must be held guilty and punished under the Indian Penal Code notwithstanding his not being corporeally present in India at the time.

46. We have been asked to consider the question of sentence. As has been stated at the outset the substantive sentences of imprisonment are two years under the first count and twenty-two months under the second. The sentences were concurrent on the second and third counts. As a result, the total imprisonment which has been awarded against the appellant would be a period of three years and ten months. We are not prepared to say that the discretion of the trial court in awarding that sentence has been wrongly exercised.

47. The appeal is accordingly dismissed.

48. Appeal dismissed.

MANU/WB/0119/1912

Back to Section 3 of Indian Penal Code, 1860

IN THE HIGH COURT OF CALCUTTA

Decided On: 12.12.1912

Kari Singh Vs. Emperor

Hon'ble Judges/Coram:
Saiyid Sharfuddin and Henry Reynell Holled Coxe, JJ.

JUDGMENT
Saiyid Sharfuddin and Henry Reynell Holled Coxe, JJ.

1. The accused in this case has been convicted of defaming one, Mr. Macpherson. It appears that in a former case lie applied to the District Magistrate for a transfer, and in that application he stated that Mr. Macpherson had brought to Court the manager of the Majhoul Factory, who was the trying Magistrate's tenant, and had had a private talk with the trying Magistrate. He inferred that this was done to put pressure on the trying Magistrate, and to induce him to convict the petitioner.

2. It appears that this was all pure invention. The manager of the Majhoul Factory was not brought to Court at all, and Mr. Macpherson had no private talk with the trying Magistrate. The assertion clearly amounted to an accusation against Mr. Macpherson that he had attempted to corrupt justice, and it cannot be gainsaid that it was defamatory, and made in bad faith.

3. The petitioner has obtained a rule on the Magistrate to show cause why the conviction should not be set aside, on the ground that the statement in the application for transfer was absolutely privileged.

4. It is evident on reference to the terms of the, section itself that statements made in bad faith are not protected. But it is argued by the learned pleader who appeal's in support of this rule, following the decision in Potaraju Venkata Reddy v. Emperor (1912) 13 Or. L. J. 275 that the English common law doctrine of absolute privilege is also law in this country. Speaking with the utmost respect for that decision, we are unable ourselves to take this view. The learned pleader has not shown us any authority, historical or otherwise, for holding that the English common law ever had any application to the Indian mofussil, and despite some casual expressions, in certain decisions, we are unable to understand how it could ever have had any application. It is argued, however, that as the Exceptions in Section 499 of the Penal Code correspond only to the classes of qualified privilege in English law, and as there is no reference in the Penal Code to the cases of absolute privilege, it must be assumed that the framers of the Code, who were introducing the English law into this country, cannot have intended to exclude that portion of it. The rule

laid down in Bank of England v. Vagliano [18011 A. C. 107 quoted in Norendra Nath Sircar v. Kamalbasini Dasi ILR(1896)Calc. 563 was that the proper course to adopt in construing an Act was to ascertain the natural meaning of its language, and not to assume that it was intended to leave the existing law unaltered, except when that intention was stated. This decision is distinguished on the ground that Lord Herschell, in laying down that rule, was dealing With an Act codifying the existing law, and not with an Act introducing new law. It seems to us that the distinction tells rather against the appellant than for him. If it is wrong to assume that in codifying existing law the Legislature intended to leave it unaltered, unless that intention is expressly stated, it seems to us that it would be more, and not less, wrong-to assume that in introducing a foreign law into a country the Legislature intended to introduce the whole of it, unless the contrary is expressly stated. It was held in Gokul Mandar v. Pudmanund Singh ILR(1902) Calc. 707 that it is " the essence of a Code to be exhaustive on the matters in respect of which it declares the law, and it is not the province of a Judge to disregard or go outside the letter of the enactment, according to its true construction." The Penal Code certainly declares the law in respect of defamation. It contains a definition of defamation, and sets out a number of Exceptions. It appears to us that it must be regarded as exhaustive on the point. Section 2 enacts that every person shall be liable to punishment under this Code, and not otherwise, for their acts. If there are a number of Exceptions to the offence of defamation, other than those contained in Section 499, it appears to us that an offender must be liable to punishment for defamation otherwise than under the Code. On principle, therefore, it would seem to us that Section 499 is exhaustive, and that if a defamatory statement does not come within the specified Exceptions, it is not privileged.

5. It appears to us also that in Bengal the matter is concluded by authority. The cases of Greene v. Delanney (1870) 14 W. R. Cr 27 Augada Ram Shaha v. Nemai Chand Shaha ILR(1896) Calc. 867 Kali Nath Gupta v. Gobinda Chandra Basu MANU/WB/0341/1900: 5. C. W. N. 293 seem to us clear authority for holding that the question of privilege must be decided by the terms of Section 499. The decisions of this Court that have been cited on behalf of the appellant are, in our opinion, distinguishable. The first case relied on is that of Baboo Gunnesh Dutt Singh v. Mugneeram Chowdhry (1872) 11 B. L. R. 321. There it was held that, on principles of public policy, a witness cannot be sued for damages in respect of defamatory evidence given by him in a judicial proceeding. But there their Lordships were dealing with a civil suit, and not with a criminal prosecution; and were not considering the effect of Section 499 of the Penal Code. This is a real distinction, because, while the law of crimes has been codified and offences have been defined by Statute, the codification, of the Law of Torts was abandoned, and actionable wrongs are not defined by Statute. It is likely enough that, if the Law of Torts had been codified, some provisions would have been introduced, such as exists in the Contract Act, by which suits opposed to public policy would have been barred. But this has not been done, and the question, what is or is not an actionable wrong, has to be gathered from case law, and considerations of justice, equity and good conscience, and not from a statutory definition. It is, therefore, possible in such cases to apply principles of the English law which are

consonant with justice, equity and good conscience, which would have no application if actionable wrongs had been defined by Statute. Secondly, it is clear that a voluntary statement by an accused is different from a statement made by a witness who is compelled to answer the questions put to him. The distinction may be fine, but it has been recognised and acted upon by this Court. We may refer again to the case of Kali Nath Gupta v. Gobinda Chandra Basu MANU/WB/0341/1900: 5 C. W. N. 293 quoted above. And in Haidar Ali v. Abru Mia ILR(1905)Calc. 756 the learned Judges refused to extend the privilege even to a witness when the statement was not made in answer to a question that the witness was bound to answer, but was volunteered.

6. In Bhikumber Singh v. Becharam Sircar ILR(1888) Calc. 264 it was held that a statement made by a witness was absolutely privileged. That was a suit for damages' and the case goes no further than Baboo Gunnesh Butt Singh v. Mugneeram Chowdhry (1872) 11 B. L. R. 321 already discussed. The same may be said of Woolfun Bibi v. Jesarat Sheikh ILR(1899) Calc. 262. In Golap Jan v. Bholanath Khettry ILR(1911)Calc. 880 the statement was made by a complainant and not by a witness, but the privilege was claimed not in a criminal prosecution but in a suit for damages. That also was a case within the original jurisdiction of this Court, where the application of English law might be supported by arguments that would be inapplicable to a case in the mofussil.

7. It seems to us, therefore, clear, both on principle and authority, that in Bengal there is no absolute privilege for a statement like that now Tinder consideration, when made in bad faith. It has been pressed upon us that, in the analogous case Kari Singh v. Emperor. Criminal Revision No. 1219 of 1912.

8. Cuitty and Richardson JJ. In this case the accused, Kari Singh, who is the petitioner before us, was put on his trial before Maulvi Najimuddin, an Honorary Magistrate, on a charge under Section 147 of the Indian Penal Code. In the course of that trial he presented a petition to the District Magistrate of Monghyr for a transfer of the case to another Court, on the ground that he would not get a fair and impartial trial before the Honorary Magistrate. Paragraph (5) of that petition was as follows:

That on the 17th June last, on the date fixed for hearing of this case, Mr. Macpherson and the manager of Majhoul Kothi, where some properties of the trying Honorary Magistrate have been leased out, came to the Court of the trying Magistrate and had some private talk with the Honorary Magistrate, and the petitioner apprehends that the manager of the Maghonl Kothi was brought to put additional pressure on the trying Magistrate to induce him to convict the petitioner, and that he cannot get a fair and impartial trial in that Court, or in any other Court in Bengal.

The accused was charged under Section 499 of the Indian Penal Code with defaming Mr. Macpherson and also the manager of Majhoul Kothi (Mr. Finch), and has been in each case convicted and sentenced to pay a fine, of Rs. 100, or in default to undergo 3 months'

simple imprisonment. The accused made two applications to this Court in revision, one in each case. For some reason a Rule was issued only in Mr. Finch's case, the question in Mr. Macpherson's case being left over for further consideration until after the disposal of the Rub so issued.

It has been found as a fact that the allegation above set out was untrue to the knowledge of the accused, inasmuch as neither of the gentlemen in fact came to Begusarai on the day alleged, or had any conversation with the trying Magistrate.

The only question before us is whether the statement of the petitioner must be judged only by the provisions of Section 499 of the Indian Penal Code, or whether it was absolutely privileged, of the trying Magistrate and had some private talk with the Honorary Magistrate, and the petitioner apprehends that the manager of the Maghonl Kothi was brought to put additional pressure on the trying Magistrate to induce him to convict the petitioner, and that he cannot get a fair and impartial trial in that Court, or in any other Court in Bengal.

The accused was charged under Section 499 of the Indian Penal Code with defaming Mr. Macpherson and also the manager of Majhoul Kothi (Mr. Finch), and has been in each case convicted and sentenced to pay a fine, of Rs. 100, or in default to undergo 3 months' simple imprisonment. The accused made two applications to this Court in revision, one in each case. For some reason a Rule was issued only in Mr. Finch's case, the question in Mr. Macpherson's case being left over for further consideration until after the disposal of the Rub so issued.

It has been found as a fact that the allegation above set out was untrue to the knowledge of the accused, inasmuch as neither of the gentlemen in fact came to Begusarai on the day alleged, or had any conversation with the trying Magistrate.

The only question before us is whether the statement of the petitioner must be judged only by the provisions of Section 499 of the Indian Penal Code, or whether it was absolutely privileged.

The question in its broadest aspect has been the subject of a largo number of judicial decisions in the High Courts of India, and in no one of the Courts have such decisions been entirely uniforn.

The statement here is not the statement of a person who is a mere witness, or who is a party to a civil suit. It is the statement made by an accused person in the course of his trial upon a criminal charge. In view of the decisions to which we have been referred, that fact may not be without its importance. It certainly makes it pertinent to observe that in the very recent case of Potaraju Venkata Reddy v. Emperor (1912) 13 Cri. L. J. 275 not yet reported in the Indian Law Reports, a Full Bench of the Madras High Court, after a careful

examination of the authorities, has held that the statement of an accused person in answer to a question by the trying Court is absolutely privileged. In another recent case in tin's Court, Golap Jan v. Bholanath Khettry ILR(1911)Calc. 880 where the defamatory statement was made in a complaint preferred under the Criminal Procedure Code, the Chief Justice remarked (p. 888), "but even if the complaint to the Magistrate was defamatory, still the complainant was entitled to protection from suit, and tin's protection is the absolute privilege accorded in the public interest to those who make statements to the Courts in the course of, and in relation to, judicial proceedings. "The remark would apply with as great, or even greater, force to a statement made by an accused person.

We have said that the statement here was made in the course of criminal proceedings, but it was not made in the Court of the trying Magistrate by way of answer to the charge. It was made in the Court of the District Magistrate to support an application for transfer. 'Die order we are about to make must not be understood as in any degree implying that we desire to weaken the sense of responsibility which such applications entail. Sometimes they may be justified. Sometimes they may be mere devices for delaying justice. Or again, they may be resorted to because it is thought that the trial Judge or Magistrate has, not improperly, from personal bias or from extraneous information, but on the bench and judicially, as the case proceeded before him, formed, or provisionally formed, an opinion on the merits, favourable or unfavourable, to one side or the other.

The authorities have been examined so often, and with such differing results, that we do not think that it would serve any useful purpose to traverse the same ground again upon this Rule. The controversy is of a character which can only be finally settled by an authoritative ruling of the Privy Council or by the Legislature. We refrain, therefore, from expressing unqualified opinion upon the question of principle involved, and we content ourselves with saying that, in view of the two cases which we have specifically cited, the propriety of the conviction is at least open to serious doubt. In that view of the matter, we make the Rule absolute, set aside the conviction and sentence, and direct that the fine, if paid, be refunded.

A Rule in the same terms must be issued in Mr. Macpherson's case. brought by the manager of the Majhoul Factory, a Bench of this Court set aside the conviction, and it has been suggested that we should refer the matter to a Full Bench. But we can only refer to a Full Bench a decision from which we dissent on a point of law, and we do not so dissent from any decision that has been laid before us. In the analogous case the learned Judges expressly declined to lay down any principle of law, and set aside the conviction, because, in view of the two cases cited by them Potaraju Venkata Redely v. Emperor (1912) 13 Cri. L. J. 275 and Golap Jan v. Bholanath Khettry ILR(1911) Calc. 880 the propriety of the conviction was open to serious doubt. But speaking with all respect we are unable to share the doubts of the learned Judges as to what is at present the law on this point in this province.
9. The Rule is discharged.

MANU/SC/0066/1954

Back to Section 4 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 90 of 1952

Decided On: 12.10.1954

Central Bank of India Vs. Ram Narain

Hon'ble Judges/Coram:
M.C. Mahajan, C.J., B.K. Mukherjea, Vivian Bose, B. Jagannadhadas and T.L. Venkatarama Aiyyar, JJ.

JUDGMENT
M.C. Mahajan, C.J.

1. This appeal, by leave of the High Court of Judicature at Simla, raises a novel and interesting question of law, viz., whether a person accused of an offence under the Indian Penal Code and committed in a district which after the partition of India became Pakistan, could be tried for that offence by a Criminal Court in India after his migration to that country, and thereafter acquiring the status of a citizen.

2. The material facts relevant to this enquiry are these:

3. The respondent, Ram Narain, acting on behalf of his firm Ram Narain Joginder Nath, carrying on business at Mailsi in Multan District, was allowed a cash credit limit of rupees three lakhs by the Mailsi branch of the Central Bank of India Ltd. (the appellant) on the 23rd December, 1946, shortly before the partition of British India. The account was secured against stocks which were to remain in possession of the borrowers as trustees on behalf of the bank. On 15th August, 1947, when British India was split into two Dominions, the amount due to the bank from Ram Narain was over Rs. 1,40,000, exclusive of interest, while the value of the goods pledged under the cash credit agreement was approximately in the sum of Rs. 1,90,000. On account of the disturbances that followed in the wake of the partition of the country, the bank's godown-keeper at Mailsi left Mailsi some time in September, 1947, and the cashier, who was left in charge, also was forced to leave that place in October, 1947, and thus no one was in Mailsi to safeguard the bank's godowns after that date. It is alleged that in January, 1948, when, Mr. D. P. Patel Agent of the Multan branch of the appellant bank visited Mailsi, he discovered that stocks pledged by Messrs. Ram Narain Joginder Nath, against the cash credit agreement had disappeared. On inquiry he found that 801 cotton bales pledged

with the bank had been stolen, and booked by, Ram Narain to Karachi on the 9th November, 1947, and that he had recovered a sum of Rs. 1,98,702-12-9 as price of these bales from one Durgadas D. Punjabi. The bank claimed this amount from Ram Narain but with no result. It then applied under section 188, Criminal Procedure Code, to the East Punjab Government for sanction for the prosecution of Ram Narain for the offences committed in Pakistan in November, 1947, when he was there, in respect of these bales. The East Punjab Government, by its order dated 23rd February, 1950, accorded sanction for the prosecution of Ram Narain, under sections 380 and 454, Indian Penal Code. Ram Narain, at this time, was residing in Hotel District Gurgaon, and was carrying on business under the name and style of Ram Narain Bhola Nath, Hodel. In pursuance of this sanction, on 18th April, 1950, the bank filed a complaint against Ram Narain under sections 380 and 454, Indian Penal Code, and also under section 412 of the code before the District Magistrate of Gurgaon.

4. Ram Narain, when he appeared in Court, raised a preliminary objection that at the time of the alleged occurrence he was a national of Pakistan and therefore the East Punjab Government was not competent to grant sanction for his prosecution under section 188, Criminal Procedure Code, read with section 4, Indian Penal Code. This objection was not decided at that moment, but after evidence in the case had been taken at the request of both sides the Court heard arguments on the preliminary point and overruled it on the finding that Ram Narain could not be said to have acquired Pakistan nationality by merely staying on there from 15th August, till 10th November 1947, and that all this time he had the desire and intention to revert to Indian nationality because he sent his family out to India in October, 1947, would up his business there and after his migration to Indian in November, 1947, he did not return to Pakistan. It was also said that in those days Hindus and Sikhs were not safe in Pakistan and they were bound to come to India under the inevitable pressure of circumstances over which they had no control. Ram Narain applied to the Sessions judge, Gurgaon, under sections 435 and 439, Criminal Procedure Code, for setting aside this order and for quashing the charges framed against him. The Additional Sessions Judge dismissed this petition and affirmed the decision of the trial magistrate. Ram Narain then preferred an application in revision to the High Court, Punjab, at Simla and with success. The High Court allowed the revision and quashed the charges and held that the trial of respondent, Ram Narain, by a magistrate in India was without jurisdiction. It was held that until Ram Narain actually left Pakistan and came to India he could not possibly be said to have become a citizen of India, though undoubtedly he never intended to remain in Pakistan for any length of time and wound up his business as quickly as he could and came to India November, 1947, and settled in Hodel. It was further held that the Punjab Government had no power in February, 1950, to sanction his prosecution under section 188, Criminal Procedure Code, for acts committed in Pakistan in November, 1947. The High Court also repelled the further contention of the appellant bank that in any case Ram Narain could be tried at Gurgaon for the possession or retention by him at Hodel of the sale proceeds of the stolen cotton

which themselves constitute stolen property. Leave to appeal to this Court was granted under article 134(1)(c) of the Constitution.

5. The sole question for determination in the appeal is whether on a true construction of section 188, Criminal Procedure Code, and section 4 of the Indian Penal Code, the East Punjab Government had power to grant sanction for the prosecution of Ram Narain for offences committed in Pakistan before his migration to India.

6. The relevant portion of section 4, Indian Penal Code, before its amendment read thus:

"The provisions of this Code apply also to any offence committed by -

(1) any Native Indian subject of Her Majesty in any place without and beyond British India;....."
7. Since 1950 the wording is:

"Any citizen of India in any place without and beyond India...."

8. Section 188, Criminal Procedure Code, formerly read thus:

"When a Native Indian subject of Her Majesty commits an offence at any place without and beyond the limits of British India....he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found."
9. These wordings were subsequently adapted after the formation of two Dominions and read as follows:-

"When a British subject domiciled in India commits an offence at any place without and beyond all the limits of the provinces.... he may be dealt with in respect of such offence as if it had been committed at any place within the Provinces at which he may be found."
10. After 1950, the adapted section reads as follows:

"When an offence is committed by -

(a) any citizen of India in any place without and beyond India - he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found."
11. The learned Attorney-General contended that Ram Narain was, at the time when sanction for his prosecution was given by the East Punjab Government, a citizen of India residing in Hodel and that being so, he could be tried in India being a citizen of India at that moment, and having committed offences outside India and that the provisions of section 4, Indian Penal Code, and section 188, Criminal Procedure Code, were fully attracted to the case. In our opinion, this contention is not well founded. The language of the sections plainly means that if at the time of the commission of the offence, the person

committing it is a citizen of India, then even if the offence is committed outside India he is subject to the jurisdiction of the Court in India. The rule enunciated in the section is based on the principle that qua citizen the jurisdiction of Courts is not lost by reason of the venue of the offence. If, however, at the time of the commission of the offence the accused person is not a citizen of India, then the provisions of these sections have no application whatsoever. A foreigner was not liable to be dealt with in British India for an offence committed and completed outside British India under the provisions of the sections as they stood before the adaptations made in them after the partition of India. Illustration (a) to section 4, Indian Penal Code, delimits the scope of the section. It indicates the extent and the ambit of this section. It runs as follows:-

"(a) A, a coolie, who is a Native Indian subject commits a murder in Uganda. He can be tried and convicted of murder in any place in British India in which he may be found."
12. In the illustration, if (A) was not a Native Indian subject at the time of the commission of the murder the provisions of section 4, Indian Penal Code, could not apply to his case. The circumstance that after the commission of the offence a person becomes domiciled in another country, or acquires citizenship of that State, cannot confer jurisdiction on the Courts of that territory retrospectively for trying offences committed and completed at a time when that person was neither the national of that country nor was he domiciled there.

13. The question of nationality of Ram Narain really does not arise in the case. The real question to be determined here is, whether Ram Narain had Indian domicile at the time of the commission of the offence. Persons domiciled in India at the time of coming into force of our Constitution were given the status of citizens and they thus acquired Indian nationality. If Ram Narain had Indian domicile at the time of the commission of the offence, he would certainly come within the ambit of section 4, Indian Penal Code, and section 188, Criminal Procedure Code. If, on the other hand, he was not domiciled in India at the relevant moment, those sections would have no application to his case. Writers on Private International Law are agreed that it is impossible to lay down an absolute definition of 'domicile.' The simplest definition of this expression has been given by Chitty J. in Craignish v. Craignish [1892] 3 Ch. 180, 192), wherein the learned Judge said:

"That place is properly the domicile of a person in which his habitation is fixed without any present intention of removing therefrom."
14. But even this definition is not an absolute one. The truth is that the term 'domicile' lends itself to illustrations but not to definition. Be that as it may, two constituent elements that are necessary by English Law for the existence of domicile are: (1) a residence of a particular kind, and (2) an intention of a particular kind. There must be the factum and there must be the animus. The residence need not be continuous but it must be indefinite, not purely fleeting. The intention must be a present intention to reside for ever in the country where the residence has been taken up. It is also a well established

proposition that a person may have no home but he cannot be without a domicile and the law may attribute to him a domicile in a country where in reality he has not. A person may be a vagrant as when he lives in a yacht or wanderer from one European hotel to another, but nevertheless the law will arbitrarily ascribe to him a domicile in one particular territory. In order to make the rule that nobody can be without a domicile effective, the law assigns what is called a domicile of origin to every person at his birth. This prevails until a new domicile has been acquired, so that if a person leaves the country of his origin with an undoubted intention of never returning to it again, nevertheless his domicile of origin adheres to him until he actually settles with the requisite intention in some other country.

15. It has been held by the High Court that Ram Narain remained in Multan District of the West Punjab, where he and his ancestors had lived till his migration to India. The contention that as no Hindu or Sikh could possibly remain in Pakistan and therefore every such person must have been bound upon making his way to India as quickly as possible and that merely by forming an intention to come to India he became an Indian subject and was never even for a moment a subject of Pakistan, was negatived, and it was said that "though there is no doubt that so far as Punjab is concerned the vast majority of Hindus and Sikhs came to India but even in the Punjab the exodus has not been complete and in the East Bengal there are a considerable number of non-Muslims who no doubt by now have become full citizens of Pakistan." In view of these findings it was concluded that the only possible way by which a resident of the territories which became Pakistan could become an Indian subject was by actually coming to India and unless and until any such person did come to India he retained Pakistan domicile, and was not covered by the words "Native Indian subject of Her Majesty" in the meaning which they automatically acquired as from the 15th August, 1947, and he certainly could not be described as a citizen of India in November, 1947. The learned Attorney-General combated this view of the learned Judge and laid considerable emphasis on his following observations:

"There does not seem to be any doubt in the evidence produced that Ram Narain never intended to remain in Pakistan for any length of time. In fact, he wound up his business as quickly as he could and came to India later in November 1947 and settled in Hotel."
16. and he further emphasized the circumstances relied upon by the trial magistrate and sessions Judge that Ram Narain had sent his family to India in October, 1947.

17. In our opinion, none of these circumstances conclusively indicate an intention in Ram Narain of permanently removing himself from Pakistan and taking up residence in India. It has to be remembered that in October or November, 1947, men's minds were in a state of flux. The partition of India and the events that followed in its wake in both Pakistan and India were unprecedented and it is difficult to cite any historical precedent for the situation that arose. Minds of people affected by this partition and who were living in those parts were completely unhinged and unbalanced and there was hardly any occasion to form intentions requisite for acquiring domicile in one place or another.

People vacillated and altered their programmes from day to day as events happened. They went backward and forward; families were sent from one place to another for the sake of safety. Most of those displaced from West Pakistan had no permanent homes in India where they could go and take up abode. They overnight became refugees, living in camps in Pakistan or in India. No one, as a matter of fact, at the moment through that when he was leaving Pakistan for India or vice versa that he was doing so for ever or that he was for ever abandoning the place of his ancestors.

Later policies of the Pakistan Government that prevented people from going back to their homes cannot be taken into consideration in determining the intention of the people who migrated at the relevant moment.

Ram Narain may well have sent his family to India for safety. As pointed out by the learned Judge below, he and his ancestors lived in the Multan District. He had considerable business there. The bank had given him a cash credit of rupees three lakhs on the security of goods. He had no doubt some business in Hodel also but that was comparatively small. There is no evidence that he had any home in India and there is no reason to go behind the finding of the learned Judge below that he and his ancestors had been living in Mailsi. In these circumstances, if one may use the expression, Ram Narain's domicile of origin was in the district of Multan and when the district of Multan fell by the partition of India in Pakistan, Ram Narain had to be assigned Pakistan domicile till the time he expressed his unequivocal intention of giving up that domicile and acquiring Indian domicile and also took up his residence in India. His domicile cannot be determined by his family coming to India and without any finding that he had established a home for himself. Even if the animus can be ascribed to him the factum of residence is wanting in his case; and in the absence of that fact, an Indian domicile cannot be ascribed to Ram Narain. The subsequent acquisition by Ram Narain of Indian domicile cannot affect the question of jurisdiction of Courts for trying him for crimes committed by him while he did not possess an Indian domicile. The question in this case can be posed thus: Can it be said that Ram Narain at the time of the commission of the offence was domiciled in India? That question can only be answered in one way, viz., that he was not domiciled in India. Admittedly, then he was not a citizen of India because that status was given by the Constitution that came into force in January, 1950. He had no residence or home in the Dominion of India. He may have had the animus to come to India but that animus was also indefinite, an uncertain. There is no evidence at all that at the moment he committed the offence he had finally made up his mind to take up his permanent residence in India, and a matter of this kind cannot be decided on conjectural grounds. It is impossible to read a man's mind but it is even more than impossible to say how the minds of people worked during the great upheaval of 1947.

18. The learned Attorney-General argued that Ram Narain was a native Indian subject of Her Majesty before the 15th August, 1947, and that description continued to apply to him after the 15th August, 1947, whether he was in India or in Pakistan, but we think that the description 'Native subject of Her Majesty' after the 15th of August, 1947, became applicable in the territory now constituted India only to residents of provinces within the

boundaries of India, and in Pakistan to residents of provinces within the boundaries of Pakistan and till the time that Ram Narain actually landed on the soil of India and took up permanent residence therein he cannot be described to be domiciled in India or even a Native Indian subject of His Majesty domiciled in India.

19. For the reasons given above we are of the opinion that the decision of the High Court that Ram Narain could not be tried in any Court in India for offences committed in Mailsi in November, 1947 is right and that the Provincial Government had no power under section 188, Criminal Procedure Code, to accord sanction to his prosecution.

20. The result is that the appeal fails and is dismissed.

21. Appeal dismissed.

MANU/SC/1140/2011

Back to Section 24 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 7241 of 2002

Decided On: 29.09.2011

Union of India (UOI) through its Secretary Ministry of Defence Vs. Rabinder Singh

Hon'ble Judges/Coram:
J.M. Panchal and H.L. Gokhale, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Parag P. Tripathi, ASG, R. Balasubramanian, Amey Nargolkar, Mahima Gupta and B.V. Balaram Das, Advs.
For Respondents/Defendant: Seeraj Bagga, Adv. for Sureshta Bagga, Adv.

JUDGMENT
H.L. Gokhale, J.

1. This appeal by Union of India through the Secretary to Government, Ministry of Defence seeks to challenge the judgment and order passed by a Division Bench of the Punjab and Haryana High Court in L.P.A. No. 996 of 1991 dated 2.7.2001 whereby the Division Bench has allowed the appeal filed by the first Respondent from the judgment and order rendered by a Single Judge of that Court dated 31.5.1991 in C.W.P. No. 995-A of 1989 which had dismissed the said Writ Petition filed by the first Respondent.

2. The Division Bench has allowed the said petition by its impugned order and set aside the proceedings, findings and sentence of the General Court Martial held during 24.6.1987 to 1.10.1987 against the first Respondent by which he was awarded the punishment of Rigorous Imprisonment (R.I.) for one year and cashiering.

The facts leading to this appeal are as follows:

3. The first Respondent was deployed between 1.2.1984 and 3.10.1986 as the Commanding Officer of the 6 Armoured Regiment which was a new raising at the relevant time in the Indian Army. The unit was authorized for one signal special vehicle. In case such a vehicle was not held by the unit it was authorized to modify one vehicle with ad-hoc special finances for which it was authorized to claim 75% of Rs. 950/- initially and claim the balance amount on completion of modification work.

4. It is the case of the Appellant that the unit had sent a claim for 75% of the amount (i.e. Rs. 450/- as per the old rates) for modification of one vehicle, but the same was returned for want of justifying documents by the audit authorities. Yet the Respondent proceeded to order modification of some 65 vehicles in two lots, first 43 and thereafter 22. There is no dispute that he countersigned those bills, and claimed and received an amount of Rs. 77,692/- by preferring four different claims. The case of the Appellant is that not a single vehicle came to be modified, the money was kept separately and the expenditure was personally controlled by the Respondent. No such items necessary for modification were purchased, but fictitious documents and pre-receipted bills were procured. Though, the counter-foils of the cheques showed the names of some vendors, the amount was withdrawn by the Respondent himself. When the annual stocktaking was done, the non-receipt of stores and false documentation having taken place was found entered in the records.

5. (i) This led to the conducting of the Court of Inquiry on 13.10.1986 to collect evidence and to make a report under Rule 177 of the Army Rules, 1954 framed under Section 191 of the Army Act, 1950. On conclusion of the inquiry a disciplinary action was directed against the Respondent.

(ii) Thereafter, the summary of evidence was recorded under Rule 23 of the Army Rules, wherein the Respondent duly participated. Some 15 witnesses were examined in support of the prosecution, and the Respondent crossexamined them. He was given the opportunity to make a statement in defence, but he declined to make it.

6. Thereafter, the case against the Respondent was remanded for trial by a General Court Martial which was convened in accordance with the provisions under Chapter X of the Army Act. The Respondent was tried for four charges. They were as follows:

The accused, IC16714K Major Deol Rabinder Singh, SM, 6 Armoured Regiment, attached Headquarters 6(1) Armoured Brigade, an officer holding a permanent commission in the Regular Army is charged with:

(1) such an offence as is mentioned in Clause (f) of Section 52 of the Army Act

(2) with intent to defraud, in that he, at field on 25 June 84, while commanding 6 Armoured Regiment, when authorized to claim modification grant in respect of only one truck one tonne 4 x 4 GS FFR, for Rs. 950/-, with intent to defraud, countersigned a contingent bill No. 1096/LP/6/TS dated 25 June 84 for Rs. 31692/- for claiming an advance of 75% entitlement of cost of modification of 43 vehicles, which was passed for Rs. 31650/-, well knowing that the Regiment was not authorized to claim such grant in respect of all types of vehicles.

Such an offence as is mentioned in Clause (f) of Section 52 of the Army Act with intent to defraud, in that he, had filed on 5 March 85, while commanding 6 Armoured Regiment, with intent to defraud, countersigned a contingent bill No. 1965/ULPG/85/TS dated 5 March 85 for Rs. 20962.50 for claiming an advance of 75% entitlement of cost of modification of 22 vehicles, well knowing that the Regiment was not authorized to claim such grant in respect of all types of vehicles.

Such an offence as is mentioned in Clause (f) of Section 52 of the Army Act with intent to defraud, in that he, had filed on 9 Feb 85, while commanding 6 Armoured Regiment, with intent to defraud, countersigned a final contingent bill No. 1965/LP/02/TS dated 9 Feb 85 for Rs. 18150/- for claiming the balance of the cost of modification of vehicles, which was passed for Rs. 18149.98 well knowing that the Regiment was not authorized to claim such grant in respect of all types of vehicles.

Such an offence as is mentioned in Clause (f) of Section 52 of the Army Act with intent to defraud, in that he, had filed on 9 Sep 85, while commanding 6 Armoured Regiment, with intent to defraud, countersigned a final contingent bill No. 1965/LP/04/TS dated 9 Sep 85 for Rs. 6987.50/- for claiming the balance of the cost of modification of vehicles, well knowing that the Regiment was not authorized to claim such grant in respect of all types of vehicles.

7. The General Court Martial found him guilty of all those four charges, and awarded punishment of R.I. for one year and cashiering. The proceedings were thoroughly reviewed by the Deputy Judge-Advocate General, Headquarter, Western Command who made the statutory report thereon. These proceedings were confirmed by the confirming authority on 20.6.1988 in terms of Sections 153 and 154 of the Army Act. The Respondent preferred a Post Confirmation Petition under Section 164 of the Army Act which was rejected by the Chief of the Army. This led the Respondent to file the Writ Petition as stated above which was dismissed but the Appeal there from was allowed leading to the present Civil Appeal by special leave.

8. We have heard Shri Parag P. Tripathi, learned Additional Solicitor General appearing on behalf of the Appellant and Shri Seeraj Bagga, learned Counsel appearing on behalf of the Respondent.

9. Before we deal with the submissions by the rival counsel, we may note that the Respondent was charged under Section 52(f) of the Army Act, 1950 and the Section was specifically referred in the charges leveled against him. Section 52 reads as follows:

52. Offences in respect of property - Any person subject to this Act who commits any of the following offences, that is to say,-

(a) commits theft of any property belonging to the Government, or to any military, naval or air force mess, band or institution, or to any person subject to military, naval or air force law, or

(b) dishonestly misappropriates or converts to his own use any such property; or

(c) commits criminal breach of trust in respect of any such property; or

(d) dishonestly receives or retains any such property in respect of which any of the offences under Clauses (a), (b) and (c) has been committed, knowing or having reason to believe the commission of such offence; or

(e) willfully destroys or injures any property of the Government entrusted to him; or

(f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person,

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

10. Shri Tripathi learned ASG appearing for the Appellant submitted that the Division Bench erred in holding that the particulars of the charges did not include the wrongful gain to the Respondent and corresponding loss to the army, nor was it proved, and therefore the charge of doing something with intent to defraud had not been conclusively proved. In his submission, Sub-section (f) is in two parts. In fact, the Division Bench of the High Court also accepted that there are two parts of this Section. The Respondent was charged with the first part which is 'doing something with intent to defraud'. Therefore, it was not necessary to mention in the charge the second part of the Sub-section which covers 'wrongful gain to one person or wrongful loss to another'.

11. The offence with which the Respondent was charged was doing something with intent to defraud. According to the Respondent, the act attributed to him was only to countersign the contingent bills. The fact is that the Army got defrauded by this countersigning of the contingent bills by the Respondent, inasmuch as no such purchases were authorized and in fact no modification of the vehicles was done. That being so, the charge had been established. The Respondent cannot escape from his responsibility. It was pointed out on behalf of the Appellant that assuming that the latter part of section 52(f) was not specifically mentioned in the charge, no prejudice was caused to the Respondent thereby. He fully understood the charges and participated in the proceedings.

12. Shri Seeraj Bagga, learned Counsel for the Respondent on the other hand, submitted that Rule 30(4) and Rule 42(b) of the Army Rules mandatorily require the Appellant to

make the charges specifically. His submission was that the charges were not specific and the Respondent did not get an idea with respect to them and, therefore, he suffered in the proceedings. We may quote these rules. They read as follows:

Rule 30(4). The particulars shall state such circumstances respecting the alleged offence as will enable the accused to know what act, neglect or omission is intended to be proved against him as constituting the offence.

Rule 42 (b). That such charge disclose an offence under the Act and is framed in accordance with the rules, and is so explicit as to enable the accused readily to understand what he has to answer.

Shri Bagga submitted that no evidence was produced with respect to wrongful gain by the Respondent and, therefore, the Division Bench was right in interfering with the judgment rendered by the Single Judge as well as in the General Court-Martial.

Consideration of rival submissions -

13. We have noted the submissions of both the counsels. When we see the judgment rendered by the Single Judge of the High Court we find that he has held in paragraph 19 of his judgment that the findings of the General Court Martial were duly supported by the evidence on record, and the punishment had been awarded considering the gravity of the offence. In paragraph 18, he has also held that the Respondent was afforded opportunity to defend his case, and there was neither any illegality in the conduct of the trial nor any injustice caused to him.

14. The Division Bench, however, held that the only allegation leveled against the first Respondent was that he had countersigned the contingent bills for claiming the cost of modifications of the vehicles, but there was no charge of wrongful gain against him. The Division Bench, however, ignored the fact that this countersigning led to withdrawal of an amount of Rs. 77,692/- by the Respondent for certain purchases which were neither authorized nor effected. The fact that the Respondent had countersigned the contingent bills was never in dispute. The Appellant placed on record the necessary documentary and oral evidence in support of the charges during the course of the enquiry which was conducted as per the provisions of the Army Act. We have also been taken through the record of the enquiry. It showed that these amounts were supposed to have been paid to some shops but, in fact, no such purchases were effected. The Respondent could not give any explanation which could be accepted. The Division Bench has clearly erred in ignoring this material evidence on record which clearly shows that the Army did suffer wrongful loss.

15. The Division Bench also took the view that the allegation against the Respondent did not come within the purview of intent to defraud. This is because to establish the intent

to defraud, there must be a corresponding injury, actual or possible, resulting from such conduct. The Army Act lays down in Section 3(xxv) that the expressions which are not defined under this Act but are defined under the Indian Penal Code, 1860 (Code for short) shall be deemed to have the same meaning as in the code. The Division Bench, therefore, looked to the definition of 'dishonestly' in Section 24 and of 'Falsification of accounts' in Section 477A of the code. In that context, it has referred to a judgment of this Court in S. Harnam Singh v. State (Delhi Administration) reported in MANU/SC/0666/1976: AIR 1976 SC 2140. In that matter, the Appellant was working as a loading clerk in Northern Railways, New Delhi and he was tried under Section 477A and Section 120B of the Code read with Section 5(2) of the Prevention of Corruption Act. While dealing with Section 477A, this Court held in paragraph 13 of the judgment that in order to bring home an offence under this Section, one of the necessary ingredients was that the accused had willfully and with intent to defraud acted in a particular manner. The Code, however, does not contain a definition of the words 'intent to defraud'. This Court, therefore, observed in paragraph 18 as follows:

18... The Code does not contain any precise and specific definition of the words "intent to defraud". However, it has been settled by a catena of authorities that "intent to defraud" contains two elements viz. deceit and injury. A person is said to deceive another when by practising "suggestio falsi" or "suppressio veri" or both he intentionally induces another to believe a thing to be true, which he knows to be false or does not believe to be true. "Injury" has been defined in Section 44 of the Code as denoting "any harm whatever illegally caused to any person, in body, mind, reputation or property.
It was submitted on behalf of the Respondent that in the instant case, it was not shown that there was any wrongful gain on the part of the Respondent and, therefore, the Division Bench rightly interfered in the order passed by the learned Single Judge as well as by the General Court Martial.

16. If we see the text of the charges, they clearly mention that the Respondent claimed advance for 43 vehicles initially and then 22 vehicles subsequently by countersigning the contingent bills knowing fully well that his Regiment was not authorized to claim such grants. Thus, the charges are very clear, and the Respondent cannot take advantage of Rule 30(4) and Rule 42(b), in any manner whatsoever. The Army had led additional evidence to prove that the amount was supposed to have been passed on to certain shops but the necessary purchases were in fact not made. In Dr. Vimla v. Delhi Administration reported in MANU/SC/0163/1962: AIR 1963 SC 1572, a bench of four judges of this Court was concerned with the offence of making a false document as defined in Section 464 of the Code. In paragraph 5 of its judgment the Court noted that Section 464 uses two adverbs 'dishonestly' and 'fraudulently', and they have to be given their different meanings. It further noted that while the term 'dishonestly' as defined under Section 24 of Indian Penal Code, talks about wrongful pecuniary/economic gain to one and wrongful loss to another, the expression fraudulent is wider and includes any kind of injury/harm to body, mind, reputation inter-alia. The term injury would include non-

economic/non-pecuniary loss also. This explanation shows that the term 'fraudulent' is wider as against the term 'dishonesty'. The Court summarized the propositions in paragraph 14 of the judgment in the following words:

14. To summarize: the expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others In short, it is a non-economic or nonpecuniary loss...
17. In the instant case, there was an economic loss suffered by Army, since an amount was allegedly expended for certain purchases when the said purchases were not authorized. Besides, the expenditure which was supposed to have been incurred for purchasing the necessary items was, in fact found to have been not incurred for that purpose. There was a complete non-utilisation of amount for the purpose for which it was claimed to have been sought. The evidence brought on record is sufficient enough to come to the conclusion that there was deceit and injury. Therefore, it was clear that Section 52(f) of the Act would get attracted since the Respondent had acted with intent to defraud within the explanation of the concept as rendered by this Court in S. Harnam Singh (supra) which had specifically referred to and followed the law laid down earlier in Dr. Vimla (supra). We accept the submission of Shri Tripathi that the two parts of Section 52(f) are disjunctive, which can also be seen from the fact that there is a comma and the conjunction 'or' between the two parts of this Sub-section, viz (i) does any other thing with intend to defraud and (ii) to cause wrongful gain to one person or wrongful loss to another person. If the legislature wanted both these parts to be read together, it would have used the conjunction 'and'. As we have noted earlier in Dr. Vimla (supra) it was held that the term 'fraudulently' is wider than the term 'dishonestly' which however, requires a wrongful gain and a wrongful loss. The Appellants had charged the Respondents for acting with 'intent to defraud', and therefore it was not necessary for the Appellants to refer to the second part of Section 52(f) in the charge. The reliance by the Division Bench on the judgment in S. Harnam Singh (supra) to justify the conclusions drawn by it was clearly erroneous.

18. The Respondent had full opportunity to defend. All the procedures and steps at various levels, as required by the Army Act were followed and it is, thereafter only that the Respondent was cashiered and sentenced to R.I. for one year. There was no allegation of malafide intention. Assuming that the charge of wrongful gain to the Respondent was not specifically averred in the charges, the accused clearly understood the charge of 'intent to defraud' and he defended the same. He fully participated in the proceedings and there was no violation of any procedural provision causing him prejudice. The Courts are not expected to interfere in such situations (see Major G.S. Sodhi v. Union of India reported in MANU/SC/0562/1991: 1991 (2) SCC 382). The armed forces are known for their integrity and reputation. The senior officers of the Armed Forces are expected to be men of integrity and character. When any such charge is proved against a senior

officer, the reputation of the Army also gets affected. Therefore, any officer indulging into such acts could no longer be retained in the services of the Army, and the order passed by the General Court Martial could not be faulted.

19. In our view, the learned Single Judge was right in passing the order whereby he declined to interfere into the decision rendered by the General Court Martial. There was no reason for the Division Bench to interfere in that order in an intra-Court appeal. The order of the learned Single Judge in no way could be said to be contrary to law or perverse. On the other hand, we would say that the Division Bench has clearly erred in exercising its appellate power when there was no occasion or reason to exercise the same.

20. In the circumstances, we allow this appeal and set-aside the order passed by the Division Bench, and confirm the one passed by the learned Single Judge. Consequently, the Writ Petition filed by the Respondent stands dismissed, though we do not order any cost against the Respondent.

MANU/SC/0152/1962

Back to Section 25 of Indian Penal Code, 1860

Back to Section 379 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 2 of 1962

Decided On: 22.10.1962

Pyare Lal Bhargava Vs. State of Rajasthan

Hon'ble Judges/Coram:
J.R. Mudholkar, K. Subba Rao, N. Rajagopala Ayyangar and Syed Jaffer Imam, JJ..

JUDGMENT
K. Subba Rao, J.

1. This appeal by special leave is directed against the decision of the High Court of Rajasthan in Criminal Revision No. 237 of 1956 confirming that of the Sessions Judge, Alwar, convicting the appellant under s. 379 of the Indian Penal Code and sentencing him to a fine of Rs. 200/-.

2. To appreciate the questions raised in this appeal the following facts, either admitted or found by the High Court, may be stated. On November 24, 1945, one Ram Kumar Ram obtained permission, Ex. PB, from the Government of the former Alwar State to supply electricity at Rajgarh, Khertal and Kherli. Thereafter, he entered into partnership with 4 others with an understanding that the licence would be transferred to a company that would be floated by the said partnership. After the company was formed, it put in an application to the Government through its managing agents for the issue of a licence in its favour. Ex. P.W. 15/B is that application. On the advice given by the Government Advocate, the Government required Ram Kumar Ram to file a declaration attested by a Magistrate with regard to the transfer of his rights and the licence to the company. On April 8, 1948, Ram Kumar Ram filed a declaration to that effect. The case of the prosecution is that Ram Kumar Ram was a friend of the appellant. Pyarelal Bhargava, who was a Superintendent in the Chief Engineer's Office, Alwar. At the instance of Ram Kumar Ram, Pyarelal Bhargava got the file Ex. PA/1 from the Secretariat through Bishan Swarup, a clerk, before December 16, 1948, took the file to his house sometime between December 15 and 16, 1948, made it available to Ram Kumar Ram for removing the affidavit filed by him on April 9, 1948, and the application, Ex. P.W. 15/B from the file and substituting in their place another letter Ex. PC and another application Ex. PB. After replacing the said documents, Ram Kumar Ram made an application to the Chief Engineer on December 24, 1948, that the licence should not be issued in the name of the company. After the discovery of the tampering of the said documents, Pyarelal and Ram Kumar were prosecuted before the Sub-Divisional Magistrate, Alwar, - the former for an

offence under s. 379 and s. 465, read with s. 109, of the Indian Penal Code, and the latter for an offence under Sections 465 and 379, read with s. 109 of the Indian Penal Code. The Sub-Divisional Magistrate convicted both the accused under the said sections and sentenced them on both the counts. On appeal the Sessions Judge set aside the conviction under s. 465, but maintained the conviction and sentence of Pyarelal Bhargava under s. 379, and Ram Kumar Ram under s. 379, read with s. 109, of the Indian Penal Code. Ram Kumar Ram was sentenced to pay a fine of Rs. 500/- and Pyarelal Bhargava to pay a fine of Rs. 200/-. Against these convictions both the accused filed revisions to the High Court and the High Court set aside the conviction and sentence of Ram Kumar Ram but confirmed those of Pyarelal Bhargava. Pyarelal Bhargava has preferred the present appeal.

3. Learned counsel for the appellant raised before us three points, namely, (1) the High Court has wrongly relied upon the confession made by the accused before Shri P. N. Singhal, Officiating Chief Secretary to the Matsya Government at that time, as that confession was not made voluntarily and, therefore, irrelevant under s. 24 of the Evidence Act; (2) the said confession having been retracted by the appellant, the High Court should not have relied upon it as it was not corroborated in material particulars; and (3) on the facts found the offence of theft has not been made out within the meaning of s. 379 of the Indian Penal Code. Another argument, namely, that the statement made by Pyarelal Bhargava before the Chief Secretary was not a confession in law, was suggested but not pursued and, therefore, nothing need be said about it.

4. The first question turns upon the interpretation of the provisions of s. 24 of the Evidence Act and its application to the facts found in this case. Section 24 of the Evidence Act lays down that a confession caused by inducement, threat or promise is irrelevant in criminal proceedings under certain circumstances. Under that section a confession would be irrelevant if the following conditions were satisfied: (1) it should appear to the court to have been caused by any inducement, threat or promise; (2) the said threat, inducement or promise must have reference to the charge against the accused person; (3) it shall proceed from a persons authority; and (4) the court shall be of the opinion that the said inducement, threat or promise is sufficient to give the accused person grounds which would appear to him reasonable in supposing that he would gain an advantage or avoid any evil of a temporal nature in reference to the proceedings against him. The crucial word in the first ingredient is the expression "appears". The appropriate meaning of the word "appears" is "seems". It imports a lesser degree of probability than proof. Section 3 of the Evidence Act says:

"A fact is said to be 'proved' when after considering the matters before it, 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.
5. Therefore, the test of proof is that there is such a high degree of probability that a prudent man would act on the assumption that the thing is true. But under s. 24 of the

Evidence Act such a stringent rule is waived but a lesser degree of assurance is laid down as the criterion. The standard of a prudent man is not completely displaced, but the stringent rule of proof is relaxed. Even so, the laxity of proof permitted does not warrant a court's opinion based on pure surmise. A prima facie opinion based on evidence and circumstances may be adopted as the standard laid down. To put it in other words, on the evidence and the circumstances in a particular case it may appear to the court that there was a threat, inducement or promise, though the said fact is not strictly proved. This deviation from the strict standards of proof has been designedly accepted by the Legislature with a view to exclude forced or induced confessions which sometimes are extorted and put in when there is a lack of direct evidence. It is not possible or advisable to lay down an inflexible standard for guidance of courts, for in the ultimate analysis it is the court which is called upon to exclude a confession by holding in the circumstances of a particular case that the confession was not made voluntarily.

6. The threat, inducement or promise must proceed from a person in authority and it is a question of fact in each case whether the person concerned is a man of authority or not. What is more important is that the mere existence of the threat, inducement or promise is not enough, but in the opinion of the court the said threat, inducement or promise shall be sufficient to cause a reasonable belief in the mind of accused that by confessing he would get an advantage or avoid any evil of a temporal nature in reference to the proceedings against him: while the opinion is that of the court, the criterion is the reasonable belief of the accused. The section, therefore, makes it clear that it is the duty of the court to place itself in the position of the accused and to form an opinion as to the state of his mind in the circumstances of a case.

7. In the present case it was found that certain documents in the Chief Engineer's Office were tampered with and certain papers were substituted. The appellant was the Superintendent in the Chief Engineer's Office. On April 11, 1949, Shri P. N. Singhal, Officiating Chief Secretary to the Matsya Government, was making a departmental inquiry in respect of the missing documents. The appellant, among others, was questioned about the said documents. The appellant first made a statement, Ex. PL, in which he stated that he neither asked Bishan Swarup to bring file No. 127, not did he recollect any cause for calling for that file on or about that date. As Shri Singhal was not able to find out the culprit, he expressed his opinion that if the whole truth did not come out, he would hand over the inquiry to the police. Thereafter, the appellant made a statement, Ex. P.L. 1, wherein, in clear terms, he admitted that about the middle of December 1948 Ram Kumar Ram took file No. 127-P.W./48 regarding issue of licence to the Bharat Electrical and Industrial Corporation Ltd., Alwar, from his residence to show it to his lawyers, and that he took the file more than once for that purpose. He also added that this was a voluntary statement. Learned counsel for the appellant argued that the Chief Secretary gave the threat that, if the appellant did not disclose the truth he would place the matter in the hands of the police and that the threat induced the appellant to make the disclosure in the hope that he would be excused by the authority concerned.

There is no doubt that the Chief Secretary is an authority within the meaning of s. 24 of the Evidence Act, but the simple question is whether the alleged statement by the said authority "appears" to the court to be a threat with reference to the charge against the accused. As we have said, under particular circumstances whether a statement appears to the court to be a threat or not is a question of fact. In this case the three lower courts concurrently held that in the circumstances of the case the statement did not appear to be a threat within the meaning of s. 24 of the Evidence Act, but that was only a general statement which any person who lost his property and was not able to find out the culprit would make. It may be that such a statement under different circumstances may amount to a threat or it may also be that another court may take a different view even in the present circumstances of the case, but in exercising the powers under Art. 136 of the Constitution we are not prepared to differ from the concurrent finding given by the three courts that in the circumstances of the present case that the said statement did not appear to them to be a threat.

8. The second argument also has no merits. A retracted confession may form the legal basis of a conviction if the court is satisfied that it was true and was voluntarily made. But it has been held that a court shall not base a conviction on such a confession without corroboration. It is not a rule of law, but is only rule of prudence. It cannot even be laid down as an inflexible rule of practice or prudence that under no circumstances such a conviction can be made without corroboration, for a court may, in a particular case, be convinced of the absolute truth of a confession and prepared to act upon it without corroboration; but is may be laid down as a general rule of practice that it is unsafe to rely upon a confession, much less on a retracted confession, unless the court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars.

The High Court having regard to the said principles looked for corroboration and found it in the evidence of Bishan Swaroop. P.W.-7, and the entry in the Dak Book, Ex. PA. 4, and accepted the confession in view of the said pieces of corroboration. The finding is one of fact and there is no permissible ground for disturbing it in this appeal.
9. The last point is that on the facts found no case of theft has been made out. The facts found were that the appellant got the file between December 15 and 16, 1948, to his house, made it available to Ram Kumar Ram and on December 16, 1948, returned it to the office. On these facts it is contended that the prosecution has not made out that the appellant dishonestly took any movable property within the meaning of s. 378 of the Indian Penal Code. The said section reads:

"Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

The section may be dissected into its component parts thus: a person will be guilty of the offence of theft, (1) if he intends to cause a wrongful gain or a wrongful loss by unlawful means of property to which the person gaining is not legally entitled or to which the person losing is legally entitled, as the case may be: see Sections 23 and 24 of the Indian Penal Code; (2) the said intention to act dishonestly is in respect of movable property; (3) the said property shall be taken out of the possession of another person without his consent; and (4) he shall move that property in order to such taking. In the present case the record was in the possession of the Engineering Department under the control of the Chief Engineer. The appellant was the Superintendent in that office; he took the file out of the possession of the said engineer, removed the file from the office and handed it over to Ram Kumar Ram. But it is contended that the said facts do not constitute the offence of theft for three reasons, namely, (i) the Superintendent was in possession of the file and therefore he could not have taken the file from himself; (ii) there was no intention to take it dishonestly as he had taken it only for the purpose of showing the documents to Ram Kumar Ram and returned it the next day to the office and therefore he had not taken the said file out of the possession of any person; and (iii) he did not intend to take it dishonestly, as he did not receive any wrongful gain or cause any wrongful loss to any other person. We cannot agree that the appellant was in possession of the file. The file was in the Secretariat of the Department concerned, which was in charge of the Chief Engineer. The appellant was only one of the officers working in that department and it cannot, therefore, be said that he was in legal possession of the file. Nor can we accept the argument that on the assumption that the Chief Engineer was in possession of the said file, the accused had not taken it out of his possession. To commit theft one need not take movable property permanently out of the possession of another with the intention not to return it to him. It would satisfy the definition if he took any movable property out of the possession of another person though he intended to return it later on. We cannot also agree with learned counsel that there is no wrongful loss in the present case. Wrongful loss is loss by unlawful means of property to which the person losing it is legally entitled. It cannot be disputed that the appellant unauthorisedly took the file from the office and handed it over to Ram Kumar Ram. He had, therefore, unlawfully taken the file from the department, and for a short time he deprived the Engineering Department of the possession of the said file. The loss need not be caused by a permanent deprivation of property but may be caused even by temporary dispossession, though the person taking it intended to restore it sooner or later. A temporary period of deprivation or dispossession of the property of another causes loss to the other.

That a person will act dishonestly if he temporarily dispossesses another of his property is made clear by illustrations (b) and (1) of s. 378 of the Indian Penal Code. They are:
(b). A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(1). A takes an article belonging to Z out of Z's possession without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

10. It will be seen from the said illustrations that a temporary removal of a dog which might ultimately be returned to the owner or the temporary taking of an article with a view to return it after receiving some reward constitutes theft, indicating thereby that temporary deprivation of another person of his property causes wrongful loss to him. We, therefore, hold that the facts found in this case clearly bring them within the four corners of s. 378 of the Indian Penal Code and, therefore, the courts have rightly held that the appellant had committed the offence of theft.

11. No other point was pressed before us. In the result the appeal fails and is dismissed.

12. Appeal dismissed.

MANU/DE/1347/2014

Back to Section 33 of Indian Penal Code, 1860

Neutral Citation: 2014/DHC/2885-DB

IN THE HIGH COURT OF DELHI

Criminal Appeal Nos. 768, 839 and 993/2011

Decided On: 28.05.2014

Shishpal and Ors. Vs. The State (NCT of Delhi)

Hon'ble Judges/Coram:
Sanjiv Khanna and G.P. Mittal, JJ.

JUDGMENT
Sanjiv Khanna, J.

1. Shishpal @ Shishu, Amit and Roshan by the impugned judgment dated 23rd May, 2011 stand convicted for murder of Ram Chandran @ Ramu. The aforesaid conviction arises out of FIR No. 8/2010, Police Station Mayur Vihar. By order on sentence dated 25th May, 2011, the appellants have been sentenced to undergo life imprisonment and pay fine of Rs. 2,000/- each, in default of which, they have to suffer Simple Imprisonment for two months. Benefit of Section 428 of the Code of Criminal Procedure, 1973 (Cr.P.C. for short) has been granted.

2. The factum that the deceased Ramu had died a homicidal or unnatural death as a result of stab wound was not questioned and challenged before us. The same is duly established and is not within the realm of any debate in view of the MLC (Exhibit PW-14/A) and the postmortem report (Exhibit PW-19/A). Dr. K. Tyagi (PW-14) had proved the MLC (Exhibit PW-14/A) and deposed that on 10th January, 2010 at 9 P.M. Ramu was brought by ASI Lalji Tiwari of PCR with history of assault. He examined the patient and opined that he had died. The patient had an incised wound on left side of abdomen approximately 4 cm x 2 cm (length into width). The post-mortem report (Exhibit PW-19/A) was proved by Dr. Vinay Kumar Singh (PW-19) and it refers to incised wound, 5.5 x 2.5 cm, obliquely present over the left side of lower abdomen. On internal examination, about 1 to 1 1/2 litre blood was present in the cavity and there was descending colon incised wound, 3 x 0.5 cm, and spleen incised wound, 2.5 cm x 0.5 cm, lower border. Cause of death was shock and haemorrhage consequent upon the incised wound No. 1. The said injury was sufficient in ordinary course of nature to cause homicidal death. The time since death was 36 to 44 hours. The post-mortem examination was conducted on

12th January, 2010 at L.B.S. Hospital. The clothes worn by the deceased and blood sample in gauze piece were seized.

3. The primary issue and question raised before us relates to the involvement of the three appellants in the crime, resulting in the death of Ramu. On the said aspect, the prosecution has relied upon the testimonies of Swami Nath Pandey (PW-3), the informant, who, as is the prosecution's case was an eye witness and Nitin (PW-4), who was present at the place of occurrence but once the fight started, had left the place to call Laxmi (PW-1) stated to be wife of the deceased. We shall begin with the testimony of Swami Nath Pandey (PW-3).

4. Swami Nath Pandey (PW-3) has deposed that he was running a paan-bidi stall in front of Police Station Mayur Vihar near English Wine Shop and was present at his stall on 10th January, 2010 when at about 8.20 P.M. he saw the appellants-Amit and Roshan quarrelling with the deceased Ramu. He identified the appellants-Amit and Roshan, who were produced through video-conferencing, but refused to identify Shishpal @ Shishu, the third appellant. PW-3 in his court deposition recorded on 1st June, 2010 stated that Amit and Roshan dragged the deceased Ramu from the wine shop towards his rehri/stall and Amit then stabbed Ramu. Crowd of about 150 persons had gathered but no one intervened even after stabbing. The appellant Amit had challengingly raised the knife in the air and Amit and Roshan slipped on his western side. After about 5-7 minutes, wife of Ramu reached the spot and started crying. She went towards the police station and at about 8.30 P.M., PCR vehicle reached the spot, as someone had made a call at No. 100. ASI Kali Charan (PW11) and the local police reached the spot and inquired from him. He had then narrated the facts. Subsequently, Pandit Subodh Kumar Sahai (PW20), SHO Police Station Mayur Vihar reached.

5. PW-3 was cross-examined by the Additional Public Prosecutor and confronted with portions of his statement made under Section 161 Cr.P.C. marked Exhibit PW-3/A, wherein it was recorded that three boys were present and two of them had caught hold of deceased Ramu, while the third had taken out a knife from his pocket and stabbed Ramu and also that the three slipped away in a car which was parked at the corner of the road. He refused to identify Shishpal @ Shishu, who was shown to him through video-conferencing as the third person along with Amit and Roshan. In cross-examination, PW-3 has stated that the deceased had tried to pick pocket on either Amit or Roshan. When wife of Ramu reached the spot, she was weeping. PW-3 accepted as correct that the deceased Ramu was a pick pocketer and a person of bad character (pakka badmash of the area). We shall be referring to his testimony subsequently as well when we deal with the evidentiary value and credibility of his deposition. However, we reject the contention that PW-3 was a planted witness and not an eye witness. Mohd. Murtuja Khan (PW-10), ASI Kali Charan (PW-11), Sonu Kaushik (PW-17) and Inspector Subodh Kumar (PW-20) have all deposed as to the paan biri shop outside the police station and adjacent to the wine shop. Location of the paan biri shop is clearly indicated in the unscaled site plan

(Ex. PW3/B) and scaled site plan (Ex. PW17/A). Thus, the presence of PW-3 at the place of occurrence was normal and natural and he was not a chance witness, who was accidentally at the spot at the time of the occurrence.

6. Learned counsel for the appellant has highlighted a small discrepancy or contradiction between the statement made by ASI Kali Charan (PW-11) and HC Soran Singh (PW-15). The latter has deposed that when he reached the spot of occurrence, ASI Kali Charan (PW-11) and Constable Kheta Ram (PW-21) were already present, but in the cross-examination, he voluntarily stated that Swami Nath Pandey (PW-3) was not there, whereas ASI Kali Charan (PW-11) has stated that PW-3 was present but initially Swami Nath Pandey (PW-3) did not tell him that he was an eye witness to the occurrence and only subsequently upon return from the hospital, PW-11 recorded Swami Nath Pandey's statement and rukka (Ex. PW11/A) was written and FIR was registered.

7. To our mind this discrepancy in the two statements is immaterial as after the occurrence, it was expected that the persons present would have disbursed and moved away. No one wants to come forward and depose about a matter in which knife was used to inflict injuries and the person injured had fallen on the road with blood oozing. It was natural for PW-3 to take a backseat and avoid interrogation.

8. Nitin (PW-4)'s deposition was recorded partly on 1st June, 2010 and concluded on the next day, i.e., 2nd June, 2010. PW-4, aged about 10-12 years on the date of deposition, has stated that he had never been to school. On 10th January, 2010 at 8 P.M. he along with the deceased Ramu, who was like his brother went to the wine shop in Trilokpuri. He was asked to sit down on the foot path, while deceased Ramu stood in the queue to purchase liquor. He identified the three appellants when they were produced through video-conferencing stating that they had dragged deceased Ramu from the queue. Thereafter, appellant-Amit, whom he identified as the person present in the centre, took out a knife. On seeing this, he ran to his house and narrated the facts to the wife of Ramu (his bhabhi) and Rahul, his brother. He along with Rahul and wife of Ramu rushed to the spot and found that the deceased-Ramu was lying in a pool of blood. He along with wife of Ramu went to the Police Station but were not given due attention (no one heard them). Wife of Ramu made a call to the police after taking phone from a person present. After 10-15 minutes, a police vehicle reached the spot and took Ramu to the LBS Hospital, where he died. Thereafter, he, Rahul and wife of Ramu came to the police station and his statement was recorded. Thus, Nitin (PW-4) has identified the three appellants, who were present at the place of occurrence when the quarrel had started and Amit had taken out the knife. PW-4 had not seen the actual stabbing incident but was present when the occurrence had begun.

9. Laxmi (PW-1) admits and states that Nitin and deceased Ramu had gone out at 8 P.M. on 10th January, 2010. Nitin came back running and had stated that three persons were beating Ramu in front of Mayur Vihar Police Station. Accordingly, PW-1, Rahul and Nitin

had rushed to the spot and there they found Ramu lying on the road, smeared in blood. She made a call at No. 100 and PCR van reached there and took Ramu to the hospital. She had also gone to the hospital where Ramu was declared brought dead.

10. Laxmi (PW-1) had deposed that after Ramu had left the house at about 8 P.M., three boys had come to the jhuggi, i.e., the house and enquired about Ramu. One of them had angrily asked where was Ramu (Ramu Kahan Hai?) and she informed him that he had just gone out with Nitin (PW4). She deposed that the person who had asked about Ramu had given his name as Amit but identified the person who had spoken said words as Shishpal @ Shishu. She testified that only Shishpal had entered the house whereas the other two were standing outside the house and she had not seen their faces. However, she identified the three appellants in the court.

11. We are inclined to accept the argument of the appellants that Laxmi's (PW-1) deposition mentioned in the above paragraph is an exaggeration and her identification of the appellants in the court is questionable. The said identification cannot be relied upon as a circumstance incriminating the appellants. The reason being, that PW-1 has deposed that only one of the three boys had come inside, while the two others remained outside and she had not seen their faces. Thus, Laxmi's (PW1) identification of the two, who remained outside the house, remained a doubtful assertion. We further believe and accept the submission on behalf of the appellants that there was no reason and cause for any of the three appellants to go inside the house, i.e., jhuggi of the deceased. There is no evidence or material to indicate or show that the three appellants had quarrelled or knew the deceased Ramu from before or were aware of his address. Pre occurrence familiarity is not established and there is no ground to accept any previous acrimony. As noticed above, Swami Nath Pandey (PW-3) has deposed that there was a quarrel at the wine shop as the deceased had pick pocketed one of the appellants, which indicates and reinforces the factual position that the deceased was not already known to the appellants. Nitin (PW-4) has also not deposed that the appellants were known to him or were known to the deceased prior to the incident. His deposition is to the effect that when the deceased was standing in the queue to purchase liquor, they started quarrelling. Shivam (PW-5) whose mobile phone was used to make a call on number 100, has deposed that he had seen a man lying on the road in an injured condition and on enquiry was informed that the said person was trying to pick pocket and was beaten by the some person. The said deposition, though not a direct evidence, corroborates PW3's version.

12. However, this does not mean that we should disregard and not accept the identification of the three appellants Amit, Roshan and Shishpal by Nitin (PW-4) and identification of Amit and Roshan by Swami Nath Pandey (PW-3) or we should only accept identification of Amit and Roshan by Swami Nath Pandey (PW-3) and disbelieve identification of Amit, Roshan and Shishpal as deposed to by Nitin (PW-4).

13. It was highlighted that Nitin (PW-4) in his cross-examination had falsely asserted that he did not have an elder brother named Vipin and our attention was drawn to the cross-examination of PW-4 after lunch on 2nd June, 2010 by the counsel for Shishpal, wherein the said Vipin was produced and shown to the witness, but Nitin (PW-4) denied that he was his real brother. At that stage, one lady named Indra, who was sitting in the Court, was called by the counsel for the defence, Shishpal. She confronted PW-4 and stated that she was the mother of Nitin (PW-4) and Vipin was her eldest son, Rahul was her middle son and Nitin was the youngest. Our attention is also drawn to the fact that Indra has deposed as defence witness (DW-8) and reiterated the said factual position and had stated that she was residing in Jhuggi No. 22, Block Market Trilokpuri, Delhi with her sons. She knew deceased Ramu, who used to be treated like a son by her husband. Ramu had not married Laxmi and she claimed that they were not living in the Jhuggi as husband and wife, but Laxmi (PW-1) used to visit her Jhuggi for meeting deceased Ramu as a friend. On 10th January, 2010, no one came to the Jhuggi in the evening hours to meet Ramu and that on 10th January, 2010, Nitin (PW-4) and Rahul had remained in the Jhuggi and all of them had gone to sleep. Next day police came and took Rahul (PW-2) and Nitin (PW-4) with them. She even deposed that Nitin (PW-4) had made a complaint to DCP and the Commissioner of Police that PW-4 had deposed in the Court under pressure and threat from Raja and Adi, brothers of the deceased. She has accepted as correct that the deceased Ramu had pending criminal cases against him but could not give details. She accepted that she had not put thumb impression or signed on the complaint made to DCP, but she had accompanied Nitin (PW-4). She denied that deceased Ramu and Laxmi were residing as husband and wife in the Jhuggi permanently, but accepted as correct that she had no concern as to who used to come and meet Ramu. She, however, denied the suggestion that she was deposing falsely in order to save Shishpal.

14. Subsequent application by Nitin (PW-4) has been dealt with separately below, but at this stage, while dealing with the testimony of Indra (DW-8) as well as the observations of the Court made at the time of deposition of PW-4 on 2nd June, 2010, we would like to record the following observations. It is rather surprising that Indra (DW-8) deemed it appropriate and proper to come and sit in the Court on 2nd June, 2010 and at the instance of the counsel for the accused Shishpal get up and vociferously contradict Nitin (PW-4). It is, therefore, clear that when PW-4's deposition was being recorded on 2nd June, 2010, he was under tremendous pressure and was being compelled not to state the facts. PW-4 on 2nd June, 2010 accepted and admitted that Indra was his mother, but remained steady on his deposition that Vipin was not his eldest brother. We do not think that we can rely upon the testimony of DW-8 that she was present in the Jhuggi of Ramu on 10th January, 2010 and Nitin (PW-4) had not gone out with Ramu and has accordingly made false and untruthful statement as to the occurrence on 10th January, 2010 at 8 p.m. The exact and precise details given by PW-4 as to the occurrence and what had transpired clearly belies and negates the deposition of DW-8 to the said effect. Further, he had deposed that his mother had gone to the village about one and a half months back i.e. before the

occurrence. This assertion was made by Nitin (PW4) on being questioned by Ld. Defence Counsel of Shishpal, in his testimony recorded before lunch on 02.06.2010.

15. Laxmi (PW-1) has been candid in her deposition that she was residing and living with the deceased-Ramu as husband and wife, though she was married before and had two children, namely, Aman and Sania aged about 8 and 4 years. She got married to Ramu in a temple. She has given the name of the land lady as Indra (reference is apparently to DW-8).

16. We are inclined to accept the relationship between Laxmi (PW-1) and the deceased-Ramu, as deposed to by Laxmi (PW-1) and Nitin (PW-4). Presence of Nitin (PW4) has not only been deposed to by Laxmi (PW-1) but also as noticed below, even by the Police officers who had conducted the investigation. Nitin (PW4) repeatedly called Laxmi (PW1) as bhabhi, an indication of a close and affectionate relationship between them.

17. Rahul, the other son of Indra (PW-8), has appeared as PW-2 and did not support the prosecution version i.e. he along with his brother Nitin (PW-4) and Laxmi (PW-1) had gone to the place of occurrence stating that he did not know anything about the case and his statement was never recorded by the police, though at the instance of Raja, brother of the deceased, his thumb impressions were taken on blank papers by the police. Aforesaid deposition of Rahul (PW-2) is ex facie false and untruthful. It is apparent that he had scrummed and renegaded. Rahul (PW-2) in his cross-examination by the Ld. Additional Public Prosecutor accepted that Laxmi (PW1) was the wife of Ramu and they were living in the jhuggi, but not as tenants. However, in the cross-examination by the Ld. Defense Counsel for Shishpal, Rahul (PW-2) again vacillated and stated that Laxmi never used to come and sleep during the night with Ramu. Thus, PW2 is completely unreliable and has given different versions.

18. We have no reason to doubt and disbelieve the presence of Nitin (PW-4) at the wine shop and his deposition that after seeing the quarrel and the knife being flashed, he had rushed to call Laxmi (PW-1) and thereupon they had returned at the place of occurrence and the Police PCR came thereafter. Our affirmation on testimony of Nitin (PW4) is corroborated by contemporaneous Police Control Room form marked Exhibit PW-16/A, which records that at 2033 hours a call was made from mobile telephone No. 9910381966 stating that in front of Mayur Vihar Police Station one man had been stabbed with a knife. The call was attended to and a message was conveyed to the Police Control Room at 2102 hours that the information was correct. The form Ex PW16/A records that the injured was known as Ram Chandran, aged 26 years and was resident of 20/208, Trilokpuri. It was also recorded that his condition was serious. The MLC (Exhibit PW-14/A) was recorded at 9 P.M. on 10th January, 2010 and mentions the name of the injured/deceased as Ramu Chandran S/o Palani, aged 25 years, resident of 20/144, Trilokpuri, Delhi and that he was brought by ASI Lalji Tiwari of the PCR. The said details could have been given by a person known to the deceased. Thus, we accept the version of Laxmi (PW-1)

and Nitin (PW-4), who have stated that Nitin (PW-4) had rushed back home and then Laxmi along with Nitin and Rahul had gone to the spot. This version of PW-1 and PW-4 was accepted by Shivam (PW-5), the person whose mobile phone was used to make the call at number 100. He has deposed that two calls were made at No. 100 by a lady and after the second call the police arrived within 2-3 minutes. PW-5 further deposed that a woman was crying near the injured and on her request he had given the mobile phone to her. No doubt the PCR form (Exhibit PW-16/A) names the informer as Ravindra Singh but PW-5 has not deposed to the said effect. Categorical statements of PWs-1 and 5 were that information was given by PW-1 to the Police Control Room.

19. Another contention raised was that the address of the deceased Ramu mentioned in the MLC was "20/144, Timarpur, Delhi" and not "Jhuggi No. 22, Block Market Trilokpuri, Delhi" where Laxmi (PW-1) used to reside. As discussed above, it has come on record that Jhuggi No. 22, Block Market Trilokpuri, Delhi belonged to Indra (DW-8). The address 20/144, Trilokpuri in fact appears to be the address of Ramu's brothers as per the trial court record.

20. Nitin (PW-4), no doubt a young child aged about 10-12 years of age when his testimony was recorded on 1st June, 2010, has been authoritative and categorical on identification of the appellants as the perpetrators and killers of Ramu. He treated and regarded Ramu as his elder brother and was residing with him in jhuggi No 22. He has deposed that Laxmi (PW-1) was his bhabhi being the wife of the deceased Ramu. Before his cross-examination was recorded on 2nd June, 2010, Nitin (PW-4) had informed the court that brother of appellant-Shishpal came to his house 10-15 days back and offered him Rs. 5,000/- stating that he should not depose true facts in the court. PW-4 however, did not accept the money and refused to accept command of the brother of the appellant-Shishpal, who was accompanied by three-four boys. On 16th May, 2010, brother of Shishpal along with three-four boys had again caught hold of Nitin (PW-4) while he was coming from a public toilet but he managed to escape. PW-4 had also moved an application before the trial court, which resulted in order dated 17th May, 2010 passed by the Additional Sessions Judge. In the application, similar averments regarding the incident of 16th May, 2010 were made and it was stated that brother of the deceased had brought this information to the knowledge of the counsel. ACP/DCP East District was directed to look into the matter immediately and to take steps. Similar application was moved by Swami Nath Pandey (PW-3), which resulted in order dated 15th May, 2010. In the said application it was mentioned that PW-3 was threatened that he would be killed. Order dated 15th May, 2010 records that PW-3 was trembling when his application was taken up for consideration. It was stated that three-four days back, some boys with muffled faces had come to PW-3's shop and threatened and asked him not to depose. Application was marked to ACP Mayur Vihar with directions to look into the matter. Subsequently order dated 18th May, 2010 was passed.

21. It was brought to our notice that the appellants had filed applications for recall and re-examination of Swami Nath Pandey (PW3) and Nitin (PW4). Orders rejecting the applications have to be read along with earlier orders passed by the Trial Court on the threats being extended to the two witnesses and the order dated 18th May, 2010 that both of them were being threatened and, therefore, they had made a written complaint. By this order dated 18th May, 2010, it was directed that PWs-3 and 4 would be escorted to the court and back to their residence and division/beat staff should be briefed to keep vigil in that regard. Subsequently, on 29th September, 2010 an application was filed by PW-3 along with his affidavit. Similarly, Nitin had purportedly filed an application on 21st August, 2010. In our opinion, the Trial Court rightly vide orders dated 4th September, 2010 and 25th September, 2010, rejected the said submission/applications on the ground that the said witnesses cannot be allowed to change their stance after having made statements under oath in the court. At the time of recording occular evidence of PW3 and PW4, the presiding officer was aware of the threats and the earlier orders. He had the opportunity to notice demeanour and closely observe the conduct and behaviour of the witnesses.

22. It was submitted that Swami Nath Pandey (PW-3) was a stock witness of the police as he has accepted in the cross-examination that he had earlier deposed in one murder case in 1984 and five other cases of Police Station Patparganj and two cases of Police Station Mayur Vihar. He accepted that he had good relations with officers of Police Station Mayur Vihar and that he was deposing because SHO Pandit Subodh Kumar Sahai was a good man. It would be incorrect and wrong to hold that Swami Nath Pandey (PW-3) was a planted witness in the present case, who had not seen the occurrence. PW-3 had a paan-bidi stall in front of the Police Station Mayur Vihar near the English Wine Shop. Thus, his presence at the said spot on the date and time of occurrence is per se believable and should be accepted. He was not a chance witness but his presence was normal and natural. The rukka in the present case was made on the basis of information and details given by Swami Nath Pandey (PW-3) being Exhibit PW-3/A to ASI Kali Charan (PW-11). This was because of the fact that he had seen the occurrence. In Exhibit PW-3/A the rukka, PW-3 has not named any of the appellants but as stated has referred to the involvement of three persons. Personal grudge or animosity of PW3 towards Asif and Roshan was not there or alleged.

23. Contesting the testimonies of PWs-1 and 4, it was submitted that none of the police officers, i.e., ASI Kali Charan (PW-11), Head Constable Soran Singh (PW-15), Somi Kaushik (PW-17) or Inspector Subodh Kumar (PW-20) have deposed about the presence of Laxmi (PW-1) and Nitin (PW-4). At the outset, we observe that the witnesses PW-11, 17 and 20 have affirmed that they had seen PW-3, who had paan-bidi shop in front of the police station. It is clearly established that the deceased-Ramu was taken to the hospital in the PCR van. Details and particulars regarding identity of Ramu were given and furnished by PWs-1 and 4 and the same are reflected in Exhibit PW-16/A, i.e., PCR form and the MLC (Exhibit PW-14/A). It is apparent that during the said period and initially

when ASI Kali Charan (PW11) swung into action, he did not notice and get in touch with PWs-1 and 4. PW-11 has deposed that on reaching the spot, he learnt that the injured had been taken to LBS Hospital and accordingly asked Constable Prashant and Constable Soran to stay back and he went to the said hospital with Constable Khetram. He procured MLC of Ramu, who was declared as brought dead (Ex PW14/A). The dead body was kept in mortuary. He (PW11) returned to the spot where he met PW-3 and recorded his statement and rukka was prepared and sent to the police station for registration of the FIR. In the hospital, PW-11 did not meet any eye witness which shows that by that time PWs-1 and 4 had left the hospital. In cross-examination, PW-11 has stated that he had reached the hospital at 8.50 P.M. and left the hospital at 9.15 P.M. This according to us is not correct and is a proximate time. The MLC itself was recorded at 9 P.M. and it is apparent that PW-11 reached the hospital subsequently. The FIR (Exhibit PW-7/A) was registered at 2250 hours. However, PW-11 hardly remained in the hospital and came back to the site of occurrence within about 20/25 minutes.

24. We have also gone through the statements of defence witnesses DW-1 to DW-7, but do not find any reason to refer to their depositions in detail as the versions given by Bala (DW-1), Mahipal (DW-2), Anil Kumar Pandey (DW-3), Vijender (DW-4) and Anil Bhatia (DW-5) do not inspire confidence and further the case and defence of the appellants. DW-6 and DW-7 have only deposed with regard to the complaints received from Nitin (PW-4) etc., which aspect has been discussed above.

25. On the basis of the disclosure statement made by Shishpal marked Ex. PW9/C, the police vide seizure memo (Ex. PW9/G) recovered a knife stated to be the weapon of offence from the house of Shishpal at 28/271, Trilokpuri. Sketch of the knife (Ex. PW9/H) was prepared. As per the CFSL report (Ex. PW20/I), human blood was found on the said knife/dagger, but blood group could not be ascertained on account of no reaction. The said knife/dagger was examined by Dr. Vinay Kumar (PW-19), who has deposed that the injury and cuts on the deceased's clothing could have been caused by the weapon examined or by some similar weapon.

26. It is in these circumstances, we partly accept the statement of PW-3 to the extent that he identified appellants-Amit and Roshan but disbelieve and disregard PW3's testimony regarding non-identification of Shishpal and accept the version of Nitin (PW-4), who identified Amit, Shishpal and Roshan in the court. It is interesting to note that Amit and Shishpal refused to participate in the Test Identification Parade (TIP) as per report (Exhibit PW-18/A to 18/C). The submission that appellants-Amit and Shishpal were justified in refusing to participate in the TIP proceedings as they had already been shown to Swami Nath Pandey (PW-3) is an obscure plea, which is not acceptable. The plea taken by appellants-Amit and Shishpal while refusing to participate in the TIP proceedings was that the complainant, i.e., PW-3 resided in their locality and there was every possibility that they might have been shown to PW3 by the police. As per the police version, appellants-Amit and Shishpal were arrested vide arrest memos Exhibits PW-9/A and

9/B at 7.10 P.M. and 6.50 P.M. respectively on 11th January, 2010, which is less than a day after the occurrence. TIP proceedings Ex PW18/A to C were to be conducted on 12.1.2010. PW-3 in the TIP proceedings (Exhibit PW-13/B) when conducted on 18th March, 2010 had identified appellant-Roshan, who was arrested vide arrest memo Exhibit PW-10/B on 15th March, 2010 at 3.25 P.M.

27. In view of the aforesaid discussion, we have no hesitation in dismissing the present appeals and we uphold the conviction and sentence of the appellants. The appeals are accordingly dismissed.

MANU/PR/0013/1945

Back to Section 34 of Indian Penal Code, 1860

BEFORE THE PRIVY COUNCIL

Decided On: 31.01.1945

Mahbub Shah Vs. Emperor

Hon'ble Judges/Coram:
Thankerton, Madhavan Nair and John Beaumont, JJ.

JUDGMENT

Madhavan Nair, J.

1. This is an appeal by special leave against a judgment of the High Court of Judicature at Lahore dated 14th March 1944, confirming on appeal the conviction of the appellant of the murder of one Allah Dad and the sentence of death passed on him by the Sessions Judge, Mianwali, on 20th December 1943. The appellant Mahbub Shah is aged 19. He has been convicted of murder under Section 302, read with Section 34, Penal Code, He was also convicted of the attempted murder of one Hamidullah Khan and sentenced to seven years' rigorous imprisonment; but that conviction has not been brought before the Board. The main question raised in this appeal is whether the appellant has been rightly convicted of murder upon the true construction of Section 34, Penal Code. Section 34 runs as follows:

When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

2. Along with the appellant, his cousin Ghulam Quasim Shah, aged 18, was also convicted under Section 302/34, Penal Code, and sentenced to transportation for life. Ghulam was convicted under Section 307/34 also, and was sentenced to five years' rigorous imprisonment by the Sessions Judge, but his convictions and sentences have been set aside by the High Court. The deceased Allah Dad died as the result of gunshot wounds inflicted on him. One Wali Shah, who is said to have fired the shot that killed the deceased, is a fugitive from justice and has not been so far arrested. His father Mohammad Hussain Shah, who was committed to the Sessions Court on a charge of abetment of murder, was acquitted by the Sessions Judge. The following table given in the judgment of the High Court shows the relationship between the appellant and the other persons who are alleged to have been concerned in this crime.

3. The prosecution case as accepted by the High Court may he briefly stated: On 25th August 1943, at sunrise, Allah Dad, deceased, with a few others left their village Khanda Kel by boat for cutting reeds growing on the banks of the Indus river. When they had travelled for about a mile downstream, they saw Mohammad Shah, father of Wali Shah (absconder) bathing on the bank of the river. On being told that they were going to collect reeds, he warned them against collecting reeds from land belonging to him. Ignoring his warning they collected about 16 bundles of reeds, and then started for the return journey. While the boat was being pulled upstream by means of a rope, Ghulam Quasim Shah,, nephew of Mohammad Huisain Shah-acquitted by the High Court-who was standing on the bank of the river asked Allah Dad to give him the reeds that had been collected from his uncle's land. He refused. What happened subsequently was spoken to by two boys Nur Hussain P.W. 10, and Nur Mohammad P.W. 11, whose version of the story has been accepted as true by the High Court and summarised as follows:

Quasim Shah then caught the rope and tried to snatch it away. He then pushed Allah Dad and gave a blow to Allah Dad with a small stick but it was warded off on the rope. Allah Dad then picked up the lari from the boat and struck Quasim Shah. Quasim Shah then shouted out for help and Wali Shah and Mahbub Shah came up. They had guns in their hands. When Allah Dad and Hamidullah tried to run away, Wali Shah and Mahbub Shah came in front of them and Wali Shah fired at Allah Dad who fell down dead and Mahbub Shah fired at Hamidullah, causing injuries to him." [Lari is a bamboo pole for propelling the boat, about ten feet long and six inches thick.]

4. On the above facts, the learned Judges of the High Court came to the conclusion that Ghulam Quasim was wrongly convicted of murder under Section 302/34, Penal Code., on the following reasoning. Bhandari J., with whom Teja Singh J. concurred, first held that Ghulam Quasim had no common intention of killing any member of the complainant party when he went to the bank of the river in order to demand the bundles of reeds which had been collected from his uncle's lands. Then the learned Judge addressed himself to the question "whether a common intention" to commit the crime which was eventually committed by Mahbub Shah and Wali Shah came into being when Ghulam Quasim Shah shouted to his companions to come to his rescue and both of them emerged from behind the bushes and fired their respective guns, and this he answered in the negative, holding that "so far as Quasim Shah was concerned he did no more than ask his companions to come to his assistance when he was knocked with a pole by the deceased" and that "he could not have been aware of the manner in which assistance was likely to be rendered to him or his friends were likely to shoot at and kill one man or injure another." In the result, he was acquitted of all offences. The learned Judge then proceeded to examine the case of the appellant and Wali Shah. He stated that the case of Mahbub Shah, who was armed with a single barrelled gun, and of Wali Shah, who had a double barrelled gun, however stood on a different footing. He distinguished their case on the following ground:

As soon as they ran to the assistance of Ghulam Quasim Shah, they fired simultaneously in the direction of the complainants killing Allah Dad on the spot and causing injuries on the person of Hamidullah Khan. It is difficult to believe that when they fired the shots they did not have the common intention of killing one or more of the complainant party. If so, both of them are guilty of murder notwithstanding the fact that the fatal shot was fired by only one of them, namely, Wali Shah, absconder.
It will be observed that according to the learned Judge a common intention to commit the crime came into being when appellant and Wali Shah fired the shots. Their Lordships will now proceed to consider whether the above reasoning is correct, and Section 34, Penal Code, has been rightly applied to the facts of the case. Attention has already been drawn to the words of the section. As it originally stood, the section was in the following terms:

When a criminal act is done by several persons, each of such persons is liable for that act in the same manner as if the act was done by him alone.
5. In 1870, it was amended by the insertion of the words "in furtherance of the common intention of all" after the word "persons" and before the word "each," so as to make the object of the section clear. Section 34 lays down a principle of joint liability in the doing of a criminal act. The section does not say "the common intentions of all" nor does it say "an intention common to all." Under the section,

the essence of that liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. To invoke the aid of Section 34 successfully, it must be shown that the criminal act complained against was done by one of the accused persons in the furtherance of the common intention of all; if this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone.
This being the principle, it is clear to their Lordships that common intention within the meaning of the section implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the prearranged plan.
As has been often observed, it is difficult if not impossible to procure direct evidence to prove the intention of an individual; in most cases it has to be inferred from his act or conduct or other relevant circumstances of the case.
6. On careful consideration, it appears to their Lordships that in the present case there was no evidence and there were no circumstances from which it might be inferred that the appellant must have been acting in concert with Wali Shah in pursuance of a concerted plan when he along with him rushed to the rescue of Ghulam Quasim. The exaggerated circumstances alleged by the prosecution to invoke the aid of Section 34, Penal Code, have been found against by the High Court who have acted solely on the evidence of P.W. 10 and p.w. 11. There was no evidence to indicate that Ghulam Quasim was aware that the complainant party had been cutting reeds from his uncle's lands, or that the appellant and Wali Shah had been kept behind the bush to come and help him

when called upon to do so. The evidence shows that Wali Shah "happened to be out shooting game" and when he and the appellant heard Ghulam's shouts for help they came up with their guns; the former shot the deceased, killing him outright, and the appellant shot at Hamidullah Khan inflicting injuries on his person. Indeed, the High Court negatived the existence of a "common intention" at the commencement in the sense in which their Lordships have explained the term by stating-in considering the application of Section 34, Penal Code, to the case of Ghulam-what has been already quoted, viz.:

that the sole point which requires consideration now is whether a common intention to commit the crime came into being when Ghulam shouted to his companions to come to his rescue and both of them emerged from behind the bushes and fired their respective guns.

7. Having answered the above question in the negative as regards Ghulam Quasim, the learned Judges thought, as Bhandari J. has expressly stated, that with respect to the appellant and Wali Shah, it must be held that the common intention of killing one or more of the members of the complainant party came into being later, when they fired the shots. Their Lordships cannot agree with this view. Their Lordships are prepared to accept that the appellant and Wali Shah had the same intention, viz., the intention to rescue Quasim if need be by using the guns and that, in carrying out this intention, the appellant picked out Hamidullah for dealing with him and Wali Shah, the deceased, but where is the evidence of common intention to commit the criminal act complained against, in furtherance of such intention? Their Lordships find none. Evidence falls far short of showing that the appellant and Wali Shah ever entered into a premeditated concert to bring about the murder of Allah Dad in carrying out their intention of rescuing Quasim Shah. Care must be taken not to confuse same or similar intention with common intention; the partition which divides "their bounds" is often very thin; nevertheless, the distinction is real and substantial, and if overlooked will result in miscarriage of justice. In their Lordships' view, the inference of common intention within the meaning of the term in Section 34 should never be reached unless it is a necessary inference deducible from the circumstances of the case. That cannot be said about the inference sought to be deduced from the facts relied on by the High Court in distinguishing the case of the appellant from that of Ghulam Quasim.

8. Mr. MacKenna, the learned Counsel for the Crown, besides supporting the judgment of the High Court on the grounds mentioned in it, called their Lordships' attention to the following additional circumstance in further support of it. Reference was made to the concluding portion of the evidence of p. Ws. 10 and 11, where it is stated that "when Allah Dad and Hamidullah tried to run away, Wali Shah and Mahbub Shah came in front of them..." and fired shots. This circumstance is stated more definitely in the evidence of P.W. 6. He stated "... we then tried to run away but Mahbub Shah and Wali Shah coming in front of us and prevented our escape" and fired shots. It was argued that the attempt of the appellant and Wali Shah to prevent the escape of the complainant party shows that they were actuated by a common intention to commit the crime, and from that moment

the Court is entitled to infer a common intention to commit the crime even though there was no pre-concerted plan to shoot till then. This additional circumstance does not, in their Lordships' view, advance the prosecution case any further, and, moreover, the learned Judges of the High Court do not rely on it. In the circumstances, their Lordships are not satisfied that the appellant was rightly convicted of the offence of murder under Section 302, Penal Code, read with Section 34. His conviction for murder and the sentence of death passed on him should, therefore, be quashed. In this view, the further question raised in the appeal whether, in the event of his conviction being confirmed, the sentence of death passed on him should not, having regard to the circumstances of the case and his age, be commuted to one of transportation for life does not arise for consideration. For the reasons indicated above, their Lordships have humbly advised His Majesty that the appellant having succeeded in his appeal, his appeal should be allowed and his conviction for murder and the sentence of death set aside.

MANU/PR/0064/1924

Back to Section 34 of Indian Penal Code, 1860

BEFORE THE PRIVY COUNCIL

Decided On: 23.10.1924

Barendra Kumar Ghosh Vs. Emperor

Hon'ble Judges/Coram:
Atkinson, Sumner and John Edge, JJ.

JUDGMENT
Sumner, J.

1. This was an appeal from the High Court of Calcutta brought in a criminal matter under Art. 41 of the Letters Patent. The trial Judge reserved no question of law and the case came to the High Court on the certificate of the Advocate-General of Bengal under Art. 26. Objection was taken at their Lordships' bar to the competence of this appeal on the ground that Art. 41 does not give an appeal to their Lordships from the determination of the High Court, unless the case came before that Court at the instance of the trial Judge. Thereupon the appellant applied in the alternative for special leave to appeal. The materials being the same in both proceedings, though the questions arising are not identical, their Lordships were able to decide the appeal and the application together and, in view of the gravity and urgency of the case, they dispensed with a formal petition for special leave to appeal. After hearing the arguments, they announced last July the substance of the advice, which they would humbly tender to His Majesty, namely, that the appeal should be dismissed. At the same time their Lordships intimated that they were unable to advise that the application for special leave to appeal should be granted. Their reasons are as follows:

2. On August 3rd, 1923, the Sub-Postmaster at Sankaritolla Post Office was counting money at his table in the back room, when several men appeared at the door which leads into the room from a courtyard, and, when just inside the door, called on him to give up the money. Almost immediately afterwards they fired pistols at him. He was hit in two places, in one hand and near the armpit, and died almost at once. Without taking any money the assailants fled, separating as they ran. One man, though he fired his pistol several times, was pursued by a post office assistant and others with commendable tenacity and courage, and eventually was secured just after he had thrown it away. This man was the appellant; the others escaped. The pistol was at once picked up and was produced at the trial.

3. There was evidence for the prosecution, such as the jury was entitled to act upon, that three men fired at the postmaster, of whom the appellant was one; that he wore

distinctive clothes by which he could be and was identified; and that, while these men were just inside the room, another was visible from the room through the door standing close to the others but just outside on the doorstep in the courtyard. This man was armed but did not fire.

4. Except for a doubt as to the total number of the men concerned in the attack, most of the witnesses concurring in the above statement while ultimately the prisoner said they were only three in number, the evidence of the eye witnesses was consistent and uniform. The pistol thrown away by the prisoner was a German automatic self-ejecting pistol. An ejected shell was found just inside the room near the door, and it fitted this pistol. The bullet which killed the postmaster was cut out of his back and was produced, and it also fitted the ejected shell and the pistol carried by the prisoner. This bullet was distinctly of German make. It was not however conclusively proved that no other assailant had a similar pistol to that which the prisoner had, or used a similar bullet to that found in the deceased.

5. The appellant was defended by five counsel. A few of the witnesses were cross-examined by them, but very sparingly, and only to test their adherence to their evidence given in chief. Most of them were not cross-examined at all. No affirmative defence was indicated in any part of this cross-examination and no witnesses were called on the part of the prisoner; but after the case for the prosecution was closed the prisoner made an oral statement, which of course was not on oath and was not cross-examined to. Here for the first time some foundation was laid, though vaguely, for what eventually became the case raised on this appeal.

6. According to the prisoner, he was the man outside the room. He said that he stood in the courtyard and was very much frightened. The prosecution had left his purpose to be inferred from his position and his action. Whether he was present as one of the firing party or as its commander or as its reserve or its sentinel was of no special importance on the case made for the Crown. What was singular was the prisoner's own reticence on these matters. He dealt with none of them. Why he was there at all and why he did not take himself off again he did not say, nor did he even indicate his precise position in the yard. Accordingly the evidence called by the prosecution, that the man outside was close to the men inside and, being visible by those within, would also see what went on within, was never challenged at all. The appellant's account was: "I took my stand on the portico"--this ran round two sides of the courtyard and according to the plan is consistent with a position on the steps of the doorway--

After a minute I heard two sounds--dum dum; when I heard the sounds I was confused. I perspired heavily and could not remember anything.

Afterwards I heard chor chor; not finding the others there, I ran away.

7. Finally he said (and it was to this that the only affirmative part of his counsel's cross-examination was directed)--

I have never assaulted anyone in my life. This is my first offence. I throw myself on the mercy of the Court. I was married hardly three months ago.

8. The charges preferred were murder under S. 302 of the Indian Penal Code, and voluntarily causing hurt under S. 394, while jointly concerned in an attempted robbery. To the first charge he pleaded not guilty. To the second he pleaded guilty of robbery. Their Lordships do not pause to remark on the inconsistency of this latter plea with the argument subsequently advanced in the High Court. There were further charges of attempted murder and attempt to commit culpable homicide, which were abandoned by the prosecution at the outset.

9. The learned trial Judge, Page, J., directed the jury, carefully, upon the footing, that the prisoner was one of the men inside the room, that he was one of those who fired, and might be the man who fired the fatal shot, and that in any event, if they were satisfied in terms of S. 34 of the Code, that the postmaster was killed in furtherance of the common intent of all then the prisoner was guilty of murder, whether he fired the fatal shot or no. He did not deal with the prisoner's statement until the prosecuting counsel reminded him of it, when he told the jury that its weight was for them, but it formed part of the evidence which they had to consider. He gave no express direction on the subject either of attempted murder or of abetting murder. It appears to their Lordships that, as the whole summing up was rested, in sentences more than once repeated, upon the prisoner being one of those inside the room and on his firing at the postmaster, the direction to the jury to take his statement into account might well be understood as impliedly instructing them to acquit, if they believed his whole statement as to his action and his connexion with the murder to be true, since in that case the conditions would not be fulfilled on which throughout the summing-up it was stated that the guilt of the accused must rest. This view, however, was not put forward in the Court below, and their Lordships are quite satisfied to deal with the matter as it was presented to the High Court upon the question of misdirection.

10. The note of the defence submitted, which was taken by the trial Judge is as follows: "No evidence of murder, because no evidence that prisoner killed him." This he overruled, by saying quite rightly "there is evidence that accused fired the fatal shot." If the defence subsequently raised before the High Court had been put before him intelligibly, it should have been a submission that the jury ought to acquit if they thought that the accused either fired and missed or did not fire at all, and that they must not find that he fired the fatal shot without weighing the fact that the prosecution had not actually proved that neither of the other men fired from a German automatic pistol like the prisoner's though there was evidence making it improbable that they were armed as he was.

11. As to the subsequent defence resting on abetment, it does not appear to have been thought of at all. It would be a circumstance proper to be considered on the application for special leave, that, neither in cross-examination nor in argument before the verdict was found, was any point about abetment taken, nor was even any point as to an attempt clearly urged.

12. It was not too late to have amended the charge and to have given further directions to the jury (Criminal Procedure Code, S. 227) and points not properly raised at the trial are not points which, in ordinary circumstances, deserve much consideration as grounds for special leave. In the present case, however their Lordships think it unnecessary to dwell further on this matter.

13. In the period of over sixty years which have elapsed since the Indian Penal Code came into force, a very large number of cases have of course been reported, in which joint commission of crime, attempts to commit crime, and abetments of crime, in many and very various forms, have been the subject of judicial rulings. With insignificant exceptions the Code has been interpreted in all the Indian Courts down to a few years ago in conformity with the English law existing in 1860.

14. The learned Judges, in the High Court examined the authorities so fully and exhaustively that it would serve no good purpose if their Lordships were to discuss them again seriatim.

15. The chief authority for the appellant is a decision of Stephen, J., in 1914, in Emperor v. Nirmal Kanta Roy (1914) 41 Cal. 1072 = 10 C.W.N. 723= 24 I.C. 340 = 15 Cr. L.J. 460., a case in which two men, obviously acting in concert, having both fired at a policeman, one hitting and killing him and the other failing to hit him at all, that learned Judge directed the acquittal of the latter, who was charged under Ss. 302/34 with murder. He held that, applying S. 34 to the case, the criminal act was the killing of the policeman: that only one man killed him, not both: that all the prisoner did was to try to kill him, and that the criminal act charged was not done by several persons at all. that is to say was not under the circumstances a joint act and he added "the only act he can be liable for under the section is one done by several persons, of whom he was one, that is by the man who escaped and himself. In order to make the accused liable for murder under S. 34 it would be necessary to say that an offence and an attempt to commit it are the same act, which seems to me not to be the case."

16. This view of the meaning of S. 34 was adopted in Emperor v. Protulla Kumar Mazumdar MANU/WB/0393/1922: A.I.R. 1923 Cal. 453=50 Cal. 41, the High Court observing that "S. 34 does not create an offence, the provisions thereof merely lay down a rule of law." Reference may also be made to Chandan Singh v. Emperor (1918) 40 All. 103=43 I.C. 438=16 A.L.J. 11 Harnam Singh v. Emperor (1919) 21 P.R. 1919 Cr.=52 I.C.

395=20 Cr. L.J. 635 and Bahal Singh v. Emperor (1919) 24 P.R. 1919 Cr.=52 I.C. 791= 20 Cr. L.J. 711.

17. Before 1914 there seems to have been no case in Bengal in which the view of S. 34 formulated by Stephen, J., in Nirmal's case (1) was adopted by any Judge while the cases to the con-trary are numerous. It is evident that till then the view now contended for had a very small place in the voluminous body of criminal decisions, and it has since been as often criticised as followed, and more often than not has been disregarded altogether. This is so in all the Courts in India.

18. The doing to death of one person at the hands of several by blows or stabs, under circumstances in which it can never be known which blow or blade actually extinguished life, if indeed one only produced that result is common in criminal experience and the impossibility of doing justice, if the crime in such cases is the crime of attempted murder only, has been generally felt. Id is not often that a case is found where several shots can be proved and yet there is only one wound, but even in such circumstances it is obvious that the rule ought to be the same as in the wider class, unless the words of the Code clearly negative it. Of course questions arise in such cases as to the extent to which the common intention and the common contemplation of the gravest consequences may have gone, and participation in a joint crime, as distinguished from mere presence at the scene of its commission, is often a matter not easy to decide in complex states of fact, but the rule is one that has never left the Indian Courts in much doubt.

19. As illustrations of the course of decision, reference may be made to the cases of Queen Empress v. Jan Mahmed 1. W.R. Cr. R. 49, Queen Empress v. Mahabir (1898) 21 All. 263=(1899) A.W.N. 76, Keshwar Lal Shaha v. Queen Empress (1902) 29 Cal. 496, Gauridas Namasundra, v. Emperor MANU/WB/0199/1908: (1909) 36 Cal. 659=13 C.W.N. 680 = 2 I.C. 841=10 Cr. L.J. 186, Kanhai v. Emperor (1913) 35 All. 329=11 A.L.J. 752=21 I.C. 657=14 Cr. L.J. 609 and Manindra Chandra Ghose v. Emperor MANU/WB/0086/1914: (1914) 41 Cal. 754=18 C.W.N. 580=28 I.C. 1002=15 Cr. L.J. 402.

20. The appellant's argument is, in brief, that in S. 34, "a criminal act," in so far as murder is concerned, means an act which takes life criminally within S. 302, because the section concludes by saying "is liable for that act in the same manner as if the act were done by himself alone," and there is no act done by himself alone, which could make a man liable to be punished as a murderer, except an act done by himself and fatal to his victim.

21. Thus the effect is that, where each of several persons does something criminal, all acting in furtherance of a common intention, each is punishable for what he has done as if he had done it by himself. Such a proposition was not worth enacting, for, if a man has done something criminal in itself, he must be punishable for it, and none the less so that others were doing other criminal acts of their own at the same time and in furtherance of an intention common to all.

22. It follows from the appellant's argument that the section only applies to cases where several persons (acting in furtherance of a common intention) do some fatal act, which one could do by himself. Criminal action, which takes the form of acts by several persons, in their united effect producing one result, must then be caught under some other section and, except in the case of unlawful assembly, is caught under attempts or abetment.

23. By way of illustration it may be noted that, in effect, this means, that if three assailants simultaneously fire at their victim and lodge three bullets in his brain, all may be murderers, but, if one bullet only grazes his ear, one of them is not a murderer and, each being entitled to the benefit of the doubt, all must be acquitted of murder, unless the evidence inclines in favour of the marksmanship of two or of one.

24. This argument evidently fixes attention exclusively upon the accused person's own act. Intention to kill and resulting death accordingly are not enough; there must be proved an act which kills, done by several persons and corresponding to, if not identical with, the same fatal act done by one. The answer is that, if this construction is adopted, it defeats itself, for several persons cannot do the same act as one of them does. They may do acts identically similar, but the act of each is his own, and because it is his own and is relative to himself, it is not the act of another, or the same as that other's act. The result is that S. 34, construed thus, has no content and is useless. Before the High Court the appellant's counsel put an illustration of their own, which may be taken now, because, the whole range of feasible illustrations being extraordinarily small, this one is equally exact in theory and paradoxical in practice.

25. Suppose two men tie a rope round the neck of a third and pull opposite ends of the rope till he is strangled. This they said really is an instance of a case under S. 34. Really it is not.

26. Obviously each is pulling his own end of the rope, with his own strength, standing in the position that he chooses to take up, and exerting himself in the way that is natural to him, in a word in a way that is his. Let it be that in effect each pulls as hard as the other and at the same time and that both equally contribute to the result. Still the act, for which either would be liable, is done by himself alone, is precisely not the act done by the other person.

27. There are two acts, for which both actors ought to suffer death, separately done by two persons but identically similar. Let us add the element, that neither act without the other would have been fatal; so that the fatal effect was the cumulative result of the acts of both. Even this does not make either person do what the other person does: it merely makes the act, for which he would be liable if done by himself alone, an attempt to murder and not an act of murder, and accordingly the case is not an illustration of S. 34. To this the reply was made before the High Court, that, in a case where death results from the

cumulative effect of different acts, each actor must be deemed guilty of murder, though whether because it cannot be shown that it was not his act alone which took the victim's life, or because the absurdity of the argument had to be disclaimed somehow, it is not easy to determine. Yet absurd it is, and absurd it must remain. "Where two men have done a man to death," said the learned counsel (Record 127) "your Lordships will not inquire in the individual effect of each blow: but the point I am insisting on is that the doing to death must have been the joint acts of both." This concession, rational enough in itself, is another way of saying that the section really means "when a joint criminal act has been done by the acts of two persons in furtherance of a common intention each is liable for that joint criminal act if he had done it all by himself."

28. On the other hand, if it is read as the appellant reads it, then, returning to the illustration of the rope, if both men are charged together but each is to be made liable for his act only and as if he had done it by himself, each can say that the prosecution has not discharged the onus, for no more is proved against him than an attempt, which might not have succeeded in the absence of the other party charged. Thus both will be acquitted of murder, and will only be convicted of an attempt, although the victim is and remains a murdered man.

29. If, on the other band, each were tried separately by different juries, either jury or both, taking the view that the violence used by the men before they killed the man, whom they knew to be dead, might return unimpeachable verdicts of murder, and then both men would be justly hanged.

30. As soon, however, as the other sections of this part of the Code are looked at, it becomes plain that the words of S. 34 are not to be eviscerated by reading them in this exceedingly limited sense.

31. By S. 33 a criminal act in S. 34 includes a series of acts and, further "act" includes omission to act, for example, an omission to interfere in order to prevent a murder being done before one's very eyes. By S. 37, when any offence is committed by means of several acts whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence. Even if the appellant did nothing as he stood outside the door, it is to be remembered that in crimes as in other things "they also serve who only stand and wait." By S. 38, when several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act. Read together, these sections are reasonably plain. S. 34 deals with the doing of separate acts, similar or diverse by several persons; if all are done in furtherance of a common intention, each person is liable for the result of them all, as if he had done them himself,

for "that act" and "the act" in the latter part of the section must include the whole action covered by "a criminal act" in the first part, because they refer to it.

32. Section 37 provides that, when several acts are done so as to result together in the commission of an offence, the doing of any one of them, with an intention to co-operate in the offence (which may not be the same as an intention common to all), makes the actor liable to be punished for the commission of the offence.

33. Section 38 provides for different punishments for different offences as an alternative to one punishment for one offence, whether the persons engaged or concerned in the commission of a criminal act are set in motion by the one intention or by the other.

34. The other part of the appellant's argument rests on Ss. 114 and 149, and it is said that, if S. 34 bears the meaning adopted by the High Court, these sections are otiose. S. 149 however, is certainly not otiose, for in any case it creates a specific offence and deals with the punishment of that offence alone. It postulates an assembly of five or more persons having a common object, viz., one of those named in S. 141 (R. v. Sabed Ali) 11 Ben. L.R. 347 at page 359=20 W.R. Cr. 5, and then the doing of acts by members of it in prosecution of that object.

35. There is a difference between object land intention, for, though their object is common, the intentions of the several members may differ and indeed may be similar only in respect that they are all unlawful, while the element of participation in action which is the leading feature of S. 34, is replaced in S. 149, by membership of the assembly at the time of the committing of the offence. Both sections deal with combinations of persons, who become punishable as sharers in an offence. Thus they have a certain resemblance and may to some extent overlap, but S. 149, cannot at any rate relegate S. 34 to the position of dealing only with joint action by the commission of identically similar criminal acts, a kind of case which is not in itself deserving of separate treatment at all.

36. As to S. 114, it is a provision which is only brought into operation when circumstances amounting to abetment of a particular crime have first been proved, and then the presence of the accused at the commission of that crime is proved in addition: Abhi Misser v. Lachmi Narain MANU/WB/0027/1900: [1900] 27 Cal. 566=4 C.W.N. 546 Abetment does not itself involve the actual commission of the crime abetted. It is a crime apart.

37. Section 114, deals with the case where there has been the crime of abetment, but where also there has been actual commission of the crime abetted and the abettor has been present thereat, and the way in which it deals with such a case is this. Instead of the crime being still abetment with circumstances of aggravation, the crime becomes the very crime abetted. The section is evidentiary not punitory. Because participation de facto (as this case shows) may sometimes be obscure in detail, it is established by the presumption juris et de jure that actual presence plus prior abetment can mean nothing else but participation. The presumption raised by S. 114 brings the case within the ambit of S. 34.

38. The prosecution gave no evidence of any prior connection of the accused with the crime, but began the case at the time when the assailants appeared at the post office. The discovery of sundry pistols and daggers among the appellant's effects, some hours after the crime, was proved but not that they were those used in the commission of the murder.

39. There was nothing in the prosecution's case to show that he had instigated or aided the commission of the crime before the actual commission began. The evidence on this matter was wholly supplied by the prisoner himself. His statement was that earlier in the day, when he was reclining on his couch after a meal, "one, whom he knew to be a God-fearing man and a man of learning," came and took him to a house where he found two young men. Here he was solicited to go with them in order to commit a dacoity, and when he reluctantly consented and was shown how to use the pistol with which like the others he was then supplied he stipulated that he was not to be a party to any dacoity or murder and was told there was to be no murder and he was to be there merely for show.

40. It is plain from his statement that these persons had some hold over him, for when by way of excusing himself, he had said "My brother is in Government service and draws large pay. The money I earn is enough for me," he states that the other "looked at me for a time. I could not speak"; and when he had been told that he was to be there only for show, he adds, "I was not in a position to speak. I went with them."

41. Thus his statement goes at most to abetting a dacoity, the crime to the actual commission of which he pleaded guilty, but, as he had stipulated with success that there was to be no murder, it is not itself a statement showing an abetment of murder. Strictly, therefore, there was no evidence of any such abetment as has to be proved before S. 114 comes into operation. As to the appellant's presence at the post office, it has been already pointed out that he gave no explanation of it at all, but his story was much more consistent with participation in the actual commission of the crime than with mere bodily presence after previous abetment. Indeed, he says that when he ran away, the others had already disappeared; thus it would seem that he covered their retreat.

42. At any rate, his statement supports presence by way of actual participation in the criminal act or series of acts by which the post master was killed rather than such conduct as adds to previous abetment bodily presence at the commission of the crime abetted and nothing more, and S. 114 was never really made applicable for want of proof of abetment of the very crime, at the commission of which the appellant was actually present.

43. For these reasons their Lordships think that only the most unsubstantial foundation was laid for any discussion of S. 114 at all, but as it was fully considered by the High Court, they state their own concurrence in the conclusion of the learned Judges below. Even if it be the case that the accused could have been convicted as an abettor, present at the commission of the offence, this is not to say that, if to presence there is added proof of participation, he could not also be convicted under Ss. 34 and 302. Participation must

depend on the facts, but it is not negatived merely because actual presence and prior abetment are proved.

44. Their Lordships do not think it useful to go at length into the history of the preparation and enactment of the provisions of the Indian Penal Code, which played no inconsiderable part in the discussion of this subject in India.

45. That the criminal law of India is prescribed by and, so far as it goes, is contained in the Indian Penal Code, that accordingly (as the Code itself shows) the criminal law of India and that of England differ in sundry respects, and that the Code has first of all to be construed in accordance with its natural meaning and irrespective of any assumed intention on the part of its framers to leave unaltered the law as it existed before, are though common-places, considerations which it is important never to forget. It is, however, equally true that the Code must not be assumed to have sought to introduce differences from the prior law.

46. It continues to employ some of the older technical terms without even defining them as in the case of abetment. It abandons others, such as principal in the first or the second decree, but it must not be supposed that, because it ceases to use the terms, it does not intend to provide for the ideas which those terms however imperfectly, expressed. One object which those who framed the Code had in view, was to simplify the law; and to get rid of the terms "principal in the first degree" and principal in the second degree" and others was no doubt a step in that direction, but to introduce a general section, S. 34, which has little, if any, content, and to attach a wholly new importance to abetments and attempts, was to complicate not to simplify the administration of the law, for participation and joint action in the actual commission of crime are, in substance, matters which stand in antithesis to abetments or attempts. If S. 34 was deliberately reduced to the mere simultaneous doing in concert of identical criminal acts, for which separate convictions for the same offence could have been obtained, no small part of the cases which are brought by their circumstances within participation and joint commission would be omitted from the Code altogether.

47. If the appellant's argument were to be adopted, the Code, during its early years, before the words "in furtherance of the common intention of all" were added to S. 34, really enacted that each person is liable criminally for what he does himself, as if he had done it by himself, even though others did something at the same time as he did. This actually negatives participation altogether and the amendment was needless, for the original words expressed all that the appellant contends that the amended section expresses. One joint transaction by several is merely resolved into separate several actions, and the actor in each answers for himself, no less and no more than if the other actors had not been there.

48. This got rid of questions about principals in the first or the second degree by ignoring them, and the object of the framers of the Code was attained. In truth, however, the amending words introduced, as an essential part of the section, the element of a common intention prescribing the condition under which each might be criminally liable when there are several actors.

49. Instead of enacting in effect that participation as such might be ignored, which is what the argument amounts to, the amended section said that, if there was action in furtherance of a common intention, the individual came under a special liability thereby, a change altogether repugnant to the suggested view of the original section.

50. Really the amendment is an amendment, in any true sense of the word, only if the original object was to punish participants by making one man answerable for what another does, provided what is done is done in furtherance of a common intention, and if the amendment then defines more precisely the conditions under which this vicarious or collective liability arises. In other words, "a criminal act" means that unity of criminal behaviour, which results in something, for which an individual would be punishable, if it were all done by himself alone, that is, in a criminal offence.

51. Their Lordships are accordingly of opinion that the Full Bench of the High Court rightly construed S. 34 of the Indian Penal Code, and that the view taken of it in Nirmal Kantha Roy's case (1) is not correct. This disposes of the main question raised in the appeal and in the application for special leave. Assuming that Page, J., in taking the view of S. 34, which he did take, directed the jury correctly on the subject, there is admittedly little left in the general objections to his summing up.

52. It was very fully examined by the Full Bench of the High Court, and the learned Judges were unanimously of opinion that it did not call for any review. Their Lordships do not think it necessary to re-examine it sentence by sentence, or to reiterate the reasons which the learned Judges gave for their conclusion. It is enough to say that, having fully considered the summing-up themselves, they entirely concur in the conclusion of the Full Bench. The learned Judge's direction was not erroneous in point of law, and it sufficiently dealt with the material facts.

53. It therefore contained no misdirection; still less was it such a summing-up as affected the due course of justice and the right of the prisoner to be fairly tried, according to law within the strict and narrow limits, which have long been laid down by their Lordships' Board when special leave to appeal is asked for in criminal matters.

54. The argument against the competence of the appeal was substantially as follows: Subject to the satisfaction of the conditions which Art. 41 contains, the appeal is a limited appeal as of right, and must, therefore, be strictly construed. It is given in two cases only, and beyond those cases any appeal is incompetent. The two cases are these: first that the

High Court, in the exercise of its original criminal jurisdiction, has passed a judgment, order or sentence; and, second, that there has been a criminal case where the Court, exercising original jurisdiction in that case, has itself reserved a point or points of law for the opinion of the High Court. The present case does not fall within the words "from any judgment, order or sentence of the said High Court of Judicature.....made in the exercise of original criminal jurisdiction" but it must be brought within the second alternative. Now, the Advocate-General of Bengal, under Art. 26 of the Letters Patent, granted his certificate that in his judgment "whether the alleged direction or the alleged omission to direct the jury do not in law amount to a misdirection should be further considered by the said High Court."

55. After full consideration of the question so raised, the Full Bench of the High Court made its order in the following terms: "The order of the Court is that the application made by the prisoner under clause 26 of the Letters Patent do stand dismissed"; and this is the order by which the Appellant is really aggrieved. It is true that in his petition to the High Court for a declaration of the fitness of his case for further review he says: "that being aggrieved by the said dismissal of his application and by the judgment and sentence passed and pronounced upon him by the Hon'ble Mr. Justice Page, your petitioner prays for leave to appeal therefrom to the King's Most Excellent Majesty in Council": but this statement is doubly inexact.

56. The High Court does not and does not purport to grant leave to appeal: it grants or withholds a declaration of its opinion on the fitness of the case for appeal. Further, the appeal is from the order of the High Court itself refusing to exercise its power to interfere with the trial and sentence. If it had discharged the sentence and directed an acquittal to be entered, the appellant would not have been aggrieved by the judgment and sentence of Page, J., at all. If it had altered the sentence, his grievance would have been that the alteration did not go far enough. Accordingly his application is made in a case which does not fall within the words "in any criminal case where any points of law have been reserved for the opinion of the High Court in manner hereinbefore provided by any Court which has exercised original jurisdiction," for the points of law were reserved by the Court which exercised original jurisdiction, nor did the Court exercise its discretion in the matter in terms of Art. 25.

57. That article provides that but for the case therein excepted, "there shall be no appeal to the High Court from any sentence passed in any criminal trial before the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the High Court," and although Art. 26, which states what is to be done with these points reserved introduces a new reserving authority, determination of the High Court on the question reserved is final, except only for the express provision of Art. 41. It says:--

And we do further ordain that on such point or points of law being so reserved as aforesaid, or on its being certified by the said Advocate-General that in his

judgment.....a point or points of law which has or have been decided by the said Court should be further considered, the said High Court shall have full power and authority to review the case and finally determine such point or points of law.

58. Now Art. 41 names, as part of the defining limits of the right to appeal to His Majesty in Council, a reservation of points of law by a Court exercising original jurisdiction, which is not the reservation made in this case, and the fact that a reservation by the Advocate-General is mentioned and provided for in Section 26, and is omitted from Section 41, makes the intention clear.

59. When an authority outside the High Court is empowered to bring about a right of first appeal by a certificate of his own, that appeal is to the High Court and is finally concluded by its determination. There is no second appeal. When the reservation originates within the High Court itself, then, subject to the approval of the High Court to the fitness of the case in that regard, a second appeal is competent. With Art. 41 the Advocate-General has nothing to do. The proceedings of the two tribunals, the High Court exercising original criminal jurisdiction and the High Court determining by its judgment points reserved for its consideration, are strictly two proceedings, and, when the trial judge is functus officio and the whole matter has passed to the Court in review, the conditions under which the further decision in review can be brought before His Majesty in Council under Art. 41 are strictly limited to those which that section prescribes for that very case. Such was the submission on behalf of the respondent, and there can be no doubt that it was a weighty one.

60. Having arrived at the above-stated conclusion on the construction of the Code, which goes to the root both of the appeal and the application for special leave, their Lordships do not, however, think it necessary to proceed with the question whether in this case an appeal under Art. 41 of the Letters Patent is competent.

61. In 1901 an appeal Subrahmania Ayyar v. King Emperor (1902) 25 Mad. 61=28 I.A. 257=11 M.L.J. 233=3 Bom. L.R. 540=5 C.W.N. 866=10 M.L.J. 147 (P.C.) was heard and determined by their Lordships' Board, in which the decision under review was that of the High Court at Madras in a criminal matter, brought before it on the certificate of the Advocate-General under Art. 26. The terms of the Letters Patent of the High Courts of Calcutta and Madras are for the present purpose identical. No objection was taken by counsel that under these circumstances an appeal to their Lordships' Board under Art. 41 was incompetent, nor is any question raised on this point in the judgment of the Board, and the explanation of this circumstance probably lies in the fact, that in addition to the appeal under Art. 41, special leave to appeal had been applied for and had been granted by Her Majesty in Council on 29th June 1900.

62. The decision in that case does not therefore conclude this matter, but their Lordships think it inexpedient to deal with the objection now, since on the other grounds above

stated the appeal itself in their opinion must fail. They desire, however, to say that they must not be understood as giving any encouragement to appeals in criminal matters under Art. 41, where no point of law has been raised by the trial judge, nor are appellants, who have chosen this mode of bringing their case before the Board, to assume that an application for special leave to appeal as an alternative will be granted or even entertained by their Lordships.

63. For similar reasons they do not deal with other considerations relating to the grant of special leave to appeal to His Majesty such as the following.

64. Although in general hardly anything could more conspicuously violate natural justice than to convict and sentence a man for an offence of which he was not guilty, it may be that irregularity alone is the proper term to use, when, the facts being the same, the evidence the same, the guilt the same, and the punishment the same, error has occurred in indicting him under the section which charges the full offence instead of under the sections which charge an attempt at or an abetting of the full offence, especially when this error could have been corrected in time, if the accused had put his counsel in a position to raise his defence clearly and in due form at the trial. Upon this point also their Lordships express no opinion at present.

MANU/MH/0166/1952

Back to Section 79 of Indian Penal Code, 1860

IN THE HIGH COURT OF NAGPUR

Decided On: 19.02.1952

Chirangi Vs. State

Hon'ble Judges/Coram:
Hemeon and K.C. Sen, JJ.

JUDGMENT

1. Chirangi, Lohar, 45 years, a widower, his unmarried daughter, only son Ghudsai, 12 years, and nephew Khotla (P.W. 2) lived together at Idnar, Narayanpur tahsil, Bastar district. Their relations were cordial, and Ghudsai was attentive and considerate to his fattier who had an abscess in his leg for some time prior to he 3rd April 1951. During that afternoon, while Khotla was working in his field, Chirangi took an axe and went with Ghudsai to a nearby hillock, known as Budra Meta, in order to gather 'siadi' leaves. When Khotla returned to his house in the evening, Ghudsai was not there and he found Chirangi asleep with the blood-stained axe beside him. Chirangi woke up at midnight, and when Khotla questioned him concerning his son's whereabouts he replied:

I had become insane. I have killed my son in Budra Meta. It occurred to me that a tiger had come to me. I then dealt blows with the axe.
2. On the following morning, Chirangi repeated ' this version to the mukaddam Bandi (P.W. 3). Ghudsai's corpse was found on hillock, and Chirangi told the 'kotwar' Aitu (P.W. 1) that he had killed his son by mistake for a tiger, that two of his sons had died from insanity and that he himself was insane. The autopsy showed that Ghudsai had incised wounds on the right temple, neck and left humerus with a comminuted fracture of the right temporal bone. Chirangi had two superficial abrasions on the front of the shoulders and a superficial abrasion ½" × ½" on the outer part of the left eyebrow which could have been caused by a fall or r contact with a hard, and rough object.

3. Chirangi in examination explained that he had sustained these injuries by falling on a stone and that because of madness he did not know what had happened at the hillock, m defence, he added he had 'bona fide' mistaken his son for a magic tiger and was incapable of knowing the nature of his act. There was nothing to show that he was insane before or after the occurrence; and it was clear that he was devoted to his son. Dr. Palsodkar, when asked whether there could have been in the circumstances a fit of temporary insanity stated:

I assume that there was no symptom of epilepsy in this case. Without excitement, such temporary insanity should not ordinarily come.
4. The four assessors were of the unanimous opinion that Chirangi had actually mistaken his son for a tiger and that his fall may have resulted in temporary insanity. The trial Judge was however of the view that there was no mistake of fact, that even if there were it was not in good faith and that Chirangi was my insane at the relevant time. He convicted and sentenced him to transportation for life under Section 302 of the Indian Penal Code for Ghudsai's murder.

5. There was, as we have pointed out, nothing to show that the appellant was insane before or after the occurrence; and it was not even suggested that he was eccentric or queer. There was also no allegation that his forbears were mentally afflicted; and in this unusual case we are confronted with the position that he suddenly killed his son to whom lie was devoted and who was devoted to him, because he thought that he was a tiger. The 4 gentlemen, who sat as assessors at the trial, belong to the somewhat primitive tract in question; and they were of the unanimous opinion that he was not liable for the murder of his son and that he was entitled to the benefit of the provisions of both Section 79 and Section 84 of the Indian Penal code. They considered that he had acted under a 'bona fide' mistake of fact in a fit of temporary insanity which had been occasioned by his fall.

6. We invited Dr. K.C. Dube, M.B.B.S. (Bombay) and D.P.M. (London), who is Superintendent of Mental Hospital, Nagpur, and has specialized in psychiatry for 11 years, to read the record and to examine him. After he had done so, we examined Dr. Dube; and his testimony showed that it was possible for Chirangi, who was suffering from bilateral cataract prior to the relevant date, to have because of this disability mistaken 'bona fide' his son for a tiger. Dr. Dube also opined that the abscess in his leg would have produced a temperature which might well have been responsible after the fall for a temporary delirium which might have created a secondary delusion to magnify the image created by the defect in vision. Chirangi in all probability, he added, suffered from cardio-vascular disease which would have resulted in temporary confusion; and the injury to his eyebrow could have caused a state of concussion during which he might have inflicted the injuries on his son without being conscious of his actions. No symptoms of psychosis or insanity were present when Dr. Dube examined him on the 11th February 1952, i.e., about 10 months after the occurrence.

7. The evidence of Dr. Dube showed clearly enough that Chirangi's fall combined with his existing physical ailments could have produced a state of mind in which he in good faith thought that the object of his attack was a tiger and was not his son. The appellant's conduct after the occurrence was in consonance with that estimate, and it was manifest that he had had no intention of doing wrong or of committing any offence. In Waryam Singh v. Emperor AIR 1926 Lah 554, a Division Bench, acting under Section 79 of the Indian Penal Code, held that an accused who killed a man with several blows from a stick was not liable under Section 302, Section 304 or Section 304A 'ibid' because he believed

in good faith at the time of the attack that the object of his assault was not a living human being but a ghost or some object other than a living human being. The Division Bench made it clear that the ground for their opinion was that 'mens rea' or an intention to do wrong or to commit an offence did not exist in the case and that the object of culpable homicide could only be a living human being.

8. This view was followed in Bonda Kui v. Emperor MANU/BH/0066/1942: AIR1943Pat64 a case in Which a woman, in the middle of the night, saw a form, apparently human, dancing in a state of complete nudity with a broomstick tied on one side and a torn mat around the waist. The woman, taking the form to be that of an evil spirit or a thing which consumes human beings, removed her own clothes and with repeated blows by a hatchet felled the thing to the ground. Examination showed, however, that she had killed a human being who was the wife of her husband's brother. The conviction and sentence of the accused woman under Section 304 of the Indian Penal Code were set aside, on the ground that she was fully protected by the provisions of Section 79 'ibid', inasmuch as the statements made by her from time to time, which constituted the only evidence in the case, demonstrated conclusively that she thought that she was, by a mistake of fact, justified In killing the deceased whom she did not consider to be a human being, but a thing which devoured human beings.

9. We are in respectful agreement with these two rulings the facts in which are largely 'in part materia' with those in the poignant case before us. It is abundantly clear that if Chirangi had for a single moment thought that the object of his attack was his son, he would have desisted forthwith. There was no reason of any kind why he should have attacked him and, as shown, they were mutually devoted. In short, all that happened was that the appellant in a moment of delusion had considered that his target was a tiger and he accordingly assailed it with his axe. He thought that by reason of a mistake of fact he was justified in destroying the deceased whom he did not regard to be a human being but who, as he thought, was a dangerous animal. He was in the circumstances protected by the provisions of Section 79 of the Indian Penal Code which lays it down that nothing is an offence which is done by any person who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law in doing it.

10. The conviction and sentence are accordingly set aside and the appellant Chirangi shall be set at liberty forthwith.

MANU/OR/0088/1978

Back to Section 80 of Indian Penal Code, 1860

IN THE HIGH COURT OF ORISSA

Decided On: 21.03.1978

State of Orissa Vs. Khora Ghasi

Hon'ble Judges/Coram:
Sachidananda Acharya and K.B. Panda, JJ.

JUDGMENT
Sachidananda Acharya, J.

1. This is an appeal against the order of acquittal passed by the court below in favour of the respondent who was charged and tried Under Section 302 I.P.C. in that court.

2. The prosecution case, in short, is that in the night of 16-8-75 the deceased stealthily had entered into the maize field of the accused for committing theft of maize therefrom. The accused who was watching his maize field at that time heard some sound inside his field, and thinking that a bear had entered into the maize field, he shot an arrow towards the place from which the said sound was heard. That arrow hit the deceased on the right side of his belly and caused a gaping and bleeding injury at that place. The deceased ran back to his house and informed his grandmother, P. W. 1, that the accused shot an arrow at him and caused that injury on his person. Soon thereafter the deceased became unconscious and he died after two hours.

The next day morning the father of the deceased convened a Panchayat in the village where the accused admitted that he shot the arrow thinking that it was a bear. The father of the deceased thereafter lodged the F. I. R. Ext. 2 at the police station; After investigation and commitment proceeding the accused stood his trial for an offence Under Section 302 I.P.C. of which he has been acquitted.

3. The accused in his statement Under Section 313 Cr. P.C. admitted that he shot the arrow thinking that he was shooting a bear which had strayed into his maize field and was destroying his maize crop. It must be noted that the accused made the same or similar statements before the Bhadraloks in the village and before a Magistrate who on 22-8-75 recorded his statement Under Section 164, Cr. P.C. (Ext. 12).

4. There is no doubt that the deceased died a homicidal death.

5. P. Ws. 1. 3 and 4, who attended the Panchayat on the next morning, state that the accused admitted in the Panchayat that he shot the arrow under the impression that he

was shooting at a bear which was damaging his maize crop in his maize field. P. Ws. 1, 3 and 4 state that the night of occurrence was a dark night, it was drizzling and the moon was not visible in the sky at the time of the occurrence. The place of occurrence, as admitted by the prosecution witnesses, is surrounded by forests on all sides, and bears and boars were in abundance in that locality. They further state that such and other animals very often damage the crops of the villagers. The maize plants in the field of the accused were about four feet high. The deceased admittedly had a black blanket on his body when he had gone inside the accused's maize field. The prosecution case itself is that the deceased had gone there after midnight to commit theft of maize therefrom. One ordinarily would not expect a man to get into a maize field surrounded by jungles and infested with wild animals in a dark drizzling night. The prosecution witnesses have admitted that there was no enmity or ill feeling between the accused and the deceased. Absolutely no reason for intentional shooting of an arrow at the deceased by the accused could ever be suggested by the prosecution.

6. On a perusal of the evidence on record and the discussion of the same in the impugned judgment we are satisfied that the finding of the court below, that the accused shot the arrow under the bona fide belief and impression that he was shooting that arrow at a bear which had entered into his field and was destroying his maize crop, is perfectly correct and justified. On that finding, the court below rightly holds that in the facts and circumstances of this case the accused is entitled to the protection Under Section 80 I.P.C.

In this connection I should refer to the decision reported in MANU/MH/0169/1951 State of M. P. v. Ranga-swami cited by Mr. Nanda, the learned Counsel for the respondent. An employee in an Ammunition Depot, during the forenoon on a particular day, went along with his co-employees towards the place of occurrence with the intention of shooting a hyena which was seen in that locality on the previous day and which they honestly believed had reappeared there. On that day visibility was poor due to drizzling of rain. On the bona fide belief that the moving object seen by them was a wild animal and not a human being, and not anticipating the presence of any human being at that place at that time the accused fired a gun shot at the moving object, and to their surprise the object aimed at was found to be a human being who died at the spot. On these facts their Lordships of that Court upheld the order of acquittal in respect of the charge Under Section 304-A, I.P.C. against the accused. Their Lordships in that decision have referred to the decision reported in AIR 1926 Lah 554: 28 Cri LJ 39 (Waryam Singh v. Emperor) and the decision of the Patna High Court reported in (1942) Cri LJ 787 (Bonda Kui v. Emperor). In the Patna decision the accused, who had been convicted Under Section 304 I.P.C. by the Lower Court, was acquitted on the ground that she believed in good faith at the time of her attack that the object of the attack was not a living human being but a ghost or some object other than a living human being, and the intention to do wrong or to commit an offence against a human being was not present in that case.

Their Lordships of the Lahore High Court in the decision reported in AIR 1926 Lah 554: 28 Cri LJ 39 on an examination of several cases cited at the bar held that:

...the better judicial opinion is that if the accused believed in good faith at the time of the assault that the object of his assault was not a living human being but a ghost or some object other than a living human being then he cannot be convicted of an offence under Section 302 or Section 304 of the I.P.C. The ground for such opinion is that mens rea or an intention to do wrong or to commit an offence does not exist in such a case and that the object of 'culpable homicide' can be a 'living human being' only.
Their Lordships held that on the aforesaid facts of that case the appellant's case would come Under Section 79 I.P.C. and he could not be convicted Under Section 302 or Under Section 304 I.P.C., and that Section 304-A of the I.P.C. would not apply to a case of that nature.

7. On the facts and circumstances of this case we are satisfied that the complained of act of the accused comes clearly Under Section 79 or 80 I.P.C., and so the order of acquittal passed in this case is perfectly correct and justified. There is no merit in this appeal. The appeal accordingly is dismissed. The respondent, if in custody, be released forthwith.

K.B. Panda, J.

8. I agree.

Back to Section 81 of Indian Penal Code, 1860

MANU/UKWQ/0002/1884

ENGLAND AND WALES HIGH COURT (QUEEN'S BENCH DIVISION)

Decided On: 09.12.1884

R. v. Dudley (Thomas)

Hon'ble Judges/Coram:
LORD COLERIDGE, C.J., GROVE AND DENMAN, JJ., POLLOCK AND HUDDLESTON, BB.

JUDGMENT
LORD COLERIDGE, C.J.

The two prisoners, Thomas Dudley and Edwin Stephens, were indicted for the murder of Richard Parker on the high seas on the 25th of July in the present year. They were tried before my Brother Huddleston at Exeter on the 6th of November, and, under the direction of my learned Brother, the jury returned a special verdict, the legal effect of which has been argued before us, and on which we are now to pronounce judgment.

The special verdict as, after certain objections by Mr. Collins to which the Attorney General yielded, it is finally settled before us is as follows. [His Lordship read the special verdict as above set out.] From these facts, stated with the cold precision of a special verdict, it appears sufficiently that the prisoners were subject to terrible temptation, to sufferings which might break down the bodily power of the strongest man, and try the conscience of the best. Other details yet more harrowing, facts still more loathsome and appalling, were presented to the jury, and are to be found recorded in my learned Brother's notes. But nevertheless this is clear, that the prisoners put to death a weak and unoffending boy upon the chance of preserving their own lives by feeding upon his flesh and blood after he was killed, and with the certainty of depriving him of any possible chance of survival. The verdict finds in terms that "the men had not fed upon the body of the boy they would probably not have survived, "and that "the boy being in a much weaker condition was likely to have died before them." They might possibly have been picked up next day by a passing ship; they might possibly not have been picked up at all; in either case it is obvious that the killing of the boy would have been an unnecessary and profitless act. It is found by the verdict that the boy was incapable of resistance, and, in fact, made none; and it is not even suggested that his death was due to any violence on his part attempted against, or even so much as feared by, those who killed him. Under these circumstances the jury say that they are ignorant whether those who killed him were guilty of murder, and have referred it to this Court to determine what is the legal consequence which follows from the facts which they have found.

Certain objections on points of form were taken by Mr. Collins before he came to argue the main point in the case. First it was contended that the conclusion of the special verdict

as entered on the record, to the effect that the jury find their verdict in accordance, either way, with the judgment of the Court, was not put to them by my learned Brother, and that its forming part of the verdict on the record invalidated the whole verdict. But the answer is twofold â€" (1) that it is really what the jury meant, and that it is but the clothing in legal phraseology of that which is already contained by necessary implication in their unquestioned finding, and (2) that it is a matter of the purest form, and that it appears from the precedents with which we have been furnished from the Crown Office, that this has been the form of special verdicts in Crown cases for upwards of a century at least.

Next it was objected that the record should have been brought into this Court by certiorari, and that in this case no writ of certiorari had issued. The fact is so; but the objection is groundless. Before the passing of the Judicature Act, 1873 (36 & 37 Vict.c. 66), as the courts of Oyer and Terminer and Gaol delivery were not parts of the Court of Queen's Bench, it was necessary that the Queen's Bench should issue its writ to bring before it a record not of its own, but of another Court. But by the 16th section of the Judicature Act, 1873, the courts of Oyer and Terminer and Gaol delivery are now made part of the High Court, and their jurisdiction is vested in it. An order of the Court has been made to bring the record from one part of the court into this chamber, which is another part of the same court; the record is here in obedience to that order; and we are all of opinion that the objection fails.

It was further objected that, according to the decision of the majority of the judges in the Franconia Case 2 Ex D 63, there was no jurisdiction in the Court at Exeter to try these prisoners. But (1) in that case the prisoner was a German, who had committed the alleged offence as captain of a German ship; these prisoners were English seamen, the crew of an English yacht, cast away in a storm on the high seas, and escaping from her in an open boat; (2) the opinion of the minority in the Franconia Case 2 Ex D 63 has been since not only enacted but declared by Parliament to have been always the law; and (3) 17 & 18 Vict. c. 104, s. 267, is absolutely fatal to this objection. By that section it is enacted as follows:â€" â€œAll offences against property or person committed in or at any place either ashore or afloat, out of her Majesty's dominions by any master seaman or apprentice who at the time when the offence is committed is or within three months previously has been employed in any British ship, shall be deemed to be offences of the same nature respectively, and be inquired of, heard, tried, determined, and adjudged in the same manner and by the same courts and in the same places as if such offences had been committed within the jurisdiction of the Admiralty of England.â€ We are all therefore of opinion that this objection likewise must be overruled.

There remains to be considered the real question in the case â€" whether killing under the circumstances set forth in the verdict be or be not murder. The contention that it could be anything else was, to the minds of us all, both new and strange, and we stopped the Attorney General in his negative argument in order that we might hear what could be said in support of a proposition which appeared to us to be at once dangerous, immoral, and opposed to all legal principle and analogy. All, no doubt, that can be said has been urged before us, and we are now to consider and determine what it amounts to. First it is said that it follows from various definitions of murder in books of authority, which

definitions imply, if they do not state, the doctrine, that in order to save your own life you may lawfully take away the life of another, when that other is neither attempting nor threatening yours, nor is guilty of any illegal act whatever towards you or any one else. But if these definitions be looked at they will not be found to sustain this contention. The earliest in point of date is the passage cited to us from Bracton, who lived in the reign of Henry III. It was at one time the fashion to discredit Bracton, as Mr. Reeve tells us, because he was supposed to mingle too much of the canonist and civilian with the common lawyer. There is now no such feeling, but the passage upon homicide, on which reliance is placed, is a remarkable example of the kind of writing which may explain it. Sin and crime are spoken of as apparently equally illegal, and the crime of murder, it is expressly declared, may be committed â€œlinguÃ¢ vel factoâ€; so that a man, like Hero â€œdone to death by slanderous tongues,â€ would, it seems, in the opinion of Bracton, be a person in respect of whom might be grounded a legal indictment for murder. But in the very passage as to necessity, on which reliance has been placed, it is clear that Bracton is speaking of necessity in the ordinary sense â€" the repelling by violence, violence justified so far as it was necessary for the object, any illegal violence used towards oneself. If, says Bracton, the necessity be â€œevitabilis, et evadere posset absque occisione, tunc erit reus homicidiiâ€ â€" words which shew clearly that he is thinking of physical danger from which escape may be possible, and that the â€œinevitabilis necessitasâ€ of which he speaks as justifying homicide is a necessity of the same nature.

It is, if possible, yet clearer that the doctrine contended for receives no support from the great authority of Lord Hale. It is plain that in his view the necessity which justified homicide is that only which has always been and is now considered a justification. â€œIn all these cases of homicide by necessity,â€ says he, â€œas in pursuit of a felon, in killing him that assaults to rob, or comes to burn or break a house, or the like, which are in themselves no felonyâ€ (1 Hale's Pleas of the Crown , p. 491). Again, he says that â€œthe necessity which justifies homicide is of two kinds: (1) the necessity which is of a private nature; (2) the necessity which relates to the public justice and safety. The former is that necessity which obligeth a man to his own defence and safeguard, and this takes in these inquiries:â€" (1.) What may be done for the safeguard of a man's own life;â€ and then follow three other heads not necessary to pursue. Then Lord Hale proceeds:â€" â€œAs touching the first of these â€" viz., homicide in defence of a man's own life, which is usually styled se defendendo.â€ It is not possible to use words more clear to shew that Lord Hale regarded the private necessity which justified, and alone justified, the taking the life of another for the safeguard of one's own to be what is commonly called â€œself-defence.â€ (Hale's Pleas of the Crown, i. 478.)

But if this could be even doubtful upon Lord Hale's words, Lord Hale himself has made it clear. For in the chapter in which he deals with the exemption created by compulsion or necessity he thus expresses himself:â€" â€œIf a man be desperately assaulted and in peril of death, and cannot otherwise escape unless, to satisfy his assailant's fury, he will kill an innocent person then present, the fear and actual force will not acquit him of the crime and punishment of murder, if he commit the fact, for he ought rather to die himself than kill an innocent; but if he cannot otherwise save his own life

the law permits him in his own defence to kill the assailant, for by the violence of the assault, and the offence committed upon him by the assailant himself, the law of nature, and necessity, hath made him his own protector cum debito moderamine inculpatÃ¦ tutelÃ¦.â€ (Hale's Pleas of the Crown, vol. i. 51.)

But, further still, Lord Hale in the following chapter deals with the position asserted by the casuists, and sanctioned, as he says, by Grotius and Puffendorf, that in a case of extreme necessity, either of hunger or clothing; â€œtheft is no theft, or at least not punishable as theft, as some even of our own lawyers have asserted the same.â€ â€œBut,â€ says Lord Hale, â€œI take it that here in England, that rule, at least by the laws of England, is false; and therefore, if a person, being under necessity for want of victuals or clothes, shall upon that account clandestinely and animo furandi steal another man's goods, it is felony, and a crime by the laws of England punishable with death.â€ (Hale, Pleas of the Crown, i. 54.) If, therefore, Lord Hale is clear â€" as he is â€" that extreme necessity of hunger does not justify larceny, what would he have said to the doctrine that it justified murder?

It is satisfactory to find that another great authority, second, probably, only to Lord Hale, speaks with the same unhesitating clearness on this matter. Sir Michael Foster, in the 3rd chapter of his Discourse on Homicide, deals with the subject of â€œhomicide founded in necessityâ€; and the whole chapter implies, and is insensible unless it does imply, that in the view of Sir Michael Foster â€œnecessity and self-defenceâ€ (which he defines as â€œopposing force to force even to the deathâ€) are convertible terms. There is no hint, no trace, of the doctrine now contended for; the whole reasoning of the chapter is entirely inconsistent with it.

In East's Pleas of the Crown (i. 271) the whole chapter on homicide by necessity is taken up with an elaborate discussion of the limits within which necessity in Sir Michael Foster's sense (given above) of self-defence is a justification of or excuse for homicide. There is a short section at the end very generally and very doubtfully expressed, in which the only instance discussed is the well-known one of two shipwrecked men on a plank able to sustain only one of them, and the conclusion is left by Sir Edward East entirely undetermined.

What is true of Sir Edward East is true also of Mr. Serjeant Hawkins. The whole of his chapter on justifiable homicide assumes that the only justifiable homicide of a private nature is the defence against force of a man's person, house, or goods. In the 26th section we find again the case of the two shipwrecked men and the single plank, with the significant expression from a careful writer, â€œIt is said to be justifiable.â€ So, too, Dalton c. 150, clearly considers necessity and self-defence in Sir Michael Foster's sense of that expression, to be convertible terms, though he prints without comment Lord Bacon's instance of the two men on one plank as a quotation from Lord Bacon, adding nothing whatever to it of his own. And there is a remarkable passage at page 339, in which he says that even in the case of a murderous assault upon a man, yet before he may take the life of the man who assaults him even in self-defence, â€œcuncta prius tentanda.â€

The passage in Staundforde, on which almost the whole of the dicta we have been considering are built, when it comes to be examined, does not warrant the conclusion

which has been derived from it. The necessity to justify homicide must be, he says, inevitable, and the example which he gives to illustrate his meaning is the very same which has just been cited from Dalton, shewing that the necessity he was speaking of was a physical necessity, and the self-defence a defence against physical violence. Russell merely repeats the language of the old text-books, and adds no new authority, nor any fresh considerations.

Is there, then, any authority for the proposition which has been presented to us? Decided cases there are none. The case of the seven English sailors referred to by the commentator on Grotius and by Puffendorf has been discovered by a gentleman of the Bar, who communicated with my Brother Huddleston, to convey the authority (if it conveys so much) of a single judge of the island of St. Kitts, when that island was possessed partly by France and partly by this country, somewhere about the year 1641. It is mentioned in a medical treatise published at Amsterdam, and is altogether, as authority in an English court, as unsatisfactory as possible. The American case cited by my Brother Stephen in his Digest, from Wharton on Homicide, in which it was decided, correctly indeed, that sailors had no right to throw passengers overboard to save themselves, but on the somewhat strange ground that the proper mode of determining who was to be sacrificed was to vote upon the subject by ballot, can hardly, as my Brother Stephen says, be an authority satisfactory to a court in this country. The observations of Lord Mansfield in the case of Rex v. Stratton and Others 21 How St Tr at p 1223, striking and excellent as they are, were delivered in a political trial, where the question was whether a political necessity had arisen for deposing a Governor of Madras. But they have little application to the case before us, which must be decided on very different considerations.

The one real authority of former time is Lord Bacon, who, in his commentary on the maxim, â€œnecessitas inducit privilegium quoad jura privata,â€ lays down the law as follows:â€" â€œNecessity carrieth a privilege in itself. Necessity is of three sorts â€" necessity of conservation of life, necessity of obedience, and necessity of the act of God or of a stranger. First of conservation of life; if a man steal viands to satisfy his present hunger, this is no felony nor larceny. So if divers be in danger of drowning by the casting away of some boat or barge, and one of them get to some plank, or on the boat's side to keep himself above water, and another to save his life thrust him from it, whereby he is drowned, this is neither se defendendo nor by misadventure, but justifiable.â€ On this it is to be observed that Lord Bacon's proposition that stealing to satisfy hunger is no larceny is hardly supported by Staundforde, whom he cites for it, and is expressly contradicted by Lord Hale in the passage already cited. And for the proposition as to the plank or boat, it is said to be derived from the canonists. At any rate he cites no authority for it, and it must stand upon his own. Lord Bacon was great even as a lawyer; but it is permissible to much smaller men, relying upon principle and on the authority of others, the equals and even the superiors of Lord Bacon as lawyers, to question the soundness of his dictum. There are many conceivable states of things in which it might possibly be true, but if Lord Bacon meant to lay down the broad proposition that a man may save his

life by killing, if necessary, an innocent and unoffending neighbour, it certainly is not law at the present day.

There remains the authority of my Brother Stephen, who, both in his Digest and in his History of the Criminal Law, uses language perhaps wide enough to cover this case. The language is somewhat vague in both places, but it does not in either place cover this case of necessity, and we have the best authority for saying that it was not meant to cover it. If it had been necessary, we must with true deference have differed from him, but it is satisfactory to know that we have, probably at least, arrived at no conclusion in which if he had been a member of the Court he would have been unable to agree. Neither are we in conflict with any opinion expressed upon the subject by the learned persons who formed the commission for preparing the Criminal Code. They say on this subject:â€"

â€œWe are certainly not prepared to suggest that necessity should in every case be a justification. We are equally unprepared to suggest that necessity should in no case be a defence; we judge it better to leave such questions to be dealt with when, if ever, they arise in practice by applying the principles of law to the circumstances of the particular case.â€

It would have been satisfactory to us if these eminent persons could have told us whether the received definitions of legal necessity were in their judgment correct and exhaustive, and if not, in what way they should be amended, but as it is we have, as they say, â€œto apply the principles of law to the circumstances of this particular case.â€

Now, except for the purpose of testing how far the conservation of a man's own life is in all cases and under all circumstances, an absolute, unqualified, and paramount duty, we exclude from our consideration all the incidents of war. We are dealing with a case of private homicide, not one imposed upon men in the service of their Sovereign and in the defence of their country. Now it is admitted that the deliberate killing of this unoffending and unresisting boy was clearly murder, unless the killing can be justified by some well-recognised excuse admitted by the law. It is further admitted that there was in this case no such excuse, unless the killing was justified by what has been called â€œnecessity.â€ But the temptation to the act which existed here was not what the law has ever called necessity. Nor is this to be regretted. Though law and morality are not the same, and many things may be immoral which are not necessarily illegal, yet the absolute divorce of law from morality would be of fatal consequence; and such divorce would follow if the temptation to murder in this case were to be held by law an absolute defence of it. It is not so. To preserve one's life is generally speaking a duty, but it may be the plainest and the highest duty to sacrifice it. War is full of instances in which it is a man's duty not to live, but to die. The duty, in case of shipwreck, of a captain to his crew, of the crew to the passengers, of soldiers to women and children, as in the noble case of the Birkenhead; these duties impose on men the moral necessity, not of the preservation, but of the sacrifice of their lives for others, from which in no country, least of all, it is to be hoped, in England, will men ever shrink, as indeed, they have not shrunk. It is not correct, therefore, to say that there is any absolute or unqualified necessity to preserve one's life. â€œNecesse est at eam, non at vivam,â€ is a saying of a Roman officer quoted by Lord Bacon himself with high eulogy in the very chapter on necessity to which so much

reference has been made. It would be a very easy and cheap display of commonplace learning to quote from Greek and Latin authors, from Horace, from Juvenal, from Cicero, from Euripides, passage after passage, in which the duty of dying for others has been laid down in glowing and emphatic language as resulting from the principles of heathen ethics; it is enough in a Christian country to remind ourselves of the Great Example whom we profess to follow. It is not needful to point out the awful danger of admitting the principle which has been contended for. Who is to be the judge of this sort of necessity? By what measure is the comparative value of lives to be measured? Is it to be strength, or intellect, or what? It is plain that the principle leaves to him who is to profit by it to determine the necessity which will justify him in deliberately taking another's life to save his own. In this case the weakest, the youngest, the most unresisting, was chosen. Was it more necessary to kill him than one of the grown men? The answer must be â€œNoâ€â€"
â€œSo spake the Fiend, and with necessity, The tyrant's plea, excused his devilish deeds.â€

It is not suggested that in this particular case the deeds were â€œdevilish,â€ but it is quite plain that such a principle once admitted might be made the legal cloak for unbridled passion and atrocious crime. There is no safe path for judges to tread but to ascertain the law to the best of their ability and to declare it according to their judgment; and if in any case the law appears to be too severe on individuals, to leave it to the Sovereign to exercise that prerogative of mercy which the Constitution has intrusted to the hands fittest to dispense it.

It must not be supposed that in refusing to admit temptation to be an excuse for crime it is forgotten how terrible the temptation was; how awful the suffering; how hard in such trials to keep the judgment straight and the conduct pure. We are often compelled to set up standards we cannot reach ourselves, and to lay down rules which we could not ourselves satisfy. But a man has no right to declare temptation to be an excuse, though he might himself have yielded to it, nor allow compassion for the criminal to change or weaken in any manner the legal definition of the crime. It is therefore our duty to declare that the prisoners' act in this case was wilful murder, that the facts as stated in the verdict are no legal justification of the homicide; and to say that in our unanimous opinion the prisoners are upon this special verdict guilty of murder. My brother Grove has furnished me with the following suggestion, too late to be embodied in the judgment but well worth preserving: â€œIf the two accused men were justified in killing Parker, then if not rescued in time, two of the three survivors would be justified in killing the third, and of the two who remained the stronger would be justified in killing the weaker, so that three men might be justifiably killed to give the fourth a chance of survivingâ€ â€" C
THE COURT then proceeded to pass sentence of death upon the prisoners. This sentence was afterwards commuted by the Crown to six months' imprisonment
A. P. S.

MANU/SC/0093/1977

Back to Section 82 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 256 of 1977

Decided On: 16.08.1977

Hiralal Mallick Vs. The State of Bihar

Hon'ble Judges/Coram:
P.K. Goswami and V.R. Krishna Iyer, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: D. Goburdhan, Adv
For Respondents/Defendant: U.P. Singh and S.N. Jha, Advs.

JUDGMENT
Authored By: V.R. Krishna Iyer, P.K. Goswami
V.R. Krishna Iyer, J.

1. This appeal involves an issue of criminal culpability presenting mixed questions of fact and law and a theme of juvenile justice, a criminological Cinderella of the Indian law-in-action.

2. Hiralal Mallick, the sole appellant before us, was a 12-year old lad when he toddled into crime, conjointly with his two elder brothers. The three, together, were charged with the homicide of one Arjan Mallick which ended in a conviction of all under Section 302 read with Section 34 IPC. The trial judge impartially imposed on each one a punishment of imprisonment for life. On appeal by all the three, the High Court, taking note of some peculiarities, directed the conversion of the convictions from Section 302 (read with Section 34) (sic) 34) IPC and, consequently, pared down the punishment award-(sic) the co-accused into rigorous imprisonment for 8 years. The third (sic), the appellant before us, was shown consideration for his tender age of 12 years (at the time of commission of the crime) and the Court, in a mood of compassion, softened the sentence on the boy into rigorous imprisonment for 4 years.

3. A close-up of the participatory role of the youthful offender, as distinguished from that of his elder brothers, discloses a junior partnership for him. For, argued Shri Goburdhan, while accused 1 and 2 caused the fatal stabs, the appellant was found to have inflicted superficial cuts on the victim with a sharp weapon, probably angered by the episode of an earlier attack on their father, induced by the stress of the reprisal urge and spurred by his brothers' rush after the foe, but all the same definitely helping them in their

aggression. That he was too infantine to understand the deadly import of the sword blows he delivered is obvious; that he inflicted lesser injuries of a superficial nature is proved; that he, like the other two, chased and chopped and took to his heels, is evident. The immature age of the offender, the fraternal company which circumstanced his involvement, the degree of intent gauged by the depth of the wounds he caused and the other facts surrounding the occurrence, should persuade us to hold that this juvenile was guilty--not of death-dealing brutality--but of naughty criminality, in a violent spree. Measured by his intent and infancy, his sinister part in the macabre offence ran upto infliction of injury with a cutting weapon attracting Section 324 IPC, not more. Such was the mecaronic submission of counsel anxious to press for an extenuatory exoneration from incarceration.

4. This mix-up of degree of culpability and quantum of punishment is unscientific and so we have first to fix the appellant's guilt under the Penal Code and then turn to the punitory process. Criminality comes first, humanist sentence next.

5. Ordinarily, the vernier scale of a man's mens rea is the pragmatic one of the reasonable and probable consequences of his act. The weapon he has used, the situs of the anatomy on which he has inflicted the injury and the like, are inputs. If that be the mental standard of the turpitude, the offender's faculty of understanding becomes pertinent. Man is a rational being and law is a system of behavioral cybernetics where noetic niceties, if pressed too far, may defeat its societal efficacy. So, except in pronounced categories, which we will advert to presently, the intent is spelt out objectively by the rough-and-ready test of the prudent man and not with psychic sensitivity to retarded individuals. Viewed in this perspective, the materials present in the case, especially the medical evidence, shows that this young offender armed himself like his brothers with a cutting instrument and set upon the victim using the sword on his neck. The autopsy evidence discloses that the injuries caused by the appellant were not the lethal ones; but multiple sword cuts on the neck of a man, leave little room for doubt in the ordinary run of cases as to the intent of the assailant. When three persons, swords in hand, attack a single individual, fell him on the ground and strike on his neck and skull several times with a sharp weapon, it is not caressing but killing, in all conscience and (sic) sense. The turpitude cannot be attenuated, and the inference is (sic) table that the least the parties sought to execute was to endanger the life of the target person. In this light, the malefic contribution of the appellant to the crime is substantially the same as that of the other two.

6. When a crime is committed by the concerted action of a plurality of persons constructive liability implicates each participant, but the degree of criminality may vary depending not only on the injurious sequel but also on the part played and the circumstances present, making a personalised approach with reference to each. Merely because of the fatal outcome, even those whose intention, otherwise made out to be far

less than homicidal, cannot, by hindsight reading, be meant to have had a murderous or kindred mens rea.

We have, therefore, to consider in an individualised manner the circumstances of the involvement of the appellant, his nonage and expectation of consequences. When a teenager, tensed by his elders or provoked by the stone-hit on the head of his father, avenges with dangerous sticks or swords, copying his brothers, we cannot altogether ignore his impaired understanding, his tender age and blinding environs and motivations causatory of his crime.
7. It is common ground that the appellant was twelve years old at the time of the occurrence. At common law in England, as noticed by Archbold in Criminal Pleading, Evidence and Practice, a child under 14 years is presumed not to have reached the age of discretion and to be doli incapax; but this presumption may be rebutted by strong and pregnant evidence of a mischievous discretion... for the capacity to commit crime, do evil and contract guilt, is not so much measured by years and days as by the strength of the delinquent's understanding and judgment.

8. Cross & Jones in 'An Introduction to Criminal Law' state: "It is conclusively presumed that no child under the age of ten years can be guilty of any offence; a child of ten years or over, but under the age of fourteen, is presumed to be incapable of committing a crime, but this presumption may be rebutted by evidence of 'mischievous discretion' i.e., knowledge that what was done was morally wrong." R.V. Owen (1830) 4 C & P. 236. Cross & Jones further state: "The re-buttable presumption of innocence in the case of persons between the age of ten and fourteen is still wholly dependent on the common law. The Crown cannot, as in most other cases, rely on the actus reus as evidence of mens rea; other evidence that the child knew it was doing something morally wrong must be adduced.": R. v. Kershaw (1902) 18 T.L.R. 357.

9. In English Law, when an adolescent is charged with an offence, the prosecution has to prove more than the presence of a guilty mind but must go further to make out that when the boy did the act, he knew that he was doing what wrong--not merely what was wrong but what was gravely wrong, seriously wrong (emphasis added).

10. Adult intent, automatically attributed to infant mens, is itself an adult error. It is everyday experience that little boys as a class have (sic) appreciation of dangers to themselves or others by injurious acts and so it is that the new penology in many countries immunises crimes committed by children of and below ten years of age and those between the ages of 10 and 14 are 'in a twilight zone in which they are morally responsible not as a class, but as individuals when they know their act to be wrong'. The Indian Penal Code, which needs updating in many portions, extends total immunity upto the age of seven (Section 82) and partial absolution upto the age of twelve (Section 83). The latter provision reads:

83. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

The venal solicitude of the law for vernal offenders is essentially a modern sensitivity of penology although from the Code of Hammurabi, the days of the Hebrews and vintage English law, this clement disposition is a criminological heritage, marred, of course, by some periods and some countries. Dr. Siddique mentions that there have been instances in England where children of tender years were given death sentences like the case where two kids of eight or nine years were given capital punishment for stealing a pair of shoes (p. 127, Criminology: Problems and Perspectives, by Ahmad Siddique: Eastern Book Co.). At least as mankind is approaching the International Year of the Child (1979), the Indian legal system must be sensitized by juvenile justice. This conscientious consciousness prompted us to counsel counsel to examine the statutory position and criminological projects in the 'child' area. We had to make-do with what assistance we got but hope that when a near-pubescent accused is marched into a criminal court, the Bench and the Bar will be alerted about jus juvenalis, if we may so call it. The compassion of the penal law for juvenescents cannot be reduced to jejunity by forensic indifference since the rule of law lives by law-in-action, not law in the books. Unfortunately, at no stage, from the charge-sheet to the petition for special leave, has awareness of Section 83 of the Panel Code, the Probation of Offenders Act, 1958 or the Bihar Children Act, 1970, been shown in this case. May be, the offence charged being under Section 302 IPC and the guilt ultimately found being of an offence punishable with life imprisonment, account for this non-consideration. Even so, justice to juvenile justice desiderates more from a lively judicial process.

11. Back to Hiralal Mallick and his crime and punishment. Was he guilty under Section 326 IPC as the High Court has found, or was he liable only under Section 324 as Shri Goburdhun urges He was twelve; he wielded a sword; he struck on the neck of the deceased; he rushed to avenge; he ran away like the rest. No evidence as to whether he was under twelve, as conditioned by Section 83 IPC is adduced; no attention to feeble understanding or youthful frolic is addressed. And we are past the judicial decks where factual questions like this can be investigated. The prima facie inference of intent to endanger the life of the deceased with a sharp weapon stands unrebutted. Indeed, robust realism easily imputes doli capax to a twelver who cuts on the neck of another with a sword; for, if he does not know this to be wrong or likely to rip open a vital part he must be very abnormal and in greater need of judicial intervention for normalisation. The conviction under Section 326, IPC, therefore, must be reluctantly sustained. When such is the law, we cannot innovate to attenuate, submit to spasmodic sentiment, or ride an unregulated benevolence. We cannot forget Benjamin Cardozo's caveat that "the Judge, even when he is free, is still not wholly free'. Fettered by the law, we uphold the conviction.

12. Now to the issue of 'sentence'. Guidelines for sentencing are difficult to prescribe and more difficult to practice. Justice Henry Alfred-McCardie succinctly puts it:

Trying a man is easy, as easy as falling off a log, compared with deciding what to do with him when he has been found guilty.(All quotations from 'Sentencing and Probation'-Published by National College of the State Judiciary, Reno, Nevada, U.S.A.) (p. 362)
Speaking broadly, the ultimate desideratum of most sentences is 'to make an offender a non-offender. Only as judges impose effective sentences with a proper attitude and manner will they perform their expected function of decreasing the rising number of criminal and quasi-criminal activities in this nation', (p. 364) 0) Penal humanitarianism has come to assert itself, although Sir Winston Churchill put the point of the common man and of the judge with forceful clarity:

The mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country, (p. 68) (All quotations from 'Sentencing and Probation'-Published by National College of the State Judiciary, Reno, Nevada, U.S.A.)

13. By that unfailing test we fail, if we betray brutality towards children and burke the human hope of tomorrow and the current trust in our hands and hearts. So it is that in the words of the Archbishop of York in the House of Lords' debate in 1965:

Society must say, through its officers of law, that it repudiates certain acts as utterly incompatible with civilized conduct and that it will exact retribution from those who violate its ordered code... (p. 18)(All quotations from 'Sentencing and Probation'-Published by National College of the State Judiciary, Reno, Nevada, U.S.A.)
It is a badge of our humanist culture that we hold fast to a national youth policy in criminology. The dignity and divinity, the self-worth and creative potential of every individual is a higher value of the Indian people; special protection for children is a constitutional guarantee writ into Article 15(3) and 39(f). Therefore, without more, our judicial processes and sentencing paradigms must lead kindly light along the correctional way. That is why Gandhiji emphasized the hospital setting, the patient's profile in dealing with 'criminals'. In-patient, out-patient and domiciliary treatment with curative orientation is the penological reverence to the Father of the Nation. A necessary blossom of this ideology is the legislative development of criminological pediatrics. And yet it is deeply regrettable that in Bihar, the land of the Buddha-the beacon-light whose compassion encompassed all living beings-the delinquent child is inhospitably treated. Why did this finer consciousness of juvenile justice not dawn on the Bihar legislators and government. Why did the State not pass a Children Act through its elected members? And one blushes to think that a belated Children Act, passed in 1970 during President's rule, was allowed to lapse. Today, may be, the barbarity of tender-age offenders being handcuffed like adult habituals, trooped into the crowded criminal court in hurtful humiliation and escorted by policemen, tried along with adults attended by court

formalities, survives in that hallowed State; for, counsel for Bihar surprised us with the statement that there now exists no Children Act in that State. With all our boasts and all our hopes, our nation can never really be decriminalized until the crime of punishment of the young deviants is purged legislatively, administratively and judicatively. This twelve-year old delinquent would have had a holistic career ahead, instead of being branded a murderer, had a Children Act refined the Statute Book and the State set up Children's Courts and provided for healing the psyche of the little human.

14. Conceptually, the establishment of a welfare-oriented jurisdiction over juveniles is predicated and over judicialisation and over-formalisation of court proceedings is contraindicated. Correctionally speaking, the perception of delinquency as indicative of the person's underlying difficulties, inner tensions and explosive stresses similar to those of mal-adjusted children, the belief that court atmosphere with forensic robes, gowns and uniforms and contentious disputes and frowning paraphernalia like docks and stands and crowds and other criminals marched in and out, are psychically traumatic and socially stigmatic, argues in favour of more informal treatment by a free mix of professional and social workers and experts operating within the framework of the law. There is a case to move away from the traditional punitive strategies in favour of the nourishing needs of juveniles being supplied by means of a treatment-oriented perspective. This radicalisation and humanisation of jus juvenalis has resulted in legislative projects which jettison procedural rigours and implant informal and flexible measures of freely negotiated non-judicial settlement of cases. These advances in juvenile criminology were reflected inter alia in the Children Act, 1960.

15. The rule of law in a Welfare State has to be operational and, if the State, after a make-believe legislative exercise, is too insouciant even to bring it into force by a simple notification, or renew it after its one year brevity, it amounts to a breach of faith with the humanism of our supreme lex, an abandonment of the material and moral well-being promised to the children of the country in Article 39(f) and a subtle discrimination between child and child depending on the State where it is tried. We hopefully speak for the neglected child and wish that Bihar-and, if there are other States placed in a similar dubiety or dilemma, they too-did make haste to legislate a Children Act, set up the curial and other infrastructure and give up retributivism in favour of restorative arts in the jurisdiction of young deviants. Often, the sinner is not the boy or girl but the broken or indigent family and the indifferent and elitist society. The law has a heart-or, at least, must have. Mr. Justice Fortas, speaking for the U.S. Supreme Court in Kent v. United States, said:

There may be grounds of concern that the child receives the worst of both worlds; that he gets neither the protection accorded to adults nor the solicitous care and regenerative treatment postulated for children.
383, U.S. 541, quoted in Siddique, supra, p. 149]

The Indian child must have a new deal.

16. Now we move on to a realistic appraisal of the situation. The absence of a Children Act leads to a search for the probation provisions as alternative methods of prophylaxis and healing. In 1951, the UNESCO recommended a policy of probation as a major instrument of therapeutic forensics. Far more comprehensive than Section 562 of the CrPC, the Indian Act still leaves room for improvement in philosophy, application, education and periodical review through Treatment Tribunals, to mention but a few. We, as judges, are concerned with the law as it is. And one should have thought that counsel in the courts below would have pleaded, when the appellant was convicted, for probationary liberation. The decisive date for fixing the age under Section 6 is when the youth is found guilty. But here the offence charged is one punishable with death or life imprisonment and the crime proved at the High Court level is one punishable with life-term. The Act therefore does not apply. We venture to suggest that in marginal cases this age-punishability rigidity works hardship but making or modifying laws belongs to the Legislature. Even so, Chief Justice Sikri complained, inaugurating the Probation Year (1971):

...But is it enough to pass a law and say that probation is a good thing? Not only should the serious student and Probation Officers be convinced of its advantages but the Judiciary and the Bar must also become its votaries. Unfortunately at present, very little serious attention is paid to this aspect by the Judiciary and the Bar. As a matter of fact I was shocked to see that in a number of cases, which came to the Supreme Court recently, even the existence of the local Probation of Offenders Act was not known, or easily ascertainable. No reference to the relevant Probation Act was made in the court below but the point was for the first time taken in the grounds for special leave to appeal to the Supreme Court.
* * * *

It seems to me that if an accused person is likely to be covered by the Act and his age appears to be about 21, efforts should be made by the investigating agency or the prosecuting counsel to collect material regarding the age.

You are all aware that the exact age is known to very few persons in rural areas.

17. I also think that a Magistrate should himself try this question early, if there is any possibility of the applicability of the Probation of Offenders Act.

(Social Defence: Vol. VII, No. 25, July 1971-Quarterly review published by the Central Bureau of Correctional Services, Department of Social Welfare, Government of India).

We repeat that liberal use of the law is its life.

18. Anyway, now that probation also is out of the way, what incarceratory impost is just? 'Prison should serve the purposes of confining people, not of punishing them' (Justinian). As the 'Guidelines for Sentencing' published by the National Probation and Parole Association, New York, 1957 states:

Imprisonment is the appropriate sentence when the offender must be isolated from the community in order to protect society or if he can learn to readjust his attitudes and patterns of behavior only in a closely controlled environment.
19. So we come up to the harm of long shut-up behind the bars. Subjected to hard labour that rigorous imprisonment implies and exposed to the deleterious company of hardened adult criminals, a young person, even if now twenty one, returns a worse man, with more vices and vengeful attitude towards society. This is self-defeating from the correctional and deterrent angles.

20. How then shall we rehabilitate this youth who has stood nine years of criminal proceedings, suffered some prison life and has the prospect of hardening years ahead? This is not a legal problem for traditional methods. A vehement critic, in overzealous emphasis, once said what may be exaggerated but carries a point which needs the attention of the Bench and the Bar. H. Barnes wrote:

The diagnosis and treatment of the criminal is a highly technical medical and sociological problem for which the lawyer is rarely any better fitted than a real estate agent or a plumber. We shall ultimately come to admit that society has been unfortunate in handing over criminals to lawyers and judges in the past as it once was in entrusting medicine to shamans and astrologers and surgery to barbers. A hundred years ago we allowed lawyers and judges to have the same control of the insane classes as they still exert over the criminal groups, but we now recognize that insanity is a highly diversified and complex medical problem which we entrust to properly trained experts in the field of neurology and psychiatry. We may hope that in another hundred years the treatment of the criminal will be equally thoroughly and willingly submitted to medical and sociological experts.
(p. 74, Sentencing and Probation, supra)

21. We have to turn to correctional and rehabilitative directions while confirming the four-year term. We affirm the period of the sentence since there is no particular reason why a very short term should be awarded. When a young person is being processed correctionally, a sufficient restorative period to heal the psychic wounds is necessary. From that angle also a term which is neither too short nor too long will be the optimum to be adopted by the sentencing judge. However, the more sensitive question turns on how, behind the prison walls, behavioral techniques can be built in to repair the distortions of his mind. Stressologists tell us, by scientific and sociological research, that the cause of crime in most cases is inner stress, mental disharmony and unresolved tension. In this very case, the lad of twelve was tensed into irresponsible sword play as a

result of fraternal provocation and paternal injury. It is, therefore, essential that the therapeutic orientation of the prison system, vis a vis the appellant, must be calculated to release stresses, resolve tensions and restore inner balance.

22. This is too complicated a question and, in some measure, beyond the judicial expertise, so that we have to borrow tools and techniques from specialists, researchers and sociologists. The ancient admonition of the Rigveda,

('Let noble thoughts come to us from every side-Rigveda 1-89-i) is a good guideline here. From Lenin and Gandhi to leading sociologists, criminologists and prison-management officials, it is established that work designed constructively and curatively, with special reference to the needs of the person involved, may have a healing effect and change the personality of the quondam criminal. The mechanical chores and the soulless work performed in jail premises under the coercive presence of the prison warders and without reference to relaxation or relish may often be counter-productive. Even the apparel that the convict wears burns into him humiliatingly, being a distinguishing dress constantly reminding him that he is not an ordinary human but a criminal. We, therefore, take the view that within the limits of the prison rules obtaining in Bihar, reformatory type of work should be prescribed for the appellant in consultation with the medical officer of the jail. The visiting team of the Central Prison will pay attention to see that this directive is carried out. The appellant, quite a young man, who was but a boy when the offence was committed, shall not be forced to wear convict costume provided his guardians supply him normal dress. These harsh obscurantisms must gradually be eroded from our jails by the humanizing winds that blow these days. We mentioned about stressology. One method of reducing tension is by providing for vital links between the prisoner and his family. A prisoner insulated from the world becomes bestial and if his family ties are snapped for long, becomes de-humanised. Therefore we regard it as correctionally desirable that this appellant be "ranted parole and expect the authorities to give consideration to paroling out periodically prisoners, particularly of the present type for reasonable spells, subject to sufficient safeguards ensuring their prober behavior outside and prompt return inside.

23. More positive efforts are needed to make the man whole and this takes us to the domain of mind culture.

24. Modern scientific studies have validated ancient vedic insights bequeathing to mankind new meditational, yogic and other therapeutics, at once secular, empirically tested and trans-religious. The psychological, physiologic and sociological experiments conducted on the effects of Transcendental Meditation (TM, for short) have proved that this science of creative intelligence, in its meditational applications, transquillises the tense inside, helps meet stress without distress, overcome inactivations and instabilities and by holistic healing normalises the fevered and fatigued man. Rehabilitation of psychiatric patients, restoration of juvenile offenders, augmentation of moral tone and

temper and, more importantly, improvement of social behavior of prisoners are among the proven findings recorded by researchers. Extensive studies of TM in many prisons in the U.S.A. Canada, Germany and other countries are reported to have yielded results of improved creativity, higher responsibility and better behavior. Indeed, a few trial courts in the United States have actually prescribed(I. In the Superior Court of the State of Arizona-judgment d/5-3-76 in State of Arizona v. Jean Coston Presley-Case No, 6878; Criminal Action No. 4-81750 in the U.S. District Court for Eastern District of Michigan-United States of America v. Robert Charles Rusch Ir.) TM as a recipe for rehabilitation. As Dr. M. P. Pai, Principal of the Kasturba Medical College, Mangalore, has put down:

Meditation is a science and this should be learnt under guidance and cannot be just picked up from books. Objective studies on the effects of meditation on human body and mind is a modern observation and has been studied by various investigation at MERU-Maharishi European Research University. Its tranquillising effect on body and mind, ultimately leading to he greater goal of Cosmic Consciousness or universal awareness, has been studied by using over a hundred parameters. Transcendental Meditation practised for 15 minutes in the morning and evening every day brings about a host of beneficial effects. To name only a few:

1. Body and mind gets into a state of deep relaxation.

2. B. M. R. drops, less oxygen is consumed.

3. E.E.G. shows brain wave coherence with 'alpha' wave preponderance.

4. Automatic stability increases.

5. Normalisation of high blood pressure.

6. Reduced use of alcohol and tobacco.

7. Reduced stress, hence decreased plasma cortisol and blood lactate.

8. Slowing of the heart etc.

The self of every man has been found to be his consciousness and its full potential is found in the state of, least excitation of consciousness, which is the most simple of awareness.

To sum up, inadequacy of 'alpha' waves is disease and mental health could be restored by increasing 'alpha' wave production in the cerebral hemisphere instead of other type of waves, seen in disease. Five years' research has given encouraging results and more work in this field is being done and results are awaited.

25. Lecture on 'Ancient Insights and Modern Discoveries delivered under the auspices of Bharatiya Vidhya Bhavan sponsored two-day symposium-Published in Bhavan's journal d/July 17, 1977: P. 57 under the caption: The Mind of Man: Importance of Mental Health.

26. A recent Article on TM and the Criminal Justice System in the Kentucky Law Journal and another one in the Maryland Law Forum highlight the potency of TM in the field of criminal rehabilitation (Kentucky L. J. Vol. 60, 1971-72 No. 2; and University of Maryland Law Forum, Vol. III, No. 2, Winter 1973) There is no reason, prima facie, if TM physiologically produces a deep state of restful alertness which rejuvenates and normalises the functioning of the nervous system, to reject the conclusion of David E. Sykes which he has summarized thus:

Physiologically, T.M. produces a deep state of restful alertness which rejuvenates and normalizes the functioning of the nervous system.

Psychologically, T. M. eliminates mental stress, promotes clearer thinking and greater comprehension; it enriches perception, improves outlook and promotes efficiency and effectiveness in life.

Sociologically, T. M. eliminates tension and discordance and promotes more harmonious and fulfilling interpersonal relationships, thus making every individual more useful to himself and others and bringing fulfilment to the purpose of society.

The combined physiological, psychological and sociological changes produce an over all effect of fullness of life. The elimination of mental, physical and behavioral abnormalities through the release of deep stress produces a sense of fulfilment and internal harmony. It is interesting to note that this development of life in increasing values of contentment and fulfilment has long been understood in terms of spiritual development. With the tools of modern science, we can now systematically evaluate the objective causes and expressions of this inner, personal development produced by transcendental meditation.

27. It has been repeatedly pointed out in the literature bearing on the subject that TM is just not religion and is like physics appled to human consciousness. Even so, it is not for the court, at the present stage, to prescribe what the prison authorities should do win the appellant while he is in their charge. Nevertheless, we emphasize how important it is for the prison department to explore, experiment and organize gradually some of these reformative exercises in order to eliminate recidivism and induce rehabilitation. We make these observations in the expectation that, facilities being available and the prisoner's consent being forthcoming, he will be given, under proper initiation and medical authorisation, courses which will refine his behavior, develop his full potential and thereby justify the justice of his forced tenancy for four years.

28. An afterword on power. Within the limits of the Prison Act and rules, there is room for reform of the prisoner's progress. And the court, whose authority to sentence deprives the sentence of his constitutional freedoms to a degree, has the power-indeed, the duty-to invigorate the intra-mural man-management so that the citizen inside has spacious opportunity to unfold his potential without over such inhibition or sadistic overseeing. No traditional judicial hand off doctrine nor Prison department's Monroe doctrine can dissuade or disentitle this Court from issuing directives, consistently with law, for the purpose of compelling the institutional confinement to conform to the spirit and standards of the fundamental rights which belong to the man walled off. We cannot, in all conscience, order him to be shut up and forget about him. The brooding presence of judicial vigilance is the institutional price of prison justice.

29. We have sojourned in the sentencing chapter of this judgment for so long, our anxiety being to work out purposeful incarceration shot with just and effective prescription. Red-hot rhetoric or flaming recommendations can have no more than romantic value since statutory authority is the only sanction behind a court's directive. So we requested counsel to search for the sections and rules under the Prisons Act bearing on constructive correction-oriented orders the Court has power to pass. Counsel for the State drew our attention to the vintage measures lost in the statute book like the Reformatory Schools Act as well as the Borstal Schools Act, apart from the Probation of Offenders Act and the rules under these laws. This study has served only to convince us that, while statutory guidelines to fix the quantum of punishment are marked by uncanalised fuidity, the court's correctional role in meaningful sentencing is marginal, justifying Judge Marvin E. Frankel's cynical expression-Criminal Sentences: Law without Order. The Raj prisons continue gerent logically in their grimy grimness; the dress, diet, bed, drill, Organisation discipline-why, even the philosophy and fears-have hardly responded to rehabilitative penology or humane decency. Indeed, it is still an attitude of 'lock them up and throw away the key', save for some casual 'open Jail' experiments and radical phrases in academic literature. We omit the Chambal oasis where changes are being tried out. And this is a startling anti-climax when we remember that our Freedom Struggle had found nearly all post-Independence leaders in wrathful incarceration and most Indian Ministers, now and before. had been no strangers to prison torments. The time has come for reform of the sentencing process with flexibility, humanity, restoration and periodic review informing the system and involving the court in the healing directions and corrections affecting the sentence whom judicial power has cast into the 'cage'. For the nonce, however, we, as judges, have to work within the law as it now stands. And we cannot impose what is not sanctioned or is not accepted by the State. So we have couched what would have been binding mandates in terms of hopeful half-imperatives. Subject to the observations regarding in-prison and parole treatment of the appellant, we dismiss the appeal.

P.K. Goswami, J.

30. I agree that there is no merit in this appeal which is dismissed.

31. My learned Brother has dealt with both the lethargy in law-making and indifference and indolence in implementing laws in and attractive and trenchant manner.

32. So far as the post-sentencing aspects are concerned, my learned Brother has gone into depth on matters which he has studied extensively. These will appertain to law reforms as well as prison reforms which the legislature and the implementing executive can profitably undertake. I hope and trust that my learned Brother's earnest and anxious observations in this judgment will not be a cry in the wilderness.

MANU/SC/0087/1976

Back to Section 84 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 383 of 1976

Decided On: 29.11.1976

Amrit Bhushan Gupta Vs. Union of India (UOI) and Ors.

Hon'ble Judges/Coram:
A.N. Ray, C.J., Raja Jaswant Singh and M. Hameedullah Beg, JJ.

JUDGMENT
M. Hameedullah Beg, J.

1. A petition under Article 226 of the Constitution was filed in the High Court of Delhi, seeking a writ in the nature of Mandamus "or any other appropriate writ, direction or order", to restrain the respondents from carrying out the sentence of death passed against Amrit Bhushan Gupta, a person condemned to death for having committed culpable homicide amounting to murder. The petition was filed by Smt. Shanti Devi, purporting to act on behalf of her son Amrit Bhushan Gupta, who was alleged to be insane. A Division Bench of the Delhi High Court passed the following order on it:

We have no doubt, in our minds that if the petitioner is really insane, as stated in the petition, the appropriate authorities will take necessary action. This petition, at this stage, we feel, does not justify invocation of the powers of this Court under Article 226 of the Constitution. Criminal Writ is dismissed.
2. Before the grant of special leave to the petitioner on 27th August, 1976, an application for intervention in the matter had been filed by Tek Chand Chanana supported by an affidavit stating the following facts which have not been controverted:

Amrit Bhushan Gupta was sentenced to death for burning alive three innocent sleeping children aged 14, 8 and 5 years at Sriniwas Puri on the midnight of 21st June, 1968 by the learned Dist. & Sessions Judge Delhi under Section 302 and 7 years R.I. under Section 307 for attempting to murder Tek Chand Chanana (Petitioner) on 6th June, 1969 with the remarks 'even the extreme penalty of death may appear too mild for the gruesome murder of three children by burning them alive.' Delhi High Court confirmed the death sentence on 23rd September, 1969. Amrit Bhushan Gupta's relatives made the plea of insanity to the High Court but the Hon'ble High Court refused even to entertain this petition of the accused, some dates are given below: Writ petition dismissed on 20th July, 1971

...

...

...

Petition dismissed...20th August, 1975.

Supreme Court had dismissed the various petitions of Amrit Bhushan Gupta noted below:

Special leave petition dismissed on 3rd April, 1970.

Petition dismissed on 12th Sept. 1970.

Petition dismissed on 30th April, 1971.

Writ Petition filed on 11th May, 1971 was withdrawn on 2nd August, 1976.

Petition dismissed on 8th January, 1976

Rashtrapati had also rejected several mercy petitions of the accused some dates are given below:

1. 10th August, 1970

2. 6th December, 1970

3. 8th November, 1971

4. February, 1972.

Government of India had fixed various dates for execution, details given below:

1. 18th December, 1970.

2. 25th August, 1975 and 19th December, 1975.

Amrit Bhushan Gupta and his relatives have been delaying the matter on one excuse or the other. Their latest plea is nothing new. It is repetition of their modus operandi. The petitioner and his wife have been under constant torment since the day their three innocent children were gruesomely murdered in 1968 and the punishment awarded to the accused in 1969 is being postponed on the making of the accused.

3. This Court when granting special leave in this case was obviously not aware of the facts stated above which were concealed. Learned Counsel for the appellant, when asked to state the question of law which called for the invocation of the jurisdiction of this Court under Article 136 of the Constitution, could only submit that the provisions of Section 30 of the Prisoners Act, 1900, should be applied to the petitioner. This section reads as follows:

30. Lunatic Prisoners how to be dealt with.- (1) Where it appears to the State Government that any person detained or imprisoned under any order or sentence of any Court is of unsound mind, the State Government may, by a warrant setting forth the grounds of belief that the person is of unsound mind, order his removal to a lunatic asylum or other place of safe custody within the State there to be kept and treated as the State Government directs during the remainder of the term for which he has been ordered or sentenced to be detained or imprisoned, or, if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the prisoner or others that he should be further detained under medical care or treatment, then until he is discharged according to law.

(2) Where it appears to the State Government that the prisoner has become of sound mind, the State Government shall, by a warrant directed to the person having charge of the prisoner, if still liable to be kept in custody, remand him to the prison from which he was removed, or to another prison within the State, or if the prisoner is no longer liable to be kept in custody, order him to be discharged.

(3) The provisions of Section 9 of the Lunatic Asylums Act, 1858, shall apply to every person confined in a lunatic asylum under Sub-section (1) after the expiration of the term for which he was ordered or sentenced to be detained or imprisoned; and the time during which a prisoner is confined in a lunatic asylum under that sub-section shall be reckoned as part of the term of detention or imprisonment which he may have been ordered or sentenced by the Court to undergo.

(4) In any case in which the State Government is competent under Sub-section (1) to order the removal of a prisoner to a lunatic asylum or other place of safe custody within the State, the State Government may order his removal to any such asylum or place within any other State or within any part of India to which this Act does not extend by agreement with the State Government of such other State; and the provisions of this section respecting the custody, detention, remand and discharge of a prisoner removed under Sub-section (1) shall, so far as they can be made applicable, apply to a prisoner removed under this sub-section.

4. Thus, at the very outset, the section invoked relates to the powers of the State Government. It has nothing to do with powers of Courts. It only regulates the place and manner of the confinement of a person, who appears to be a lunatic, when his detention

or imprisonment is either during the trial or during the period when, after the sentence, he is undergoing imprisonment. In the case of a person condemned to death no question of keeping him in prison would arise except for the period elapsing between the passing of the sentence of death and its execution. A special provision for a person sentenced to death is to be found in Section 30 of the Prisons Act, 1894, which lays down:

30. Prisoners under sentence of death-

(1) Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence be searched by, or by order of, the Jailor and all articles shall be taken from him which the Jailor deems it dangerous or inexpedient to leave in his possession.

(2) Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of a guard.

5. The whole object of the proceedings in the High Court and now before us seems to be to delay execution of the sentence of death passed upon the appellant. In view of the number of times the appellant has unsuccessfully applied, there can be little doubt that the powers of the High Court and of this Court ought not to have been invoked again. The repeated applications constitute a gross abuse of the processes of Court of which we would have taken more serious notice if we were not disposed to make some allowance for the lapses of those who, possibly out of misguided zeal or for some other reason, may be labouring under the belief that they were helping an unfortunate individual desperately struggling for his life which deserves to be preserved. A bench of this Court too was persuaded to pass orders for observation of the convict and obtaining certificates of experts on the mental condition of the convict.

6. Dr. P.B. Buekshey, Medical Superintendent and Senior Psychiatrist, Hospital for Mental Diseases, Shahdara Delhi, certified as follows:

After careful consideration of the entire mental state of the accused, including his behavior, I am of opinion that, Shri Amrit Bhushan Gupta is a person of unsound mind suffering from Schizophrenia. Schizophrenia is a basically incurable type of insanity characterised by remissions and relapses at varying intervals.

Shri Gupta was also severely and overwhelmingly depressed and appeared to have lost interest in life.

7. Dr. S.C. Malik, Assistant Prof. of Psychiatry, G.B. Pant Hospital, New Delhi, gave a more detailed certificate as follows:

Amrit Bhushan Gupta remained mute throughout the ten days period of observation. He however started communicating to me through writing on 3rd day of encounter. He

exhibits gross disturbance in thinking and his emotional life appears to be disorganised. He is suffering from delusion that he is the incarnation of Christ and that I come to his kingdom or 'Palace'. He does not mutter to himself but at times keeps on staring vacantly in space. He is unable to write coherent meaningful sentences. He coins new words and when asked to explain he says it is 'Technologem of meself as CHRIST'. He also has hallucinations e.g. that Russian planes are shooting his Bunkers and that I should be helping him to drive them away. He exhibited depressive and suicidal tendencies towards later period of my observation period and broke off all communication as I did not give him potassium Cyanide 'Poison' so that he (Christ) may go back to his kingdom.

In my opinion he is suffering from 'SCHIZOPHRENIA, (Chronic) which is a serious mental derangement. He is thus considered to be of unsound mind under the Indian Lunacy Act, 1912.

8. We have not even got any appeal from a conviction and sentence before us. We assume that, at the time of the trial of the appellant, he was given proper legal aid and assistance and that he did not suffer from legal insanity either during his trial or at the time of the commission of the offence. Insanity, to be recognised as an exception to criminal liability, must be such as to disable an accused person from knowing the character of the act he was committing when he commits a criminal act. Section 84 of the Indian Penal Code contains a principle which was laid down in England in the form of Macnaughten Rules. The section provides:

84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.
9. If at the time of Commission of the offence, the appellant knew the nature of the act he was committing, as we assume he did, he could not be absolved of responsibility for the grave offence of murder. A Constitution Bench of this Court has upheld the Constitutional validity of the death penalty in Jagmohan Singh v. State of U.P. MANU/SC/0139/1972: 1973CriLJ370. We have to assume that the appellant was rightly convicted because he knew the nature of his acts when he committed the offences with which he was charged. The legality or correctness of the sentence of death passed upon him cannot be questioned before us now. So far as the prerogative power of granting a pardon or of remitting the sentence is concerned, it lies elsewhere. We cannot even examine the facts of the case in the proceedings now before us and make any recommendation or reduce the sentence to one of life imprisonment.

10. The contention which has been pressed before us, with some vehemence, by learned Counsel for the appellant, is that a convicted person who becomes insane after his conviction and sentence cannot be executed at all at least until he regains sanity.

11. In support of this contention learned Counsel has quoted the following passage from Hale's Pleas of the Crown Vol. I - p. 33:

If a man in his sound memory commits a capital offence, and before his arraignment he becomes absolutely mad, he ought not by law to be arraigned during such his phrenzy, but be remitted to prison until that incapacity be removed; the reason is, because he cannot advisedly plead to the indictment; and this holds as well in cases of treason, as felony, even though the delinquent in his sound mind were examined, and confessed the offence before his arraignment; and this appears by the Statute of 33 H. 8 Cap. 20 which enacted a trial in case of treason after examination in the absence of the party; but, this statute stands repealed by the statute of 1&2 Phil & Mr. Cap. 10 cv. P.C. p. 6. And, if such person after his plea, and before his trial, becomes of non sane memory, he shall not be tried, or, if after his trial he becomes of non sane memory he shall not receive judgment; or, if after judgment he becomes of non sane memory, his execution shall be spared; for were he of sound memory, he might allege somewhat in stay of judgment or execution.
He also cited a passage from Coke's Institutes, Vol. III, page 6, which runs as follows:

It was further provided by the said act of 33 H.S. that if a man arraigned of treason became mad, that notwithstanding he should be executed; which cruel and inhuman law lived not long, but was repelled, for in that point also it was against the common law, because by intendment of law the execution of the offender is for example, ut poena ad paucos, metus omnes perveniat, as before is said; but so it is not when a mad man is executed, but should be a miserable spectacle, both against law and of extreme inhumanity and cruelty, and can be no example to others.
The following passage from Black-stone's Commentaries on the Laws of England Vol. IV, pages 18 and 19 was also placed before us:

The second case of a deficiency in will, which excuses from the guilt of crimes, arises also from a defective or vitiated understanding, viz., in an idiot or a lunatic. For the rule of law as to the latter, which may easily be adapted also to the former, is that 'furiosus furore solum punitur.' In criminal cases, therefore, idiots and lunatics are not chargeable for their own acts, if committed when under these incapacities; no, not even for treason itself. Also, if a man in his sound 'mind' commits an offence, and before arraignment for it he becomes mad, he ought not to be 'called on to plead to it, because he is unable to do so' with that advice and caution that he ought. And, if after he has pleaded, the prisoner becomes mad, he shall not be tried; for how can he make his defence? If, after he be tried and found guilty, he loses his senses before judgment, judgment shall not be pronounced; and if, after judgment, he becomes of non sane memory, execution shall be stayed; for peradventure, says the humanity of the English law, had the prisoner been of sound memory, he might have alleged something in stay of judgment or execution. Indeed, in the bloody reign of Henry the Eighth, a statute was made, which enacted that if a person, being compos mentis, should commit high treason, and after fall into madness, he might be tried in his absence, and should suffer death, as if he were of perfect memory. But this

savage and inhuman law was repealed by the statute 1 & 2 Ph. & M. c. 10. For, as is observed by Sir Edward Coke the execution of an offender is, for example, ut poena ad paucos, metus ad omnes perveniat; but so it is not a miserable spectacle, both against law, and of extreme inhumanity and cruelty, and can be of no example to others.
A passage from a modern work, "An Introduction to Criminal Law", by Rupert Cross, (1959), p. 67, was also read. It reads as follows:

In conclusion it may be observed that there are two other periods in the history of a person charged with a crime at which his sanity may be relevant. First, although there may be no doubt that he was sane when he did the act charged, he may be too insane to stand a trial in which case he will be detained during the Queen's pleasure under the Criminal Lunatics Act, 1800 and 1883, pending his recovery (c). Secondly, if he becomes insane after sentence of death he cannot be hanged until he has recovered. In each of these cases, the question of sanity is entirely a medical question of fact and is in no way dependent on the principles laid down in M' Naghten's case.

The rule that insanity at the time of the criminal act should be a defence is attributable to the fact that the idea of punishing a man for that which was due to his misfortune is revolting to the moral sense of most of the community. The rule that the accused must be fit to plead is based on the undesirability of trying someone who is unable to conduct his defence, or give instructions on the subject. The basis of the rule that an insane person should not be executed is less clear. Occasionally, the rule is said to be founded on theological grounds. A man should not be deprived of the possibility of a sane approach to his last hours. Sometimes, the rule is said to be based on the fact that condemned men must not be denied the opportunity of showing cause why they should not be reprieved."
Shri S.K. Sinha, learned Counsel for the appellant, has, industriously, collected a number of statements of the position in English law from the abovementioned and other works of several authorities such as Theobald on Lunacy (p. 254), and Kenny's Criminal Law (p. 74).

12. On the other hand, learned Additional Solicitor General, has relied on the following statement of a modern point of view contained in a book by Mr. Nigel Walker on "Crime and Insanity in England" (Vol. I: The Historical Perspective) - at pages 213-214:

Home Secretaries have been even more cautious in offering justifications for the practice of reprieving the certifiably insane or the mentally abnormal. Short, though he cited Coke, Hale, Hawkins. Black-stone, Hawles, and Stephen to prove that he was bound by the common law, refrained from dwelling on their explanations of it, which are, as we have seen, far from impressive. The Atkin Committee, being lawyers, were more respectful to the institutional writers, and argued that 'many (sic) of the reasons given for the merciful view of the common law continue to have force even under modern conditions. Everyone would revolt from dragging a gibbering maniac to the gallows.' If they had reflected they would surely have conceded that 'modern conditions' greatly weakened two out of the

three traditional reasons. The abolition of public executions made Coke's argument irrelevant as well as illogical; and Hale's argument - that if sane the condemned man might be able to produce a sound reason why he should not be hanged - was greatly weakened now that the condemned man's interests were so well looked after by his lawyers. As for Hawles' argument that an insane man was spiritually unready for the next world (which not even Hawles regarded as the main objection) - were the committee such devout Christians that they set store by it? Equally odd was their remark that 'everyone would revolt from dragging a gibbering maniac to the gallows', which sounded as if it was meant as an endorsement of one or more of the traditional justifications, but if so could hardly have been more unfortunately phrased. Why should it be more revolting to hang a 'maniac' than a woman, a seventeen-year-old boy or a decrepit old man? Must the maniac be 'gibbering' before it becomes revolting?

A more logical justification was suggested by Lord Hewart, who opposed Lord Darling's attempt to legislate on the lines recommended by the Atkin Committee (see Chapter 6). Lord Hewart suggested that the medical inquiry should be concerned only with a single, simple question: 'If this condemned person is now hanged, is there any reason to suppose from the state of his mind that he will not understand why he is being hanged?' Although this suggestion would have appealed to Covarrubias, it had little attraction either for the Home Office or for humanitarians in general, for it was clearly intended to reduce the number of cases in which the inquiry led to a reprieve. Nevertheless, given certain assumptions about the purpose of the death penalty, it was at least more logical than the traditional justifications which the Atkin Committee had so piously repeated. If, as Covarrubias and Hewart no doubt believed, the primary aim of a penalty was retributive punishment, it could well be argued that the penalty would achieve its aim only if the offender understood why it was being imposed. This argument is not open, however, to someone who believes that the primary aim of a penalty such as hanging is the protection of society by deterrence or elimination. The Atkin Committee would have been more realistic if they had contented themselves with the observation that for at least four hundred years it had been accepted that common law forbade the execution of madman, although the institutional writers' explanations were obviously speculative and odd: and that since 1884 certifiable insanity had been accepted as the modern equivalent of 'madness'. Any further attempt to justify the practice would have involved them in one sort of difficulty or another, as Lord Goddard was to argue to the Gowers Commission.

13. Interesting as the statements on and origins of the Common Law rules on the subject in England, against the execution of an insane person, may be, we, in this country, are governed entirely by our statute law on such a matter. The Courts have no power to prohibit the carrying out of a sentence of death legally passed upon an accused person on the ground either that there is some rule in the Common Law of England against the execution of an insane person sentenced to death or some theological, religious, or moral objection to it, Our statute, law on the subject is based entirely on secular considerations which place the protection and welfare of society in the forefront. What' the statute law

does not prohibit or enjoin cannot be enforced, by means of a writ of Mandamus under Article 226 of the Constitution, so as to set at naught a duly passed sentence of a Court of justice.

14. The question whether, on the facts and circumstances of a particular case, a convict, alleged to have become insane, appears to be so dangerous that he must not be let loose upon society, lest he commits similar crimes against other innocent persons when released, or, because of his antecedents and character, or, for some other reason, he deserves a different treatment, are matters for other authorities to consider after a Court has duly passed its sentence. As we have already indicated, even the circumstances in which the appellant committed the murders of which he was convicted are not before us. As the High Court rightly observed, the authorities concerned are expected to look into matters which lie within their powers. And, as the President of India has already rejected the appellant's mercy petitions, we presume that all relevant facts have received due consideration in appropriate quarters.

15. We think that the application to the High Court and the special leave petition to this Court, in the circumstances mentioned above, were misconceived. Accordingly, we dismiss this appeal.

16. We also dismiss Criminal Miscellaneous Petition No. 62 of 1976, an application for summoning of the original record, as it could be of no use, but we allow Criminal Miscellaneous Petition No. 380 of 1976, the application for intervention, whose contents we have quoted above. Stay of execution order is vacated.

MANU/SC/0027/1956

Back to Section 85 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Back to Section 86 of Indian Penal Code, 1860

Criminal Appeal No. 147 of 1955

Decided On: 17.04.1956

Basdev Vs. The State of Pepsu

Hon'ble Judges/Coram:
N. Chandrasekhara Aiyar and N.H. Bhagwati, JJ.

JUDGMENT
N. Chandrasekhara Aiyar, J.

1. The appellant Basdev of the village of Harigarh is a retired military Jamadar. He is charged with the murder of a young boy named Maghar Singh, aged about 15 to 16. Both of them and others of the same village went to attend a wedding in another village. All of them went to the house of the bride to take the midday meal on the 12th March, 1954. Some had settled down in their seats and some had not. The appellant asked Maghar Singh, the young boy to step aside a little so that he may occupy a convenient seat. But Maghar Singh did not move. The appellant whipped out a pistol and shot the boy in the abdomen. The injury proved fatal.

2. The party that had assembled for the marriage at the bride's house seems to have made itself very merry and much drinking was indulged in. The appellant Jamadar boozed quite a lot and he became very drunk and intoxicated. The learned Sessions Judge says "he was excessively drunk" and that "according to the evidence of one witness Wazir Singh Lambardar he was almost in an unconscious condition". This circumstance and the total absence of any motive or premeditation to kill were taken by the Sessions Judge into account and the appellant was awarded the lesser penalty of transportation for life.

3. An appeal to the PEPSU High Court at Patiala proved unsuccessful. Special leave was granted by this Court limited to the question whether the offence committed by the petitioner fell under section 302 of the Indian Penal Code or section 304 of the Indian Penal Code having regard to the provisions of section 86 of the Indian Penal Code. Section 86 which was elaborately considered by the High court runs in these terms:

"In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will".

4. It is no doubt true that while the first part of the section speaks of intent or knowledge, the latter part deals only with knowledge and a certain element of doubt in interpretation may possibly be felt by reason of this omission. If in voluntary drunkenness knowledge is to be presumed in the same manner as if there was no drunkenness, what about those cases where mens rea is required. Are we at liberty to place intent on the same footing, and if so, why has the section omitted intent in its latter part? This is not the first time that the question comes up for consideration. It has been discussed at length in many decisions and the result may be briefly summarised as follows:-

So far as knowledge is concerned, we must attribute to the intoxicated man the same knowledge as if he was quite sober. But so far as intent or intention is concerned, we must gather it from the attending general circumstances of the case paying due regard to the degree of intoxication. Was the man beside his mind altogether for the time being? If so it would not be possible to fix him with the requisite intention. But if he had not gone so deep in drinking, and from the facts it could be found that he knew what he was about, we can apply the rule that a man is presumed to intend the natural consequences of his act or acts.

5. Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things.

Even in some English decisions, the three ideas are used interchangeably and this has led to a certain amount of confusion.
6. In the old English case, Rex v. Meakin [(1836) 173 E.R. 131; 7 Car. & P. 295, Baron Alderson referred to the nature of the instrument as an element to be taken in presuming the intention in these words:

"However, with regard to the intention, drunkenness may perhaps be adverted to according to the nature of the instrument used. If a man uses a stick, you would not infer a malicious intent so strongly against him, if drunk, when he made an intemperate use of it, as he would if he had used a different kind of weapon; but where a dangerous instrument is used, which, if used, must produce grievous bodily harm, drunkenness can have no effect on the consideration of the malicious intent of the party."
7. In a charge of murdering a child leveled against a husband and wife who were both drunk at the time, Patteson J., observed in Regina v. Cruse and Mary his wife (1838) 173 E.R. 610; 8 Car. & P. 541.

"It appears that both these persons were drunk, and although drunkenness is no excuse for any crime whatever, yet it is often of very great importance in cases where it

is a question of intention. A person may be so drunk as to be utterly unable to form any intention at all, and yet he may be guilty of very great violence."
Slightly different words but somewhat more illuminating were used by Coleridge J., in Reg. v. Monk-house (1849) 4 Cox. C.C. 55.

"The inquiry as to intent is far less simple than that as to whether an act has been committed, because you cannot look into a man's mind to see what was passing there at any given time. What he intends can only be judged of by what he does or says, and if he says nothing, then his act alone must guide you to your decision. It is a general rule in criminal law, and one founded on common sense, that juries are to presume a man to do what is the natural consequence of his act. The consequence is sometimes so apparent as to leave no doubt of the intention. A man could not put a pistol which he knew to be loaded to another's head, and fire it off, without intending to kill him; but even there the state of mind of the party is most material to be considered. For instance, if such an act were done by a born idiot, the intent to kill could not be inferred from the act. So, if the defendant is proved to have been intoxicated, the question becomes a more subtle one; but it is of the same kind, namely, was he rendered by intoxication entirely incapable of forming the intent charged?"

"Drunkenness is ordinarily neither a defence nor excuse for crime, and where it is available as a partial answer to a charge, it rests on the prisoner to prove it, and it is not enough that he was excited or rendered more irritable, unless the intoxication was such as to prevent his restraining himself from committing the act in question, or to take away from him the power of forming any specific intention. Such a state of drunkenness may no doubt exist".

8. A great authority on criminal law Stephen J., postulated the proposition in this manner in Reg. v. Doherty (1887) 16 Cox C.C. 306 -

"..... although you cannot take drunkenness as any excuse for crime, yet when the crime is such that the intention of the party committing it is one of its constituent elements, you may look at the fact that a man was in drink in considering whether he formed the intention necessary to constitute the crime".
9. We may next notice Rex v. Meade [1909] 1 K.B. 895, where the question was whether there was any misdirection in his summing up by Lord Coleridge, J. The summing up was in these words:

"In the first place, every one is presumed to know the consequences of his acts. If he be insane, that knowledge is not presumed. Insanity is not pleaded here, but where it is part of the essence of a crime that a motive, a particular motive, shall exist in the mind of the man who does the act, the law declares this - that if the mind at that time is so obscured by drink, if the reason is dethroned and the man is incapable therefore of forming that intent, it justifies the reduction of the charge from murder to man-slaughter".
10. Darling, J., delivering the judgment of the Court of Criminal Appeal affirmed the correctness of the summing up but stated the rule in his own words as follows:

"A man is taken to intend the natural consequences of his acts. This presumption may be rebutted (1) in the case of a sober man, in many ways: (2) it may also be rebutted

in the case of man who is drunk, by showing his mind to have been so affected by the drink he had taken that he was incapable of knowing that what he was doing was dangerous, i.e., likely to inflict serious injury. If this be proved, the presumption that he intended to do grievous bodily harm is rebutted".
Finally, we have to notice the House of Lord's decision in Director of Public Prosecutions v. Beard [1920] A.C. 479. In this case a prisoner ravished a girl of 13 years of age, and in aid of the act of rape he placed his hand upon her mouth to stop her from screaming, at the same time pressing his thumb upon her throat with the result that she died of suffocation. Drunkenness was pleaded as a defence. Bailhache J., directed the jury that the defence of drunkenness could only prevail if the accused by reason of it did not know what he was doing or did not know that he was doing wrong. The jury brought in a verdict of murder and the man was sentenced to death. The Court of Criminal Appeal (Earl of Reading C. J., Lord Coleridge J., and Sankey, J.) quashed this conviction on the ground of misdirection following Rex v. Meade [1909] 1 K.B. 895, which established that the presumption that a man intended the natural consequences of his acts might be rebutted in the case of drunkenness by showing that his mind was so affected by the drink that he had taken that he was incapable of knowing that what he was doing was dangerous. The conviction was, therefore, reduced to manslaughter. The Crown preferred the appeal to the House of Lords and it was heard by a strong Bench consisting of Lord Chancellor, Lord Birkenhead, Earl of Reading, C. J., Viscount Haldane, Lord Denedin, Lord Atkinson, Lord Sumner, Lord Buckmaster, and Lord Phillimore. The Lord Chancellor delivered the judgment of the court. He examined the earlier authorities in a length judgment and reached the conclusion that Rex v. Meade [1909] 1 K.B. 895, stated the law rather too broadly, though on the facts there proved the decision was right. The position "that a person charged with a crime of violence may show in order to rebut the presumption that he intended the natural consequences of his acts, that he was so drunk that he was incapable of knowing what he was doing was dangerous..... " which is what is said in Meade's case, was not correct as a general proposition of law and their Lordships laid down three rules:

(1) That insanity, whether produced by drunkenness or otherwise, is a defence to the crime charged;
(2) That evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into consideration with the other facts proved in order to determine whether or not he had this intent;
(3) That evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime, and merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts.

11. The result of the authorities is summarised neatly and compendiously at page 63 of Russel on Crime, tenth edition, in the following words:

"There is a distinction, however, between the defence of insanity in the true sense caused by excessive drunkenness and the defence of drunkenness which produces a condition such that the drunken man's mind becomes incapable of forming a specific intention. If actual insanity in fact supervenes as the result of alcoholic excess it furnishes as complete an answer to criminal charge as insanity induced by any other cause.
But in cases falling short of insanity evidence of drunkenness which renders the accused incapable of forming the specific intent essentials to constitute the crime should be taken into consideration with the other facts proved in order to determine whether or not he had this intent, but evidence of drunkenness which falls short of proving such incapacity and merely establishes that the mind of the accused was so affected by drink that he more readily gave way to some violent passion does not rebut the presumption that a man intends the natural consequences of his act".

12. In the present case the learned Judges have found that although the accused was under the influence of drink, he was not so much under its influence that his mind was so obscured by the drink that there was incapacity in him to form the required intention as stated. They go on to observe:-

"All that the evidence shows at the most is that at times he staggered and as incoherent in his talk, but the same evidence shows that he was also capable of moving himself independently and talking coherently as well. At the same time it is proved that he came to the darwaza of Natha Singh P. W. 12 by himself, that he made a choice for his own seat and that is why he asked the deceased to move away from his place, that after shooting at the deceased he did attempt to get away and was secured at some short distance from the darwaza, and that when secured he realised what he had done and thus requested the witnesses to be forgiven saying that it had happened from him.
There is no evidence that when taken to the police station Barnala, he did not talk or go there just as the witnesses and had to be specially supported. All these facts, in my opinion, go to prove that there was not proved incapacity in the accused to form the intention to cause bodily injury sufficient in the ordinary course of nature to cause death. The accused had, therefore, failed to prove such incapacity as would have been available to him as a defence, and so the law presumes that he intended the natural and probable consequences of his act, in other words, that he intended to inflict bodily injury to the deceased and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death".

13. On this finding the offence is not reduced from murder to culpable homicide not amounting to murder under the second part of section 304 of the Indian Penal Code. The conviction and sentence are right and the appeal is dismissed.

MANU/SC/0921/2020

Neutral Citation: 2020/INSC/682

Back to Section 95 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Writ Petition (Criminal) No. 160 of 2020

Decided On: 07.12.2020

Amish Devgan Vs. Union of India (UOI) and Ors.

Hon'ble Judges/Coram:
A.M. Khanwilkar and Sanjiv Khanna, JJ.

JUDGMENT
Sanjiv Khanna, J.

1. Applications for intervention are allowed.

2. The writ Petitioner, Amish Devgan, is a journalist who, it is stated, is presently the managing director of several news channels owned and operated by TV18 Broadcast Limited, including News18 Uttar Pradesh/Uttarakhand, News18 Madhya Pradesh/Chhattisgarh and News18 Rajasthan.

3. The Petitioner hosts and anchors debate shows 'Aar Paar' on News18 India and 'Takkar' on CNBC Awaaz. On 15th June, 2020, at around 7:30 p.m., the Petitioner had hosted and anchored a debate on the enactment1 which, while excluding Ayodhya, prohibits conversion and provides for maintenance of the religious character of places of worship as it existed on 15th August, 1947. Some Hindu priest organisations had challenged vires of this Act before the Supreme Court, and reportedly a Muslim organization had filed a petition opposing the challenge.

4. Post the telecast as many as seven First Information Reports (FIRs) concerning the episode were filed and registered against the Petitioner in the States of Rajasthan, Telangana, Maharashtra and Madhya Pradesh. The details of the FIRs are as under:

S. No.	FIR No.	Sections	Police Station/State
1.	78/2020	153B, 295A, 298 Indian Penal Code 66F of Information Technology Act, 2000	Dargah, Ajmer (Rajasthan)
2.	50/2020	153B, 295A, 298 Indian Penal Code 66F of Information Technology Act, 2000	Makbara, Kota (Rajasthan)
3.	173/2020	295A Indian Penal Code	Bahadurpura, Hyderabad City (Telangana)
4.	218/2020	295A Indian Penal Code	Itwara, Nanded (Maharashtra)
5.	217/2020	153A, 295A, 505(2) Indian Penal Code	Paidhuni, Mumbai (Maharashtra)
6.	674/2020	295A Indian Penal Code	Originally registered at P.S. Omati, Jabalpur (Madhya Pradesh) and subsequently on 30th June 2020 was transferred to P.S., Sector-20, Gautam Buddh Nagar (Uttar Pradesh)
7.	337/2020	295A Indian Penal Code	Naya Nagar, Thane (Maharashtra)

The gist of the FIRs is almost identical. The Petitioner, while hosting the debate, had described Pir Hazrat Moinuddin Chishti, also known as Pir Hazrat Khwaja Gareeb Nawaz, as "aakrantak Chishti aya... aakrantak Chishti aya... lootera Chishti aya... uske baad dharam badle". Translated in English the words spoken would read-"Terrorist Chishti came. Terrorist Chishti came. Robber Chishti came-thereafter the religion changed," imputing that 'the Pir Hazrat Moinuddin Chishti, a terrorist and robber, had by fear and intimidation coerced Hindus to embrace Islam.' It is alleged that the Petitioner had deliberately and intentionally insulted a Pir or a pious saint belonging to the Muslim community, revered even by Hindus, and thereby hurt and incited religious hatred towards Muslims.

5. The Petitioner, as per the writ petition, claims that post the telecast he was abused and given death threats on his phone, Twitter, Facebook and other social media platforms. Fearing for his life and limb, the Petitioner had filed FIR No. 539 of 2020 dated 20th June, 2020 at P.S. Sector-20, Noida, Uttar Pradesh, and submitted the links to the threats received through social media platforms.

6. On or about 22nd June, 2020, the present writ petition was filed Under Article 32 of the Constitution of India with an application for interim relief. This writ petition came up for hearing on 26th June, 2020 whereby notice was issued with a direction to the Petitioner

to implead the informants in the respective FIRs/complaints. An interim order was passed directing that till the next date of hearing there would be a stay on further steps/action on the FIRs mentioned in the writ petition, relating to the telecast dated 15th June, 2020, and the Petitioner was protected against any coercive process arising out of or relating to the said FIRs.

7. Pursuant to the aforesaid liberty, the writ petition was amended to implead the complainants. Thereafter, the writ petition was amended on a second occasion. The prayers made in the last amended writ petition to this Court are:

(a) for issue of writ of certiorari, quashing the complaints/FIRs referred to above or any other FIR or criminal complaint which may be filed thereafter relating to the telecast in question dated 15th June, 2020;

(b) strictly in the alternative, transfer and club the FIRs mentioned above or elsewhere in the country with the first FIR, i.e. FIR No. 78, P.S. Dargah, Ajmer, Rajasthan;

(c) issue a writ of mandamus to the effect that no coercive process shall be taken against the Petitioner in the FIRs so lodged or subsequent complaint or FIRs on the subject broadcast; and

(d) direct the Union of India to provide adequate safety and security to the Petitioner, his family members and his colleagues at various places in the country."

8. The Petitioner, in his submissions, claims that he has faith in Banda Nawaz Hazrat Khwaja Moinuddin Chishti and has also gone on Ziyarat pilgrimage to Ajmer Sharif to offer respects and to worship. Expressing regret, the Petitioner claims that the attributed words were uttered inadvertently and by mistake; in fact, the Petitioner wanted to refer to Alauddin Khilji and not Gareeb Nawaz Khwaja Moinuddin Chishti. Realising his mistake and to amend the inadvertent error, and to dispel doubts and vindicate himself, the Petitioner had promptly issued a clarification and an apology vide a tweet dated 17th June 2020. A video with similar clarification and apology was also telecast by the news channel on the very same day. Contention of the Petitioner is that in a whirl, he had taken the name of Chishti though he had no such intention, and he laments his lapse as he did not wish to hurt anybody. Accordingly, he had apologised to anyone who had been hurt. In addition, a number of submissions have been made by the Petitioner, which are summarised as under:

• Multiple FIRs arising out of the same incident are abuse of law, and violate fundamental rights of the Petitioner and freedom of press, causing a chilling effect on the freedom of speech and expression.

• The FIRs are meant to harass and intimidate the Petitioner; no part of 'cause of action' has arisen in the areas where the FIRs were lodged.

• On interpretation of Sections 153A, 295A, and 505(2) of the Indian Penal Code, 1860 (in short, the 'Penal Code') and Section 66-F of the Information Technology Act, 2000, (in short, the 'IT Act'), no offence whatsoever can be made out; the allegations are based upon utterances in isolation by picking up select words and not on the programme as a whole; the Petitioner did not have any malicious intent and mens rea to outrage religious beliefs and feelings; the programme has to be judged from the standard of a reasonable and strong-minded person and at best the words exhibit carelessness without any deliberate and malicious intent, which fall outside the ambit of Sections 153A, 295A and 505(2) of the Penal Code.

• In the alternative, it is submitted that a case of trifle or minor harm is made out, which would be covered by Section 95 of the Penal Code.

• Again, in the alternative, it is submitted that all the FIRs should be clubbed and transferred to Noida or Delhi.

Counsel for the Petitioner has relied upon the following decisions in support of his contention-Arnab Ranjan Goswami v. Union of India and Ors. Balwant Singh and Anr. v. State of Punjab MANU/SC/0344/1995: (1995) 3 SCC 214, Bhagwati Charan Shukla s/o. Ravishankar Shukla v. Provincial Government, C.P. & Berar MANU/NA/0057/1946: AIR 1947 Nagpur 1, Bilal Ahmed Kaloo v. State of A.P. MANU/SC/0861/1997: (1997) 7 SCC 431, Brij Bhushan and Anr. v. State of Delhi MANU/SC/0007/1950: AIR 1950 SC 129, Devi Sharan Sharma v. Emperor MANU/LA/0431/1927: AIR 1927 Lah 594, Emperor v. Sadashiv Narayan Bhalerao MANU/PR/0031/1947: AIR 1947 PC 82, Gopal Vinayak Godse v. Union of India MANU/MH/0012/1971: AIR 1971 Bom 56, Her Majesty the Queen v. James Keegstra (1990) 3 SCR 697, Niharendu Dutt Majumdar v. The King-Emperor MANU/FE/0005/1942: 1942 FCR 38, K.A. Abbas v. Union of India and Anr. MANU/SC/0053/1970: (1970) 2 SCC 780, Kedar Nath Singh v. State of Bihar MANU/SC/0074/1962: AIR 1962 SC 955, Lalai Singh Yadav v. State of Uttar Pradesh MANU/UP/0364/1971: 1971 Crl.L.J. 1773, Lalita Kumari v. Government of Uttar Pradesh and Ors. MANU/SC/1166/2013: (2014) 2 SCC 1 Mahendra Singh Dhoni v. Yerraguntla Shyamsundar and Anr. MANU/SC/0473/2017: (2017) 7 SCC 760, Manzar Sayeed Khan v. State of Maharashtra and Anr. MANU/SC/7279/2007: (2007) 5 SCC 1, P.K. Chakravarty v. The King MANU/WB/0273/1926: AIR 1926 Calcutta 1133, Pravasi Bhalai Sangathan v. Union of India and Ors. MANU/SC/0197/2014: (2014) 11 SCC 477 Queen-Empress v. Bal Gangadhar Tilak ILR (1898) 22 Bombay 112, R. v. Zundel MANU/SCCN/0084/1992: [1992] 2 SCR 731, R.P. Kapur v. State of Punjab MANU/SC/0086/1960: AIR 1960 SC 866, Ramesh S/o Chhotalal Dalal v. Union of India and Ors. MANU/SC/0404/1988: (1988) 1 SCC 668 Ramji Lal Modi v. State of U.P.

MANU/SC/0101/1957: AIR 1957 SC 620, Romesh Thappar v. State of Madras MANU/SC/0006/1950: AIR 1950 SC 124, Saskatchewan (Human Rights Commission) v. Whatcott MANU/SCCN/0005/2013: (2013] 1 SCR 467, Shreya Singhal v. Union of India MANU/SC/0329/2015: (2015) 5 SCC 1, State of Bihar and Anr. v. P.P. Sharma, IAS and Anr. MANU/SC/0542/1992: 1992 Supp. (1) SCC 222, State of H.P. v. Pirthi Chand and Anr. MANU/SC/0259/1996: (1996) 2 SCC 37, State of Haryana v. Bhajan Lal MANU/SC/0115/1992: 1991 Supp (1) SCC 335, State of U.P. v. O.P. Sharma MANU/SC/0778/1996: (1996) 7 SCC 705, Veeda Menez v. Yusuf Khan and Anr. MANU/SC/0085/1966: 1966 SCR 123, Neelam Mahajan v. Commissioner of Police and Ors. MANU/DE/0463/1993: 1993 (27) DRJ 357 Superintendent of Police, CBI and Ors. v. Tapan Kumar Singh MANU/SC/0299/2003: (2003) 6 SCC 175, Superintendent, Central Prison, Fatehgarh and Anr. v. Dr. Ram Manohar Lohia MANU/SC/0058/1960: AIR 1960 SC 633, T.T. Antony v. State of Kerala and Ors. MANU/SC/0365/2001: (2001) 6 SCC 181 and Virendra/K. Narendra v. State of Punjab and Anr. MANU/SC/0023/1957: AIR 1957 SC 896.

9. The prayers made by the Petitioner are opposed by the states of Maharashtra, Rajasthan, Telangana and Uttar Pradesh, and the private Respondents. The informants submit that the Petitioner is a habitual offender and has on numerous earlier occasions offered similar apologies. The Petitioner had twice repeated the words 'aakrantak Chishti aya,' followed by the words 'lootera Chishti aya'. This assertion on three occasions conveys and reflects the intention of the Petitioner, who had described Khwaja Moinuddin Chishti as an invader, terrorist and robber who had come to India to convert its population to Islam. The pretext of inadvertent mistake is an afterthought and a sham and unreal defence. Respondent No. 9, namely, Saber Chausa Mohd. Naseer, in his affidavit has stated that the name of Khwaja Moinuddin Chishti as a Sufi Saint was taken by one of the panelists when the topic of conversion was being debated. The panelist had gone on record to state that the conversions at the time of Khwaja Moinuddin Chishti happened for moral, religious and spiritual reasons and the devotees and followers of Khwaja Moinuddin Chishti were inspired by his teachings. The affidavit also states that the discussion at that time was not in relation to Mughals or with reference to Aurangzeb or Allaudin Khilji. Further, the Petitioner had tampered with the broadcast of the debate uploaded on YouTube on 16th June, 2020, by deliberately deleting the part wherein the Petitioner had used the word 'aakrantak Chishti' (twice) and 'lootera Chishti'. These acts of sieving out of offensive portions, and the subsequent apology were after the Petitioner had learnt about the protests and registration of the FIRs at Ajmer and other places. The Respondents claim that the apology is not genuine but an act of self-defence. FIR at Ajmer was registered on 16th June, 2020 at 11:58 p.m. whereas the first apology (via Twitter) of the Petitioner appeared on 17th June, 2020, at 12:12 a.m., i.e., nearly 30 hours after the live telecast of the show where offensive words were uttered by the Petitioner.

10. The points raised by the Respondents can be summarised as under:

• The petition ought to be dismissed as Article 32 has been invoked in a cavalier manner. Remedy Under Section 482 of the Code of Criminal Procedure, 1973 (hereafter referred to as, 'Criminal Code') was available to the Petitioner.2

• The offending words were uttered thrice by the Petitioner, which shows his ill intention.3 The intention of the Petitioner was to create disharmony between the two faiths/groups and to incite disorder.4

• The debate was a staged program, where no experts or historians were on the panel; the program was staged to malign the Muslims and to promote hatred.5

• The themes of the programs hosted by the Petitioner are communal.6

• The conduct of the Petitioner was against norms of journalistic standards.7

• Petitioner uploaded an edited version of the video on Youtube, where he had removed the part containing the offensive speech. This was done after FIR was lodged as an attempt to tamper/destroy the evidence.8

• The Petitioner claimed that inadvertently he uttered "Chishti" in place of "Khilji", but there is no relation between these two historical figures. Khwaja Chishti came to India in 1136 when Md. Ghori was defeated by Prithvi Raj Chauhan for the first time in the battle of Tarain. Whereas, Khiljis ruled in India from 1290 to 1320. So Khilji and Khwaja Chishti were neither contemporaries nor related to each other.8

• Apology by the Petitioner was an afterthought. It came only after the registration of FIR.2 The Petitioner did not apologize initially and let the followers of Khwaja Chishti be outraged, in order to gain popularity.2

• The two persons, whose credentials the Petitioner has mentioned in the petition, to press that the members of the community have forgiven him, is false. These two people as TV personalities and nowhere represent the devotees of Khwaja Chishti.8

• FIR need not have an encyclopaedia of the event. Even if only material facts have been disclosed, it is enough to continue with criminal proceedings.8

• Some communal elements in Maharashtra, after the broadcast of the utterances by the Petitioner, used this opportunity and started circulating this video to spread hatred.8

• Article 19(1)(a) of the Constitution is subject to express limitations Under Article 19(2) of the Constitution.

• The police should be permitted to file report Under Section 173 of the Code of Criminal Procedure and court should frame the charges. Then only the Petitioner would get the opportunity to defend himself in the court.9

• Section 19 of the Cable TV (Regulation) Act prohibits cable TV network to broadcast any content that promotes hate or ill will.5

• The broadcast was throughout the nation and thus cause of action arose in Ajmer too, where the intervener resides and serves as khadim to Dargah of Khwaja Chishti.

• Respondent No. 5, State of Uttar Pradesh,10 reiterated the facts of the FIR lodged at the instance of informant Amish Devgan. Also, it has been mentioned that one FIR which was filed in Jabalpur against the Petitioner Amish Devgan was transferred by Jabalpur police to Gautam Budh Nagar.

• State of Rajasthan11 submitted:

(a) apology tendered by the Petitioner would not dilute the offence. Also, it was after 30 hours of the broadcast of the show.

(b) Allegations and counter allegations of facts are matter of trial.

(c) Transfer all FIRs to Ajmer as one of the FIRs is there, and matter also relates to Ajmer.

• State of Telangana12 submitted:

(a) Complainants/informants came to the P.S. Bahadurpura, Hyderabad and made a complaint that the Petitioner has dishonoured Khwaja Chishti.

(b) As per State of Orissa v. Saroj Kumar Sahoo MANU/SC/2264/2005: (2005) 13 SCC 540, probabilities of prosecution version can't be denied at the early stages.

(c) Normal course of investigation cannot be cut-short in casual manner. Also, the Accused has a remedy under 482 of the Code of Criminal Procedure.

The Show and Debate

11. Before we examine the first prayer, we must take notice of the fact that the transcript filed by the Petitioner with the original writ petition and the amended writ petitions is not the true and correct transcript. As per these transcripts the Petitioner is stated to have only uttered the words "Akranta Chishti came... Lootera Chishti came after then religion changed". However, in the transcript filed by the Petitioner on 8th July, 2020, it is accepted that the Petitioner had used the words 'Akranta Chishti' not once but twice. This is the

correct version. The Petitioner accepts that the topic of debate was relating to the challenge posed by a Hindu priest organisation to the Places of Worship (Special Provisions) Act, 1991, according to which the de facto position of religious places as on 15th August, 1947 could not be changed or altered, though Ayodhya was kept out of the ambit of the Act, and this petition was opposed by a Muslim organisation stating that if notice is issued there would be widespread fear among the Muslim community. After the prelude initiating the debate, the Petitioner, as per the transcript, had stated "Today, this will be the key issue of the debate... Ayodhya Verdict delivered, Why Kashi-Mathura issue left unresolved?... asking Hindu Priests!". The Petitioner as per the transcript had then declaimed:

Now analyse the legal position of Kashi Mathura issue...Hindu Priest organisation has reached Supreme Court against Places of Worship (Special Provisions) Act, 1991...According to this Act of 1946, the de facto position of any religious place could not be altered in any condition...According to Act a mosque could not be changed into temple or a temple could not be changed into mosque...This is impossible...The Ayodhya issue was out of this ambit as it was already in litigation. The Ayodhya issue was 100 year old dispute...The priest organisation says that Places of Worship (Special Provisions) Act, 1991 is against the Hindus...Today we are not debating the issue of Kashi or Mathura...we are debating the Places of Worship (Special Provisions) Act, 1991...What changes should be made in this Act?...if the arguments of Hindu Priests to be believed.

12. We must also at this stage itself reproduce portions of the debate, including the portion which the Petitioner seeks to rely upon:

I don't want to make this debate a hot topic between Hindu-Muslim community...I would like to discuss the provisions of this Act...First, I am going to ask questions to Mahant Naval Kishore Das Ji...Naval ji...Why do you want a change to the provisions of this Act?...The indication is clear...Ayodhya Jhanki Hai...Mathura Kashi Baaki Hain...This was the slogan of RSS, VHP and BJP...

xx xx xx

Atiq-Ur-Rehman: Amish Ji, I'm welcoming your statements that you said you don't want the 'Hindu-Muslim' saga on the matter. And I pay respect to Mahant Ji as well. He put his thoughts in a well-behaved manner. The Mahant Ji raised the question; 'a mole in the thief's beard' (darta wo hai jinki dadi me tinka hota hai).

xx xx xx

Amish Devgan:

Point Number-2: You have said that with a clever step...Atiq-Ur-Rehman Ji I've listened your statement, you talked around 2-2½ minutes. You said that the verdict on the Ayodhya case came on the board cleverly. But, I want to refresh your memory; in the year of 1991-92 when there had the slogan for the Ayodhya in the air the Sant Samaj, VHP, Rashtriya Swayamsevak Sangh and authentic persons of the Hindu Samaj used to say Ayodhya jhanki hai, Kashi-Mathura baki hai.

So the demand is very old. The wish is too old. But when the Ayodhya's wish was fulfilled then definitely after that verdict you are raising the question on your own ways. That is your take. Now I'm moving to Dr. Sudhanshu Trivedi, Jamiat Ulema-e-Hind are saying that if these types of petitions to be heard then thee will be a danger to the Muslim worship places.

xx xx xx

Amish Devgan: Dr. Trivedi, you made your point. I'm moving to Maulana Ali Kadri, he is senior guy. Kadri Sahab; I'm asking you straight. The Saints/Pujaris/Purohits/Mahants have a constitutional right that they file the writ in the Supreme Court against the 1991 Act. And they have right to talk about the Kashi and Mathura. But, if there is the Dukan is the concern, Dar ki Dukan to pahle hi khol di. In that petition had said if there was a notice on it the Muslims would feel that their worship places were not safe. They feel fear. Jamiat Ulema-e-Hind's petition says then who is opening the Dar ki Dukan. The Dar ki Dukan has already opened. This is the constitutional right?

xx xx xx

Amish Devgan: Ali Qadri Sahab, why the Jamiat Ulema-e-Hind is hiding its failure? Why the organisation is saying that there will be a fear in the Muslims for their worship places due to the notice? If you want to show Dr. Sudhanshu Trivedi's party's failure and wish to expose the RSS and VHP, then please tell in 20 seconds.

xx xx xx

Amish Devgan: Mr. Vinod Bansal, there is a symbol of Om is showing behind you. Om, the symbol of peace. But Maulana Ali Kadri is saying; you want to spread Ashanti. You have defeated by corona and now seeking a base from the Mathura-Kashi issues. After these issues you will raise the Jama Masjid matter and Taj Mahal will be in your hit list.

xx xx xx

Amish Devgan: Then how the Kashi-Mathura issue came into limelight?

Vinod Bansal: There is clearly written that the 1947's status to be maintained. Despite of that why the properties had transferred to the Waqf Board in a large level? Waqf Board asked properties on the name of Mazars, Mosques and Graveyards several times. Is all the things are belong to their father (Ye sara inka, inke Baap ka hai?) This is not the right way.

The first thing is, if the law had implemented, it should complete in a shape.

And the second one is...is it not true that thousands of the Hindu temples had demolished? The Hindu had converted and humiliated in a large scale. There should be needed to rectify the historical wrongs. Why they are trying to escape from the reality.

Amish Devgan: The historical wrong should rectify. Though several historians said the Eidgah and Krishan Janam Bhoomi in Mathura are situated adjacent to each other. Several historians claimed that in the 17th century emperor Aurangzeb had demolished a temple and had built a mosque on the very same place. VHP's Giriraj Kishor also said the same thing that on the place where the mosque is situated in Mathura, the Lord Krishnan had birthed on the same place. Besides that, he said several things. Now I want to move to Shadab Chauhan. He wishes to say something. Please go ahead.

Shadab Chauhan: Peace Party pay respect to the Constitution of India and the social harmony. So, we have filed the curative petition for the justice. Now we will talk about Kashi and Mathura. After defeating from the coronavirus, government is trying to divert the nation's attention by raising the issue of Kashi and Mathura.

And now I'm saying with the challenge that there should not be any 'nanga-nach' like the 1992, on the name of worship place. We respect the 1991 law. I deeply said that my elder brother Sudhanshu Trivedi Ji said, that the temples which had built after August 15, 1947, will be removed. Are you talking about demolishing the temples? The Ram Mandir which will be constructed, have you will demolish it as well?

And the second thing is, the Ram Mandir verdict came on basis of the faith and we are not satisfied with the decision. So we moved to the court. This is the matter of justice not of any religion's issue. Now we will not allow any goon to insult the saffron colour. The terror was made with demolishing the Babri Masjid.

Amish Devgan: What you said? Repeat it. The insult of the saffron colour...we...any...what did you say?

Shadab Chaudhary: Listen...insult of the saffron colour. We don't allow any goon to demolish any worship place and don't allow kill the innocents.

Amish Devgan: No...You can't say goons to the Sant Samaj. I objected completely. Shadab Chauhan you said a wrong thing. You said India's Sant Sama/Purohit-Pande of the country are goons.

Mahant Nawal Kishor Das: These people should apologise. You invite such people for the debate? They didn't pay respect to their ancestors too. Due to the fear they converted in the other religion.

Shadab Chauhan: They are goons.

xx xx xx

Amish Devgan: You are wrong...we do not have any problem with Muslims...we do not have problems with Abdul Kalam, we do not have problem with Dara Shikoh but yes...we do have problem with AURANGZEB...being a Hindustani we should have problems with Aurangzeb.

xx xx xx

Maulan Qadri: I will answer Sudhanshu Sahab...Sudhanshu has said that the Ram Mandir decision was not merely based on faith...A few days before today, Shivlinga got excavated there, after that I do not want to name anything else and there was an idol of someone there...So it should be decided if there was a Ram temple or Jain temple, it can be disseminated to you...the excavation says another story...if talk about name of Shadab Chauhan or anybody else...we are proud to said that after Khawaja Moinuddin Chisti...a lot of Indians converted to Islam and saw Moinuddin's execution and converted to Islam by seeing his life...but not all the Muslims who are in India are converts.

Amish Devgan: Maulana sahib, you took the name of Chishti...Now tell me, you are in today's age, after watching Donald Trump, he is a Christian, you will not change your religion, will not change religion after seeing Prime Minister Narendra Modi's religion...

xx xx xx

Maulana Ali Qadri: Seeing the implementation of Khwaja Moinuddin Chishti...Seeing the Talimat of Islam that all live together, there is no inferiority...Seeing Moinuddin's life, people accepted Islam...

Amish Devgan: Dr. Sudhanshu Trivedi...Akranta Chishti came...Akranta Chisti came...Lootera Chishti came after then religion changed.

Maulana Qadri: No man accepted Islam at the edge of the sword...He became a Muttasir from Islam and accepted Islam by liking the teachers of Islam...I would like to say that to you...

xx xx xx

Amish Devgan: Vinod ji, I got your point...Why Jamiat is creating fear mongering among Muslim community...Jamiat is creating false perception that their place of worship is closing...

xx xx xx

Ateeq-ur-Rehman: Amish let's discuss the Act only...in the beginning of the show, you mentioned that Hindu-Muslim slugfest should not happen...We are adhere to this...Vinod Bansal is now saying that 1991 Act's provision should be discussed again...Is it not insult to Parliament...The Act was passed in Parliament when BJP was also present in the House...Why they have not discussed this issue before Ram Mandir verdict...Why they were silent...

Vinod Bansal: This case was in consideration before Ram Mandir issue.

Ateeq-ur-Rehman: Amish ji...Mahant ji talking about Hindu pride...What about Buddhist pride...

xx xx xx

Amish Devgan: I am stopping for break Sudhanshu ji Sudhanshu ji I am staying for break but on public demand, Shadab Chauhan will apologize after the break...I will go to Shadab Chauhan after the break...He will apologize to the whole saint society...I am coming back after the break and if he don't apologise, he will have to get out of this debate.

xx xx xx

Amish Devgan: Yes or No...I am not giving a chance to say yes or No...You will either apologize, your audio will open. If you do not apologize, I will say thank you...Thank you for coming...

Shadab Chauhan: The son of the farmer says that he...

Amish Devgan: The son of a farmer is not a matter of a son of a farmer, it is a matter of saints...

Shadab Chauhan: I leave the debate...They are goons, they are goons...Those who fight in the name of religion are goons...

Amish Devgan: I will not ask for forgiveness...keep shouting I do not matter...I will not ask for forgiveness...

Shadab Chauhan: No...Farmer's son won't apologise.

Amish Devgan: So get out again...You get this person out of debates...Turn off the audio of this...I never say that to any guest...But you spoke derogatory words...Show this person show a full frame...You are a foolish man...Open the audio, what is he saying...

Shadab Chauhan: And but goons will be called goons...

Amish Devgan: Apologise to the saint community...

Shadab Chauhan: I respect all religions but goons will be called goons...

Amish Devgan: Same respect for all religions, everybody spoke about religion...Nobody called anything derogatory to Jamiat Ulema Hind...No one spoke...The saints who are putting up a social petition would be called goons...goons?..

Shadab Chauhan: There are hooligans who break religious places...There are goons who break the Constitution are goons who destroy the Constitution...

Amish Devgan: Shut up and get out. You are out...You are not fit to sit in this debate. You are out...Turn these out. Turn off the audio. Keep eating the minds of your family...get out of here...I am asking you Qadri sahib...the words used by Shadab Chauhan, were they wrong or right?

Maulana Ali Qadri: See...the use of such derogatory words for any religion is not approved by me or by anybody...

Amish Devgan: Thanks.

Maulana Qadri: It is necessary to respect the Guru of any religion. I believe it to be yours and it is a request from you also that do not use the word Islamic terrorism...because terror has no religion...

xx xx xx

Amish Devgan: Thank you very much...Mahant ji, I am sorry, I will not be able to give more time than this...Thank you very much...for keeping your point in our discussion...Finally, I will always I conclude...

But in conclusion today, I want to say something that we should respect all religions...But many people wrote that Shadab Chauhan should not be called in this debate, such people are abusive...See we can't judge people on the basis of their face...He had done wrong...we put him out of debate...but it is very important to boycott such people...and that's why we boycotted them in this debate...Namaskar...

A. First Prayer-Whether the FIRs should be quashed?

(i) Cause of Action

13. We reject the contention of the Petitioner that criminal proceedings arising from the impugned FIRs ought to be quashed as these FIRs were registered in places where no 'cause of action' arose. Section 179 of the Code of Criminal Procedure provides that an offence is triable at the place where an act is done or its consequence ensues. It provides:

179. Offence triable where act is done or consequence ensues: When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

The debate-show hosted by the Petitioner was broadcast on a widely viewed television network. The audience, including the complainants, were located in different parts of India and were affected by the utterances of the Petitioner; thus, the consequence of the words of the Petitioner ensued in different places, including the places of registration of the impugned FIRs.

Further, Clause (1) of Section 156 of the Code of Criminal Procedure provides that any officer in-charge of a police station may investigate any cognizable case which a court having jurisdiction over the local limits of such station would have the power to inquire into or try. Thus, a conjoint reading of Sections 179 and 156(1) of the Code of Criminal Procedure make it clear that the impugned FIRs do not suffer from this jurisdictional defect.

(ii) Defence of causing slight harm

14. The Petitioner has relied upon the decision of this Court in Veeda Menez and the decision of the High Court of Delhi in Neelam Mahajan to plead the defence of trifle Under Section 95 of the Penal Code. We are not inclined at this stage to entertain this defence of the Petitioner. Section 95 is intended to prevent penalisation of negligible

wrongs or offences of trivial character. Whether an act, which amounts to an offence, is trivial would undoubtedly depend upon the evidence collated in relation to the injury or harm suffered, the knowledge or intention with which the offending act was done, and other related circumstances. These aspects would be examined and considered at the appropriate stage by the police during investigation, after investigation by the competent authority while granting or rejecting sanction or by the Court, if charge-sheet is filed. The present case cannot be equated with either Veeda Menez or Neelam Mahajan's case where the factual matrix was undisputed and admitted. It would be wrong and inappropriate in the present context to prejudge and pronounce on aspects which are factual and disputed. The 'content' by itself without ascertaining facts and evidence does not warrant acceptance of this plea raised by the Petitioner. The defence is left open, without expressing any opinion.

(iii) Hate Speech

15. Benjamin Franklin, in 1722, had stated:

Without Freedom of Thought, there can be no such Thing as Wisdom; and no such Thing as public Liberty, without Freedom of Speech; which is the Right of every Man, as far as by it, he does not hurt or control the Right of another; And this is the only Check it ought to suffer, and the only Bounds it ought to know.

Two centuries later it remains difficult in law to draw the outmost bounds of freedom of speech and expression, the limit beyond which the right would fall foul and can be subordinated to other democratic values and public law considerations, so as to constitute a criminal offence. The difficulty arises in ascertaining the legitimate countervailing public duty, and in proportionality and reasonableness of the restriction which criminalises written or spoken words. Further, criminalisation of speech is often demarcated and delineated by the past and recent significant events affecting the nation including explanation of their causes. Therefore, constitutional and statutory treatment of 'hate speech' depends on the values sought to be promoted, perceived harm involved and the importance of these harms.13 Consequently, a universal definition of 'hate speech' remains difficult, except for one commonality that 'incitement to violence' is punishable.

16. This Court in 2014, in Pravasi Bhalai Sangathan had requested the Law Commission of India to examine the possibility of defining the expression 'hate speech', and make recommendations to the Parliament to curb this menace, especially in relation to electoral offences. This Court had expressed difficulty in 'confining the prohibition to some manageable standard'. The Law Commission, in its 267th Report on Hate Speech had recommended amendments to the criminal laws for inserting new provisions prohibiting incitement to hatred and causing fear, alarm, or provocation of violence in certain cases, but these have not yet been accepted by the government. Referring to the Constituent

Assembly Debates and the Constitution, the Report observes that the right to speech was not to be treated as absolute, but subject to restrictions on the grounds like sedition, obscenity, slander, libel and interest of public order. If the State is denied power to restrict speech on the basis of content, it might produce debates informed by prejudices of the public that would marginalise vulnerable groups and deny them equal space in the society. The mode of exercise of free speech, the context and the extent of abuse of freedom are important in determining the contours of permissible restrictions. The Commission also felt that laying down of a definite standard might lead to curtailment of free speech; a concern that has prevented the judiciary from defining hate speech in India. However, this is not to deny that the courts while adjudicating each case have to inevitably apply an objective test in terms of the legislative provisions. This is an inescapable legal necessity to ensure certainty and to prevent abuse and misuse, as failure to do so would curtail and subjugate the right to free speech and expression to occasional whims and even tyranny of subjective understanding of the authorities. Difference between free speech and hate speech in the context of the penal law must be understood.

17. The Law Commission report analysed the legal standards under various instruments of international law that lay down the regime for controlling and preventing hate speech, which we will encapsulate. Article 20(2) of the International Covenant on Civil and Political Rights, 1966 (ICCPR) prohibits 'advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence'. Similarly, Articles 4 and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, 1966 (CERD), prohibits 'dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin...'. The Human Rights Council's Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, in the context of internet content, states that freedom of expression can be restricted on grounds like hate speech (to protect rights of affected communities), defamation (to protect the rights and reputation of individuals against unwarranted attacks), and 'advocacy' of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (to protect the rights of others). Article 10 of the European Convention of Human Rights guarantees the right to freedom of expression, subject to certain 'formalities, conditions, restrictions or penalties' in the interest of... public safety, for the prevention of disorder or crime... for the protection of the reputation or rights of others...'. Further, Article 17 of the Convention prohibits abuse of the right by 'any State, group or person'. The Council of Europe's Committee of Ministers to Member States on Hate Speech has defined 'Hate Speech' as 'covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.' The Law Commission report notes that pluralism, tolerance, peace and non-discrimination have been termed non-derogatory values by the European Court of

Human Rights in ascertaining the extent of free speech allowed under the Convention; speech propagating religious intolerance, negationism, homophobia etc. has been excluded from the ambit of Article 10 of European Convention of Human Rights and the importance of responsible speech in a multicultural society has been stressed by the court in several cases. The Law Commission report has noted that in recent years, the European Court of Human Rights has moved from a strictly neutral approach, wherein not every offensive speech was considered illegitimate, by holding that interference is not to be solely judged on legitimate aim test but also whether such interference was necessary in a democratic society. This moderation takes into account that affording protection to all kinds of speech, even offensive ones, many times vilifies the cause of equality.

18. We will now succinctly refer to the American position which discloses a strong preference for liberty over equality, and commitment to individualism, predicated on the belief that:

...Truth was definite and demonstrable and that it had unique powers of survival when permitted to assert itself in a "free and open encounter." [...] Let all with something to say be free to express themselves. The true and sound will survive; the false and unsound will be vanquished. Government should be kept out of the battle and not weigh the odds in favor of one side or the other. And even though the false may gain a temporary victory, that which is true, by drawing to its defence additional forces, will through the self-righting process ultimately survive.14

19. The American framework on hate speech is based upon four major philosophical justifications.15 Justification from democracy is based on the belief that free speech enables a democratic self-government by allowing citizens to convey and receive ideas. This rationale does not grant protection to speech that is antidemocratic in general, and hateful or political extremist in particular. Another justification comes from the social contract theory, which requires that 'fundamental political institutions must be justifiable in terms of an actual or hypothetical agreement among all members of the relevant society.' The third justification-pursuit of the truth, is based on the utilitarian philosophy. Popularly known as the justification based on 'free marketplace of ideas,' it is grounded in the notion that truth is more likely to prevail through open discussion, and that the society will be better able to progress if the government is kept out of adjudicating as to what is true or false, valid versus invalid, or acceptable against abhorrent. The fourth justification comes from the idea of autonomy, and is primarily individualistic, unlike the previous three that value collective good. According to this, free speech enables individual autonomy, respect and well-being through self-expression.

20. The threshold or the standard in American jurisprudence to determine the circumstances under which the First Amendment freedoms of speech, press and assembly should be restricted has with time moved from the 'bad tendency test' i.e., prohibiting speech if it has tendency to harm public welfare, to the test of 'clear and

present danger',16 and to finally the test of 'imminent lawless action'. Mr. Justice Douglas in his concurring opinion in Brandenburg v. Ohio MANU/USSC/0132/1969: 395 U.S. 444 (1969) had adumbrated that the 'clear and present danger' precept in pronouncements during World War I and to check Marxism had moved away from the First Amendment ideal as in Dennis v. United States MANU/USSC/0089/1951: 341 U.S. 494 'not improbable' standard was followed. The 'imminent lawless action' test has three distinct elements, namely-intent, imminence and likelihood. In other words, the State cannot restrict and limit the First Amendment protection by forbidding or proscribing advocacy by use of force or law, except when the speaker intends to incite a violation of the law-that is both imminent and likely.

21. Michel Rosenfeld in his essay13 states that primary function of free speech has taken different forms in four historical stages. The first stage, dating back to the War of Independence, established protection of people against the government as the dominant function of free speech. In the second stage, as democracy became entrenched in the USA, free speech was meant to protect proponents of unpopular views against the tyranny of the majority. Stage three, panning between mid-1950s to 1980s when there was widespread consensus on essential values, saw the main function of free speech shift from lifting restraints on speakers to ensuring that listeners remain open-minded. Finally, with the rise of alternative discourses such as feminist and critical race theories attacking mainstream and official speech as inherently oppressive, the primary role of free speech became the protection of oppressed and marginalised discourses against the hegemony of discourses of the powerful. Accordingly, there are suggestions that 'imminent lawless action' fails to take into consideration and is prone to undermine the autonomy or self-respect of those whom the hate speech targets. Critics emphasise on the threat posed by unconstrained speech by the hegemony of dominant discourses at the expense of discourses of others, which as a result may only exacerbate the other's humiliation and denial of self-respect and autonomy. Counter approach reflects on the impact of hate speech on target and non-target audiences. The targeted audiences could experience anger, fear, concern and alienation. The non-targeted audiences may have different experiences from reversion to mixed emotions to downright sympathy for the substance of the main hate message, if not the form. This has long-term effects even on the non-targeted audiences, as even when they do not agree, they tend to accept as normal the message of hate over a period of time.

22. The Canadian jurisprudence on the subject proceeds on the basis of inviolability of human dignity as its paramount value and specifically limits the freedom of expression when necessary to protect the young and the right to personal honour. Canadian approach emphasises on multiculturalism and group equality, as it places greater emphasis on cultural diversity and promotes the idea of ethnic mosaic. The Canadian Supreme Court in James Keegstra had upheld the criminal conviction of a high school teacher for anti-Semitic propaganda on the ground that it amounts to wilful promotion

of hatred against a group identifiable on the basis of colour, race, religion or ethnic origin. It was observed as under:

(1) seeking and attaining truth is an inherently good activity; (2) participation in social and political decision-making is to be fostered and encouraged; and (3) diversity in forms of individual self-fulfillment and human flourishing ought to be cultivated in a tolerant and welcoming environment for the sake of both those who convey a meaning and those to whom meaning is conveyed.

The Canadian position, therefore, considers the likely impact of hate speech on both the targeted groups and non-targeted groups. The former are likely to be degraded and humiliated to experience injuries to their sense of self-worth and acceptance in the larger society and may well, as a consequence, avoid contact with members of the other group within the polity. The non-targeted members of the group, sometimes representing society at large, on the other hand, may gradually become de-sensitised and may in the long run start accepting and believing the messages of hate directed towards racial and religious groups. These insidious effects pose serious threats to social cohesion rather than merely projecting immediate threats to violence. Dixon, C.J., in Canada (Human Rights Commission) v. Taylor MANU/SCCN/0071/1990: (1990) 3 SCR 892, had observed:

...messages of hate propaganda undermine the dignity and self-worth of targeted group members and, more generally, contribute to disharmonious relations among various racial, cultural and religious groups, as a result eroding the tolerance and open mindedness that must flourish in a multicultural society which is committed to the idea of equality.

23. Saskatchewan (Human Rights Commission) had laid down three tests to determine whether an expression could qualify as hate speech or not. First, courts must apply the hate speech prohibitions objectively by applying the test of a reasonable person. Secondly, the legislative term 'hatred' or 'hatred or contempt' must be interpreted to mean the extreme form of the emotions, i.e. detestation and vilification. Thirdly, the effect of the expression on the targeted group should be determined by the Court. Canadian laws attempt to restrict false and discriminatory statements that are likely to lead to breach of peace. In R. v. Zundel the Court observed that publishing and spreading false news that was known to be false is likely to cause injury to public interest and multiculturalism.

24. In Australia, the position of law is substantially aligned with that in Canada. The Australian Federal Court, in the case of Pat Eatock v. Andrew Bolt (2011) FCA 1103 followed the dictum in Keegstra in holding that the right to freedom of expression could be restricted vide legislation which made racial hatred a criminal offence. The Federal Court quoted with approval the observations in Keegstra that had examined and rejected the underlying rationale theory, to hold:

(a) The justification from pursuit of truth does not support the protection of hate propaganda, and may even detriment our search for truth. The more erroneous or mendacious a statement, the less its value in the quest of truth. We must not overemphasise that rationality will overcome all falsehoods.

(b) Self-fulfilment and autonomy, in a large part, come from one's ability to articulate and nurture an identity based on membership in a cultural or religious group. The extent to which this value furthers free speech should be modulated insofar as it advocates an intolerant and prejudicial disregard for the process of individual self-development and human flourishing.

(c) The justification from participation in democracy shows a shortcoming when expression is employed to propagate ideas repugnant to democratic values, thus undermining the commitment to democracy. Hate propaganda argues for a society with subversion of democracy and denial of respect and dignity to individuals based on group identities.

25. The South African position regards dignity as paramount constitutional value and the law and the courts are willing to subjugate freedom of expression when the latter sufficiently undermines the former. The constitutional provision, therefore, enjoins the legislature and the court to limit speech rights and the exercise of those rights which deprive others of dignity.

26. The position in the United Kingdom has shifted over the years from reinforcing the security of the government to checking incitement to racial hatred among non-target audience with the aim of protecting targets against racially motivated harassment. The Race Relations Act, 1965 makes it a crime to utter in public or publish words 'which are threatening, abusive or insulting' and which are intended to incite hatred on the basis of race, colour or national origin. The Act focuses on 'incitement to hatred' rather than 'incitement to violence' but requires proof of intent for conviction. It also distinguishes between free speech and protects expression of political position but checks and criminalises illegal promotion of hate speech on basis of race, colour or national origin.13

27. Germany, on the other hand, and by contrast, believes that freedom of expression is one amongst several rights which is limited by principles of equality, dignity and multiculturalism. Further, value of personal honour always triumphs over the right to utter untrue statements or facts made with the knowledge of their falsity. If true statements of fact invade the intimate personal sphere of an individual, the right to personal honour triumphs over the freedom of speech. If such truth implicates the social sphere, the court once again resorts to balancing. Finally, if the expression of opinion as opposed to a fact constitutes a serious affront to the dignity of a person, the value of person however triumphs over the speech. But if damage to reputation is slight, then

again, the outcome of the case will depend on careful judicial balancing. Therefore, German application strikes a balance between rights and duties, between the individual and the community and between the self-expression needs of the speaker and the self-respect and dignity of the listeners. It recognises the content-based speech Regulation. It also recognises the difference between fact and opinion.17

28. The United States and France saw birth of democracy vide 18th century revolutions that strove to guarantee rights to individuals. However, the situations were quite different. In France, the revolution sought to limit, if not abolish-the prerogatives of rich and powerful catholic church. The French Parliament defined 'religious freedom' in individual terms and in August, 1789 adopted the declaration des Droits de l'Homme et du Citoy en, which declared-'no one may be disturbed for his opinions, even religious ones, provided that their manifestation does not trouble the public order established by the law'. In 1905, Declaration of Laicite, freedom of conscience, the freedom to believe or not believe, was enshrined in the Constitution. The principle recognises freedom to practice religion, in private or in public, as long as the manifestation of the practice does not disturb the peace. The State guarantees equality to all citizens regardless of their philosophical or religious conviction as all persons are born and remain free and equal in right. Everyone is free to express their own particular convictions and adhere to it. Laicite confederates and reinforces the unity of the nation by bringing citizens together by adhering to values of the republic which includes the right to accept differences.18 In accordance with the above principle, the French recognise and accept the right to offend as an essential corollary to freedom of expression which should be defended or upheld by other means, than by causing an offence. France does have hate speech laws against racism and xenophobia, which includes anti-religious hate crimes, to protect groups and individuals from being defamed or insulted on the ground of nationality, race, religion, ethnicity, sex, sexual orientation, gender identity or because they have a handicap. However, the French law gives primacy to freedom of expression, which it believes is meaningless without the right to offend, which would to some not only include the right to criticise and provoke but also the right to ridicule when it comes to ideas and beliefs, including religious beliefs.

29. Andrew F. Sellars, in his essay 'Defining Hate Speech'19 has examined the concept of hate speech in different democratic jurisdictions, and refers to attempts to define 'hate speech' by scholars and academics, including Mari J. Matsuda, Mayo Moran, Kenneth D. Ward, Susan Benesch, Bhikhu Parekh and others. The Author has formulated common traits in defining 'hate speech' observing that this would be helpful and relevant in considering how the society should respond. These can be categorised as follows:

(a) Hate speech targets a group, or an individual as a member of the group. The word 'group' has been traditionally used with reference to historically oppressed, traditionally disadvantaged or minority, but some prefer not to look for a defined group but to see whether the speaker targets someone based on an arbitrary or normatively irrelevant

feature. The expression 'group' would include identification based upon race, ethnicity, religion, gender, sexual orientation, sexual identity, appearance, physical ability, etc.;

(b) Content of the message should express hatred. Hostility towards a group in the spoken words reflects the intent of the speaker. One should be able to objectively identify the speech as an insult or threat to the members of the targeted group, including stigmatising the targeted group by ascribing to it qualities widely disregarded as undesirable;

(c) Speech should cause harm, which can be physical harm such as violence or incitement and true threats of violence and can include deep structural considerations caused by silent harm because of the victim's desperation that they cannot change the attribute that gives rise to hatred. The speech could permeate and impact the victim's relationship with others, cause denial of oneself and result in structural harms within the society;

(d) Intent of the speaker to cause harm or other bad activity to most is an essential feature of hate speech. In some statutes it can be even tacit inherent component. However, what the speaker should intend to constitute hate speech is subject to varied positions. Intent may refer to non-physical aspects like to demean, vilify, humiliate, or being persecutorial, disregarding or hateful, or refer to physical aspects like promoting violence, or direct attacks. However, speakers can lie about their intent not only to others but to themselves. Intent may be disguised and obscured;

(e) Speech should incite some other consequence as a result of the speech. Incitement could be of non-physical reactions such as hatred, or physical reactions such as violence. Certain jurisdictions require that the incitement should be imminent or almost inevitable and not too remote;

(f) Context and occasion of the speech is important. This requirement means looking into the factors such as the power of the speaker, place and occasion when the speech was made, the receptiveness of the audience and the history of violence in the area where the speech takes place. It requires examination whether the statement was made in the public to the view of the targeted group as an undesirable presence and a legitimate object of hostility. In certain contexts, at 'home speeches' may themselves amount to hate speeches as the said speeches are now uploaded and circulated in the virtual world through internet etc.; and lastly

(g) Speech should have no redeeming purpose, which means that 'the speech primarily carries no meaning other than hatred towards a particular group'. This is necessarily subjective and requires examination of good faith and good motives on the part of the speaker. 'No legitimate purpose' principle being abstract has difficulties, albeit is well documented. 'Good faith' and 'no legitimate purpose' exclusions are accepted as a good exception.

C. Decisions of this Court and High Courts interpreting Article 19(1)(a) and 19(2) of the Constitution, and Sections 153A, 295A and Clause (2) of Section 505 of the Penal Code.

30. In Ramji Lal Modi, a Constitution Bench of five Judges, relying upon the earlier decisions in Romesh Thappar and Brij Bhushan, had upheld the constitutional validity of Section 295A, a provision which criminalises the act of insulting religious beliefs with the deliberate intention to outrage religious feelings of a class of citizens. Ruling that the right to free speech is not absolute as Article 19(2) of the Constitution envisages reasonable restrictions, this Court observed that the phrase 'public order', as a ground for restricting the freedom of speech, incorporated in Article 19(2) vide the Constitution (First Amendment) Act, 1951 with retrospective effect, reads 'in the interest of public order', which connotes a much wider import than 'maintenance of public order'. This distinction between 'maintenance of public order' and 'in the interest of public order' was reiterated by another Constitution Bench of five Judges of this Court in Virendra/K. Narendra.

31. Even so, in Ramji Lal Modi Section 295A of the Penal Code was interpreted punctiliously observing:

9....Section 295-A does not penalise any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens but it penalises only those acts of insults to or those varieties of attempts to insult the religion or the religious beliefs of a class of citizens, which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class...

Import of Section 295A of the Penal Code, Ramji Lal Modi holds, is to curb speech made with 'malicious intent' and not 'offensive speech'. Criminality would not include insults to religion offered unwittingly, carelessly or without deliberate or malicious intent to outrage the religious feelings. Only aggravated form of insult to religion when it is perpetuated with deliberate and malicious intent to outrage the religious feelings of that group is punishable. Notably, this Court had already dismissed the Special Leave Petition and upheld Ramji Lal Modi's conviction Under Section 295A for having published an Article in a magazine against Muslims. It was specifically noticed that even earlier, the journalist in question had printed and published an Article or a cartoon about a donkey on which there was agitation by Muslims in Uttar Pradesh, which after prosecution, however, had eventually resulted in Petitioner's acquittal by the Allahabad High Court.

32. In Kedar Nath Singh, a Constitution Bench of five Judges of this Court had interpreted Sections 124A and 505 of the Penal Code post amendment to Clause (2) to Article 19 of the Constitution widening its ambit by incorporating the words-'in the interest of'... 'public order'. Reference was made to the difference in approach and interpretation by Sir Maurice Gwyer, C.J., speaking for the Federal Court in Niharendu Dutt Majumdar and the decision of the Privy Council in Sadashiv Narayan Bhalerao, which had approved

the elucidation by Strachey, J. in Bal Gangadhar Tilak. This Court held that the exposition of law by the Federal Court in Niharendu's case would be apposite and in conformity with the amended Clause (2) of Article 19. Specific reference was made to the dissenting opinions of Fazl Ali, J., in Romesh Thappar and Brij Bhushan, to observe that the difference between the majority opinion in the two cases and the minority opinion of Fazl Ali, J. had prompted the Parliament to amend Clause (2) of Article 19 by the Constitution (First Amendment) Act, 1951 with retrospective effect. Fazl Ali, J. had held that the concept of 'security of state' was very much allied to the concept of 'public order' and that restrictions on the freedom of speech and expression could validly be imposed in the interest of public order. At the same time, this Court had cautioned that the two penal provisions, read as a whole together with the explanation, aim at rendering penal only those activities which would be intended, or have the tendency, to create disorder or disturbance of public peace by resort to violence. It was elutriated that criticism and comments on government's action in howsoever strong words would not attract penal action as they would fall within the fundamental right of freedom of speech and expression. The penal provisions catch up when the word, written or spoken etc., have the pernicious tendency or intention of creating public disorder. So construed, the two provisions strike the correct balance between individual fundamental rights and the interest of public order. For interpretation, the court should not only have regard to the literal meaning of the words of the statute but take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress.

33. With reference to Section 505 of the Penal Code, Kedar Nath Singh observes that each of the three clauses of the Section refer to the gravamen of the offence as making, publishing or circulating any statement, rumour or report-(a) with the intent of causing or which is likely to cause any member of the Army, Navy or Air Force to mutiny or otherwise disregard or fail in his duty as such; or (b) cause fear or alarm to the public or a Section of the public which may induce the commission of an offence against the State or against public tranquillity; or (c) incite or which is likely to incite one class or community of persons to commit an offence against any other class or community. Constituent elements of each of the three clauses have reference to the direct effect on the security of the State or public order. Hence, these provisions would not exceed the bounds of reasonable restriction on the right to freedom of speech and expression.

34. We have referred to the judgment in Kedar Nath Singh, for it interprets Clause (2) of Section 505 of the Penal Code and also lays down principles and guidelines to interpret a penal provision in the context of the fundamental right to freedom of speech and expression. Secondly, and more importantly, this decision affirms the view of the Federal Court in Niharendu's case that the expression 'government established by law' has to be distinguished from the 'persons for the time being engaged in carrying on the administration'. The former is the visible symbol of the State, which gets enwrapped when the very existence of the State will be in jeopardy if the government established by law is subverted. Written or spoken words etc. that bring the State into contempt or

hatred or create disaffection fall within the ambit of the penal statute when the feeling of disloyalty to the government established by law or enmity to it imports the idea of tendency to public disorder by use of actual violence or incitement to violence. Equally, strongly worded expression of disapprobation of the actions of the government, even elected government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence would never be penal. Further, disloyalty to the government by law and comments even in strong terms on the measures or acts of the government so as to ameliorate the condition of the people or to secure cancellation or alteration of those actions or measures by lawful means, without exciting of those feelings of enmity and disloyalty which imply excitement to public disorder or use of force, is not an offence. Another significant advertence is to the principle that recognises that if two views are possible, the court should construe the provisions of law penalising 'hate speech' in the way that would make them consistent with the Constitution, and an interpretation that would render them unconstitutional should be avoided. Interpreting the Sections under challenge, the provisions were read as a whole to make it clear that the aim is to render penal only such activities as would be intended, or have a tendency, to create public disorder or disturbance of public peace by resort to violence. As a sequitur it follows that the courts should moderate and control the ambit and scope of the penal provisions to remain within and meet the constitutional mandate. Interpretation and application that is distant and beyond the superior command of the permissible constitutional limitation vide Clause (2) to Article 19 is unacceptable.

35. The decision in Ramji Lal Modi and the later decision in Bilal Ahmed Kaloo, which had examined Sections 153A and 505(2) of the Penal Code, had primarily applied the 'Bad Tendency test' as propounded by the American jurists. In Dr. Ram Manohar Lohia, the Constitution Bench of five Judges, referring to the words 'in the interest of... public order' in Clause (2) to Article 19 had observed that order is a basic need in any organised society. It implies orderly state of society or community in which the citizens can peacefully pursue their normal activities of life. This is essential as without order there cannot be any guarantee of other rights. Security of the State, public order and law and order represent three concentric circles: law and order being the widest, within which is the next circle representing public order and the smallest circle represents the security of the State. The phrase 'security of the State' is nothing less than endangering the foundations of the State or threatening its overthrow. It includes events that have national significance or upheavals, such as revolution, civil strife, war, affecting security of the State but excludes breaches of purely local significance. The phrase 'minor breaches' refers to public inconvenience, annoyance or unrest. The phrase 'in the interest of...public order', in the context of Clause (2) to Article 19, would mean breaches of purely local significance, embracing a variety of conduct destroying or menacing public order. Public order, in view of the history of the amendment is synonymous with public peace, safety and tranquillity. Further, any restriction to meet the mandate of Clause (2) to Article 19 has to be reasonable, which means that the restriction must have proximate and real connection with public order but not one that is far-fetched, hypothetical, problematic or

too remote in the chain of its relationship with public order. Restriction must not go in excess of the objective to achieve public order. In practice the restriction to be reasonable, should not equate the actus with any remote or fanciful connection between a particular act of violence or incitement to violence. This Court upheld the decision of the Allahabad High Court striking down Section 3 of the U.P. Special Powers Act, 1932 as the Section within its wide sweep had included any instigation by words, signs or visible representation not to pay or defer payment of any extraction or even contractual dues of the government authority, land owner, etc. which was treated as an offence. Even innocuous speeches were prohibited by threat of punishment. It was observed there was no proximate or even foreseeable connection between such instigation and the public order sought to be protected. Similarly, the argument of the State that instigation of a single individual in the circumstances mentioned above may in long run ignite revolutionary movement and destroy public order was rejected on the ground that fundamental rights cannot be controlled on such hypothetical and imaginary considerations. The argument that in a democratic society there is no scope for agitational approach and the law, if bad, can be modified by democratic process alone was rejected on the ground that if the same is accepted it would destroy the right to freedom of speech. However, what is important is the finding that public order is synonymous with public safety and tranquillity, in the sense that the latter terms refer to the former. The terms refer to absence of disorder, involving breaches of local significance in contradiction to national upheavals affecting security of the State. Yet they have be serious enough like civil strife and not mere law and order issues. Further, the 'proximate nexus test' in the 'interest of public order' should be satisfied.

36. In Madhu Limaye v. Sub-Divisional Magistrate, Monghyr and Ors. MANU/SC/0147/1970: (1970) 3 SCC 746 a seven Judge Constitution Bench of this Court has rejected challenge to the constitutional validity of Section 144 and Chapter VIII of the Code of Criminal Procedure, 1873 (sic 1973) holding that the impugned provisions properly understood were not in excess of the limits laid down in the Constitution for restricting the freedoms guaranteed Under Article 19(1) Clauses (a), (b), (c) and (d). The Constitution Bench was required to interpret Clauses (2), (3), (4) and (5) to Article 19 and whether the provision under challenge when interpreted would be protected in the sense that they would fall within the 'interest of..public order' occurring in Clauses (2), (3) and (4) and 'interest of.. general public' occurring in Clause (5). Noticing that the phrase 'in the interest of...public order', enacted with retrospective effect vide the First Amendment in 1951, has been interpreted as expanding the scope of restrictions, which was earlier restricted to aggravated activities calculated to endanger the security of the State only, reference was made to the decision in Dr. Ram Manohar Lohia which had also quoted judgments of the Supreme Court of the United States in which it had been held that public order is synonymous with public peace, safety and tranquillity. Hidayatullah, C.J., however, observed that the terms 'public order' and 'public tranquillity' do overlap to some extent but are not always synonymous as 'public tranquillity' is a much wider expression and it's breach may even include things that cannot be described as public

disorder. 'Public order' no doubt requires absence of disturbance of state of serenity in society but goes further and means ordre publique, a French term which means absence of insurrection, riot, turbulence or cry of violence. The expression 'public disorder' includes all acts which endanger the security of the State as also acts which are comprehended by the expression ordre publique but not acts which disturb only the serenity of others. For breach of public order, it is not necessary that the act should endanger the security of the State, which is a far stricter test, but would not include every kind of disturbance of society. Accepting that 'law and order' represents the largest circle within which is the next circle representing 'public order' and inside that the smallest circle representing the 'security of the State' is situated, it was observed that State is at the centre and the society surrounds it. Disturbances of society can fall under broad spectrum ranging from disturbance of serenity of life to jeopardy of the State. Therefore, the journey travels first through public tranquillity then through public order and lastly to the security of the State. Interpreting the requisites of Section 144, it was held that it was meant and concerned with power with the State to free the society from the menace of serious disturbances of grave character, that is to say that the annoyance must assume sufficiently grave proportions to bring the matter within the interest of public order. Rejecting the contention that the language of Section 144 was overbroad, reference was made to Section 188 of the Penal Code to hold that mere disobedience of the order is not sufficient to constitute an offence; there must be in addition obstruction, annoyance, or danger to human life, health or safety or a riot or an affray for an offence to me made out under the penal provision. Thus, the offence Under Section 188 of the Penal Code is restricted and confined by the legislative mandate. The general order Under Section 144 is justified on the ground that it may be necessary when number of persons is so large that distinction between them and general public cannot be made without the risk mentioned in the section. A general order is thus justified, and if the action is too general, the order may be questioned by appropriate remedy provided in the Code of Criminal Procedure.

37. Recently, this Court in Shreya Singhal, accepting the constitutional challenge and striking down Section 66A of the Information Technology Act, 2000, had differentiated between categories and adopted the scales test when offensive speech would be criminalised, observing:

13....There are three concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in. It is at this stage that a law may be made curtailing the speech or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, etc...

This judgment relies upon the American principles of 'clear and present danger' and 'imminent lawless action' wherein to criminalise speech, proximate nexus should be established, that is, causal linkage between the words spoken with the 'clear and present danger' and 'imminent lawless action'.

38. In Shreya Singhal, this Court has struck down Section 66A of the Information Technology Act on various grounds, including unreasonableness of the restriction, absence of requirements of Clause (2) to Article 19, including public order; having chilling effect and over-breadth; vagueness etc. Referring to the public order aspect of Clause (2) of Article 19 and the reasonable restriction mandate, it was observed that they connote limitation on a person in enjoyment of the right, and should not be arbitrary and excessive in nature, beyond what is required by the specific Clause applicable in the said case. Reference was made to several judgments, including Chintaman Rao v. State of Madhya Pradesh MANU/SC/0008/1950: AIR 1951 SC 118, State of Madras v. V.G. Row MANU/SC/0013/1952: AIR 1952 SC 196, N.B. Khare (Dr.) v. State of Delhi MANU/SC/0004/1950: AIR 1950 SC 211 and Mohammed Faruk v. State of Madhya Pradesh and Ors. MANU/SC/0046/1969: (1969) 1 SCC 853 to hold that the reasonable restriction test must be satisfied both in substantive and in procedural aspects. This test of reasonableness should be applied to each individual impugned statute, as no abstract standard or general pattern of reasonableness is applicable to all cases. Reasonableness always has reference to evil sought to be remedied and requires examination of the proportion of the imposition.

39. In Shreya Singhal, to exposit the public order stipulation in Clause (2) of Article 19, reference was made to Arun Ghosh v. State of West Bengal MANU/SC/0035/1969: (1970) 1 SCC 98 wherein the test as laid down in Dr. Ram Manohar Lohia was applied to hold that public order would embrace more of the community than law and order. Public order refers to the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from the acts directed against individuals which do not disturb the society to the extent of causing general disturbance of public tranquillity. This was explained by way of examples:

3....Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large Sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different...

...It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. The French distinguish law and order and public order by designating the latter as order publique...

In Arun Ghosh, it was held that a line of demarcation has to be drawn between serious and aggravated forms of breaches of public order which affect life of the community or forms of breaches of public order which endanger the public interest at large, from minor breaches of peace which do not affect the public at large. Acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity do not subvert public order, but are law and order issues. Referring to Dr. Ram Manohar Lohia's case, it was observed that similar acts in different context may affect law and order in one case and public order in the other. It is always the degree of harm and its effect on the community. The test which is to be examined in each case is whether the act would lead to disturbance of the current life of the community so as to amount to disturbance of public order, or does it affect merely an individual leaving the tranquillity of the society undisturbed. The latter is not covered under and restriction must meet the test of ordre publique affecting the community in the locality.

40. In Anuradha Bhasin v. Union of India and Ors. MANU/SC/0022/2020: (2020) 3 SCC 637 this Court, while dealing with the suspension of internet services in the area of Jammu and Kashmir in the background of public order and security concerns, interpreted the term "reasonable" under Clause (2) of Article 19 of the Constitution. It was expounded as under:

37. The right provided Under Article 19(1) has certain exceptions, which empower the State to impose reasonable restrictions in appropriate cases. The ingredients of Article 19(2) of the Constitution are that:

(a) The action must be sanctioned by law;

(b) The proposed action must be a reasonable restriction;

(c) Such restriction must be in furtherance of interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

38. At the outset, the imposition of restriction is qualified by the term "reasonable" and is limited to situations such as interests of the sovereignty, integrity, security, friendly relations with the foreign States, public order, decency or morality or contempt of court, defamation or incitement to an offence. Reasonability of a restriction is used in a qualitative, quantitative and relative sense.

39. It has been argued by the counsel for the Petitioners that the restrictions Under Article 19 of the Constitution cannot mean complete prohibition. In this context, we may note that the aforesaid contention cannot be sustained in light of a number of judgments of this Court wherein the restriction has also been held to include complete prohibition in appropriate cases. [Madhya Bharat Cotton Assn. Ltd. v. Union of India, Narendra Kumar v. Union of India, State of Maharashtra v. Himmatbhai Narbheram Rao, Sushila Saw Mill v. State of Orissa, Pratap Pharma (P) Ltd. v. Union of India and Dharam Dutt v. Union of India.]

40. The study of the aforesaid case law points to three propositions which emerge with respect to Article 19(2) of the Constitution. (i) Restriction on free speech and expression may include cases of prohibition. (ii) There should not be excessive burden on free speech even if a complete prohibition is imposed, and the Government has to justify imposition of such prohibition and explain as to why lesser alternatives would be inadequate. (iii) Whether a restriction amounts to a complete prohibition is a question of fact, which is required to be determined by the Court with regard to the facts and circumstances of each case. [Refer to State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat]

41. The second prong of the test, wherein this Court is required to find whether the imposed restriction/prohibition was least intrusive, brings us to the question of balancing and proportionality. These concepts are not a new formulation under the Constitution. In various parts of the Constitution, this Court has taken a balancing approach to harmonise two competing rights. In Minerva Mills Ltd. v. Union of India and Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd.], this Court has already applied the balancing approach with respect to fundamental rights and the directive principles of State policy.

41. Anuradha Bhasin's case refers to the principle of proportionality as formulated by this Court in Modern Dental College and Research Centre and Ors. v. State of Madhya Pradesh and Ors. MANU/SC/0495/2016: (2016) 7 SCC 353 in the following words:

...a limitation of a constitutional right will be constitutionality permissible if: (i) it is designated for a proper purpose; (ii) the measures undertaken to effectuate such a limitation are rationally connected to the fulfilment of that purpose; (iii) the measures undertaken are necessary in that there are no alternative measures that may similarly achieve that same purpose with a lesser degree of limitation; and finally (iv) there needs to be a proper relation ('proportionality stricto sensu' or 'balancing') between the importance of achieving the proper purpose and the social importance of preventing the limitation on the constitutional right.

Subsequently, the principle was reiterated in the Aadhaar judgment reported as Justice K.S. Puttasamy v. Union of India (2) MANU/SC/1044/2017: (2017) 10 SCC 1. We need

not elaborate on this principle in view of the limited controversy involved in the present case, albeit the formulation recognises the benefit and need for least intrusive measure when it comes to curtailment of fundamental rights and for this purpose the court can examine the reasonableness of the measures undertaken and whether they are necessary, in that there are no alternatives measures that can achieve the same purpose with a lesser degree of restriction. Secondly, there has to be proper proportionality or balance between the importance of achieving the proper measure and social importance of preventing the limitation on the constitutional right.

42. The expression 'reasonable restriction' has been elucidated in numerous decisions which have been quoted in Subramanian Swamy v. Union of India and Ors. MANU/SC/0621/2016: (2016) 7 SCC 221 to connote that the restriction cannot be arbitrary or excessive and should possess a direct and proximate nexus with the object sought to be achieved. Sufficient for our purpose would be reproduction of the observations of P.N. Bhagwati, J. (as His Lordship then was) in Maneka Gandhi v. Union of India MANU/SC/0133/1978: (1978) 1 SCC 248 wherein he had referred to the authority in Rustom Cowasjee Cooper v. Union of India MANU/SC/0074/1970: (1970) 2 SCC 298 and Bennett Coleman & Co. v. Union of India MANU/SC/0038/1972: (1972) 2 SCC 788, to observe:

20. It may be recalled that the test formulated in R.C. Cooper case merely refers to "direct operation" or 'direct consequence and effect' of the State action on the fundamental right of the Petitioner and does not use the word "inevitable" in this connection. But there can be no doubt, on a reading of the relevant observations of Shah, J., that such was the test really intended to be laid down by the Court in that case. If the test were merely of direct or indirect effect, it would be an open-ended concept and in the absence of operational criteria for judging "directness", it would give the Court an unquantitiable discretion to decide whether in a given case a consequence or effect is direct or not. Some other concept-vehicle would be needed to quantify the extent of directness or indirectness in order to apply the test. And that is supplied by the criterion of "inevitable" consequence or effect adumbrated in the Express Newspapers case. This criterion helps to quantify the extent of directness necessary to constitute infringement of a fundamental right. Now, if the effect of State action on fundamental right is direct and inevitable, then a fortiori it must be presumed to have been intended by the authority taking the action and hence this doctrine of direct and inevitable effect has been described by some jurists as the doctrine of intended and real effect.

43. The decisions in Rustom Cowasjee Cooper and Maneka Gandhi are also relevant for our purpose as they have considered the interrelation between the rights enshrined in Article 21, Article 14 and Article 19 and had made a departure from the majority view in A.K. Gopalan v. State of Madras MANU/SC/0012/1950: AIR 1950 SC 27 to hold that these freedoms contained in Part III shade and merge into each other and are not watertight compartments. They weave a pattern of guarantees on the basic structure of

human rights and impose negative obligations on the State not to encroach on individual liberty in its different dimensions. The rights under Part-III are wide ranging and comprehensive, though they have been categorised under different heads, namely, right to equality, right to freedom of expression and speech, right against exploitation, right to freedom of religion, cultural and educational rights, and right to constitutional remedies. Each freedom has a different dimension and merely because the limits of interference with one freedom are satisfied, the law is not free from the necessity to meet the challenge of another guaranteed freedom. Secondly, in Maneka Gandhi, it was held that the expression 'personal liberty' in Article 21 is of the widest amplitude and it covers a variety of rights which go on to constitute the personal liberty of a man, though some of them have been raised to the status of distinct fundamental rights and given additional protection Under Article 19. Article 21 does not exclude Article 19 or vice-versa, or for that matter the right to equality Under Article 14 of the Constitution. Thus, Part III of the Constitution is expansive and its connotative sense carries a collection or bouquet of highly cherished rights. In Subramanian Swamy, this Court referred to Charu Khurana and Ors. v. Union of India and Ors. MANU/SC/1044/2014: (2015) 1 SCC 192 wherein it has been ruled that dignity is the quintessential quality of personality and a basic constituent along with honour and reputation of the rights guaranteed and protected Under Article 21. Dignity is a part of the individual rights that form the fundamental fulcrum of collective harmony and interest of a society. While right to speech and expression is absolutely sacrosanct in the sense that it is essential for individual growth and progress of democracy which recognises voice of dissent, tolerance for discordant notes and acceptance of different voices, albeit the right to equality Under Article 14 and right to dignity as a part of Article 21 have their own significance. The aforesaid proposition has been reiterated by Dr. D.Y. Chandrachud, J., in India Young Lawyers Association and Ors. (Sabarimala Temple, In RE.) v. State of Kerala and Ors. MANU/SC/1094/2018: (2019) 11 SCC 1 which decision refers to the four precepts which emerge from the Preamble, namely, justice, in its social, economic and political dimensions; individual liberty in the matter of thought, expression, belief, faith and worship; equality of status and opportunity amongst all citizens; and sense of fraternity amongst all citizens that assures the dignity of human life. Individual dignity can be achieved in a regime which recognises equality with other citizens regardless of one's religious beliefs or the group to which one belongs. Religious beliefs and faiths ensure wider acceptance of human dignity and liberty, but when conflict arises between the two, the quest for human dignity, liberty and equality must prevail. Constitutional interpretation must bring a sense of equilibrium-a balance, so that read individually and together, the provisions of the Constitution exist in a contemporaneous accord. Thus, effort should be made to have synchrony between different parts of the Constitution and different rights should be interpreted together so that they exist in harmony. Freedoms elaborated in Part III are exercised within the society which are networked. Freedoms, therefore, have linkages which cannot be ignored. In Subramanian Swamy, this Court had referred to a compendium of judgments dwelling on balancing of fundamental rights when the right of a citizen comes in conflict with a different fundamental right also

granted by the Constitution as each citizen is entitled to enjoy each and every one of the freedoms together and the Constitution does not prefer one freedom to another. In Ram Jethmalani and Ors. v. Union of India and Ors. MANU/SC/0711/2011: (2011) 8 SCC 1 this Court has observed that rights of citizens Under Article 19(1) have to be balanced against the rights of citizens and persons Under Article 21 and the latter rights cannot be sacrificed as this would lead to detrimental consequences and even anarchy. Constitutional rights no doubt very important, possibly are not made absolute as they may come into conflict with each other and when competing they have to be qualified and balanced. In Noise Pollution (V), In Re. MANU/SC/0415/2005: (2005) 5 SCC 733 it was observed that Article 19(1)(a) cannot be pressed into service for defeating the fundamental right guaranteed by Article 21 as if one claims to right to speech, the others have the right to listen or decline to listen. A person speaking cannot violate the rights of others of peaceful, comfortable and pollution free right guaranteed by Article 21.

44. Right to equality enshrined in Article 14 is recognition that the principle of equality is inherent in the Rule of law. In the positive sense, it means absence of any privilege for particular individuals and in the negative sense, no one can be discriminated against; and anybody and everybody should be treated as equals. The latter is the essence and core of right to equality and imposes obligation on the State to take necessary steps so that every individual is given equal respect and enjoys dignity as others, irrespective of caste, creed, religion, identity, sexual preference etc. Right to equality is embodied not only in Article 14, but also finds different manifestations in Articles 15 to 18 of Part III, and Articles 38, 39, 39A, 41 and 46 of Part IV. Thus, right to equality has many facets, and is dynamic and evolving.20

45. It is not only the Preamble and Articles 14, 21 and others referred to above which affirms the right to dignity of the individual. Clause (e) to Article 51A, which incorporates fundamental duties, states that it will be the obligation of every citizen to promote harmony and the spirit of common brotherhood amongst all the people of India, transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women. Clause (f) states that we must value and preserve the rich heritage of our composite culture.

46. At this stage, it is necessary to clarify what is meant by the expression 'dignity' in the context of 'hate speech'-for an expansive meaning, if given, would repress and impede freedom to express views, opine and challenge beliefs, ideas and acts. Dignity, in the context of criminalisation of speech with which we are concerned, refers to a person's basic entitlement as a member of a society in good standing, his status as a social equal and as bearer of human rights and constitutional entitlements.21 It gives assurance of participatory equality in inter-personal relationships between the citizens, and between the State and the citizens, and thereby fosters self-worth.22 Dignity in this sense does not refer to any particular level of honour or esteem as an individual, as in the case of defamation which is individualistic. The Supreme Court of the United States of America

in Beauharnais v. Illinois MANU/USSC/0102/1952: 343 U.S. 250 (1952), while upholding conviction for hate speech, had emphasised that such speech should amount to group defamation which though analogous to individual defamation has been traditionally excluded from free speech protection in America. Loss of dignity and self-worth of the targeted group members contributes to disharmony amongst groups, erodes tolerance and open-mindedness which are a must for multi-cultural society committed to the idea of equality. It affects an individual as a member of a group. It is however necessary that at least two groups or communities must be involved; merely referring to feelings of one community or group without any reference to any other community or group does not attract the 'hate speech' definition. Manzar Sayeed Khan, taking note of the observations in Bilal Ahmad Kaloo, records that common features of Sections 153A and 505(2) being promotion of feeling of enmity, hatred or ill-will 'between different' religious or racial or linguistic or regional groups or castes or communities, involvement of at least two groups or communities is necessary. Further, merely inciting the feeling of one community or group without any reference to any other community or group would not attract either provision. Definition of 'hate speech' as expounded by Andrew F. Sellars prescribes that hate speech should target a group or an individual as they relate to a group.

47. Preamble to the Constitution consciously puts together fraternity assuring dignity of the individual and the unity and integrity of the nation. Dignity of individual and unity and integrity of the nation are linked, one in the form of rights of individuals and other in the form of individual's obligation to others to ensure unity and integrity of the nation. The unity and integrity of the nation cannot be overlooked and slighted, as the acts that 'promote' or are 'likely' to 'promote' divisiveness, alienation and schematism do directly and indirectly impinge on the diversity and pluralism, and when they are with the objective and intent to cause public disorder or to demean dignity of the targeted groups, they have to be dealt with as per law. The purpose is not to curtail right to expression and speech, albeit not gloss over specific egregious threats to public disorder and in particular the unity and integrity of the nation. Such threats not only insidiously weaken virtue and superiority of diversity, but cut-back and lead to demands depending on the context and occasion, for suppression of freedom to express and speak on the ground of reasonableness. Freedom and rights cannot extend to create public disorder or armour those who challenge integrity and unity of the country or promote and incite violence. Without acceptable public order, freedom to speak and express is challenged and would get restricted for the common masses and law-abiding citizens. This invariably leads to State response and, therefore, those who indulge in promotion and incitement of violence to challenge unity and integrity of the nation or public disorder tend to trample upon liberty and freedom of others.

48. Before referring to provisions of the Penal Code, we would like to refer to an Article by Alice E. Marwick and Ross Miller of Fordham University, New York (USA),23 elucidating on three distinct elements that legislatures and courts can use to define and identify 'hate speech', namely-content-based element, intent-based element and harm-

based element (or impact-based element). The content-based element involves open use of words and phrases generally considered to be offensive to a particular community and objectively offensive to the society. It can include use of certain symbols and iconography. By applying objective standards, one knows or has reasonable grounds to know that the content would allow anger, alarm or resentment in others on the basis of race, colour, creed, religion or gender. The intent-based element of 'hate speech' requires the speaker's message to intend only to promote hatred, violence or resentment against a particular class or group without communicating any legitimate message. This requires subjective intent on the part of the speaker to target the group or person associated with the class/group. The harm or impact-based element refers to the consequences of the 'hate speech', that is, harm to the victim which can be violent or such as loss of self-esteem, economic or social subordination, physical and mental stress, silencing of the victim and effective exclusion from the political arena. Nevertheless, the three elements are not watertight silos and do overlap and are interconnected and linked. Only when they are present that they produce structural continuity to constitute 'hate speech'.

49. On the aspect of content, Ramesh states that the effect of the words must be judged from the standard of reasonable, strongminded, firm and courageous men and not by those who are weak and ones with vacillating minds, nor of those who scent danger in every hostile point of view. The test is, as they say in English Law,-'the man on the top of a Clapham omnibus'. Therefore, to ensure maximisation of free speech and not create 'free speaker's burden', the assessment should be from the perspective of the top of the reasonable member of the public, excluding and disregarding sensitive, emotional and atypical. It is almost akin or marginally lower than the prudent man's test. The test of reasonableness involves recognition of boundaries within which reasonable responses will fall, and not identification of a finite number of acceptable reasonable responses. Further, this does not mean exclusion of particular circumstances as frequently different persons acting reasonably will respond in different ways in the context and circumstances. This means taking into account peculiarities of the situation and occasion and whether the group is likely to get offended. At the same time, a tolerant society is entitled to expect tolerance as they are bound to extend to others.

50. Richard Delgado24 has proposed a definition of 'hate speech' as language that was intended to demean a group which a reasonable person would recognise as a 'racial insult'. Mari J. Matsuda25 has referred to 'hate speech' as a message of racial inferiority, prosecutorial, hateful and degraded. Kenneth Ward26 has analysed 'hate speech' as a form of expression, through which the speaker primarily intends to vilify, humiliate or incite hatred against their targets. As explained below, 'content' has relation with the subject-matter, but is not synonymous with the subject-matter. 'Content' has more to do with the expression, language and message which should be to vilify, demean and incite psychosocial hatred or physical violence against the targeted group.

51. The 'context', as indicated above, has a certain key variable, namely, 'who' and 'what' is involved and 'where' and the 'occasion, time and under what circumstances' the case arises. The 'who' is always plural for it encompasses the speaker who utters the statement that constitutes 'hate speech' and also the audience to whom the statement is addressed which includes both the target and the others. Variable context review recognises that all speeches are not alike. This is not only because of group affiliations, but in the context of dominant group hate speech against a vulnerable and discriminated group, and also the impact of hate speech depends on the person who has uttered the words.13 The variable recognises that a speech by 'a person of influence' such as a top government or executive functionary, opposition leader, political or social leader of following, or a credible anchor on a T.V. show carries a far more credibility and impact than a statement made by a common person on the street. Latter may be driven by anger, emotions, wrong perceptions or mis-information. This may affect their intent. Impact of their speech would be mere indifference, meet correction/criticism by peers, or sometimes negligible to warrant attention and hold that they were likely to incite or had attempted to promote hatred, enmity etc. between different religious, racial, language or regional groups. Further, certain categories of speakers may be granted a degree of latitude in terms of the State response to their speech. Communities with a history of deprivation, oppression, and persecution may sometimes speak in relation to their lived experiences, resulting in the words and tone being harsher and more critical than usual. Their historical experience often comes to be accepted by the society as the rule, resulting in their words losing the gravity that they otherwise deserve. In such a situation, it is likely for persons from these communities to reject the tenet of civility, as polemical speech and symbols that capture the emotional loading can play a strong role in mobilising.27 Such speech should be viewed not from the position of a person of privilege or a community without such a historical experience, but rather, the courts should be more circumspect when penalising such speech. This is recognition of the denial of dignity in the past, and the effort should be reconciliatory. Nevertheless, such speech should not provoke and 'incite'-as distinguished from discussion or advocacy-'hatred' and violence towards the targeted group. Likelihood or similar statutory mandate to violence, public disorder or 'hatred' when satisfied would result in penal action as per law. Every right and indulgence has a limit. Further, when the offending act creates public disorder and violence, whether alone or with others, then the aspect of 'who' and question of indulgence would lose significance and may be of little consequence.

52. Persons of influence, keeping in view their reach, impact and authority they yield on general public or the specific class to which they belong, owe a duty and have to be more responsible. They are expected to know and perceive the meaning conveyed by the words spoken or written, including the possible meaning that is likely to be conveyed. With experience and knowledge, they are expected to have a higher level of communication skills. It is reasonable to hold that they would be careful in using the words that convey their intent. The reasonable-man's test would always take into consideration the maker. In other words, the expression 'reasonable man' would take into account the impact a

particular person would have and accordingly apply the standard, just like we substitute the reasonable man's test to that of the reasonable professional when we apply the test of professional negligence.28 This is not to say that persons of influence like journalists do not enjoy the same freedom of speech and expression as other citizens, as this would be grossly incorrect understanding of what has been stated above. This is not to dilute satisfaction of the three elements, albeit to accept importance of 'who' when we examine 'harm or impact element' and in a given case even 'intent' and/or 'content element'.

53. Further, the law of 'hate speech' recognises that all speakers are entitled to 'good faith' and '(no)-legitimate purpose' protection. 'Good faith' means that the conduct should display fidelity as well as a conscientious approach in honouring the values that tend to minimise insult, humiliation or intimidation. The latter being objective, whereas the former is subjective. The important requirement of 'good faith' is that the person must exercise prudence, caution and diligence. It requires due care to avoid or minimise consequences. 'Good faith' or 'no-legitimate purpose' exceptions would apply with greater rigour to protect any genuine academic, artistic, religious or scientific purpose, or for that matter any purpose that is in public interest, or publication of a fair and accurate report of any event or matter of public interest.29 Such works would get protection when they were not undertaken with a specific intent to cause harm. These are important and significant safeguards. They highlight importance of intention in 'hate speech' adjudication. 'Hate speech' has no redeeming or legitimate purpose other than hatred towards a particular group. A publication which contains unnecessary asides which appear to have no real purpose other than to disparage will tend to evidence that the publications were written with a mala fide intention. However, opinions may not reflect mala fide intention.

54. The present case, it is stated, does not relate to 'hate speech' causally connected with the harm of endangering security of the State, but with 'hate speech' in the context of Clauses (a) and (b) to Sub-section (1) of Section 153A, Section 295A and Sub-section (2) to Section 505 of the Penal Code. In this context, it is necessary to draw a distinction between 'free speech' which includes the right to comment, favour or criticise government policies; and 'hate speech' creating or spreading hatred against a targeted community or group. The former is primarily concerned with political, social and economic issues and policy matters, the latter would not primarily focus on the subject matter but on the substance of the message which is to cause humiliation and alienation of the targeted group. The object of criminalising the latter type of speech is to protect the dignity (as explained above) and to ensure political and social equality between different identities and groups regardless of caste, creed, religion, sex, gender identity, sexual orientation, linguistic preference etc. Freedom to express and speak is the most important condition for political democracy. Law and policies are not democratic unless they have been made and subjected to democratic process including questioning and criticism. Dissent and criticism of the elected government's policy, when puissant, deceptive or even false would be ethically wrong, but would not invite penal action. Elected representatives in

power have the right to respond and dispel suspicion. The 'market place of ideas' and 'pursuit of truth' principle are fully applicable. Government should be left out from adjudicating what is true or false, good or bad, valid or invalid as these aspects should be left for open discussion in the public domain. This justification is also premised on the conviction that freedom of speech serves an indispensable function in democratic governance without which the citizens cannot successfully carry out the task to convey and receive ideas. Political speech relating to government policies requires greater protection for preservation and promotion of democracy. Falsity of the accusation would not be sufficient to constitute criminal offence of 'hate speech'. The Constitutional Bench decision of this Court in Kedar Nath Singh and the subsequent decisions have clearly and uniformly held that there is difference between 'government established by law' and 'persons for the time being engaged in carrying on administration' and that comment or criticism of the government action in howsoever strong words must be protected and cannot be a ground to take penal action unless the words written or spoken, etc. have pernicious tendency or intention of creating public disorder. Without exciting those feelings which generate inclination to cause public disorder by acts of violence, political views and criticism cannot be made subject matter of penal action. Reference to later decision in Arun Ghosh drawing distinction between serious and aggravated from of breaches of public order that endanger public peace and minor breaches that do not affect public at large would be apposite. In consonance with the constitutional mandate of reasonable restriction and doctrine of proportionality in facts of each case it has to be ascertained whether the act meets the top of Clapham omnibus test and whether the act was 'likely' to lead to disturbance of the current life of the community so as to amount to disturbance of public order; or it may affect an individual or some individuals leaving the tranquillity of the society undisturbed. The latter and acts excluded on application of the top of Clapham omnibus test are not covered. Therefore, anti-democratic speech in general and political extremist speech in particular, which has no useful purpose, if and only when in the nature of incitement to violence that 'creates', or is 'likely to create' or 'promotes' or is 'likely to promote' public disorder, would not be protected.

55. Sometimes, difficulty may arise and the courts and authorities would have to exercise discernment and caution in deciding whether the 'content' is a political or policy comment, or creates or spreads hatred against the targeted group or community. This is of importance and significance as overlap is possible and principles have to be evolved to distinguish. We would refer to one example to illustrate the difference. Proponents of affirmative action and those opposing it, are perfectly and equally entitled to raise their concerns and even criticise the policies adopted even when sanctioned by a statute or meeting constitutional scrutiny, without any fear or concern that they would be prosecuted or penalised. However, penal action would be justified when the speech proceeds beyond and is of the nature which defames, stigmatises and insults the targeted group provoking violence or psychosocial hatred. The 'content' should reflect hate which tends to vilify, humiliate and incite hatred or violence against the target group based upon identity of the group beyond and besides the subject matter.

56. Our observations are not to say that persons of influence or even common people should fear the threat of reprisal and prosecution, if they discuss and speak about controversial and sensitive topics relating to religion, caste, creed, etc. Such debates and right to express one's views is a protected and cherished right in our democracy. Participants in such discussions can express divergent and sometimes extreme views, but should not be considered as 'hate speech' by itself, as subscribing to such a view would stifle all legitimate discussions and debates in public domain. Many a times, such discussions and debates help in understanding different view-points and bridge the gap. Question is primarily one of intent and purpose. Accordingly, 'good faith' and 'no legitimate purpose' exceptions would apply when applicable.

57. On the aspect of truth or true facts, reference can be made to the decision of this Court in K.A. Abbas, which pertained to the documentary called 'A Tale of Four Cities' portraying contrast between the lives of rich and poor in the four principal cities of the country. The challenge was to the grant of certificate for exhibition restricted to adults. It was observed that audience in India can be expected to view with equanimity the different historical facts and stories. There is no bar in showing carnage or bloodshed which have historical value and depiction of such scenes as the sack of Delhi by Nadir Shah may be permissible, if handled delicately as a part of an artistic portrayal of confrontation with Mohd. Shah Rangila. Clearly, the restrictions were not to be reduced to the level where the protection to the least capable and the most deprived amongst us would be applicable. In Ebrahim Suleiman Sait v. M.C. Mohammed and Anr. MANU/SC/0347/1979: (1980) 1 SCC 398, it was observed that speaking the truth was not an answer to the charge of corrupt practice and what was relevant was whether the speech had promoted or had sought to promote feelings of enmity or hatred. The likelihood must be judged from healthy and reasonable standard thereby accepting the position that historical truth may be a relevant and important factor. However, the historical truth must be depicted without in any way disclosing or encouraging hatred or enmity between different classes or communities. In Lalai Singh Yadav and Anr. v. State of Uttar Pradesh MANU/UP/0364/1971: 1971 Cri.L.J. 1773 (FB) (Allahabad), the Allahabad High Court had observed that the book written by Dr. B.R. Ambedkar throwing light on the oppression and exploitation of Dalits and suggesting conversion to Buddhism was couched in a restrained language and did not amount to an offence. Rational criticism of religious tenets, is acceptable as legitimate criticism, is not an offence for no reasonable person of normal susceptibilities would object to it. In Ramesh, challenge to the serial 'Tamas' was rejected on the ground that it was an instructive serial revealing an evil facet of history within permissible extent of examination even if it depicted pre-partition communal tension and violence. A hurt, which is a product of a benevolent intent, may incite negative attitudes to the victim but would fall short of criminal hurt, i.e. hatred. Watching the bloodshed that accompanied partition, the average person will "learn from the mistakes of the past and realise the machinations of the fundamentalists and will not perhaps commit those mistakes again". Knowledge of

tragic experiences of the past would help "fashion our present in a rational and reasonable manner and view our future with wisdom and care". Quoting Lord Morley, Mukharji, J. noted in paragraph 20:

20....It has been said by Lord Morley in "On Compromise" that it makes all the difference in the world whether you put truth in the first place or in the second place. It is true that a writer or a preacher should cling to truth and right, if the very heavens fall. This is a universally accepted basis. Yet in practice, all schools alike are forced to admit the necessity of a measure of accommodation in the very interests of truth itself. Fanatic is a name of such ill-repute, exactly because one who deserves to be so called injures good causes by refusing timely and harmless concession; by irritating prejudices that a wiser way of urging his own opinion might have turned aside; by making no allowances, respecting no motives, and recognising none of those qualifying principles that are nothing less than necessary to make his own principle true and fitting in a given society. Judged by all standards of a common man's point of view of presenting history with a lesson in this film, these boundaries appear to us could (sic to) have been kept in mind. This is also the lesson of history that naked truth in all times will not be beneficial but truth in its proper light indicating the evils and the consequences of those evils is instructive and that message is there in "Tamas" according to the views expressed by the two learned Judges of the High Court. They viewed it from an average, healthy and commonsense point of view. That is the yardstick. There cannot be any apprehension that it is likely to affect public order or it is likely to incite into (sic) the commission of any offence. On the other hand, it is more likely that it will prevent incitement to such offences in future by extremists and fundamentalists.

It should also be noted that contrary to the positivist claim of singularity and absoluteness of 'truth', it may, in actuality, be a subjective element, making it one person's relative truth over another's. Cultural value system, historical experiences, lived realities of social systems and hierarchies-all these are determinants in how an individual perceives the truth to be. George Bernard Shaw has said that our whole theory of freedom of speech and opinion for all citizens rests not on the assumption that everybody was right, but on the certainty that everybody was wrong on some point on which somebody else was right, so that there was a public danger in allowing anybody to go unheard.30 Many so-called truths have been rectified and corrected because they were disputed scientifically or economically, socially and politically. One should not Rule out possibility of divergency between truth and popular belief or even situations that are described as epistemological problem of the 'post truth' era, which is not that people do not value truth, but some may believe and accept falsehoods.31 Nevertheless, in many ways, free speech has empowered those who were marginalised and discriminated and thus it would be wholly incorrect and a mistake to assume that free speech is an elite concept and indulgence.

58. On the question of harm, the legislations refer to actual or sometimes likely or anticipated danger, of which the latter must not be remote, conjectural or farfetched. It should have proximate and direct nexus with the expression 'public order' etc. Otherwise, the commitment to freedom of expression and speech would be suppressed without the community interest being in danger. In the Indian context, the tests of 'clear and present danger' or 'imminent lawless action' unlike United States, are identical as has been enunciated in the case of Shreya Singhal. The need to establish proximity and causal connection between the speech with the consequences has been dealt with and explained in Dr. Ram Manohar Lohia in great detail. In the case of actual occurrence of public disorder, the cause and effect relationship may be established by leading evidence showing the relationship between the 'speech' and the resultant 'public disorder'. In other cases where public disorder has not occurred due to police, third party intervention, or otherwise, the 'clear and present danger' or 'imminent lawless action' tests are of relevance and importance. 'Freedom and rational' dictum should be applied in absence of actual violence, public disorder etc. Further, when reference is to likelihood, the chance is said to be likely when the possibility is reasonably or rather fairly certain, i.e. fairly certain to occur than not. Therefore, in absence of actual violence, public disorder, etc., something more than words, in the form of 'clear and present danger' or 'imminent lawless action', either by the maker or by others at the maker's instigation is required. This aspect has been examined subsequently while interpreting the penal provisions.

59. We have repeatedly referred to the word 'tolerance', and noted that the expression 'who' refers to both the speaker and the targeted audience; and will subsequently refer to the ratio of the Calcutta High Court judgment in P.K. Chakravarty v. The King MANU/WB/0273/1926: AIR 1926 Cal. 1133, that something must be known of the kind of people to whom the words are addressed. Similarly, in paragraph 49, we have observed that a tolerant society is entitled to expect tolerance as they are bound to extend to others. The expression 'tolerance' is, therefore, important, yet defining it is problematic as it has different meanings. We need not examine the philosophies or the meanings in detail, and would prefer to quote Article 1 from the Declaration of Principles of Tolerance by the Member States of the United Nations Educational, Scientific and Cultural Organisation adopted in its meeting in Paris at the 28th session of the General Conference, which reads as under:

Article 1-Meaning of tolerance

1.1 Tolerance is respect, acceptance and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human. It is fostered by knowledge, openness, communication, and freedom of thought, conscience and belief. Tolerance is harmony in difference. It is not only a moral duty, it is also a political and legal requirement. Tolerance, the virtue that makes peace possible, contributes to the replacement of the culture of war by a culture of peace.

1.2 Tolerance is not concession, condescension or indulgence. Tolerance is, above all, an active attitude prompted by recognition of the universal human rights and fundamental freedoms of others. In no circumstance can it be used to justify infringements of these fundamental values. Tolerance is to be exercised by individuals, groups and States.

1.3 Tolerance is the responsibility that upholds human rights, pluralism (including cultural pluralism), democracy and the Rule of law. It involves the rejection of dogmatism and absolutism and affirms the standards set out in international human rights instruments.

1.4 Consistent with respect for human rights, the practice of tolerance does not mean toleration of social injustice or the abandonment or weakening of one's convictions. It means that one is free to adhere to one's own convictions and accepts that others adhere to theirs. It means accepting the fact that human beings, naturally diverse in their appearance, situation, speech, behaviour and values, have the right to live in peace and to be as they are. It also means that one's views are not to be imposed on others.

There are multiple justifications for 'tolerance', which include respect for autonomy; a general commitment to pacifism; concern for other virtues such as kindness and generosity; pedagogical concerns; a desire for reciprocity; and a sense of modesty about one's ability to judge the beliefs and actions of others.32 However, tolerance cannot be equated with appeasement, permissiveness, or indifference. It is also not identical to neutrality. Toleration requires self-consciousness and self-control in a sense that it is a restraint of negative judgment that is free and deliberate. It implies no lack of commitment to one's own belief but rather it condemns oppression or persecution of others.33 Interpreted in this sense, there is no 'paradox of toleration'.34 The paradox whether those who express their views or activities that are themselves intolerant should be tolerated is answered by making evaluative judgment predicated on rational universal principles.35 The test accepts rational argument principle to keep intolerant philosophies in check. Thus, tolerance is not to accept things that are better to overcome,36 or when practices reflect intolerance within themselves, like disregard for human rights and principles of equality and fraternity. Further, there may even be unjustified religious beliefs in relation to morality, politics, origin of humanity, social hierarchies, etc. which should not be tolerated.37 The argument can also be grounded on comprehensive moral theory.38 Tolerance also means developing an 'overlapping consensus' between individuals and groups with diverse perspectives to find reason to agree about certain principles of justice.39 It is being fair to allow reasonable consensus to emerge despite differences. In essence, it implies non-discrimination of individuals or groups, but without negating the right to disagree and disapprove belief and behaviour. It signifies that all persons or groups are equal, even when all opinions and conduct are not equal. It also means use of temperate language and civility towards others. In the correct and true sense, undoubtedly 'tolerance' is a great virtue in all societies, which when practiced by communities, gets noticed, acknowledged and appreciated.

(iv) Interpretation of the statutory provisions

60. We would now interpret Section 153A of the Penal Code, which reads as under:

153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.--(1) Whoever--

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, or

(c) organises any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity, for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence committed in place of worship, etc.--(2) Whoever commits an offence specified in Sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

61. In the present case, we are not concerned with Clause (c) to Sub-section (1) to Section 153A and hence we would not examine the same. Section 153A has been interpreted by this Court in Manzar Sayeed Khan and Balwant Singh and other cases. It would be, however, important to refer to the legislative history of this Section as the same was introduced by the Indian Penal Code (Amendment) Act, 1898 on the recommendation of the Select Committee. The Section then enacted had referred to words, spoken or written,

or signs or visible representation or other means that promote or attempt to promote feeling of enmity or hatred between different classes of citizens of India which shall be punished with imprisonment that may extend to two years or fine or with both. The explanation to the said Section was as under:

Explanation.-It does not amount to an offence within the meaning of this Section to point out without malicious intention and with an honest view to their removal, matters which are producing or have a tendency to produce, feelings of enmity or hatred between different classes of Her Majesty's subjects.

The original enacted Section was amended with Clauses (a) and (b) by the Criminal Law (Amendment) Act, 1969 and Clause (c) was subsequently inserted by the Criminal Law (Amendment) Act, 1972.40

62. The Calcutta High Court in P.K. Chakravarty had delved into the question of intention and had observed that the intention as to whether or not the person Accused was promoting enmity is to be collected from the internal evidence of the words themselves, but this is not to say that other evidence cannot be looked into. Likewise, while examining the question of likelihood to promote ill-feelings the facts and circumstances of that time must be taken into account. Something must be known of the kind of people to whom the words are addressed. Words will be generally decisive, especially in those cases where the intention is expressly declared if the words used naturally, clearly or indubitably have such tendency. Then, such intention can be presumed as it is the natural result of the words used. However, the words used and their true meaning are never more than evidence of intention, and it is the real intention of the person charged that is the test. The judgment rejects the concept of constructive intention. Similarly, the Lahore High Court in Devi Sharan Sharma had observed that intention can be deduced from internal evidence of the words as well as the general policy of the paper in which the concerned Article was published, consideration of the person for whom it was written and the state of feeling between the two communities involved. In case the words used in the Article are likely to produce hatred, they must be presumed to be intended to have that effect unless the contrary is shown. The Bombay High Court in Gopal Vinayak Godse has observed that the intention to promote enmity or hatred is not a necessary ingredient of the offence. It is enough to show that the language of the writing is of the nature calculated to promote feelings of enmity or hatred, for a person must be presumed to intend the natural consequences of his act. The view expressed by the Bombay High Court in Gopal Vinayak Godse lays considerable emphasis on the words itself, but the view expressed in P.K. Chakravarthy and Devki Sharma take a much broader and a wider picture which, in our opinion, would be the right way to examine whether an offence Under Section 153A, Clauses (a) and (b) had been committed. The ordinary reasonable meaning of the matter complained of may be either the literal meaning of the published matter or what is implied in that matter or what is inferred from it. A particular imputation is capable of being conveyed means and implies it is reasonably so capable

and should not be strained, forced or subjected to utterly unreasonable interpretation. We would also hold that deliberate and malicious intent is necessary and can be gathered from the words itself-satisfying the test of top of Clapham omnibus, the who factor-person making the comment, the targeted and non targeted group, the context and occasion factor-the time and circumstances in which the words or speech was made, the state of feeling between the two communities, etc. and the proximate nexus with the protected harm to cumulatively satiate the test of 'hate speech'. 'Good faith' and 'no legitimate purpose' test would apply, as they are important in considering the intent factor.

63. In Balwant Singh this Court had accepted that mens rea is an essential ingredient of the offence Under Section 153A and only when the spoken or written words have the intention of creating public disorder for disturbance of law and order or affect public 'tranquillity', an offence can be said to be committed. This decision was relied on in Bilal Ahmed Kaloo41 while referring to and interpreting Sub-section (2) to Section 505 of the Penal Code. Similarly, in Manzar Sayeed Khan, the intention to promote feeling of enmity or hatred between different classes of people was considered necessary as Section 153A requires the intention to cause disorder or incite the people to violence. The intention has to be judged primarily by the language of the book and the circumstances in which the book was written and published.

64. In the context of Section 153A(b) we would hold that public tranquillity, given the nature of the consequence in the form of punishment of imprisonment of up to three years, must be read in a restricted sense synonymous with public order and safety and not normal law and order issues that do not endanger the public interest at large. It cannot be given the widest meaning so as to fall foul of the requirement of reasonableness which is a constitutional mandate. Clause (b) of Section 153A, therefore, has to be read accordingly to satisfy the constitutional mandate. We would interpret the words 'public tranquillity' in Clause (b) would mean ordre publique a French term that means absence of insurrection, riot, turbulence or crimes of violence and would also include all acts which will endanger the security of the State, but not acts which disturb only serenity, and are covered by the third and widest circle of law and order. Public order also includes acts of local significance embracing a variety of conduct destroying or menacing public order. Public Order in Clause (2) to Article 19 nor the statutory provisions make any distinction between the majority and minority groups with reference to the population of the particular area though as we have noted above this may be of some relevance. When we accept the principle of local significance, as a sequitur we must also accept that majority and minority groups could have, in a given case, reference to a local area.

65. Section 295A and Clause (2) of Section 505 of the Penal Code reads as under:

295-A. Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.--Whoever, with deliberate and malicious

intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

xx xx xx

505. Statements conducing to public mischief.--

xx xx xx

(2) Statements creating or promoting enmity, hatred or ill-will between classes.--Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

The two provisions have been interpreted earlier in a number of cases including Ramji Lal Modi, Kedar Nath, Bilal Ahmed Kaloo. It could be correct to say that Section 295A of the Penal Code encapsulates of all three elements, namely, it refers to the content-based element when it refers to words either spoken or written, or by signs or visible representation or otherwise. However, it does not on the basis of content alone makes a person guilty of the offence. The first portion refers to deliberate and malicious intent on the part of the maker to outrage religious feeling of any class of citizens of India. The last portion of Section 295A refers to the harm-based element, that is, insult or attempt to insult religions or religious belief of that class. Similarly, Sub-section (2) to Section 505 refers to a person making publishing or circulating any statement or report containing rumour or alarming news. Thereafter, it refers to the intent of the person which should be to create or promote and then refers to the harm-based element, that is, likely to create or promote on the ground of religion, race, place of birth, residence, language, cast, etc., feeling of enmity, hatred or ill-will between different religions, racial language, religious groups or castes or communities, etc.

66. In Bilal Ahmad Kaloo, this Court had drawn a distinction between Sub-section (2) to Section 505 and Clause (a) to Section 153A of the Penal Code observing that publication is not necessary in the latter while it is sine qua non under Clause (2) of Section 505. Clause (2) of Section 505 of the Penal Code cannot be interpreted disjunctively and the words 'whosoever makes, publishes or circulates' are supplemented to each other. The intention of the legislature in providing two different Sections of the same subject vide single amending act would show that they cover two different fields of same colour.

67. Clauses (a) and (b) to Sub-section (1) to Section 153A of the Penal Code use the words 'promotes' and 'likely' respectively. Similarly, Section 295-A uses the word 'attempts' and Sub-section (2) to Section 505 uses the words 'create or promote'. Word 'likely' as explained above, in our opinion, convey the meaning, that the chance of the event occurring should be real and not fanciful or remote (Tillmanns Butcheries Pty. Ltd. v. Australasian Meat Industry Employees' Union (1979) 27 ALR 380). The standard of 'not improbable' is too weak and cannot be applied as it would infringe upon and fall foul of reasonable restriction and the test of proportionality. This is the mandate flowing from the catena of judgments of the Constitutional Benches which we have referred to earlier and also the decision in Shreya Singhal drawing distinction between advocacy, discussion and incitement and that only the latter, i.e. the incitement, is punishable whereas the former two would fall within the domain of freedom to express and convey one's thoughts and ideas. 'Incitement' is a restricted term under the American Speech Law which has been adopted by us and as per Brandenburg applies when the incitement is imminent or almost inevitable. There has been some criticism that the said test is too strong, nevertheless, it conveys that the standard has to be strict. Instigation must necessarily and specifically be suggestive of the consequences. Sufficient certainty to incite the consequences must be capable of being spelt out to be incitement. Further, it is for the prosecution to show and establish that the standard has been breached by leading evidence, which can be both oral and documentary. 'Promote' does not imply mere describing and narrating a fact, or giving opinion criticising the point of view or actions of another person-it requires that the speaker should actively incite the audience to cause public disorder. This active incitement can be gauged by the content of the speech, the context and surrounding circumstances, and the intent of the speaker. However, in case the speaker does not actively incite the descent into public disorder, and is merely pointing out why a certain person or group is behaving in a particular manner, what are their demands and their point of view, or when the speaker interviews such person or group, it would be a passive delivery of facts and opinions which may not amount to promotion.

68. The word 'attempt', though used in Sections 153-A and 295-A of the Penal Code, has not been defined. However, there are judicial interpretations that an 'attempt to constitute a crime' is an act done or forming part of a series of acts which would constitute its actual commission but for an interruption. An attempt is short of actual causation of crime and more than mere preparation. In Aman Kumar v. State of Haryana MANU/SC/0104/2004: (2004) 4 SCC 379, it was held that an attempt is to be punishable because every attempt, although it falls short of success, must create alarm, which by itself is an injury, and the moral guilt of the offender is same as if he had succeeded. Moral guilt must be united to injury in order to justify punishment. Further, in State v. Mohd. Yakub MANU/SC/0239/1980: (1980) 3 SCC 57, this Court observed:

13....What constitutes an attempt is mixed question of law and fact depending largely upon the circumstances of a particular case. "Attempt" defies a precise and exact definition. Broadly speaking all crimes which consist of the commission of affirmative acts are preceded by some covert or overt conduct which may be divided into three stages. The first stage exists when the culprit first entertains the idea or intention to commit an offence. In the second stage he makes preparation to commit it. The third stage is reached when the culprit takes deliberate overt act or step to commit the offence. Such overt act or step in order to be 'criminal' need not be the penultimate act towards the commission of the offence. It is sufficient if such acts were deliberately done, and manifest a clear intention to commit the offence aimed, being reasonably proximate to the consummation of the offence...

On the scope of proximity, it was elucidated that the measure of proximity is not in relation to time and place but in relation to intention.

In the context of 'hate speech', including the offences related to promoting disharmony or feelings of enmity, hatred or ill-will, and insulting the religion or the religious beliefs, it would certainly require the actual utterance of words or something more than thought which would constitute the content. Without actual utterance etc. it would be mere thought, and thoughts without overt act is not punishable. In the case of 'publication', again a mere thought would not be actionable, albeit whether or not there is an attempt to 'publish' would depend on facts. The impugned act should be more than mere preparation and reasonably proximate to the consummation of the offence, which has been interrupted. The question of intent would be relevant. On the question of the harm's element, same test and principle, as applicable in the case of 'likely' would apply, except for the fact that for intervening reasons or grounds public disorder or violence may not have taken place.

69. Having interpreted the relevant provisions, we are conscious of the fact that we have given primacy to the precept of 'interest of public order' and by relying upon 'imminent lawless action' principle, not given due weightage to the long-term impact of 'hate' speech as a propaganda on both the targeted and non-targeted groups. This is not to undermine the concept of dignity, which is the fundamental foundation on the basis of which the citizens must interact between themselves and with the State. This is the considered view of the past pronouncements including the Constitution Bench judgments with which we are bound. Further, a 'hate speech' meeting the criteria of 'clear and present danger' or 'imminent lawless action' would necessarily have long-term negative effect. Lastly, we are dealing with penal or criminal action and, therefore, have to balance the right to express and speak with retaliatory criminal proceedings. We have to also prevent abuse and check misuse. This dictum does not, in any way, undermine the position that we must condemn and check any attempt at dissemination of discrimination on the basis of race, religion, caste, creed or regional basis. We must act with the objective for promoting social harmony and tolerance by proscribing hateful and inappropriate behaviour. This

can be achieved by self-restraint, institutional check and correction, as well as self-Regulation or through the mechanism of statutory Regulations, if applicable. It is not penal threat alone which can help us achieve and ensure equality between groups. Dignity of citizens of all castes, creed, religion and region is best protected by the fellow citizens belonging to non-targeted groups and even targeted groups. As stated earlier, in a polity committed to pluralism, hate speech cannot conceivably contribute in any legitimate way to democracy and, in fact, repudiates the right to equality.

70. Majority of the cases referred to by the Petitioner were cases wherein after charge-sheet and trial, this Court had come to the conclusion that no offence had been proved and established Under Section 153A, 295A or Sub-section (2) to Section 505 of the Penal Code. We do not deem it necessary to reproduce the facts of those decisions and apply their ratio in the present case. However, we would like to refer to judgments where this Court has at the initial stage itself quashed the proceedings arising out of the FIR, namely, Manzar Sayeed Khan, Mahendra Singh Dhoni, Ramesh as well as Balwant Singh to clarify the ratio.

71. In Balwant Singh, this Court, allowing the appeal, had set aside convictions Under Sections 124A and 153A of the Penal Code. While we are not concerned with Section 124A, this Court significantly observed that the Appellants were never leading a procession or raising slogans with the intent to incite people, indicating that the Court did take into account the 'who' factor as the Appellants were unknown and inconsequential. This is of consequence as far as Section 153A of the Penal Code is concerned. Both the content and context, given the occasion, were highly incriminating and possibly warranted conviction, but as per paragraphs 10 and 11, the court was not convinced that the prosecution witnesses had spoken the whole truth and what slogan(s) was/were actually shouted. Lastly, the harm effect or impact was also taken into account. What is acceptable speech in one case, it could be well argued, should be acceptable in another, and therefore the ratio in Balwant Singh must be applied with caution as the decision had proceeded on failure of the prosecution. The 'who' factor as a variable had weighed with the court. Besides there was no impact or harm.

72. Manzar Sayeed Khan was a case wherein the Appellants had published a book titled 'Shivaji: Hindu King in Islamic India' authored by Prof. James W. Laine, a Professor of Religious Studies in Macalester College, United States of America, which had led to registration of FIR against the Indian Publisher and a Sanskrit scholar whose name had appeared in the acknowledgement of the book for having helped the author by providing him some information during the latter's visit to Pune. The primary reason according to us why the appeal was allowed and the proceedings arising from the FIR were quashed at the initial stage are reflected in paragraph 19 of the judgment which notes that the author was a well-known scholar who had done extensive research before publishing the book. Further, he had relied upon material and records at Bhandarkar Oriental Research Institute (BORI), Pune. It was highly improbable to accept that any serious and intense

scholar like the author would have any desire or motive to involve himself in promoting or attempt to promote any disharmony between communities, castes or religions within the State. Good faith and (no) legitimate purpose principle was effectively applied. These principles were also applied by this Court in Ramesh holding that the T.V. Serial 'Tamas' did not depict communal tension or violence to fall foul of Section 153A of the Penal Code and/or was the serial prejudicial to national integration to fall Under Section 153B of the Penal Code. Reliance was also placed on the test of 'Clapham omnibus' referred to above. Mahendra Singh Dhoni was a case in which prosecution Under Section 295A was initiated by filing a private complaint on the ground that the photograph of the well-known cricketer, as published in the magazine, was with a caption 'God of Big Things'. It was obvious that prosecution on the basis of content was absurd and too farfetched by any standards even if we ignore the intent or the hurt element.

(v) Validity of First Information Reports (FIRs)

73. Acronym FIR, or the First Information Report, is neither defined in the Code of Criminal Procedure nor is used therein, albeit it refers to the information relating to the commission of a cognisable offence. This information, if given orally to an officer in-charge of the police station, is mandated to be reduced in writing. Information to be recorded in writing need not be necessarily by an eye-witness, and hence, cannot be rejected merely because it is hearsay. Section 154 does not mandate nor is this requirement manifest from other provisions of the Code of Criminal Procedure. Further, FIR is not meant to be a detailed document containing chronicle of all intricate and minute details. In Dharma Rama Bhagare v. State of Maharashtra MANU/SC/0110/1972: (1973) 1 SCC 537, it was held that an FIR is not even considered to be a substantive piece of evidence and can be only used to corroborate or contradict the informant's evidence in the court.

74. In Lalita Kumari, a Constitution Bench, of five judges of this Court, has held that Section 154 of the Code of Criminal Procedure, in unequivocal terms, mandates registration of FIR on receipt of all cognisable offences, subject to exceptions in which case a preliminary inquiry is required. The Petitioner has not contended that the present case falls under any of such exceptions. Conspicuously, there is a distinction between arrest of an Accused person Under Section 41 of the Code of Criminal Procedure and registration of the FIR, which helps maintain delicate balance between interest of the society manifest in Section 154 of the Code of Criminal Procedure, which directs registration of FIR in case of cognisable offences, and protection of individual liberty of those persons who have been named in the complaint. The Constitution Bench referring to the decision of this Court in Tapan Kumar Singh reiterated that the FIR is not an encyclopaedia disclosing all facts and details relating to the offence. The informant who lodges the report of the offence may not even know the name of the victim or the assailant or how the offence took place. He need not necessarily be an eye-witness. What is essential is that the information must disclose the commission of a cognisable offence and

the information must provide basis for the police officer to suspect commission of the offence. Thus, at this stage, it is enough if the police officer on the information given suspects-though he may not be convinced or satisfied-that a cognisable offence has been committed. Truthfulness of the information would be a matter of investigation and only there upon the police will be able to report on the truthfulness or otherwise. Importantly, in Tapan Kumar Singh, it was held that even if information does not furnish all details, it is for the investigating officer to find out those details during the course of investigation and collect necessary evidence. Thus, the information disclosing commission of a cognisable offence only sets in motion the investigating machinery with a view to collect necessary evidence, and thereafter, taking action in accordance with law. The true test for a valid FIR, as laid down in Lalita Kumari, is only whether the information furnished provides reason to suspect the commission of an offence which the police officer concerned is empowered Under Section 156(1) of the Code of Criminal Procedure to investigate. The questions as to whether the report is true; whether it discloses full details regarding the manner of occurrence; whether the Accused is named; or whether there is sufficient evidence to support the allegation are all matters which are alien to consideration of the question whether the report discloses commission of a cognisable offence. As per Clauses (1)(b) and (2) of Section 157 of the Code of Criminal Procedure, a police officer may foreclose an FIR before investigation if it appears to him that there is no sufficient ground to investigate. At the initial stage of the registration, the law mandates that the officer can start investigation when he has reason to suspect commission of offence. Requirements of Section 157 are higher than the requirements of Section 154 of the Code of Criminal Procedure. Further, a police officer in a given case after investigation can file a final report Under Section 173 of the Code of Criminal Procedure seeking closure of the matter.

(vi) Conclusion and relief

75. At this stage and before recording our final conclusion, we would like to refer to decision of this Court in Pirthi Chand wherein it has been held:

12. It is thus settled law that the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinise the FIR/charge-sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is conducted (sic concluded) and the charge-sheet is laid, the prosecution produces the statements of the witnesses recorded Under Section 161 of the Code in support of the charge-sheet. At that stage it is not the function of the court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The court has to prima facie consider from the

averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out, no further act could be done except to quash the charge-sheet. But only in exceptional cases, i.e., in rarest of rare cases of mala fide initiation of the proceedings to wreak private vengeance [issue of process under Code of Criminal Procedure is availed of. A reading of a complaint or FIR itself does not disclose at all any cognizable offence--the court may embark upon the consideration thereof and exercise the power.

13. When the remedy Under Section 482 is available, the High Court would be loath and circumspect to exercise its extraordinary power Under Article 226 since efficacious remedy Under Section 482 of the Code is available. When the court exercises its inherent power Under Section 482, the prime consideration should only be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the court. When investigating officer spends considerable time to collect the evidence and places the charge-sheet before the court, further action should not be short-circuited by resorting to exercise inherent power to quash the charge-sheet. The social stability and order requires to be regulated by proceeding against the offender as it is an offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon exercising inherent power. The Accused involved in an economic offence destabilises the economy and causes grave incursion on the economic planning of the State. When the legislature entrusts the power to the police officer to prevent organised commission of the offence or offences involving moral turpitude or crimes of grave nature and are entrusted with power to investigate into the crime in intractable terrains and secretive manner in concert, greater circumspection and care and caution should be borne in mind by the High Court when it exercises its inherent power. Otherwise, the social order and security would be put in jeopardy and to grave risk. The Accused will have field day in destabilising the economy of the State regulated under the relevant provisions.

The aforesaid ratio was followed by this Court in O.P. Sharma.

76. In Arnab Ranjan Goswami, this Court in almost identical circumstances had refused to examine the question whether the proceedings arising out of the FIR filed against a journalist should be quashed in exercise of jurisdiction Under Article 32 of the Constitution on the ground that the Petitioner must be relegated to pursue equally efficacious remedies under the Code of Criminal Procedure, observing:

49. We hold that it would be inappropriate for the court to exercise its jurisdiction Under Article 32 of the Constitution for the purpose of quashing FIR 164 of 2020 under investigation at the NM Joshi Marg Police Station in Mumbai. In adopting this view, we are guided by the fact that the checks and balances to ensure the protection of the Petitioner's liberty are governed by the Code of Criminal Procedure. Despite the liberty

being granted to the Petitioner on 24 April 2020, it is an admitted position that the Petitioner did not pursue available remedies in the law, but sought instead to invoke the jurisdiction of this Court. Whether the allegations contained in the FIR do or do not make out any offence as alleged will not be decided in pursuance of the jurisdiction of this Court Under Article 32, to quash the FIR. The Petitioner must be relegated to the pursuit of the remedies available under the Code of Criminal Procedure, which we hereby do. The Petitioner has an equally efficacious remedy available before the High Court. We should not be construed as holding that a petition Under Article 32 is not maintainable. But when the High Court has the power Under Section 482, there is no reason to by-pass the procedure under the Code of Criminal Procedure, we see no exceptional grounds or reasons to entertain this petition Under Article 32. There is a clear distinction between the maintainability of a petition and whether it should be entertained. In a situation like this, and for the reasons stated hereinabove, this Court would not like to entertain the petition Under Article 32 for the relief of quashing the FIR being investigated at the NM Joshi Police Station in Mumbai which can be considered by the High Court. Therefore, we are of the opinion that the Petitioner must be relegated to avail of the remedies which are available under the Code of Criminal Procedure before the competent court including the High Court.

77. We respectfully agree with the aforesaid ratio. Ordinarily we would have relegated the Petitioner and asked him to approach the concerned High Court for appropriate relief, albeit in the present case detailed arguments have been addressed by both sides on maintainability and merits of the FIRs in question and, therefore, been dealt with by us and rejected at this stage. We do not, in view of this peculiar circumstance, deem it appropriate to permit the Petitioner to open another round of litigation; therefore, we have proceeded to answer the issues under consideration.

78. We have already reproduced relevant portions of the transcript of the debate anchored by the Petitioner. It is apparent that the Petitioner was an equal co-participant, rather than a mere host. The transcript, including the offending portion, would form a part of the 'content', but any evaluation would require examination and consideration of the variable 'context' as well as the 'intent' and the 'harm/impact'. These have to be evaluated before the court can form an opinion on whether an offence is made out. The evaluative judgment on these aspects would be based upon facts, which have to be inquired into and ascertained by police investigation. 'Variable content', 'intent' and the 'harm/impact' factors, as asserted on behalf of the informants and the State, are factually disputed by the Petitioner. In fact, the Petitioner relies upon his apology, which as per the Respondents/informants is an indication or implied acceptance of his acts of commission.

79. Having given our careful and in-depth consideration, we do not think it would be appropriate at this stage to quash the FIRs and thus stall the investigation into all the relevant aspects. However, our observations on the factual matrix of the present case in

this decision should not in any manner influence the investigation by the police who shall independently apply their mind and ascertain the true and correct facts, on all material and relevant aspects. Similarly, the competent authority would independently apply its mind in case the police authorities seek sanction, and to decide, whether or not to grant the same. Same would be the position in case charge-sheet is filed. The court would apply its mind whether or not to take cognisance and issue summons. By an interim order, the Petitioner has enjoyed protection against coercive steps arising out of and relating to the program telecast on 15.06.2020. Subject to the Petitioner cooperating in the investigation, we direct that no coercive steps for arrest of the Petitioner need be taken by the police during investigation. In case and if charge-sheet is filed, the court would examine the question of grant of bail without being influenced by these directions as well as any findings of fact recorded in this judgment.

80. We are conscious and aware of the decisions of this Court in Bhajan Lal, P.P. Sharma and the earlier decision in R.P. Kapur which held that the High Court, in exercise of inherent jurisdiction, can quash proceedings in a proper case either to prevent abuse of process or otherwise to secure ends of justice. These could be cases where, manifestly, there is a legal bar against institution or continuance of the prosecution or the proceedings, such as due to requirement of prior sanction; or where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the Accused; or where the allegations in the FIR do not disclose a cognizable offence; or where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the Accused. Another qualifying category in cases where charge-sheet is filed would be those where allegations against the Accused do constitute the offence alleged, but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. Application of these principles depends on factual matrix of each case. Strict and restricted as the requirements are, they are at this stage not satisfied in the present case.

D. The second prayer-multiplicity of FIRs and whether they should be transferred and clubbed with the first FIR registered at P.S. Dargha, Ajmer, Rajasthan

81. We would now examine the second prayer of the Petitioner viz. multiplicity of FIRs being registered in the States of Rajasthan, Maharashtra, Telangana, and Madhya Pradesh (now transferred to Uttar Pradesh) relating to the same broadcast. Fortunately, both the sides agree that the issue is covered by the decision of this Court in T.T. Antony which has been followed in Arnab Ranjan Goswami's case. It would be appropriate in this regard to therefore reproduce the observations in Arnab Ranjan Goswami's case which are to the following effect:

28....The law concerning multiple criminal proceedings on the same cause of action has been analyzed in a judgment of this Court in T.T. Antony v. State of Kerala ("T.T. Antony"). Speaking for a two judge Bench, Justice Syed Shah Mohammed Quadri interpreted the provisions of Section 154 and cognate provisions of the Code of Criminal Procedure including Section 173 and observed:

20...under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 Code of Criminal Procedure, only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 Code of Criminal Procedure. Thus, there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 Code of Criminal Procedure.

The Court held that "there can be no second FIR" where the information concerns the same cognisable offence alleged in the first FIR or the same occurrence or incident which gives rise to one or more cognisable offences. This is due to the fact that the investigation covers within its ambit not just the alleged cognisable offence, but also any other connected offences that may be found to have been committed. This Court held that once an FIR postulated by the provisions of Section 154 has been recorded, any information received after the commencement of investigation cannot form the basis of a second FIR as doing so would fail to comport with the scheme of the Code of Criminal Procedure. The court observed:

18....All other information made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the first information report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling Under Section 162 Code of Criminal Procedure. No such information/statement can properly be treated as an FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of Code of Criminal Procedure.

This Court adverted to the need to strike a just balance between the fundamental rights of citizens Under Articles 19 and 21 and the expansive power of the police to investigate a cognisable offence. Adverting to precedent, this Court held:

27....the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report Under Section 173(2) Code of Criminal Procedure. It would clearly be beyond the purview of Sections 154 and 156 Code of Criminal Procedure, nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report Under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power Under Section 482 Code of Criminal Procedure or Under Articles 226/227 of the Constitution.

(Emphasis supplied)

The Court held that barring situations in which a counter-case is filed, a fresh investigation or a second FIR on the basis of the same or connected cognisable offence would constitute an "abuse of the statutory power of investigation" and may be a fit case for the exercise of power either Under Section 482 of the Code of Criminal Procedure or Articles 226/227 of the Constitution.

29. The decision in T.T. Antony came up for consideration before a three judge Bench in Upkar Singh v. Ved Prakash ("Upkar Singh"). Justice N Santosh Hegde, speaking for this Court adverted to the earlier decisions of this Court in Ram Lal Narang v. State (Delhi Administration) ("Ram Lal Narang"), Kari Choudhary v. Mst. Sita Devi ("Kari Choudhary") and State of Bihar v. J.A.C. Saldanha ("Saldanha"). The Court noted that in Kari Choudhary, this Court held that:

11....Of course the legal position is that there cannot be two FIRs against the same Accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried on under both of them by the same investigating agency.

30. In Saldanha, this Court had held that the power conferred upon the Magistrate Under Section 156(3) does not affect the power of the investigating officer to further investigate the case even after submission of the report Under Section 173(8). In Upkar Singh, this Court noted that the decision in Ram Lal Narang is "in the same line" as the judgments in Kari Choudhary and Saldanha and held that the decision in T.T. Antony does not preclude the filing of a second complaint in regard to the same incident as a counter complaint nor is this course of action prohibited by the Code of Criminal Procedure. In that context, this Court held:

23. Be that as it may, if the law laid down by this Court in T.T. Antony case is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given hereinbelow i.e. if in regard to a crime committed by the real Accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimate right to bring the real Accused to book. This cannot be the purport of the Code.

These principles were reiterated by a two judge Bench of this Court in Babubhai v. State of Gujarat. Dr. Justice B.S. Chauhan observed:

21. In such a case the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is in the affirmative, the second FIR is liable to be quashed. However, in case the contrary is proved, where the version in the second FIR is different and they are in respect of the two different incidents/crimes, the second FIR is permissible. In case in respect of the same incident the Accused in the first FIR comes forward with a different version or counterclaim, investigation on both the FIRs has to be conducted.

This Court held that the relevant enquiry is whether two or more FIRs relate to the same incident or relate to incidents which form part of the same transactions. If the Court were to conclude in the affirmative, the subsequent FIRs are liable to be quashed. However, where the subsequent FIR relates to different incidents or crimes or is in the form of a counter-claim, investigation may proceed.

[See also in this context Chirra Shivraj v. State of Andhra Pradesh and Chirag M Pathak v. Dollyben Kantilal Patel].

The aforesaid quotation refers to the judgment of this Court in Babubhai v. State of Gujarat and Ors. MANU/SC/0643/2010: (2010) 12 SCC 254 wherein the test to determine sameness of the FIRs has been elucidated as when the subject matter of the FIRs is the same incident, same occurrence or are in regard to incidents which are two or more parts of the same transaction. If the answer to the question is affirmative, then the second FIR need not be proceeded with.

82. In Arnab Ranjan Goswami's case, the proceedings in the subsequent FIRs were quashed as the counsel for the complainants in the said case had joined the Petitioner in making the said prayer. However, in the present case, we would like to follow the ratio

in T.T. Antony which is to the effect that the subsequent FIRs would be treated as statements Under Section 162 of the Code of Criminal Procedure. This is clear from the following dictum in T.T. Antony:

18. An information given Under Sub-section (1) of Section 154 Code of Criminal Procedure is commonly known as first information report (FIR) though this term is not used in the Code. It is a very important document. And as its nickname suggests it is the earliest and the first information of a cognizable offence recorded by an officer in charge of a police station. It sets the criminal law in motion and marks the commencement of the investigation which ends up with the formation of opinion Under Section 169 or 170 Code of Criminal Procedure, as the case may be, and forwarding of a police report Under Section 173 Code of Criminal Procedure. It is quite possible and it happens not infrequently that more informations than one are given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 Code of Criminal Procedure. Apart from a vague information by a phone call or a cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the first information report--FIR postulated by Section 154 Code of Criminal Procedure. All other informations made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the first information report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling Under Section 162 Code of Criminal Procedure. No such information/statement can properly be treated as an FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of Code of Criminal Procedure. Take a case where an FIR mentions cognizable offence Under Section 307 or 326 Indian Penal Code and the investigating agency learns during the investigation or receives fresh information that the victim died, no fresh FIR Under Section 302 Indian Penal Code need be registered which will be irregular; in such a case alteration of the provision of law in the first FIR is the proper course to adopt. Let us consider a different situation in which H having killed W, his wife, informs the police that she is killed by an unknown person or knowing that W is killed by his mother or sister, H owns up the responsibility and during investigation the truth is detected; it does not require filing of fresh FIR against H--the real offender--who can be arraigned in the report Under Section 173(2) or 173(8) Code of Criminal Procedure, as the case may be. It is of course permissible for the investigating officer to send up a report to the Magistrate concerned even earlier that investigation is being directed against the person suspected to be the Accused.

83. This would be fair and just to the other complainants at whose behest the other FIRs were caused to be registered, for they would be in a position to file a protest petition in case a closure/final report is filed by the police. Upon filing of such protest petition, the

magistrate would be obliged to consider their contention(s), and may even reject the closure/final report and take cognizance of the offence and issue summons to the Accused. Otherwise, such complainants would face difficulty in contesting the closure report before the Magistrate, despite and even if there is enough material to make out a case of commission of an offence.

84. Lastly, we would also like to clarify that Section 179 of the Code of Criminal Procedure permits prosecution of cases in the court within whose local jurisdiction the offence has been committed or consequences have ensued. Section 186 of the Code of Criminal Procedure relates to cases where two separate charge-sheets have been filed on the basis of separate FIRs and postulates that the prosecution would proceed where the first charge-sheet has been filed on the basis of the FIR that is first in point of time. Principle underlying Section 186 can be applied at the pre-charge-sheet stage, that is, post registration of FIR but before charge-sheet is submitted to the Magistrate. In such cases ordinarily the first FIR, that is, the FIR registered first in point of time, should be treated as the main FIR and others as statements Under Section 162 of the Code of Criminal Procedure. However, in exceptional cases and for good reasons, it will be open to the High Court or this Court, as the case may be, to treat the subsequently registered FIR as the principal FIR. However, this should not cause any prejudice, inconvenience or harassment to either the victims, witnesses or the person who is Accused. We have clarified the aforesaid position to avoid any doubt or debate on the said aspect.

85. In view of our findings, we accept the prayer made in the last amended writ petition and transfer all FIRs listed at serial No. 2 to 7 in paragraph 4 (supra) to police station Dargah, Ajmer, Rajasthan, where the first FIR was registered. We do not find any good ground or special reason to transfer the FIRs to Noida, Uttar Pradesh. Statement of the complaint/informant forming the basis of the transferred FIRs would be considered as statement Under Section 162 of the Code of Criminal Procedure and be proceeded with. Compliance of the above directions to transfer papers would be made by the concerned police station within four weeks when they receive a copy of this order. The above directions would equally apply to any other FIR/complaint predicated on the same telecast/episode.

E. The third prayer

86. Regarding the third prayer made by the Petitioner, following the ratio laid down in Arnab Ranjan Goswami we direct the State of Uttar Pradesh to examine the threat perception for the Petitioner and his family members and take appropriate steps as may necessary. Similar assessment be made by the State of Rajasthan and based on the inputs given by its agencies steps as may be necessary be taken on usual terms.

Operative directions

87. In view of the aforesaid discussion, we decline and reject the prayer of the Petitioner for quashing of the FIRs but have granted interim protection to the Petitioner against arrest subject to his joining and cooperating in investigation till completion of the investigation in terms of our directions in paragraphs 79 and 85 above. We have however accepted the prayer of the Petitioner for transfer of all pending FIRs in relation to and arising out of the telecast/episode dated 15th June 2020 to P.S. Dargah, Ajmer, Rajasthan, where the first FIR was registered. On the third prayer, we have asked the concerned states to examine the threat perception of the Petitioner and family members and take appropriate steps as may be necessary.

88. The writ petition and all pending applications are, accordingly, disposed of in the aforesaid terms.

1 The Places of Worship (Special Provisions) Act, 1991.
2 I.A. by Haji Syed Chisti, Khadim of Dargah; Respondent No. 9,
3 I.A. by Haji Syed Chisti, Khadim of Dargah; Respondent No. 9, Respondent No. 6
4 I.A. by Haji Syed Chisti, Khadim of Dargah
5 I.A. by Sajid Noormohammad Sheikh r/o Nashik, Maharashtra
6 Respondent No. 9, Respondent No. 10
7 Respondent No. 6
8 Respondent No. 9
9 Respondent No. 9 and Respondent No. 6
10 sworn by DSP/ASST. Commissioner, Noida
11 Respondent No. 3
12 Respondent No. 4
13 Hate Speech in Constitutional Jurisprudence: A Comparative Analysis by Michel Rosenfeld, 24 Cardozo L. Rev. 1523 2002-2003
14 Frederick Siebert writing on John Milton's Areopagitica, 1644, in The Libertarian Theory of the Press, in FOUR THEORIES OF THE PRESS 39, 44-45
15 "Justification from democracy, the justification from social contract, the justification from the pursuit of the trust, and the justification from individual autonomy."-Cardozo L. Rev.1523 2002-2003 (Hein Online).
16 Mr. Justice Holmes in Schenek v. United States, 249 U.S. 47 (52), has described the test as:
"The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."
17 See Hate Speech in Constitutional Jurisprudence: A Comparative Analysis by Michel Rosenfeld, 24 Cardozo L. Rev. 1523 2002-2003.
18 Declaration for Laïcité-Observatoire de la laicite (Republique Francaise)

19 Andrew F. Sellers, Defining Hate Speech, published by Berkman Klein Center for Internet & Society at Harvard University
20 Indira Sawhney v. Union of India, MANU/SC/0104/1993: (1992) Supp. 3 SCC 217 and Amita v. Union of India, MANU/SC/0481/2005: (2005) 13 SCC 721
21 See-Pat Eatock v. Andrew Bolt
22 O'Neill at (160)-(161) and Hill v. Church of Scientology of Toronto, MANU/SCCN/0068/1995: (1995) 2 S.C.R. 1130 (117) and (120)
23 'Online harassment, defamation, and hateful speech: A primer of the legal landscape'
24 'Words that Wound: A tort Action for Racial Insults, Epithets, and Name-Calling', 17 Harv. C.R.-C.L.L.rev. 133 (1982)
25 'Public Response to Racist Speech: Considering the Victim's Story', 87 Mich.L. Rev. 2320 (1989)
26 'Free Speech and the Development of Liberal Virtues: An Examination of the Controversies Involving Flag Burning and Hate Speech', 52 U. Miami K. Rev. 733 (1998)
27 Myra Mrx Ferree, William A. Gamson, Jurgen Gerhards and Dieter Rucht, 'Four Models of the Public Sphere in Modern Democracies,' published in THEORY AND SOCIETY, Vol. 31, No. 3 (June, 2002), pp. 289-324
28 In Bolam v. Friern Hospital Management Committee, [1957] 2 All E.R. 118, it was observed:
"A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a reasonable body of medical men skilled in that particular Article..Putting it the other way round, a doctor is not negligent, if he is acting in accordance with such a practice, merely because there is a body of opinion that takes a contrary view."
29 Racial and Religious Tolerance, 2001 (Victoria, Australia)
30 George Bernard Shaw, Socialism off Millionaires, 16(1901)
31 Joseph Blocher, 'Free Speech and Justified True Belief', Harvard Law Review, Vol. 133, No. 2, December 2019.
32 Internet Encyclopaedia of Philosophy, Toleration by Andrew Fiala, ISSN 2161-0002
33 John F. Kennedy
34 Karl Popper in The Open Society and Its Enemies, who has observed:
"...If we extend unlimited tolerance even to those who are intolerant, if we are not prepared to defend a tolerant society against the onslaught of the intolerant, then the tolerant will be destroyed, and tolerance with them..."
35 According to Martin Packer, at least since Immanuel Kant and David Hume, morality has been seeing as needing to take the form of 'rational, universal principles' that would guide the autonomous individual. These principles would necessarily transcend the many dictates of specific societies and cultures; the dictates are contingent while morality and the good must be universally compelling.
36 Marjoka Van Doorn, the Nature of Tolerance and the Social Circumstances in Which it Emerges, Current Sociology Review, 2014, Vol. 62(6) 905-927
37 Sam Hariss, The End of Faith
38 Michael Sandel Democracy's Discontent (1998)

39 John Rawls, Theory of Justice (1971). Rawls idea of justice as fairness is based upon principle that justice is political and not necessarily on moral principles.
40 The Wounded Vanity of Governments in 'Republic of Rhetoric: Free Speech and the Constitution of India' by Abhinav Chandrachud, Penguin Books India (2017)
41 Bilal Ahmed Kaloo was overruled on a different point in Prakash Kumar Alias Prakash Bhutto v. State of Gujarat, MANU/SC/0030/2005: (2005) 2 SCC 409

MANU/SC/0649/2008

Back to Section 96 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 732 of 2002

Decided On: 28.01.2008

Kashi Ram and Ors. Vs. State of Rajasthan

Hon'ble Judges/Coram:

S.B. Sinha and Dalveer Bhandari, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Sushil Balwada, Adv

For Respondents/Defendant: Naveen Kumar Singh, Shashwat Gupta and Aruneshwar Gupta, Advs.

JUDGMENT

Dalveer Bhandari, J.

1. This appeal is directed against the judgment dated 04.02.2002 in Criminal Appeal No. 826 of 2001 passed by the High Court of judicature for Rajasthan at Jodhpur.

2. Brief facts, which are necessary to dispose of this appeal are recapitulated as under:

2.1 The land measuring 21 bighas is located in village Bhinan, Tehsil Taranagar and the ownership of the same was recorded in the name of Smt. Chhoti Devi w/o Budh Singh Rajput and after her demise, the land was transferred in the name of Balu Singh.

2.2 The accused, Nanuram submitted an application before the Tehsildar, Taranagar and disclosed that he had bought the said land on the basis of agreement to sell from Smt. Chhoti Devi at a consideration of Rs. 1200/- and he is in possession of the land and is cultivating the same. It was alleged that the transfer in the name of Balu Singh had been wrongly recorded in the revenue records. The Tehsildar, after some enquiry cancelled the entry of transfer recorded in the name of Balu Singh.

2.3 On 13th June, 1999 at about 10 a.m., the complainant party consisting of Amar Singh PW4, his father Balu Singh (since deceased), Bahadur Singh PW8, Nanuram Nai PW1 and Prithvi Singh PW17 went to cultivate Khasra No. 512 situated in village Bhinan Tehsil, Taranagar District Churu. At that time, the accused persons were not there but on learning about the presence of the complainant party in Khasra No. 512 around 12 noon on the same day, the accused party consisting of Nanuram accused-appellant along with the acquitted 6 persons came from the side of village, armed with gandasa, lathis and axes and attacked the members of the complainant party and caused serious injuries to Amar Singh PW4, Nanuram Nai PW1 and Balu Singh. Balu Singh succumbed to those injuries in the hospital on the same day at 6 p.m.

2.4 Amar Singh PW4 lodged the first information report. The accused persons were apprehended and on their voluntary disclosure statements, lathis, gandasa and axes were recovered and after usual examination, they were charged under Section 302 read with Sections 149, 148 and 323 IPC. The accused-appellants in their statements under Section 313 of the Code of Criminal Procedure denied all the incriminating evidence and pleaded that they were in possession of the agricultural land and the complainant party wanted to dispossess them forcibly. In the process of protecting the possession of their land, a scuffle between the parties took place. Amar Singh P.W.4 and Balu Singh from the side of the complainant party received injuries and Gopiram from the side of accused appellants also received injuries.

2.5 According to the members of the complainant party, they were totally unarmed at the time of the incident and the accused persons who were armed with lathis, gandasa and axes had inflicted serious injuries on them. The injuries on the person of Balu Singh were medically examined. The doctor found the following external injuries:

(1) lacerated wound - 6 cm x 1 cm x bone deep on vertex of skull,

(2) lacerated wound - 5 cm x bone deep in the right frontal prominence region,

(3) lacerated wound - 3 cm x 1 cm x bone deep on occipital region of head and

(4) four abrasions on right middle leg, left knee and posterior region of left leg.

2.6 All the aforesaid injuries were found to have been caused with blunt weapon and x-ray was advised in respect of three lacerated wounds.

2.7 On the post-mortem of Balu Singh's body, it was revealed that apart from abrasions, three lacerated wounds, haematoma was present and the fracture of bone was detected. The brain was squeezed. In the opinion of doctor, cause of death of Balu Singh was shock due to aforesaid three lacerated injuries on his person.

2.8 On the head of Amar Singh four lacerated wounds on left parietal region, middle of forehead, right leg and two other lacerated wounds and middle region of left leg were found by the doctor. According to the doctor, these injuries were caused by a blunt weapon.

2.9 On Nanuram, lacerated wound on occipital region of head, upper left near ear region respectively and contusion on left shoulder were found. All the above three injuries were caused by a blunt weapon. Gandasa, lathis and other weapons of offence were recovered at the instance of the accused appellants. Blood-stained clothes of the deceased Balu Singh were seized by the police and clothes, earth etc. were sent to Forensic Laboratory for examination. In the serological examination human blood was detected in the blood-stained earth and on the deceased's shirt, dhoti and baniyan, however, no blood was found on the weapons recovered by the police. In the formal investigation of the case, no case was made out against Sri Chand, Dula Ram, Lilu Ram and Pappu and charge-sheet against the remaining 11 accused persons was filed in the court of the learned Judicial Magistrate, Taranagar. On committal, the case was sent to the Court of Sessions.

3. The prosecution, in order to support and strengthen its case has examined 25 witnesses and placed reliance on 78 documents on record. The statements of the accused persons were recorded under Section 313 Cr.P.C. wherein the accused denied the prosecution version and claimed themselves innocent and asserted that a false case has been made out against them. It was asserted by the appellants that Nanuram and Kashiram bought the disputed land from Smt. Chhoti Devi through agreement to sell dated 23.4.1965 and since then Nanuram has been in possession and was paying land revenue. It was further submitted that on 13.9.1999, on the basis of the information received that Balu Singh and

his sons along with other 15-20 persons went to their field (Khasra No. 512) on a tractor with the intention to take forcible possession of the field by cultivating it. About 100-150 people of village Bhinan went to stop them from doing so. They were armed with variety of weapons. They inflicted serious injuries on Amar Singh and Balu Singh.

4. The defence has produced DW1 Dr. Haleef, DW2 Mahender Singh and DW3 Nanuram. In the documentary evidence, extracts of statements of witnesses Nanuram, Mohan Kunwar, Amar Singh, Bhawan Singh, Moti Ram Patwari, Bhanwar Singh and written report by Dr. Mahesh Panwar to the SHO Police Station Taranagar, letter of SHO and injury report of Gopiram and copies of traced out site plans have been produced.

5. The prosecution mainly relied on PW2 Lal Chand, PW5 Het Ram, PW6 Lilu Ram, PW7 Moman Ram, PW12 Gulab Singh, PW13 Moti Ram, PW14 Manohar Lal and PW23 Pala Ram, investigating officer.

6. According to the investigating officer, the accused- appellants were in possession of the field where the occurrence took place. The complainant party went to this field with the intention to take its possession. The members of the complainant party were asked not to ply the tractor on the field. Despite the resistance the field was cultivated by the complainant party. On learning that the complainant party was cultivating Khasra No. 512, the accused appellants in a group of 15-20 people fully armed with different weapons, reached the said Khasra and attacked the complainant party. The case of the appellants as culled out from evidence is that the accused appellants were compelled to use force in order to protect the lives and property and their case is fully covered by the right of private defence. In this view of the matter, presence of the accused appellants cannot be doubted.

7. The entire evidence on record had been scrutinized in detail by the learned Additional Sessions Judge. On evaluation of the entire evidence it has been fully established by the learned Additional Sessions Judge that the fatal injuries were inflicted by Kashiram and other serious injuries were caused by Dharam Pal, Jagdish and Rupa Ram on the persons of Balu Singh and Amar Singh in furtherance of their common object of killing the members of the complainant party.

The trial court acquitted six accused and convicted five accused appellants.

8. From the analysis of the evidence by the trial court, it is abundantly clear that the accused appellants were in possession of Khasra No. 512. The complainant party had gone to cultivate the said Khasra at 10 a.m. on 13th June, 1999. At that time, the accused appellants were not there but on learning that the complainant party was cultivating the field, they reached there armed with varieties of weapons and caused serious injuries on the members of the complainant party. Admittedly, the members of the complainant party were totally unarmed. The appellants were responsible for causing fatal injury on Balu Singh and other serious injuries on Amar Singh and Nanuram. According to the findings of the Sessions Court, the accused appellants had exceeded the right of private defence.

9. Kashiram was convicted under Section 304 Part-II and was sentenced to 5 years rigorous imprisonment. Other 4 accused, namely, Dharam Pal, Jagdish, Rupa Ram and Om Prakash inflicted injuries on Amar Singh and Nanuram were convicted under Section 304 Part-II read with Section 149 IPC and they were also sentenced to 5 years rigorous imprisonment. They were also convicted under Section 323 IPC.

10. The High Court again examined the entire evidence and came to a clear conclusion that the accused appellants had exceeded in their right of private defence. They caused serious injuries to Balu Singh which proved fatal. They also caused serious injuries to Amar Singh and Nanuram. Injuries of such serious nature were totally unwarranted because the members of the complainant party were totally unarmed.

11. The finding of the High Court regarding accused appellants' private defence reads as under:

Therefore, the learned trial court has rightly held that the accused persons have exceeded their right of private defence of property.

12. The High Court also came to the conclusion that in the facts and circumstances the trial court has correctly evaluated the entire evidence on record and has taken a very lenient view. The High Court did not find any mitigating circumstance to interfere with the quantum of sentence.

The appellants aggrieved by the said judgment of the High Court have preferred this appeal before this Court.

13. It was submitted by the learned Counsel appearing for the appellants that the High Court failed to appreciate that the disputed land was in possession of the accused persons and the complainant party came to their field to dispossess them and their acts, if any, are fully covered by the right of self defence. It is also submitted that the appellants had filed a suit against the complainant party prior to this incident and an injunction was granted against the complainant party by the Revenue Court on 10.5.1999 and it was found that the accused appellants were in possession of the disputed land.

14. The appellants also submitted that it is a case of over implication because of previous enmity. According to the appellants, since they were in possession of the land in dispute, therefore, no offence under Section 304 Part-II IPC can be made out against them.

15. We have heard the learned Counsel for the appellants and the State. We have also perused the judgment of the trial court and the record of the case. The Sessions Court and the High Court found that the appellants were in possession of Khasra No. 512 and the complainant party at about 10 a.m. on 13th June, 1999 went to cultivate Khasra No. 512. The appellants were not there. The appellants learnt that the members of the complainant party were cultivating the said field, the accused appellants armed with gandasa, lathis and axes came to the field and assaulted the members of the complainant party when they were unarmed. Appellant Kashiram inflicted gandasa blow on Balu Singh from the reverse side and that injury proved fatal. The gandasa has been recovered at the instance of Kashiram. According to the report of the Chemical Examiner, human blood was detected from the blood-stained clothes of the deceased. The earth collected from the spot also contained human blood. Since the appellant Kashiram did not use the front side of gandasa, therefore, the trial court instead of convicting him under Section 302 IPC convicted him under Section 304 Part-II IPC. In view of our finding that the appellants were in possession of Khasra No. 512 and the appellants had gone to take back possession of Khasra No. 512 from the members of the complainant party, had inflicted fatal blow on Babu Singh and other serious injuries on the members of the complainant party.

16. The question which arises for our adjudication is that in the facts and circumstances of this case whether the accused appellants are protected by the right of private defence as enumerated by Section 96 of the Indian Penal Code.

17. Sections 96 to 106 deal with various facets of the right of private defence. Before determining the controversy in this case, we deem it proper to deal with these provisions in brief.

Section 96 IPC reads as under:

96. Things done in private defence.- Nothing is an offence which is done in the exercise of the right of private defence.

Section 97 of IPC gives right to a person to defend his body and the property. But, this right is subject to restrictions contained in Section 99. Section 99 IPC reads as under:

99. Acts against which there is no right of private defence. - There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act, may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Extent to which the right may be exercised. - The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

18. The main question that arises for adjudication in this case is whether the accused appellants had right of private defence and this is the case of exceeding the right of private defence meaning thereby, inflicting more harm than it was necessary for the purpose of defence.

19. Section 100 of the Indian Penal Code deals with a situation when the right of private defence of the body extends of causing death. The relevant portion of the section reads as under:

100 - When the right of private defence of the body extends to causing death. - The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:

First. - Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly. - Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly. - xxxxxx xxx

Forthly. - xxx xxx xxx

Fifthly. - xxx xxx xxx

Sixthly. - xxx xxx xxx

20. Section 103 IPC deals with a situation when the right of private defence of property extends to causing death. Section 103 IPC reads as under:

103. When the right of private defence of property extends to causing death. - The right of private defence of property extends, under the restrictions mentioned in Section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated....

21. Admittedly, the members of the complainant party were totally unarmed. Even if the case of the accused appellants is accepted in toto that in order to take back the possession of Khasra No. 512 some injuries were inflicted but the act of the appellants in causing death cannot be covered by the ambit of Section 96 IPC. According to the findings of courts below, it was clearly a case of exceeding the right of private defence. The appellants indeed inflicted more harm than it was necessary for the purpose of defence.

22. The right of private defence is codified in Sections 97 to 106 of the Indian Penal Code and all these sections will have to be read together to ascertain whether in the facts and circumstances the accused appellants are entitled to right of private defence or they exceeded the right of private defence. Only when all these sections are read together, we

get comprehensive view of the scope and limitation of that right. The position of law is well-settled for over a century both in England and India.

23. Almost 150 years ago in Queen v. Fuzza Meeah alias Fuzza Mahomed (1866) 6 WR (Cr) 89 because of exceeding the right of private defence, the appellants were convicted, but the sentence of imprisonment was reduced.

24. In another case decided during the same period in Queen v. Shunker Sing, Kukhoor Sing (1864) 1 WR (Cr) 34, the court for exceeding the right of private defence convicted the accused and reduced the sentence.

25. This Court also on several occasions dealt with the cases of exceeding the right of private defence. In The Munney Khan v. State of Madhya Pradesh MANU/SC/0206/1970: [1971]1SCR943, this Court for exceeding the right of private defence converted the sentence of the accused appellant from under Section 302 IPC to Section 304 IPC. The relevant portion of the judgment reads as under:

Such a right of private defence is governed by Section 101, I.P.C. and is subject to two limitations. One is that, in exercise of this right of private defence, any kind of hurt can be caused, but not death; and the other is that the use of force does not exceed the minimum required to save the person in whose defence the force is used. In these circumstances, in the present case, when Zulfiquar was being given fist blows only, there could be no justification at all for the appellant to stab Reotisingh with a knife and particularly to give him a blow which could prove fatal by aiming it on his back. The use of the knife itself was in excess of the right of private defence and it became much more excessive when the blow with the knife was given on a vital part of the body which, in the ordinary course of nature, was likely to cause the death of Reotisingh. From the fact that the blow was given in the back with a knife an inference follows that the appellant intended to cause death or at least intended to cause such injury as would, in the ordinary course of nature, result in his death. In adopting this course, the appellant would have been clearly guilty of the offence of murder had there been no right of private defence of Zulfiquar at all. Since such a right did exist, the case would fall under the exception under which culpable homicide does not amount to murder on the ground that the death was caused in exercise of right of private defence, but by exceeding that right. An offence of this nature is made punishable under the first part of Section 304, I.P.C. Consequently, the conviction of the appellant must be under that provision and not under Section 302 I.P.C.

As a result, the appeal is partly allowed, the conviction under Section 302, I.P.C. is set aside, and the appellant is convicted instead under the first part of Section 304, I.P.C. In view of the change in the offence for which the appellant is being punished, we set aside the sentence of imprisonment for life, and instead, award him a sentence of seven years' rigorous imprisonment.

26. In Balmukundand Anr. v.: State of Madhya Pradesh (1981)4SCC432 this Court while dealing with the facts of similar nature converted the conviction from Section 302 IPC to Section 304 IPC. Relevant observations of the court reads as under:

In rural landscape even today dispute as to possession of agricultural land is a part of life. Occupancy of land being the only source of survival, emotional attachment apart, the struggle for survival leads to fierce fight and resort to arms to protect possession because in the context of tardy slow moving litigative process actual possession has ceased to be mere nine point in law but it has assumed alarming proportions. Years upon years spent in legal conundrums moving vertically through hierarchy of courts coupled with the cost and time to throw out a trespasser or even a rank trespasser provides occasionally provocation to resort to physical violence. The use of the firearm used to be spasmodic but it has started becoming a recurring malady. But right of private defence cannot be judged step by step or in golden scales. Once we accept the finding of the High Court that the appellants had the right of private defence of person and property meaning thereby that the appellants were the victims and the complainants were aggressors, but in the facts of the case they exceeded the same by wielding a firearm, a sentence of 10 years' rigorous imprisonment would appear to us in the facts and circumstances of the case to be a little bit too harsh.

Having given our earnest consideration to the question of sentence alone in this case, we are of the opinion that Balmukund, Appellant 1, should be sentenced to rigorous imprisonment for five years, and simultaneously the sentence of seven years under Section 307, Indian Penal Code awarded to Appellants 1 and 2 both be reduced to three years each. The substantive sentences should run concurrently.

27. In another case, while dealing with a case of self defence in Dharam Pal and Ors. v. State of U.P. MANU/SC/0039/1994: 1994CriLJ615, this Court for exceeding the right of private defence instead of convicting the accused appellant under Section 302 read with Section 149 IPC, converted the sentence under Section 304 Part-I IPC.

28. In Mahabir Choudhary v. State of Bihar MANU/SC/0495/1996: 1996CriLJ2860, this Court held that the High Court erred in holding that the appellants had no right of private defence at any stage. However, this Court upheld the judgment of the Sessions Court holding that since the appellants had right of private defence to protect their property, but in the circumstances of the case, the appellants had exceeded their right of private defence and were, therefore, rightly convicted by the trial court under Section 304 Part-I. The court observed that the right of private defence cannot be used to kill the wrongdoer unless the person concerned has a reasonable cause to fear that otherwise death or grievous hurt might ensue in which case that person would have full measure of right of private defence including killing.

29. We have examined the cases of exceeding of the right of private defence. In the instant case, both the Sessions Court and the High Court came to the conclusion that the accused appellants were guilty of exceeding the right of private defence and instead of convicting them under Section 302 convicted them under Section 304 Part-II along with 149 IPC.

30. Both the Sessions Court and the High Court clearly came to the conclusion that the accused appellants in a group of 15- 20 people armed with variety of weapons had gone to Khasra No. 512 where the complainant party was cultivating. The accused appellants in order to dispossess the members of the complainant party attacked them and caused serious injuries to the members of the complainant party in which Balu Singh died. Admittedly, the members of the complainant party were totally unarmed. From perusal of the entire evidence on record, it is abundantly clear that the accused appellants were the aggressor and they attacked the complainant party when they were totally unarmed. It is settled legal position that the right of private defence cannot be claimed when the accused are aggressors particularly when the members of the complainant party were totally unarmed. This Court in the recent judgment in Bishna alias Bhiswasdeb Mahato and Ors. v. State of West Bengal MANU/SC/1913/2005: AIR2006SC302 exhaustively dealt with this aspect of the matter. The facts of this case are akin to the facts of the instant cases. In this case, the Court while relying on the earlier judgments of this Court, clearly came to the conclusion that the right of private defence cannot be claimed when the accused is an aggressor.

31. In the said case, this Court relied on Preetam Singh v. State of Rajasthan MANU/SC/0881/2003: (2003)12SCC594. In this case, the Court clearly held that the appellants were the aggressors, therefore, the question of the appellants having the right of private defence or exceeding it does not arise. The plea of private defence is not at all available to the appellants.

32. In the instant case, the appellants were the aggressor. They inflicted serious injuries on the unarmed complainant party by a variety of weapons causing the death of Balu Singh and also inflicted serious injuries on other members of the complainant party.

33. Private defence can be used only to ward off unlawful force, to prevent unlawful force, to avoid unlawful detention and to escape from such detention as held by this Court in Bishna's case (supra). In the said judgment the relevant portion of Kenny's Outlines of Criminal Law and Criminal Law by J.C. Smith and Brian Hogan have been quoted. We deem it appropriate to reproduce the same.

It is natural that a man who is attacked should resist, and his resistance, as such, will not be unlawful. It is not necessary that he should wait to be actually struck, before striking in self-defence. If one party raises up a threatening hand, then the other may strike. Nor is the right of defence limited to the particular person assailed; it includes all who are under any obligation, even though merely social and not legal, to protect him. The old authorities exemplify this by the cases of a husband defending his wife, a child his parent, a master his servant, or a servant his master (and perhaps the courts would now take a still more general view of this duty of the strong to protect the weak).

34 The learned author further stated that self-defence, however, is not extended to unlawful force:

But the justification covers only blows struck in sheer self-defence and not in revenge. Accordingly if, when all the danger is over and no more blows are really needed for defence, the defender nevertheless strikes one, he commits an assault and battery. The numerous decisions that have been given as to the kind of weapons that may lawfully be used to repel an assailant, are merely applications of this simple principle. Thus, as we have already seen, where a person is attacked in such a way that his life is in danger he is justified in even killing his assailant to prevent the felony. But an ordinary assault must not be thus met by the use of firearms or other deadly weapons....

In Browne 1973 NI 96 (NI at p. 107] Lowry, L.C.J. with regard to self-defence stated:

The need to act must not have been created by conduct of the accused in the immediate context of the incident which was likely or intended to give rise to that need.

35. As regards self-defence and prevention of crime in Criminal Law by J.C. Smith & Brian Hogan, it is stated:

Since self-defence may afford a defence to murder, obviously it may do so to lesser offences against the person and subject to similar conditions. The matter is now regulated by Section 3 of the Criminal Law Act, 1967. An attack which would not justify D in killing might justify him in the use of some less degree of force, and so afford a defence to a charge of wounding, or, a fortiori, common assault. But the use of greater force than is reasonable to repel the attack will result in liability to conviction for common assault, or whatever offence the degree of harm caused and intended warrants. Reasonable force may be used in defence of property so that D was not guilty of an assault when he struck a bailiff who was unlawfully using force to enter D's home. Similar principles apply to force used in the prevention of crime.

36. The right of private defence is a very valuable right and it has been recognized in all free, civilized and democratic societies within certain reasonable limits (see Gottipulla Venkatasiva Subbrayanam and Ors. v. The State of Andhra Pradesh and Anr. MANU/SC/0124/1970: 1970CriLJ1004.

Russel in his celebrated book on Crimes (11th Edn.) p.491 has stated:

A man is justified in resisting by force any one who manifestly intends and endeavours by violence or surprise to commit a known felony against his person, habitation or property. In these cases he is not obliged to retreat and not merely to resist the attack where he stands but may indeed pursue his adversary until the danger is ended. If and in a conflict between them he happens to kill his attacker such killing is justifiable.

Blackstone [Commentaries Book 4; P. 185] also observed as under:

The party assaulted must, therefore, flee as far as he conveniently can either by reason of some wall, ditch, or some other impediment; or as far as the fierceness of the assault will permit him; for it may be so fierce as not to yield a step, without manifest danger of his life, or enormous bodily harm; and then in his defence he may kill his assailant instantaneously. And this is the doctrine of universal justice, as well as of the municipal law.

(Emphasis supplied)

Halsbury's Laws of England, Fourth Edition, Vol.11 pp. 630-631 dealt with self-defence and defence of property. The relevant portion in paras 1180-1181 reads as under:

1180. Self-defence. A person acting in self- defence is normally acting to prevent the commission of a crime, as is a person acting in defence of another. The test to be applied in such cases is now established to be the same as for cases of prevention of crime, that is the force used in self- defence or in defence of another must be reasonable in the circumstances

Provided the force used is reasonable a person is entitled to defence not only himself or a member of his family, but even a complete stranger if the stranger is subject to unlawful attack by others.

In deciding whether the force used was reasonable, all the circumstances may be considered. The matter is one of fact and not one of law, hence it cannot be ruled that a person who is attacked must retreat before retaliating. A person's opportunity to retreat with safety is a factor to be taken into account in deciding whether his conduct was reasonable, as is his willingness to temporize or disengage himself before resorting to force. A man is not obliged to refrain from going where he may lawfully go because he has reason to believe that he may be attacked, and is not thereby deprived of his right of self-defence.

1181. Defence of property. Where a person in defending his property is also acting in the prevention of crime then he may use such force as is reasonable in the circumstances. Where no crime is involved, as where there is merely a trespass, the same rule of reasonable force in the circumstances is applicable. If in using reasonable force the defendant should accidentally kill another, the killing would not amount to murder or man- slaughter. It would not, in general, be reasonable to kill in defence of property alone, although it has been held that a man may lawfully kill, a trespasser who would forcibly dispossess him of his house.

37. In Mohammad Khan and Ors. v. State of Madhya Pradesh MANU/SC/0143/1971: 1972CriLJ661, this Court has rightly concluded that the right of self-defence only arises if the apprehension is unexpected and one is taken unawares. If one enters into an inevitable danger with the fullest intimation beforehand and goes there armed to fight out, the right cannot be claimed.

38. Careful analysis of the right of private defence as codified in Sections 96 to 106 IPC and the legal position as crystallized by a number of judgments leads to an irresistible conclusion that the findings of the Sessions Court as upheld by the High Court in the

instant case regarding the appellants' exceeding the right of private defence are wholly erroneous and untenable.

39. The right of private defence is purely preventive and not punitive. This right is available only to ward off the danger of being attacked; the danger must be imminent and very real and it cannot be averted by a counter-attack.

40. In view of the facts of this case, the accused appellants did not have the right of private defence. Therefore, they cannot legitimately claim any benefit by invoking the principle of right of private defence.

41. The acts of the accused appellants of proceeding to a definite destination with lethal weapons and thereafter causing serious injuries including fatal injuries on the unarmed members of the complainant party can never legitimately claim the benefit of the provisions of the right of private defence. Since the accused appellants did not have the right of private defence, therefore, the findings of the courts below regarding their exceeding the right of private defence cannot be sustained and are accordingly set aside.

42. Since there is no appeal by the State against acquittal of the accused appellants under Sections 302 IPC, therefore it is not necessary for us to deal with the aspect whether their acquittal under Section 302 was justified or not.

43. The Sessions Court convicted accused Kashiram under Section 304 Part-II and the other appellants under Section 304 Part-II read with Section 149 IPC. In the impugned judgment the High Court has upheld their conviction.

44. On consideration of the peculiar facts and circumstances of the case the conviction and sentence of the accused appellants as recorded by the courts below do not warrant any interference. The appeal being devoid of any merit is accordingly dismissed.

The accused appellants are directed to surrender forthwith to suffer the remaining sentence.

MANU/SC/0218/1974

Back to Section 100 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 192 of 1972

Decided On: 02.05.1974

State of U.P. Vs. Ram Swarup and Ors.

Hon'ble Judges/Coram:
M. Hameedullah Beg, V.R. Krishna Iyer and Y.V. Chandrachud, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: D.P. Uniyal and O.P. Rana, Advs
For Respondents/Defendant: Frank Anthony, A.K. Garg, Santokh Singh and Ramesh Sharma and R.K. Garg, Advs.

JUDGMENT
Y.V. Chandrachud, J.

1. On the morning of June 7, 1970 in the Subzi Mandi at Badaun, U.P., a person called Sahib Datta Mal alias Munimji was shot dead. Ganga Ram and his three sons, Ram Swamp, Somi and Subhash were prosecuted in connection with that incident. Ram Swarup was convicted by the learned Sessions Judge, Badaun, under Section 302, Panel Code, and was sentenced to death. Ganga Ram was convicted under Section 302 read with Section 34 and was sentenced to imprisonment for life. They were also convicted under the Arms Act and sentenced to concurrent terms of imprisonment. Somi and Subhash were acquitted of all the charges as also was Ganga Ram of a charge under Section 307 of the Penal Code in regard to an alleged knife-attack on one Nanak Chand.

2. The High Court of Allahabad has acquitted Ganga Ram and Ram Swarup in an appeal filed by them and has dismissed the appeal filed by the State Government challenging the acquittal of Somi and Subhash. In this appeal by special leave we are concerned only with the correctness of the judgment of acquittal in favour of Ganga Ram and Ram Swarup.

3. Except for a solitary year, Ganga Ram held from the Municipal Board of Badaun the contract of Tehbazari in the vegetable market from 1954 to 1969. The deceased Munimji out-bid Ganga Ram in the annual auction of 1970-71 which led to the day-light outrage of June 7, 1970.

4. At about 7 a.m. on that day Ganga Ram is alleged to have gone to the market to purchase a basket of melons. The deceased declined to sell it saying that it was already marked for another customer. Hot words followed during which the deceased, asserting his authority, said that he was the Thekedar of the market and his word was final. Offended by this show of authority, Ganga Ram is alleged to have left in a huff.

5. An hour later Ganga Ram went back to the market with his three sons, Ram Swamp, Somi and Subhash. Ganga Ram had a knife, Ram Swarup had a gun and the two others carried lathis. They threw a challenge saying that they wanted to know whose authority prevailed in the market. They advanced aggressively to the gaddi of the deceased who, taken by surprise, attempted to rush in a neighbouring kothari. But that was much too late for before he could retreat, Ram Swarup shot him dead at point-blank range It was at all stages undisputed that Ganga Ram and Ram Swarup went to the market at about 8 a.m. that one of them was armed with a gun and that a shot fired from that gun by Ram Swarup caused the death of Munimji.

6. Though there was no direct evidence of the 7 O'clock incident the learned Sessions Judge accepted the prosecution case that the shooting was preceded by that incident. In coming to that conclusion the learned Judge relied upon the evidence of Sona Ram, Nanak Chand, Shanti Lal, Shariat Ullah and Shiva Dutta Mal (P. Ws. 1 to 5) to whom the deceased had narrated the incident. These witnesses were also examined in order to establish the main incident and their evidence in that regard was also accepted by the learned Judge. Having found that these witnesses were trustworthy and that their evidence established the case of the prosecution the learned Judge proceeded to consider whether as contended by Ganga Ram and Ram Swarup the shot was fired by Ram Swarup in exercise of the right of private defence. Adverting to a variety of circumstances the learned Judge rejected that theory and held that the charges leveled against the two accused were proved beyond a reasonable doubt.

7. The High Court disbelieved the evidence in regard to the 7 O'clock incident. In any case, according to the High Court, that incident was far to trifling to lead to the shooting outrage. The High Court accepted the defence version that a scuffle had taken place between the deceased Munimji and Ganga Ram and that Ganga Ram was assaulted with lathis by Shiva Dutta Mal (P.W. 5) and the servants of the deceased. The High Court concluded:

If Ganga Ram was being given repeated lathi blows by P.W. Shiva Dutta Mal and servants of the deceased, then Ram Swarup had full justification to fire his gun in the right of private defence of the person of his father. It may be that the gun fire injured the deceased, rather than those who were belabouring Ganga Ram with lathis. But once we come to the conclusion that it was not unlikely that Ram Swarup had used his gun in the circumstances narrated above, i.e. in order to save his aged father from the clutches and

assaults of his assailants, he cannot be held guilty of murder or for the matter of that of any other offence.
In regard, to Ganga Ram the High Court held that he could not be found guilty under Section 302 read with Section 34 "as his. presence in the Subzimandi was not for the purpose of killing the deceased, as suggested by the prosecution, but he had more probably reached there alongwith his son Ram Swarup, on way back from their vegetable farm, in order to purchase melons.

8. The burden which rests on the prosecution to establish its case beyond a reasonable doubt is neither neutralised nor shifted because the accused pleads the right of private defence. The prosecution must discharge its initial traditional burden to establish the complicity of the accused and not until it does so can the question arise whether the accused had acted in self-defence. This position, though often overlooked, would be easy to understand if it is appreciated that the Civil Law rule of pleadings does not govern the rights of an accused in a criminal trial. Unlike in a civil case, it is open to a criminal court to find in favour of an accused on a plea not taken up by him and by so doing the court does not invite the charge that it has made out a new case for the accused. The accused may not plead that he acted in self-defence and yet the court may find from the evidence of the witnesses examined by the prosecution and the circumstances of the case either that what would otherwise be an offence is not one because the accused has acted within the strict confines of his right of private defence or that the offence is mitigated because the right of private defence has been exceeded.

For a moment, therefore, we will keep apart the plea of the accused and examine briefly by applying the well-known standard of proof whether the prosecution, as held by the Sessions Court, has proved its case.
9. The evidence of the five witnesses--Sona Ram, Nanak Chand, Shanti Lal, Shariat Ullah, Shiva Dutta Mal--is consistent and convincing on the broad points of the case. The Sessions Court accepted that evidence after a careful scrutiny and we are inclined to the view that the High Court was unduly suspicious of that, evidence in the name of caution. The High Court thought that the evidence of these witnesses must be viewed with great caution because Sona Ram and Shanti Lal are the first cousins of the deceased, Nanak Chand and Shiva Dutta Mal were co-sharers of the deceased in the Tehbazari contract, Shariat Ullah was a constituent of the deceased and because Sona Ram, Nanak Chand and Shiva Dutta Mal being co-sharers in the contract should have been moving about the market rather than remain at the gaddi of the deceased where he was shot down. Caution is a safe and unfailing guide in the judicial armoury but a cautious approach does not justify an a priori assumption that the case is shrouded in suspicion. This is exemplified by the rejection of the melon incident by the High Court on the grounds, inter alia, that there was no entry in the account books of the deceased evidencing the sale of the melon-basket and that the owner of the melons was not called to support the prosecution case. The point in issue was not whether the melon-basket was in truth and reality sold to another customer, in which case the evidence of the owner and the account books of the

deceased would have some relevance. The point of the matter was that three was trade rivalry between the deceased and Ganga Ram, their relations were under a deep strain and therefore the deceased declined to sell the melons to Ganga Ram The excuse which the deceased trotted out may be true or false. And indeed, greater the falsity of that excuse greater the affront to Ganga Ram.

10. The melon incident formed a prelude to the main occurrence and was its immediate cause. By disbelieving it or by treating it alternatively as too trifling the High Court was left to wonder why Ganga Ram and Ram Swarup went to the market armed with a gun, which they admittedly did. The case of the prosecution that they went back to the market to retaliate against the highhandedness of the deceased was unacceptable to the High Court because "it does not stand to reason that the appellants and their two other companions (sons of Ganga Ram) would walk into the lion's den in broad day light and be caught and beaten up, and even be done to death by the deceased, his partners and servants, besides hundreds of people who were bound to be present in the Sabzimandi at about 8 A.M. Such a large congregation could have easily disarmed the appellants and their two other companions and given them a thorough beating if not mortal injuries". Evidently, they did go to the market which to their way of thinking was not a lion's den. And they went adequately prepared to meet all eventualities. The large congregation of which the High Court speaks is often notoriously indifferent to situations involving harm or danger to others and it is contrary to common experience that anyone would readily accost a gun-man in order to disarm him.

11. The High Court saw yet another difficulty in accepting the prosecution case:

Even if the appellants and their companions would have been so very hazardous, they could not have exposed their lives by carrying only one cartridge in the gun, if they had really gone to murder the deceased and make a safe retreat. It might very well have been that the first shot went stray and did not hit the deceased. It was, therefore, necessary to have at least both the barrels loaded with cartridges. In fact one would expect the ready availability of more cartridges with the appellants, because they were bound to fire some rounds of shots to create a scare in the crowded Sabzi mandi, before making good their escape. For this reason also one would expect them to keep both the barrels loaded with cartridges and also to carry some spare cartridges for the sake of contingency and safety. Murders like the one before us are not committed by coolly weighing the pros and cons. Ganga Ram and Ram Swarup were wounded by the high and mighty attitude of a trade rival and they went back to the market in a state of turmoil. They could not have paused to bother whether the double- barreled gun contained one cartridge or two any more than an assailant poised to stab would bother to take a spare knife. On such occasions when the mind is uncontrollably agitated, the assailants throw security to the winds and being momentarily blinded by passion are indifferent to the consequences of their action. The High Court applied to the mental processes of the respondents a test far too rigid and unrealistic than was justified by the circumstances of the case and concluded:

It is noteworthy that P.W. 1 Sona Ram clearly admits that Ganga Ram had a farm in village Naushera, which is at a distance of two miles from Badaun. It is very likely that the two appellants must have been going every early morning to have a round of their vegetable farm and returning home therefrom at about 8 A.M. in the sultry month of June. It is not surprising that on such return to Badaun on the morning of June 7, 1970 the appellants went to the Sabzimandi in order to purchase melons, when they were called to the Gaddi of the deceased, ultimately resulting in the fatal occurrence as suggested by the defence.
The High Court assumed without evidence that Ganga Ram used to carry a gun to his vegetable farm and the whole of the conclusion reproduced above would appear to be based on the thin premise that Sona Ram had admitted that Ganga Ram had a village farm situated at distance of two miles from Badaun. We find it impossible to agree with the reasons given by the High Court as to why Ganga Ram and Ram Swarup went to the market and how they happened to carry a gun with them. It is plain that being slighted by the melon incident, they went to the market to seek retribution.

12. The finding recorded by the High Court that the respondents went to the market for a casual purchase and that they happened to have a gun because it was their wont to carry a gun is the very foundation of its acceptance of the theory of private defence set up by the respondents- According to the High Court a routine visit to the market led to an unexpected quarrel between the deceased and Ganga Ram, the quarrel assumed the form of grappling, the grappling provoked the servants of the deceased to beat Ganga Ram with lathis and the beating impelled Ram Swarup to use the gun in defence of his father. Our view of the genesis of the shooting incident must, at the very threshold, deny to the respondents the right of private defence.

13. The right of private defence is a right of defence, not of retribution. It is available in face of imminent peril to those who act in good faith and in no case can the right be conceded to a person who stage-manages a situation wherein the right can be used as a shield to justify an act of aggression. If a person goes with a gun to kill another, the intended victim is entitled to act in self-defence and if he so acts there is no right in the former to kill him in order to prevent him from acting in self-defence. While providing for the right of private defence, the Penal Code has surely not devised a mechanism whereby an attack may be provoked as a pretence for killing.

14. Angered by the rebuff given by the deceased while declining to sell the melons, Ganga Ram went home and returned to the market with the young Ram Swarup who, on the finding of the High Court, carried a gun with him. Evidently, they went to the market with a pre-conceived design to pick up a quarrel. What semblance of a right did they then have to be piqued at the resistance put up by the deceased and his men? They themselves were the lawless authors of the situation in which they found themselves and though the Common Law doctrine of "retreat to the wall" or "retreat to the ditch" as expounded by

Blackstone Blackstone's Commentaries, Book IV, p. 185 has undergone modification and is not to be applied to cases where a victim, being in a place where he has a right to be, is in face of a grave uninvited danger, yet, at least those in fault must attempt to retreat unless the severity of the attack renders such a course impossible. The exemption from retreat is generally available to the faultless alone.

15. Quite apart from the consideration as to who was initially at fault, the extent of the harm which may lawfully be inflicted in self-defence is limited. It is a necessary incident of the right of private defence that the force used must bear a reasonable proportion to the injury to be averted, that is, the injury inflicted on the assailant must not be greater than is necessary for the protection of the person assaulted. Undoubtedly, a person in fear of his life is not expected to modulate his defence step by step or tier by tier for as Justice Holmes said in Brown v. United States (1921) 256 U.S. "detached reflection cannot be demanded in the presence of an uplifted knife" But Section 99 provides in terms clear and categorical that "The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence".

16. Compare for this purpose the injuries received by Ganga Ram with the injuries caused to the deceased in the alleged exercise of the right of private defence. Dr. N. A. Farooqi who examined Ganga Ram found that he had four contusions on his person and that the injuries were simple in nature. Assuming that Ganga Ram had received these injuries before Ram Swarup fired the fatal shot, there was clearly no justification on the part of Ram Swarup to fire from his gun at point-blank range. Munimji was shot on the chest and the blackening and tatooing around the wound shows that Ram swarup fired his shot from a very close range. Under Section 100 of the Penal Code the right of private defence of the body extends to the voluntary causing of death if the offence which occasions the exercise of the right is of such a nature as may, to the extent material, reasonably cause the apprehension that death or grievous hurt will otherwise be the consequence of the assault. Considering the nature of injuries received by Ganga Ram, it is impossible to hold that there could be a reasonable apprehension that he would be done to death or even that grievous hurt would be caused to him.

17. The presence of blood near the door leading to room No. 2 and the pellet marks on the door frame show that Ram Swarup fired at the deceased when the latter was fleeing in fear of his life. In any event, therefore, there was no justification for killing the deceased selectively. The right of defence ends with the necessity for it. Under Section 102, Penal Code, the right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises and it continues as long as such apprehension of danger continues. The High Court refused to attach any significance to the pellet-marks on the door-frame as it thought that "the gun fire which hit the chaukhat was not the one which struck the deceased". But this is in direct opposition to its own view that the respondents had loaded only one cartridge in the gun--a premise from which it had concluded that the respondents could not have gone to the market with an evil design.

Ballistically, there was no reason to suppose that the shot which killed the deceased was not the one which hit the door frame. It is quite clear that the deceased was shot after he had left his gaddi and while he was about to enter room No. 2 in order to save his life.

18. It would be possible to analyse the shooting incident more minutely but it is sufficient to point out that under Section 105 of the Evidence Act, when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Penal Code, is upon him and the court shall presume the absence of such circumstances. The High Court must, of course, have been cognizant of this provision but the Judgment does not reflect its awareness of the provision and this we say not merely because Section 105 as such has not been referred to in its Judgment. The importance of the matter under consideration is that sections 96 to 106 of the Penal Code which confer and define the limits of the right of private defence constitute a general exception to the offences defined in the Code; in fact these sections are a part of Chapter IV headed "General Exceptions". Therefore, the burden of proving the existence of circumstances which would bring the case within the general exception of the right of private defence is upon the respondents and the court must presume the absence of such circumstances. The burden which rests on the accused to provide that any of the general exceptions is attracted does not absolve the prosecution from discharging its initial burden and truly, the primary burden never shifts save when a statute displaces the presumption of innocence; "indeed, the evidence, though insufficient to establish the exception, may be sufficient to negative one or more of the ingredients of the offence K.M. Nanavati v. State of Maharashtra [1962] (1) Supp S.C.R. 567". That is to say, an accused may fail to establish affirmatively the existence of circumstances which would bring the case within a general exception and yet the facts and circumstances proved by him while discharging the burden under Section 105 of the Evidence Act may be enough to cast a reasonable doubt on the case of the prosecution, in which event he would be entitled to an acquittal Dahyabhai Chhaganbhai Thakker v. State of Gujarat; MANU/SC/0068/1964: 1964CriLJ472. The burden which rests on the accused to prove the exception is not of the same rigour as the burden of the prosecution to prove the charge beyond a reasonable doubt. It is enough for the accused to show, as in a civil case, that the preponderance of probabilities is in favour of his plea. Dahyabhai Chhaganbhai Thakker v. State of Gujarat; Supra; Munshi Ram and Ors. v. Delhi Administration, MANU/SC/0072/1967: A.I.R. 1968 S.C. 702.

19. The judgment of one of us, Beg J., in Rishikesh Singh v. State MANU/UP/0008/1970: AIR1970All51 explains the true nature and effect of the different types of presumptions arising under Section 105 of the Evidence Act. As stated in that judgment, while the initial presumption regarding the absence of circumstances bringing the case within an exception may be met by showing the existence of appropriate facts, the burden to establish a plea of private defence by a balance of probabilities is a more difficult burden to discharge. The judgment points out that despite this position-there may be cases where, though the plea of private defence is not established by an accused on a balance

of probabilities, yet the totality of facts and circumstances may still throw a reasonable doubt on the existence of "mens rea", which normally is an essential ingredient of an offence. The present is not a case of this latter kind. Indeed realising that a simple plea of private defence may be insufficient to explain the nature of injuries caused to the deceased, Ram Swamp suggested that the shot fired by him at the assailants of his father Ganga Ram accidentally killed the deceased. We have no doubt that the act of Ram Swarup was deliberate and not accidental.

20. The respondents led no evidence to prove their defence but that is not necessary because such proof can be offered by relying on the evidence led by the prosecution, the material elicited by cross-examining the prosecution witnesses and the totality of facts and circumstances emerging out of the evidence in the case. In view of the considerations mentioned earlier we find it impossible to hold that Ram Swarup fired the shot in defence of his father Ganga Ram. The circumstances of the case negative the existence of such a right.

21. The conclusion of the High Court in regard to Ram Swarup being plainly unsupportable and leading as it does to a manifest failure of justice, we set aside the order acquitting Ram Swarup and restore that of the Sessions Court convicting him under Section 302 of the Penal Code. The possibility of a scuffle, of course not enough to justify, the killing of Munimji but bearing relevance on the sentence cannot, however, be excluded and we would therefore reduce the sentence of death imposed on Ram Swarup by the Sessions Court to that of life imprisonment. We also confirm the order of conviction and sentence under Section 25(1)(a) and Section 27 of the Arms Act and direct that all the sentences shall run concurrently.

22. In regard to Ganga Ram, however, though if we were to consider his case independently for ourselves we might have come to a conclusion different from the one to which the High Court has come, the principles governing appeals under Article 136 of the Constitution would require of us to stay our hands. The incident happened within the twinkling of an eye and there is no compelling reason to differ from the concurrent finding of the High Court and the Sessions Court that Ganga Ram never carried the gun and that at all stages it was Ram Swarup who had the gun. The finding of the Sessions Court that "Ram Swarup must have shot at the deceased at the instigation of Ganga Ram" is based on no evidence for none of the five eye-witnesses speaks of any such instigation. On the contrary, Shariat Ullah (P.W. 4) says that "As soon as they came, Ram Swarup opened the gunfire" and Shiva Dutta Mal (P.W. 5) says that "Just after coming forward, Ram Swarup opened the gun-fire". The evidence of the other three points in the same direction. True that these witnesses have said that Ganga Ram and Ram Swarup challenged with one voice the authority of the deceased but in discarding that part of the evidence we do not think that the High Court has committed any palpable error requiring the interference of this Court. Such trite evidence of expostulations on the eve of an attack is often spicy and tends to strain one's credulity. We therefore confirm the order of the

High Court acquitting Ganga Ram of the charge under Section 302 read with Section 34 of the Penal Code.

23. The High Court was clearly justified in acquitting Ganga Ram of the charge under Section 307, Penal Code, in regard to the knife-attack on Nanak Chand Nanak Chand received no injury at all and the story that the knife-blow missed Nanak Chand but caused a cut on his kurta and Bandi seems incredible. The High Court examined these clothes but found no cut marks thereon. Tears there were on the Kurta and Bandi but it is their customary privilege to be torn. With that,. the conviction and sentence under the Arms Act for possession of the knife had to fall.

24. There is no substance in the charge against Ganga Ram under Section 29(b) of the Arms Act because he cannot be said to have delivered his licensed gun to Ram Swarup. The better view is that Ram Swarup took it.

25. We, therefore, confirm the order of acquittal in favour of Ganga Ram on all the counts.

26. This disposes of the appeal on merits.

27. Mr. Garg had raised a preliminary objection to the maintainability of this appeal which, we thought, was devoid of substance and could briefly be dealt with at the end of the judgment. He argues, that the State Government has no locus standi to file in this Court an appeal against an order of acquittal passed by the High Court because no such right is conferred by the CrPC or by the Constitution and there can be no right of appeal unless one is clearly given by statute.

28. The CrPC does not provide for an appeal to this Court. In Chapter XXXI ("Of Appeals"), the only reference to an appeal to the Supreme Court is to be found in Section 426(2B) which empowers the High Court to suspend the sentence and enlarge an accused on bail if the Supreme Court has granted to him special have to appeal against any sentence which the High Court has imposed or maintained. But by Section 417(1) of the Code the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court. It is in pursuance of this power that State Governments file appeals in the High Court against orders of acquittal passed by courts subordinate to the High Court.

29. Article 132(1) of the Constitution provides that an appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court, whether in a civil, criminal or other proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution. Where the High Court has refused to give such a certificate, the Supreme Court may under Clause (2) of Article 132 grant special leave to appeal if it is satisfied that the case involves a substantial

question of law as to the interpretation of the Constitution. Where such a certificate is given or special leave is granted, "any party in the case" may, under Clause (3) of the Article, appeal to the Supreme Court on the ground that any question of the aforesaid description has been wrongly decided and with the leave of the Supreme Court, on any other ground.

30. Under Article 134(1) of the Constitution an appeal lies to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court if the High Court (a) has in appeal reversed any order of acquittal of an accused person and has sentenced him to death; or (b) has withdrawn for trial before itself any case from a court subordinate to it and has sentenced the accused to death; or (c) certifies that the case is a fit one for appeal to the Supreme Court.

31. By Article 136(1) the Supreme Court may notwithstanding anything contained in Chapter IV ("The Union Judiciary"), grant special leave in its discretion to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in India.

32. Article 132(3) referred to above shows that where the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution or the Supreme Court grants special leave to appeal on the ground that the case involves such a question, "any party in the case" may appeal to the Supreme Court. It is incontrovertible that if the State Government is impleaded to an appear in the High Court as a contending party, it would be a "party in the case" and therefore if the decision is adverse to it, it would be entitled to appeal on the conditions mentioned in Article 132. This right is of course limited to cases in which a substantial question of law as to the interpretation of the Constitution is involved.

33. Article 134(1) extracted above shows-that if the High Court reverses an order of acquittal and sentences the accused to death, he can appeal to the Supreme Court as a matter of right. A similar right is available to an accused whose case is withdrawn for trial by the High Court and who on being convicted is sentenced to death. In a case falling under Article 134(l)(a), the appeal against acquittal would normally be filed in the High Court by the State Government under Section 417(1) of the CrPC. It is only in cases instituted upon complaint that the complainant can ask for special leave to appeal from the order of acquittal. If the State Government files in the High Court an appeal against an order of acquittal passed by the lower court and if in such an appeal the accused is sentenced to death, it seems to us patent that if the accused files an appeal in the Supreme Court against the judgment of the High Court, the State Government would be entitled to defend the appeal as a respondent interested in the decision of the High Court. In an appeal falling under Article 134(1)(b) also it is the State Government which would be interested in and entitled to defend the appeal in the Supreme Court. The circumstance

that Article 134 does not refer to the right of the State Government to defend such appeals cannot be construed as depriving it of that right.

34. If in an appeal against a conviction the High Court acquits an accused or if in an appeal by the State Government against an order of acquittal the High Court confirms the order of acquittal, it is the State Government which, if at all, would be aggrieved by the order of acquittal and it would therefore be entitled to challenge the order in a further appeal if any such appeal is provided by law. The right of appeal is a creature of statute and if the law provides for no further appeal the matter has to rest where it stands. But if the Constitution provides for an appeal against a judgment or order, the party aggrieved or affected by that judgment or order would be entitled to avail of the right or facility of appeal, though on the conditions prescribed by the Constitution.

35. Under Article 136(1) of the Constitution this Court has a wide discretion, though sparingly exercised, to grant special leave to appeal from any judgment, decree, determination, sentence or order. This remedy can be availed of by any party which is affected adversely by the decision under challenge. If the State Government is a contesting party to a matter disposed of by the High Court and if it is aggrieved by the judgment or order of the High Court, it is entitled under Article 136(1) to ask for special leave of this Court to appeal from the decision of the High Court. It is, of course, not entitled to obtain leave but that is a separate matter because under Article 136(1) no party is entitled to obtain leave as a matter of right. "The Supreme Court may, in its discretion, grant special leave to appeal" and one of the relevant considerations in granting leave is whether the party seeking leave is aggrieved by the impugned decision, in which case it would, at any rate, have locus to ask for leave.

36. The locus standi of State Governments to file appeals in this Court against judgments or orders rendered in criminal matters, particularly those commenced otherwise than on private complaints, has been recognised over the years and for a valid reason. All crimes raise problems of law and order and some raise issues of public disorder. The effect of crime on the ordered growth of society is deleterious and the State Governments are entrusted with the enforcement and execution of laws directed against prevention and punishment of crimes. They have, therefore, a vital stake in criminal matters which explains why all public prosecutions are initiated in the name of the Government. The objection of Mr. Garg that the State Government has no locus standi to file this appeal must be rejected.

MANU/SC/1051/2003

Back to Section 101 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 887 of 1997 with SLP (Crl.) Nos. 47-49 of 1998

Decided On: 16.12.2003

Back to Section 103 of Indian Penal Code, 1860

James Martin Vs. State of Kerala

Hon'ble Judges/Coram:
Doraiswamy Raju and Dr. Arijit Pasayat, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Sushil Kumar, Sr. Adv., M.T. George and Adolf Mathew, Advs
For Respondents/Defendant: Ramesh Babu M.R., Adv.

JUDGMENT
Arijit Pasayat, J.

1. Self-preservation is the prime instinct of every human being. The right of private defence is a recognized right in the criminal law. Therefore, Section 96 of Indian Penal Code, 1860 (in short 'the IPC') provides that nothing is an offence which is done in the exercise of the right of private defence. The question is, as happens in many cases, where exercise of such rights is claimed, whether the "Lakshman Rekha", applicable to its exercise has been exceeded. Section 99 IPC delineates the extent to which the right may be exercised.

2. The claim was made by the accused in the following background:

Appellant-James Martin faced trial along with his father-Xavier for alleged commission of offences punishable under Sections 302, 307, 324 read with Section 34 and Section 326 read with Section 114 IPC and Sections 25(b)(1) of the Arms Act, 1959 (in short 'the Act') and Sections 27 and 30 thereof. Learned Sessions Judge, N. Paravur, found the present appellant (A-1) guilty of offences punishable under Section 304 Part I, 326 and 324 IPC, while the other accused was found guilty of the offences punishable under Section 304 Part I read with Section 34, 326 read with Sections 34, 324 IPC. Both the accused persons were sentenced to undergo imprisonment for 7 years and for the second offence, 2 years RI and fine of Rs. 20,000/- with default stipulation of 1 year sentence. It was directed that in case fine was realized it was to be paid to (PW-3). Each of the accused was also to undergo sentence RI for 1 year for the offence punishable under Section 324 IPC and to pay a fine of Rs. 5,000/- with default stipulation of 6 months sentence. The fine, if any on

realisation, was directed to be paid to PW-7 and PW-8. The fine was directed to be paid to (PW-8). The sentences were directed to run concurrently.
3. A-2 also filed a complaint against 24 persons, which was tried as S.C. No. 74 of 1991. In the said case some of the PWs and their supporters were the accused. State had launched prosecution against 12 of the said 24 persons. The same as tried as S.C. No. 57 to 1990.

4. Several appeals and revisions were filed by the appellants, the prosecution witnesses and the State. Appeal filed by the accused persons was numbered as criminal appeal No. 4 of 1994. As complaint was lodged by the accused alleging various offences by the prosecution witnesses, a separate case (S.C. 74 of 1991) was registered in which there was an acquittal. Against such acquittal also appeal was filed by A-2 which was numbered as criminal appeal No. 471 of 1994. Criminal appeal No. 784 of 1994 was filed by the State questioning acquittal in S.C. 57 of 1990. Father of one of the victims filed Crl. Revision Cr.RP 820 of 1994. The propriety of conviction under Section 304 Part I instead of Section 302 IPC was questioned by the State in Crl. Appeal No. 312 of 1994. By a common judgment all matters were disposed of.

5. The matrix of the litigation related to a Bharat Bandh on 15.3.1998 sponsored by some political parties. Prosecution version as unfolded during trial is as follows:

6. Most of the shops and offices were closed and vehicles were off the road. There were isolated instances of defiance to the bundh call and some incidents had taken place that, however, did not escalate the uncontrolled dimensions. Cheranelloor, where the concerned incidents took place, is a politically sensitive suburb of Kochi where accused-appellant James and his father Xavier had their residence, besides a bread factory and a flour mill in the same compound. It was not anybody's case that they belonged to any political party or had credentials, which were unwholesome. By normal reckoning, their business activities flourished well. they owned a tempo van and other vehicles which were parked inside the compound itself. It was, however, said that their success in business was a matter of envy for Thomas Francis, their neighbour, particularly who filed complaints to the local authorities against the conduct of the mill and the factory and also filed a writ petition to get them closed down, but without success. He was one of the accused in S.C. No. 74 of 1991 and according to the accused appellant-James was the kingpin and that the incident was wrought by him out of hatred and deep animosity towards James and Xavier.

7. The incident involved in this case took place at about 2.30 p.m. on 15.3.1988 when five young men, the two deceased in this case, namely, Mohan and Basheer (hereinafter referred to as 'deceased' by their respective name), and PW-1, PW-2 and PW-4, who activities of the bundh, as followers of the political parties which organized that bundh on that day, got into the flour mill of the A-2 through the unlocked gate leading access to that mill situate in a property comprising the residential building, a bread factory and

other structures belonging to that accused. This group of five men on passing beside the mill of A-2 while they were perambulating the streets of Cheranelloor to have a first hand information as to the observance of the bundh on coming to know of the operation of the flour mill by A-2 proceeded to that place and made demands to PW-15, the employee of A-2 who was operating the mill to close down. An altercation took place between them and on hearing the commotion the accused, A-1 and A-2 who were inside their residential building, situate to the west of that mill, rushed to the place and directed the bundh activities to go out of the mill. As the activities of the bundh persisted in their demands for closing the mill, according to the prosecution, A-2 got out of the mill and on the instruction given by A-2, A-1 locked the gate of the compound from inside. Then both of them rushed back to the house with A-2 directing A-1 to take out the gun and shoot down the bundh activists by declaring that all of them should be finished off. On getting into the house and after closing the outer door of that building, both the accused rushed to the southern room of that building which faced the gate with a window opening to that side. The 1st accused on the instigation of the 2nd accused, his father, and having that accused beside him, fired at the bundh activists, who by that time had approached near the locked gate, by using an S.B.B.L. Gun through the window. The first shot fired from the gun hit against one of the bundh activists, who had got into the compound, namely Basheer, and he fell down beside the gate. The other four bundh activists on requesting the 1st accused not to open fire rushed towards Basheer and, according to the prosecution, the first accused fired again with the gun indiscriminately causing injuries to all of them. Even when the first shot was fired from the gun passersby in the road situate in front of that property also sustained injuries. When the firing continued as stated above some of the residents of the area who were standing beside the road also received gun shot injuries. On hearing the gun shots people of the locality rushed to the scene of occurrence and some of them by scaling over the locked gate broke opened the lock and removed the injured to the road, from where they were rushed to the hospital in a tempo van along with the other injured who had also sustained gun shot injuries while they were standing beside the road. One among the injured, namely, Monahan breathed his last while he was transported in the tempo to the hospital and another, namely, Basheer, succumbed to his injuries after being admitted at City Hospital, Ernakulam. All the other injured were admitted in that hospital to provide them treatment for the injuries sustained. After the removal of the injured to the hospital in the tempo as aforesaid a violent mob which collected at the scene of occurrence set fire to the residential building, flour mill, bread factory, household articles, cycles, a tempo and scooter, parked in front of the residential building of the accused, infuriated by the heinous act of the accused in firing at the bundh activists and other innocent people as aforesaid. Soon after the firing both the accused and PW-15 escaped from the scene of occurrence and took shelter in a nearby house.

8. The information as to the occurrence of a skirmish and altercation between bundh activists and the accused and of an incident involving firing at Cheranelloor was received by the police at Kalamassery Police Station from the Fire Station at Gandhi Nagar,

Ernakulam, which was informed of such an incident over phone by a resident living close to the place of occurrence.

9. The accused on the other hand, took the stand that the firing resulting in the death of two bundh activists and sustaining of grievous injuries to several others occurred when their house and other buildings, situated in a common compound bounded with well protected boundary walls, and movable properties kept therein were set on fire by an angry mob of bundh activists when the accused failed to heed their unlawful demand to close down the flour mill which was operated on that day.

10. The trial Court discarded the prosecution version that the deceased and PWs who had sustained injuries had gone through the gate as claimed. On analysing the evidence it was concluded that they had scaled the walls. Their entry into premises of the accused was not lawful. It was also held that PW-15 was roughed up by the bandh activists, making him runaway. A significant conclusion was arrived at that they were prepared and in fact used muscle power to achieve their ends in making the bandh a success. It was categorically held that the bandh activists on getting into the mill threatened, intimidated and assaulted PW-15 so as to compel him to close downs the mill. He sustained injuries, and bandh activists indulged in violence before the firing took place at the place of occurrence. Accused asked PW-1, PW-2 and PW-4 to leave the place. It was noticed by the trial Court that the activists were in a foul and violent mood and had beaten up one Jossy, and this indicated their aggressive mood. They were armed with sharp edged weapons. Finally, it was concluded that the right of private defence was exceeded in its exercise.

11. On consideration of the evidence on record as noted above, the conviction was made by the trial Court and sentence was imposed. The trial Court came to hold that though the accused persons claimed alleged exercise of right of private defence same was exceeded. The view was endorsed by the High Court by the impugned judgment so far as the present appellant is concerned. But benefit of doubt was given to A-2, father of the present appellant.

12. Mr. Sushil Kumar, learned senior counsel for the appellant submitted that the factual scenario clearly shows as to how the appellant was faced with the violent acts of the prosecution witnesses. Admittedly, all of them had forcibly entered into the premises of the appellant. PW-15 one of employees was inflicted severe injuries. In this background, the accused acted in exercise of right of private defence and there was no question of exceeding such right, as held by the trial Court and the High Court.

13. In response, learned counsel for the State submitted that after analyzing the factual position the trial Court and the High Court have rightly held that the accused exceeded the right of private defence and when two persons have lost lives, it cannot be said that the act done by the accused was within the permissible limits. He also pressed for

accepting prayer in the connected SLPs relating to acquittal of A-2 and conviction of the accused-appellant under Section 304 Part I.

14. Only question which needs to be considered, is the alleged exercise of right of private defence. Section 96, IPC provides that nothing is an offence which is done in the exercise of the right of private defence. The Section does not define the expression 'right of private defence'. It merely indicates that nothing is an offences which is done in the exercise of such right. Whether in a particular set of circumstances, a person legitimately acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of each case. No test in the abstract for determining such a question can be laid down. In determining this question of fact, the Court must consider all the surrounding circumstances. It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the Court to consider such a plea. In a given case the Court can consider it even if the accused has not taken it, if the same is available to be considered from the material on record. Under Section 105 of the Indian Evidence Act, 1872 (in short 'the Evidence Act'), the burden of proof is on the accused, who sets up the plea of self-defence, and, in the absence of proof, it is not possible for the Court to presume the truth of the plea of self-defence. The Court shall presume the absence of such circumstances. It is for the accused to place necessary material on record either by himself adducing positive evidence or by eliciting necessary facts from the witnesses examined for the prosecution. An accused taking the plea of the right of private defence is not necessarily required to call evidence; he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. The question in such a case would be a question of assessing the true effect of the prosecution evidence, and not a question of the accused discharging any burden. Where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the Court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused. The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record. (See Munshi Ram and Ors. v. Delhi Administration MANU/SC/0072/1967: 1968CriLJ806, State of Gujarat v. Bai Fatima MANU/SC/0217/1975: 1975CriLJ1079, State of U.P. v. Mohd. Musheer Khan MANU/SC/0153/1977: 1977CriLJ1897, and Mohinder Pal Jolly v. State of Punjab MANU/SC/0130/1978: 1979CriLJ584. Sections 100 to 101 define the extent of the right of private defence of body. If a person has a right of private defence of body under Section 97, that right extends under Section 100 to causing death if there is reasonable apprehension that death or grievous hurt would be the consequence of the assault. The oft quoted observation of this Court in Salim Zia v. State of U.P. MANU/SC/0161/1978: 1979CriLJ323, runs as follows:

"It is true that the burden on an accused person to establish the plea of self-defence is not as onerous as the one which lies on the prosecution and that, while the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea to the hilt and may discharge his onus by establishing a mere preponderance of probabilities either by laying basis for that plea in the cross-examination of the prosecution witnesses or by adducing defence evidence."
The accused need not prove the existence of the right of private defence beyond reasonable doubt. It is enough for him to show as in a civil case that the preponderance of probabilities is in favour of his plea.

15. The number of injuries is not always a safe criterion for determining who the aggressor was. It cannot be stated as a universal rule that whenever the injuries are on the body of the accused persons, a presumption must necessarily be raised that the accused persons had caused injuries in exercise of the right of private defence. The defence has to further establish that the injuries so caused on the accused probabilise the version of the right of private defence. Non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance. But mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all cases. This principle applies to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit-worthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. [See Lakshmi Singh v. State of Bihar, MANU/SC/0136/1976: 1976CriLJ1736]. A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to inflict severe and mortal injury on the aggressor. In order to find whether the right of private defence is available to an accused, the entire incident must be examined with care and viewed in its proper setting. Section 97 deals with the subject matter of right of private defence. The plea of right comprises the body or property (i) of the person exercising the right; or (ii) of any other person; and the right may be exercised in the case of any offence against the body, and in the case of offences of theft, robbery, mischief or criminal trespass, and attempts at such offences in relation to property. Section 99 lays down the limits of the right of private defence. Section 96 and 98 give a right of private defence against certain offences and acts. The right given under Section 96 to 98 and 100 to 106 is controlled by Section 99. To claim a right of private defence extending to voluntary causing of death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused to him caused to him. The burden is on the accused to show that he had a right of private defence which extended to causing of death. Section 100 and 101, IPC define the limit and extent of right of private defence.

16. Sections 102 and 105, IPC deal with commencement and continuance of the right of private defence of body and property respectively. The right commences, as soon as a

reasonable apprehension of danger to the body arises from an attempt, or threat, or commit the offences, although the offence may not have been committed but not until there is that reasonable apprehension. The right lasts so long as the reasonable apprehension of the danger to the body continues. In Jai Dev v. State of Punjab MANU/SC/0134/1962: [1963]3SCR489, it was observed that as soon as the cause for reasonable apprehension disappears and the thereat has either been destroyed or has been put to route, there can be no occasion to exercise the right of private defence.

17. In order to find whether right of private defence is available or not, the injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered. Similar view was expressed by this Court in Biran Singh v. State of Bihar MANU/SC/0112/1974: 1975CriLJ44. (See: Wassan Singh v. State of Punjab MANU/SC/1014/1996: 1996CriLJ878, Sekhar alias Raja Sekharan v. State represented by Inspector of Police, T.N., MANU/SC/0865/2002: 2003CriLJ53.

18. As noted in Butta Singh v. The State of Punjab MANU/SC/0314/1991: 1991CriLJ1464, a person who is apprehending death or bodily injury cannot weigh in golden scales in the spur of moment and in the heat of circumstances, the number of injuries required to disarm the assailants who were armed with weapons. In moments of excitement and disturbed mental equilibrium it is often difficult to expect the parties to preserve composure and use exactly only so much force in retaliation commensurate with the danger apprehended to him where assault is imminent by use of force, it would be lawful to repel the force in self-defence and the right of private-defence commences, as soon as the threat becomes so imminent. Such situations have to be pragmatically viewed and not with high-powered spectacles or microscopes to detect slight or even marginal overstepping. Due weightage has to be given to, and hyper technical approach has to be avoided in considering what happens on the spur of the moment on the spot and keeping in view normal human reaction and conduct, where self-preservation is the paramount consideration. But, if the fact situation shows that in the guise of self-preservation, what really has been done is to assault the original aggressor, even after the cause of reasonable apprehension has disappeared, the plea of right of private-defence can legitimately be negatived. The Court dealing with the plea has to weigh the material to conclude whether the plea is acceptable. It is essentially, as noted above, a finding of fact.

19. The right of self-defence is a very valuable right, serving a social purpose and should not be construed narrowly. (See Vidhya Singh v. State of M.P. MANU/SC/0212/1971: 1971CriLJ1296. Situations have to be judged from the subjective point of view of the accused concerned in the surrounding excitement and confusing of the moment, confronted with a situation of peril and not by any microscopic and pedantic scrutiny. In adjudging the question as to whether more force than was necessary was used in the prevailing circumstances on the spot it would be inappropriate, as held by this Court, to

adopt tests by detached objectivity which would be so natural in a Court room, or that which would seem absolutely necessary to a perfectly cool bystander. The person facing a reasonable apprehension of threat to himself cannot be expected to modulate his defence step by step with any arithmetical exactitude of only that much which is required in the thinking of a man in ordinary times or under normal circumstances.

20. In the illuminating words of Russel (Russel on Crime, 11th Edition Volume I at page 49):
"..... a man is justified in resisting by force anyone who manifestly intends and endeavours by violence or surprise to commit a known felony against either his person, habitation or property. In these cases, he is not obliged to retreat, and may not merely resist the attack where he stands but may indeed pursue his adversary until the danger is ended and if in a conflict between them he happens to kill his attacker, such killing is justifiable."
21. The right of private defence is essentially a defensive right circumscribed by the governing statute i.e. the IPC, available only when the circumstances clearly justify it. It should not be allowed to be pleaded or availed as a pretext for a vindictive, aggressive or retributive purpose of offence. It is a right of defence, not of retribution, expected to repel unlawful aggression and not as retaliatory measure. While providing for exercise of the right, care has been taken in IPC not to provide and has not devised a mechanism whereby an attack may be a pretence for killing. A right to defend does not include a right to launch an offensive, particularly when the need to defend no longer survived.

22. The background facts as noted by the trial Court and the High Court clearly show that the threat to life and property of the accused was not only imminent but did not cease, and it continued unabated. Not only there were acts of vandalism, but also destruction of property. The High Court noticed that explosive substances were used to destroy the properties of the accused, but did not specifically answer the question as to whether destruction was prior or subsequent to the shooting by the accused. The High Court did not find the prosecution evidence sufficient to decide the question. In such an event the evidence of PW-15 who was also a victim assumes importance. The High Court without indicating any acceptable reason held on mere assumptions that his sympathy lies with the accused. The conclusion was unwarranted, because the testimony was acted upon by the Courts below as a truthful version of the incident. The trial Court found that an unruly situation prevailed in the compound of the accused as a result of the violence perpetrated by the bandh activists who got into the place by scaling over the locked gate and that their entry was unlawful too, besides intimidating and assaulting PW-15 and making him flee without shutting down the machines. The circumstances were also found to have necessitated a right of private defence. Even the High Court, candidly found that tense situation was caused by the deceased and his friends, that PW-15 suffered violence and obviously there was the threat of more violence to the person and properties, that the events taking place generated a sort of frenzy and excitement rendering the situation explosive and beyond compromise. Despite all these to expect the accused to remain calm

or to observe greater restraint in the teeth of the further facts found that the accused had only PW-15 who was already manhandled though they were outnumbered by their opponents (the bandh activists) and whose attitude was anything but peaceful - would be not only too much to be desired but being unreasonably harsh and uncharitable, merely carried away only by considerations of sympathy for the lives lost, on taking a final account of what happened ultimately after everything was over. In the circumstances, the inevitable conclusion is that the acts done by the accused were in the reasonable limits of exercise of his right of private defence and he was entitled to the protection afforded in law under Section 96 IPC.

23. Accordingly we set aside the conviction and sentence imposed. The appeal is allowed. The bail bonds shall stand discharged so far as the present accused is concerned.

24. In view of the order passed in criminal appeal No. 887 of 197, and conclusions arrived at therein no further orders are necessary to be passed in SLP (Criminal) Nos. 47-49 of 1998 filed by the State of Kerala.

25. Before we part with the case it needs to be noted that in the name of Hartal or Bandh or strike no person has any right to cause inconvenience to any other person or to cause in any manner a threat or apprehension of risk to life, liberty, property of any citizen or destruction of life and property, and the least any government or public property. It is high time that the authorities concerned take serious note of this requirement while dealing with those who destroy public property in the name of strike, hartal or bandh. Those who at times may have even genuine demands to make should not loose sight of the overall situation eluding control and reaching unmanageable bounds endangering life, liberty and property of citizens and public, enabling anti-social forces to gain control resulting in all around destruction with counter productive results at the expense of public order and public peace. No person has any right to destroy another's property in the guise of bandh or hartal or strike, irrespective of the proclaimed reasonableness of the cause or the question whether there is or was any legal sanction for the same. The case at hand is one which led to the destruction of property and loss of lives, because of irresponsible and illegal acts of some in the name of bandh or hartal or strike. Unless those who organize can be confident of enforcing effective control over any possible turn of events, they should think twice to hazard themselves into such risk prone ventures endangering public peace and public order. The question whether bandh or hartal or strike has any legal sanctity is of little consequence in such matters. All the more so when the days are such where even law-enforcing authorities/those in power also precipitate to gain political advantage at the risk and cost of their opponents. Unless such acts are controlled with iron hands, innocent citizens are bound to suffer and they shall be the victims of the highhanded acts of some fanatics with queer notions of democracy and freedom of speech or association. That provides for no license to take law into their own hands. Any soft or lenient approach for such offenders would be an affront to rule of law and challenge to public order and peace.

Back to Section 120A of Indian Penal Code, 1860

Back to Section 201 of Indian Penal Code, 1860

Back to Section 212 of Indian Penal Code, 1860

Back to Section 216 of Indian Penal Code, 1860

Back to Section 324 of Indian Penal Code, 1860

MANU/SC/0945/1999

IN THE SUPREME COURT OF INDIA

Death Reference Case No. 1 of 1998 (arising out of Dairy No. 1151 of 1998) with Criminal Appeal Nos. 321, 322, 323, 324 and 325 of 1998

Decided On: 11.05.1999

State through Superintendent of Police, CBI/SIT Vs. Nalini and Ors.

Hon'ble Judges/Coram:
K.T. Thomas, D.P. Wadhwa and S.S.M. Quadri, JJ.

Counsels:
Altaf Ahmed, Additional Solicitor General, N. Natarajan, S. Sivasubramaniam, Senior Advs., Jacob Daniel, Mariaputham, Romy Chacko, S.A. Matto, Meenakshi Arora, A.D.N. Rao, P. Parmeswaran, N. Chandrasekaran, S. Duraisamy, T. Ramadass, Ilamgovan, Sunder Mohan, B. Gopi Krishna Jai Sri Lanka, K. Vijay Kumar, V. Ramasubramanian, T. Raja, K. Thennan and D.K. Singh, Advs.

JUDGMENT
Authored By: K.T. Thomas, D.P. Wadhwa, S.S.M. Quadri
K.T. Thomas, J.

1. Rajiv Gandhi, a former Prime Minister of India was assassinated on 21-5-1991 at a place called Sriperumpudur in Tamil Nadu. The assassin was an adolescent girl named Thanu who was made into a human bomb and she got herself exploded at 10.19 P.M. at very close proximity to the visiting former Prime Minister. In a trice the life of Rajiv Gandhi was snuffed out and his body was smashed into smithereens. As for the assassin nothing except a few pieces of charred limbs and her sundered head were left behind. In the explosion lives of 18 others also got extinguished. Investigation pointed to a minutely orchestrated cabal, masterminded by some conspirators to extirpate the former Prime Minister from this terrestrial terrain. In the final charge-sheet made by the Central Bureau of Investigation (CBI) all the 26 appellants now before us, were arraigned as members of the conspiracy which targeted, inter alia, Rajiv Gandhi. The Special Judge who tried the case found all the 26 appellants guilty of various offences charged, the gravamen of them being Section 302 read with Section 120-B IPC. All of them were hence convicted of those offences and all of them were sentenced to death.

2. These appeals by right are under Section 19 of the Terrorists and Disruptive Activities (Prevention) Act (TADA for short). The Special Judge submitted the records to this Court for confirmation of the death sentence. We heard all the above matters together at great

length, perhaps the longest heard criminal appeal in this country. Shri Altaf Ahmad, Additional Solicitor General who was assisted by a team of Advocates argued the prosecution side adroitly and with great dedication. The accused's side was represented by Shri N. Natarajan, Senior Counsel who was assisted by array of counsel with meticulous preparation and admirable resourcefulness.

3. We were verily benefited by the remarkable contribution made by the counsel for both sides. We record our uninhibited thanks to them.

4. We may narrate, as briefly as possible, the events which preceded and succeeded the assassination as they would unfurl the conspectus of the case. The genesis can be traced to a movement which burgeoned in Sri Lanka for ventilating the grievances of the people of Tamil origin and for making certain demands for the Tamil speaking people of the island. Under the leadership of one Veluppillai Piribhakaran, a militant organisation called "Liberation Tigers of Tamil Eelam" (hereinafter referred to as ' LTTE' as the abbreviation) came to existence in the island. When the movement became belligerent the Government of Sri Lanka adopted sterner measures to curb their activities. Eventually a series of confrontations took place between the Government of Sri Lanka and the activists of LTTE.

5. When Sri Lankan Government found it difficult to meet the situation by themselves, the Government sought assistance from Government of India for tackling the problem. This was reciprocated by the Government of India. Some parleys took place between the diplomats of both nations in 1987. The President of Sri Lanka (Mr. Jayawardhane) and the Prime Minister of India (Sri Rajiv Gandhi) met together at New Delhi and Veluppillai Piribhakaran was also invited to be involved. An accord was signed by the aforesaid three persons by which Indian Government agreed, inter alia, to form a cadre called Indian Peace Keeping Force (IPKF for short). One of the tasks assigned to the force was to disarm LTTE militants. Pursuant to the terms of the accord Government of India despatched large number of IPKF personnel to Sri Lanka. While discharging their duties the IPKF committed many excesses which became inhuman conduct towards the followers of LTTE. Consequently hostility developed in the minds of LTTE cadre towards IPK Force. To register their protest against such excesses one of the LTTE hardcore activists by name Dileepan undertook a fast and he succumbed to it after a few days.

6. Skirmishes became rampant between members of the IPK Force and LTTE activists. In October 1987, a vessel carrying 17 LTTE functionaries was intercepted by the Sri Lankan navy while patrolling on the high seas and the passengers were held captives. Leaders of LTTE made a bid to save them by appealing to the Indian Government to intervene, but there was no response. 12 out of 17 captives committed suicide by consuming Pottasium Cyanide. There was counter attack on IPK Force when LTTE commandos captured a ship carrying provisions for the army, and in the encounter which ensued 11 Indian soldiers were killed.

7. In the meanwhile one Varadaraja Perumal who was an accredited leader of a rival organisation called Eelam Peoples Revolutionary Liberation Front (EPRLF) got elected from the Northern Zone as a follow-up step of the terms of Sri Lanka-India Accord to which reference was made above. Later the Indian Government under the leadership of Rajiv Gandhi agreed for making a gradual denudation of IPK Force from Sri Lanka.

8. In the general election which was held in 1989, a new Government headed by Sri V.P. Singh as Prime Minister came to power in India. The new Government accelerated the process of denudation of IPK Force. However the said Government did not last long and another Government with Sri K. Chandrashekhar as Prime Minister assumed office. That Government too did not last long and the political changes in India reached a stage when the Lok Sabha was dissolved and the President of India issued a notification for fresh election. Rajiv Gandhi started campaigning for the Congress (I) Party. He made his views public when a correspondent of Amrit Bazar Patrika interviewed him which was published in the Sunday Magazine of the newspaper on the 12th and 19th of August, 1990. The pith of the interview, concerning Sri Lankan policy, was that Rajiv Gandhi did not favour withdrawal of the IPK Force from Sri Lanka and he was critical of the approach made by V. P. Singh Government towards Sri Lanka.

9. In the election manifesto published by Congress (I) for the ensuing general election the party reiterated its commitment to the India-Sri Lanka agreement of July 1987 as the basis for the settlement of outstanding issues relating to the Tamil population of Sri Lanka, and assured to ensure the territorial integrity of Sri Lanka.

10. The events which took place subsequent thereto were so intertwined with the above narrated political developments that this case cannot be understood without etching the afore-presented backdrop. We may now proceed to describe the prosecution case.

11. A criminal conspiracy was hatched and developed by the hardcore LTTE cadre which spread over a long period of 6 years commencing from July 6, 1987 and stretching over till May 1992. The main objects of the conspiracy were: (1) to carry out acts of terrorism and disruptive activities in Tamil Nadu and other places in India during the course of which to assassinate Rajiv Gandhi and Ors. (2) to cause disappearance of evidence thereof, (3) to harbour all the conspirators living in India and (4) to escape from being apprehended and to screen all those who were involved in the conspiracy from legal consequences.

12. As a follow-up step of the conspiracy, during the first half of its period LTTE commandos arrived on the Indian shore in different batches. The first batch arrived on 12-9-1990 which consisted of Perumal Vijayan (12th accused) and his wife Selvaluxmi (13th accused) and Bhaskaran (14th accused). They were seen off at Jaffna in Sri Lanka by one of the top ranking hardcore LTTE leader by name Sivarasan.

13. It is appropriate to mention now itself that the said Sivarasan would have been one of the most seriously involved accused in this case, but he is not alive now as he abruptly ended his life when he was sure of being nabbed by the police. Among the conspirators nobody else seems to have played a greater role on the Indian soil than what Sivarasan had played. Sivarasan reached India sometime in December 1990 and in collaboration with those who arrived in the first batch he managed to secure a house building in a locality called Kodangiyoorat Madras.

14. The next batch consisted of Robert Payas (9th accused), his wife and sisters and Jayakumar (10th accused) together with his wife Shanthi (11th accused). They arrived in India in September 1990. They took another house on rent at a more secluded locality in Kodangiyoor as suggested by Sivarasan who too started residing therein. The third batch consisting of Ravichandran (16th accused) and Suseendran (17th accused) came to India on December 17, 1990. Murugan (3rd accused) reached India in January 1991 and Radhayya (7th accused) and Chandralekha alias Athirai alias Guari (8th accused) reached India in April 1991. In the meantime two persons, Arivu (18th accused) and Irumborai (19th accused) went beck to Sri Lanka in the company of another important LTTE activists called Baby Subramaniam. They collected instructions from Veluppillai Piribhakaran. Sivarasan was shuttling between India and Sri Lanka quite often during the above period.

15. The final arrivals were the most dedicated hardcore LTTE commandos who were brought on the Indian soil by Sivarasan on 1st of May, 1991. That batch consisted of the girl Thanu (who offered herself to become the human bomb) and her close friend Suba besides Santhan (2nd accused), Shankar (4th accused), Vijayanandan (5th accused) and Sivaruban alias Ruban (6th accused). They were seen off at Sri Lanka by a man called Pottu Omman (who was described as chief of intelligence wing of LTTE).

16. The targets of the conspiracy, according to the prosecution, were Fort St. George at Madras (which houses the Government Secretariat of Tamil Nadu and a lot of important State Government buildings), Tamil Nadu Police Headquarters and other police stations, Vellore Fort (in which the Central Jail is situate) Krishna Raja Sagar Dam (Karnataka) Vidhan Soudha at Bangalore. Among the persons the targets were Rajiv Gandhi, Varadaraja Perumal and certain other unspecified but identified personage.

17. Pursuant to the scheme of the conspirators, photos of Fort St. George, Madras Police Headquarters and a few other police stations were taken and forwarded them to the top leaders of LTTE at Sri Lanka. A sketch of Vellore Fort was drawn up which too was despatched to the island.

18. Sivarasan sheltered Suba and Thanu for a few days in the house of Jayakumar (A-10) and shifted them to the house of Vijayan (A-12). As instructed by Sivarasan a wireless set was installed in the house of Vijayan (A-12) and fitted it with operational facilities as

Station No. 910. Another wire-less set was installed in the house of Robert Payas (A-9). In October 1990, a house was taken on rent by Nalini (A-1) at High Court Colony, Villivakkom, Madras. Murugan (A-3), Suba and Thanu used to see Nalini and Sivarasan. In March 1991, another house was taken on rent by Rangan (A-24) at Park Avenue, Madras and one more house was taken by him at Bangalore. Both houses were taken on rent as per the instructions given by Sivarasan.

19. When information reached that Rajiv Gandhi was addressing a meeting at Marina Beach, Madras on 18-4-1991 four persons - Nalini (A-1), Murugan (A-3), Subha Sundaram (A-22) and one Haribabu went to the meeting place. The conspirators thought of conducting a trial for the purpose of assassinating Rajiv Gandhi. When they got information that V.P. Singh, a former Prime Minister, was addressing a meeting at Madras on 7th May, 1991 Sivarasan took Suba and Thanu to that place (Nandanam, in Madras), Nalini (A-1), Murugan (A-3) and Arivu (Perarivalan) and Haribabu also accompanied them. The idea was to give advance training to Suba and Thanu as to how to go near a former Prime Minister. V.P. Singh arrived at the meeting place only during the wee hours of 8th May, 1991. Before V.P. Singh could address the gathering, Nalini (A-1), Thanu and Suba made a bid to garland the visiting former Prime Minister on the rostrum of the meeting. The success of the aforesaid trial emboldened Suba and Thanu and they on 9th May, 1991 conveyed their confidence in achieving the target to Akila who was Deputy Chief of intelligence wing of LTTE. (Akila was also put in charge of the Women Wing of the organisation).

20. With the success they felt achieved in the trial run the main conspirators started acting swiftly. On 11-5-1991, Nalini (A-1) took Suba and Thanu to a tailoring shop and purchased some clothes including a Salwar-Kameez. On 17-5-1991, Sivarasan and Santhan (A-2) sent Sivaruban (A-6) to Jaipur to find out a hide-out for the conspirators and to take the same on rent under a pseudonymous name.

21. The tour programme of Rajiv Gandhi was published in the local newspapers on 19-5-1991 and then Sivarasan came to know that Rajiv Gandhi would address a meeting at Sriperumpudur on 21st May, 1991. Sivarasan determined not to miss that opportunity. He ascertained all about Sriperumpudurfrom Nalini (A-1) and then he told Nalini that the target was only Rajiv Gandhi.

22. On 20-5-1991, Arivu (A-18) purchased a 9-Watt golden power battery from a shop. Sivarasan deputed Kanagasabapathy (A-7) to go to Delhi to fix up a house as a hide-out to be used during the days after accomplishing the target. Sivarasan confabulated with Nalini (A-1), Murugan (A-3), Arivu (A-16) and Haribabu at the house of Jayakumar (A-10). Sivarasan instructed Nalini to take half a day's leave under some pretext or the other. Arivu (A-18) and Bhagyanathan (A-20) procured a Kodak film and supplied it to Haribabu who was a freelance photographer.

23. On 21-5-1991, Haribabu bought a garland made of sandalwood presumably for using it as a camouflage (for murdering Rajiv Gandhi). He also secured a camera. Nalini (A-1) wangled leave from her immediate boss (she was working in a company as P. A. to the Managing Director) under the pretext that she wanted to go to Karichipuram for buying a saree. Instead she went to her mother's place. Padma(A-21) is her mother. Murugan (A-3). was waiting for her and on his instruction Nalini rushed to her house at Villivakkom (Madras). Sivarasan reached the house of Jayakumar (A-10) and he got armed himself with a pistol and then he proceeded to the house of Vijayan (A-12).

24. Sivarasan directed Suba and Thanu to get themselves ready for the final event. Suba and Thanu entered into an inner room. Thanu was fitted with a bomb on her person together with a battery and switch. The loosely stitched Salwar-kameez which was purchased earlier was worn by Thanu and it helped her to conceal the bomb and the other accessories thereto. Sivarasan asked Vijayan (A-12) to fetch an auto-rickshaw.

25. The auto-rickshaw which Vijayan (A-12) brought was not taken close to his house as Sivarasan had cautioned him in advance. He took Suba and Thanu in the auto-rickshaw and dropped them in the house of Nalini (A-1). Suba expressed gratitude of herself and her colleagues to Nalini (A-1) for the wholehearted participation made by her in the mission they had undertaken. She then told Nalini that Thanu was going to create history by murdering Rajiv Gandhi. The three women went with Sivarasan to a nearby temple where Thanu offered her last prayers. They then went to "Parry's Corner" (which is a starting place of many bus services at Madras). Haribabu was waiting there with camera and garland.

26. All the 5 proceeded to Sriperumpudur by bus. After reaching there they waited for the arrival of Rajiv Gandhi. Sivarasan instructed Nalini (A-1) to provide necessary cover to Suba and Thanu so that their identity as Sri Lankan girls would not be disclosed due to linguistic accent. Sivarasan further instructed her to be with Suba and to escort her after assassination to the spot where Indira Gandhi's statue is situate and to wait there for 10 minutes for Sivarasan to reach.

27. Nalini (A-1), Suba and Thanu first sat in the enclosure earmarked for ladies at the meeting place at Sriperumpudur. As the time of arrival of Rajiv Gandhi was nearing Sivarasan took Thanu alone from that place. He collected the garland from Suba and escorted Thanu to go near the rostrum. Thanu could reach near the red carpet where a little girl (Kokila) and her mother (Latha Kannan) were waiting to present a poem written by Mokila on Rajiv Gandhi.

28. When Rajiv Gandhi arrived at the meeting place Nalini (A-1.) and Suba got out of the enclosure and moved away. Rajiv Gandhi went near the little girl Kokila. He would have either received the poem or was about to receive the same, and at that moment the hideous battery switch was clewed by the assassin herself. Suddenly the pawn bomb got

herself blown up as the incendiary device exploded with a deadening sound. All human lives within a certain radius were smashed to shreds. The head of a female, without its torso, was seen flinging up in the air and rolling down. In a twinkle, 18 human lives were turned into fragments of flesh among which included the former Prime Minister of India Rajiv Gandhi and his personal security men, besides Thanu and Haribabu. Many others who sustained injuries in the explosion, however, survived.

29. Thus the conspirators perpetrated their prime target achievement at 10.19 P.M. on 21 -5-1991 at Sriperumpudur in Tamil Nadu.

30. After hearing the sound of explosion Nalini (A-1) and Suba ran across and reached Indira Gandhi statue. Sivarasan joined them without delay. He confirmed to them that Rajiv Gandhi was murdered and conveyed that their comrade Haribabu was also killed in the blast. Then they proceeded to a nearby house, took water therefrom and then escaped in an auto-rickshaw. They reached the house of Jayakumar(A-10).

31. Sivarasan transmitted wireless message to the LTTE supreme in Sri Lanka regarding the killing of Rajiv Gandhi. Pottu Omman, the Chief of intelligence of LTTE confirmed receipt of the message and in reply sent certain queries.

32. The next phase of activities of the conspirators consisted of attempts to abscond, to screen the offenders and to destroy the evidence regarding conspiracy.

33. On 24-5-1991 the newspapers published a photograph of Thanu holding a garland in her hand at Sriperumpudur in the company of a few other females waiting for the arrival of Rajiv Gandhi On seeing it Pottu Omman sent a wireless query to Sivarasan whether Thanu was identifiable in the photo. Sivarasan, Suba, Nalini (A-1), her husband Murugan (A-3) and mother Padma (A-21) proceeded to Tirupati to offer thanks-giving worship to the Lord, and they returned Madras on the next day. Sivarasan thereafter moved from place to place and Suba was shifted to different houses.

34. In the first week of June 1991, Sivarasan felt that he was within the penumbra of suspicion of the police. Thereupon he entrusted the remaining work to be carried out by Murugan (A-3). Though Sivarasan advised Nalini to escape to Sri Lanka she did not do so for practical reasons known to her. She and her husband Murugan (A-3) again proceeded to Tirupati on 9-6-1991 in cognito. Murugan got his head tonsured by way of redeeming a vow.

35. By the middle of June, photographs of Nalini (A-1) and Suba appeared in the newspapers. Sivarasan kept Pottu Omman informed of the developments in India through wireless transmissions.

36. On 11-6-1991 Bhagyanathan (A-20) and Padma (A-21) were arrested by the police. Three days later Nalini (A-1) and Murugan (A-3) were arrested. The said development was communicated by Sivarasan to the LTTE Headquarters at Sri Lanka and thereafter he in the company of Suba and Dhanasekaran (A-23), Rangan (A-24) and Vicky (A-25) and one LTTE activist by name Nehru had skulked to Bangalore and concealed themselves in a house at Indira Nagar. Irumborai (A-19) was already accommodated in that house. On 16-8-1991 they shifted to another house situated at Kananakuntte in Bangalore.

37. The police got some scent regarding the above hide-out and they rushed to that place. But by the time the police could trace them out, Sivarasan, Suba, Nehru and Amman and other LTTE activists, who too were hiding in the same house, ended their lives by committing suicide. The remaining accused were arrested on different days at different places.

38. On completion of the investigation the CBI laid charge-sheet against all the 26 appellants besides Veluppillai Piribhakaran (the Supremo of LTTE), Pottu Omman (the Chief of intelligence wing of LTTE) and Akila (Deputy Chief of intelligence) for various offences including the main offence under Section 302 read with Section 120-B and Sections 3 & 4 of the TADA. In the charge-sheet names of 12 other persons were also mentioned as conspirators. co-conspirators. Among them two had died at the spot (Thanu and Haribabu) and the remaining 10 persons died subsequently. Their names are: (1) Sivarasan alias Raghuban (2) Suba alias Nitya alias Mallika (3) Nehru alias Nero (4) Suresh Master (5) Amman alias Gangai Kumar (6) Driver Anna alias Keerthy (7) Jamuna alias Jamila (8) Shanmugham (9) Trichy Santhan alias Gundu Santhan (10)Dixon.

39. All steps taken to apprehend three of the main accused (1) Veluppillai Piribhakaran (2) Pottu Omman and (3) Akila did not succeed and hence they were proclaimed as absconding offenders. Remaining 26 persons (who are appellants before us) were charged for offences under Section 302 and Sections 326, 201, 212 and 316 read with Section 120-B of IPC; Section 3 sub-section either (2) or (3) or (4) of the TADA. Ravichandran (A-16) and Suseendran (A-17) were, in addition, charged under Section 5 of the TADA. Less serious offences under certain provisions of Explosive Substance Act, Arms Act, Passport Act, Foreigners Act and Wireless Telegraphy Act were indicted on a few accused. (It is not necessary to pinpoint, the different offences mentioned in the charge-sheet against each accused as the same shall be referred to when we consider the liability of the each accused.)

40. The Special Judge, after a marathon trial, convicted all the 26 accused of all the main offences charged against each of them. He sentenced all of them to the extreme penalty under law (i.e. death) for the principal offence under Section 302 read with Section 120-B IPC. In addition thereto A-1 was again sentenced to death under Section 3(1)(ii) of the TADA. Ravichandran (A-16) and Suseendran (A-17) were further convicted under

Section 5 of TADA and were sentenced to imprisonment for life. For other offences of which the accused were convicted the trial court awarded sentences of lesser terms of imprisonment.

41. Before we proceed to discuss the evidence relating to the main offence under Section 302 read with Section 120-B of IPC it would be advantageous to consider whether prosecution could sustain offences under TADA (except the offence under Section 5 thereof which was fastened only against Ravichandran (A-16) and Suseendran (A-17) as that can be dealt with separately).

42. To constitute any offence under Sub-section (2) or Sub-section (3) of Section 3 of TADA the accused should have either committed a terrorist act or have done something concerning a terrorist act which is sine qua non for convicting the accused under either of the sub-sections. If terrorist act is absent in the perpetration of any crime it may still amount to certain offences under the ordinary law for which there is procedure and penalty already prescribed by law. But if any such crime should be dealt with under TADA it must be interlinked with "terrorist act" as defined there-under.

43. "Terrorist act" is defined in Section 2(1)(h) of the TADA, by giving "the meaning assigned to it in Sub-section (1) of Section 3" and the expression "terrorist" is mandated to be construed accordingly. It is therefore necessary to look at Section 3(1) more closely. We may extract the first three sub-sections of Section 3:

(1) Whoever with intent to. overawe the Government as by law established or to strike terror in people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire-arms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, commits a terrorist act.

(2) Whoever commits a terrorist act, shall,-

(i) if such act has resulted in the death of any person, be punishable with death or imprisonment for life and shall be liable to fine;

(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(3) Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

44. A reading of the first sub-section shows that the person who does any act by using any of the substances enumerated in the sub-section in any such manner as are specified in the sub-section, cannot be said to commit a terrorist act unless the act is done "with intent" to do any of the four things: (1) to overawe the Government as by law established; or (2) to strike terror in people or any section of the people; or (3) to alienate any section of the people; or (4) to adversely affect the harmony amongst different sections of the people.

45. When the law requires that the act should have been done "with intent" to cause any of the above four effects such requirement would be satisfied only if the dominant intention of the doer is to cause the aforesaid effect. It is not enough that the act resulted in any of the four consequences.

46. It must be recapitulated now that the constitutional validity of Section 3 of TADA was challenged in this Court and a Five-Judge Bench has upheld the provisions in Kartar Singh v. State of Punjab: 1994CriLJ3139 by striking a note of caution that since provisions of TADA tend to be very harsh and drastic containing stringent provisions they must be strictly construed. The Bench approved the observations made by Ahmadi, J (as the learned Chief Justice then was) in Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijaya and Ors. MANU/SC/0337/1990: 1990 Cri LJ 1869.

Therefore, when a law visits a person with serious penal consequences extra care must be taken to ensure that those whom the legislature did not intend to be covered by the express language of the statute are not roped in by stretching the language of the law.
47. Dealing with the facts of that case where the accused was alleged to have killed one Raju and another Keshav for gaining supremacy in the under-world this Court has stated that "a mere statement to the effect that the show of such violence would create terror or fear in the minds of the people and none would dare to oppose them cannot constitute an offence under Section 3(1) of the Act" and then observed thus:

The consequence of such violence is bound to cause panic and fear; but the intention of committing the crime cannot be said to be to strike terror in the people or any section of the people.
48. A Two-Judge Bench of this Court has considered the distinction between the act done with the requisite intent and another act which had only ensued such consequences. In Hitendra Vishnu Thakur and Ors. v. State of Maharashtra and Ors.

MANU/SC/0526/1994: 1995 Cri LJ 517 Dr. Anand, J (as the learned Chief Justice then was) has stated thus:

Thus unless the act complained of falls strictly within the letter and spirit of Section 3(1) of TADA and is committed with the intention as envisaged by that section by means of the weapons etc. as are enumerated therein with the motive as postulated thereby, an accused cannot be tried or convicted for an offence under Section 3(1) of TADA.
49. The further reasoning contained in the Judgment is the following:

Likewise, if it is only as a consequence of the criminal act that fear, terror or/and panic is caused but the intention of committing the particular crime cannot be said to be the one strictly envisaged by Section 3(1), it would be impermissible to try or convict and punish an accused under TADA. The commission of the crime with the intention to achieve the result as envisaged by the section and not merely where the consequence of the crime committed by the accused create that result, would attract the provisions of Section 3(1) ' of TADA. Thus, if for example a person goes on a shooting spree and kills a number of persons, it is bound to create terror and panic in the locality but if it was not committed with the requisite intention as contemplated by the section, the offence would not attract Section 3(1) of TADA.
50. The Bench on the aforesaid reasoning, concluded thus:

Thus, the true ambit and scope of Section 3(1) is that no conviction under Section 3(1) of TADA can be recorded unless the evidence led by the prosecution establishes that the offence was committed with the intention as envisaged by Section 3(1) by means of the weapons etc. as enumerated in the section and was committed with the motive as postulated by the said section. Even at the cost of repetition, we may say that where it is only the consequence of the criminal act of an accused that terror, fear or panic is caused, but the crime was not committed with the intention as envisaged by Section 3(1) to achieve the objective as envisaged by the section, an accused should not be convicted for an offence under Section 3(1) of TADA.
51. Two other decisions rendered by a Two-Judge Bench of this Court were cited before us. In Girdhari Parmanand Vadhava v. State of Maharashtra MANU/SC/1708/1996: (1996) 11 SCC 179 it has been pointed out that the intention of the wrong doer can be inferred from the. circumstances. After referring to the case law i.e. Hitendra Vishnu Thakur (supra) the Bench had held that "terrorist activity is not confined to unlawful activity or crime committed against an individual or individuals but it aims at bringing about terror in the minds of people or section of people disturbing public order, public peace and tranquillity, social and communal harmony, disturbing or establishing public administration and threatening security and integrity of the country. In the instant case, the intention to strike terror in the minds of the people can be reasonably inferred because Birju declared such intention in no uncertain terms by indicating that Vaibhav should be killed in order to send the message to the people in the locality that if the demand of Birju

and his associates was not met, extreme consequence of killing of an innocent person would be resorted to."

52. In Mohd. Iqbal M. Shaikh and Ors. v. State of Maharashtra MANU/SC/0281/1998: 1998 Cri LJ 2537 the same combination of learned Judges reiterated the principle by reference to Hitendra Vishnu Thakur and inferred from the facts of the case that the offence fell under Section 3 of TADA.

53. Thus the legal position remains unaltered that the crucial postulate for judging whether the offence is a terrorist act falling under TADA or not is whether it was done with the intent to overawe the Government as by law established or to strike terror in the people etc.

54. Learned Additional Solicitor General endeavoured to show that the intention of the conspirators was to overawe the Government of India. His contention was that assassination of Rajiv Gandhi was a follow up action for restraining the Government from proceeding with the implementation of India-Sri Lanka Accord. In other words, the focus of the conspirators was the Government of India and Rajiv Gandhi was targeted to deter that focal point, according to learned Additional Solicitor General. This contention can be examined by a reference to the evidence in this case.

55. It is true, LTTE leaders were bitterly critical of "India-Sri Lanka Accord" which was signed on 22-7-1987. Any one who criticised the policy of a Government could not be dubbed as a terrorist unless he had done any of the acts enumerated with the object of deterring the Government from doing anything or to refrain from doing anything.

56. Veluppillai Piribhakaran addressed a meeting on 4-8-1987, the text of the speech was published which is marked in this case as Ext.354. In the said speech he used strong language to criticise "India-Sri Lanka Accord" and the manner in which it was made. But no word of hatred was expressed towards the Government of India though he aired his opposition towards Sri Lankan Government which he described as "Sinhala racist government". He also spoke bitterly against the Sri Lankan Tamil leaders who supported the Accord. About the Indian Government and its Prime Minister the LTTE supremo said the following:

The Indian Prime Minister offered me certain assurances. He offered a guarantee for the safety and protection of our people, I do have faith in the straightforwardness of the Indian Prime Minister and I do have faith in his assurances. We do believe that India will not allow the racist Sri Lankan State to take once again to the road of genocide against the Tamils. It is only out of this faith that we decided to hand over our weapons to the Indian peace keeping force.

57. It must be remembered that political changes which occurred in India thereafter had brought a new Government under the leadership of V.P. Singh as Prime Minister in 1989.

The IPKF inducted into Sri Lanka was gradually withdrawn in a phased manner, which process was commenced during the Prime Ministership of Rajiv Gandhi himself and continued during the Prime Ministership of V.P. Singh. The attitude of LTTE towards Government of India, during the aforesaid period, can be seen from what their own official publication "Voice of Tigers" had declared in its editorial column in the issue of the said journal dated 19-1-1990 (which is marked as Ext. 362). The editorial reads as follows:

In the meantime, the defeat of Rajiv Congress Party and the assumption to power of the National Front alliance under Vishwanath Pratap Singh has given rise to a sense of relief and hope to the people of Tamil Eelam. The LTTE has already indicated to the new Indian Government its desire to improve and consolidate friendly ties with India. The new Indian leadership responded positively according to Mr. Karunanidhi, the Tamil Nadu Chief Minister, the role and responsibility of mediating with the Tamil Tigers. The LTTE representatives who had four rounds of talks with the Tamil Nadu Chief Minister in Madras, are firmly convinced that the Tamil Nadu Government and the new Indian administration are favourably disposed to them and the V.P. Singh's government will act in the interests of the Tamil speaking people by creating appropriate conditions for the LTTE to come to political power in the North-Eastern Province.

58. The above editorial is a strong piece of material for showing that LTTE till then did not contemplate any action to overawe the Government of India. Of course the top layer Of LTTE did not conceal their ire against Rajiv Gandhi who was then out of power.

59. In this context it is important to point out what Veluppillai Piribhakaran, who went underground in Sri Lanka and resurfaced on 1-4-1990 after a period of 32 months of disappearance had said. (The news about his re-emergence was published in the newspaper - a copy of which has been marked as Ext.363). The LTTE supremo had told the newsmen then as follows:

We are not against India or the Indian people but against the former leadership in India who is against the Tamil liberation struggle and the LTTE.

60. Nothing else is proved in the case either from the utterances of the top brass LTTE or from any writings edited by them that anyone of them wanted to strike fear in the Government either of center or of any State.

61. From the aforesaid circumstances it is difficult for us to conclude that the conspirators intended, at any time, to overawe the Government of India as by law established.

62. Nor can we hold that the conspirators ever entertained an intention to strike terror in people or any section thereof. The mere fact that their action resulted in the killing of 18 persons which would have struck great terror in the people of India has been projected as evidence that they intended to strike terror in people. We have no doubt that the aftermath of the carnage at Sriperumpudur had bubbled up waves of shock and terror

throughout India. But there is absolutely no evidence that any one of the conspirators ever desired the death of any Indian other than Rajiv Gandhi. Among the series of confessions made by a record number of accused in any single case, as in this case, not even one of them has stated that anybody had the desire or intention to murder one more person along with Rajiv Gandhi except perhaps the murderer herself. Of course they should have anticipated that in such a dastardly action more lives would be vulnerable to peril. But that is a different matter and we cannot attribute an intention of the conspirators to kill anyone other than Rajiv Gandhi and the contemporaneous destruction of the killer also.

63. Alternatively, even if Sivarasan and the top brass of LTTE knew that there was likelihood of more casualties that cannot be equated to a situation that they did it with an intention to strike terror in any section of the people.

64. In view of the paucity of materials to prove that the conspirators intended to overawe the Government of India or to strike terror in the people of India we are unable to sustain the conviction of offences under Section 3 of TADA.

65. The next endeavour is to see whether the conspirators did any "disruptive activities" so as to be caught in the dragnet of Section 4(1) of TADA. The sub-section reads:

Whoever commits or conspires or attempts to commit or abets, advocates, advises, or knowingly facilitates the commission of, any disruptive activity or any act preparatory to a disruptive activity shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

66. "Disruptive activity" is defined in Sub-section (2). It is extracted below:

"For the purposes of Sub-section (1), 'disruptive activity' means any action taken, whether by act or by speech or through any other media or in any other manner whatsoever,-

(i) which questions, disrupts or is intended to disrupt, whether directly or indirectly, the sovereignty and territorial integrity of India; or

(ii) which is intended to bring about or supports any claim, whether directly or indirectly, for the cession of any part of India or the secession of any part of India from the Union.

67. An attempt was made to bring the case within the ambit of Sub-section (3) of Section 4 of TADA on the strength of the assassination of Rajiv Gandhi and also on the strength of death of a number of police personnel at Sriperumpudur on the fateful night. Sub-section (3) reads thus:

Without prejudice to the generality of the provisions of Sub-section (2), it is hereby declared that any action taken, whether by act or by speech or through any other media or in any other manner whatsoever, which-

(a) advocates, advises, suggests or incites; or

(b) predicts, prophesies or pronounces or otherwise expresses, in such manner as to incite, advise, suggest or prompt, the killing or the destruction of any person bound by oath under the Constitution to uphold the sovereignty and integrity of India or any public servant shall be deemed to be a disruptive activity within the meaning of this section.

68. The killing of a public servant or killing of any other person bound by oath would be an offence under the Indian Penal Code. But it must be noted that such killing, as such, is not a disruptive activity. Certain type of actions which preceded such killing alone is regarded as a disruptive activity through the legal fiction created by Sub-section (3). Such actions include advocating, advising, suggesting, inciting, predicting, prophesying, pronouncing or prompting the killing of such persons.

69. In other words, all the preceding actions directed positively towards killing of such persons would amount to disruptive activity, but not the final result namely, the act of killing of such person.

70. If there is any evidence, in this case, to show that any such preceding act was perpetrated by any of the appellants towards killing of any police officer who was killed at the place of occurrence it would, no doubt, amount to disruptive activity. But there is no such evidence that any such activity was done for the purpose of killing any police personnel.

71. However, there is plethora of evidence for establishing that all such preceding activities were done by many among the accused arrayed, for killing Rajiv Gandhi. But unfortunately Rajiv Gandhi was not then "a person bound by oath under the Constitution to uphold the sovereignty and integrity of India". Even the Lok Sabha stood dissolved months prior to this incident and hence it cannot be found that he was under an oath as a Member of Parliament.

72. The inevitable fall out of the above situation is that none of the conspirators can be caught in the dragnet of Sub-section (3) of Section 4 of TADA.

73. What remains to be considered for Section 4(1) of TADA is whether any disruptive activity falling within the ambit of the definition in Sub-section (2) has been established. The attempt which prosecution has made in that regard, is to show that the conspirators intended to disrupt the sovereignty of India. To support the said contention, our attention was drawn to the confessional statement of A-3 (Murugan), A-18 (Arivu) and the

photographs proved as M.Os.256 to 259 which were seized from the bag of A-3 (Murugan). The said items of evidence show that photos of Fort St. George, Madras (which houses the Government Secretariat of Tamil Nadu and the Legislative Assembly and Legislative Council), Police Headquarters, Central Jail within Vellore Fort etc. had been taken and despatched to the LTTE top brass of Sri Lanka.

74. It is too much a strain to enter a finding, on such evidence, that the above activities were unmistakably aimed at disrupting the sovereignty of India. The sketch of Vellore Fort (which houses the Central Jail) was drawn up, most probably, for planning some operation to rescue the prisoners (belonging to LTTE who have been interned therein). That of course would be an offence but not an activity which falls within the purview of Section 4 of TADA.

75. We are, therefore, unable to sustain the conviction of appellants for offences under Section 3 or 4 of TADA.

76. Now we have to proceed to consider whether the prosecution has succeeded in establishing the remaining offences found against the appellants.

77. We may put on record the following concessions made by the learned Counsel for all the appellants at the Bar:

(I) Prosecution has successfully established that Rajiv Gandhi was assassinated at 10.19 P.M. on 21-5-1991 at Sriperumpudur by a girl named Thanu who became a human bomb and got herself exploded in the same event; and that altogether 18 persons, including the above two, died in the said explosion.

(II) There is overwhelming evidence to show that assassination of Rajiv Gandhi was resulted from a conspiracy to finish him.

(III) It is also established by the prosecution beyond doubt that Sivarasan alias Raghuvaran who was a top brass of LTTE was one of the kingpins of the said conspiracy.

78. We may also record at this stage that the two points which are seriously disputed by the learned Counsel for the appellants are the following: (1) Assassination of Rajiv Gandhi was not the only focal point of the conspiracy. (2) Appellants were participants in the conspiracy.

79. In other words, the defence contended that the conspiracy was made only to assassinate Rajiv Gandhi and that none of the appellants had participated in the conspiracy.

80. For deciding the aforesaid major area of dispute, prosecution heavily relies on the statements allegedly made by a number of appellants and recorded purportedly under Section 15 of TADA. (Such statements will, hereinafter, be referred to, for convenience, as confessional statements of the accused). Such confessional statements were recorded by the Superintendent of Police, CBI/SPG who was deputed in the Special Team of Investigation. Every one of such confessional statements has been signed by the person who is shown as the maker thereof. Such confessional statement consists of inculpatory admissions, narrations which are neither inculpatory nor exculpatory, and incriminating roles attributed to other co-accused. It was not disputed before us that all such confessional statements, if duly recorded, are admissible in evidence in view of Section 15 of TADA. It is necessary to extract that Section which reads thus:

15. Certain confessions made to police officers to be taken into consideration.- (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person (or co-accused, abettor or conspirator) for an offence under this Act or rules made thereunder.

(Provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused).

(2) The police officer shall, before recording any confession under Sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily.

81. Learned Counsel for the defence made a bid to exclude the confessional statements from the purview of admissibility in this case on the premise that no offence under TADA could be found against any of the accused and hence the confessional statements would wiggle into the can of inadmissibility and consequently it cannot be used for offences outside TADA. To buttress up the said contention, learned Counsel invited our attention to the following observations made by a two-Judge Bench of this Court in Bilal Ahmed Kaloo v. State of A.P. MANU/SC/0861/1997: 1997 Cri LJ 4091:

While dealing with the offences of which the appellant was convicted there is no question of looking into the confessional statement attributed to him, much less relying on it since he was acquitted of all offences under TADA. Any confession made to a police officer is inadmissible in evidence as for the offences and hence it is fairly conceded that the said ban would not wane off in respect of offences under the Penal Code merely because the

trial was held by the Designated Court for offences under TADA as well. Hence the case against him would stand or fall depending on the other evidence.

82. Shri Altaf Ahmed, learned Additional Solicitor General submitted that the above observations do not lay down the correct proposition of law and it requires reconsideration, more so because the two-Judge Bench did not advert to Section 12 of TADA. That apart, the Bench adopted that view partly because the counsel for respondents in that case had conceded to the said position. We are inclined to consider the position afresh.

83. Section 12 of the TADA enables the Designated Court to jointly try, at the same trial, any offence under TADA together with any other offence "with which the accused may be charged" as per the CrPC. Sub-section (2) thereof empowers the Designated Court to convict the accused, in such a trial, of any offence "under any other law" if it is found by such Designated Court in such trial that the accused is found guilty of such offence. If the accused is acquitted of the offences under TADA in such a trial, but convicted of the offence under any other law it does not mean that there was only a trial for such other offence under any other law.

84. Section 15 of the TADA enables the confessional statement of an accused made to a police officer specified therein to become admissible "in the trial of such a person". It means, if there was a trial of any offence under TADA together with any other offence under any other law, the admissibility of the confessional statement would continue to hold good even if the accused is acquitted under TADA offences.

85. The aforesaid implications of Section 12 vis-a-vis Section 15 of TADA have not been adverted to in Bilal Ahmed's case (supra). Hence the observations therein that "while dealing with the offences of which the appellant was convicted there is no question of looking into the confessional statement attributed to him, much less relying on it, since he was acquitted of the offences under TADA" cannot be followed by us. The correct position is that the confessional statement duly recorded under Section 15 of TADA would continue to remain admissible as for the other offences under any other law which too were tried along with TADA offences, no matter that the accused was acquitted of offences under TADA in that trial.

86. While it is not disputed that a duly recorded confessional statement is substantive evidence in a trial of offences under TADA as against the maker thereof, learned Counsel for the defence contended that its use against the co-accused (which was tried in the same case) is only for a limited purpose, i.e. to be used for corroborating other evidence. In support of the contention learned Counsel relied on the decision of a two-Judge Bench of this Court in Kalpnath Rai v. State MANU/SC/1364/1997: 1998 Cri LJ 369. The ratio of that decision, on this point, is that "a confession made admissible under Section 15 of TADA can be used as against a co-accused only in the same manner and subject to the same conditions as stipulated in Section 30 of the Evidence Act."

87. Shri Altaf Ahmad, learned Additional Solicitor General pleaded for reconsideration of the aforesaid legal position adumbrated in the said decision and contended that the non obstante limb in Section 15(1) of TADA ("notwithstanding anything in the Code or Indian Evidence Act") is a clear legislative indicator to permit a confession made by an accused against a co-accused to be used with the same force as it can be used against the confessor himself. He further contended that the position became clearer after the subsection was amended by Act 43 of 1993.

88. We shall first examine whether the amendment as per Act 43 of 1993 has improved the position from the pre-amendment position. Before the amendment Sub-section (1) of Section 15 read thus:

15. Certain confessions made to police officers to be taken into consideration.- (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person for an offence under this Act or rules made thereunder.

After the amendment in 1993 the sub-section reads in the present form (which has been extracted supra). The main changes in the sub-section, after the amendment, are addition of the words "or co-accused, abettor or conspirator", and insertion of a new proviso to the subsection as "Provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

89. In this case we may refer to another provision in TADA (Sec.21) which also underwent much changes as per the same amending Act. That provision has a perceptible bearing on Section 15(1) of TADA. That provision, in specific terms, empowered the Designated Court to draw certain presumptions. Section 21(1), as it stood before 1993 amendment, read thus:

21. Presumption as to offences under Section 3.- (1) In a prosecution for an offence under Sub-section (1) of Section 3, if it is proved-

(a) that the arms or explosives or any other substances specified in Section 3 were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature, were used in the commission of such offence; or

(b) that by the evidence of an expert the finger prints of the accused were found at the site of the offence or on anything including arms and vehicles, used in connection with the commission of such offence; or,

(c) that a confession has been made by a co-accused that the accused had committed the offence; or

(d) that the accused had made a confession of the offence to any person other than a police officer,

the Designated Court shall presume, unless the contrary is proved, that the accused had committed such offence.

90. Act 43 of 1993 has snipped out Clause (c) which contained the words "that a confession has been made by a co-accused that the accused had committed the offence" and Clause (d) which contained-the words "that the accused had made a confession of the offence to any person other than a police officer" of Section 21(1).

91. No doubt, the amendment carried out in Section 15(1) and in Section 21(1) was in one package. It was done with a definite purpose. Before amendment the Designated Court had a duty to presume that an accused had committed the offence if his co-accused had, in a confession, involved the former. The words "shall presume" in Section 21(1) denoted that it was the duty of the court to draw such presumption. (See Section 4 of the Evidence Act).

92. This means, the court should have treated the confession of one accused as against a co-accused to be substantive evidence against the latter, and in the absence of proof to the contrary, the Designated Court would have full power to base a conviction of the co-accused upon the confession made by another accused.

93. But the amendment of 1993 has completely wiped out the said presumption against a co-accused from the statute book. In other words, after the amendment a Designated Court could not do what it could have done before the amendment with the confession of one accused against a co-accused. Parliament has taken away such empowerment. Then what is it that Parliament did by adding the words in Section 15(1) and by inserting the proviso. After the amendment the Designated Court could use the confession of one accused against another accused only if two conditions are fulfilled: (1) The co-accused should have been charged in the same case along with the confessor. (2) He should have been tried together with the confessor in the same case. Before amendment the Designated Court had no such restriction as the confession of an accused could have been used against a co-accused whether or not the latter was charged or tried together with the confessor.

94. Thus the amendment in 1993 was a clear climbing down from a draconian legislative fiat which was in the field of operation prior to the amendment in so far as the use of one confession against another accused was concerned. The contention that the amendment in 1993 was intended to make the position more rigorous as for a co-accused is, therefore, untenable.

95. While considering the effect of the non-obstante limb we can see that Section 15(1) of TADA was given protection from any contrary provision in the Evidence Act. But what is it that Parliament did through Section 15(1) regarding a confession made to a police officer? It has only made such confession "admissible" in the trial of such person or the co-accused etc.

96. There are provisions in the Indian Evidence Act which prohibited admissibility of certain confessions, e.g. Section 25 of the Evidence Act prohibited proving any confession made by an accused to a police officer.

Section 26 prohibited proving any confession made by an accused to any person while that accused was in the custody of police. Section 27 permitted only a very limited part of the information supplied by the accused to a police officer, whether it amounts to a confession or not.

97. What Section 15(1) of TADA has done was to remove the said ban against admissibility of confessions made to police officer and brought it on a par with any other admissible confessions under the Evidence Act. A confession made to a magistrate is admissible under the Evidence Act, and a confession made by an accused to any person other than a police officer, if the accused was not in police custody, is also admissible under the Evidence Act.

98. The upshot of the above discussion is that the effect of the non obstante clause, when read with the words "shall be admissible in the trial of such person or a co-accused or abettor or conspirator" would only mean that the confession made to a police officer under Section 15(1) shall also become a confession like other admissible confessions under the Evidence Act. But it was not even in the legislative contemplation of Parliament to elevate a confession made to a police officer to a status even higher than a judicial confession recorded by a magistrate.

99. What is the evidentiary value of a confession made by one accused as against another accused apart from Section 30 of the Evidence Act? While considering that aspect we have to bear in mind that any confession when it is sought to be used against another has certain inherent weaknesses. First is, it is the statement of a person who claims himself to be an offender, which means, it is the version of an accomplice. Second is, the truth of it cannot be tested by cross-examination. Third is, it is not an item of evidence given on

oath. Fourth is, the confession was made in the absence of the co-accused against whom it is sought to be used.

100. It is well-nigh settled, due to the aforesaid weaknesses, that confession of a co-accused is a weak type of evidence. A confession can be used as a relevant evidence against its maker because Section 21 of the Evidence Act permits it under certain conditions. But there is no provision which enables a confession to be used as relevant evidence against another person. It is only Section 30 of the Evidence Act which, at least, permits the court to consider such a confession as against another person under the conditions prescribed therein. If Section 30 was absent in the Evidence Act no confession could ever have been used for any purpose as against another co-accused until it is sanctioned by other statute. So, if Section 30 of the Evidence Act is also to be excluded by virtue of the non obstante clause contained in Section 15(1) of TADA, under what provision a confession of one accused could be used against another co-accused at all? It must be remembered that Section 15(1) of TADA does not say that a confession can be used against a co-accused. It only says that a confession would be admissible in a trial of not only the maker thereof but a co-accused, abettor or conspirator tried in the same case.

101. Sir John Beaumont speaking for five law lords of the Privy Council in Bhuboni Sahu v. The King MANU/PR/0014/1949 had made the following observations:

Section 30 seems to be based on the view that an admission by an accused person of his own guilt affords some sort of sanction in support of the truth of his confession against others as well as himself. But a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of 'evidence' contained in Section 3, Evidence Act. It is not required to be given on oath, nor in the presence of the accused and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver which is not subject to any of those infirmities. Section 30, however, provides that the Court may take the confession into consideration and thereby, no doubt, makes it evidence on which the Court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case; it can be put into the scale and weighed with the other evidence.

102. The above observations had since been treated as the approved and established position regarding confession vis-a-vis another co-accused. Vivian Bose, J, speaking for a Three-Judge Bench in Kashmira Singh v. State of Madhya Pradesh MANU/SC/0031/1952: 19 52 Cri LJ 839 had reiterated the same principle after quoting the aforesaid observations. A Constitution Bench of this Court has followed it in Hari Charan Kurmi and Jogia Hajam v. State of Bihar MANU/SC/0059/1964: 1964 Cri LJ 344. Gajendragadkar, J (as he then was) has stated the legal principle thus:

The point of significance is that when the Court deals with the evidence by an accomplice, the Court may treat the said evidence as substantive evidence and enquire whether it is

materially corroborated or not. The testimony of the accomplice is evidence under Section 3 of the Act and has to be dealt with as such. It is no doubt evidence of a tainted character and as such, is very weak; but, nevertheless, it is evidence and may be acted upon, subject to the requirement which has now become virtually a part of the law that it is corroborated in material particulars. The statements contained in the confessions of the co-accused persons stand on a different footing. In cases where such confessions are relied upon by the prosecution against an accused person, the Court cannot begin with the examination of the said statements. The stage to consider the said confessional statements arrives only after the other evidence is considered and found to be satisfactory. The difference in the approach which the Court has to adopt in dealing with these two types of evidence is thus clear, well-understood and well-established.
Thus the established position which gained ground for a very long time is that while a confession is substantive evidence against its maker it cannot be used as substantive evidence against another person even if the latter is a co-accused, but it can be used as a piece of corroborative material to support other substantive evidence. The non obstante words in Section 15(1) of TADA are not intended to make it substantive evidence against the non-maker, particularly after amendments were brought about in the sub-section through Act 43 of 1993.

103. Having set the legal position thus, we have now to consider the legal evidence to see whether prosecution has proved the disputed points.

104. The prime aim of the conspiracy, in this case, was to assassinate Rajiv Gandhi. The stand of the prosecution is that the Sri Lanka-India Accord (signed on 27-7-1987) was resented against by the LTTE top brass for reasons more than one. The acrimony was further fomented up with the LTTE repressive heaped up by the IPKF. The editorials published in the "Voice of Tigers" (the main publication of LTTE) and the articles reproduced in the compilation made under the nomenclature "Satanic Force" were replete with vituperative epithets expressed by LTTE activists against the said Accord and the actions which IPKF did against them. Rajiv Gandhi was not spared from the vitriolic onslaughts made through such publications. PW-75 (Basant Kumar) said that he was assigned with the work of preparing "Satanic Force", by LTTE top brass Veluppillai Piribhakaran, Pottu Omman and another person called Balasingam, containing strong criticism against IPKF and Rajiv Gandhi. PW-75 (Basant Kumar) accepted the work on payment of Rs. 2000/- per month.

105. We have pointed out earlier that LTTE was very much concerned about the general elections to the Lok Sabha in the year 1991. They felt that if Rajiv Gandhi came back to power, IPKF would again go to Sri Lanka which means lot more atrocities heaped upon LTTEs and the goal "Tamil Eelam" would again elude like a mirage.

106. In all probabilities a criminal intent to kill Rajiv Gandhi would have sprouted in the minds of LTTE top brass at the aforementioned stage. There is not even a speck of doubt

in our mind that the criminal conspiracy to murder Rajiv Gandhi was hatched by at least 4 persons comprising of Veluppillai Piribhakaran, Pottu Omman, Sivarasan and Akila. It could have been the scheme of the conspirators to enlist more persons in the field for the successful implementation of their targets.

107. We have no doubt from the circumstantial evidence in this case, that Thanu, the girl who transformed into a human bomb, and her friend Suba were unflinchingly committed commandos of LTTE and they were also brought into the conspiracy ring by the top brass of LTTE. Circumstances proved in this case regarding the aforesaid core points are too many. However, we are spared from the task of enumerating all such circumstances as learned Counsel for the accused have fairly conceded about the sufficiency of circumstances which have been proved in this case to establish the aforesaid points.

108. Learned Counsel for the appellants have focussed their attack on the indictment against individual accused. They endeavoured to show that none of the appellants was involved in the criminal conspiracy to assassinate Rajiv Gandhi. Hence that is the most disputed point in this case.

109. Before proceeding to discuss the evidence, we have to deal with yet another legal point canvassed by Shri Altaf Ahmed, learned Additional Solicitor General, regarding the amplitude of Section 10 of the Evidence Act. Such a decision is necessary to decide what exactly is the evidence of conspiracy. Learned Additional Solicitor General contended that the width of the provision is so large as to render any statement made by a conspirator as substantive evidence if it has succeeded in conforming with the other conditions of the Section. Such a contention became necessary for him to bring the confessional statement of one conspirator against an-other conspirator as substantive evidence if there is any legal hurdle in doing so under Section 15 of TADA, as we have already found that confession of one accused is not substantive evidence against another though it can be used for corroborative value. Section 10 of the Evidence Act, can, in this context, be extracted below:

Things said or done by conspirator in reference to common design.- Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

110. The first condition which is almost the opening lock of that provision is the existence of "reasonable ground to believe" that the conspirators have conspired together. This condition will be satisfied even when there is some prima facie evidence to show that there was such a criminal conspiracy. If the aforesaid preliminary condition is fulfilled then anything said by one of the conspirators becomes substantive evidence against the

other, provided that should have been a statement "in reference to their common intention". Under the corresponding provision in the English Law the expression used is "in furtherance of the common object". No doubt, the words "in reference to their common intention" are wider than the words used in English Law, (vide Sardar Sardul Singh Caveeshar v. State of Maharashtra MANU/SC/0063/1963: 1965 Cri LJ 608a.

111. But the contention that any statement of a conspirator, whatever be the extent of time, would gain admissibility under Section 10 if it was made "in reference" to the common intention, is too broad a proposition for acceptance. We cannot overlook that the basic principle which underlies in Section 10 of the Evidence Act is the theory of agency. Every conspirator is an agent of his associate in carrying out the object of the conspiracy. Section 10, which is an exception to the general rule, while permitting the statement made by one conspirator to be admissible as against another conspirator restricts it to the statement made during the period when the agency subsisted. Once it is shown that a person became snapped out of the conspiracy, any statement made subsequent thereto cannot be used as against the other conspirators under Section 10.

112. Way back in 1940, the Privy Council has considered this aspect and Lord Wright, speaking for Viscount Maugham and Sir George Rankin in Mirza Akbar v. King-Emperor MANU/PR/0037/1940 has stated the legal position thus:

The words 'common intention' signify a common intention existing at the time when the thing was said, done or written by one of them. Things said, done or written while the conspiracy was on foot are relevant as evidence of the common intention, once reasonable ground has been shown to believe in its existence. But it would be a very different matter to hold that any narrative or statement or confession made to a third party after the common intention or conspiracy was no longer operating and had ceased to exist is admissible against the other party.

113. In Sardul Singh Caveeshar v. The State of Bombay MANU/SC/0041/1957: 1957 Cri LJ 1325 Three-Judge Bench has reiterated that the rule of agency is the founding principle of Section 10 of the Evidence Act. A Two-Judge Bench of this Court in State of Gujarat v. Mohammed Atik and Ors. MANU/SC/0267/1998: 1998 Cri LJ 2251 has followed the said position and held thus:

It is well-nigh settled that Section 10 of the Evidence Act is founded on the principle of law of agency by rendering the statement or act of one conspirator binding on the other if it was said during subsistence of the common intention as between the conspirators. If so, once the common intention ceased to exist any statement made by a former conspirator thereafter cannot be regarded as one made 'in reference to their common intention'.

114. Whether a particular accused had ceased to be a conspirator or not, at any point of time, is a matter which can be decided on the facts of that particular case. Normally a conspirator's connection with the conspiracy would get snapped after he is nabbed by

the police and kept in their custody because he would thereby cease to be the agent of the other conspirators. Of course we are not unmindful of rare cases in which a conspirator would continue to confabulate with the other conspirators and persists with the conspiracy even after his arrest. That is precisely the reason why we said that it may not be possible to lay down a proposition of law that one conspirator's connection with the conspiracy would necessarily be cut off with his arrest.

115. In this case, prosecution could not establish that the accused who were arrested, continued to conspire with those conspirators remaining outside. Prosecution cannot contend that the confession made by one accused in this case can be substantive evidence against another accused under Section 10 of the Evidence Act. At any rate we cannot uphold the contention that confessions made by an accused can be used as substantive evidence against the another co-accused on the principle enunciated in Section 10 of the Evidence Act,

116. The conclusion on the above score is that confessional statement made by an accused after his arrest, if admissible and reliable, can be used against a confessor as substantive evidence, but its use against the other co-accused would be limited only for the purpose of corroboration of other evidence.

THE CASE AGAINST A-1 (NALINI):

117. A-1 (Nalini) is the sole surviving conspirator who participated in the assassination, if the prosecution case is correct. The principal item of evidence available in this case is her own confessional statement (Ext.P-77) recorded on 9-8-1991. (She was arrested on 14-6-1991). She was aged 27 during the relevant period and has passed M.A. degree. She is the daughter of another co-accused (A21 -Padma) and sister of yet another co-accused (A20 - Bhagyanathan). She had fallen in love with one Murugan (who is accused No. 3) during the period of conspiracy and it is claimed that their marriage was solemnised on 21-4-1991 (within 9 months thereof she gave birth to a female child). She was working as Private Secretary to the Managing Director of a private company - M/s. Anabante Silicons.

118. The evidence in this case shows that A-1 (Nalini) much before her marriage quarrelled with her mother and brother and shifted her residence to No. 11, High Court Colony, Villivakkom, Madras. It was during the said time that A-3 (Murugan) got acquainted with her and gradually the familiarity grew into a love affair between them. A-3 (Murugan) was a committed LTTE member. In April 1991, A-1 (Nalini) came into contact with Sivarasan.

119. Ext. P-77 confessional statement contains the following facts as to have been stated by A-1 (Nalini): When she was contemplating with the idea of vacating the house at Villivakkom she was dissuaded from doing so by A-3 (Murugan) as Sivarasan was

expected to bring two girls from Sri Lanka. On 2-5-1991 Sivarasan brought those two girls (Suba and Thanu) to her house. Her mind changing process started thereafter as Murugan, Suba and Thanu were narrating various acts of atrocities which IPKF heaped on LTTE followers in Sri Lanka. Suba told Nalini of a horrendous story of how 7 little girls were raped and killed by the soldiers of IPKF. She was made to believe that Rajiv Gandhi was the person responsible for all such atrocities. She developed vengeful attitude towards Rajiv Gandhi and she too agreed to retaliate. She realised that the two girls were brought for the purpose of carrying out a very dangerous retaliatory step. Sivarasan had told Nalini to play the role of a chaperone to Suba and Thanu wherever they went.

120. In Ext.P-77, A-1 (Nalini) is alleged to have further stated that on 7-5-1991 she took Suba and Thanu, under the instructions of Sivarasan to Nandavanom (Madras) where V.P. Singh (a former Prime Minister) was addressing a meeting. Suba and Thanu tried to garland V.P. Singh. Later Sivarasan scolded A-1 (Nalini) for not taking the girls to the rostrum. It was then that Nalini realised as to how the murder was planned to be perpetrated.

121. In the confessional statement A-1 (Nalini) is alleged to have stated that on 11 -5-1991 she chaperoned Suba and Thanu to a readymade garments shop at Puruswakkom (Madras) and bought a chooridar suit (orange and green coloured) and a dupatta. On 17-5-1991, Sivarasan told her of Rajiv Gandhi's Tamil Nadu programme and asked her to attend one of the meetings. She confessed in her statement (Ext.P-77) that by then it was certain for her that Rajiv Gandhi was going to be killed. Sivarasan collected the details of the topography of Sriperumpudur from her and warned her not to divulge the contents of that conversation to any one else. She was instructed to take leave from her office on 21st May, 1991 under some false pretext.

122. She had narrated in the confessional statement the events which happened on the day of assassination and also on its preceding day. According to her, Sivarasan met her on 20-5-1991 at 6.00 P.M. and told her that the venue of the meeting was at Sriperumpudur, and she should take half day casual leave and not more and that she should make herself available in the house at 3.00 P.M. on the next day for being picked up for escorting Suba and Thanu. On 21st May, 1991 Nalini took half a day's leave and she went to her mother's house at Roypetta (Madras) where A-3 (Murugan) was waiting who told her to hurry up lest Sivarasan would be annoyed. So she reached her house at about 3.00 P.M. A little while thereafter Sivarasan reached the same house with Suba and Thanu. According to her, Thanu was then wearing an orange/green coloured chooridar and was hiding something in her dress. Suba told Nalini that Thanu was going to create history by murdering Rajiv Gandhi. At 4.00 P.M. Nalini took Suba and Thanu to the bus stop. On the way Haribabu also joined them. He had a garland with him.

123. It is further stated in Ext.P-77 that A-1 (Nalini) along with Suba, Thanu, Haribabu and Sivarasan reached the place of occurrence at 7.30 P.M. They stopped at the spot where there was a statue of Indira Gandhi. Sivarasan gave instructions to A-1 (Nalini) about the role to be performed by her just before and after the murder, if successful. By following the said instructions she along with Suba ran across Indira Gandhi statue and waited for Sivarasan. Within a few minutes Sivarasan rushed to them and said Rajiv Gandhi and Thanu died and Haribabu also died. Sivarasan gave Nalini a pistol which she handed over to Suba. They hurriedly left the place and on the way got some water to drink from a roadside house and then they went in an auto-rickshaw and reached Kodingyoor at 1.30 A.M. in the night.

124. The rest of the confessional statement (in Ext.P-77) relates to the hectic movements made by her in association with other accused. It is further recorded therein that on 13-6-1991, A-1 (Nalini) and A-3 (Murugan) went to Davangere (in Karnataka) and stayed in the house of Shashikala (PW-132). A-1 (Nalini) told Shashikala of what all happened regarding Rajiv Gandhi's murder.

125. The above were the statements said to have been made by A-1 (Nalini) in Ext.P-77. The Designated Court acted on the said confessional statement as valid and proved and reliable.

126. A three-fold attack was made against Ext.P-77 by Sri N. Natarajan, learned senior counsel for the accused. First is that the confession was not signed as provided in Rule 15 of the TADA Rules, 1987. Second is that it was not certified as required by the Rules. Third is that the confession was extracted by coercive methods and is therefore unreliable.

127. Rule 15(3) says that the confession shall be signed by its maker and also the police officer who recorded it. Further, the police officer "shall certify under his own hand that such confession was taken in his presence and recorded by him and that the record contains a full and true account of the confession made by the person".

128. Ext. P-77 was recorded in as many as 18 pages. All the first 16 pages contain the signatures of A-1 (Nalini) but the last two pages don't have the signatures. The requirement that confessional statement shall be signed by the maker has been substantially complied with despite the slip in obtaining the signatures in the last two pages. According to PW-52 - the Superintendent of Police who recorded it, the said slip was an inadvertent omission. But that omission does not mean that a confession was not signed by her at all. The certificate which is required by Rule 15(3) has also been made at the foot of Ext.P-77, but that happened to be made on one of the two pages where the signature of A-1 is absent.

129. On the facts we are not persuaded to uphold the contention that Rule 15(3) has not been complied with. That apart, even if there was such an omission the question is whether it would have injured the accused in her defence. Section 463 of the Code permits such an approach to be made in regard to the omissions in recording the confession under Section 164 of the Code. That approach can be adopted in respect of the confession recorded under Section 15 of the TADA as well. The resultant position is that the said omission need not be countenanced since it was not shown that the omission has caused any harm to the accused.

130. The contention that the confession was extracted by coercive methods is not supported by any material. We may point out that when A-1 (Nalini) was produced before the Judicial Magistrate soon after recording the confession she did not even express any complaint regarding the conduct of any personnel of the Special Investigation Team. Ext.P-77 has, in fact, reached the Judicial Magistrate on the next day itself and thereafter it was kept under sealed cover.

131. The confessional statement of A-1 (Nalini) in Ext. P-77, according to Shri Altaf Ahmad learned Additional Solicitor General, is corroborated by other substantive evidence and also by the confessional statements made by a number of other accused in this case. PW-132 (Shashikala) who is a teacher said that she got acquainted with A-1 in 1990 and A-1 visited her in the school when she was teaching, on 13-6-1991. Then A-3 (Murugan) was also with her. A-1 (Nalini) introduced A-3 (Murugan) as her brother by name -Das. PW-132 further stated that when they (three persons) went to her house A-1 told her that her husband, a Sri Lankan citizen, had brought two girls to Madras. PW-132 has also stated in her evidence that Nalini told her that it was she who took those girls to the meeting place at Sriperumpudur where Rajiv Gandhi came and in the incident which happened there, one of the girls died. PW-132, on hearing the said news, became frightened. Then both A-1 and A-3 implored her not to disclose it to anybody else.

132. The aforesaid evidence of PW-132 -a teacher, was fully believed by the trial judge. We have no reason to take a different view on that evidence. Its corroborative value is unassailable because A-1 herself admitted in her confessional statement that she made such a disclosure to PW-132.

133. Another item of corroborative evidence is M.O.144 Video Cassette. (It was viewed on the video in the trial court as well as by us in the Supreme Court). It was the video cassette of the meeting held at Nandavanam (Madras) in the early hours of 18-5-1991 which was addressed by V.P. Singh. PW-93 (Suyambu) said in his evidence that he attended the said meeting. When he was shown the video cassette replayed in the court he identified Sivarasan who was sitting at the meeting place, just left to the said witness. It was video graphed by PW-81 (Manivanam) as instructed by PW-77 (Ganani). PW-77 also identified Sivarasan in the video. We have noticed the presence of A-1 (Nalini) in the meeting when M.O.144 was displayed in this Court, with the help of a photograph in

which A-1 's figure could be discerned by us and admitted by the defence counsel to be correct.

134. On the next day of the said meeting, i.e. 9th May, two letters were sent by Suba and Thanu jointly to Sri Lanka, one to Pottu Omman and the other to Akila. They are Ext.P-96 and Ext.P-95 respectively. Prosecution has proved that they were the letters written by the aforesaid two girls. We do not deem it necessary to refer to all the materials made available to prove the authorship of those letters because they are no more.

135. In Ext.P-96, the girls wrote to Pottu Omman "we are confident that we would be successful in completing the job for which we came as we expect a similar opportunity..." In Ext. P-95 they wrote to Akila like this: "We are confident that the work for which we came would be finished promptly as we are expecting another appropriate opportunity.... It would be implemented during this month itself.... Every word which you (Akila) had said to us would remain in our mind till last."

136. The aforesaid telling circumstances confirm the truth of what A-1 has divulged in Ext.P-77.

137. PW-179 (Gunathilal Soni) said in his evidence that he was manager of a retail textile shop called "Queen Corner" at Puruswakkom and that on 11-5-1991, a chooridar (with orange and green colours) was sold to three ladies one of whom was A-1 (Nalini). From the photograph shown to the witness he identified the other lady as Thanu, The Cash Book which he maintained was marked as Ext.P-899 and the copy of the Bill for the said chooridar was marked as Ext.P-900.

138. It could be argued that it was not possible for any textile retail seller to identify the person who had purchased the goods only once. That may be so. But here PW-179 gave one reason for remembering A-1 (Nalini) and the girls, that they insisted on quick delivery of the stitched goods on the same day itself and then PW-179 took measurements of Thanu. Within a few days the witness saw the photo of Thanu in newspapers wearing the chooridar of that colour. That apart, the investigating officer could trace out PW-179 only because A-1 (Nalini) told him of the place wherefrom the chooridar was purchased. That portion was admitted in evidence under Section 27 of the Evidence Act. The cumulative effect is that the testimony of PW-179 can be treated as true evidence. It is a highly corroborating material.

139. PW-96 (Sujaya Narayan) was an officer in M/s. Anaband Silicon Private Ltd. where A-1 (Nalini) was working as Private Secretary to the Managing Director. He gave evidence that A-1 (Nalini) took half a days leave on 21-5-1991 saying that she wanted to go to Kanchipuram to purchase sarees and left office by 12 noon.

140. One of the most striking corroborative evidence for A-1 's confession regarding her participation in the assassination scene of Rajiv Gandhi is the testimony of PW-32 (Anusuya). She is a woman Sub-Inspector who was deputed to do duty at the venue of the meeting to be addressed by Rajiv Gandhi at Sriperumpudur. She was one of the injured in the bomb blast. Nobody can dispute that she was on duty because she had come in the photo M.O.33. It was taken just before the occurrence. Pointing out Thanu in the photograph PW-32 (Anusuya) said in her evidence that she was found moving with two male persons at the scene of occurrence before the arrival of Rajiv Gandhi. One of them, on being questioned by PW-32, claimed to be a press photographer (it is with reference to Haribabu). The witness identified the other person as Sivarasan. PW-32 identified A-1 Nalini (who was present in the trial court) as one of the ladies who attended the meeting place. She identified A-1 from the photograph when M.O.32 photograph was shown to her. There was no dispute about the genuineness of the above said photograph. We have absolutely no reason to doubt the correctness of M.O.32.

141. PW-215 (Samundeeswari) said in her evidence that she is a resident at Sriperumpudur and that on 21-5-1991, while she was standing outside her house at about 10.45 P.M. waiting for her son to return/she found two ladies and one male getting into her house and they asked for water to drink. She gave them water. The witness identified A-1 as one of the ladies and identified Sivarasan and Suba with the help of M.O.105 photograph. The witness said that she had a dialogue with those visitors. After giving them water she asked them about Rajiv Gandhi's arrival and they replied to her that Rajiv Gandhi died even before reaching 7 feet away from the meeting place. The witness said that after drinking water the said three persons went towards Madras side. The significance of the evidence of PW-215 is that Investigating Officer succeeded in discovering her house on the information supplied by A-1 (Nalini).

142. PW-183 is an equally important witness. He is an auto-rickshaw driver at Thiruvallur. He said in his evidence that he took some persons in his auto-rickshaw and dropped them at the place of the meeting to be addressed by Rajiv Gandhi. As he parked the vehicle a little away he overheard the announcement through loudspeaker that Rajiv Gandhi was arriving, but within a short while a bomb-blast took place and all were found running helter-skelter. He also escaped from the place riding his auto-rickshaw. According to him, on the way two ladies and one male got into his auto-rickshaw and he took them right upto Madras and dropped them at Teynampet. The witness identified A-1 (Nalini) as one of the ladies and the male who travelled in his auto-rickshaw as Sivarasan and the other lady as Suba. M.O.183 and M.O.105 photographs were shown to the witness to help him to identify Sivarasan and Suba. He had sufficient opportunity to identify them as all of them were talking many things in their long distant drive in the auto-rickshaw.

143. It is unnecessary to refer to the remaining evidence which prosecution pointed out as further corroborating the confessional statements of A-1 (Nalini) in Ext.P-77, as we

think that in view of the already large number of items of evidence the truth of the confession stands established.

144. From the above, we come to the conclusion that prosecution has succeeded in proving, beyond reasonable doubt, that A-1 (Nalini) was one of the conspirators and she participated in the act of assassination of Rajiv Gandhi by playing a very active role.

A-2 SANTHAN ALIAS RAVIRAJ:

145. Santhan (A-2) is a Sri Lankan citizen. He was aged 22 during the relevant time. The evidence shows that he was a cardholder of the intelligence wing of the LTTE. He studied up to 5th standard in a school at Jaffana. He came in contact with Sivarasan and they eventually became close to each other. In February 1988, Sivarasan suggested to him to continue his studies at Madras and LTTE would meet his expenses. Pursuant thereto he came to India in February 1990 and secured admission at Madras Institute of Engineering Technology. His educational expenses were met by LTTE'. He was arrested in connection with Rajiv Gandhi murder case on 22-7-1991. His confessional statement was recorded on 17-9-1991 by the Superintendent of Police as per Section 15 of TADA. It is marked as Ext.P-104. The incriminating admissions contained in Ext.P-104 are the following:

Sivarasan persuaded A-2 (Santhan) to join him for liquidating one Padmnabha who was leader of EPRLF which was considered to be a rival organisation of Sri Lankan Tamils. A-2 (Santhan) accepted the assignment and began closely following the movements of Padmnabha and transmitted the information from time to time to Sivarasan. With the help of such information Sivarasan succeeded in getting Padmnabha gunned down on 19-6-1990 through some assassins. On the next day Sivarasan and A-2 (Santhan) left India and on arrival at Sri Lanka A-2 (Santhan) was profusely praised by Pottu Omman and Veluppilli Piribhakaran for the role he played in achieving the target of finishing Padmnabha.

146. By last week of April 1991 Pottu Omman gave a directive to A-2 (Santhan) to proceed to Tamil Nadu in the group lead by Sivarasan. On 1-5-1991 the group reached Kodingyoor in India. The said group consisted of Sivarasan, Suba, Thanu, A-6 (Sivaruban) and Nehru etc. besides A-2 himself.

147. On the evening of 9-5-1991, Sivarasan took A-2 (Santhan) to Marina Beach, Madras and introduced him to photographer Haribabu (who died in the bomb explosion at Sriperumpudur), A-3 (Murugan) and A-18(Arivu). In the night he was taken to the residence of A-10 (Jayakumar). On the next day he was taken to the house of photographer Haribabu where he (A-2) stayed for about a week. During this period Sivarasan gave Rs. 1,000/- to him for buying clothes.

148. On 15-5-1991, A-2 (Santhan) met a top LTTE leader called Kanthan and handed over to him a letter sent by Sivarasan. Kanthan entrusted A-2 with a sum of Rs. 5 lacs to be handed over to Sivarasan. A-2 handed over the amount to Sivarasan in installments as and when the latter asked for it. It was on 16-5-1991 that Sivarasan divulged to A-2 (Santhan) that Veluppillai Piribhakaran had great confidence in A-2 (Santhan) particularly after his performance in the murder of Padmnabha. Sivarasan also disclosed to him that Suba and Thanu were brought for the purpose of murdering Rajiv Gandhi.

149. Next day Sivarasan collected Rs. 10,000/- from A-2 (Santhan) and on the succeeding day Sivarasan again collected another Rs. 10,000/- out of the balance amount. Under Sivarasan's instructions A-2 (Santhan) gave Rs. 4,000/- to A-6 (Sivaruban). Next day evening A-2 (Santhan) took A-6 (Sivaruban) to Marina Beach where Sivarasan was waiting.

150. On 21-5-1991, which was the day of assassination of Rajiv Gandhi, A-2 (Santhan) met Sivarasan and saw the latter preparing himself. A pistol was concealed by him beneath his kurta, and Sivarasan checked up with A-2 (Santhan) whether it was visible from outside. A-2 gave a nod that nothing was visible and then Sivarasan left the place. It was on the said night that Sivarasan told him that Rajiv Gandhi was murdered. He also said that Thanu too died. It was only on the next day that Sivarasan revealed to A-2 (Santhan) that Haribabu died. On 27-5-1991 Sivarasan moved to Madras and instructed A-2 (Santhan) to hand over Rs. 5,000/- to A-10 (Jayakumar). A-2 (Santhan) was moving from place to place thereafter and finally on 30-5-1991 he went to Sundara Lodge. PW-111 (Vijayendran) conveyed to A-2 a message from Sivarasan that the latter should meet him. Pursuant to that, A-2 (Santhan) met Sivarasan on the next day. By that time Sivarasan had removed his moustache.

151. Sivarasan told A-2 (Santhan) that thenceforth it was A-3 (Murugan) who would look after the work which Sivarasan was to continue in India. A-2 booked three bus tickets to Coimbator in pseudonymous names.

152. On 7-6-1991 Sivarasan and Suba met A-2 (Santhan) and asked him to handover a cover to A-3 (Murugan). A-2 (Santhan) learnt from A-3 (Murugan) that Sivarasan had instructed A-3 to murder one Chandrahasan. When A-3 (Murugan) asked A-2 (Santhan) as to the cause for which Chandrahasan was to be murdered A-2 (Santhan) replied that such a murder was planned for diverting the attention of CBI.

153. In the further portion of the confessional statement Ext.P-104, A-2 (Santhan) has narrated those occasions when he and Sivarasan met together. Among them an important meeting was on 11-5-1991 at 7.00P.M. They met at the house of A-5 (Vijayanandan).

154. Sivarasan wanted A-2 to keep his two bags and conceal the same at Kollivakkom. It was done so on the succeeding day itself. On 28-6-1991, Suresh Master (an LTTE leader)

directed A-2 (Santhan) to shift A-8 (Athirai) to some other place to escape from the catch of police. Pursuant thereto A-2 (Santhan) took A-8 (Athirai) to a house at Pammal and stayed there for a night. Next day A-2 (Santhan) handed over the wireless set to Suresh Master at the house of Vijayan.

155. The aforesaid are the prominent incriminating circumstances narrated in Ext. P-104. If the aforesaid confession is true it would be a justifiable inference that A-2 (Santhan) was very much involved in the conspiracy. The vivid details which Ext.P-104 contains would, in all probabilities, have been supplied by A-2 (Santhan) himself because he alone knew what all he did and where all he went and whom all he met.

156. Regarding the truth of the contents of Ext. P-104 we may verify whether it is corroborated by other evidence,

157. PW-120 (Sundarmani) is the father of photographer Haribabu. He said in his evidence that on 6-5-1991 his son Haribabu brought A-2 (Santhan) to his house and he stayed there for one week, for which Haribabu had to implore his mother because there was lack of space in the house and other female members of the family were also residing there. PW-111 (Vijayandran) is a cinema actor. He has a Doctorate from a US University. He deposed that Sivarasan came into contact with him pretending to be his admirer and on 8-5-1991 Sivarasan visited him along with A-2 (Santhan). Those items of evidence can be seen as details mentioned by A-2 (Santhan) in his confessional statement.

158. PW-285 (R. Sivaji) was a Superintendent of Police who arrested A-2 (Santhan). In his evidence it has come out that when A-2 (Santhan) was questioned the police officer got the information regarding the place where 3 plastic bags and one cloth bag were kept. The particular portion of the statement, it was admitted in evidence, has been marked as P-1396. Those bags were actually given to A-2(Santhan) by Sivarasan after returning from Tirupaty. Those articles were seized pursuant to the information for which Ext. P-1397 Mahassar was drawn up. M.O.1083 is a bag which was identified as containing the clothes and cosmetics and other materials belonging to Suba. M.O.1129 is a bag which contained articles of Sivarasan including a diary maintained by him.

159. PW-62 (Vimla), a teacher by profession narrated how she and her daughters were duped by Sivarasan when he brought Athirai (A-8) to their house under some false pretext without knowing that they were the persons involved in the assassination of Rajiv Gandhi. PW-62 (Vimla) was closely associated with A-8 (Athirai), PW-62 in her evidence said that A-2 (Santhan) was visiting A-8 (Athirai) and that once A-2 (Santhan) told the witness that CBI might perhaps search her house also. A-2 (Santhan) took A-8 (Athirai) away from the house of PW-62 (Vimla) on the direction of Sivarasan. We have absolutely no reason to disbelieve the evidence of PW-62. She said that the moment she came to know that those persons were suspected by the police in the Rajiv Gandhi murder case she screamed and implored to spare her and her daughters.

160. From the above corroborative items of evidence we are assured of the truth of the confession made by A-2 (Santhan) as recorded in Ext.P-104. We are hence of the view that prosecution has succeeded in proving that A-2 (Santhan) was also one of the conspirators in the Rajiv Gandhi assassination conspiracy.

A-3 MURUGAN ALIAS DAS:

161. Murugan was aged 21 at the time of the occurrence in this case. He belongs to Sri Lanka. He was a committed LTTE follower. After working for his organisation at Jaffana for a considerable period he was deputed by LTTE top brass to India for carrying out "an important mission". He was arrested in connection with Rajiv Gandhi murder case on 14-6-1991. Prosecution relies on the confessional statement said to have been given by him on 9-8-1991 to the Superintendent of Police. It is marked in this case as Ext.P-81.

162. In that confessional statement it is said that he joined the "Suicide Squad" of LTTE and he came to India in January 1991. He was received by Sivarasan at Kodiakarai. He got sketches of Fort St. George, Madras and Vellore Fort prepared under the instructions of his bosses in Sri Lanka. Photographer Haribabu went with him to Vellore Fort for that purpose and he got it photographed, Besides that, certain other Government buildings were also photographed by the said Haribabu. It was A-3 (Murugan), according to his own confession, who persuaded A-1 (Nalini) to associate with LTTE work by giving her repeated narrations of atrocities committed by IPKF soldiers on LTTE members. He made Nalini to become revengeful towards Rajiv Gandhi. He said that he had knowledge that Sivarsan and other top brass of LTTE were planning to murder an important personage of India. He knew it from the conversation he had with Sivarasan.

163. In Ext.P-81 he also referred to a letter written by Baby Subramaniam to Bhagyanathan (A-20) and two other letters written by Thanu and Suba to Pottu Omman and Akila (Ext. P-95 and Ext.P-96). A-3 (Murugan) further confessed in Ext.P-81 that on 20-5-1991 Sivarasan visited him and alerted him to be ready for the meeting to be addressed by Rajiv Gandhi next day. On 21-5-1991, A-3 (Murugan) alerted A-1 (Nalini) to move fast and reminded her that Sivarasan, Suba and Thanu might be waiting for her.

164. In the further portion of the confessional statement A-3 (Murugan) stated that Sivarasan expressed to him that he had accomplished his work though Haribabu and Thanu died in it. He stated further that on 25-5-1991 he along with A-1 (Nalini) and Suba accompanied Sivarasan to Tirupaty to visit the temple of Lord Venkateshwara. During that trip Sivarasan told him that it was with the help of a belt bomb connected to two switches that Thanu could explode the bomb and that it was Veluppillai Piribhakaran's decision to utilize the girls to retaliate against Rajiv Gandhi because IPKF atrocities were done mostly on women. He also confessed that on 7-6-1991 he himself, Sivarasan, Suba

and A-2 (Santhan) met together at Astataka Temple and took a decision to go back to Sri Lanka.

165. In Ext.P-81, A-3 (Murugan) has further stated that Sivarasan told him to find out a girl from India for garlanding Rajiv Gandhi at a public meeting. This happened during the last week of March 1991. Then he realised that Rajiv Gandhi was the target. He believed that Rajiv Gandhi was responsible for all the atrocities which IPKF committed in Sri Lanka. He said that it was in April 1991 that Sivarasan brought Suba and Thanu to India. Then A-3 suggested that services of Nalini could be utilized for concealing the Sri Lankan identity of the girls. He further confessed that, on 18-4-1991 he along with Nalini and Haribabu attended the public meeting which Rajiv Gandhi addressed at Marina Beach, Madras during which Haribabu took photos of Rajiv Gandhi and supplied the photos to him and Sivarasan.

166. He also confessed in Ext. P-81 that on 7-5-1991 he attended the public meeting at Madras addressed by V.P. Singh and that A-1 (Nalini), the two girls (Thanu and Suba), Sivarasan and Haribabu were also with him then. He further confessed that the said function was attended by them for the purpose of conducting a trial as to how far the two girls would be able to go near the rostrum and garland a former Prime Minister. He mentioned in Ext.P-81 that Sivarasan scolded them for the failure to click the camera when the former Prime Minister was garlanded.

167. In substance A-3 (Murugan) has admitted in Ext.P-81 that he rendered a lot of help in carrying out the target of conspiracy i.e. the assassination of Rajiv Gandhi, though he did not go to Sriperumpudur. Except for the general criticism made against the prosecution case that all confessions were extracted by coercive methods no specific criticism has been raised as against Ext.P-81. We have no reason to think that Ext.P-81 is tainted due to any reason whatsoever.

168. Nonetheless, we can act on Ext.P-81 only if we are assured by other corroborative evidence. Prosecution has placed reliance on the confession of A-1 (Nalini) to be used as corroborative version. Learned Counsel for the defence cautioned us that the version of one accomplice should not be used to corroborate the version of an-other accomplice. Be that as it may, we have come across several other items of evidence which are of great corroborative value.

169. PW-120 (Sundarmani) who is the father of photographer Haribabu, said in his evidence that on 20-5-1991 A-3 (Murugan) went to his house in search of Haribabu and as the latter was not available A-3 (Murugan) instructed the witness to inform Haribabu about the visit, and that no sooner than Haribabu was told about it he left the house.

170. Ext.P-521 is a forged press accreditation card in the name of A-3 (Murugan) containing his photo also. This was seized from the house which A-3 (Murugan) had

taken on rent. Evidently it was a preparation to attend public meetings addressed by persons like Prime Minister or a former Prime Minister.

171. After the arrest of A-3 (Murugan) PW-282 (Inspector of CBI) seized six baggage which were buried in a pit. The baggage contained, among other things, Ext.P-95 and Ext.P-96 (letters written by Suba and Thanu to Pottu Omman and Akila after attending the meeting addressed by V.P. Singh on 17-5-1991). PW-86 (Mariappan) said in his evidence that he was staying in the house of one Sanmugham at Kodiakarai opposite to which some Sri Lankan people were staying, A-3 (Murugan) was one among them. PW-86 stated that one day A-3 (Murugan) told him to hand over a box to the witness and asked him to keep it till he returned from Madras. After A-3 (Murugan) left he was asked by his master (Sanmugham's brother) to bury the box. It contained six items. He collected those six items and tied them together in a plastic bag and buried them. It must be remembered that PW-86 was pointed out by A-3 when the CBI Inspector (PW-282) questioned him after the arrest.

172. PW-233 (Bharathi) said that she was staying at Royapetta, Madras and in the same house an other family consisting of A-20 (Bhagyanathan) and his mother A-21 (Padma) were residing. She said about the number of occasions when Sivarasan and A-3 (Murugan) were frequenting the house. She further said that she saw A-3 (Murugan), A-18 (Arivu) and A-20 (Bhagyanathan) in association with photographer Haribabu visiting the house and food was prepared for them. Sivarasan was also seen visiting them.

173. There is much evidence to prove that A-3 (Murugan) went to Tirupaty in the company of Sivarasan, Suba and Nalini on 25-5-1991. In this context we took into consideration that confession made by A-1 (Nalini) in which she has narrated her association with A-3 (Murugan) and the places which they visited together. We have dealt with those aspects earlier.

174. With the above corroborative items of evidence we are confident in relying on the confessional statement of A-3 (Murugan), as recorded in Ext.P-81, to be a true version. The active and positive involvement of A-3 (Murugan) in the conspiracy for assassinating Rajiv Gandhi looms large in the said confession. We have therefore no doubt that A-3 was also one of the conspirators.

175. A-4 to A-8 can be considered at a stretch, among them A-7 and A-8 can be considered together. Unlike the earlier considered accused A-4 to A-7 did not give any confessional statement to any person. Though A-8 gave a confessional statement his involvement, if at all any, in the conspiracy, cannot be seen different from that of A-7. So the first effort is to find out whether there is any circumstance or other evidence to prove the complicity of any one of those accused. Of course the trial court found all of them to be members of the conspiracy and convicted them of it.

A-4 SHANKAR:

176. A-4 (Shankar) has two other names, one is Koneswaran and the other is Russo. The circumstances unfurled in evidence as against him are these: (1) He was a full fledged LTTE member and came to India on 1-5-1991 in the group of 9 persons including Sivarasan, Suba and Thanu. (2) Ext. P-1062 (a sheet of paper) shows that A-4 (Shankar) would have met A-3 (Murugan) at Kodiakkarai and then the phone number of A-1 (Nalini) would have been supplied to him. (3) On 21-5-1991 he was staying at Esware Lodge which was a place frequented by Sivarasan. (4) In Ext.P-401 (a wireless message sent by Sivarasan to Pottu Omman on 9-6-1991) it was mentioned: "I got news that one of my associates was caught at Nagapattinam and he has told all the news about me." (5) When the news of arrest of A-4 was published Sivarasan communicated that fact to. Pottu Omman. (6) In Ext.P-1253, a diary, Sivarasan has mentioned having paid a sum of Rs. 10,000/- to A-4. (7) In Ext. P-439, Sivarasan has mentioned payment of Rs. 5,000/- to A-4 (Shankar).

177. The Special Judge of the Designated Court reached a conclusion, on the strength of the above narrated circumstances, that A-4 (Shankar) was a member of the conspiracy. It was contended by the learned Counsel for the defence that the above circumstances may, at the most, show that A-4 (Shankar) was actively involved in LTTE work because there is nothing to suggest that he ever knew that Rajiv Gandhi was going to be murdered. Of course the first among those circumstances has a strong tendency to create suspicion in our mind against A-4 (Shankar) but in the total absence of anything to show that the 9 passengers in the boat had talked about the assassination programme of Rajiv Gandhi or at least that Sivarasan or Suba or Thanu would have divulged it to others, there is great practical difficulty to fix up a premise that all of them shared any intention to murder Rajiv Gandhi when they set out the voyage from that island to India. It must be remembered that LTTE had several activities, even apart from murdering Rajiv Gandhi. So merely because a person is shown to be an active worker of LTTE that by itself would not catapult him into the orbit of the conspiracy mesh in order to murder Rajiv Gandhi. It cannot be forgotten that a conspiracy for that purpose would be strictly confined to a limited number of persons, lest, any tiny leakage is enough to explode the entire bubble of the cabal.

178. At any rate, we find it difficult to concur with the conclusion reached by the Special Judge that the aforesaid circumstances would unerringly point to the involvement of A-4 (Shankar) as a conspirator to assassinate Rajiv Gandhi. The worst that could be concluded from the afore-mentioned circumstances, assuming that they being all proved by the prosecution in this case, is that A-4 (Shankar) was also an ardent LTTE votary having close acquaintance with Sivarasan. But from that step of conclusion it is not legally permissible to ascend on to the highest tier and reach the final conclusion that he too was in the conspiracy to murder Rajiv Gandhi.

A-5 VIJAYANANDAN:

179. As against A-5 (Vijayanandan) the circumstances established are the following: (1) He too was in the 9-member group which clandestinely came to India on 1 -5-1991. He had only a forged passport. (2) He stayed in Komala Vilas Lodge, Madras on 8th and 9th of May 1991 by showing a false address and also on a false pretext "to attend a marriage". (3) PW-75 said that A-5 stayed in his house and during then he was fuming with acerbity towards Rajiv Gandhi. (4) In a diary of Sivarasan (M.O.180) there is an entry showing that an amount of Rs. 50,000/- was given to "Hari Ayyah" on 8-5-1991.

180. In the first place we may point out that there is no substantive evidence in this case to show that A-5 (Vijayanandan) had another alias name as Hari Ayyah. Of course it is seen stated so by A-2 (Santhan) in the confessional statement but it has not been put to A-5 (Vijayanandan) when he was questioned under Section 313 of the Code. Even if it was put it is doubtful whether the said entry in the diary could have been used against A-5. However, the trial court upon the said circumstances reached the conclusion that he too was a member of the conspiracy.

181. It must be borne in mind that LTTE was a proscribed organisation in Sri Lanka and their members were indulging in secret activities for attaining a goal of independent Tamil Eelam in Sri Lanka. There were many, who were members of LTTE, living in India without exposing themselves lest they would be caught by the Sri Lankan authorities. Even prosecution has no case that all those who were members of the LTTE were also members of the conspiracy to murder Rajiv Gandhi. So the mere fact that someone was shown to be an LTTE votary and acquainted with the other accused persons in this case that by itself would not entangle him into the cobweb of the conspiracy to murder Rajiv Gandhi.

182. As in the case of A-4 (Shankar) the circumstances arrayed by the prosecution against A-5 (Vijayanandan) may, at the worst, show him to be an active LTTE votary. But beyond that stage the circumstances would not push him into the dragnet of the conspiracy.

A-6 SIVARUBAN:

183. A-6 (Sivaruban) was a boy in his teens when the incident took place. He also belongs to Sri Lanka. His left leg was amputated. Nevertheless he was an active LTTE member. The circumstances pitted against him by the prosecution are the following: (1) He was one among the 9 persons who arrived in India from Sri Lanka on 1-9-1991 in the company of Sivarasan. It was a clandestine voyage. (2) he was sent to Jaipur on 19-5-1991 by Sivarasan at the expense of LTTE. Though it was ostensibly for fixing up an artificial leg for him there is no evidence to show that the leg was fixed at Jaipur. (3) He stayed in Golden Hotel, Jaipur from 19-5-1991 to 23-5-1991 and then he shifted to Vikram Hotel, Jaipur. (4) M.O.667 series which were seized from the house occupied by A-3 (Murugan)

on 15-6-1991 contained a folio showing the telephone number and the address of A-6 (Sivaruban) at Jaipur. In a search conducted by the Inspector of CBI, Jaipur at Vikram Hotel on 20-6-1991 telephone numbers of A-15 (Thambi Anna) as well as A-9 (Robert Payas) were found out among the materials seized therefrom. (5) Ext.P-1200 is a letter which A-2 (Santhan) had written to A-6 (Sivaruban) dated 18-6-1991 in which A-6 was asked to shift from Vikram Hotel immediately.

184. The Special Judge of the Designated Court highlighted two features. First is, why should A-6, who is not a senior leader of LTTE, be sent to Jaipur when artificial leg could have been fixed at places like Madras and Bangalore. Second is, during the long period when he was in Jaipur he could not get the artificial leg fixed. Learned Special Judge took into account those features along with the circumstances enumerated above and came to the conclusion that there is force in the prosecution contention that A-6 (Sivaruban) was deputed to Jaipur for finding out a hide-out for Sivarasan and Suba to escape after assassination of Rajiv Gandhi.

185. There is no justification for reaching such a rash inference on the said evidence. If A-6 (Sivaruban) required an artificial leg it is not a proper query - why he could not have got it fixed at any other place. (It is an admitted fact that the institute at Jaipur for providing artificial legs is a very renowned one). Why one is preferring a particular Center to a less renowned place for such reparative devices, is too difficult a question for another person to answer. That apart, we do not know whether a period of one month is too long for completing the process of artificial leg attachment or whether any work was in progress at the center. At any rate no material has been placed in regard to those aspects.

186. A circumstance which created suspicion in the mind of the investigating agency was that A-6 (Sivaruban) also came to India along with the other 8 persons on 1-5-1991 That might be the reason why the associates of A-6 cautioned him that he too would be caught by the police and advised him to shift to another place. No doubt that is an incriminating circumstance against A-6 (Sivaruban). But it is too much a strain to jump to the conclusion, with the help of the aforesaid circumstance, that A-6 (Sivaruban) was also a conspirator for assassinating Rajiv Gandhi.

A-7 KANAGASABAPATHY AND A-8 ATHIRAI:

187. While considering the involvement of A-7 (Kanagasabapathy) it would be expedient to consider the case of A-8 Athirai alias Sonia (also called Gowri). Such a course was adopted by the trial court and we too feel that such a course would be advantageous. In fact the learned Counsel for the defence addressed arguments as for A-7 and A-8 together.

188. It must first be pointed out that no confessional statement was recorded by any person from A-7. A confessional statement attributed to A-8 is marked as Ext.P-97. We will refer to the said confessional statement before proceeding to other evidence concerning the said two accused.

189. A-8 is a girl hailing from Sri Lanka. She was in her teens during the days of conspiracy. Two of her sisters are now in Switzerland living with their husbands. A-8 (Athirai) had a love affair with a boy named Anand, but he died in a raid conducted by IPKF during 1989. She was recruited in the LTTE at the age of 16 and she was given a training in shooting. It was from her confessional statement that we got the idea of placement of Thanu and Suba in the LTTE ranking. The former was a member of "Black Women Tiger" and the latter was a member of the Army Branch of LTTE. The following facts are also mentioned in Ext.P-97:

When she was studying in 6th standard LTTE people visited her school and started the campaign for enlisting support from school children. She was then only aged 13. After reading a lot of literature on freedom struggle, Tamil culture etc. she decided to join LTTE when she was aged 16. She was christened by Veluppillai Piribhakaran. She learnt shooting with AK-47. She was made to believe that IPKF, instead of protecting the Tamils was fighting against them and committing all sorts of atrocities on the innocent Tamilians of Sri Lanka.

190. In March 1991, Pottu Omman told her that if she would go to India the LTTE would meet all her expenses. She was introduced to A-7 (Kanagasabapathy). She understood that her work in India was to collect information about certain marked places in Delhi for facilitating the work of LTTE. She and A-7 (Kanagasabapathy) together left Sri Lanka and they reached India by boat in April 1991 and they stayed together in the house of a relative of A-7. Sivarasan helped her with money. After the murder of Rajiv Gandhi Sivarasan told her that thenceforth she would be looked after by A-2 (Santhan) as Sivarasan was apprehending arrest.

191. We have not found out any material whatsoever from the aforesaid confessional statement regarding her involvement in the conspiracy for Rajiv Gandhi murder. That young girl could not be attributed with even any knowledge that Rajiv Gandhi would be murdered. The worst that could be found against her is that her young mind was transformed into a stormy petrel of LTTE through brainwashing. That does not mean that she should necessarily have been cobbled into the conspiracy.

192. Over and above the circumstances pitted against A-7 on a par with A-8 (Athirai) it is proved that A-7 had gone to Delhi on 20-5-1991 with the money supplied by Sivarasan. He was accompanied by a person called Vanan and they both stayed in Delhi till 30-5-1991. Trial court drew an inference that Sivarasan would have sent A-7

(Kanagasabapathy) to New Delhi for fixing up a hide- out. Even if it was so, where is the evidence to show that A-7 was ever conspired with for the murder of Rajiv Gandhi?

193. In this connection reference has to be made to the testimony of two witnesses. PW-109 (Jai Kumari) is the niece of A-7 (Kanagasabapathy). She has stated in court that she has seen her uncle A-7 in the company of A-8 (Athirai) visiting "Higginboathams" (the famous bookseller) at Mount Road, Madras. They bought a map of Delhi and they were found enquiring for a book containing the addresses of VIPs. On 2-5-1991 Sivarasan was found talking with them and a few days thereafter they went away with Sivarasan, though A-7 used to visit her again infrequently. The witness said that when she saw the photo of Sivarasan connecting him with the murder of Rajiv Gandhi she asked her uncle about it. Then A-7 answered thus: "You are simply imagining many things. For Heaven's sake don't entertain any bad things about me and A-8. Otherwise you have to face God's punishment."

194. The Special Judge of the Designated Court drew an inference from the above talk of A-7 that he would have had the knowledge of the object of conspiracy. The above words said to have been used by A-7 to his niece could as well have been said as he was certain that he was not involved in the murder of Rajiv Gandhi. But the trial court took it the other way around.

195. PW-62 (Vimla) who is a teacher has stated in her Khandelwal Metal and Engineering Works v. Union of India MANU/SC/0123/1985: 1985 (20) ELT 222 (SC) evidence that it was Sivarasan who brought A-8 (Athirai) to her house and requested for accommodating her also in the house. (The witness has narrated how she came into acquaintance with Sivarasan). PW-62 further said that Sivarasan visited her house a couple of days after Rajiv Gandhi was killed and he talked with A-8 (Athirai). But later when the witness happened to see the photo of Sivarasan in the newspapers connecting him with the murder of Rajiv Gandhi she asked A-8 (Athirai) whether there was any truth in the news. A-8 strongly repudiated it and said that Sivarasan was a press reporter and he would have gone there to make a report of the function. Sivarasan visited A-8 on the same afternoon and then PW-62 (Vimla) requested Sivarasan to take A-8 away from that house. Sivarasan then said that he would not visit that house again. At the same time he warned the witness like this: "If anybody would identify him and give information about him he would meet the same fate as Padmnabha had". Thereafter Sivarasan did not visit PW-62 at all. It was A-2 (Santhan) who later took A-8 (Athirai) away from that house.

196. We have no reason to disbelieve the testimony of PW-62 or that of PW-109. We have no doubt from the aforesaid evidence that A-7 and A-8 were very close to Sivarasan who had taken much interest in them. But the question is, will that alone lead us to the conclusion that A-7 and A-8 were also associated with Sivarasan to the conspiracy to murder Rajiv Gandhi? In this connection it is well to remember that all those who worked for LTTE cause were familiar with Sivarasan. It is true that all conspirators had worked

in unison with Sivarasan and they were all ardent LTTE personnel. But the converse cannot be a necessary inference i.e. all those LTTE personnel who associated with Sivarasan should have been brought within the radius of the conspiracy to murder Rajiv Gandhi as participants thereof.

197. We entertain genuine doubt, in spite of the association that A-7 and A-8 had with LTTE Movement and also with Sivarasan, whether those two accused would have conspired with others in murdering Rajiv Gandhi.

A-9 ROBERT PAYAS:

198. Robert Payas was aged 25 during the relevant period. While he was in Sri Lanka he associated himself with LTTE work. He arrived in India on 20-9-1990. He was arrested in connection with Rajiv Gandhi murder case on 18-6-1991. Ext. P-85 is said to be the confessional statement given by him to the Superintendent of Police on 15-8-1991.

199. It has been narrated in Ext. P-85 that IPKF caught A-9 (Robert Payas) and detained him for 15 days along with some others, and during that time the army men committed a lot of atrocities in the houses of the detained persons. A suckling child of A-9 died in the army action. A-9 and his colleagues developed bitter hatred towards IPKF and the other rival organisations headed by Padmnabha.

200. The incriminating statements in Ext.P-85 are the following:

A-9 was in close contact with Kanthan (a senior LTTE leader) and Sivarasan, who came to India for carrying out a certain dreaded act. LTTE was bearing all the expenses of A-9 and his family and Sivarasan used to visit him frequently. In February 1991, Sivarasan and A-3 (Murugan) went to the house of A-9 and stayed there for a couple of days. A-2 (Santhan), Sivarasan and Kanthan used to chalk out plans for their movements while staying in the house of A-9. In the beginning of May 1991, Sivarasan brought Santhan to the house of A-9. On 5-5-1991 Sivarasan and A-2 (Santhan) had a talk with Haribabu, A-3 (Murugan), A-18 (Arivu) and A-9 (Robert Payas) at Marina Beach, Madras. Between 15th and 20th of May 1991, Kanthan, A-2 (Santhan) and two other persons of LTTE used to meet each other in the house of A-9 and while they were in dialogue Sivarasan was keeping them in close contact through phone.
201. It is further stated in Ext. P-85 that A-9 remained in his house on 21-5-1991 from the afternoon till next day expecting some message from Sivarasan. On 24th May, 1991 Sivarasan went to the house of A-9 riding a motorcycle but he felt that he could not see Kanthan in A-9's house. A-9 told that fact to Kanthan on the next day. On 27th May 1991, A-9 and A-2 (Santhan) decided between themselves to escape from the police. So he with his wife and sisters proceeded to Thiruchandur and from there they moved to other places in cognito.

202. From the above confessional statement recorded in Ext.P-85 it can be seen that A-9 had a serious involvement in the conspiracy with Sivarasan and Ors. for assassinating Rajiv Gandhi. But the question is whether Ext. P-85 can be treated as a reliable evidence. So our next effort is to find out whether there are other corroborating evidence.

203. Prosecution relied on the evidence of PW-197 (Dr. Claud Fernandez) who is a Dental Surgeon. He said in his evidence that he was residing just in front of the building where A-9 was residing. According to him, on the next day of the assassination of Rajiv Gandhi crackers were exploded in the house of A-9. The witness well remembers that A-9 and A-3 together visited his clinic. The aforesaid evidence of PW-197 has some corroborative value. There is no contention that the witness is speaking falsehood.

204. PW-59 (Raghu) has a Photo Studio at St. Thomas Mount, Madras. He said that A-9 and Sivarasan went to his studio on 15-9-1990 and got two photographs taken. Sivarasan then wrote his name and address in the records of the studio as follows:

R. Subaraj,
85 Gangai Amman Street,
Kodambakkam (Madras)

His version is supported by documentary evidence such as Exts.P-176 to P-184 (all are records kept in the studio).

205. In M.0.180 Diary, which is proved to be the diary of Sivarasan, there are umpteen entries showing various amounts paid to A-9. It is not disputed that the said diary belonged to Sivarasan and the entries were made at his instance.

206. In Ext.P-81 confessional statement, A-3 (Murugan) stated that a wireless set was installed in the house of A-9 at Porur by LTTE militant Kanthan. It was from that wireless set Sivarasan used to contact Pottu Omman at Sri Lanka.

207. The aforesaid items of evidence proved in this case have rendered the confessional statement made by A-9 in Ext. P-85 as wholly true. We therefore concur with the finding of the Special Judge that A-9 (Robert Payas) was very much involved in the conspiracy to assassinate Rajiv Gandhi.

A-10 JAYAKUMAR:

208. Jayakumar is the brother-in-law of A-9 (Robert Payas). (His sister Prema is A-9's wife). A-10 was lead into LTTE movement. He was sent to India in September 1990. He was arrested in connection with Rajiv Gandhi murder case on 26-6-1991. A confessional statement which is marked as Ext.P-91 is attributed to A-9. The incriminating statements in it are the following:

As IPKF committed lots of atrocities on LTTE people A-10 (Jayakumar) along with others felt very much annoyed. (A-9's little child died in one such IPKF action). So LTTE had decided to teach the leaders concerned a lesson. On 20-9-1990 A-10 reached India and met a hardcore LTTE personnel Nishananthan (who was also called Nixon). A house was arranged at a place called Porur for which an amount of Rs. 5,000/- was paid to the owner. Kanthan (another top ranking LTTE leader) used to supply money to A-10 and also to his brother-in-law A-9. A wireless set was installed by Kanthan inside the house of A-10 in order to facilitate the hardcore LTTE personnel to contact their Sri Lankan counterparts. Once he was told by Kanthan that a high ranking LTTE leader (Sivarasan) would be arriving in India for carrying out a dangerous plot. A similar information was passed on to him by his brother-in-law Robert Payas also. As Kanthan told him that a house was to be arranged for Sivarasan it was so arranged at Kodingayoor. In December 1990, Sivarasan was brought to A-10's house by his brother-in-law. He was directed to render all help to Sivarasan and he knew very well that the mission of Sivarasan was to execute a dangerous plot, Sivarasan used to supply enough money to A-10 (Jayakumar). Once Sivarasan brought a suit-case consisting of his diary, dress, a pistol and one AK-47 gun besides plenty of bullets. The pistol was concealed in a book in which a cavity was made out for containing the firearm.. Sivarasan used to carry the suit-case wherever he went. Once he went to Sri Lanka and on his return he brought Suba and Thanu. This was on the 2nd of May 1991. A-10 knew that Sivarasan brought those two girls for accomplishing the retaliatory plot. A-10 understood that Rajiv Gandhi was the focus of their hatred. He asked his wife to stitch a cloth cover for keeping the pistol of Sivarasan.

209. Regarding the activities on 21 -5-1991, A-10 (Jayakumar) is said to have confessed in Ext.P-91 that he saw Sivarasan keeping the pistol concealed and set out for the public meeting at Sriperumpudur. By midnight Sivarasan returned with Suba and Nalini and it was confirmed that Rajiv Gandhi was killed by Thanu. He saw Sivarasan going upstairs for talking with Santhan.

210. The further incriminating portions in Ext.P-91 are: On 22-5-1991 A-10 prepared meals for Sivarasan, Suba and Nalini and it was only on 23rd that Sivarasan left the house. Before leaving Sivarasan kept all his things in the suitcase, (except the pistol) and entrusted the pistol to A-10. The suit-case was put in a pit dug by A-10. As instructed by Sivarasan the pit was closed with a concrete slab and a painting was given on its surface.

211. The above is the substance of the confession contained in Ext.P-91. If that statement can be accepted as reliable we have no doubt that it would afford enough materials for concluding that A-10 (Jayakumar) was actively involved in the conspiracy to assassinate Rajiv Gandhi. In order to verify the truth of it we have to turn to other evidence which prosecution has adduced for corroboration purposes.

212. The first corroborative material pressed into service by the prosecution is the confessional statement made by his brother-in-law Robert Payas (A-9) in Ext.P.85. We have earlier found it acceptable and hence it can be regarded as a material to ensure confidence about the truth of the statement contained in Ext.P-91. Another item of evidence is the testimony of PW-63 (Smt. Kottammai). She is an employee of the Tamil Nadu State Electricity Board. She said that when she completed the house construction at Kodingayoor it was rented out to A-10 (Jyakumar) and his wife Shanti. Ext.P-217 is the rent agreement executed for the said purpose. PW-85 (Swaminathan) who is a nearby resident has stated that by the third week of December 1990 he saw A-10 and his wife occupying the new house of Kottammai. He also said that Sivarasan used to visit that house frequently and A-2 (Santhan) was also staying in that house from 6th May 1990 onwards. The witness remembers that Sivarasan started staying in that house from 22nd May onwards. He remembers the date because he.knew that Rajiv Gandhi was murdered on the previous day. Nalini and Suba were also with Sivarasan. PW-85 further said that he noticed distribution of sweets in the house of A-10 by noon on' 22nd May 1991.

213. PW-200 (Smt. Meera) who is another neighbouring resident gave evidence almost in the same manner as PW-85. What she further said was that Sivarasan was a regular visitor in the house of A-10 from January 1990 onwards and the witness noted Sivarasan bringing two girls in the first week of May 1991.

214. Testimony of those witnesses was believed by the trial court and we have no reason to take a different view. It is clear that the aforesaid items of evidence are of much corroborative value.

215. There is yet another circumstance which gives assurance about the involvement of A-10 with the conspiracy. When he was arrested and interrogated by PW-288 (Raghauthamam - one of the chief investigating officers) the accused gave the information that he had buried the suitcase and on the strength of the said statement the suit-case was unearthed. Ext.P-437 is the Mahassar which was prepared for it. (The statement which A-10 made pursuant to which the suit-case was unearthed was separately marked as Ext.P-1436). The articles contained the diaries of Sivarasan, the Sri Lankan Passport of A-2 (Santhan) besides some live cartridges and M.O.157 (which is a Tamil dictionary in which a cavity was carved out for keeping a pistol). PW-85 is a witness to the unearthing of the suit-case. He has stated that fact in his evidence.

216. Over and above the afore-narrated corroborative pieces of evidence prosecution has produced still further items of evidence. But we do not think it necessary to refer to all of them since we are fully satisfied even with the evidence already discussed above that the confessional statement contained in Ext.P-91 was made by A-10 and it is a true confession. We therefore conclude without hesitation that prosecution has succeeded in proving that A-10 (Jayakumar) was an active participant in the conspiracy for assassination of Rajiv Gandhi.

A-11 SHANTHI:

217. She is the wife of A-10 (Jayakumar). Except the fact that she accompanied her husband from Sri Lanka in September 1990 and continued to live with him in India we are unable to find any involvement for her in the conspiracy to murder Rajiv Gandhi. Learned Special Judge has considered her case, tagging it with her husband's case. We may point out, in this context, that no confession could be recorded from her under Section 15 of TADA. We have not come across any material, apart from her living with her husband A-10 (Jayakumar), to suggest that she had any role in the conspiracy. It is very unfortunate that for the role played by her husband she has been sentenced to death under Section 302 read with Section 120B of the Indian Penal Code.

A-12 VIJAYAN ALIAS PERUMAL VIJAYAN:

218. Vijayan was arrested on 8-7-1991 in connection with Rajiv Gandhi murder case. Ext.P-101 is a confessional statement said to have been recorded from him on 3-9-1991 by the Superintendent of Police as per Section 15 of TADA. We will first refer to the following incriminating passages in Ext.P-101:

A-12 (Vijayan) was conducting a workshop in Sri Lanka, but with the commencement of IPKF operation in the island the workshop ran into doldrums. That was a time when his wife was pregnant. He therefore thought of going to India for availing themselves of medical facilities, but then he found a hurdle that every Sri Lankan Tamil citizen wanting to leave the island had to pay Rs. 1500/- and two gold sovereigns to LTTE Movement. As A-12 (Vijayan) was in penury he approached LTTE leaders for exonerating him from the financial liability in crossing over to India.

219. He was then introduced to Sivarasan by a close relative. Sivarasan offered to meet all his expenses in going to India on a condition that he should work for LTTE. A-12 accepted the condition. On 12-9-1990, he, his wife (A-13) and his father-in-law (A-14) reached Rameshwaram. After getting themselves registered as Sri Lankan refugees they moved to Tuticorin.

220. In December 1990, Sivarasan visited them at Tuticorin and persuaded A-12 to shift his residence to Madras and take a house on rent so that the new arrivals of LTTE could also be accommodated therein. Sivarasan paid him Rs. 10,000/-. So he and his family shifted to Madras.

221. On 2-5-1991 Sivarasan brought a suit case containing a wireless set and wanted A-12 (Vijayan) to keep it in his house. One person by name Nehru was also present along with Sivarasan. Sivarasan told A-12 that two girls would be brought from Sri Lanka for an

important work and requested to keep that information secret. Sivarasan paid him Rs. 10,000/- again.

222. After 3 days, Sivarasan brought Suba and Thanu to the house of A-12. He directed A-12 to dig a pit for keeping the wireless set as well as some guns. A-12 obeyed and he was helped by Nehru in digging the pit. On 21-5-1991 Sivarasan visited A-12's house at 12.30 noon and asked Thanu and Suba to get ready. Then the two girls went inside a room and after about an hour came out dressed up for going out. Sivarasan took the girls in an auto-rickshaw and left. On the next day Sivarasan reached A-12's house and disclosed to him that Rajiv Gandhi was murdered. He asked Nehru to transmit the message to Sri Lanka.

223. The remaining part of the confessional statement in Ext.P-101 contains the directives which Sivarasan gave to A-12 (Vijayan) which the latter had obeyed. But there is nothing in Ext.P-101 to show that A-12 ever knew before 22-5-1991 that Rajiv Gandhi would be murdered. Of course, he could have inferred that the important work which Sivarasan suggested would be some criminal activity but that does not mean he should necessarily have inferred that Sivarasan was targeting Rajiv Gandhi and was contemplating his assassination.

224. No doubt A-12 was very much used by Sivarasan without letting him know of his plan to murder Rajiv Gandhi. Nor did anyone else tell A-12 about it. Even from among the articles which PW-281 - a police officer recovered from his house (as per Ext.P-1359 Mahassar) nothing could be attributed to A-12 regarding his knowledge that Sivarasan was planning to murder Rajiv Gandhi.

225. But after the murder of Rajiv Gandhi A-12 (Vijayan) had helped Sivarasan very much to escape from being caught. In that endeavour he helped Suba also. It might be that Sivarasan could secure such assistance from A-12 on the strength of the financial assistance which he lavishly gave to A-12 and his family at the time of need. But we are unable to stretch the inference further backward to think that A-12 played any part in the conspiracy to murder Rajiv Gandhi.

A-13 SELVALUXMI:

226. Selvaluxmi is the wife of A-12 (Vijayan). Except that she was living with her husband she had no other role apart from what her husband did. She was arrested on 16-5-1992. Trial court dealt with the case of A-13 in conjunction with that of her husband A-12 (Vijayan). We note that the investigating agency could not elicit any confession from her. The result is there is practically nil evidence to show that A-13 was ever involved in the conspiracy to assassinate Rajiv Gandhi.

A-14 BHASKARAN:

227. Bhaskaran is the father-in-law of A-12 (Vijayan) and father of A-13 (Selvaluxmi). His involvement in the conspiracy was considered by the trial court conjointly with the discussion pertaining to A-12 and A-13. As from him also the investigating agency could not elicit any confession under Section 15 of TADA.

228. Though there is no evidence to show that he had any prior knowledge of the plan to murder Rajiv Gandhi there is evidence to show that after A-14 (Bhaskaran) came to know of the assassination he tried to protect Sivarasan and others from being caught or detected.

229. PW-97 (Chokkanathan) is the brother-in-law of A-14 (Bhaskaran). That witness has said in his evidence that on 21-6-1991 his brother-in-law (A-14) expressed a desire to have a larger house on rent by saying that such a house was necessary to accommodate certain important persons. A-14 (Bhaskaran) initially hesitated to divulge the identity of those important persons to PW-97, but later he disclosed that the house was meant for Sivarasan and Suba who were involved in Rajiv Gandhi murder case. PW-97 said that on hearing the said information he refused to help his brother-in-law, but his brother-in-law became very angry and gave a warning that if the information is divulged to the police he (PW-97) might have to meet his end. Next morning A-14 left the house of PW-97.

230. Shri Altaf Ahmad, learned Additional Solicitor General contended that the aforesaid conduct of A-14 is enough to draw the inference that A-14 was also privy to the conspiracy. But we are unable to stretch the inference to such a farthest extent. The evidence of PW-97 would certainly indicate that A-14 was interested in securing a safe place for Sivarasan and Suba to escape from police detection and also to save them from being caught by the police. It is quite possible that he would have been persuaded to help Sivarasan and Suba on the strength of the help which Sivarasan rendered to the family. It may be possible to go one more step further that perhaps Sivarasan would have disclosed to A-14 that Rajiv Gandhi was murdered at his behest and sought the help of A-14 to escape from police detection.

231. We can only conclude that A-14 would have harboured Sivarasan and Suba and also tried to screen them from being caught by the police.

A-15 SHANMU GAVADIVELU ALIAS THAMBI ANNA:

232. He was arrested on 16-5-1992, The Superintendent of Police recorded a statement on 17-5-1992. Claiming that it is a confessional statement it was marked by the prosecution as Ext.P-139. But its admissibility was resisted on the ground that it does not contain any passage which incriminates him. We will just reproduce the contents of what he said in Ext-P. 139.

233. In the year 1987, he and his wife with two children and his nephew left Sri Lanka and reached India. He had to get permission from LTTE for leaving Sri Lanka and Kjttoo (LTTE leader) helped him in that regard. In the first week of May 1991, Sivarasan and A-2 (Santhan) sought his help to get an introduction to PW-62 (Vimla) - a teacher. He obliged them. Later A-2 met him and requested him to keep some good amount in safe custody. As he agreed to do so A-2 (Santhan) gave him Rs. 1.25 lacs on one occasion (which was about a week prior to the murder of Rajiv Gandhi) and on a subsequent occasion A-2 (Santhan) entrusted Rs. 3.20 lacs to him. About 4 days prior to Rajiv Gandhi murder A-2 (Santhan) collected Rs. 70,000/- from him and a week after the assassination A-2 collected Rs. 3.12 lacs from him and after some days the balance amount was also collected. A couple of days later A-8 Athirai visited him, by which time the photo of Sivarasan appeared in newspapers as having involved in Rajiv Gandhi murder case. Thereupon A-15's wife resented any LTTE people visiting the house. A-15, in fact, asked A-2 (Santhan) as to why the photo of Sivarasan appeared in newspapers as involving in Rajiv Gandhi murder case. A-2 explained that there is nothing to worry about it.

234. The above are the important contents in Ext.P-139. It is needless to point out that the said statement is lacking any inculpative admissions. On the contrary, it is mostly exculpative. Even apart from that, prosecution could not adduce any tangible evidence against A-15 (Shanmugavadivelu), not even to doubt that he had any involvement in the conspiracy to murder Rajiv Gandhi. Of course, the conspirators would have found A-15 as a reliable person for keeping their money. We must not forget the fact that A-15 hailed from Sri Lanka and he got some help from LTTE people for going away from the island to India. The mere fact that A-2 (Santhan) had chosen A-15 as a safe person to keep money is hardly sufficient to conclude that he was involved in Rajiv Gandhi murder conspiracy.

A-16 RAVICHANDRAN AND A-17 SUSEENDRAN:

235. In dealing with the case against the above two accused we have necessarily to deli the offences under Sections 3(3) and 3(4) and 5 of TADA and Section 5 of the Explosive Substance Act and Section 3(1) of the Arms Act, for a certain obvious reason. It is an admitted fact that A-16 and A-17 were tried in another criminal case for the aforesaid offences read with Section 120-B of Indian Penal Code, inter alia, certain other counts of offences, A-16 and A-17 and a host of some other persons were arrayed in CCI of 1992 before a Designated Court, Poonamallai, Chennai (Madras). As per judgment dated 23-1-1998 they were convicted of those offences and sentenced to varying terms of imprisonment. It is also an admitted fact that the said judgment has become final and the convicted persons involved therein have undergone the punishment period.

236. Shri N. Natarajan, learned senior counsel for A-16 and A-17 contended that those accused are not liable to be tried again for the said offences since the facts now stated by the prosecution were substantially the same as were involved in CC 7 of 1992. Shri Altaf Ahmad, learned Additional Solicitor General made a strong bid to show that as the said

trial was not in connection with the assassination of Rajiv Gandhi the facts cannot be regarded as the same. We have no doubt that A-16 and A-17 cannot use the judgment in CC 7 of 1992 as a shield against the charge under Section 302 read with Section 109-B and under Section 212 of IPC. But the other offences found against them were based on the same facts of which they were tried for such offences in CC 7 of 1992. This can be discerned from the narration of facts in the aforesaid case.

237. Learned Counsel for the accused had produced a certified copy of the judgment in CC 7 of 1992. A-16 (Ravichandran) in this case was arrayed as A-2 in that case and A-17 (Suseendran alias Mahesh) in this case was arrayed as A-3 in that case. Relevant portion showing the facts in that case appearing in paragraph 2 of the judgment is extracted here:

A. 1 to A.32 together and in separate groups at various places such as Palaly, Jaffna in Sri Lanka, Coimbatore, Udumalpet, Pollachi, Madras, Vaniyambadi, Palani, Kaniyur, Dindiguland Pudukkottai conspired together and agreed to do illegal acts by illegal means like to form an armed force by name 'Tamil National Retrieval Troop' with an intention to overawe the Government established by law, cessation of Tamil Nadu from Indian Union and to strike terror in people and to exhort members of TNRT, to indulge in disruptive activities and make preparations for the same to fulfil their object, to achieve their object by procuring arms, ammunitions, bombs, wireless sets and other explosive substances, to loot police armories in Tamil Nadu for the said purpose, to aid, abet, advice and knowingly render assistance for acts preparatory to terrorist and disruptive activities and to harbour terrorists and destructionists and persons who conspire or attempts to commit or advocate, abet, advise or incite or knowingly facilitate the commission of a terrorist or disruptive activity, everyone did their best at different stages to achieve their common design.

238. The period of the aforesaid activities, as involved in that case, covered between 1987 and end of 1991. Section 300(1) of the CrPC contains the ban against a second trial of the same offence against the same person. Sub-section (1) reads thus:

A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Sub-section (1) of Section 221, or for which he might have been convicted under Sub-section (2), thereof.

239. The well-known maxim 'nemo debet bis vexari pro eadem causa' (no person should be twice vexed for the same offence) embodies the well established Common Law rule that no one should be put to peril twice for the same offence. The principle which is sought to be incorporated into Section 300 of the Procedure Code is that no man should be vexed with more than one trial for offences arising out of identical acts committed by him. When an offence has already been the subject of judicial adjudication, whether it

ended in acquittal or conviction, it is negation of criminal justice to allow repetition of the adjudication in a separate trial on the same set of facts.

240. Though Article 20(2) of the Constitution of India embodies a protection against second trial after a conviction of the same offence, the ambit of the sub-article is narrower than the protection afforded by Section 300 of the Procedure Code. It is held by this Court in Manipur Administration v. Thokehom Bira Singh MANU/SC/0065/1964: [1964] 7 SCR 123 that "if there is no punishment for the offence as a result of the prosecution, Article 20(2) has no application". While the sub-article embodies the principle of autrefois convict Section 300 of the Procedure Code combines both autrefois convict and autrefois acquit.

241. Section 300 has further widened the protective wings by debarring a second trial against the same accused on the same facts even for a different offence if a different charge against him for such offence could have been made under Section 221(1) of the Code, or he could have been convicted for such other offence under Section 221(2) of the Code. In this context it is useful to extract Section 221 of the Procedure Code.

221. Where it is doubtful what offence has been committed.-(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of Sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

242. As the contours of the prohibition are so widely enlarged it cannot be contended that the second trial can escape therefrom on the mere premise that some more allegations were not made in the first trial. We have absolutely no doubt that the offences which we have indicated above were fully covered by the trial in CC 7 of 1992, and therefore the prosecution is debarred in this case from proceeding against A-16 and A-17 for the aforesaid offences. Consequently the conviction and sentence passed by the Designated Court as per the impugned judgment for offences under Sections 3(3), 3(4) and 5 of TADA and also Section 5 of the Explosive Substance Act as well as Section 3(1) of the Arms Act on A-16 and A-17 are hereby set aside.

243. Now, we have to consider the case of A-16 (Ravichandran) for the offences under Section 302 read with Section 120-B of IPC as a member of the criminal conspiracy to assassinate Rajiv Gandhi.

244. A-16 (Ravichandran) is a Sri Lankan citizen. He was arrested on 20-10-1991 in connection with Rajiv Gandhi murder case. The Superintendent of Police (CBI) has recorded a statement which is said to contain the confession made by A-16 on 14-2-1992. It is marked in this case as Ext.P-121. The incriminating statements, as for this case contained in Ext.P-121 can be extracted after excluding the facts which were the subject matter of CC 7 of 1992.

245. A-16 (Ravichandran) and his companion A-17 (Suseendran) reached India in December 1990. He met Sivarasan as instructed by him near Devi Theatre. A few days hence Sivarasan handed over to A-16 a sum of Rs. 1.5 lacs for buying any kind of vehicle for the use of LTTE movement. Sivarasan gave A-16 a contact number (2343402) for any urgent need which might arise. A-16 went to the house of A-10 Jayakumar at Kodingayoor along with Sivarasan and on his instructions went to the Airport at Madras to know how security arrangements were in force when a VIP arrived. A-16 reported to Sivarasan that the first gate of the old Airport could be used for sneaking in. A-16 reminded Sivarasan that three months have already elapsed after they reached India but still A-16 did not know the target. Sivarasan then replied: "We need not go in search of the target but the target would come in search of us." Sivarasan further assured A-16 that the crucial situation would arrive very soon.

246. The further incriminating statements in Ext.P-121 are the following:

Sivarasan asked A-16 to start a make-believe Travel Agency at Delhi. A-16 collected Rs. 2 lacs from Sivarasan and a few days later collected a further sum or Rs. 5 lacs for the said purpose. However, Sivarasan cautioned him to start the Travel Agency only after getting definite instructions from him. Pottu Omman (one of the topmost LTTE hardcore) supplied a particular code number to A-16 for transmitting wireless messages. They are: No. A.9 for A.17, and No. P.O 91 for Pottu Omman. On 1st or 2nd of May 1991, A-16 met Sivarasan near Shanti Theatre (Madras) as directed in a letter which he got from his aunt (Lokmatha). On 13th or 14th of May, A-3 (Murugan) reached the same place with a suit-case. In the presence of A-16 one of the LTTE petrel "Sokkan" asked A-3 (Murugan) "why the work of Sivarasan has not yet reached the target? and A-3 gave the following reply: "why worry, it would take place and it must happen." Thereafter A-16 kept silence without putting further questions.
247. On 20-5-1991, A-16 was in the house opposite to Shanmugham's house. At 12.30 in the night the news that Rajiv Gandhi was killed was communicated to them. Then he and others left the place. Sokkan later told A-16 that death of Rajiv Gandhi was advantageous for LTTE movement.

248. The remaining portion of the confession in Ext.P. 121 relates to the joint activities of himself, Sivarasan, SubaandA-17. When much later he heard that Sivarasan and Suba died by consuming capsules he felt very sad. The rest of the statement relates to his continued contacts with Pottu Omman and other leaders of the LTTE.

249. If the aforesaid confession is true and reliable it can be treated as a safe foundation for resting a finding that A-16 was involved in the conspiracy to murder Rajiv Gandhi. True, A-16 did not divulge in so many words in that confession about the identity of the target of Sivarasan. But it is very clear from Ext.P-121 that A-16 knew about it. In December 1990, he was deputed to India to carry out the execution of an "important mission" and he was instructed to obey the direction of Sivarasan for that purpose. When he knew that Rajiv Gandhi was a target he wanted to get that confirmed from Sivarasan and that is why he asked Sivarasan in plain language -whether it was Rajiv Gandhi. The silence adopted by Sivarasan helped him to confirm it. All the activities done by him thereafter were in facilitation of the aforesaid common design. It has now to be considered whether the confessional statement made by A-16 has been corroborated in material particulars.

250. PW-206 (Lokmatha), the aunt of A-16, has said in her evidence that Sivarasan was found contacting A-16 in March 1991, and on another occasion Sivarasan entrusted one letter to her for handing over to A-16. The witness said that when the letter was given to A-16 he read it and immediately went out of the house. On 23-5-1991 Sivarasan again visited her house, but when he noted that A-16 was absent there he gave one more letter to the witness to be handed over to A-16. A couple of days thereafter PW-206 handed over that letter to A-16. He left the house and from the next day she found Sivarasan and A-16 in her house and both of them left together.

251. PW-217 is the husband of PW-206 and gave evidence substantially in tune with the version of his wife.

252. PW-133 (Karpagam) and her husband Shanmugham Sundaram (PW-208) said in their evidence that A-17 (Suseendran) visited them on 28-5-1991 along with Suba, and A-17 introduced her as his wife by name Mallagi whom he recently married. Both the witnesses believed that representation to be true and thought that a wedding gift should be presented to them. They purchased a wrist watch and gave it to A-17 as wedding present. Later A-17 and Suba paid Rs. 1000/- as price of the wrist watch saying that they were in need of it. They stayed in the house of those witnesses. In their evidence they said that on 2-6-1991 Sivarasan together with A-16 visited A-17. Later the witness saw the photo of Suba in the newspaper connecting her with Rajiv Gandhi murder. When A-17 was asked about it he first denied it and later admitted it and said that her name was Suba. However, A-17 gave a warning to both the witnesses not to disclose such things to anyone else.

253. Ext. P-149 is the diary of Sivarasan in which there is an entry showing that Sivarasan met A-16 near Devi Theatre. PW-56 (Utham Singh) said that he was running a grocery shop under the caption "Ebenezer Stores" at Porur. The telephone number of his Stores is 2343402. The witness said that some Sri Lankans who were residing nearby were availing

themselves of the said telephone facility for calling outside. He mentioned Sivarasan, A-2 (Santhan), Kanthan etc. among those who used the telephone. It was the said number which Sivarasan had supplied to

A-16 as a contact number.

254. Ext.P-411 dated 16-6-1991, Ext.P-417 dated 19-6-1991, Ext.P-419 dated 20-6-1991 and Ext.P-423 dated 21-6-1991 are all wireless messages sent by Pottu Omman. Those messages contain exhortations that A-16 should help Sivarasan to escape to Sri Lanka.

255. The above items of evidence which corroborate the confessional statement of A-16, give us confidence to believe that Ext.P-121 is a true version of A-16's involvement in Rajiv Gandhi's murder. So it can safely be concluded that A-16 was also a member of the criminal conspiracy.

256. As for A-17 a confessional statement is attributed to him claiming that it was recorded under Section 15 of the TADA (Ext.P-123). Here also we have to exclude those portions which relate to the offences covered by CC 7 of 1992. The remaining incriminating statements in Ext.P-123 are the following:

In December 1990, he met Sivarasan. Pottu Omman asked him to go to Tamil Nadu. He went to Madras and met A-16 at Marina Beach (Madras) and A-16 asked him to recruit more people to LTTE. He then set out on a tour to Pollachi, Coimbatore, Palani, and reached Madras on 26th May 1991. He met A-16 at Madras. When he met Sivarasan at Thiruvallur Bus Stand (Madras) Suba was introduced to him. They all went to Trichi.
257. A-17 has further said that he went with A-16 and Suba to Pollachi where he and Suba stayed in the house of PW-208 by pretending that Suba was his wife called Mallagi and Sivarasan was her brother.

258. It is not necessary to reproduce the further portion of the confessional statements as they relate to the efforts to save Sivarasan and Suba. We have no doubt that A-17 would have got information as to how Rajiv Gandhi was murdered at least when he met Suba and Sivarasan. But there is nothing in the confessional statement to indicate that he knew it at any time before the assassination. Nor is there any material which points to A-17's knowledge prior to 21-5-1991 about Sivarasan's target. Of course Ext.P-121 and the evidence of PW-206, PW-217, PW-133, PW-208 and PW-181 as also the recovery of the walkie-talkie as per Ext. 1172 would show that A-17 was actively helping Sivarasan and Suba to escape from the clutches of law. But that is not enough to credit him with the advance knowledge of Rajiv Gandhi's murder. It is equally possible that he, on coming to know of the predicament of LTTE personnel like Sivarasan and Suba, would have developed a desire to help them. But that is not enough to conclude that he had prior knowledge that Rajiv Gandhi would be murdered.

A-18 PERARIVALAN ALIAS ARIVU:

259. He was aged 20 during the relevant period. He is the son of a Tamil poet called "Kuyildasan". He was arrested on 18-6-1991 in connection with the murder of Rajiv Gandhi. PW-52 (Superintendent of Police, CBI) has recorded a confessional statement attributed to him. It is marked as Ext.P-87.

260. The following inculpatory passages in Ext.P-87 are said to be the confessions made by him: He had close association with LTTE people from 1989 onwards. He was selling LTTE publications such as "Tamil Eelam" and "Urumal". While he was in Sri Lanka he had an opportunity to meet Veluppillai Piribhakaran and other leaders of LTTE. The former sought A-18's help for LTTE services. It excited him. When he learnt that Tamil people in Sri Lanka were suffering a lot due to the atrocities committed by IPKF he developed a vengeful attitude towards Rajiv Gandhi. In the second week of October, 1990 he and A-19 (Irumborai) reached India by boat along with some other LTTE people. From February 1991 onwards he was residing with A-20 (Bhagyana than) in a house at Roypetta, Madras. A-3 (Murugan) was also staying there. In March 1991, A-18 accompanied A-3 (Murugan) to Vellore for preparing a sketch of the Fort because LTTE prisoners were interned there. Blasting of Vellore Fort for rescuing LTTE prisoners was one of the programmes of LTTE in India.

261. In the further portion of Ext.P-87 it is stated that Kanthan, Sivarasan and Nixon were visiting A-3 (Murugan) occasionally and from their conversation A-18 understood that they were planning to carry out a very dangerous task. A-18 had his own reasons to think that the target of the said dangerous task was Rajiv Gandhi. In fact, Sivarasan asked him in April 1991 whether A-18 could work in unison with him and then A-18 agreed to do so. After this Sivarasan went to Sri Lanka.

262. After Sivarasan came back from Sri Lanka he asked A-18 to get a large sized car battery and some clips etc. A-18 bought a battery from a shop near LIC Building at Madras by giving a false name "Rajan" and a false address. He bought some wire and other accessories from another shop near Midland Theatre. A-18 took Sivarasan to a motor shop on 4.5.1991 and bought a motorcycle in his own name but giving a wrong address. He also bought two batteries (9-Volt Golden Power Battery) and handed them over to Sivarasan for using to blast bomb.

263. On 7-5-1991 he attended the public meeting addressed by V.P. Singh at Madras along with Suba, Thanu, A-3 (Murugan) and A-1 (Nalini). He bought a millimeter from a shop at Richie Street, Mount Road, Madras as Sivarasan wanted them.

264. He further confessed that on 20-5-1991, he went to A-20 Bhagyanathan's house. There he found Sivarasan, A.1 (Nalini), A.3 (Murugan) and Haribabu. Sivarasan divulged to

them about the public meeting which Rajiv Gandhi might address on the next day. A-18 (Arivu) thereupon gave a colour film (Kodak) to Haribabu,

265. On 21-5-1991, A-18 (Arivu) and A-20 (Bhagyanathan) went to see a film at 9.30 P.M. While returning he came to know that Rajiv Gandhi was murdered. So on the next day he packed up his things including TV and VCR and kept them in the house of a friend of him. On 23-5-1991, Sivarasan met him and gave full details of the incident in which Rajiv Gandhi died. Sivarasan conveyed to them that Haribabu also died in the bomb-blast. Sivarasan then asked A-18 (Arivu) to make all efforts to retrieve the dead body of Haribabu.

266. As days passed A-18 (Arivu) felt that he would be caught by the police. He therefore left his friends and stayed with his parents at Jolarpet. It was during the said period that Sivarasan's photo was published in the newspapers connecting him with Rajiv Gandhi's murder.

267. If the above incriminating portions in Ext.P-87 can be relied on as true confession they would uphold the prosecution case for convicting A-18 of criminal conspiracy to murder Rajiv Gandhi.

268. One of the contentions raised against the said confession is that A-18 (Arivu) was not given any time for reflection after eliciting that he was prepared to give a confession. But a perusal of the proceedings which led to the recording of Ext. P-87 shows that on 14.8.1991 preliminary questions were put to him by PW-52 (Superintendent of Police, CBI) but no confession was recorded on that date, It was on 15.8.1991 that PW-52 called him again. Even from the first question put to A-18 (Arivu) it is clear that the interval was intended to afford a period of reflection for A-18. The Superintendent of Police, CBI (PW-52) has also said the same thing in his evidence. In such a situation there is no scope for contending that A-18 was not afforded sufficient opportunity for reflection.

269. It seems there are a lot of circumstances to assure the truth of the statements in Ext.P-87.

270. M.O.49 is the sketch of the Vellore Fort which is said to be prepared by A-18 (Arivu). PW-75 (Basant Kumar - a freelance artist) has said in his evidence that he was engaged by LTTE people for printing books. He said that A-18 met him in February 1991, and gave him certain telephone numbers. One was that of Kittoo who was then in London. It was intended for effecting payments regarding the printing charges. The witness further said that A-18 gave him a letter of Veluppillai Piribhakaran in which receipt of the books printed by him was acknowledged. By the beginning of May 1991, A-18 took this witness to Trichi and introduced him to A-2 (Shanthan). The witness further said that A-18 was found fuming with hatred towards Rajiv Gandhi for the atrocities which IPKF committed

in Sri Lanka. On 10th May 1991, A-18 went to this witness's house with Sivarasan. We have no reason to disbelieve the above testimony of PW-75.

271. PW-23 (Bharathi - a nurse) is the sister of A-20(Bhagyanathan). She said in her evidence that A-3 (Murugan), A-18 (Arivu) and A-20 (Bhagyanathan) were staying in the same house. M.O.286 - a diary of Sivarasan contains the entry regarding the amount paid to A-18.

272. PW-149 (Latha) said that she had acquaintance with LTTE people through A-20 (Bhagyanathan). She identified A-18 as one of the LTTE strong men. The witness said that she saw A-18 (Arivu) and A-20 (Bhagyanathan) conversing with each other at the press where this witness was working.

273. PW-91 (Moideen) is a salesman in Hindustan Training Company, Roypetta High Road, Madras. He said in his evidence that during second week of May 1991, A-18 (Arivu) had purchased two batteries from his shop. He mentioned a reason for remembering that it was, A-18 who purchased the batteries. Whatever be the reason, the fact remains that it was on the strength of the information supplied by A-18 that the Investigating Officer (PW-266 Venkateswaran) came to know of PW-91's shops. The inference is therefore irresistible that A-18 would have pointed out the shop and PW-91 the salesman as the person from whom A-18 had purchased two "9-Volt Golden" batteries.

274. In this context it is significant to note that a little portion of one battery was recovered from the place of occurrence. When that was tested at the Forensic Laboratory it was found to be the portion of a 9-Volt golden battery.

275. Another item of evidence to corroborate the confession of A-18 is the further portion of the testimony of PW-266.' The witness said that from the interrogation of A-18 he came to know of PW-88 (Dalip Chodia) who is dealer of a firm called "International Tyre Service" at Mount Road, Madras. The copy of a Cash Bill was proved through PW-88 as Ext.PW-447. It is in respect of a Bill issued in the name of one Rajan, Door No. 6, Lady Madhavan Street, Mahabalipuram, Madras. The Bill is in respect of selling an Exide Battery No. EM-3878.

276. PW-281 (M. Narayanan) is the Deputy Superintendent of Police, CBI. He said in his evidence that when he interrogated A-18 on 2-8-1991, he got the information that LTTE books and literature and cassettes were kept by A-18 in the house of PW-210. Pursuant to the said information 49 items were recovered from the said house. Ext. 1344 is the Mahassar prepared for that purpose. It contains the list of the articles which is consistent with the statement made by A-18.

277. We have no reason to disbelieve or reject the above items of evidence. It is not necessary to refer to yet other items of evidence which prosecution has presented for corroborating the confessional statement of A-18 (Arivu) because even with the help of those which we have adverted to above we are satisfied that A.18's confession in Ext. P-87 has been corroborated in material particulars.

278. We therefore reach the conclusion that A-18 (Arivu) was actively involved in the criminal conspiracy to assassinate Rajiv Gandhi.

A-19 IRUMBORAI:

279. Irumborai is an Indian citizen. His original name was Duraisingam. After he joined the Rationalists' Organisation of Dravida Kazhakam he changed his name as Irumborai. In a meeting of Dravida Kazhakam held in 1985 a resolution was adopted to give full support to the Tamil liberation movements in Sri Lanka.

280. A-19 (Irumborai) was arrested on 9-10-1991. The most important item of evidence placed by the prosecution against him is Ext.P-117 which is a statement recorded by PW-52 (Superintendent of Police, CBI) on 3-12-1991 under Section 15 of TADA which is said to be a confessional statement. No doubt Ext.P-117 contains inculpatory statements about A-19 trying to screen the offenders in Rajiv Gandhi murder case and to harbour some of them. But on the crucial question whether he was a party to the conspiracy to assassinate Rajiv Gandhi, following portion of the statement would throw light.

He was in contact with A-2 (Santhan), Suresh Master and some other leaders of LTTE. In the second week of May 1991 he went to Trichi as per the instructions of Suresh Master (a leader of LTTE) and collected an amount of Rs. 15.000/- from A-2 (Santhan) to be delivered over to Suresh Master. Then he was told by A-2 (Santhan) that LTTE was making arrangements to kill "an important leader quickly."

281. It is clear that A-19 (Irumborai) did not then understand who that leader was because A-19 then asked A-2 (Santhan) whether that leader could be "Vazhappadi". A-2 (Santhan) in his answer did not confirm it or deny it but expressed ignorance about the identity of the person and also about the manner by which it was to be accomplished. A-19 (Irumborai) further said in the confessional statement that when he heard the above answer from A-2 (Santhan) he did not talk with anybody else on that subject. He also said that he knew that Rajiv Gandhi was murdered in a bomb blast only on 22-5-1991. On hearing the news he became frightened.

282. The rest of the confessional statement relates to the help rendered by him to Sivarasan, Suba, Nehru, Vicky etc. to hide themselves from police catch.

283. Thus it is not discernible from the confessional statement whether he knew that Rajiv Gandhi was going to be murdered. But his own thinking was that it was Vazhappadi (a local leader of Tamil Nadu) who was the target. When that doubt was eliminated there is no material to show that he knew that the target of the plotters was Rajiv Gandhi. Prosecution relies on a letter which Trichy Santhan (a top ranking LTTE personnel) had written to A-19. That letter is dated 7-9-1991 and is marked as Ext.P-128. (It is not necessary to embark on a discussion regarding the proof of Ext. P-128-letter written by Trichy Santhan, as the defence counsel has agreed that it can be taken as proved). In Ext.P-128 an advice seems to have been given to A-19 (Irumborai) like this: "Don't say that Rajiv incident was known before."

284. It is admitted that Trichy Santhan died later. Prosecution wants to press into service the aforesaid advice of Trichy Santhan to prove that as a matter of fact A-19 knew about Rajiv Gandhi incident earlier and that is why he was advised not to say so.

285. There are two hurdles before we take up that piece of evidence into consideration. First is that it was a statement made by a person who is now dead. It does not relate to any transaction of the circumstances which resulted in his death. So the statement would not fall within the ambit of Section 32 of the Evidence Act. Second is that if the statement has to be brought within the ambit of Section 10 of the Evidence Act the pre-condition has to be satisfied that we must have reason to believe that A-19 and Trichy Santhan were members of the conspiracy to murder Rajiv Gandhi, Even assuming that the said statement can be brought under Section 10 of the Evidence Act, the question is -will it be a conclusive inference therefrom that the sender of the letter knew that fact earlier? It could be an advice given to A-19 (Irumborai) that he should not loosely talk that he knew about Rajiv Gandhi's murder earlier. It does not necessarily mean that A-19 (Irumborai) knew it earlier.

286. Even taking the alternative interpretation, the worst is that the sender of the letter (Trichy Santhan) would have believed that the sender had advance knowledge of Rajiv Gandhi's murder. Could it not have been possible for A-19 to clarify to Trichy Santhan that there was no need to give such an advice because he in fact did not know about it earlier.

287. In whatever way it is looked at we have difficulty to credit A-19 (Irumborai) with the advance knowledge of Rajiv Gandhi's murder on such a fragile material.

288. We are therefore inclined to extend to A-19 the benefit of reasonable doubt regarding his involvement in the conspiracy for assassinating Rajiv Gandhi though we are fully satisfied that he was involved in helping the offenders to escape from police.

A-20 BHAGYANATHAN:

289. Bhagyanathan is an Indian citizen. He is the brother of A-1 (Nalini) and son of A-21 (Padma). During the relevant period he was aged 25. He has passed B.Com. degree examination. He and is mother were residing in the Nurses Quarters of "Kalyana Nursing Home", Madras where his mother was working. His father was a Sub-Inspector of Police.

290. He was arrested on 10-6-1991 in connection with Rajiv Gandhi murder case. PW-52 Superintendent of Police, CBI recorded a statement from him which is marked as Ext. P-69. Prosecution wants to treat it as a confessional statement recorded under Section 15 of the TADA. The following are said to be the inculpative statements in Ext.P-69.

291. In 1988, A-20 (Bhagyanathan) got himself acquainted with Muthuraja who was an important person in LTTE and they became friends. Through him A-20 secured friendship with Baby Subramaniam - another LTTE senior leader. A-20 was allured to LTTE movement by Muthuraja. In course of time he became friendly with A-18 (Arivu). Muthuraja arranged a press to be transferred to A-20 and he agreed to print LTTE publications at that press.

292. According to A-20, he and his family shifted the residence to a house at Roypetta on 26-1-1991. He accommodated A-3 (Murugan) also to stay in the said house as Muthuraja requested him to do so. His mother raised objections to the said accommodation but he prevailed upon her to agree. Muthuraja went back to Sri Lanka in February 1991.

293. The further contents in Ext. P-69 are that A-3 (Murugan) brought Sivarasan to the house of A-20 in the month of April 1991. He sent a letter to Baby Subramaniam on 9-5-1991 offering full co-operation for the cause of Tamil liberation in Sri Lanka. The letter was sent per A-3 (Murugan). On 20-5-1991, Haribabu visited the house of A-20 at Roypetta. A Kodak film was obtained from Arivu and A-20 gave it to Haribabu.

294. Regarding the activities on the day of assassination of Rajiv Gandhi A-20 (Bhagyanathan) has stated in Ext.P-69 that on 21-5-1991 A-18 (Arivu) and himself went to the house of Muthuraja. A-18 who returned to the house at 9.30 P.M., after seeing a cinema show, came to know of Rajiv Gandhi's murder. The other confessions in Ext.P-69 are that on 23-5-1991 Sivarasan reached the house and informed them that Haribabu also died; and on 24-5-1991, A-20 (Bhagyanathan) compelled his mother to go along with Sivarasan, Suba and A-1 (Nalini) to Tirupaty. The confession shows that A-20 (Bhagyanathan) destroyed LTTE stickers which remained with him. When he saw the photo of Sivarasan in the newspapers connecting him with Rajiv Gandhi's murder case A-20 became very much bewildered.

295. The above statement of A-20 (Bhagyanathan) cannot be taken as a confession. He did not know that Rajiv Gandhi was going to be assassinated. He did not say anything in Ext.P-69 which would have at least impliedly connected him with Rajiv Gandhi's murder or the conspiracy. He was, of course, a strong sympathiser of LTTE.

296. Even assuming that the statement recorded in Ext.P-69 is a confessional statement there is no confession that A-20 ever knew that Rajiv Gandhi was going to be assassinated.

297. One of the materials which prosecution has pressed into service as a circumstance involving A-20 (Bhagyanathan) with the conspiracy is, Ext.P-128 letter which is said to have been written by Trichy Santhan to A-19 (Irumborai) on 7-9-1991. We have already discussed about the proof of that letter and so we proceed on the assumption that the letter was written by Trichy Santhan. The following passage in the letter is made use of by the prosecution as against A-20 (Bhagyanathan):

Speaking about the mistakes of Raghuvaran's people like Arivu, Baby Anna Press, Haribabu and Subhasundaram, such things would not have occurred if our own people were utilised as was done in the case of Padmnabha.
298. It is not disputed that the reference to Raghuvaran means Sivarasan, Baby Anna means A-20 (Bhagyanathan), Subhasundaram means A-22 and Arivu means A-18.

299. The first question is how far is that reference in Ext.P-128 admissible as against A-20. The writer of that letter Trichy Santhan is now no more. The letter does not speak to any transaction of the circumstances which resulted in his death. Nor has the cause of his death come into question in this case. Hence, the said reference cannot fall under the purview of Section 32 of the Evidence Act.

300. But the greater effort made was to bring it within the ambit of Section 10 of the Evidence Act. The primary condition to invoke the said Section is the existence of "reasonable ground to believe" that Trichy Santhan and A-20 (Bhagyanathan) had conspired together to commit an offence. When the very question whether A-20 was a party to the conspiracy, is being considered the aforesaid primary hurdle forecloses the use of the contents of Ext.P-128 as against A-20 (Bhagyanathan).

301. Barring the above materials we are unable to find that A-20 was party to the conspiracy to murder Rajiv Gandhi.

A-21 PADMA:

302. She is the mother of A-1 (Nalini) and A-20 (Bhagyanathan). As pointed out earlier she is a nurse. She was arrested on 10-6-1991 in connection with Rajiv Gandhi's murder,

303. We may say at the outset, regarding A-21 (Padma), that it is very unfortunate that she too was convicted as a conspirator in Rajiv Gandhi murder case and was sentenced to hanging. We are unable to find anything which involves her in the conspiracy. Of course there is some evidence to show that A-21 (Padma) is privy to accommodate some

of the offenders in Rajiv Gandhi murder case. At the most she is liable to be convicted of that offence.

304. Ext.P-73 is said to be a confessional statement given by PW-21 on 7-8-1991 and that too was recorded under Section 15 of the TADA. A-21 is said to have confessed the following.

Muthuraja brought A-3 (Murugan) to her house in February 1991. A-21 (Padma) was not willing to accommodate him in the house. But she was prevailed upon by A-3 (Murugan) not to raise any objection. A-3 (Murugan) used to help the family with money. Sivarasan was brought to her house by A-3 in March or April 1991. On 20-5-1991, Sivarasan brought Suba and Thanu to her house. Till then they were in the house of A-1 at Villivakkom. Some medicines were given by A-21 to Thanu as she had a sprain on the leg.

305. A-21 (Padma) has further said in Ext.P-73 that in the morning of 21 -5-1991 she went to her Nursing Home as usual and returned in the evening. Late in the night she came to know of the assassination of Rajiv Gandhi when A-18 and A-20 told her about it.

306. In the further portion of Ext.P-73 she has stated that on 23-5-1991, she came to know from her daughter (A-1 Nalini) the details of the killing of Rajiv Gandhi at Sriperumpudur. According to A-21 she became frightened on hearing the said information and at the same time she started worrying about her daughter (A-1 Nalini) and her son-in-law (A-3 Murugan). When the photo of Thanu appeared in the newspapers A-21 (Padma) started entertaining a. fear that she too would be embroiled in the case.

307. The above is the substance of her statement in Ext.P-73. A reading of it would show that A-21 had no inkling whatsoever that Rajiv Gandhi was going to be murdered. Of course, as a mother it was a concern for her when she knew that her daughter (A-1) and her son-in-law (A-3) were wanted by the police in connection therewith.

308. The only inculpative statement in Ext.P-73 is that she harboured the offenders in her house after coming to know that they were involved in the murder of Rajiv Gandhi. She is liable to be convicted of that.

A-22 SUBHA SUNDARAM:

309. He is a photographer. He was running a Photo Studio by name "Subha News Photo Service" at Madras. Haribabu was a cameraman attached to the said Photo Studio. (Haribabu died along with Thanu during the bomb blast at Sriperumpudur.) No confessional statement was elicited from A-22 which could be used under Section 15 of TADA. Hence prosecution had to depend upon certain circumstances alone for establishing the charge against him. Such circumstances are the following:. Im 16

(1) Ext.P-544 is an article prepared by A-22 on 5. 8,1989. (It was written in the handwriting of PW-116 - Girija Vallabhan on the dictation given by A-22). Ext.P-544 contains a scathing criticism of the activities of IPKF in Sri Lanka.

(2) The camera which Haribabu carried to the scene of occurrence belonged to A-22.

(3) On 22-5-1991, A-22 told some others that he and Haribabu met together on 21.5.1991. (PW-108 Santhana Krishna), PW-120 (Sundaramony) and PW-151 (Ravisankaran are the witnesses who spoke about it.)

(4) When a search was conducted by the police in the Photo Studio of A-22 on 5.6.1991, LTTE literature and cassettes were recovered. Ext.P-1354 is the Search List prepared then.

(5) In a letter which Trichy Santhan wrote to A-19 (Irumborai) on 7.9.1991 (Ext.P-128) he criticised the supporters of Sivarasan. Among such supporters the name of A-22 was mentioned by Trichy Santhan.

(6) PW-172 (Ramamurthy) another photographer who happened to be at the place of occurrence said in his evidence that A-22 asked him whether he could have brought back the camera of Haribabu from the scene of occurrence.

(7) PW-205 (Smt. Parimalam) a cousin of Haribabu said that she got a phone call in the name of A-22 advising her to remove all the papers and cassettes from the house of Haribabu.

(8) PW-258 (Vazhappari Ramamurthy) said that A-22 told him on 23.5.1991 and also on 27.5.1991 to enquire about the camera which Haribabu carried to Sriperumpudur.

(9) A-22 persuaded the father of Haribabu to issue a press statement that Haribabu had no knowledge in Rajiv Gandhi murder case. In fact A-22 drafted that statement for the witness.

The trial court found that all the above 9 circumstances were proved and are reliable. On that basis the Special Judge further found that A-22 was a member of the conspiracy, and that he had harboured the offenders. Learned Counsel for A-22, contended that even if all the above circumstances are found to be legal evidence it would not form a completed chain for the court to draw any conclusive inference.

310. We too are of the definite view that the aforesaid circumstances, even if all of them are assumed to be legal evidence, would hardly be sufficient to prove the involvement of A-22 in the conspiracy to murder Rajiv Gandhi.

311. That apart, if the circumstances are individually analysed, many of them cannot be treated as incriminating circumstances at all. A-22 would have been a critic of IPKF activities in Sri Lanka. He would have been a sympathiser of LTTE movement. Those two premises are discernible from the aforesaid circumstances.

312. Of course there is one circumstance which, if found reliable, would be incriminating to A-22. It was spoken to by PW-205 (Parimalam) that A-22 phoned her up and advised her to remove the incriminating articles from the house of Haribabu. But the difficulty regarding that evidence is, PW-205 (Parimalam) never knew A-22 and she had never heard his voice earlier. So her evidence is hardly sufficient for holding that A-22 called her over the phone. Anybody else could have called her in the name of A-22.

313. Most probably A-22 was the owner of the camera which Haribabu took to Sriperumpudur. So A-22's concern was to get his valuable property back. He would have sought the help of others for that purpose. The conduct of A-22 can only show that he evinced much interest for securing his property. But that can hardly be a circumstance which is consistent only with the guilt of the accused.

314. We cannot therefore concur with the finding of the trial court that A-22 was a member of the conspiracy to assassinate Rajiv Gandhi.

A-23 DHANASEKARAN alias RAJU:

315. He was arrested on 13.10.1991 in connection with Rajiv Gandhi's murder. He was conducting a Motor Transport Company at Tuticorin. Ext.P-113 is the record containing his statement which PW-52 (Superintendent of Police, CBI) recorded on 4.11.1991. It is sought to be used as his confessional statement.

316. But the difficulty with Ext.P-113 is, it shows clearly that A-23 had absolutely no knowledge about the murder of Rajiv Gandhi. The following passage in Ext.P-113 would bear testimony to it:

On 21st May, I was in my house at Mettur. Then only I heard the news that Rajiv Gandhi died due to bomb explosion at Sriperumbuthur. The news was flashed through papers and television. Later, I came to know that LTTE organisation is the main cause for that assassination and Sivarasan, Subha and Thanu were involved in that murder.
Of course, his statement thereafter in Ext.P-113 shows that he too was involved in helping the offenders to escape. It is not necessary to refer to those passages in Ext.P-113 because learned Counsel for the accused has fairly conceded that he is not attacking the finding of the trial court regarding the offence under Section 212 of the IPC.

317. One circumstance which the trial court used against A-23 is that he purchased a Maruti Gypsy (M.O.540) on 14.11.1990. There is evidence to prove that fact. There is also

evidence to prove that the said vehicle was used by Sivarasan, Suba and others for moving from one place to other, but all such travels were subsequent to the assassination of Rajiv Gandhi. The trial court concluded on the strength of the aforesaid evidence like this:

Thus M.0.540 Maruti Gypsy purchased in November, 1990 in Salem before the assassination of Rajiv Gandhi was used by A-24, and Sivarasan, Subha and A-26 and other accused, after the assassination of Rajiv Gandhi. The close association between these accused is thus proved by the prosecution beyond doubt. Purchase of M.O.540 Maruti Gypsy and its subsequent use by the members of the conspiracy also proves the involvement of A-23 in the accomplishment of the object of conspiracy.
318. The aforesaid leap jump to such a conclusion is impermissible and contrary to the well established principles governing circumstantial evidence. We therefore dissent from the trial court's conclusion regarding A-23's involvement in the conspiracy to murder Rajiv Gandhi.

A 24 RAJASURIYA alias RANGAN:

319. He is a Sri Lankan citizen. He was aged 27 during the relevant time. He was arrested on 29.8.1991 in connection with Rajiv Gandhi murder, PW-52 (Superintendent of Police, CBI) recorded his confessional statement on 23.10.1991 as per Section 15 of TADA. It is marked as Ext.P-109.

320. A-24 (Rangan) has stated in Ext.P-109 that he was working for LTTE in Sri Lanka and he reached India in 1989 and that he stayed at Thiruvanniyur. He was conducting a Travel Agency business without obtaining the required permission for it. He said that he was making fake travel documents for his clients and he was closely associated with LTTE movement in India. He further stated that in April 1991, he got acquainted with Trichy Santhan and Suresh Master and A-18 (who were all senior leaders of LTTE). A-24 (Rangan) was given an assignment to look after the injured LTTE fighting men. In Ext.P-109 he further said that in May 1991 he was asked by Suresh Master to arrange transportation of LTTE men to different places. But A-24 did not say that he had any knowledge about Rajiv Gandhi's murder before the assassination took place. In June 1991, A-24 himself gave hospitality to Sivarasan, Suba and Suresh Master and thereafter they were helped to escape by a Tanker Lorry,

321. It is not necessary to extract the further portion in the confessional statements as they contain his admissions regarding the activities which he carried on for helping Sivarasan and others to escape from police nabbing. We have no doubt that A-24 had harboured the offenders and helped them to escape from the police net.

322. But regarding the crucial fact whether A-24 had any involvement in the conspiracy to assassinate Rajiv Gandhi, the confessional statement is of no help because it does not even indicate that he had any prior knowledge about the same.

323. PW-65 (Mridula) is the wife of A-26 (Ranganath). She said in her evidence that on 2.8.1991 her husband brought A-24 and some other persons who are accused in the Rajiv Gandhi murder case. Suba was also among such persons. On the next day, a green Maruti Gypsy van reached their house. When she viewed the television programme she knew that Sivarasan and Suba were wanted by the police in connection with the aforesaid case. PW-230 (Selvaraj) was the person who drove the Tanker Lorry. PW-22 (Sathyamoorthy) said that on 8.8.1991 A-24 brought a Maruti Gypsy for painting. The witness painted it with white colour.

324. The above items of evidence would also help in finding that A-24 was actively helping the accused to escape from the police. Learned Additional Solicitor General argued that considering the fact that he was an active LTTE votary and also considering his activities during the post assassination days it is possible to draw an inference that he too was involved in the conspiracy to murder Rajiv Gandhi.

325. Such an inference is not a necessary inference, for, it is equally possible to think that A-24 being an active LTTE votary, would have decided to help other LTTE people to escape from the police clutches though he knew about their involvement in the assassination of Rajiv Gandhi only after he himself came to know that the former Prime Minister was assassinated.

A-25 VIGNESWARAN (r) VICKY:

326. He is a Sri Lankan citizen. He was aged 28 during the relevant period. He was, by profession, a cleaner of vehicles. He was arrested on 4-2-1992 in connection with Rajiv Gandhi murder case. A statement was elicited from him on 24-2-1992 which has been marked as Ext.P. 127. Prosecution treated it as a confessional statement under Section 15 of the TADA.

327. A-25 (Vicky) has admitted in Ext.P-127 that he was working for LTTE movement from 1985 onwards. He moved to India when his house was destroyed by Sri Lankan Army in 1987. He was acquainted to Trichy Santhan by middle of 1990. Another LTTE member called Dixon was introduced to him. When he was staying in Trichy he was doing some business in medicines for which Trichy Santhan extended financial help to him.

328. In the further portion of Ext.P-127 he has stated that 2 days after the murder of Rajiv Gandhi he was told by Trichy Santhan not to venture to stay in Trichy any more. Hence he decided to shift to Coimbatore and agreed to take over all the medicines for which

Trichy Santhan had placed orders. He came to know of Sivarasan only after the newspapers published the photo of that person though he had seen him before.

329. The rest of the statements in Ext.P-127 contain clear admissions of the activities of A-25 (Vicky) for helping Sivarasan, Suba etc. to escape from the police. However, there is absolutely no statement of him in the document which could be used to involve him in the conspiracy to murder Rajiv Gandhi. Apart from his role in helping some of the accused who were wanted by the police in Rajiv Gandhi murder case there is no evidence to suggest that A-25 (Vicky) had even knowledge that Rajiv Gandhi would be murdered by anyone whom he knew.

330. The trial court, after referring to various items of evidence, concluded in paragraph 2373 of the Judgment that "A-25 was also instrumental in the transportation of Sivarasan, Suba and Nehru from Madras to Bangalore in M.O. 543 Tanker-Lorry driven by PW-230 Selvaraj". It is a conclusion which needs no interference,

331. But Thereafter learned Special Judge proceeded to mention that A-25 identified the photo of the Tanker-Lorry and also the photos of Sivarasan, Suba and Nehru and even the photos of dead body of Suba, Suresh Master and Sivarasan. The trial court adverted to his association with Trichy Santhan. After making reference to such facts learned Special Judge made a long leap to reach the next conclusion like this: "All the above evidence and circumstances would go to establish the active part played by A-25 in consonance with the directions of Trichy Santhan in furtherance of the object of the conspiracy."

332. We are unable to uphold the second conclusion regarding A-25 (Vicky) for want of any evidence and also for the reasons set out by us in the preceding paragraphs.

A-26 RANGANATH:

333. The trial court at the close of the discussion of evidence against A-26 has entered the following finding in paragraph 2419 of the Judgment:

From the foregoing discussion and analysis of evidence proved by the prosecution it has to be concluded that A-26 harboured Sivarasan and Suba, who were proclaimed offenders and the other accused A-24 Rangan, Nehru, Suresh Master, Driver Anna and Amman in his house at Puttanahalli and subsequently at Konanakunte voluntarily and willingly without any fear to his life.

334. The above is the only finding on facts which the learned trial Judge appears to have made regarding the role of A-26. Thereafter no discussion is seen made about his activities. But learned Judge had held in paragraph 2451, that A-26 is also guilty of the offence under Section 120-B read with Section 302 IPC and rest of the offences included in the charge.

335. We have no difficulty to concur with the finding of the trial court that A-26 (Vicky) is guilty of offences under Sections 212 & 216 of the Indian Penal Code. In this context we may point out that PW-65 is the wife of A-26, and apart from her evidence the testimony of PW-218 (Anjanappa), PW-223 (Rajan) and PW-229 (Jayasankar) were read out to us. In the trial court a plea was made on behalf of A-26 that he is prelisted by Section 94 of the Indian Penal Code. We do not think it necessary to advert to that plea now in view of the concession made by the learned Counsel for A-26 that the appeal as for A-26 is not pressed regarding the offences under Sections 212 & 216 of the IPC because the accused concerned had already undergone the sentence of imprisonment awarded by the trial court as for those two counts.

336. But at the same time we have to point out that there is absolutely no evidence whatsoever for connecting A-26 with the conspiracy to assassinate Rajiv Gandhi. In fact, the prosecution did not even bother to establish that A-26 had no knowledge that anybody would be plotting to murder Rajiv Gandhi. It is very unfortunate that the trial court has convicted A-26 also of the offence under Section 120-B read with Section 302 IPC and sentenced him to be hanged.

337. Now, we come to the stage of deciding who are all liable to be convicted and of which offences. We may point out that learned Counsel for the accused submitted at the Bar that it is not worthwhile, at this distance to time, to press the appeal of the appellants as against the conviction under Sections 212 & 216 of IPC, Section 14 of the Foreigners Act, Section 6(1 -A) of Wireless and Telegraph Act, 1933, Section 3 of the Wireless Act and Section 5 of the Explosive Substance Act as well as Section 12 of the Passports Act.

338. For the reasons set out in the preceding paragraphs of this Judgment we confirm the conviction of the offence under Section 120-B read with Section 302 IPC as against A-1 (Nalini), A-2 (Santhan alias Raviraj), A-3 (Murugan alias Thas), A-9 (Robert Payas), A-10 (Jayakumar), A-16 (Ravichandran alias Ravi) and A-18 (Perarivalan alias Arivu). We shall deal with the question of sentence for the said offence separately. However, we set aside the conviction and sentence passed on all the accused under Section 120-B of the IPC read with all the other counts of offences (except Section 302 IPC). We also set aside the conviction and sentence passed by the trial court on those appellants who were convicted of offences under Section 3(3), Section 3(4) and Section 5 of TADA.

339. We confirm the conviction passed by the trial court for the offences under Sections 212 & 216 of the IPC, Section 14 of the Foreigners Act, 1946, Section 25(1-B) of the Arms Act, Section 5 of the Explosive Substance Act, Section 12 of the Passports Act, and Section 6(1-A) of the Wireless and Telegraph Act, 1933, in respect of those accused who were found guilty of those offences. However, as the sentence awarded by the trial court in respect of those offences did not exceed imprisonment for a period of two years we are not disposed to disturb the sentence passed by the trial court on those counts. It is for the

jail authorities to consider the question of releasing those accused who have already undergone the period of rigorous imprisonment for two years, and against whom there is no conviction confirmed under any other counts of offence, as they are entitled to be set at liberty forthwith.

340. In other words, except A-1 (Nalini), A-2 (Santhan), A-3 (Murugan), A-9 (Royert Payas), A-10 (Jayakumar), A-16 (Ravichandran) and A-18 (Arivu) all the remaining appellants shall be set at liberty forthwith.

SENTENCE REGARDING OFFENCE UNDER SECTION 302 READ WITH SECTION 120-B OF IPC:

341. Now we have reached the proximity of the terminus of a long journey. But the remaining stage is the hardest and the most tedious sector - to decide on the sentence passed for the offence under Section 302 read with Section 120-B IPC.

342. We have before us only two alternatives - death or life term. The trial judge opted to award the former for all the 26 appellants. This was dubbed as amounting to judicial massacre by the defence counsel, while the Additional Solicitor General endeavoured to justify the imposition of extreme penalty.

343. A fervent plea was made to us that the high profile of the celebrity dimension of the targeted victim should not colour our judicial vision in determining the sentencing extent. But the other side of the picture was etched by pleading that the court cannot adopt a Nelson's eye to the stark reality that the target of the dastardly intrigue was a leader who represented bulk of the nation's population in whom the nation reposed its faith and trust for a full term. Be such factors as they may - we would proceed to discharge the task as law enjoins.

344. Both sides cited a number of decisions of this Court in support of their respective pleas - one for retention of the sentence and the other for choosing the next alternative. Decisions which held the field before the introduction of the Code of criminal Procedure, 1973 do not afford any help because the Criminal Procedure then obliged the court to pass death sentence for murder as a general proposition and the alternative sentence could be awarded only in exceptional cases for which the court was then required to advance special reasons. After 1973, there was a complete reversal to the approach. Thereafter, life imprisonment was made the normal sentence for murder and death penalty was allowed to be passed only in exceptional cases. The criminal courts were required to state special reasons for choosing the latter. But the decisions rendered during the aforesaid second stage were divided into two categories with the pronouncement of the decision of this Court in Bachan Singh v. State of Punjab MANU/SC/0055/1982: 1980 Cri LJ 636.

345. During pre Bachan Singh period the Sessions Court was free to choose death penalty in any case where special reasons could be advanced. But during post Bachan Singh period even that was drastically changed as the Constitution Bench made it impermissible to award death sentence except in rarest of the rare cases wherein the lesser alternative is unquestionably foreclosed.

346. As the law which has been pronounced in such unreserved language on the subject, holds the field ever thereafter we are required to remind ourselves of the legal position adumbrated by the Constitution Bench in Bachan Singh's case (supra). The following is the ratio which emerged after making a detailed analysis of various view points on the sustainability of the provision empowering the court to pass death sentence:

It is therefore imperative to voice the concern that courts, aided by the broad illustrative guide-lines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3), viz., that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.

347. The Constitution Bench, however, did not agree with the approach adopted by a three-Judge Bench of this Court in Rajendra Prasad v. State of U.P. MANU/SC/0212/1979: 1979 Cri LJ 792 that focus of special reasons has shifted from the crime to the criminal. On that part, the majority view in Bachan Singh is the following:

As we read Sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of 'special reasons' in that context, the court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case.

Their Lordships accepted the broad contours of the circumstances cited before them by one of the learned Counsel as having mitigating impact. The Constitution Bench has observed, on the aforesaid submission of the counsel, as follows:

We will do no more than to say that these are undoubtedly relevant circumstances and must be given great weight in the determination of sentence.

Three such circumstances which the court was told about are the following:

(1) The age of the accused - if the accused is young or old the sentence of death should be avoided.

(2) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(3) That the accused acted under duress or domination of another person.

348. Bearing the above principles in mind we have now to determine whether the death sentence passed by the trial court should be confirmed or not in respect of the 7 accused whose conviction of the offence under Section 302 read with Section 120-B we have confirmed. There can be no two opinions that looking at the crime conspectus of what was perpetrated at Sriperumpudur it was most dastardly to the superlative degree. Those who machinated to bring about such a horrendous crime cannot normally escape the extreme penalty of law. As the law enjoins that we have to look at the criminals also we are duty bound to look at it from that perspective also.

349. The conspirators in the Rajiv Gandhi assassination can be vivisected into four broad categories.

First, those who formed the hardcore nucleus which took the decision to assassinate Rajiv Gandhi.

Second, those who induced others to join the ring and played active as well as supervisory roles in the conspiracy.

Third, those who joined the conspiracy by inducement whether through indoctrination or otherwise.

Fourth, those among the conspirators who participated in the actual commission of murder.

350. Persons who fall within the first category cannot normally escape from capital punishment if their case ends in conviction. Veluppillai Piribhakaran, Pottu Omman, Akila, Sivarasan and Trichy Santhan have been described as persons falling within the radius of the first category. As they were not tried for the offences so far we refrain from observing anything concerning them in the sphere of sentencing exercise.

351. However, we can hold with certainty that A-2 (Santhan), A-3 (Murugan) and A-18 (Arivu) belonged to the second category even if they slip out of the first. They were not merely carrying out the orders of the first category personnel but they made others to work according to their directions in order to achieve the target. The role played by them was prominently direct and active. They were in the leadership layer among the conspirators. We are not able to find out anything extenuating as for the said three persons in their activities for implementation of the decisions of the cabal.

352. We therefore confirm the extreme penalty imposed by the trial court on A-2 (Santhan), A-3 (Murugan) and A-18 (Arivu) for the offence under Section 302 read with Section 120-B of the IPC.

353. A-1 (Nalini) belongs to the fourth category. In the normal spectrum of consideration death penalty is the first priority to be chosen for her. She is an elderly and educated woman. One gets the impression, on reading her confession, that she was led into the conspiracy by playing on her feminine sentiments. She became an obedient participant without doing any dominating role. She was persistently brain-washed by A-3 (Murugan) who became her husband and then the father of her child. Suba and Thanu would certainly have etched a woeful picture regarding the atrocities committed by IPKF on women and girls of Tamil origin in Sri Lanka. By such indoctrinate exercises she would have honestly believed in the virtue of offering her help to the task undertaken by the conspirators. In the confessional statement made by her brother A-20 (Bhagyanathan) he revealed one fact i.e. A-1 (Nalini) had confided to him on 23-5-1991 itself that as a matter of fact she realised only at Sriperumpudur that Thanu was going to kill Rajiv Gandhi. Perhaps that may be a true fact. But she would not have dared to retreat from the scene as she was tucked into the tentacles of the conspiracy octopus from where it was impossible for a woman like A-1 (Nalini)to get extricated herself. She knew how Sivarasan and Santhan had liquidated those who did not stand by them. Padmnabha's episode would have been a lesson for her. Considering the fact that she belongs to the weaker sex and her helplessness in escaping from the cobweb of Sivarasan and company the mere fact that she became obedient to all the instructions of Sivarasan, need not be used for treating her conduct as amounting to "rarest of the rare cases" indicated in Bachan Singh's case.

354. Another consideration which we find difficult to overlook is - she is the mother of a little female child who would not have even experienced maternal huddling as that little one was born in captivity. Of course the maxim "Justitia non novit patrem nee mortem" (Justice knows no father nor mother) is a pristine doctrine. But it cannot be allowed to reign with its rigour in the sphere of sentence determination. As we have confirmed the death sentence passed on the father of that small child an effort to save its mother from gallows may not militate against jus gladiate " so that an innocent child can be saved from imposed orphanhood.

355. Thus, on an evaluation of the plus and minus, pros and cons -we persuade ourselves to save A-1 (Nalini) from gallows. Hence the sentence passed on her is altered to one of imprisonment for life.

356. What remains is the case of A-9 (Robert Payas), A-10 (Jayakumar), and A-16(Ravichandran). They do not belong to the first or even to the second category. They were LTTE followers and they just obeyed the commands of leaders like Sivarasan who

had the capacity to dominate over them. We are inclined to alter their sentence from death penalty to imprisonment for life. We order so.

357. The appeals filed by all the 26 accused and the proceedings submitted by the Special Judge of the Designated Court under Section 366 of the CrPC are disposed of in the aforementioned terms.

D.P. Wadhwa, J.

358. I have studied the draft judgment prepared by my learned and noble brother K.T. Thomas, J. It is a judgment so well written, but, regrettably, I find myself unable to agree with him entirely both on certain questions of law and conviction and sentence proposed by him on some of the accused. Moreover, keeping in view the fact that since sentence of death passed on 26 accused by the Designated Court has been submitted to this Court for confirmation evidence needs to be considered in somewhat greater detail, I venture to render separate judgment.

359. On the night of 21.5.1991 a diabolical crime was committed. It stunned the whole nation. Rajiv Gandhi, former Prime Minister of India, was assassinated by a human bomb. With him 15 persons including 9 policemen perished and 43 suffered grievous or simple injuries. Assassin Dhanu an LTTE (Liberation Tigers of Tamil Elam) activist, who detonated the belt bomb concealed under her waist and Haribabu, a photographer (and also a conspirator) engaged to take photographs of the horrific sight, also died in the blast. As in any crime, criminals leave some footprints. In this case it was a camera which was found intact on the body of Haribabu at the scene of the crime. Film in the camera when developed led to unfolding of the dastardly act committed by the accused and others. A charge of conspiracy for offences under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), Indian Penal Code (IPC), Explosive Substances Act, 1908, Arms Act, 1959, Passport Act, 1967, Foreigners Act, 1946, and the Indian Wireless Telegraphy Act, 1933 was laid against 41 persons, 12 of whom were already dead having committed suicide and three absconded. Out of these, 26 faced the trial before the Designated Court. Prosecution examined 288 witnesses and produced numerous documents and material objects. Statements of all the accused were recorded under Section 313 of the CrPC (Code). They denied their involvement. The Designated Court found them guilty of the offences charged against them. Thereafter all the accused were heard on the question of sentence. Designated Court awarded death sentence to all of them on the charge of conspiracy to murder. "A judicial massacre", bemoaned Mr. Natarajan, learned senior counsel for the accused, and rightly so in our opinion. Designated Court also sentenced each of the accused individually for various offences for which they had been separately charged.

360. In view of the provisions of Section 20 of TADA, Designated Court submitted the sentence of death to this Court for confirmation. The accused also filed appeals under Section 19 of TADA challenging their conviction and sentence.

361. The accused have different alias and while mentioning the accused name it may not be necessary to refer to them with all their respective alias and alias of an accused will be indicated wherever necessary. There is no dispute about these alias. For proper comprehension of the facts it will be appropriate to refer to the appellants as accused,

362. Three absconding accused are (1) Prabhakaran, (2) Pottu Amman alias Shanmuganathan Sivasankaran and (3) Akila alias Akilakka. Prabhakaran is alleged to be the supreme leader of Liberation Tigers of Tamil Elam (LTTE) - a Sri Lankan Tamil organization, who along with Pottu Amman, Chief of Intelligence Wing of LTTE, Akila, Deputy Chief of Women Wing of LTTE, and others designed criminal conspiracy to assassinate Rajiv Gandhi and commit other offences in pursuance thereof.

363. Deceased accused (DA) who are alleged to be the members of the conspiracy and died either by consuming cyanide or in the blast or by hanging are:

1. S. Packiachandran alias Raghuvaran alias Sivarasan

2. Dhanu alias Anbu alias Kalaivani

3. SubhaaliasNithya

4. S. Haribabu

5. Nehru alias Nero alias Gokul

6. N. Shanmugam alias Jayaraj

7. Trichy Santhan alias Gundu Santhan

8. Suresh Master

9. Dixon alias Kishore

10. Amman alias Gangai Kumar

11. Driver Anna alias Keerthy

12. Jamuna alias Jameela

The accused, who are put on trial and are appellants before us, are:

A-1 S. Nalini,

A-2 T. Suthendraraja alias Santhan

A-3 Sriharan alias Murugan alias Thas alias Indu Master

A-4 Shankar alias Koneswaran A-5 D. Vijayanandan alias Hari Ayya

A-6 Sivaruban alias Suresh alias Suresh Kumar alias Ruban

A-7 S. Kanagasabapathy alias Radhayya

A-8 A. Chandralekha alias Athirai alias Sonia alias Gowri

A-9 B. Robert Payas alias Kumaralingam

A-10 S. Jayakumar alias Jayakumaran alias Jayam

A-11 J. Shanthi

A-12 S. Vijayan alias Perumal Vijayan

A-13 V. Selvaluxmi

A-14 S. Bhaskaran alias Velayudam

A-15 S. Shanmugavadivelu alias Thambi Anna

A-16 P. Ravichandran alias Ravi alias Pragasam

A-17 M. Suseendran alias Mahesh

A-18 G. Perarivelan alias Arivu

A-19 S. Irumborai alias Duraisingam

A-20 S. Bhagyanathan

A-21 S. Padma

A-22 A. Sundaram alias Subha Sundaram

A-23 K. Dhanasekaran alias Raju

A-24 N. Rajasuriya alias Rangan

A-25 T. Vigneswaran alias Vicky

A-26 J. Ranganath

364. Prosecution case is that Prabhakaran, Pottu Amman, Akila and Sivarasan master-minded and put into operation the plan to kill Rajiv Gandhi which was executed by Sivarasan, and Dhanu, of the two assassins (other being Subha), with the back-up of other accused, who conspired and abetted them in the commission of the crime which included providing them safe haven before and after the crime. Charge of conspiracy is quite complex and when analysed it states that 26 accused before us, and those absconding, deceased and others, are charged with having entered into criminal conspiracy between July, 1987 and May, 1992 at various places in Sri Lanka and India to do or cause to be done illegal acts, namely:

1. to infiltrate into India clandestinely,

2. to carry and use unauthorized arms, ammunition and explosives,

3. to set up and operate unauthorized wireless sets to communicate with LTTE leaders in Sri Lanka from time to time,

4. to cause and carry out acts of terrorism and disruptive activities in Tamil Nadu and other places in India by use of bombs, explosives and lethal weapons so as to scare and create panic by such acts in the minds of the people and thereby to strike terror in the people,

5. in the course of such acts to assassinate Rajiv Gandhi, former Prime Minister of India and others, who were likely to be with him,

6. to cause disappearance of evidence thereof and to escape,

7. to screen themselves from being apprehended,

8. to harbour the accused and escape from the clutches of law, and

9. to do such other acts as may be necessary to carry out the object of the criminal conspiracy as per the needs of situation.

and in pursuance of the said criminal conspiracy and in furtherance of the same to carry out the object of the said criminal conspiracy:

(I) Santhan (A-2), Murugan (A-3), Shankar (A-4), Vijayanandan (A-5), Ruban (A-6), Kanagasabapathy (A-7), Athirai (A-8), Robert Payas (A-9), Jayakumar (A-10), Shanthi (A-11), Vijayan (A-12), Selvaluxmi (A-13), Bhaskaran (A-14), Rangam (A-24) and Vicky (A-25) along with the deceased accused Sivarasan, Dhanu, Subha, Nero, Gundu (Trichy) Santhan, Suresh Master, Dixon, Amman, Driver Anna and Jamuna infiltrated into India from Sri Lanka clandestinely and otherwise on different dates during the said period of criminal conspiracy;

(II) Shanmugam (DA) amongst them arranged to receive, accommodated and rendered all assistance to the members of the conspiracy;

(III) Robert Pay as (A-9), Jayakumar (A-10), Shanthi (A-11), Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) after having come over to India secured houses at Porur and Kodungaiyur in Madras at the instance of Sivarasan (DA) for accommodating one or other of the co-conspirators from time to time and for chalking out the modalities of the course of action to be followed for the achievement of the object of the said criminal conspiracy;

(IV) Nero (DA) established contacts with Prabhakaran (absconding) through Pottu Amman (absconding) through illegally operated wireless sets brought into India by Sivarasan (DA) through illicit channel from the house of Vijayan (A-12);

(V) Kanagasabapathy (A-7) and Athirai (A-8) came to India through illicit channel and set up hide outs in Delhi;

(VI) Sivarasan (DA) brought Santhan (A-2), Shankar (A-4), Vijayanandan (A-5) and Ruban (A-6) along with the deceased accused Dhanu, Subha, Nero and Driver Anna to Kodiakkarai and got them all accommodated in several places in Tamil Nadu to be of assistance in carrying out the object of criminal conspiracy;

(VII) (a)Arivu (A-18) visited Jaffna and other places in Sri Lanka along with Irumborai (A-19) clandestinely in June 1990, purchased a Kawasaki Motor cycle on 4,5.1991 at Madras to facilitate quick movement of himself and one or the other of the co-conspirators,

(a-1) arranged payment for printing the compilation described as "The Satanic Force" and sent one copy of the same to Prabhakaran (absconding) through Sivarasan (DA) and another set through Murugan(A-3),

(b) purchased and provided a battery for operating the wireless apparatus and other two battery cells, which were used as detonator in the belt bomb used by Dhanu (DA) for the murder of Rajiv Gandhi and 15 others;

(VIII) Shankar (A-4), Vijayanandan (A-5) and Ruban (A-6) along with Driver Anna (DA) rendered all assistance necessary therefor;

(IX) Sivarasan decided to murder Rajiv Gandhi, former Prime Minister of India in the public meeting to be held at Sriperumbudhur on 21.5.91 on learning that Rajiv Gandhi was to address the meeting on the said day and finalized the method of operation to murder him by enlisting the services of Nalini (A-1) to be of help at the scene of crime;

(X) Arivu (A-18) handed over the film roll for the purposes of taking photographs of events to Haribabu (DA), who also purchased a sandal wood garland from Poompuhar Handicrafts, Mount Road Madras to be used for garlanding Rajiv Gandhi at the scene of occurrence by Dhanu (DA) so as to gain access to the VVIP under the guise of garlanding;

(XI) Dhanu equipped herself with the necessary apparel in order to hide a belt bomb and detonator attached thereto for detonating the same when she was in close proximity to Rajiv Gandhi;

(XII) Haribabu (DA) met Suba Sundaram (A-22) on 21.5.1991 and thereafter took a Chinon camera from a friend for taking photographs at the scene of offence and loading the camera with the film already provided by Arivu (A-18);

(XIII) Nalini (A-1) along with the deceased accused Sivarasan, Dhanu and Subha met Haribabu at Parrys Corner, Broadway Bus Stand and proceeded to the venue of the public meeting at Sriperumbudur on the evening of 21.5.1991 where Nalini (A-1) provided cover to Dhanu and Subha and when Rajiv Gandhi arrived at the scene of occurrence at about 10.10 P.M. Dhanu gained access nearer to Rajiv Gandhi and while in close proximity to Rajiv Gandhi Dhanu detonated the improvised explosive device kept concealed in her waist belt at about 10.20 P.M. resulting in the blast and assassinated Rajiv Gandhi and 15 others and also by killing herself (Dhanu) and also causing the death of Haribabu accused and causing injuries to 43 persons;

(XIV) Nalini (A-1) along with the deceased accused Sivarasan and Subha immediately fled from the scene of occurrence, reached the house of Jayakumar (A-10) and Shanthi (A-11) and took shelter in Jayakumar's (A-10)house;

(XV) Suba Sundaram (A-22) attempted to retrieve the camera used by Haribabu from the scene of occurrence, caused destruction of documents and material objects linking Haribabu in this case and arranged to issue denial in the press about any connection of the said Haribabu with the LITE;

(XVI) Bhagyanathan (A-20) and Padma (A-21) rendered all assistance and harboured the deceased accused Sivarasan and Subha, Murugan (A-3)and Arivu(A-18);

(XVII) Nalini(A-1), Murugan (A-3) and Padma (A-21) accompanied the deceased accused Sivarasan and Subha to Tirupathi, where Nalini (A-1) did "Angapradakshinam";

(XVIII) Nalini (A-1) and Murugan (A-3) hide themselves in different places in Tamil Nadu and Karnataka State in order to evade arrest;

(XIX) Dhanasekaran (A-23), Rangam (A-24) and Vicky (A-25) harboured the deceased accused Sivarasan, Subha and Nero by transporting them and concealing them inside a tanker lorry bearing No. TN-27-Y-0808 belonging to Dhanasekaran (A-23) from Madras to Bangalore;

(XX) Nero (DA) operated the wireless set and communicated with the absconding accused Prabhakaran and Pottu Amman and conveyed the developments on behalf of the accused Sivarasan;

(XXI) the deceased accused Nero, Gundu Santhan, Suresh Master, Dixon, Amman and Driver Anna rendered all assistance to the deceased accused Sivarasan;

(XXII) Rangam(A-24) rendered all assistance to Sivarasan and others by transporting them in a Maruti Gypsy in Bangalore and other places in Karnataka purchased by Dhanasekaran (A-23) using LTTE funds;

(XXIII) Ranganath (A-26) harboured the accused Rangam (A-24) and the deceased accused Sivarasan, Subha, Nero, Suresh Master, Amman, Driver Anna and Jamuna at Knonnakunte, Bangalore and on 19.8.1991 the deceased accused Sivarasan, Subha, Nero, Suresh Master, Amman, Driver Anna and Jamuna committed suicide;

(XXIV) Shanmugavadivelu alias Thambi Anna (A-15) rendered financial assistance to Sivarasan and to one or other of coconspirators to carry out the object of conspiracy and abetted the commission of the said offence;

(XXV) Nalini(A-1)to Ranganath(A-26) caused the disappearance of evidence of murder of Rajiv Gandhi;

and thereby Nalini (A-1) to Ranganath (A-26) committed offences punishable under Section 120-B of IPC read with Sections 302 of IPC, 326 of IPC, 324 of IPC, 201 of IPC, 212 of IPC and 216 of IPC; Sections 3, 4 and 5 of Explosive Substances Act of 1908; Section 25 of Arms Act of 1959; Section 12 of Passport Act, 1967; Section 14 of the Foreigners Act,

1946; Section 6(1A) of the Wireless Telegraphy Act, 1933 and Sections 3, 4 and 5 of TADA of 1987.

365. Including the charge of conspiracy, which is charge No. 1, there are 251 other charges framed against the accused for having committed various offences in pursuance to the conspiracy under Charge No. 1. Out of these Nalini (A-1) has been charged on 121 different counts. Second charge against her is that in pursuance to the conspiracy and in the course of the same transaction and in furtherance to the common intention of the accused she and the deceased accused Sivarasan, Dhanu, Subha and Haribabu did "commit murder of Rajiv Gandhi and others, who were likely to be with him on 21.5.1991 at about 10.20 P.M. at Sriperumbudur in the public meeting where Nalini (A-1) was physically present at the scene of crime and provided the assassin Dhanu [deceased accused (DA)] the necessary cover from being detected as a foreigner, which enabled the assassin to move freely in the scene of crime and gain access nearer to Rajiv Gandhi to accomplish the object of conspiracy, where Dhanu did commit murder and intentionally caused the death of Rajiv Gandhi by detonating the improvised explosive device which was kept concealed in her waist belt when she was in close proximity to Rajiv Gandhi and thereby she (Nalini) committed an offence punishable under Section 302 read with Section 34 IPC."

366. Charges 3 to 17 are also under Section 302 read with Section 34 IPC for having caused the death of persons, who were in close proximity to Rajiv Gandhi. Charges 18 to 34 are under Section 326/ 34 IPC for voluntarily causing grievous hurt to the persons who were in close proximity to Rajiv Gandhi at the time of explosion. Charges 35 to 60 are under Section 324 read with Section 34 IPC for voluntarily causing hurt to the persons at the same time. Charges 61 to 119 are under Section 3(2) TADA read with Section 34 IPC. In these charges under Section 3(2) TADA it is mentioned that Nalini (A-1) committed terrorist acts by providing cover to Dhanu (DA) who detonated the improvised explosive device resulting in the bomb, blast and in the murder of Rajiv Gandhi and others. Charge No. 120 is for offence under Section 3(3) TADA and this charge is as under:

367. That Nalini (A-1) in pursuance of the said criminal conspiracy referred to in Charge No. 1, and in the course of the same transaction she in furtherance of the common intention, of Nalini (A-1) she proceeded to Sriperumbudur along with Sivarasan, Subha, Dhanu and Haribabu on the night of 21.5.1991 at about 10.20 P.M. in the public meeting having knowledge of the commission of the terrorist act viz., explosion of bomb for killing Rajiv Gandhi and others and causing injuries to those, who were likely to be around him, and also striking terror in the people and rendered assistance to the terrorists Dhanu, Sivarasan and Subha prior to the terrorist act by taking them to the bus, hotel, the venue of public meeting and the like and intentionally aided the said terrorist act by being present on 21.5.1991 at Sriperumbudur in the public meeting, where the terrorist act was committed by Dhanu by detonating the improvised explosive device kept concealed in her waist belt resulting in the bomb blast, and with intent to aid and facilitate the

commission of the said terrorist act Nalini (A-1) provided a cloak to Dhanu and Subha from being easily identified as Sri Lankan Tamils at the scene of crime and also facilitated the escape of the above said accused concerned in the crime, and thus Nalini (A-1) abetted the commission of the terrorist act and acts preparatory to the terrorist act or knowingly facilitated the commission of the terrorist act and acts preparatory to the terrorist act and thereby Nalini (A-1) committed the offence punishable under Section 3(3) of the TADA of 1987.

368. Last charge against Nalini (A-1) is under Section 4(1) TADA read with Section 34 IPC for having committed offence under Section 4(3) TADA for killing of nine police officials, who were public servants and were at that time with Rajiv Gandhi on duty.

369. Santhan (A-2) has been charged for an offence under Section 3(3) TADA and Section 14 of Foreigners Act (Charges 122 and 123). Other accused have also been similarly charged. As to how all the accused have been charged and whether found guilty or not and sentences passed against them by the Designated Court can be best illustrated by the table given hereunder:

CHARGES

COMMON TO ALL 26 ACCUSED

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
1	120-B r/w 302, 326, 324, 201, 212, 216 of IPC 3, 4 and 5 of Explosive Substances Act 25 of Arms Act 12 of Passport Act 14 of Foreigners Act 6 (1-A) Wireless and Telegraphy Act 3, 4 & 5 TADA	Guilty	Death

Nalini (A-1)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
2 TO 17	302 r/w 34 IPC	Guilty	Death (16 counts)
18 to 34	326 r/w 34 IPC	Guilty	3 years RI (13 counts)
35 to 40	324 r/w 34 IPC	Guilty	1 year RI (6 counts)
41 to 60	324 r/w 34 IPC	Not guilty	Acquitted (20 counts)
61 to 76	3(2)(i) of TADA r/w 34 IPC	Guilty	Death (16 counts)
77 to 99	3(2) (ii) TADA r/w 34 IPC	Guilty (not guilty for 79, 82, 84, 93 Acquitted for four counts)	Life (19 counts)
100 to 119	3(2)(ii) TADA r/w 34 IPC	Not guilty	Acquitted (20 counts)
120	3(3) TADA	Guilty	Life (Life Imprisonment)
121	4(3) TADA and 4(1) r/w 34 IPC	Guilty	Life

Santhan (A-2)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
122	3(3) TADA	Guilty	Life
123	14 of Foreigners Act	Guilty	2 years RI

Murugan (A-3)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
124	3(3) TADA	Guilty	Life
125	14 of Foreigners Act	Guilty	2 years RI
126	6(1-A) of Indian Wireless and Telegraphy Act	Guilty	2 years RI

Shankar (A-4)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
127	3(3) TADA	Guilty	Life
128	14 of Foreigners Act	Guilty	2 years RI

Vijayanandan (A-5)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
129	3(3) TADA	Guilty	Life
130	14 of Foreigners Act	Guilty	2 years RI

Ruban (A-6)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
131	3(3) TADA	Guilty	Life
132	14 of Foreigners Act	Guilty	2 years RI

Kanagasabapathy (A-7)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
133	3(3) TADA	Guilty	Life
134	3(4) TADA	Guilty	Life
135	212 IPC	Guilty	2 years RI
136	14 of Foreigners Act	Guilty	2 years RI

Athirai (A-8)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
137	3(3) TADA	Guilty	Life
138	3(4) TADA	Guilty	Life
139	212 IPC	Guilty	2 years RI
140	14 of Foreigners Act	Guilty	2 years RI

Robert Payas (A-9)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
141	3(3) TADA	Guilty	Life

Jayakumar (A-10)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
142	3(3) TADA	Guilty	Life
143	3(4) TADA	Guilty	Life
144	212 IPC	Guilty	2 years RI
145	3(1) & 25 (1-B) (a) Arms Act	Guilty	2 years RI

Shanthi (A-11)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
143	3(4) TADA	Guilty	Life
144	212 IPC	Guilty	2 years RI
145	3(1) & 25 (1-B) (a) Arms Act	Guilty	2 years RI
146	3(3) TADA	Guilty	Life

Vijayan (A-12)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
147	3(3) TADA	Guilty	Life
148	3(4) TADA	Guilty	Life
149	212 IPC	Guilty	2 years RI
150	6(1A) of Indian Wireless and Telegraphy Act	Guilty	2 years RI

Selvaluxmi (A-13)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
148	3(4) TADA	Guilty	Life
149	212 IPC	Guilty	2 years RI
150	6(1A) of Indian Wireless and Telegraphy Act	Guilty	2 years RI
151	3(3) TADA	Guilty	Life

Bhaskaran (A-14)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
148	3(4) TADA	Guilty	Life
149	212 IPC	Guilty	2 years RI
152	3(3) TADA	Guilty	Life

Shanmugavadivelu (A-15)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
153	3(3) TADA	Guilty	Life

Ravi (A-16)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
154	3(3) TADA	Guilty	Life
155	3(4) TADA	Guilty	Life
156	212 IPC	Guilty	2 years RI
157	5 of TADA	Guilty	Life
158	5 of Explosive Substances Act	Guilty	2 Years RI
159	3(1) & 25 (1-B) (a) Arms Act	Guilty	2 years RI

Suseendran (A-17)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
160	3(3) TADA	Guilty	Life
161	3(4) TADA	Guilty	Life
162	212 IPC	Guilty	2 years RI
163	5 of TADA	Guilty	Life
164	5 of Explosive Substances Act	Guilty	2 Years RI
165	3(1) & 25 (1-B) (a) Arms Act	Guilty	2 years RI

Arivu (A-18)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
166	3(3) TADA	Guilty	Life
167 to 182	109 and 302 IPC	Guilty	Death (16 counts)
183 to 199	109 and 326 IPC	Guilty (13 counts) 183, 184, 86, 187, 189, 191 to 198. 200 to 205, 226 to 228 Acquitted of charges 185, 188, 190 and 199 (4 counts)	3 years RI (13 counts)
200 to 225	109 and 324 IPC	Guilty (6 counts) 200 to 205 acquitted on 20 counts (206 to 225)	1 year RI
226	6(1-A) of Wireless & Telegraphy Act and 109 IPC	Guilty	2 years RI
227	12 of Passport Act	Guilty	3 months RI
228	4(3) TADA punishable u/s 4(1) TADA and 109 IPC r/w 34 IPC	Guilty	Life

Irumborai (A-19)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
229	3(3) TADA	Guilty	Life
230	3(4) TADA	Guilty	Life
231	212 IPC	Guilty	2 years RI
232	12 of Passport Act	Guilty	3 months RI

Bhagyanathan (A-20)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
233	3(3) TADA	Guilty	Life
234	212 IPC	Guilty	2 years RI

Padma (A-21)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
235	3(3) TADA	Guilty	Life
236	212 IPC	Guilty	2 years RI
237	6 (1-A) Wireless & Telegraphy Act	Guilty	2 years RI

Suba Sundaram (A-22)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
238	3(3) TADA	Guilty	Life
239	212 IPC	Guilty	2 years RI

Dhanasekaran (A-23)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
240	3(3) TADA	Guilty	Life
241	3(4) TADA	Guilty	Life
242	212 IPC	Guilty	2 years RI

Rangam (A-24)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
243	3(4) TADA	Guilty	Life
244	212 IPC	Guilty	2 years RI
245	14 Foreigners Act	Guilty	2 years RI

Vicky (A-25)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
246	3(4) TADA	Guilty	Life
247	212 IPC	Guilty	2 years RI
248	14 of Foreigners Act	Guilty	2 years RI

Ranganath (A-26)

CHARGE NO.	OFFENCE U/S	FINDING	SENTENCE
249	3(4) TADA	Guilty	Life
250	216 IPC	Guilty	2 years RI
251	212 IPC	Guilty	2 years RI

370. Before we consider the evidence and the arguments advanced by both the parties it may be more appropriate to set out various provisions of law which are the subject-matter of the charges against the accused.

THE TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987

2. Definitions.-(1) In this Act, unless the context otherwise requires,-

(a) to (c)...

(d) "disruptive activity" has the meaning assigned to it in Section 4, and the expression "disruptions" shall be construed accordingly;

(e)to(gg)...

(h) "terrorist act" has the meaning assigned to it in Sub-section (1) of Section 3, and the expression "terrorist" shall be construed accordingly;

Section 3. Punishment for terrorist acts.-

(1) Whoever with intent to overawe the Government as by law established or to strike terror in people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire-arms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption or any supplies or services essential to the life of the community, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, commits a terrorist act.

(2) Whoever commits a terrorist act, shall,-

(i) if such act has resulted in the death of any person, be punishable with death or imprisonment for life and shall be liable to fine;

(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(3) Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(4) Whoever harbours or conceals, or attempts to harbour or conceal, any terrorist shall be punishable with imprisonment for a term which shall not be less than five years but which may extent to imprisonment for life and shall also be liable to fine,

(5) Any person who is a member of a terrorists gang or a terrorists organisation, which is involved in terrorist act, shall be punishable with imprisonment for a term which shall

not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(6) Whoever holds any property derived or obtained from commission of any terrorist act or has been acquired through the terrorist funds shall be punishable with imprisonment for a term which shall not be less than five years but which may extent to imprisonment for life and shall also be liable to fine.

Section 4. Punishment for disruptive activities.- (1) Whoever commits or conspired or attempts to commit or abets, advocates, advises, or knowingly facilitates the commission of, any disruptive activity or any act preparatory to a disruptive activity shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(2) For the purposes of Sub-section (1), "disruptive activity" means any action taken, whether by act or by speech or through any other media or in any other manner whatsoever,-

(i) which questions, disrupts or is intended to disrupt, whether directly or indirectly, the sovereignty and territorial integrity of India; or

(ii) which is intended to bring about or supports any claim, whether directly or indirectly, for the cession of any part of India or the secession of any part of India from the Union.

Explanation.-For the purposes of this Sub-section (a) "cession" includes the admission of any claim of any foreign country to any part of India, and

(b) "secession" includes the assertion of any claim to determine whether a part of India will remain within the Union.

(3) Without prejudice to the generality of the provisions of Sub-section (2), it is hereby declared that any action taken, whether by act or by speech or through any other media or in any other manner whatsoever, which-

(a) advocates, advises, suggests or incites; or

(b) predicts, prophesies or pronounces or otherwise expresses, in such manner as to incite, advise, suggest or prompt, the killing or the destruction of any person bound by oath under the Constitution to uphold the sovereignty and integrity of India or any public servant shall be deemed to be a disruptive activity within the meaning of this section.

(4) Whoever harbours or conceals, or attempts to harbour or conceal, any disruptions shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

5. Possession of certain unauthorized arms, etc., in specified areas.- Where any person is in possession of any arms and ammunition specified in columns 2 and 3 of Category 1 and III (a) of Schedule I to the Arms Rules, 1962, or bombs, dynamite or other explosive substances unauthorisedly in a notified area, he shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

6. Enhanced penalties.-(1) If any person with intent to aid any terrorist or disruptions, contravenes any provision of, or any rule made under, the Arms Act, 1959 (54 of 1959), the Explosives Act, 1884 (4 of 1884), the Explosive Substances Act, 1908 (6 of 1908), or the inflammable Substances Act, 1952 (20 of 1952), he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(2) For the purposes of this section, any person who attempts to contravene or abets, or attempts to abet, or does any act preparatory to the contravention of any provision of any law, rule or order, shall be deemed to have contravened that provision, and the provisions of Sub-section (1) shall, in relation to such person, have effect subject to the modification that the reference to "imprisonment for life" shall be construed as a reference to "imprisonment for ten years".

15. Certain confessions made to police officers to be taken into consideration.-

(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence under this Act or rules made thereunder.

Provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

(2) The police officer shall, before recording any confession under Sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such

confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily.

25. Over-riding effect.- The provisions of this Act or any rule made thereunder or any order made under any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

28. Power to make rules.-(1) Without prejudice to the powers of the Supreme Court to make rules under Section 27, the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient and the removal of such persons from such areas;

(b) the entry into, and search of,-

(i) any vehicle, vessel or aircraft; or

(ii) any place, whatsoever, reasonably suspected of being used for committing the offences referred to in Section 3 or Section 4 or for manufacturing or storing anything for the commission of any such offence;

(c) conferring powers upon,-

(i) the Central Government;

(ii) a State Government;

(iii) an Administrator of a Union territory under article 239 of the Constitution.

(iv) an officer of the Central Government not lower in rank than that of a Joint Secretary; or

(v) an officer of the State Government not lower in rank than that of a District Magistrate to make general or special orders to prevent or cope with terrorist acts or disruptive activities;

(d) the arrest and trial of persons contravening any of the rules or any order make thereunder;

(e) the punishment of any person who contravenes or attempts to contravene or abets or attempts to abet the contravention of any rule or order made thereunder with imprisonment for a term which may extend to seven years or for a term which may not be less than six months but which may extend to seven years or with fine or with imprisonment as aforesaid and fine;

(f) providing for seizure and detention of any property in respect of which such contravention, attempt or abetment as is referred to in Clause (e) has been committed and for the adjudication of such seizure and detention, whether by any court or by any other authority.

TADA Rules

15. Recording of confession made to police officers.- (1) A confession made by a person before a police officer and recorded by such police officer under Section 15 of the Act shall invariably be recorded in the language in which such confession is made and if that is not practicable, in the language used by such police officer for official purposes or in the language of the Designated Court and it shall form part of the record.

(2) The confession so recorded shall be shown, read or played back to the person concerned and if he does not understand the language in which it is recorded, it shall be interpreted to him in a language which he understands and he shall be at liberty to explain or add to his confession.

(3) The confession shall, if it is in writing, be-

(a) signed by the person who makes the confession; and

(b) by the police officer who shall also certify under his own hand that such confession was taken in his presence and recorded by him and that the record contains a full and true account of the confession made by the person and such police officer shall make a memorandum at the end of the confession to the following effect: -

I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing and recorded by me and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

Sd/- Police Officer.

(4) Where the confession is recorded on any mechanical device, the memorandum referred to in Sub-rule (3) in so far as it is applicable and a declaration made by the person making the confession that the said confession recorded on the mechanical device has been correctly recorded in his presence shall also be recorded in the mechanical device at the end of the confession.

(5) Every confession recorded under the said Section 15 shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Designated Court which may take cognizance of the offence.

INDIAN PENAL CODE (IPC)

120-A. Definition of criminal conspiracy. - When two or more persons agree to do, or cause to be done,-

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation - It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

120-B. Punishment of criminal conspiracy - (1) whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in the Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

34. Acts done by several persons in furtherance of common intention.- When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

302.Punishment for murder-Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

326. Voluntarily causing grievous hurt by dangerous weapons or means.-

Whoever, except in the case provided for by Section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

324. Voluntarily causing hurt by dangerous weapons or means.-

Whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

201. Causing disappearance of evidence of offence, or giving false information to screen offender-Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false.

if a capital offence shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years' imprisonment and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend

to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

212 Harbouring offender.-Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment, if a capital offence shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with, imprisonment of the description provided for the offence for a term which may extend to one fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

"Offence" in this section includes any act committed at any place out of India, which, if committed in India, would be punishable under any of the following Sections, namely, 302, 304, 482, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in India.

Exception-This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

216. Harbouring offender who has escaped from custody or whose apprehension has been ordered.-

Whenever any person convicted or charged with an offence, being in lawful custody for that offence, escapes from such custody, or when ever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say,

if a capital offence if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment if the offence is punishable with imprisonment for life or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine;

and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

"Offence" in this section includes also any act or omission of which a person is alleged to have been guilty out of India, which, if he had been guilty of it in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise liable to be apprehended or detained in custody in India, and every such act or omission shall, for the purposes of this sections, be deemed to be punishable as if the accused person had been guilty of it in India.

Exception-The provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

"EXPLOSIVE SUBSTANCES ACT, 1908

3. Punishment for causing explosion likely to endanger life or property -Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property, shall, whether any injury to person or property has been actually caused or not, be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to ten years, to which fine may be added.

4. Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property - Any person who unlawfully and maliciously -

(a) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in India of a nature likely to endanger life or to cause serious injury to property; or

(b) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life, or cause serious injury to property in India, or to enable any other person by means thereof to endanger life or cause serious injury to property in India;

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished with transportation for

a term which may extend to twenty years, to which fine may be added, or with imprisonment for a term which may extend to seven years, to which fine may be added.

5. Punishment for making or possessing explosives under suspicious circumstances-Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a.reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punishable with transportation for a term which may extend to fourteen years, to which fine may be added, or with imprisonment for a term which may extend to five years, to which fine may be added.

ARMS ACT, 1959

3. Licence for acquisition and possession of firearms and ammunition.- [1] No person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder:

Provided that a person may, without himself holding a licence, carry any firearm or ammunition in the presence, or under the written authority, of the holder of the licence for repair or for renewal of the licence or for use by such holder."

"25(1-B) Whoever-.

(a) acquires, has in his possession or carries any firearm or ammunition in contravention of Section 3;

xxx xxx xxx xxx

shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and shall also be liable to fine.

Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than one year.

"PASSPORTS ACT, 1967

12. Offences and penalties - (1) Whoever-

(a) contravenes the provisions of Section 3; or

(b) knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under this Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document; or

(c) fails to produce for inspection his passport or travel document (whether issued under this Act or not) when called upon to do so by the prescribed authority; or

(d) knowingly uses a passport or travel document issued to another person; or

(e) knowingly allows another person to use a passport or travel document issued to him;

shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both.

(1A) Whoever, not being a citizen of India,-

(a) makes an application for a passport or obtains a passport by suppressing information about his nationality, or

(b) holds a forged passport or any travel document, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees.

(2) Whoever abets any offence punishable under Sub-section (1) or Sub-section (1A) shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided in that sub-section for that offence.

(3) Whoever contravenes any condition of a passport or travel document or any provision of this Act or any rule made thereunder for which no punishment is provided elsewhere in this Act shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(4) Whoever, having been convicted of an offence under this Act, is again convicted of an offence under this Act shall be punishable with double the penalty provided for the latter offence.

THE FOREIGNERS ACT, 1946

14. Penalties.-If any person contravenes the provisions of this Act or of any order made thereunder, or any direction given in pursuance of this Act or such order, he shall be punished with imprisonment for a term which may extend to five years and shall also be

liable to fine; and if such person has entered into a bond in pursuance of Clause (f) to Sub-section (2) of Section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting Court why such penalty should not be paid."

"3(2) In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner, -

(a)to(e)....

(f) shall enter into a bond with or without sureties for the due observance of as in alternative to a enforcement of any or all prescribed or specified restrictions or conditions,

(g)...

and make provision for any matter which is to be or may be prescribed and for such incidental and supplementary matters as may in the opinion of the Central Government be expedient or necessary for giving effect to this Act.

INDIAN WIRELESS TELEGRAPHY ACT, 1933

6(1-A)Whoever possesses any wireless transmitter in contravention of the provisions of Section 3 shall be punished with imprisonment which may extend to three years, or with fine which may extend to one thousand rupees, or with both.

3. Prohibition of possession of wireless telegraphy apparatus without licence - Save as provided by Section 4, no person shall possess wireless telegraphy apparatus except under and in accordance with a licence issued under this Act.

INDIAN EVIDENCE ACT, 1872

10.Things said or done by conspirator in reference to common design.- Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was fi them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.-

When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Explanation - "Offence" as used in this section, includes the abetment of, or attempt to commit, the offence.

371. Having set out provisions of law we may refer to the preliminary submissions of Mr. N. Natarajan, senior advocate, who appeared for all the accused except Shanmugavadivelu alias Thambi Anna (A-15). He submitted that he is not challenging the convictions of various accused under the Foreigners Act, Passport Act, Explosive Substances Act, Indian Wireless and Telegraphy Act, Arms Act and Sections 212 and 216 IPC. This he said was on account of the fact that for offences under these Acts accused were awarded sentence of imprisonment for two years or for a period less than two years which in any case has to be set off under Section 428 of the Code as they had been under detention throughout the period during trial. We are thus left to consider offences under Section 120B IPC, 302/34 IPC, 326/34 IPC 324/34 IPC and under Sections 3, 4 and 5 of TADA.

372. Opening his arguments Mr. Natarajan submitted that the first charge gives the over all view of the case of the prosecution. In brief he said there were five facets of conspiracy alleged by the prosecution against the accused, namely, (1) clandestine infiltration into India, (2) hiring of safe accommodation for the conspirators, (3) unauthorized wireless operation by them, (4) assassination of Rajiv Gandhi and others on 21.5.1991, and (5) harbouring of offenders in order to escape from India and disappearance of evidence. The prosecution evidence propounds a criminal conspiracy. Mr. Natarajan was right in his submissions when he said it would be futile to contend that there was no conspiracy. The questions that arise for consideration are as to what is the object of that conspiracy, who were members of the conspiracy, whether any offence under TADA is made out and whether it was a case of conspiracy to murder and causing grievous and simple hurt by use of bombs. Assuming that whatever prosecution evidence has led to be admissible and reliable there is no conspiracy to commit any offence under TADA and the conspiracy is only to commit the murder of Rajiv Gandhi. On the question of motive of the crime, we find, there is no dispute. For past couple of years there has been unrest in the north part of Sri Lanka, a neighbouring country which area is inhabited mostly by Tamils. These Tamils or Tamilians complained of atrocities committed by the majority community of Sinhalis inhabiting in south of Sri Lanka. To protect the rights of the Tamils various organizations came up in Sri Lanka, foremost being the Liberation Tigers of Tamil Elam (LTTE). This Organization claimed to be the only representative body of the Tamils. For the independence of Tamil area in Sri Lanka arm struggle started between LTTE and Sri Lankan army. On this account there was turmoil in Sri Lanka resulting in the influx of Tamil refugees to India from Sri Lanka and by 1987 the problem, it appeared, was

getting out of hands. During the arm struggle LTTE was having a free field in India. To support its struggle against Sri Lankan army cadre of LTTE had been operating from Indian soil for the purpose of arms training, treatment of injured LTTE people, supply of medicines and other provisions, collection of funds, printing and publishing of propaganda material, buying of provisions like petrol, diesel, wireless equipments, explosives and even cloths.

373. An Indo-Sri Lankan Agreement to establish peace and normalcy in Sri Lanka was entered into on 29.7.1987. It was signed by Rajiv Gandhi, Prime Minister of the Republic of India and J.R. Jayewardene, President of the Democratic Socialist Republic of Sri Lanka. After the agreement was signed Prime Minister Rajiv Gandhi made a statement in the Rajya Sabha on the Agreement which he said aimed "at bringing to an end the difficult conflict which has afflicted our friendly neighbour Sri Lanka for years" and that the conflict assumed acute dimensions over the last four years endangering the very stability, unity and integrity of Sri Lanka. The agreement among other things envisaged lifting of emergency in the eastern and northern provinces of Sri Lanka by 15.8.1987, holding of elections, constitution of interim council, etc. Cessation of hostilities was to come into effect all over the island within 48 hours of the signing of the Agreement and all arms presently held by Tamil militant groups were to be surrendered, in accordance with an agreed procedure, to authorities to be designated by the Government of Sri Lanka. Sri Lanka will grant a general amnesty to political and other prisoners now held in custody under the Prevention of Terrorism Act and other Emergency laws. Para 2.16 of the Agreement provided as under:

2.16 These proposals are also conditional to the Government of India taking the following actions if any militant groups operating in Sri Lanka do not accept this framework of proposals for a settlement, namely,

(a). India will take all necessary steps to ensure that Indian territory is not used for activities prejudicial to the unity, integrity and security of Sri Lanka.

(b) The Indian Navy/Coast Guard will co-operate with the Sri Lanka Navy in preventing Tamil militant activities from affecting Sri Lanka.

(c) In the event that the Government of Sri Lanka requests the Government of India to afford military assistance to implement these proposals, the Government of India will co-operate by giving to the Government of Sri Lanka such military assistance as and when requested.

(d) The Government of India will expedite repatriation from Sri Lanka of Indian citizens to India who are resident there, concurrently with the repatriation of Sri Lankan refugees from Tamil Nadu.

(e) The Government of India and Sri Lanka will co-operate in ensuing the physical security and safety of all communities inhabiting the Northern and Eastern Provinces.

The Indo-Sri Lankan Accord had thus the following features ;-

1. It contains a package for the devolution of political power recognising the Northern and Eastern province of Sri Lanka as the traditional homeland of the Tamils.

2. It gives to India a "Guarantor" role in the implementation of the devolution package and the other provisions within the frame work of "United Sri Lanka".

3. It takes account of India's security concerns in the area.

374. In pursuance to the Agreement Indian forces called the Indian Peace Keeping Force (IPKF) went to Sri Lanka on 29.7.1987. After the initial somewhat reluctance to acceptance LTTE got disillusioned with the accord which is reflected from the following factors:-

1. The Accord ruled out separate Tamil Elam in Sri Lanka and so went against the objectives of LTTE to form an independent Tamil Elam.

2. LTTE looked towards India with certain expectations under the Accord, which, according to it, were not fulfilled. It was the way the Tamil refugees of Sri Lanka were rehabilitated by Sri Lankan Government which was not to the satisfaction of LTTE.

3. In the interim council to be formed under the Accord LTTE was given less seats though it claimed to be the sole representative body of Sri Lankan Tamils.

(4) On 15.9.1987 one Dileepan of LTTE went on hunger strike in Sri Lanka. He took fast against the atrocities committed by IPKF and for Government of India not acting properly. He died fasting on 26.9.1987.

(5) 17 important functionaries of LTTE were captured by Sri Lankan Navy in the first week of October, 1987. They were being taken to Colombo for interrogation. LTTE approached Government of India for their release. Government of India did not vigorously pursue the matter and while it was negotiating with the Sri Lankan Government to secure their release, 12 of them committed suicide by consuming cyanide.

(6) In the night of 3/4.10.1987 when IPKF convoy was carrying ration it was attacked by LTTE and 11 Indian soldiers were killed. It was the flash point of breach between IPKF and LTTE and active confrontation between the two started. Prabhakaran, supreme leader of LITE, went underground.

(7). The agreement or the accord, as it is normally called ultimately, did not find favour with LTTE and in spite of the agreement activities of LTTE on the Indian soil continued growing substantially.

375. LTTE became opposed to the Accord and also against the IPKF. Prabhakaran at one stage even said that it was stabbed in the back by agreeing to the accord and had been betrayed. There was more influx of refugees to India. Now LTTE complained of atrocities committed by IPKF on the Tamils in Sri Lanka and accused IPKF of torture, rape, murder, etc. As to what led India to enter into the Accord with Sri Lankan Government and the background of the ethnic trouble in Sri Lanka and also reservations expressed on the Accord, there is the statement of R.M. Abhyankar (PW-173), Joint Secretary in the Ministry of External Affairs, Government of India. Two volumes of the book "Satanic Force" (MO-124 and MO-125) were published in India at the behest of LTTE which contained compilation of speeches of Prabhakaran and other articles and photographs showing the atrocities committed by IPKF on Tamils in Sri Lanka after the Accord and the animosity which Prabhakaran developed towards Rajiv Gandhi. The book was compiled by N. Vasantha Kumar (PW-75). He is an artist by profession. The printing and publishing of the book was authorised and financed by LTTE. It was published in January, 1991 and contains information up to March, 1990. In his statement Brig. Vivek Sapatnekar (PW-186), who was earlier in-charge of IPKF operations in Sri Lanka, also stated that the Accord was not having the support of LTTE. MO-125 (Volume 2 of "Satanic Force") contained the news item published in the Indian Express of April, 1990 which quotes the speech by Prabhakaran saying that he was against the former leadership in India and that LTTE was not against India or Indian people. These two volumes of "Satanic Force" contain over 1700 pages. No article or writing has been pointed out from the "Satanic Force" from which it could be inferred that it was ever in the contemplation of Prabhakaran or any other functionary of LTTE questioning the sovereignty and territorial integrity of India rather they identified Rajiv Gandhi with the Accord and the atrocities committed by IPKF. In the editorial in the official Journal of LTTE Voice of Tigers' dated 19.1.1990 the following comment appears:-

In the meantime, the defeat of Rajiv's Congress Party and the assumption to power of the National Front alliance under Viswanath Pratap Singh has given rise to a sense of relief and hope to the people of Tamil Elam. The LTTE has already indicated to the new Indian Government its desire to improve and consolidate friendly ties with India. The new Indian leadership responded positively accrediting to Mr. Karunanidhi, the Tamil Nadu Chief Minister, the role and responsibility of mediating with the Tamil Tigers. The LTTE representatives who had four rounds of talks with the Tamil Nadu Chief Minister In Madras, are firmly convinced that the Tamil Nadu Government and the new Indian administration are favourably disposed to them and the V.P. Singh's government will act in the interests of the Tamil speaking people by creating appropriate conditions for the LTTE to come to political power In the Northeastern Province.

376. It may be noted that in general elections in India Congress was defeated and new Government under V.P. Singh as Prime Minister had taken over. Withdrawal of IPKF from Sri Lanka was completed on 24.3.1990. In March, 1991 general elections in India were again announced. First phase of elections was over on 20.5.1991 and next phase was to be held on 23.5.1991. This second phase was postponed for 15 days on account of assassination of Rajiv Gandhi on 21.5.1991.

377. Aveek Sarkar (PW-255) had an interview with Rajiv Gandhi which was published in the Sunday magazine issue of August 12-19, 1990. The interview is dated July 30/31, 1990. In the interview Rajiv Gandhi supported the Accord and criticized V.P. Singh in withdrawing the IPKF. He said there was no rationale behind the withdrawal and as things till then had not stabilized and Accord had not been fully implemented. In the Congress manifesto which was released in 1991 for Lok Sabha elections Congress supported the Accord. This manifesto was brought on record in the statement of K. Ramamurthi (PW-258), who was the President of Tamil Nadu Congress Committee at the relevant time.

378. Rajiv Gandhi in August, 1990 predicted general elections in the country in early 1991. In the writings and articles in the two volumes of "Satanic Force" there were scathing attacks on Shri Rajiv Gandhi, who was projected as the perpetrator of the sufferings of Tamils in Sri Lanka by sending IPKF. Prabhakaran when he came out of his hiding after about two and a half years he made statement in April, 1990 that he was against the former leadership, namely, Rajiv Gandhi. Though the Congress lead by Rajiv Gandhi was out of power in 1990 there was clear indication of mid-term poll and perceptible upswing in the popularity of Rajiv Gandhi. LTTE apprehended the reversal of the Government of India's policy of non-interference towards Sri Lanka and with the possibility of return of Rajiv Gandhi as Prime Minister. Rajiv Gandhi stood for territorial integrity of Sri Lanka and for role of various Tamil organizations in Sri Lanka for any Tamil solution. LTTE on the other hand claimed to be the sole representative body of Tamils there.

379. It was on this account, submitted Mr. Natarajan; that there was conspiracy to eliminate Rajiv Gandhi in order to prevent him from coming back to power. He said LTTE perceived the accord as object to stop creation of separate. Tamil Elam which went against the basic objective of LITE. The creation of separate Tamil Elam was thwarted by the induction of IPKF and in the fight with IPKF more Tamil Sri Lankan died than they died fighting Sri Lankan army. IPKF committed atrocities on Tamils in Sri Lanka. LTTE thus turned against the Government of India and the former leadership as it identified Rajiv Gandhi and his Government as bringing the struggle of Sri Lankan Tamils to square one. Rajiv Gandhi and the Congress manifesto supported the Accord even after IPKF had been withdrawn from Sri Lanka. Mr. Natarajan said that motive was not to overawe the Government of India or to create terror as was being alleged by the prosecution. Animosity of LTTE was only against Rajiv Gandhi who was identified with the Accord.

Prabhakaran, the supreme leader of LTTE, had clearly stated more than once that he was not against the Indian Government and the Indian people.

380. According to prosecution conspiracy was activated with the publication of an interview of Rajiv Gandhi in Sunday magazine and now the conspiracy was nut into operation. First group of conspirators to achieve the object of conspiracy arrived in India on September 12, 1990. This group consisted of Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14). Bhaskaran (A-14) is father of Selvaluxmi (A-13). They arrived at Rameshwaram in India like other refugees from Sri Lanka and got themselves registered. At Jaffna in Sri Lanka they were seen off by deceased accused Sivarasan without paying any toll to LTTE. It is in evidence that anyone leaving Sri Lanka from the area in the control of LTTE had to pay two sovereigns of gold and Rs. 1500/-. The reason for not paying the toll was that they had left for India to take a house on rent for the work of LTTE. From Rameshwaram they were sent to the refugee camp at Tuticorin. Sivarasan visited them there on two occasions -once in December, 1990 and on second time in the first week of April, 1991. Sivarasan during his visit in December, 1990 told Vijayan (A-12) that he was to take a house on rent in Madras at the time when he would be so told. In April, 1991 Sivarasan gave instructions to Vijayan (A-12) to go to Madras and to take a house on rent with the help of Vijayan's cousin Munusamy. At that time Sivarasan also told Vijayan (A-12) that he would be meeting him on 10.4.1991 at the house of Munusamy. Vijayan (A-12) was given Rs. 1000/- towards expenses for the purpose by Sivarasan. Sivarasan did meet Vijayan (A-12) at Munusamy's house as promised. Sivarasan wanted that the house which was to be taken on rent should be in a secluded place as "he thought that the movements of LTTE men are not known to the neighbours". House of J. Duraisamy Naidu (PW-82) at No. 12, Eveready Colony, Kodungaiyur, Madras (Kodungaiyur house) was thus taken on rent by Vijayan (A-12). He, thereafter brought his family (Selvaluxmi (A-13) and Bhaskaran (A-14)) from the refugee camp at Tuticorin and started living in this Kodungaiyur house from 20.4.1991..

381. Second group comprising Robert Payas (A-9), his wife Prema, his sister Premlatha, Jayakumar(A-10) and his wife Shanthi (A-11) came to India from Sri Lanka on 20.9.1990 as refugees and reported at Rameshwaram. Shanthi (A-11) is an Indian Tamil while Robert Payas (A-9) and Jayakumar (A-10) are Sri Lankan Tamils. This group was similarly exempted from paying toll to LTTE and was sent for taking a house on rent for the work of LTTE. They registered themselves at the refugee camp there. They left for Madras of their own and on reaching there stayed with the relatives of Shanthi (A-11). From.1.10.1990 house of G.J. Srinivasan (PW-252) bearing number 26, Sabari Nagar Extn., Porur, Madras (Porur house) was taken on rent in the name of Jayakumar (A-10). It was taken through an M. Utham Singh (PW-56), a property agent and proprietor of Ebenezer Stores. Sivarasan (deceased accused) and Kanthan (not named accused) used to visit them in their Porur house. Telephone No. 2343402 installed at Abenezer Stores, Porur was used by Sivarasan, Robert Payas (A-9) and others to contact one another. A wireless set was installed in the Porur house, which was numbered as Station No. 95. Till

December, 1990 families of Robert Payas (A-9), Jayakumar (A-10) and Shanthi (A-11) stayed together in this house. Sivarasan then wanted Robert Payas (A-9) to take another independent house at secluded place for him (Sivarasan) to stay. This third house was taken on rent in the name of Ramasamy, father-in-law of Jayakumar (A-10) (father of Shanthi (A-11)). The house was owned by K. Kottammal (PW-63) and was at No. 153, Muthamil Nagar, Kodungaiyur, Madras (Muthamil house). On 18.12.1990 Jayakumar (A-10), Shanthi (A-11) and their child moved to this house and Sivarasan also started staying with them.

382. Third Group comprising Ravi (A-16) and Suseendran (A-17) along with Sivarasan arrived in India from Sri Lanka in the end of December, 1990. Both Ravi (A-16) and Suseendran (A-17) are Indian Tamils. This group was seen off at Sri Lanka by Pottu Amman. They were instructed by Pottu Amman to follow the instructions of Sivarasan. Both Ravi (A-16) and Suseendran (A-17) had gone to Jaffna and took training in LTTE camp in arms and in their indoctrination regarding atrocities committed by IPKF on Tamils in Sri Lanka and to enlist more people in Tamil Nadu in India for the movement of LTTE and for creation of Tamil State separate from India.

383. Fourth group comprising Arivu (A-18) and Irumborai (A-19) came to India in October, 1990. They had gone to Sri Lanka in May, 1990. with Baby Subramaniam where they had met Prabhakaran.

384. In the fifth group there is only one person - Murugan (A-3), who arrived in India clandestinely in the third week of January, 1991 with the directions from Pottu Amman. He reached Kodiakkarai on the Indian coast where Sivarasan was waiting to receive him. They thereafter went to the house of one Mahalingam, a Sri Lankan Tamil, residing in Kodiakkarai. Then they came to Madras and went to the Porur house where now Robert Payas (A-9) was staying with his family. Murugan (A-3) stayed there for a few days. Muthiraja, an LTTE activist took Murugan (A-3) to the house of Padma (A-21), who was staying there with her son Bhagyanathan (A-20). This house is situated at No. 22, Muthiah Garden Street, Royapettah, Madras (Royapettah house).

385. Sixth group comprising Kanagasabapathy (A-7) and Athirai (A-8) came to India on 23.4.1991 and was seen off by Pottu Amman with certain specific instructions in an LTTE boat with escort. They reached Kodiakkarai on the coast of India and were received by Chokan, an LTTE helper, who took them to the house of V. Kantha Raja (PW-60). After staying there for two days Kanagasabapathy (A-7) and Athirai (A-8) left for Madras and stayed in the house of Jayakumari (PW-109), niece of Kanagasabapathy (A-7). Sivarasan met them there on 2.5.1991 as per the prior arrangement fixed by Pottu Amman.

386. Seventh and the last group consisting of nine persons under the leadership of Sivarasan arrived at Kodiakkarai on 1.5. 1991 in an LTTE boat. This group was seen off by Pottu Amman on 27,4.1991. The boat in which they were travelling developed a snag

and had to return. They left shore of Sri Lanka on 30.4.1991 when again Pottu Amman was there to see them off. Nine persons were Sivarasan, Santhan (A-2), Shankar(A-4), Vijayanandan (A-5), Ruban (A-6), Subha, Dhanu, Nero and Keerthi. Last four and Sivarasan are deceased accused. On 2.5.1991 Sivarasan took Subha and Dhanu to the house (Muthamil house) of Jayakumar (A-10) and Nero to the house (Kodungaiyur house) of Vijayan (A-12). On 6.5.1991 Sivarasan took Subha and Dhanu also to the Kodungaiyur house. A wireless set, which belonged to Sivarasan, was installed by Nero in the Kodungaiyur house which is Station No. 910 and started communicating with LTTE Headquarters in Sri Lanka. On 3.5.1991 Santhan (A-2) and Ruban (A-6) went to Porur house of Robert Payas (A-9) at Madras. Shankar (A-4) stayed at Kodiakkarai till 15.5.1991. Then he came to Madras and stayed at Samundeeswari Lodge up till 23.5.1991, Vijayanandan (A-5) went to Trichy where he stayed till 7.5.1991 and then came to Madras and stayed at Komala Vilas Lodge, Madras. Arivu (A-18) also came to Madras on 9.5.1991 and took Vijayanandan (A-5) to meet N. Vasantha Kumar (PW-75) on the instructions of Sivarasan. Keerthi alias Driver anna, who was also in the nine members group, who had come to India on 1.5.1991, was later found dead along with Sivarasan, Subha and others in the house at Konanakunte, Bangalore on 20.8.1991. There is nothing on record as to where Keerthi stayed from the time of his arrival in India till he was found dead.

387. When Murugan (A-3) met Shankar (A-4) at Kodiakkarai on 14.5.1991 he gave him a slip of paper (Exh.P-1062) containing the names Nalini (A-1)-Thas (also pronounced as Das by which name Murugan (A-3) was as well known) and telephone number 419493, which was the phone number of the office of Nalini (A-1). Before Santhan (A-2) arrived in India in the nine members group on 1.5.1991 at Kodiakkarai Shanmugavadivelu (A-15) (also described as Thambi Anna) had made arrangements with P. Veerappan (PW-102), a travel agent and C. Vamadevan (PW114), a Sri Lankantravel agent, for getting an Indian passport and travel documents for him (Santhan (A-2)) in the last week of April, 1991 for Santhan (A-2) to go abroad.

388. Sivarasan has been travelling between India and Sri Lanka though clandestinely during the period February, 1990 to May, 1991. Evidence shows his presence in these two countries as follows:

1.	15-2-1990	arrives India along with Santhan (A-2)
2.	21-6-1990	went to Sri Lanka
3.	Last week of Dec. 1990	Sivarasan, Ravi (A-16) and Suseendran (A-17) arrive in India
4.	Feb., 1991	Went to Sri Lanka
5.	24-4-1991	He was at Madras in the House of Vijayan (A-12)
6.	27-4-1991	He was at Jaffna in Sri Lanka
7.	1-5-1991	Reached Kodiakkarai

388-A. Up till now we have referred to that part of the evidence as to how different groups arrived in India to achieve the object of conspiracy. They are all LTTE activists or its

ardent supporters and were to act under the instructions of Sivarasan. It is not disputed, however, that existence of LTTE was already in India.

389. The first step was to hire places for shelter of the conspirators and this was achieved by hiring houses - one at Porur and two at Kodungaiyur. Fourth house is that of Padma (A-21). Nalini (A-1) was living with her mother. Since October, 1990 she started living separately in a house at No. 11, High Court Colony, Villivakkam, Madras. On 7.3.1991 Rangam (A-24) took on rent a house at No. 3, Park Avenue, Alwarthirunagar, Madras, purportedly for the stay of LTTE men. The house belonged to Nageswara Rao(PW-178). On 21.3.1991 a house at Indira Nagar, Bangalore was taken on rent in the name of Sivapackiam, wife of K. Jagannathan (PW-211) at the instance of Dhanasekaran (A-23) for the alleged purpose of serving it as a hide out for the conspirators.

390. Of the remaining accused facing trial, Suba Sundaram (A-22) owned studio and had trained deceased accused Haribabu in photography. Haribabu was assigned the role of taking photographs of the scene of crime. Dhanasekaran (A-23), Rangam (A-24) and Vicky (A-25) transported the deceased accused Sivarasan, Subha, etc., who were proclaimed offenders from Madras to Bangalore in a tanker owned by Dhanasekaran (A-23). Ranganath (A-26) harboured proclaimed offenders Sivarasan, Subha and others.

391. According to prosecution steps to achieve the object of conspiracy had already started even prior to arrival in India on 1.5.1991 of the assassins Dhanu and Subha accompanied by Sivarasan and six others. Houses for the use of LTTE persons had already been hired. In March, 1991 Arivu (A-18), Bhagyanathan (A-20) and deceased accused Haribabu removed certain incriminating material of LTTE from the house of M. Sankari (PW-210) and kept them in the house of V. Radhakrishnan (PW-231). Baby Subramaniam, an LTTE activist was staying in the house of M. Sankari (PW-210). Arivu (A-18) purchased a Kawasaki Bajaj motor cycle (MO-82) on 4.5.1991. Vijayan (A-12) purchased two bicycles for use of Subha and Dhanu. A Maruti Gypsy (MO-540) had already been purchased by Dhanasekaran (A-23) in November, 1990 in the name of Mohan. This Maruti Gypsy was driven by Rangam (A-24) and was used by deceased accused Sivarasan, Subha, Nero, Suresh Master and Keerthi for their movements in Bangalore after the crime. On 3.5.1991 Arivu (A-18) purchased a 12 volt Exide car battery (MO-209) for use in the house of Vijayan (A-12) to operate the wireless set installed there (Station 910). During the second week of May, 1991 Arivu (A-18) purchased two 9 volt Golden Power batteries and gave them to Sivarasan. These golden power batteries are alleged to have been ultimately used to detonate the belt bomb on 21.5.1991 killing Rajiv Gandhi and others. Various conspirators had been meeting each other under the charge of Sivarasan for communicating amongst themselves. While at Madras they used telephone numbers of Ebenezer Stores (2343402), Nalini (A-1) (419493) and of Shanmugavadivelu (A-15) (864249). An OYT telephone connection was applied for on 8.4.1991 in the name of Shanthi (A-11) for the shop premises hired in her name for coffee powdermachine. On 11.5.1991 Nalini(A-1) took Subha and Dhanu to the shop of M.

Gunankhalal Soni (PW-179), gave him the measurement of Subha for stitching a loose salwar kameez from the material bought from the shop itself. This salwar kameez was used by Dhanu for concealing the improvised explosive device. On 18.4.1991 Nalini (A-1), Murugan (A-3), Arivu (A-18) and Suba Sundaram (A-22) and deceased accused Haribabu attended the meeting of Rajiv Gandhi and Jayalalitha at Marina Beach, Madras. On the night between May 7-8,1991 Nalini (A-1), Murugan (A-3), Arivu (A-18) and deceased accused Sivarasan, Subha, Dhanu and Haribabu attended the meeting of Prime Minister V.P. Singh at Nandanam, Madras, where they conducted a 'dry run' by securing access to V.P. Singh for garlanding him. On May 16/17, 1991 Vijayan (A-12), Sivarasan and Nero dug a pit in the kitchen room of the house of Vijayan (A-12) for the purpose of concealing wireless set and gun. On 17.5.1991 Ruban (A-6) along with Vijayendran (PW-111) was sent to Jaipur for the purported purpose of fixing an artificial limb on the leg of Ruban (A-6) but in fact for hiring safe accommodation. Similar role has been assigned to Robert Payas (A-9) and Athirai (A-8) for hiring a place at Delhi for LTTE activists. All the payments for hiring accommodation, buying vehicles and expenses of Ruban (A-6) and going to Jaipur, etc. were borne by Sivarasan. On 19.5.1991 tour programme of Rajiv Gandhi to Tamil Nadu for May 21 and 22,1991 was published in local newspapers. When Nalini (A-1), Subha and Dhanu after visiting Mahabalipuram came to the house of Nalini (A-1) at Villivakkam they found Sivarasan waiting for them. He showed the clipping of the Tamil newspaper in which the visit to Tamil Nadu for election campaign of Rajiv Gandhi was published. Sivarasan told Nalini (A-1) to take two days leave. On 19.5.1991 itself Sivarasan went to the house of N. Vasantha Kumar (PW-75) where Vijayanandan (A-5) was staying and shifted him to the house of one Vanan. On 20.5.1991 Kanagasabapathy (A-7) along with Vanan went to Delhi by flight to fix a house there. One house in Delhi was secured at Moti Bagh belonging to K. Thiagarajan (PW-57). On 20.5.1991.Sivarasan visited the house of Bhagyanathan (A-20) where Bhagyanathan (A-20), Murugan (A-3), Arivu (A-18) and deceased accused Haribabu were present. A message had already been left at the house of Haribabu when he was not there by Murugan (A-3) to go to the house of Bhagyanathan (A-20). Nalini (A-1) also joined the group. Sivarasan told Nalini (A-1) to apply for half day casual leave on 21.5.1991 as venue of the public meeting, which Rajiv Gandhi was to address, was at Sriperumbudur. Arivu (A-18) gave a Kodak colour film roll to Haribabu. This Kodak colour film was to be used by Haribabu to take pictures of the scene of crime. On 21.5.1991 Haribabu purchased a sandalwood garland from Poompuhar Emporium. He then went to the studio of K. Ravi Shankar (PW-151) and borrowed his camera (MO-1). In the afternoon he went to the studio of Suba Sundaram (A-22) when he was having garland packet in his hands. On 21.5.1991 Nalini (A-1) got permission from her office to leave early and told her colleague N. Sujaya Narayan (PW-96) that she was going to Kancheepuram for buying sarees. She went to her mother's house at Royapettah where Murugan (A-3) was present. He directed her to rush to her Villivakkam house where Sivarasan would be waiting for her or else he would be angry. From there Nalini (A-1) immediately went to her house at Villivakkam. It was about 3.00 p.m.

392. On that very day Sivarasan dressed in white kurta-pyjama left the house of Jayakumar (A-10). Santhan (A-2) was also present there at that time. Sivarasan was armed with a pistol. Sivarasan then went to the house of Vijayan (A-12) and talked to Subha and Dhanu. Both Subha and Dhanu went inside the room and after about 30 to 40 minutes came out. Dhanu was wearing the orange colour salwar kameez. Sivarasan, Subha and Dhanu went to the house of Nalini (A-1) at Villivakkam in an auto-rikshaw. Sivarasan had asked Vijayan (A-12) to hire the auto-rikshaw and had told him to stop at a distance from his house. Subha told Nalini (A-1) that Dhanu was going to create history by assassinating Rajiv Gandhi and they would be happy if she participated in that. Nalini (A-1) agreed. Nalini (A-1) also saw that some apparatus were concealed underneath the dress of Dhanu, All four of them, namely, Sivarasan, Subha, Dhanu and Nalini (A-1) went in the auto-rikshaw to a nearby temple where Dhanu offered prayers. They then went to Parrys Corner where Haribabu was waiting for them with camera and sandalwood garland. All five then now left for Sriperumbudur by bus and reached there at about 7.30 p.m. Near Indira Gandhi Statue Sivarasan directed Nalini (A-1) to give cover to Subha and Dhanu at the place of meeting before the occurrence and after the occurrence had taken place to take care of Subha and to wait for him near the statue of Indira Gandhi for about ten minutes and if he failed to turn up they could proceed as already planned. They then proceeded towards the place of meeting. Sivarasan and Haribabu went towards the stage. Nalini (A-1), Subha and Dhanu sat in the women enclosure. Sivarasan then came to the women enclosure, got the garland parcel from Subha and took with him Dhanu towards the stage. Nalini (A-1) saw Dhanu standing in between a young girl (Kokila) and a lady (Lata Kannan) near the red carpet. It was about 9.30 p.m. Thereafter Rajiv Gandhi arrived. Nalini (A-1) and Subha got up from the women enclosure and moved away. There was a loud explosion. Nalini (A-1) and Subha ran across to Indira Gandhi statue and waited for Sivarasan. Sivarasan came there and told them that Rajiv Gandhi and Haribabu died in the blast and that it was unfortunate that Haribabu died. Dhanu of course exploded herself. All this has come in the confession of Nalini (A-1) admissibility of which has been challenged by Mr. Natarajan.

393. After the occurrence prosecution led evidence of harbouring, escaping and removal and destruction of incriminating evidence.

394. Dhanu is already dead in the blast. She was a human bomb. Principal perpetrators of the crime and others met their end during the course of investigation. They are all dead. They committed suicide. They are Sivarasan, Subha, Haribabu, Nero, Shanmugam, Trichy Santhan, Suresh Master, Dixon, Amman, Driver Anna alias Keerthy and Jamuna alias Jameela, all Sri Lankan nationals.

395. First Information Report of the crime was lodged at 1.15 a.m. on 22.5.1991 under Section 302, 307, 326 IPC and Section 3 to 5 of Indian Explosives Act. Camera (MO-1) was found lying on the dead body of Haribabu without any damage. Ten photographs taken by Haribabu before he died at the scene of crime showed the presence of the accused

Sivarasan, Dhanu, Subha and Nalini (A-1). One photograph also showed the event of the explosion itself. (Exh. P-735 is the exposed part of the film and MO-542 is the unexposed part of the film). During the course of investigation accused were arrested on various dates and confessions of all the accused except Shankar (A-4), Vijayanandan (A-5), Ruban (A-6), Kanagasabapathy (A-7), Shanthi (A-11), Selvaluxmi (A-13), Bhaskaran (A-14), Suba Sundaram (A-22) and Ranganath (A-26) were recorded. Their dates of arrest, confession and nationality are as under:

Name	Nationality	Date of arrest	Date of confession
Nalini (A-1)	Indian	14-6-91	9-8-91
Santhan (A-2)	Srilankan	22-7-91	17-9-91
Murugan (A-3)	Srilankan	14-6-91	8-8-91
Shankar (A-4)	Srilankan	19-5-92	No confession
Vijayanandan (A-5)	Srilankan	16-5-92	No confession
Ruban (A-6)	Srilankan	16-5-92	No confession
Kanagasabapathy (A-7)	Srilankan	4-7-91	No confession
Athirai (A-8)	Srilankan	5-7-91	29-8-91
Robert Payas (A-9)	Srilankan	18-6-91	15-8-91
Jayakumar (A-10)	Srilankan	26-6-91	22-8-91
Shanthi (A-11)	Indian	16-5-92	No confession
Vijayan (A-12)	Srilankan	8-7-91	4-9-91
Selvaluxmi (A-13)	Indian	16-5-92	No confession
Bhaskaran (A-14)	Indian	8-7-91	No confession
Shanmugavadivelu (A-15)	Srilankan	16-5-92	17-5-92
Ravi (A-16)	Indian	6-1-92	14-2-92
Suseendran (A-17)	Indian	6-1-92	14-2-92
Ariyu (A-18)	Indian	19-6-91	15-8-91
Irumborai (A-19)	Indian	9-10-91	3-12-91
Bhagyanathan (A-20)	Indian	11-6-91	5-8-91
Padma (A-21)	Indian	11-6-91	7-8-91
Suba Sundaram (A-22)	Indian	2-7-91	No confession
Dhanasekaran (A-23)	Indian	13-10-91	4-11-91
Rangam (A-24)	Srilankan	28-8-91	23-10-91
Vicky (A-25)	Srilankan	4-2-92	24-2-92
Ranganath (A-26)	Indian	28-8-91	No confession

396. The immediate fall out of the assassination of Rajiv Gandhi was that general elections in India got postponed. A notification was issued by Election Commission of India on 22.5.1991 stating that earlier notification dated 19.4.1991 had been issued under Section 30 of the Representation of People Act, 1951 fixing 20.5.1991, 23.5.1991 and 26.5.1991 as the dates on which poll shall betaken in the parliamentary constituencies in India and that "the country has suffered a great tragedy in the death of Shri Rajiv Gandhi at the assassins' hands". The Election Commission directed that election to the constituencies fixed for 22.5.1991 shall be held on 12.6.1991 and that fixed for 26.5.1991 shall be held on 15.6.1991.

397. During the course of investigation prosecution, as stated above, arrested the accused on various dates, recorded their confessions, recorded the statements of witnesses, collected documents and other material and submitted challan under Section 173 of the Code for offences punishable under Sections 120B IPC read with 302, 326, 324, 201 and 212 IPC;. Sections 3, 4 and 5 of Explosive Substances Act; Sections 25 and 27 of Arms Act; Section 12 of Passports Act; Section 14 of Foreigners Act; Section 6(1A) of Wireless Telegraphy Act and Sections 3(3), 4(2), 4(3) TADA, 1987. Specific offences committed by each of the accused in pursuance to the criminal conspiracy were also stated.

398. Mr. Natarajan took us through the evidence. He understood the futility of the arguments, and in our opinion rightly, to challenge the very existence of a conspiracy. From the evidence led by the prosecution he did not dispute that reasonable grounds existed to believe that there was a conspiracy to commit an offence. According to him the object of conspiracy was to assassinate Rajiv Gandhi and not to commit any terrorist act or disruptive activity falling under Sections 3 and 4 of TADA as contended by the prosecution. Having accepted the existence of conspiracy he said it was only to be seen as to what was the object of the conspiracy and who were the members of the conspiracy. Confessions of the accused have been recorded under Section 15 of TADA. Rule 15 of the TADA Rules framed under Section 28 of TADA prescribes the conditions for recording of confession made to police officer. He said confessions were not voluntary and have been retracted by the accused. Under Section 20 of TADA certain modified provisions of the Code are applicable. Except for Shanmugavadivelu (A-15), who was taken into custody on 16.5.1992 and his confession was recorded on the following day, in the case of other accused confessions have been recorded only a day or so when the police remand was to expire which was for 60 days. No sufficient time was granted to the accused to reflect if they wanted to make confession. In the case of Nalini (A-1) and Arivu (A-18) mandatory safeguards have been violated. Confession of one accused could not be used for corroboration of the confession of another accused.

399. Mr. Natrajan said that confessions of the accused could not be taken into consideration. His arguments were:

(1) all these confessions have been retracted by the accused having being taken under coercion and under Police influence;

(2) sufficient time was not given to accused before recording of the confession. They were given only few hours to reflect if they wanted to make any confession;

(3) under the provisions of the Code as amended by TADA, the Police took full remand of the accused for 60 days and when a day or so before the remand was to expire the accused were made to give their confessions. There is, thus, every possibility of the confessions being extracted. It cannot also be ruled out that the confessions were obtained by causing physical harm to the accused and playing upon their psychology;

(4) confessions of Nalini (A-1) and Arivu (A-18) are otherwise inadmissible as mandatory provisions contained in Section 15 of TADA and Rule 15(3) of TADA Rules have been violated;

(5) all the accused were kept together in a building called Malagai situated at Green Pass Road, Madras which were the headquarters of CBI, Firstly, remand was taken for one month but no confession came to be recorded. Further remand of one month was taken. During this period, Ponamalai sub-jail was denotified as jail and handed over to CBI and converted into Police Station. All the accused were transferred there and again kept together under the control of special investigating team of CBI. Legal principles required that the accused should have been kept separate and sufficient time should have been given to them for their minds to reflect if they wanted to make clean breast of the whole thing;

(6) it is settled law that confession of an accused cannot be used for corroboration of the confession made by co-accused. The rule of prudence so requires; and

(7) all these confessions are post-arrest confessions and confession of one accused cannot be used against the other even with reference to Section 10 of the Evidence Act. It could not be said that object of conspiracy was not accomplished by the assassination of Rajiv Gandhi and that the conspiracy was still in existence.

400. Coming to the confession of Nalini (A-1), it was submitted by. Mr. Natrajan that she, in her confession, referred to Murugan (A-3), Arivu (A-18), Bhagyanathan (A-20) and Padma (A-2,1) among the accused now arraigned before the Court. She also referred to Jayakumar (A-10) though he comes in the picture after the act of assassination has been completed. Nalini (A-1) who was present at the scene of the crime is the sole surviving accused of the group and had gone to Sriperumbudur in furtherance of conspiracy to assassinate Rajiv Gandhi. Nalini (A-1) has denied in her statement under Section 313 of the Code that her confession was voluntary. She said blank papers were got signed from her. This confession does not satisfy the requirement of law under Section 15 of TADA and Rule 15(3) of TADA Rules though it is not disputed that all the confessions are recorded by V. Thiagarajan (PW-52), Superintendent of Police.

401. It was submitted that the certificate required to be recorded under Rule 15 (3) of the Rules of TADA is on the same lines as given in Section 164 (4) of the Code. Section 164(4) of the Code is as under:"

(4)Any such confession shall be recorded in the manner provided in Section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:-

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed)
A.B. Magistrate".

402. It is unnecessary to refer to provisions of Section 281 of the Code as it is not disputed that otherwise the confessions of the accused have been properly recorded. Contention in the case of Nalini (A-1) is that the mandatory provision of Rule 15 (3) have been violated as it is not signed by Nalini (A-1) which signatures are required at the end of the confession. It was thus submitted that since the confession does not bear the signatures of Nalini (A-1) it could not be said to be a valid confession. It is important that the accused signs the confession at the end. In that way he comprehends that he has made confession. Confession of Nalini (A-1), it was submitted, has to be rejected in its entirety. Confession is said to be in 18 pages out of which only pages 1 to 16 bear her signatures while pages 17 and 18, which are crucial to the confession, do not bear her signatures. It may be said that the police officer has appended his certificate at the end of the confession but his recording of the certificate is immaterial if the accused did not append his signatures at the end of the confession. Omission of signatures of Nalini (A-1) cannot cure the defect. V. Thiagarajan (PW-52), who recorded the confession, merely stated in the examination-in-chief that his not getting the signatures of Nalini (A-1) was an omission. No explanation has been given as to why the omission occurred and it was not for the accused to bring out in cross-examination as to the circumstances under which signatures of Nalini (A-1) could not be obtained at the end of the confession. It is also not relevant if each page of the confession is signed, signature has to be put on the last page at the end of the confession and only then endorsement by the police officer recording the confession has a meaning. Both the signatures at the end of the confession and the certificates of the police officer must go together. Rule 15 provided an assurance that confession recorded is as per prescribed provisions. In support of the submission Mr. Natarajan referred to a Constitution Bench decision of this Court in Kartar Singh v. State of Punjab: 1994CriLJ3139 where this Court considered constitutional validity of the provisions of Section 15 of TADA and Rule 15 of TADA Rules. It was submitted that the constitutional validity of TADA was upheld because of the safeguards provided by Rule 15 for recording confession by police officer which under ordinary law is impermissible. In Kartar Singh's case the Court said:

In view of the legal position vesting authority on higher police officer to record the confession hitherto enjoyed by the judicial officer in the normal procedure, we state that there should be no breach of procedure and the accepted norms of recording the

confession which should reflect only the true and voluntary statement and there should be no room for hyper criticism that the authority has obtained an invented confession as a source of proof irrespective of the truth and creditability as it could be ironically put that when a judge remarked, "Am I not to hear the truth", the prosecution giving a startling answer, "No, Your Lordship is to hear only the evidence".
This is how this Court analyzed Section 15 and Rule 15:-

As per Section 15(1), a confession can either be reduced into writing or recorded on any mechanical device like cassettes, tapes or sound tracks from which sounds or images can be reproduced. As rightly pointed out by the learned Counsel since the recording or evidence on mechanical device can be tampered, tailored, tinkered, edited and erased etc., we strongly feel that there must be some severe safeguards which should be scrupulously observed while recording a confession under Section 15(1) so that the possibility of extorting any false confession can be prevented to some appreciable extent.

Sub-section (2) of Section 15 enjoins a statutory obligation on the part of the police officer recording the confession to explain to the person making it that he is not bound to make a confession and to give a statutory warning that if he does so it may be used as evidence against him.

Rule 15 of the TADA Rules imposes certain conditions on the police officer with regard to the mode of recording the confession and requires the police officer to make a memorandum at the end of the confession to the effect that he has explained to the maker that he was not bound to make the confession and that the confession, if made by him, would be used as against him and that he recorded the confession only on being satisfied that it was voluntarily made. Rule 15(5) requires that every confession recorded under Section 15 should be sent forthwith either to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and the Magistrate should forthwith forward the recorded confession received by him to the Designated Court taking cognizance of the offence.

For the foregoing discussion, we hold that Section 15 is not liable to be struck down since that section does not offend either Article 14 or Article 21 of the Constitution.

Notwithstanding our final conclusion made in relation to the intendment of Section 15, we would hasten to add that the recording of a confession by a Magistrate under Section 164 of the Code is not excluded by any exclusionary provision in the TADA Act, contrary to the Code but on the other hand the police officer investigating the case under the TADA Act can get the confession or statement of a person indicted with any offence under any of the provisions of the TADA Act recorded by any Metropolitan Magistrate, Judicial Magistrate, Executive Magistrate or Special Executive Magistrate of whom the two latter Magistrates are included in Section 164(1) by Sub-section (3) of Section 20 of the TADA Act and empowered to record confession.

The net result is that any confession or statement of a person under the TADA Act can be recorded either by a police officer not lower in rank than of a Superintendent of Police, in exercise of the powers conferred under Section 15 or by a Metropolitan Magistrate or Judicial Magistrate or Executive Magistrate or Special Executive Magistrate who are empowered to record any confession under Section 164(1) in view of Sub-section (3) of Section 20 of the TADA Act.

Reference was also made to a Division Bench decision of the Bombay High Court in Abdul Razak Shaikh v. State of Maharashtra 1988 Crl.L.J. 382, which relying on a decision of Privy Council in Nazir Ahmad v. King-Emperor MANU/PR/0020/1936, held, "that the provision that the Magistrate after recording confession should obtain the signature of the accused thereon is a salutary provision and has been specially provided for, for safeguarding the interest of the accused and, therefore, it is mandatory". High Court said that this omission cannot be cured by examining the Magistrate under Section 463 of the Code. Section 463 of the Code is as under:-"

463. Non-compliance with provisions of Section 164 or Section 281.- (1) If any Court before which a confession or other statement of an accused person recorded, or purporting to be recorded under Section 164 or Section 281, is tendered, or has been received, in evidence finds that any of the provisions of either or such sections have not been complied with by the Magistrate recording the statement, it may, notwithstanding anything contained in Section 91 of the Indian Evidence Act, 1872 (1 of 1872), take evidence in regard to such non-compliance, and may, if satisfied that such non-compliance has not injured the accused in his defence on the merits and that he duly made the statement recorded, admit such statement.

(2) The provisions of this section apply to Courts of appeal, reference and revision.

In Nazir Ahmad v. King-Emperor MANU/PR/0020/1936the Magistrate, who purportedly recorded the confession, was called as a witness. He said that the accused made a full confession of his participation in the crime. The Magistrate said he made rough notes of what he was told and, after dictating to a typist memorandum from the rough notes, then destroyed them. The Board then noticed:

He produced, and there was put in evidence, a memorandum, called a note, signed by him, containing the substance but not all of the matter to which he spoke orally. The note was signed by him and at the end, above the signature, there was appended a certificate somewhat to the same effect as that prescribed in Section 164, and in particular stating that the Magistrate believed that 'the pointing out and the statements were voluntarily made'. But it was not suggested that the Magistrate, though he was manifestly acting under Part 5 of the Code, either purported to follow or in fact followed the procedure of Sections 164 and 364 (old Code). Indeed, as there was no record in existence at the

material time, there was nothing to be shown or to be read to the accused, and nothing he could sign or refuse to sign. The Magistrate offered no explanation of why he acted as he did instead of following the procedure required by Section 164.
403. The Board did not express any opinion in this case on the question of the operation or scope of Section 533 (old) corresponding to Section 463 of the present Code. It was conceded that the Magistrate neither acted nor purported to act under Section 164 or Section 364 (old) and nothing was tendered in evidence as recorded or purporting to be recorded under either of the sections. The Board then went on to hold as under:-

On the matter of construction Sections 164 and 364 must be looked at and construed together, and it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves. Upon the construction adopted by the Crown, the only effect of Section 164 is to allow evidence to be put in a form in which it can prove itself under Sections 74 and 80, Evidence Act. Their Lordships are satisfied that the scope and extent of the section is far other than this, and that it is a section conferring powers on Magistrates and delimiting them. It is also to be observed that, if the construction contended for by the Crown be correct, all the precautions and safeguards laid down by Sections 164 and 364 would be of such trifling value as to be almost idle. Any Magistrate of any rank could depose to a confession made by an accused so long as it was not induced by a threat or promise, without affirmatively satisfying himself that it was made voluntarily and without showing or reading to the accused any version of what he was supposed to have said or asking for the confession to be vouched by any signature. The range of magisterial confessions would be so enlarged by this process that the provisions of Section 164 would almost inevitably be widely disregarded in the same manner as they were disregarded in the present case.
In Abdul Razak Shaikh's case Bombay High Court also relied on a decision of the Nagpur High Court in Neharoo Mangtu Satnami v. Emperor MANU/NA/0209/1936, where also Nagpur High Court relying the aforesaid decision of the Privy Council in Nazir Ahmad v. King-Emperor MANU/PR/0020/1936 held that the evidence of the Magistrate, who recorded the confession of the accused and did not obtain his signatures thereon was inadmissible. The Magistrate also while recording the confession of the accused did not follow the provisions of Sections 164 and 364 of the Code (old) and did not record the confession of the accused with required care and formality. He also did not record the certificate as required by Section 164 and also failed to obtain signature of the accused. The Magistrate subsequently went into the witness box for the prosecution and deposed that the confession was made by the accused voluntarily. In these circumstances High Court held that the evidence of the Magistrate was inadmissible and the confession recorded by him was ineffective.

404. In the case before the Bombay High Court contention was that "as per the provisions of Sub-section (4) of Section 164 Cr.P.C. it is mandatory for the Magistrate, after recording the confession, to obtain the signature of the accused thereon and as in the present case

the learned Judicial Magistrate failed to obtain the signature of the accused on the confession recorded by him, that confession could not be admitted in evidence and the defect could not be cured by invoking the provisions of Section 463, Cr.P.C.". This contention was upheld by the High Court relying on the aforesaid two decisions one of the Privy Council and the other of the Nagpur High Court. We do not think the view taken by the Bombay High Court and Nagpur High Court is correct. It may noted that the Privy Council did not consider the scope and applicability of Section 463 in the circumstances of the case before it. In that case it was conceded that the confessions were not recorded either under Section 164 or Section 281 of the Code. The view taken by the Bombay High Court appears to us to be rather too technical and if we accept this view it would be almost making Section 463 of the Code ineffective. Confession of Nalini (A-1) runs into 18 pages. The certificate as required by Rule 15 (3) of TADA Rules in the form prescribed has been appended by V. Thiagarajan (PW-52), S.P., at the end of the confession. Signatures of Nalini (A-1) appear on pages 1 to 16. In his testimony V. Thiagarajan (PW-52) has submitted that his not getting signatures of Nalini (A-1) at the end of confession is an omission. There is no cross-examination of V. Thiagarajan (PW-52) as to why the omission occurred. It has not been suggested that the omission was deliberate. Statement of V. Thiagarajan (PW-52) is forthright. There could certainly be a human error but that would not mean that Section 463 of the Code becomes inapplicable. Mr. Natarajan is correct in his submission that when the requirement of law is that confession should be signed by the person making it, it would mean his signatures at the end of the confession. What Section 463 requires is that evidence could be led of police officer recording the confession as to why provisions of Rule 15 (3) could not be complied while recording the confession. It has not been suggested or brought on record as to how not getting signatures of Nalim (A-1) on the last pages of the confession has injured her in her defence on the merits of the case. The confession has been corroborated in material particulars by means of independent evidence even if the confessions of the co-accused are set apart. Confession of Nalini (A-1) was recorded on 7.8.1991 and was sent to the court of the Chief Judicial Magistrate on the following day and on 9.8.1991 it was sent to the Designated Court. We find that the confession was duly made, which was recorded by V. Thiagarajan (PW-52). We are, therefore, inclined to admit the confession of Nalini (A-1) overruling the objection that Rule 15 (3) of the TADA Rules has been violated.

405. We think sufficient time was given to the accused in the circumstances of the case for them to reflect if they wanted to make confession. Merely because confession was recorded a day or so before the police remand was to expire would not make the confession involuntary. No complaint was made before the trial court that confession was the result of any coercion, threat or use of any third degree methods or even playing upon psychology of the accused.

406. In the Case of Arivu (A-18) it was submitted that when he was produced before V. Thiagarajan (PW-52) on 14.8.1991 his statement was recorded that he wanted to give confession statement voluntarily. But then while giving time to him for reflection V.

Thiagarajan (PW-52) recorded that "the accused Shri Payas alias Kumaralingam has been made to remain alone in his apartment for the purpose of reflection in order to further make up his mind as to whether he should make a confessional statement or not". Argument was that it was not Arivu (A-18), who was called on 14.8.1991 and rather it was accused Payas (A-9). We do not think that this submission has any merit as on the following day, i.e., 15.8.1991 confession dated 15.8.1991 of Arivu (A-18) was duly recorded. We have examined the proceedings of 14.8.1991 and of 15.8.1991 and we have no doubt in our minds that these refer to the accused Arivu (A-18) and that the name of Payas (A-9) was merely typing error and no advantage can be drawn from that.

407. Mr. Natrajan said that evidence in the present case does not show if any offence under Section 3 or 4 of TADA has been made out and when there is no offence under TADA, provisions of Section 15 of TADA would not apply and all the confessions would become inadmissible in evidence as all these were made before a Police Officer. In support of his submissions, he referred to a decision of this Court in Bilal Ahmed Kaloo v. State of Andhra Pradesh MANU/SC/0861/1997: 1997 Cri LJ 4091. In that case, the accused was challaned before the Designated Court at Hyderabad for offences under Sections 124-A, 436, 153-A and 505(2) IPC and under Sections 3, 4 and 5 of TADA and also under Section 25 of the Arms Act. The Designated Court acquitted him of the offences under TADA but convicted him of the offences under the IPC and also under Section 25 of the Arms Act. In these circumstances, this Court said that confession made by the accused before the Police Officer was inadmissible in respect of the offences under the IPC. The Court observed as under:

While dealing with the offences of which the appellant was convicted there is no question of looking into the confessional statement attributed to him, much less relying on it since he was acquitted of all offences under TADA. Any confession made to a police officer is inadmissible in evidence as for these offences and hence it is fairly conceded that the said ban would not wane off in respect of offences under the Penal Code merely because the trial was held by the Designated Court for offences under TADA as well. Hence the case against him would stand or fall depending on the other evidence.

408. As to whether any offence under Section 3 or 4 of TADA is made out in the present case, we will consider at subsequent stage of the judgment. In view of the decision of this Court in Bilal Ahmed Kaloo's case contention of Mr. Natrajan is rather correct. However, it appears to us that while holding the confession to be inadmissible in a trial when the accused is acquitted of offences under Section 3 or 4 of TADA, provisions of Section 12 of the TADA were not taken into consideration by this Court in the said judgment. Section 12 reads as under:

12.Power of Designated Courts with respect to other offences.-(1) When trying any offence, a Designated Court may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or any rule made thereunder or under any other law, the Designated Court may convict such person of such other offence and pass any sentence authorised by this Act or such rule or, as the case may be, such other law for the punishment thereof.

409. It is apparent that provisions of Section 12 of TADA were not brought to the notice of the Court in Bilal Ahmed Kaloo's case. This judgment which was rendered by two learned Judges of this Court, does not lay a good law on this aspect of the matter. Continuing Mr. Natrajan said that even if the confession of an accused is admissible under Section 15 of TADA it is not a substantive piece of evidence and cannot be used against a co-accused unless it is corroborated in material particulars by other evidence. Confession of one accused cannot corroborate the confession of another. In support of his submission, he referred to another two Judge Bench decision in Kalpanath Rai v. State (Through CBI) MANU/SC/1364/1997: 1998 Cri LJ 369 where this Court said that confession under Section 15 of TADA cannot be used as substantive evidence and that it has only corroborative value. This is how this Court considered this question:

70. Section 15 of TADA provides that "notwithstanding anything in the Code or in the Indian Evidence Act... a confession made by a person before a police officer not lower in rank than a Superintendent of Police... shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence under this Act or rules made thereunder, provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused". In this context we may point out that the words "or co-accused, abettor or conspirator" in the proviso were not in the section until the enactment of Act 43 of 1993 by which those words were inserted. By the same Amendment Act Section 21 was also recast which, as it originally stood, enabled the Designated Court to draw a legal presumption that the accused had committed the offence "if it is proved that a confession has been made by a co-accused that the accused had committed the offence".

71.The legal presumption linked to an accused vis-a-vis a confession made by a co-accused has been deleted by Parliament through Act 43 of 1993 and as a package inserted the words mentioned above in Section 15.

72. What is the effect of such deletion from Section 21 and addition to Section 15 of TADA? It should be remembered that under Sections 25 and 26 of the Evidence Act no confession made by an accused to a police officer, or to any person while he was in police custody could be admitted in evidence, and under Section 162 of the Code no statement made by any person during investigation to a police officer could be used in a trial except for the purpose of contradiction. In view of the aforesaid ban imposed by the legislature Section 15 of TADA provides an exception to the ban. But it is well to remember that other confessions which are admissible even under the Evidence Act could be used as

against a co-accused only upon satisfaction of certain conditions. Such conditions are stipulated in Section 30 of the Evidence Act, which reads thus:

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession.
73. The first condition is that there should be a confession i.e. inculpatory statement. Any exculpatory admission is not usable for any purpose whatsoever as against a co-accused. The second condition is that the maker of the confession and the co-accused should necessarily have been tried jointly for the same offence. In other words, if the co-accused is tried for some other offence, though in the same trial, the confession made by one is not usable against the co-accused. The third condition is that the confession made by one accused should affect him as well as the co-accused. In other words, if the confessor absolves himself from the offence but only involves the co-accused in the crime, while making the confession, such a confession cannot be used against the co-accused.

74. Even if no conditions are satisfied the use of a confession as against a co-accused is only for a very limited purpose i.e. the same can be taken into consideration as against such other person. It is now well settled that under Section 30 of the Evidence Act the confession made by one accused is not substantive evidence against a co-accused. It has only a corroborative value (vide Kashmira Singh v. State of M.P. MANU/SC/0031/1952: 1952 Cri LJ 839, Nathu v. State of U.P. MANU/SC/0104/1955: 1956 Cri LJ 152 and Haricharan Kurmi v. State of Bihar MANU/SC/0059/1964: 1964 Cri LJ 344.

75.A confession made admissible under Section 15 of TADA can be used as against a co-accused only in the same manner and subject to the same conditions as stipulated in Section 30 of the Evidence Act.

410. Mr. Altaf Ahmad, learned Additional Solicitor General submitted that the statement of law as spelled out in para 75 of the judgment in Kalpnath Rai's case needs re-consideration. He said what Section 15 contains is a non-absent clause and it applies notwithstanding the provisions of the Evidence Act and the Code.

411. Section 21 of TADA was amended by the amending Act 43 of 1993 and Clauses (c) and (d) were omitted. Section 21 before deletion of Clauses (c) and (d) was as under:

21. Presumption as to offences under Section 3. - (1) In a prosecution for an offence under Sub-section (1) of Section 3, if it is proved -

(a) that the arms or explosives or any other substances specified in Section 3 were recovered from the possession of the accused and there is reason to believe that such arms

or explosives or other substances of a similar nature, were used in the commission of such offence; or

(b) that by the evidence of an expert the finger prints of the accused were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence; or

(c) that a confession has been made by a co-accused that the accused had committed the offence; or

(d) that the accused had made a confession of the offence to any person other than a police officer

the Designated Court shall presume, unless the contrary is proved, that the accused had committed such offence.

(2) In a prosecution for an offence under Sub-section (3) of Section 3, if it is proved that the accused rendered any financial assistance to a person accused of, or reasonably suspected of, an offence under that section, the Designated Court shall presume, unless the contrary is proved, that such person has committed the offence under that sub-section.

412. By the same amending Act words "or co-accused, abettor or conspirator" were introduced in Section 15 TADA after the words "shall be admissible in the trial of such person". Now this Section reads as under:

15. Certain confessions made to police officers to be taken Into consideration, - (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be, reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence under this Act or rules made thereunder.

Provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

(2) The police officer shall, before recording any confession under Sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily.

413. In Kalpnath Rai's case this Court said that Sections 25 and 26 of the Evidence Act were excluded and not Section 30. The question that arises for consideration is as to what is the effect of deletion Clauses (c) and (d) in Section 21 and addition of words in Section 15.

414. Mr. Altaf Ahmad said that the provisions of Sections 15 and 21 after their amendment provided that a confession of an accused is now admissible in evidence against co-accused. It is the substantive evidence against the co-accused as well. Concept of drawing presumption though as was earlier mentioned in Section 21 now no more existed.

415. When Section 15 TADA says that confession of an accused is admissible against co-accused as well it would be substantive evidence against the co-accused. It is a different matter as to what value is to be attached to the confession with regard to the co-accused as that would fall in the realm of appreciation of evidence.

416. The term 'admissible' under Section 15 has to be given a meaning. When it says that confession is admissible against a co-accused it can only mean that it is substantive evidence against him as well as against the maker of the confession.

417. Mr. Natrajan said that the confession may be substantive evidence against the accused who made it but not against his co-accused. He reasoned that the confession was not that of the co-accused and it was not the evidence; it is the confessor who owned his guilt and not the co-accused; it is not evidence under Section 3 of the Evidence Act; it is not tested by cross-examination; and lastly, after all it is the statement of an accomplice. According to him it can have only corroborative value and that is a well established principle of the evidence even though Section 3 and Section 30 of the Evidence Act be ignored. But then Section 15 TADA starts with non-absent clause. It says Evidence Act will not apply and neither the CrPC. This is certainly a departure from the ordinary law. But then it was also the submissions of Mr. Natrajan that the bar which is removed under Section 15 is qua Sections 24, 25 and 26 of the Evidence Act and not that all the provisions of the Evidence Act have been barred from its application. He, therefore, said that the view taken by this Court in Kalpnath Rai's case MANU/SC/1364/1997: 1998 Cri LJ 369 that Section 30 Evidence Act was in any case applicable, was correct. We think, however, that the view expressed in that case needs reconsideration.

418. If we analyze Section 15 the words which have been added by the Amending Act, 1993 have to be given proper meaning and if we accept the argument of Mr. Natrajan these words will be superfluous which would be against the elementary principles of interpretation of statute. For the confession of accused to be admissible against co-accused proviso to Section 15 says that they should be tried together. That is also Section 30 Evidence Act. Clauses (c) and (d) of Section 21 were deleted which raised a presumption of guilt against the co-accused. According to Mr. Natrajan that provision

made the confession of co-accused a substantive evidence and Parliament did not think it proper that it should be so. But then why add the words in Section 15?

'Admissible' according to Black's Law Dictionary means, "pertinent and proper to be considered in reaching a decision. Used with reference to the issues to be decided in any judicial proceeding."

419. It defines 'Admissible evidence' as, "As applied to evidence, the term means that the evidence introduced is of such a character that the court or judge is bound to receive it; that is, allow it to be introduced at trial. To be "admissible" evidence must be relevant, and, inter alia, to be "relevant" it must tend to establish material proposition..,." If we again refer to Black's Law Dictionary 'substantive evidence' means "that adduced for the purpose of proving a fact in issue, as opposed to evidence given for the purpose of discrediting a witness (i.e. showing that he is unworthy of belief), or of corroborating his testimony".

420. TADA was enacted to meet extraordinary situation existing in the country. Its departure from the law relating to confession as contained in Evidence Act is deliberate. Law has to respond to the reality of the situation. What is admissible is the evidence. Confession of the accused is admissible with the same force in its application to the co-accused who is tried in the same case. It is primary evidence and not corroborative. When the legislature enacts that Evidence Act would not apply which would mean all the provisions of the Evidence Act including Section 30. By judicial interpretation or judicial rigmarole, as we may put it, the Court cannot again bring into operation Section 30 of the Evidence Act and any such attempt would not appear to be quite warranted. Reference was made to a few decisions on the question of interpretation of Sections 3 and 30 of the Evidence Act, foremost being that of the Privy Council in Bhuboni Sahu v. The King MANU/PR/0014/1949, and though we note this decision it would not be applicable because of the view which we have taken on the exclusion of Section 30 of the Evidence Act. In Bhuboni Sahu's case the Board opined as under:

Section 30 seems to be based on the view that an admission by an accused person of his own guilt affords some sort of sanction in support of the truth of his confession against others as well as himself. But a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of "evidence" contained in Section 3, Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver which is not subject to any of those infirmities. Section 30, however, provides that the Court may take the confession into consideration and thereby, no doubt, makes it evidence on which the Court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case; it can be put into the scale and weighed with the other evidence. Their

Lordships think that the view which has prevailed in most of the High Courts in India, namely that the confession of a co-accused can be used only in support of other evidence and cannot be made the foundation of a conviction, is correct.
421. In Kashmira Singh v. State of Madhya Pradesh MANU/SC/0031/1952: 1952 Cri LJ 839 one of the questions was how far and in what way the confession of an accused person can be used against a co-accused. The Court relied on the observations made by the Privy Council in Bhuboni Sahu's case and said that testimony of an accomplice can in law be used to corroborate another though it ought not to be used save in exceptional circumstances and for reasons disclosed.

422. In Hari Charan Kurmi and Jogia Hajam v. State of Bihar 1964 (2) SCR 623 this Court again relied on its earlier decision in Kashmira Singh's case and on the, decision of the Privy Council in Bhuboni Sahu's case. It said that technically construed, definition of evidence as contained in Section 3 of the Evidence Act will not apply to confession. Even so, Section 30 provides that a confession may be taken into consideration not only against its maker, but also against a co-accused person; that is to say, though such a confession may not be evidence as strictly defined by Section 3 of the Act, it is an element which may be taken into consideration by the criminal court and in that sense, it may be described as evidence in a non-technical way. But it is significant that like other evidence which is produced before the Court, it is not obligatory on the court to take the confession into account. When evidence as defined by the Act is produced before the Court, it is the duty of the Court to consider that evidence. What weight should be attached to such evidence, is a matter in the discretion of the Court. But a Court cannot say in respect of such evidence that it will just not take that evidence into account. Such an approach can, however, be adopted by the Court in dealing with a confession, because Section 30 merely enables the Court to take the confession into account.

423. In view of the above discussions, we hold the confessions of the accused in the present case to be voluntarily and validly made and under Section 15 of TADA confession of an accused is admissible against co-accused as a substantive evidence. Substantive evidence, however, does not necessarily means substantial evidence. It is the quality of evidence that matters. As to what value is to be attached, to a confession will fall within the domain of appreciation of evidence. As a matter of prudence court may look for some corroboration if confession is to be used against a co-accused though that will again be with the sphere of appraisal of evidence.

424. Having thus held the confessions to be voluntary and admissible we proceed to examine these confessions and other evidence but before that it may be useful to have a look at the witnesses and the nature of the evidence produced. Rajiv Gandhi had come to Sriperumbudur to address an election meeting for Maragatham Chandrasekar, who was contesting election on Congress ticket as MP from Sriperumbudur constituency. She is herself a witness (PW-29) and was injured in the blast. PWs-1 to 51 give evidence of the tour programme of Rajiv Gandhi, his arrival at the venue at Sriperumbudur, security

arrangements by the police and eye witnesses to the blast being Congress party workers, photographers and journalists. We are not concerned with the tour programme of Rajiv Gandhi and the security arrangements made for him. His addressing meeting at Sriperumbudur on May 21, 1991 was published in local newspapers and was known to some of the conspirators. All the security arrangements could not save his life from the human suicide bomb. Many bystanders and police personnel died along with him or suffered grievous or simple injuries. One such person was a young girl Kokila of 14 years who had come with her mother Latha Kankan to recite a poem to Rajiv Gandhi which she had written in Hindi. She was talking to Rajiv Gandhi when blast occurred. She died and so her mother. In one of the photographs in the camera (MO-1) Kokila with her mother Latha Kankan is seen standing next to Dhanu, the human bomb. Some of the persons who suffered hurt have been examined. Of these 51 witnesses, who are not in the list of injured one is C.S. Ganesh (PW-18), Music Director, who was giving his programme at the meeting before the arrival of Rajiv Gandhi; and Sundararajan Murali (PW-34) and Subramaniyan (PW-35) who give opinion regarding motive of LTTE against Rajiv Gandhi. In the photographs found in the camera (MO-1) and other photographs taken at the site by other witnesses Dhanu, Subha, Nalini (A-1), Sivarasan and Haribabu are identified at the scene, of the crime. The witnesses give gory picture of the scene of the crime. There is no dispute that death of Rajiv Gandhi and 15 others was homicidal and the grievous and simple hurt caused to 43 on account of the blast. There is also no dispute about the identity of the accused. Dr. Cecelia Cyril (PW-121), Dr. M.N. Damodaran (PW-124) to Dr. Jishnu Mohan (PW-127), Dr. N. Ramasamy (PW-129), Dr. B. Santhakumar (PW-130), Dr. Veerapandian (PW-134) to Dr. T.S. Koshy (PW-146), Dr. Raja Venkatesh (PW-150), Dr. Kanagaraj (PW-155), Dr. A. Srinivasan (PW-162), Dr. E.V. Yuvaraj (PW-163), Dr. Ponnusamy (PW-165), Dr. K. Poongothai M.S. (PW-166), Dr. Saraswathi (PW-169) and Dr. Ramesh Kumar Sharma (PW-182) are medical officers, who conducted post-mortem and examined the injured. Dr. L. Thirunavukkarasu (PW-243), Dr. S. Rajendran (PW-244), Dr. S. Maghivanan (PW-246) and Dr. T. Shankughavel Samy (PW-247) are the medical officers who conducted the post-mortem on the dead bodies of the deceased accused, who committed suicide during investigation. Dr. Amrit Patnaik (PW-147) is the medical officer who conducted the post-mortem on the dead body of Dhanu.

425. We may now examine the confessions given by the accused and other evidence led by the prosecution to see how each confession corroborates the other and how the evidence corroborates the confessions.

426. Nalini (A-1) is the only accused who was present at the scene of the crime. She is the sister of Bhagyanathan (A-20) and daughter of Padma (A-21). During 1991 she was working as P.A. to Managing Director of Anabond Silicons Pvt. Ltd. at Adyar, Madras. Her office telephone number was 419493. N. Sujaya Narayan (PW-96) was her colleague and acquainted with her hand-writing. Baby Subramaniam, an LTTE leader, was running a printing press in Madras which was bought by Bhagyanathan (A-20) and named it BPL All Rounders. Till January, 1991 Padma (A-21) was staying in Kalyani Nursing Home

quarters where she was working. Thereafter she rented Royapettah house in January, 1991. She was living with her three children Bhagyanathan (A-20), Nalini (A-1) and Kalyani, another daughter. When Nalini (A-1) started living separately she for a short while lived with M. Sankari (PW-210), who is sister of Muthuraja, an LTTE activist. This Muthuraja was a friend of Bhagyanathan (A-20). Nalini (A-1) thereafter rented a house in Villivakkam. Muthuraja was working with Baby Subramaniam, who was a top leader of LTTE. Family of Bhagyanathan (A-20) was introduced to M. Sankari (PW-210) by her brother Muthuraja. Baby Subramaniam used one room in the house of M. Sankari (PW-210) and kept his belongings such as books and papers there. Bhagyanathan (A-20), Arivu (A-18), Haribabu (DA) and Irumborai (A-19) used to visit the room occupied by Baby Subramaniam and meet him. In February, 1991 Irumborai (A-19) and Suresh Master (DA) met M. Sankari (PW-210) and told her that they had come from Jaffna and wanted her to take them to the house of Bhagyanathan (A-20) which she did. Muthuraja had told M. Sankari (PW-210) that he was working in Subha Sundaram Studio but for how long he worked there she did not know. This studio belonged to Subha Suba Sundaram (A-22). Muthuraja had left for Jaffna in February, 1991. He was a professional photographer and was recording video cassettes and he did that work for LTTE movement.

426-A. Bhagyanathan (A-20) had also a job in Subha Sundaram Studio of Subha Suba Sundaram (A-22) which job Padma (A-21) had arranged for him. Subha Suba Sundaram (A-22) was known to Padma (A-21) as she attended the delivery of the wife of the former at Kalyani Nursing Home. Bhagyanathan (A-20) was introduced to Baby Subramaniam by Muthuraja. Arivu (A-18) also became friend of Bhagyanathan (A-20). Like Muthuraja, Arivu (A-18) used to gather news and photographs. He used to compile Tamil and English news, record in video cassettes, edit them and send them to LTTE Headquarters in Sri Lanka. He was staying in the house of Padma (A-21) since February, 1991. For the purpose of recording news on video cassettes he had bought a National colour TV and video deck. In the first week of February, 1991 Muthuraja introduced Murugan (A-3) to the family of Padma (A-21), He belonged to LTTE organization. Padma (A-21) at first did not like Murugan (A-3) to stay in her house but she agreed when Muthuraja told her that police was keeping a watch over his house and he could not keep him there. Murugan (A-3) used to provide financial help to Padma (A-21). He helped Bhagyanathan (A-20) by giving him money as well. One K. Bharathi (PW-233), a nurse, was a friend of Kalyani. She also stayed in the house of Padma (A-21) since February, 1991. On one occasion in February, 1991 K. Bharathi (PW-233) found Murugan (A-3) in the house of Padma (A-21). On inquiry Padma (A-21) told her that he had come from Tirunelveli and that Muthuraja had sent him to learn English.

427. In the second week of February, 1991 Kalyani, sister of Nalini (A-1), accompanied with K. Bharathi (PW-233) and Murugan (A-3) came to the office of Nalini (A-1). Nalini (A-1) was introduced to Murugan (A-3) and was told that he was staying in the house of her mother Padma (A-21). Murugan (A-3) started coming to the office of Nalini (A-1) regularly thereafter and she was quite infatuated of him. Haribabu (DA) and Robert

Payas (A-9) were friends of Murugan (A-3) and they also used to come to the office of Nalini (A-1) and used her telephone to talk to their friends. After some time Murugan (A-3) told Nalini (A-1) that he was an important member of LTTE and had been sent to India by Pottu Amman, Intelligence Chief of LTTE. Murugan (A-3) also told Nalini (A-1) that in India he was working under the charge of Sivarasan (DA), who was in-charge of operations of LTTE in India. On April 18, 1991 Nalini (A-1) attended the election meeting of Rajiv Gandhi and Jayalalitha at Marina Beach, Madras along with Murugan (A-3). She went there at the instance of Murugan (A-3). In the month of April, 1991 when Nalini (A-1) was in the house of her mother Padma (A-21) she met Sivarasan. Murugan (A-3) told her that he (Sivarasan) was his boss and that it was under his Instructions that he was carrying out his work. Nalini (A-1) wanted to vacate her Villivakkam residence but was persuaded by Murugan (A-3) to stay on there for some more time. He told her that Sivarasan was bringing two girls from Sri Lanka for LTTE operations and those girls would be staying with her. Nalini (A-1) agreed. On 2.5.1991 Sivarasan brought Subha and Dhanu to her house. They, however, did not stay with Nalini (A-1) and used to visit her on some days. They told her that they were staying in Kodungaiyur house. Nalini (A-1) learnt both Subha and Dhanu were committed LTTE tigresses and committed to the cause of LTTE. Murugan (A-3) had told Nalini (A-1) that they were working under Pottu Amman and Akila. During their discussions Nalini (A-1) was told by Murugan (A-3), Subha and Dhanu about the atrocities committed by IPKF on Sri Lankan Tamils. They said Rajiv Gandhi was responsible for sending troops to Sri Lanka who killed Tamils, raped and humiliated their women. Nalini (A-1) was also told about the suicide committed by 12 Tamil activists, who were detained by Sri Lankan Navy. All this led Nalini (A-1) to have strong feeling of disgust against Rajiv Gandhi. She also read the book "Satanic Force" and developed extreme hatred for Rajiv Gandhi. Since Subha and Dhanu had come to India for the first time and were finding it difficult to communicate and thus required a natural cover to facilitate their movements. Nalini (A-1) by this time was mentally prepared by Sivarasan, Murugan (A-3), Subha and Dhanu for any kind of retaliatory action including killing of leaders. On 2.5.1991 when Sivarasan brought Subha and Dhanu to the house of Nalini (A-1) and she was told that they were going to garland Indian leaders while addressing public meeting Nalini (A-1) felt instinctively that they were going to assassinate some leader. They had, however, not discussed about it. Sivarasan was of the view that in order to acquaint with the method by which they could bypass the police security and reach the leaders addressing the meetings they should attend those meetings. He said it was very important that Subha and Dhanu reached very close to VIP for garlanding him at the meeting. Sivarasan told Nalini (A-1) that her role was a very important one because being an Indian nobody would suspect Subha and Dhanu if she accompanied them. At the instance of Sivarasan Nalini (A-1), Subha and Dhanu attended the election meeting addressed by V.P. Singh, the then Prime Minister. Sivarasan briefed them in advance that how they should try to go to the dais. Dhanu and Subha were to carry garlands. Haribabu, who had also been briefed, was to be present at the dais to take photographs and was to be a part of the rehearsal. Murugan (A-3) gave Nalini (A-1) a camera and told her that she should try to take photographs. Before going

to the meeting they purchased two rose garlands from a nearby shop. Nalini (A-1), Subha and Dhanu were unable to go to the dais as organizers did not permit them to go there. They were all standing near the stair-case leading to the dais and when V.P. Singh reached there Subha and Dhanu managed to hand over garlands to him. Nalini(A-l) tried to take photographs but could not operate the camera. Haribabu also for some reason could not take photographs. After the meeting when they all assembled failure of Dhanu and Subha reaching the dais was considered. It was also, thought that some donations or bribes should be offered to party workers and the security people in order to go to the dais. Now by this time Nalini (A-1) was convinced that they had definite mission to perform. The meeting of V.P. Singh was also attended by Arivu (A-18) but separately.

428. On 9.5.1991 Murugan (A-3) told Nalini (A-1) that he was to go Sri Lanka on instructions received from Sri Lanka as conveyed to him by Sivarasan. He left for Sri Lanka on 11.5.1991. Sivarasan gave him two letters written by Dhanu and Subha to Pottu Amman and Akila. Bhagyanathan (A-20) also wrote a letter (Exh.P-453) on 9.5.1991 to Baby Subramaniam and gave that to Murugan (A-3) to be delivered to Baby Subramaniam at Sri Lanka. These two letters dated 9.5.1991 are Exh. P-95 and P-96 and were subsequently seized during the course of investigation. These are in Tamil. Though these are written by Subha but are sent on behalf of both Subha and Dhanu. English translation of these two letters is as under:

Ex.P. 95

Tamil Elam
09.05.91.

Dear Akila sister,

We are well and we shall be confident until the fulfillment of the job we came here. Here it is very hot and hence we cannot proceed to any place in the noon.

We are confident that the work for which we came would be finished in a proper manner. Because we were expecting another opportunity appropriately it would be executed within this month.

Otherwise, the state of this country is very bad. We have to practise only to speak. Otherwise there is no problem for us. It is necessary to enact a drama. Akila sister's, every word shall remain in our mind until last.

The remaining, if we meet? Are everybody is well?

Yours
Sd/- Subha-Dhanu

Ex. P. 96

Tamil Elam
09.05.91

To
Pottanna,

We are confident and well. I am confident that we will be successful in the attempt of job for which we came.

Because, we expected a similar opportunity (we went very near to Singh).

We will be confident until last

Yours
Sd/- Subha-Dhanu

Ex. P. 96

Tamil Elam
09.05.91

To
Pottanna,

We are confident and well. I am confident that we will be successful in the attempt of job for which we came.

Because, we expected a similar opportunity (we went very near to Singh).

We will be confident until last

Yours
Sd/- Subha-Dhanu

429. On 7.5.1991 Sivarasan sent a coded wireless message from Madras to Pottu Amman in Sri Lanka (Exh. P-392) which, when decoded, reads as under:

She is the eldest daughter in the house of Indu Master. Moving closely. Our intention is not known to anybody except we three. I have told her that it is to have the support of

the party who will be coming to power. Here V.P. Singh is coming. We are receiving. Like that we are receiving all the leaders.

I am slowly approaching. If I tell our intention there is no doubt that she will stand firmly on our side.

We are moving with her closely, have full satisfaction. Girls are telling that the intention can be revealed to her she can be believed.

If I return I will return as your man. We are strong in powder business.

430. Here reference to 'eldest daughter'.is to Nalini (A-1) and Indu Masters Murugan (A-3). On 11.5.1991 Subha and Dhanu came to Nalini (A-1) and all three went for shopping. They purchased a set of 'churidar' in orange colour with designs, green colour 'kameez' (shirt) and a green 'duppatta' from a shop in Purasawakkam. These.purchases were made for Dhanu. Her measurements were required but she said she need not give any measurement as she wanted a very loose kurta. It was Subha who gave measurements on her benalf. From another shop a pair of sleepers ('chappals') was also purchased for Dhanu. S. Chinnamani (PW-203) is salesman working in shop called Metro Square in Pondy Bazaar, Madras, who testified of having sold chappals to Dhanu and identified the same as worn in the leg in photograph (MO-527). He said at that time there were two more ladies with her. M. Gunankhalal Soni (PW-179) testified having sold the 'churidar' to Dhanu from his shop. He has identified the dress sold by him and worn by Dhanu in the photograph (MO-31). M. Gunankhalal Soni (PW-179) identified Subha and Nalini (A-1) in photograph (MO-105) and also Nalini (A-1) in the court as one of the two women who came along with Dhanu.

431. In the morning of 19.5.1991 Nalini (A-1), Subha and Dhanu went to Mahabalipuram and returned in the evening when they found that Sivarasan was waiting for them in the house of Nalini (A-1). He showed them the clipping of an evening Tamil newspaper in which the visit of Rajiv Gandhi to Tamil Nadu in connection with the election campaign was published. Nalini (A-1) found Sivarasan tense and excited. He said that "they had come only for that and that we should attend his meeting on 21st or 22nd, whether at Pondicherry or Sriperumbudur". He asked Nalini (A-1) to apply for two days' leave. Sivarasan's presence at the house of Nalini (A-1) at that odd hour, his excitement and his command gave Nalini (A-1) a feeling of terror. She, however, managed to tell him that it would be difficult to apply for two days' leave and go to Pondicherry and that she would be able to visit the nearest point. Sivarasan said that he would decide about the venue the next day. Nalini (A-1) now had a strong feeling that Rajiv Gandhi was their final target. Sivarasan again came to the house of Nalini (A-1) on the morning of 20.5.1991 and said that he would inform her about the venue in the evening. He told her to go to Royapettah house in the evening at about 6.30 p.m. He asked her where Sriperumbudur was and when she told him that she would make inquiries and let him know he said sternly that

on no account she should discuss that matter with any one and that he would himself find out about Sriperumbudur. Sivarasan told Nalini (A-1) to apply for leave on some pretext but not for Sriperumbudur meeting. Then he left along with Dhanu and Subha. Nalini (A-1) went to Royapettah house in the evening. Sivarasan also came there and told her that venue was Sriperumbudur and that she need take only half day's leave on 21.5.1991 and should be available at her house positively at 3.00 p.m. sharp. He said he would come along with Dhanu and Subha and pick her up. At that time Haribabu had also come to Royapettah house since message was left at his house by Murugan (A-3) to go there. Murugan (A-3) was also present as he had returned to Madras and told Nalini (A-1) that he could not go to Sri Lanka. After getting instructions to return to Sri Lanka on 11.5.1991 Murugan (A-3) after purchasing certain articles and getting letters from Subha and Dhanu (Exh. P-95 and P-96) and from Bhagyanathan (A-20) (Exh.P-453) went to Kodiakkarai. He also carried a dress given by Arivu (A-18) for Baby Subramaniam and negatives of photographs of Chennai Fort, D.G.P. Office. At Kodiakkarai he had met Shankar (A-4) and while returning he gave him piece of paper containing his name and that of Nalini (A-1) and also her telephone number 419493. He waited there till 17.5.1991 and as no boat came from Sri Lanka he returned to Madras after leaving his articles in boxes at Kodiakkarai. These boxes contained the two letters by Subha and Dhanu and that one written by Bhagyanathan (A-20) to Baby Subramaniam. Murugan (A-3) reached Madras on 18.5.1991.

432. When the meeting disbursed Haribabu told Nalini (A-1) that he was also coming to Sriperumbudur next day, i.e, 21.5.1991. After Murugan (A-3) returned from Kodiakkarai on 18.5.1991 he was staying with Nalini (A-1).

433. On the morning of 21.5.1991 while Nalini (A-1) went to her office Murugan (A-3) went to Royapettah house. In the meeting Arivu (A-18) and Bhagyanathan (A-20) were also present. Arivu (A-18) gave a Kodak colour film to Haribabu,

434. Nalini (A-1) told her boss that she wanted half day's leave. She was told that she need not take leave and could go after finishing her work. She, however, told her colleague N. Sujaya Narayan (PW-96) that she was going to Kanchipuram for buying sarees. Sriperumbudur is mid way between Madras and Kanchipuram. After Nalini (A-1) left her office at about 2.00 p.m. she went to Royapettah house. She found only Murugan (A-3) was present there. Murugan (A-3) told her to hurry and go to her house otherwise Sivarasan would get annoyed. Nalini (A-1) reached her house at 3.00 p.m. At 3.45 p.m. Sivarasan came there along with Subha and Dhanu. He was wearing a white loose 'kurta' and narrow 'pyjama' and was carrying a note pad and a camera in his hand. Subha was wearing a green colour saree which had been purchased earlier. Dhanu was wearing loose fitting green colour 'kameez', orange colour 'churidar' and a green colour dupatta which had been purchased earlier from the market. Subha told Nalini (A-1) that Dhanu was going to create history that day by assassinating Rajiv Gandhi and they would he very happy if Nalini (A-1) also participated in that. Nalini (A-1) agreed. She

could see that Dhanu was concealing an apparatus under her dress. Nalini (A-1) wore a saree. At about 4.00 p.m. they all left in an auto rikshaw. Dhanu said that she would go to temple for her final prayers. They went to Pillayar Temple near Nadamuni Theatre and Dhanu offered prayers. before leaving the house Nalini (A-1) left her keys with Rani (PW-90), her neighbour, whom she told that she was going to Vellore. They went to Parrys Corner and reached Thiruvalluvar bus stand around 5.00 p.m. Haribabu was already there. He had purchased a sandalwood garland which was wrapped in a brown cover. This garland was purchased in the morning by Haribabu from Poompuhar Handicrafts, Madras. It was sold to him by A.K. Anbalagan (PW-94). He was also having a camera. This was the camera (MO-1) which was found at the scene of the crime and had been borrowed from K. Ravi Shankar (PW-151). Thereafter they boarded a bus for Sriperumbudur. For all five, tickets were purchased by Sivarasan. They reached Sriperumbudur at about 7.30 p.m. They purchased flowers. Dhanu purchased Kanakambaram, Subha and Nalini (A-1) purchased Jasmine. They ate their dinner and started towards the meeting point where Rajiv Gandhi was to address a meeting. On the way they stopped near Indira Gandhi statue and discussed their roles. Nalini (A-1) was to help Subha after the assassination to take refuge in some city till Sivarasan gave further instructions. Haribabu was to take photographs of the assassination scene. Nalini (A-1) was also to provide cover to both Subha and Dhanu during the event. After the event Nalini (A-1) and Subha were to wait for ten minutes near Indira Gandhi statue for Sivarasan. If he did not come they would push off as instructed before. Subha, Dhanu and Nalini (A-1) went to the ladies enclosure in the meeting and sat there. Haribabu and Sivarasan went separately towards the stage. Music programme of C.S. Ganesh (PW-18) was going on at that time. After surveying the scene Sivarasan came and called Dhanu. Subha, who was having the garland parcel, given to her by Haribabu, handed over the same to Dhanu. She opened the parcel and took out the garland. Dhanu and Sivarasan then went back near the dais. Nalini (A-1) could see them with Haribabu. Sivarasan was also trying to put Dhanu in the crowd of people who were waiting to greet Rajiv Gandhi. There were a mother and daughter sitting in the women enclosure behind where Subha and Nalini (A-1) were sitting. The mother was telling that her daughter had written a poem which she would recite to Rajiv Gandhi. After some time both daughter and mother were seen standing near Dhanu, who was talking to the daughter and appeared to befriend her. About 9.30 p.m. there was announcement that all persons who were waiting to garland and greet Rajiv Gandhi might make a queue near the carpet. Dhanu was standing between the mother and daughter. After some time announcement was made that Rajiv Gandhi was coming. Thereafter Rajiv Gandhi arrived. Subha and Nalini (A-1) got up from the ladies enclosure and moved away. Subha was holding the hand of Nalini (A-1) and was nervous. There was a loud explosion. Dhanu exploded herself. Nalini (A-1) and Subha ran across to the Indira Gandhi statue as instructed earlier by Sivarasan and waited for him. Soon thereafter Sivarasan came running there. He told that both Rajiv Gandhi and Dhanu had died and said that unfortunately Haribabu also died. Sivarasan took out a pistol wrapped in a white cloth and gave it to Nalini (A-1) to be given to Subha. Nalini (A-1) handed over that pistol to Subha. They came to the bus stand and saw there

was a bus but they were told that that bus would not be leaving. They ran further down the road and saw a lady Samundeeswari (PW-215) who was standing outside a house. They requested her and were given water to drink. They were able to reach Madras by changing two auto rickshaws. Last auto rikshaw was driven by K. Vardarajan (PW-183). They reached Kodungaiyur at 1.30 a.m. in the night of 21/22.5.1991. Jayakumar (A-10) and his wife Shanthi1 (A-11) were in the house. Nalini (A-1) met them for the first time. They spent night there. Nalini (A-1) and Subha were quite upset that Haribabu had unexpectedly also died in the blast. Subha told Nalini (A-1) that it was she who had personally prepared Dhanu to put the belt on her waist containing the bomb. The bomb had two switches and for it to explode Dhanu had pressed one switch after another. The bomb contained a small battery for electric circuit. On the morning of 22.5.1991 Santhan (A-2) brought some newspapers. At about 7.30 a.m. they all went to the house of D.J. Swaminathan (PW-85), a neighbour, to watch TV news. The whole day they spent in the house of Jayakumar (A-10).

435. On the morning of 23.5.1991 Sivarasan left the house and came back at about 8.30 a.m. on a red Kawasaki Bajaj motor cycle. He dropped Nalini (A-1) to her office on the motor cycle. Since the office on that day was not working Nalini (A-1) went to Royapettah house to her mother. She learnt that in the morning Sivarasan had come there and gave details of the incident to Murugan (A-3) and Bhagyanathan (A-20). In the evening Nalini (A-1) accompanied by Murugan (A-3) went to her house at Villivakkam. She got the key of the house from Rani (PW-90).

436. On the morning of 25 5.1991 Sivarasan told Nalini (A-1) that they all should go out of Madras and go to Tirupathi. Nalini (A-1) and Murugan (A-3) after locking the house and handing over the key to Rani (PW-90) went to Royapettah house. In the afternoon Sivarasan, Nalini (A-1), Murugan (A-3), Padma (A-21) and Subha went in a tourist taxi to Tirupathi. They returned on the next day. In Tirupathi Nalini (A-1) did Angapradakshnam. Rooms in Tirupathi were taken in the name of taxi driver V. Ramasmy (PW-107). Taxi was arranged by Bhagyanathan (A-20) from Sriram Travels of R. Shankar (PW-117) and S. Vaidyanathan (PW-104). It was on the suggestion of Sivarasan that nobody would suspect if Padma (A-21) also accompanied them to Tirupathi. Before leaving for Tirupathi Nalini (A-1) went to her neighbour Gajalakshmi (PW-189) and told her that she had arranged for Abhishekam at Pillaiyar Temple for 26.5.1991 and that as she would not be available Gajalakshmi (PW-189) might attend the Abhishekam. While going to Tirupathi Sivarasan and Subha were picked up from Parrys Corner and on return they were dropped there. Padma (A-21) went to her Royapettah house. Murugan (A-3) and Nalini (A-1) went to Villivakkam house where they packed up their belongings and came to stay at Royapettah house. Murugan (A-3) arranged a house for him at Madipakkam on 28.5.1991 where Nalini (A-1) and he could hide. However, he started staying in the press of Bhagyanathan (A-20). Nalini (A-1) continued to attend her office till 7.6.1991. On 7.6.1991 she gave a plastic cover containing Rs. 25,000/- to her colleague N. Sujaya Narayan (PW-96) and requested her to keep the same

in her table drawer. Three days earlier Murugan (A-3) had come to the office of Nalini (A-1) and took her to a lady doctor to know if Nalini (A-1) was pregnant. That day they stayed in Madipakkam house. On 6.6.1991 Nalini (A-1) asked her sister Kalyani to go to Villivakkam house and settle the rent arrears with the landlord there. On 7.6.1991 as per earlier programme Nalini (A-1) and Murugan (A-3) went to Ashtalaxmi temple at Besant Nagar where Subha and Sivarasan also came. Sivarasan said that CBI was making detailed inquiries and invited Nalini (A-1) to go to Sri Lanka with him. Nalini (A-1) declined, He then told her to take Subha to a doctor as she was very weak. Nalini (A-1) took Subha to Asian Hospital at Besant Nagar and doctor advised her to take rest and prescribed some medicines. Sivarasan and Subha then left by an auto. Nalini (A-1) and Murugan (A-3) also returned. Nalini (A-1) went to see the lady doctor, who confirmed that she was pregnant.

437. On the morning of 8.6.1991 Nalini (A-1) suggested to her mother that they all should commit suicide. This was because of the fear that CBI was looking for them. Nalini (A-1) brought some poison from a nearby shop but then they decided not to commit suicide. She and Murugan (A-3) decided to go out of Madras. On the morning of 9.6.1991 Nalini (A-1) went to her office. It was Sunday. She took out the amount of Rs. 25,000/- kept by N. Sujaya Narayan (PW-96) in her table drawer. Nalini (A-1) then wrote a resignation letter (Exh. P-471) on a slip of paper and kept it on the table of N. Sujaya Narayan (PW-96). She handed over the key of her office to maid servant of N. Sujaya Narayan (PW-96). She did not attend the office from 10.6.1991. Murugan (A-3) and she left for Tirupathi by bus and stayed there in a lodge. The lodge was taken in an assumed name "Lalitha with one other". Murugan (A-3) tonsured his head. On 11.6.1991 they left Tirupathi and went to Madurai and stayed in the house of R. Ravi Srinivasan (PW-115), Nalini (A-1) had known to R. Ravi Srinivasan (PW-115) as she had worked with him as his steno. Before coming to the house of R. Ravi Srinivasan (PW-115) Nalini (A-1) had called him up from Tirupathi on phone and asked him whether she could stay with her husband in his house for few days. Nalini (A-1) told R. Ravi Srinivasan (PW-115) that she had married one Sri Lankan citizen and introduced Murugan (A-3) as her brother-in-law by name Raju. While they were all sitting for breakfast a telephone call came for Muthupandian, who was sub-inspector of police. R. Ravi Srinivasan (PW-115) sent his maid servant to call Muthupandian. He was, however, not in his house. Nalini (A-1) was quite perplexed when she asked R. Ravi Srinivasan (PW-115) how he knew the police. He told her that Muthupandian was his neighbour and he had given the telephone number of R. Ravi Srinivasan (PW-115). He then asked Nalini (A-1) as to why she was afraid of police to which she replied that since she had married a Sri Lankan and her parents did not like that and that they had lodged a complaint with the police.

438. On the morning of 12.6.1991 Nalini (A-1) woke up and told R. Ravi Srinivasan (PW-115) that they were going to Meenakshi Temple and will come back later. When the newspapers came that day R. Ravi Srinivasan (PW-115) found a notice published with the caption "Do you know these women, who are connected with Rajiv's assassination".

In that notice there was description of Nalini (A-1) mentioned. R. Ravi Srinivasan (PW-115) gave information on telephone to SIT at about 10.00 a.m. Nalini (A-1) and Murugan (A-3), however, did not return from the temple. Murugan (A-3) had left his cap (MO-395) in the house which R. Ravi Srinivasan (PW-115) handed over to the police. From Madurai Nalini (A-1) and Murugan (A-3) went to Villupuram and then to Devangere near Bangalore on 13.6.1991 and stayed there in the house of Sasikala (PW-132). There Nalini (A-1) introduced Murugan (A-3) as her brother-in-law Thas (Doss) to Sasikala (PW-132). Sasikala (PW-132) met Nalini (A-1) earlier in a common acquaintance house and had conversed with her. Nalini (A-1) told Sasikala (PW-132) that she was two months pregnant. Husband of Sasikala (PW-132) came to the house in the evening. He asked Nalini (A-1) how and when she got married. Nalini (A-1) said it was a long story and it would take time to narrate. While she was narrating her story Murugan (A-3) stopped her mid way and said they had to go to Madras urgently. During the course of their stay Nalini (A-1) told Sasikala (PW-132) that her husband was a Sri Lankan citizen and that he had brought two girls to see Madras. Sasikala (PW-132) in her statement then says as under:

Then Nalini told me that she showed them beach and market. Then Nalini told me that those girls told her that they have to see Rajiv Gandhi's meeting which is to be held at Sriperumbudur on May 21, 1991 and so that she took them to the Rajiv Gandhi meeting and one girl died in it. Nalini told me that since the police had suspected her husband, he gave the sum of Rupees twenty five thousand and asked her to go with his brother and later he will come and bring her. She told me that her husband told her that he will come and take her after the election was over and there will be tight police security in the seashore. Nalini told me that since the police suspect them, they came to this area. On hearing this I was frightened. Then my husband came to our house I told him about this matter, separately. He also frightened. Then Thas told us that we should not tell about this with anybody else.
Both Nalini (A-1) and Murugan (A-3) left for the bus stand and were dropped there by husband of Sasikala (PW-132). While at Sasikala's (PW-132) place they bought new cloths. Nalini (A-1) left behind in the house of Sasikala (PW-132) her old dress which was seized by the CBI (Exh. P-634) and later identified in court by Sasikala (PW-132) as that of Nalini (A-1). Sasikala (PW-132) identified both Nalini (A-1) and Murugan (A-3) as the persons who stayed in her house. Sasikala (PW-132) also said that Nalini (A-1) told her that her husband had brought two girls from Sri Lanka to Madras for sight seeing.

After being dropped at the bus stand Nalini (A-1) and Murugan (A-3) came to Bangalore. From there they picked up a bus for Villupuram and from Villupuram to Madras. It was on 14.6.1991 when they got down at Saidapet bus stand, Madras they were arrested.

439. Confession of Bhagyanathan (A-20) bears out what Nalini (A-1) said in her confession. Apart from the fact that we find truthfulness in the version given by Nalini (A-1), it also stands corroborated by material particulars. We may briefly note what

Bhagyanathan (A-20) said in his confession. In 1988 he got acquainted with Muthuraja, an Indian and strong LTTE sympathizer. It was through Muthuraja that Baby Subramaniam became known to Bhagyanathan (A-20) when he was working at Suba Studio. Various persons connected with LTTE used to come to Suba Studio to meet Baby Subramaniam. In the course of time Bhagyanathan (A-20) was also attracted towards LITE. In 1989 Bhagyanathan (A-20) used to stay in the house of Muthuraja during nights. He then came in contact with Arivu (A-18), a diploma holder in Electronics and Communications. Arivu (A-18) was meeting Baby Subramaniam everyday. He was selling books and collecting news for the political propaganda wing of LITE. Baby Subramanian was senior member of LTTE and was incharge of political wing of LTTE in Tamil Nadu. At the suggestion of Muthuraja, Bhagyanathan. (A-20) purchased the press being run by Baby Subramaniam in 1990. He bought it for a petty sum of Rs. 5,000/- though he purportedly bought it for Rs. 51,000/-. He was told not to pay the balance amount and instead he was required to print monthlies of Tamileelam and Urumal which were being published from the press. Baby Subramaniam left for Srilanka in the end of May, 1990. Arivu (A-18) and Irumborai (A-19) also went along with him. They, however, returned after about four or five months. Irumborai (A-19) came to be known to Bhagyanathan (A-20) through Baby Subramaniam as he was also in the political wing of LTTE.

440. During last months of 1990 State Government had taken strong steps against LTTE because of the killing of EPRLF leader Padmanabha and his associates at Madras. It had become difficult for LTTE to operate freely in India and now they were doing so clandestinely. Arivu (A-18) and Irumborai (A-19) when on their return came from Sri Lanka brought with them photographs and literature published by LTTE showing weapons seized by LTTE from IPKF. These were distributed by Arivu (A-18) to Tamil magazines and to various supporters of LTTE movement. LTTE was having a office of its political wing in Madras which was sealed and some persons were arrested by the police. That was around November, 1990. According to Bhagyanathan (A-20) it was at the instance of Muthuraja that he allowed Murugan (A-3)to reside with their family at Royapettah house though that was initially objected by Padma (A-21). Murugan (A-3) told Bhagyanathan (A-20) that he had come to India to learn English. Subsequently, however, he told him that he belonged to Intelligence Wing of LTTE under the charge of Pottu Amman. Bhagyanathan (A-20) was put in fear, the time he purchased the press from Baby Subramaniam that he and his family might have to face consequences if he operated against LITE.

441. When Murugan (A-3) needed a person to assist him Bhagyanathan (A-20) introduced Haribabu to him. Haribabu had also worked with Suba Sundaram (A-22) as photographer. He was also known to Muthuraja and was interested in LITE. He would come to the meetings conducted in support of LITE, take photographs and give them to Suba Sundaram (A-22) and Muthuraja. He was being paid anything from Rs. 100/- to Rs. 1000/- a month.

442. In April, 1991 there was change of Government and LTTE men were searched and arrested with the result that Arivu (A-18) also started residing in Royapettah house. Murugan (A-3) joined English speaking course in an institute in Madras. At the request of Muthuraja LTTE publications, photographs and posters were shifted, which were kept in the house of M. Sankari (PW-210), to the house of V. Radhakrishnan (PW-231) (MO-594 to 632). The material which was shifted included the 'Black Book' (B.B.) in three volumes. In the third volume (MO-609) there was a diagram of electric circuit. Prosecution has tried to infer that the electric circuit used in the waist belt-bomb to kill Rajiv Gandhi was identical to the diagram in MO-609. The material was shifted by Arivu (A-18), Bhagyanathan (A-20) and Haribabu. P. Vadivelu (PW-202) is a tempo driver in whose tempo the material was shifted from the house of M. Sankari (PW-210) to the house of V. Radhakrishnan (PW-231). V. Radhakrishnan (PW-231) is working in the Customs Department of the State Government. He was familiar with Arivu (A-18) and Suba Sundaram (A-22). In January, 1991 Arivu (A-18) had asked him for a house for keeping his books. V. Radhakrishnan (PW-231) told him that he was not having any house at Madras but had one in his village. Arivu (A-18) agreed for that house and in March, he sent his books in a tempo with two persons. When the books were being kept there Arivu (A-18) had also come. After seeing that the books related to LTTE movement V. Radhakrishnan (PW-231) asked Arivu (A-18) to remove those books on which Arivu (A-18) said that he would do so within a month or two months time. A sum of Rs. 50/- was paid by him to the mother of V. Radhakrishnan (PW-231) towards rent. All this material was subsequently seized by the police.

443. Various persons connected with LTTE activities in Tamil Nadu came to be known to Bhagyanathan (A-20) since they used to come either to meet Suba Sundaram (A-22) or Baby Subramaniam or Murugan (A-3). In his letter (Exh.P-453) Bhagyanathan (A-20) to Baby Subramaniam said that he was running the press properly though he had shifted the press to another place and that he had informed Arivu (A-18) about that and he was keeping contact with him. He also described the working of the press. The letter was recovered during course of investigation. Bhagyanathan (A-20) learnt about the attending the meeting of Rajiv Gandhi and Jayalalitha and of V.P. Singh and also about Subha and Dhanu from his sister Nalini (A-1). Bhagyanathan (A-20) in his confession said that around 7.00 p.m. on 20.5.1991 Haribabu came to their house when K. Bharathi (PW-233), his other sister Kalyani, Nalini (A-1), Murugan (A-3), Arivu (A-18) and he were there in the house. He said at the instance of Haribabu he did get from Arivu (A-18) a Kodak colour roll which he handed over to Haribabu. But there is no charge against Bhagyanathan (A-20) that he handed over the film roll to Haribabu. Rather this charge is against Arivu (A-18) of handing over the Kodak colour film roll to Haribabu. According to Bhagyanathan (A-20) on 23.5.1991 when Nalini (A-1) came to Royapettah house she told him as to how Sivarasan asked her to take leave on 21.5.1991; how they all went to Sriperumbudur by bus when during travel from Madras to Sriperumbudur Nalini (A-1) came to know that Dhanu was about to assassinate Rajiv Gandhi; how after reaching the

place of meeting Sivarasan took Dhanu with him and by paying Rs. 500/ - to woman constable they moved to the front row and Haribabu took photos; and finally how they escaped after the blast. On 21.5.1991 Bhagyanathan (A-20) and Arivu (A-18) had gone to see a movie at 9.30 p.m. and when they returned they came to know that Rajiv Gandhi had been assassinated. After reaching home they informed Murugan (A-3) and others about this. Murugan (A-3) did not express any surprise or shock. Next morning video and audio cassettes belonging to Arivu (A-18) were removed from Royapettah house and taken to the house of Veeramani, a friend of Arivu (A-18).

444. On 23.5.1991 Sivarasan came to Royapettah house and informed the death of Haribabu. Arivu (A-18) and Murugan (A-3) were there at that time. Bhagyanathan (A-20) and Arivu (A-18) went to Subha Studio to get the address of Haribabu. Murugan (A-3) sent Rs. 1000/- to the family of Haribabu which money was handed over by Bhagyanathan (A-20) there. At this stage Bhagyanathan (A-20) also learnt that Haribabu had taken a camera from K. Ravi Shankar (PW-151) to get photograph of garlanding Rajiv Gandhi as was told by Haribabu to K. Ravi Shankar (PW-151). When Bhagyanathan (A-20) told this fact to Suba Sundaram (A-22) he said not to open his mouth in this regard. But Ravi Shanker (PW-151) does not say of any conversation he had with Haribabu when he took the camera (MO-1). Bhagyanathan (A-20) said that he compelled his mother Padma (A-21) to go to Tirupathi along with Nalini (A-1), Murugan (A-3), Sivarasan and Subha in the car arranged by him. He burnt LTTE stickers and Prabhakaran's stickers.

445. On 25.3.1991 Dhanu's photo, which had been taken by Haribabu, was published in the papers. On 26.5.1991 Sivarasan's photo was published. On 27.5.1991 Murugan (A-3) asked Bhagyanathan (A-20) to meet Sivarasan at Mount Road Post Office. They both went by auto. Sivarasan gave Bhagyanathan (A-20) the motor cycle key and a bag containing documents of the motor cycle and asked him to take away the motor cycle (MO-82) and conceal it, which had been parked nearby. He warned them that even though he was not there they may be watched by somebody. He also said that he would arrange a cyanide capsule for Nalini (A-1). Fearing arrest by the police Bhagyanathan (A'-20) allowed Murugan (A-3) to stay in his press for four or five days. Thereafter he was arrested by the police.

446. MO-82 Kawasaki Bajaj Motorcycle used by Sivarasan was subsequently seized by the police during investigation from the press of Bhagyanathan (A-20).

447. We may at this stage note a letter (Exh. P-128) dated 7.9.1991 written by Trichi Santhan (deceased accused) to Irumborai (A-19) when he was on his way to Sri Lanka. This letter was seized from Irumborai (A-19). In this Trichy Santhan gave instructions to Irumborai (A-19) what he was to tell Prabhakaran in Sri Lanka. Photocopy of this letter is Exh.P-131. But another letter (Exh.P-129) which was seized from Irumborai (A-19) was one addressed by Trichy Santhan to Prabhakaran. He is complaining about the mishandling of the whole affair by Sivarasan and about other things. Letter of Irumborai

(A-19) gives him instructions as to what he should tell prabhakaran and what he should not. Some of these instructions are:

* Don't speak as though you knew in advance about Rajiv's incident.

* Speak about the persons who are monthly paid, because we are caught only while going to make payments to them.

* Speak about the prevailing political situation/also about the leader.

* Speak in details about the mistake committed in our association with the supporters of Raghuvaran like Arvin/person connected with the press of Baby Anna/ Haribabu/Subha Sundaram. Name of the movement would not have come to light, had it been done through our own people as done in Padmanabha's case. Movement behind Arivu, Subha Sundaram and presence of our emblems in the press are these not evidence?

448. From these instructions prosecution wants to infer that Irumborai (A-19) was member of the conspiracy to kill Rajiv Gandhi and so was Trichy Santhan (DA), Arivu (A-18), Haribabu Suba Sundaram (A-22) and perhaps Bhagyanathan (A-20), who was running the press earlier run by Baby Subramaniam. We, however, do not think that advantage can be drawn by the prosecution from this letter. It is a post-conspiracy letter. It does not show if Trichy Santhan was a conspirator. There is no evidence of Trichy Santhan being a member of the conspiracy to kill Rajiv Gandhi. He was one of the persons who committed suicide in Bangalore. Then any knowledge of conspiracy is not enough to implicate a person as a member of the conspiracy.

449. Padma (A-21) did not know if Murugan (A-3) was an LTTE activist when he came to stay in her house at the instance of Muthuraja, who told her that his house was being watched by police. Only later on she came to know that Murugan (A-3) was an LTTE activist. He helped her financially as financial condition of Padma (A-21) was not sound. Padma (A-21) had even borrowed money from M. Chandra (PW-214) (Rs.4000/-), who was working as a maid in the neighbourhood of Kalyani Nursing Home, where Padma (A-21) was working and where her employer had been admitted. This amount Padma (A-21) returned three months prior to the death of Rajiv Gandhi. Padma (A-21) had also borrowed money from R. Janaki (PW-226) whom she knew. This amount she returned in the month of March, 1991. From the notebook of Murugan (A-3) (MO-286), which was seized during the course of investigation, the amounts paid by him to Padma (A-21) have been mentioned. Padma (A-21) introduced Murugan (A-3) to K. Bharathi (PW-233) as the boy who had been sent by Muthuraja and had come from Tirunelveli to learn English. Whenever Sivarasan came to the house of Padma (A-21) she found that Sivarasan, Murugan (A-3), Arivu (A-18) and Bhagyanathan (A-20) "used to discuss matters in low tone". On 20.5.1991 a day before the assassination of Rajiv Gandhi Dhanu had sprain in her leg. Nalini (A-1) suggested Sivarasan to take Subha and Dhanu to Kalyani Nursing

Home for treatment of Dhanu where her mother Padma (A-21) was working. K. Rajalakshmi(PW-76), who was working as a pharmacist in Kalyani Medical center, stated on the basis of the records maintained in the center that six tablets of Brufen were given to Padma (A-21) on 20.5.1991. Sivarasan asked Padma (A-21) to prescribe medicine for Dhanu as she was having sprain in her leg. Dhanu, however, refused to show her leg. She asked for pain-killer. She was given six brufen tablets. Later in the evening at about 8.30 p.m. on 20.5.1991 when Padma (A-21) came back home she learnt through Kalyani, K. Bharathi (PW-233) and Arivu (A-18) that Nalini (A-1), Murugan (A-3) and Haribabu had come and after finishing their dinner they had left. Sivarasan also met Nalini (A-1) in the house. Next day Padma (A-21) returned from her duty at 4.00 p.m. After Arivu (A-18) and Bhagyanathan (A-20) came back from the late night show they told her that Rajiv Gandhi had been assassinated in a bomb blast. On 23.5.1991 Nalini (A-1) when came to the Royapettah house she informed Padma (A-21) that she had gone along with Sivarasan, Subha, Dhanu and Haribabu to Sriperumbudur on the night of 21.5.1991 for Rajiv Gandhi's assassination. This made Padma (A-21) worried. She was more concerned about Nalini (A-1) and Murugan (A-3). When on the morning of 24.5.1991 Dhanu's photo was published in the papers Padma (A-21) was frightened and was in fear of her arrest. On 26.5.1991 after return from Tirupathi Nalini (A-1) vacated her Villivakkam house and she and Murugan (A-3) came to the house of Padma (A-21). From 27.5.1991 onwards Nalini (A-1) was going to her office while Murugan (A-3) was staying in the house. On 27.5.1991 Murugan (A-3) gave Padma (A-21) one Code Sheet belonging to LITE, meant for transmitting secret messages through wireless, so that it might not be seized by the police. He asked her to keep that safely hidden. Padma (A-21) gave that Code Sheet to her co-nurse Devasena Raj (PW-73) for safe custody. Devasena Raj (PW-73) in her statement said that it was on the morning of 7.5.1991 when she was going for duty that Padma (A-21) asked her to keep one brown cover in her locker. Padma (A-21) said it was important. MO-106 is the brown cover and papers which were in the cover are MO-107 and MO-108. These were taken into possession by the police during investigation. Both Padma (A-21) and Bhagyanathan (A-20) were arrested on 12.6.1991. There is a wireless message dated 12.6.1991 sent by Sivarasan from Wireless Station 910 to Station 91 of Pottu Amman which reads "the brother of officer-girl, her mother were arrested". Reference to office-girl is to Nalini (A-1).

450. Murugan (A-3) is a Srilankan national. He joined LTTE movement in 1988. He is hard-core LTTE activist. He took training in shooting, drill, political classes and weaponary; He used to train new entrants. He spent two months in Yalpanam (Jaffna) fort and was also guarding the prison there. He subjected prisoners to torture in order to elicit information. Over thirty persons died due to the torture inflicted on them by various methods. Murugan (A-3) in his confession described the set up of LITE. He said, among them, Prabhakaran (absconding accused) was the world leader, Mathiah was political leader, Pottu Amman (absconding accused) was leader of spy wing and the man incharge of military was Palraj. Shanthi was incharge of intelligence wing of women in LTTE and her next in command was Akila (absconding accused). Murugan (A-3) told Pottu Amman

that he did not like the job he was doing. Pottu Amman asked him to go to India for an important job. In January, 1991 Murugan (A-3) joined the suicide squad of LITE. He was given the job of procuring the sketch of the interior of Chennai Fort, Police Headquarters at Chennai and various other police stations with their locations. He was also asked to take photographs and video graphs of those places. He was given two gold biscuits weighing one kilo each and a sum of Rs. 2000/- in cash. He was told that when he reached Indian soil he would be met by Sivarasan who would take him to Kanthan at Madras. Kanthan would arrange a house for him- and if any news were to be given by Murugan (A-3), these were to be sent through wireless set of Kanthan and if any further amount was required Kanthan was to give the same. In the third week of January, 1991 Murugan (A-3) reached Kodiakkarai on Indian soil. Along with him one Mukunthan came, who was a smuggler. Sivarasan met him there. He told him that though his name was Raghuvaran he was having the name of Sivarasan in India and should be called by that name. From there both Sivarasan and Murugan (A-3) came to Madras and went to the house of Robert Payas (A-9). Kanthan met Murugan (A-3) in the house of Robert Payas (A-9). He was having a red colour Yamaha motorcycle. Kanthan and Sivarasan were quite close to each other. One Nisanthan was assisting Kanthan. After staying in the house of Robert Payas (A-9) for five days, in the first week of February, 1991 arrangements for his stay in Royapettah house of Padma (A-21) were made. This was as per plan of Muthuraja as stated by Murugan (A-3). Here Murugan (A-3) came in contact with Nalini (A-1) and other members of the family. Murugan (A-3) did go to an institute for learning English for two or three days and thereafter he stopped. Because of his influence Nalini (A-1) became very much attracted to LTTE movement. In March, 1991 Sivarasan asked Murugan (A-3) to find out from Padma (A-21) if she would come with him to Delhi to arrange a house for their stay. Padma (A-21) did not agree. When Sivarasan asked Murugan (A-3) about this he felt that there was some plan for serious act like murder. However, he did not ask for any details from Sivarasan. On his request Bhagyanathan (A-20) introduced Haribabu as his confidential man to Murugan (A-3). In the third week of February, 1991 Murugan (A-3) and Haribabu went to Vellore and saw the Fort where certain persons belonging to LTTE were arrested and detained. Haribabu of his own went to Vellore three or four times and collected the structure of the jail interiors and maps as desired by Murugan (A-3). These were sent to Pottu Amman through Kanthan's code message. Murugan (A-3) was snubbed that he should do that work only which was entrusted to him at Madras and he was to do his duty without questioning. Pottu Amman told Murugan (A-3) that if he was asked to watch a particular shop he should not watch the next shop. Haribabu was doing the job of taking photographs and videograph of St. George Fort, Chennai, Fort buildings, DGP Office, Police stations and their locations. Murugan (A-3) asked Bhagyanathan (A-20) and Arivu (A-18) also to take photographs of these places. After collecting the same he sent them to Sri Lanka. In the last week of March, 1991 Sivarasan asked Murugan (A-3) that he had plan to garland Rajiv Gandhi for the first time in a public meeting and asked him if he could arrange for an Indian girl for that purpose. When the name of Rajiv Gandhi was mentioned Murugan (A-3) understood that the next target was Rajiv Gandhi. As Rajiv Gandhi was responsible for

the atrocities committed by IPKF, there were strong feelings among the women folk to wreak vengeance on him. Murugan (A-3) understood that Sivarasan had come with a plan to murder Rajiv Gandhi but Sivarasan neither told that nor confirmed about that to Murugan (A-3). Murugan (A-3) said he would arrange for an Indian girl. Nalini (A-1) was thus thought of. Again in the first week of May, 1991 Sivarasan told Murugan (A-3) that he had brought two girls Subha and Dhanu from Sri Lanka and he required an Indian girl for him to finish the job as both Subha and Dhanu would speak Tamil in Sri Lankan dialect and in order to mix with the crowd without any suspicion he felt the need of an Indian Tamil girl. They then decided to make use of Nalini (A-1). Murugan (A-3) knew Subha and Dhanu as the women working with LTTE. Murugan (A-3) attended public meeting of Rajiv Gandhi and Jayalalitha on 18.4.1991 along with Nalini (A-1) at Madras. Haribabu had also come to that meeting and took photographs of Jayalalitha and Rajiv Gandhi. Murugan (A-3), Subha, Dhanu, Haribabu and Nalini (A-1) went to the public meeting of V.P. Singh on 7.5.1991. That was to rehearse if Dhanu and Subha could go to the dais and garland V.P. Singh. Nalini (A-1) was assigned to take photographs. This was a "dry run". A fabricated press accredited card prepared by Haribabu was given to Murugan (A-3) (Exh. P-521). This press accredited card with Murugan's (A-3) photo and name was seized from the house taken on rent by Murugan (A-3) at Madiapakkam. Forged press accreditation photo card was also given by Haribabu to Sivarasan. This was for them to gain access to VIP. When Murugan (A-3) got instructions to go to Sri Lanka he purchased some articles and got collected other things. He reached Kodiakkarai on the Indian soil on 14.5.1991 and stayed there upto 17.5.1991. Since no boat came he returned to Madras. The boxes which he was carrying he left at Kodiakkarai with M. Mariappan (PW-86), an employee of Shanmugham(DA). Those were subsequently recovered and seized and letters written by Subha, Dhanu and Bhagyanathan (A-20) (Exh. P-95, P-96 and P-453) were found. Two volumes of "Satanic Force" (MO-125 and 126), video cassettes showing various parts of Fort St. George (MO-323), photographs of DGP Office etc. (Mos-256-259) were also found. Murugan (A-3) reached Madras on 18.5.1991 and stayed with Nalini (A-1). While at Kodiakkarai, Murugan (A-3) met Shankar (A-4) and gave him a slip of paper (Exh.P-1062) containing the name: "Nalini-Thass-419493". On 20.5.1991 Sivarasan came to Royapettah house to instruct them to be ready for the meeting of Rajiv Gandhi on the next day. Murugan (A-3) went to the house of Haribabu and since Haribabu was not available he asked his sister to tell Haribabu to go to Royapettah house. On the night of 21.5.1991 Murugan (A-3) was in Royapettah house. When Arivu (A-18) and Bhagyanathan (A-20) came at 1.30 a.m. after seeing late night show they told him about Rajiv Gandhi's assassination by human bomb. From this Murugan (A-3) understood that Sivarasan had finished his task. Now he was anxious about Nalini (A-1). While at Tirupathi on 25.5.1991 Sivarasan told Murugan (A-3) about the belt bomb. He told him there were two switches and after switching the first switch on, Dhanu asked Sivarasan to go away. Murugan (A-3) when asked Sivarasan the reasons for killing of Rajiv Gandhi he replied that Kasi Anandhan (PW-242) had met Rajiv Gandhi at Delhi and was told that the meeting was very cordial there and if Rajiv Gandhi came to power he would help LTTE movement. Prabhakaran showed the letter written by Kasi

Anandhan (PW-242) suggesting cordial relations to Pottu Amman and said that people like Kasi Anandhan (PW-242) should be removed from the movement. When Sivarasan met Prabhakaran he told him that "we must teach a lesson to Rajiv Gandhi through the girls since IPKF dishonoured women". From this Murugan (A-3) understood that decision to assassinate Rajiv Gandhi was taken by Prabhakaran. When on 7.6.1991 Murugan (A-3) met Sivarasan at Astalakshmi Temple it was decided that Murugan (A-3) would continue the task of Sivarasan and these tasks were to take care of old Vijayanandan (A-5) living in the house of Vanan; to send Arivu (A-18) to Delhi and also to contact Santhan (A-2). Sivarasan also said that they must go back to Sri Lanka on or before June 10/11, 1991 and that he was arranging the boat for the purpose from Nagapattinam.

451. Santhan (A-2) is a Sri Lankan national. He knew Sivarasan as they both belonged to same town in Sri Lanka. According to Santhan (A-2) important decisions like murder of any body could be taken only by Prabhakaran. Santhan (A-2) knew that Sivarasan was a member of military wing of LTTE movement. He knew the set up of LTTE, its activities and its skirmishes with IPKF. In February, 1988 Sivarasan asked Santhan (A-2) if he wished to continue his education at Madras, LTTE would make arrangements for that. Santhan (A-2) accepted the offer. He and Sivarasan came to India on 15.2.1990. They reached Kodiakkarai by boat and overnight stayed in the house of shanmugam (DA). Next day they went to Madras and to the house of one Nagarajan, a smuggler and a Sri Lankan Tamil. Sivarasan, Nagarajan and Shanmu-gavadivelu (A-15) took Santhan (A-2) to Madras Institute of Engineering Technology where he got admission. Nagarajan was introduced as uncle of Santhan (A-2). Fees and expenses were paid by Sivarasan. Santhan (A-2) was residing in the hostel. Santhan (A-2) in his confession has described as to how Padmanabha, leader of EPRLF and other leaders of EPRLF were killed by Sivarasan and other LTTE tigers David, Danial alias Dinesh Kumar and Ravi on 19.6.1990 and how they were able to effect the escape back to Sri Lanka. Santhan (A-2) though himself did not take part in the killing was entrusted with the duty to watch the place where meeting of EPRLF was being held and to give that information to Sivarasan. He also escaped with Sivarasan and other Sri Lankans. Pottu Amman welcomed them and praised them by patting their shoulders. Prabhakaran also met them and shook hands with David, who was incharge of Padmanabha's murder. Because of this incident Santhan (A-2) discontinued his studies. P.S. Padmanabhan (PW-187) was a student of Madras Institute of Engineering Technology. He identified Santhan (A-2) as Raja who was studying in that Institute. He said Santhan (A-2) studied in the institute only for a couple of days and thereafter he did not see him. In the last week of April, 1990 Pottu Amman called him and asked him to get ready on 27.4.1991 to go to Tamil Nadu with a group under the leadership of Sivarasan. On the morning of 1.5,1991 Santhan (A-2) along with other comprising a group of nine arrived at Kodaikkarai in the boat from Sri Lanka. They stayed for a short while in the house of deceased accused Shanmugam. Then all these persons left for various places after arriving at the Indian soil. Santhan (A-2) stayed in the house of Robert Payas (A-9) at Porurtill 5.5.1991. On 5.5.1991 Santhan (A-2) was

introduced to Haribabu, Murugan (A-3) and Arivu (A-18) by Sivarasan. Sivarasan asked Haribabu to take Santhan (A-2) to his residence for Santhan (A-2) to stay there. That evening Sivarasan also took Santhan (A-2) to the residence of Jayakumar (A-10) where he met Jayakumar (A-10) and his wife Shanthi (A-11). That night Santhan (A-2) stayed in the house of Jayakumar (A-10) with Sivarasan. Next day Santhan (A-2) went to the house of Haribabu. When Haribabu's mother asked Santhan (A-2) his native place he told her that he was from Pariyakulam, Madurai. Santhan (A-2) stayed in the house of Haribabu for about a week. On 12.6.1991 Santhan (A-2) met Sivarasan who inquired from him about his Switzerland visit. Santhan (A-2) said he had inquired about that from a travel agent P. Veerappan (PW-102) who told him that his passport would be ready within a week. Sivarasan remarked that if he did not go to Switzerland LTTE would suffer a loss of Rs. 1,00,000/-.

452. P. Veerappan (PW-102) said that he was doing the job of getting passports and renewal of old passports and also getting visas. He knew C. Vamadevan (PW114) who started the business of brokerage of letting houses on rent. In that connection Vamadevan (PW-114) came in contact with Shanmugavadivelu (A-15). In the end of April, Shanmugavadivelu (A-15) met Vamadevan (PW-114) and asked him if he could suggest some agent to send his brother-in-law to a foreign country. Vamadevan (PW-114) thought of P. Veerappan (PW-102) and took Shanmugavadivelu (A-15) to him. When P. Veerappan (PW-102) asked Shanmugavadivelu (A-15) as to which country his brother-in-law belonged to he replied that he belonged to Madras only. P. Veerappan (PW-102) told him that he had a friend who would arrange for his brother-in-law to go to a foreign country. He asked hanmugava divelu (A-15) to bring necessary documents such as passport, ration card, school certificate, etc. and his brother-in-law should also come along with him. Shanmugavadivelu (A-15) was told that the expenses of visa, ticket and foreign exchange for the purpose would be Rs. 80,000/- and Rs. 50,000/-- were required in advance. In the first week of May, 1991 Shanmugavadivelu (A-15) brought his brother-in-law and introduced him to P. Veerappan (PW-102). He asked him certain questions. After two or three days C. Vamadevan (PW114) and Shanmugavadivelu (A-15) came to P. Veerappan (PW-102) and gave him Rs. 50,000/-. Shanmugavadivelu (A-15) said that other documents he will bring within a few days. Shanmugavadivelu (A-15) again met P. Veerappan (PW-102) two/three times and told him that necessary documents were getting ready. In the second week of July, 1991 brother-in-law of Shanmugavadivelu (A-15) came to P. Veerappan (PW-102) and asked him if papers were ready for his foreign trip. He told that documents have still not been given to him. P. Veerappan (PW-102) identified Santhan (A-2), who was introduced to him as brother-in-law by Shanmugavadivelu (A-15). P. Veerappan (PW-102) was, however, unable to identify if Shanmugavadivelu (A-15) was the person who brought Santhan (A-2) to him though Vamadevan (PW-114) identified both Santhan (A-2) and Shanmugavadivelu (A-15) in court.

453. Santhan (A-2) told Sivarasan that he was not comfortable staying in the house of Haribabu. Sivarasan then took him to the house of Jayakumar (A-10) on 13.5.1991. On 15.5.1991 Sivarasan gave a letter to Santhan (A-2) and asked him to give it to Kanthan, who was in Robert Payas's (A-9) house. Santhan (A-2) gave the letter to Kanthan who in turn gave him Rs. 5 lacs and asked him to give the sum to Sivarasan. Santhan (A-2) accordingly paid the amount to Sivarasan who took Rs. 2,00 lacs and asked him to keep the balance with him. On 17.5.1991 Sivarasan and Santhan (A-2) went to Eashwari Lodge and met Snankar (A-4). Sivarasan took Rs. 10,000/- from Santhan (A-2) and gave that to Shankar (A-4). On 18.5.1991 Sivarasan again got Rs. 20,000/-- from Santhan (A-2). He asked Santhan (A-2) to go to the house of Robert Payas (A-9) where he gave Rs. 4,000/- to Ruban (A-6). Then both Robert Payas (A-9) and Santhan (A-2) went to Pondy Bazaar and purchased clothes and a watch for Ruban (A-6). Ruban (A-6) came to stay at Robert Payas's (A-9) house only a day before. At the instance of Sivarasan, Santhan (A-2) brought Ruban (A-6) to Marina Beach on 19.5.1991. Sivarasan and Ruban (A-6) talked to each other and then all three went to the house of Vijayendran (PW-111), a Sri Lankan national. After that all four of them and one more boy went to Central Station of Railway. A send off was given to Ruban (A-6), Vijayendran (PW-111) and the boy on a train to Delhi on way to Jaipur.

454. Santhan (A-2) said that Ruban (A-6) had lost one of his legs in bomb blast and that journey was to take treatment for that. More money was given by Kanthan to Santhan (A-2) who in turn gave that back to Sivarasan. Sivarasan asked Santhan (A-2) to furnish him the account of money he received from Kanthan which account Sivarasan had to give to a man going to Sri Lanka. The account which Santhan (A-2) wrote as told to him by Sivarasan was as under:

"Income:		
Received from Kanthan Through Santhan	Rs.	9,50,000
Received from Kanthan by Sivarasan	Rs.	9,50,000
Expenditure :		
To X Y	Rs.	3,00,000
Delta (Murugan)	Rs.	25,000
	Rs.	5,000
A.T.	Rs.	1,00,000
	Rs.	3,50,000
	Rs.	1,00,000
To Y X through Delta	Rs.	5,00,000
To self (Sivarasan)	Rs.	15,000"

455. Sivarasan then asked Santhan (A-2) as to why he had not shown the amount of Rs. 50,000/- which was given to Santhan (A-2). He asked Santhan (A-2) that out of that amount Rs. 25,000/- be paid to Murugan (A-3) and Rs. 5,000/- each to Jayakumar (A-10) and Keerthi. These amounts Santhan (A-2) paid as directed after the assassination of Rajiv Gandhi. On 20.5.1991 Santhan (A-2), Jayakumar (A-10) and Sivarasan were in the house

of Jayakumar (A-10). before that on 16.5.1991 Sivarasan had told Santhan (A-2) that Prabhakaran had paid special attention on Santhan (A-2) after the murder of Padmanabha and important works were allotted to him and all this was on account of the cooperation given by Santhan (A-2) in Padmanabha case. Santhan (A-2) said that Sivarasan also told him that he was going to help Subha and Dhanu to finish Rajiv Gandhi. In Jayakumar's (A-10) house Santhan (A-2) stayed upto 28.5.1991. D.J. Swaminathan (PW-85) in his deposition said that Santhan (A-2) stayed in the house of Jayakumar (A-10) from 16.5.1991 to 26.5.1991.

456. On 21.5.1991 Santhan (A-2) saw Sivarasan in white kurta-pyjama. Sivarasan inserted a white cloth bag containing a pistol in his hip pocket and asked Santhan (A-2) whether the gun was protruding outside the dress. To this Santhan (A-2) replied in the negative. The pistol was Czechoslovakia make. Cloth bag was stitched by Shanthi (A-11) two days earlier. A pistol (MO-79) was seized by P.P. Chandrasekara Nair (PW-271) from the house at Konanakunte (Bangalore) where Sivarasan, Subha and others committed suicide. Sivarasan then went out and returned around mid-night when Santhan (A-2) was sleeping. Sivarasan woke him up and told him that Rajiv Gandhi and Dhanu had died. He also told that he had brought one sister who was a helper of LTTE. His reference was to Nalini (A-1). Next morning Sivarasan, Subha and Nalini (A-1) went to the house of a neighbour to watch TV. On 28.5.1991 Santhan (A-2) went to Tirupathi in the assumed name of Kumaresan. On his return journey from Tirupathi he saw the picture of Sivarasan in Kurta Pyjama in a newspaper. He went to the house of Robert Payas (A-9) and not to the house of Jayakumar(A-10). On 30.5.1991 Robert Payas (A-9), his wife Prema, sister Latha and Santhan (A-2) went to Thiruchendur and planned to stay in a cottage there. Receptionist there, on hearing Santhan (A-2), asked him his address. He gave the address as No. 30, Vanniar Street, Choolaimedu. Santhan (A-2) then left the place fearing that they would be trapped if the receptionist asked the PIN code of Choolaimedu. From Thiruchendur they came to Madurai and after staying there for a while left for Madras reaching there early morning. Robert Payas (A-9) and his family returned to Porur house while Santhan (A-2) went to K.K. Nagar. In between he had been meeting Sivarasan and getting instructions from him. He said Sivarasan told him that thereafter Murugan (A-3) would look after his work and that of Kanthan, i.e., to send Keerthi to Colombo, Athirai (A-8) to Delhi, to send money to Ruben (A-6); provision of a house for Shankar (Shankar (A-4)); and arranging money for such works. Sivarasan was frantically trying to escape to Sri Lanka. Santhan went to the house of P. Thirumathi Vimala (PW-62) to meet Athirai (A-8) who was staying there. He took Shanmugavadivelu (A-15) along with him.

457. P. Thirumathi Vimala (PW-62) said that Santhan (A-2) did come to her house and said that he was acquainted with Athirai (A-8) that he knew her already and that he had come to see her. She told him that she was having problem and asked him to take away Athirai (A-8) immediately. He said he would do that. He wanted a letter for Dixon (DA)

who was staying in Gowri Karunakaran's house, a relative of P. Thirumathi Vimala (PW-62).

That letter was delivered at Gowri Karunakaran's house. Santhan (A-2) got a reply while he was still in the house of P. Thirumathi Vimala (PW-62). At his request Santhan (A-2) was taken to the house of Gowri Karunakaran. When he met Dixon he knew that he was a member of LTTE. A few days later Santhan (A-2) again come to the house of P.Thirumathi Vimala (PW - 62) and told her that Shanmugavadivelu's (A-15) house had been searched by the CBI and had caught him and that perhaps CBI would come to the house of P.Thirumathi Vimala (PW-62) also since Athirai (A-8) who was staying there was not holding passport and that it would be problem for her. He said he had, therefore, come to take Athirai (A-8) as directed by Sivarasan. Athirai (A-8) then went along with Santhan (A-2). before leaving, Athirai (A-8) left Rs. 8,000/-with P. Thirumathi Vimala (PW-62). Around 1.7.1991 when P. Thirumathi Vimala (PW-62) came to her house she found Santhan (A-2) and Athirai (A-8) waiting for her. Athirai (A-8) wanted her money back. P. Thirumathi Vimala (PW-62) said that she never expected them to come back immediately and that she had already spent Rs. 1,500 out of that money for certain purchases and was left with Rs. 6,500/-. They said it was alright and asked her to give that money to them. They then left. Kangasabapathy (A-7) had also come along with Santhan (A-2) and Athirai (A-8) but afterwards had left before P. Thirumathi Vimala (PW-62) returned to her house.

Santhan (A-2) then received a message from Dixon that he wanted to meet him. Dixon told Santhan (A-2) that all their wireless messages were spied by Tamil Nadu police. Santhan (A-2) took Athirai (A-8) to Pamal house where he also stayed. On the night of 1.7.1991 Santhan (A-2) made Athirai (A-8) to get in the train at Central Railway Station to Delhi and then went to Pamal house and stayed there. Though Santhan (A-2) in his confession said that he saw off Athirai (A-8) at the Central Railway Station but evidence shows that he saw off both Kanagasabapathy (A-7) and Athirai (A-8) on 1.7.1991 to New Delhi.

458. In letter (Exh.P-129) dated 7.9.1991 written by deceased accused Trichy Santhan to Prabhakaran he mentioned that arrest of Santhan (A-2) was a great danger to LTTE and that members of the movement had been captured alive and that members had made disclosure right from Padmanabha incident.

459. Confession statement of Shanmugavadivelu alias Thambi Anna (A-15) was recorded on 18.5.1992 while he was arrested on 16.5.1992. He is a Sri Lankan national and gives his family background. He was owning a lorry along with another in Sri Lanka and doing business there. However, his business was hit because of war between LTTE and Sri Lankan army. His house was damaged in 1987 by bomb lodged by Sri Lankan army. He then decided to stay in India. Since 1985 while in Sri Lanka LTTE had started collecting money from each family for its war efforts. He left Colombo on 19.6.1987 and came to

Madras with his wife and two children and his sister's son. Initially he stayed with his elder sister's son Dr. Thiru Vadivel (Dentist). Then he rented a house where he started living with his family. In 1988 Dr. Thiru Vadivel went back to Sri Lanka hoping that situation would normalize after the presence of IPKF in Sri Lanka. Shanmugavadivelu (A-15) got the telephone No. 864249 of Dr. Thiru Vadivel installed in his house. That telephone always remained in the name of Dr. Thiru Vadivel. Shanmugavadivelu (A-15) started lorry service along with his wife's brother Arvinda Das. One Karunakaran was working as a lorry contractor in Madras harbour. 35% of the profit was taken by Karunakaran and rest 65% was shared between Shanmugavadivelu (A-15) and Arvinda Das. According to Shanmugavadivelu (A-15) Arvinda Das was disbursing money to Sri Lankan Tamils there from lorry service. He was also receiving money from Sri Lanka at times for distribution as per instructions received on telephone by him. Shanmugavadivelu (A-15) knew P. Thirumathi Vimala (PW-62) from Sri Lanka. She had come to India three or four years earlier to Shanmugavadivelu (A-15). She shifted to her house at Royapettah in 1990. P. Thirumathi Vimala (PW-62) was known to wife of Shanmugavadivelu (A-15). They were on visiting terms. One child was born to Shanmugavadivelu (A-15) while in India. One day two persons by the name Sivarasan and Santhan (A-2) came to the house of Shanmugavadivelu (A-15) and wanted to give a letter to P. Thirumathi Vimala (PW-62). Shanmugavadivelu (A-15) took them to the house of P. Thirumathi Vimala (PW-62). When Sivarasan and Santhan (A-2) expected some money from Shanmugavadivelu (A-15) he told them that that matter was attended to by Arvinda Das. Sivarasan said that whenever Santhan (A-2) would come and ask for money that be given to him. When Shanmugavadivelu (A-15) took them to P. Thirumathi Vimala's (PW-62) house she was not at home. He, however, introduced Sivarasan to her daughters who were aged 15 and 16 years. After four or five days Santhan (A-2) again came to the house of Shanmugavadivelu (A-15) and asked to be taken to the house of P. Thirumathi Vimala (PW-62) which again Shanmugavadivelu (A-15) did. At that time also P. Thirumathi Vimala (PW-62) was not at home. One week before Rajiv Gandhi's assassination Santhan (A-2) came to the house of Shanmugavadivelu (A-15) and gave him a bundle containing Rs. 1.25 lacs for safe custody. Shanmugavadivelu (A-15) had helped Santhan (A-2) to get admission in M.I.E.T. Institute through Nagaraja. After four or five days Santhan (A-2) again came and this time gave Rs. 3.20 lacs to Shanmugavadivelu (A-15). This money Santhan (A-2) took back subsequently. One day when he came to get some money from Shanmugavadivelu (A-15) by that time photo of Sivarasan connected with the assassination of Rajiv Gandhi was published in newspaper. Shanmugavadivelu (A-15) asked Santhan (A-2) about Sivarasan and his photo appearing in paper to which Santhan (A-2) said that he need not worry. before the assassination of Rajiv Gandhi one-day P. Thirumathi Vimala (PW-62) with her daughter and Athirai (A-8) came to the house of Shanmugavadivelu (A-15). Athirai (A-8) said that she expected a phone call from foreign country and told Shanmugavadivelu (A-15) that she might be informed about that. Daughter of P. Thirumathi Vimala (PW-62) told Shanmugavadivelu (A-15) that Athirai (A-8) was Sivarasan's person. Next day when phone call came which was attended to and the person who spoke on the phone said that he was Athirai's (A-8)

brother. He asked to call Athirai (A-8) and said that he would call again within an hour. Shanmugavadivelu (A-15) went and called Athirai (A-8). After one hour phone call came but Shanmugavadivelu (A-15) did not know what were they talking about. On May 30/31, 1991 Athirai (A-8) again came to the house of Shanmugavadivelu (A-15) to receive a phone call about which Shanmugavadivelu (A-15) did not know. Wife of Shanmugavadivelu (A-15) did not like Athirai (A-8) when she came to know that she was LTTE person. Wife of Shanmugavadivelu (A-15) had strong dislike for LTTE because on one occasion they kidnapped their son aged four years and on other two brothers-in-law including Arvinda Dass were kidnapped. LTTE used to ask for money before releasing the kidnapped but no one did make any complaint about that. Wife of Shanmugavadivelu (A-15) had thus developed a great hatred for LTTE. When Sivarasan and Santhan (A-2) came to the house of Shanmugavadivelu (A-15) for the first time they had noted his phone number. Shanmugavadivelu (A-15) does not talk of any help rendered by him to Santhan (A-2) to go abroad and for that purpose to get passport and visa for him or about any conversation between him and P. Veerappan (PW-102) and C. Vamadevan (PW114). In one of the papers seized from Ruban (A-6) at Jaipur telephone number of Shanmugavadivelu (A-15) 864249 is mentioned. From this prosecution seeks to draw an inference that Ruban (A-6) was sent to Jaipur by Santhan (A-2) and Sivarasan on 17.5.1991 for fixing a hide out and he was given telephone number of Shanmugavadivelu (A-15) as his contact number. Shanmugavadivelu (A-15) was known to Sivarasan and Santhan (A-2) as early as 1990 and had helped Santhan (A-2) to get admission in Madras Institute of Engineering Technology.

460. There is no confession of Ruban (A-6). Vijayendran (PW-111) is a Sri Lankan national. He came to India in 1979, studied here, wrote many books and acted in films. Sivarasan met Vijayendran (PW-111) in the second week of April, 1991 at railway platform bookstall and introduced himself. During conversation Sivarasan told him that he was leaving for Sri Lanka in a week's time. Vijayendran (PW-111) had not received any letter from his home in Sri Lanka for more than one and a half years. He asked Sivarasan to hand over his letter to his mother, brothers and also to receive a reply to that. Sivarasan after two days of the meeting came to the house of Vijayendran (PW-111) to collect the letter. Sivarasan again met him on 11.5.1991 bringing to him reply dated 8.5.1991 to his letter. He addressed Vijayendran (PW-111) as brother. Vijayendran (PW-111) expressed gratitude to Sivarasan for his help. Once Sivarasan came to the house of Vijayendran (PW-111) with Santhan (A-2). Sivarasan requested Vijayendran (PW-111) to accompany Ruban (A-6), who was introduced as Suresh Kumar, to Jaipur to fix an artificial limb as he did not have left leg. Vijayendran (PW-111) asked whether there was no doctor available in Madras but Sivarasan said that in India Dr. Sethi was a specialist in that medical field and was based in Jaipur and he wanted treatment for Ruban (A-6) from him. Vijayendran (PW-111) agreed. He, however, told Sivarasan that he would take another person along with him as he himself did not know Hindi. Sivarasan gave him Rs. 15,000/- in cash to meet the medical expenses and the conveyance charges. He asked Vijayendran (PW-111) to buy tickets of G.T. Express for Delhi leaving on 17.5.1991. The

railway tickets were got reserved by Vijayendran (PW-111) on 14.5.1991. Ruban (A-6), Vijayendran (PW-111) and a boy called Ajas Ali left by G.T. Express on 17.5.1991. Sivarasan and Santhan (A-2) had come to see them off. Sivarasan told Vijayendran (PW-111) that Santhan (A-2) would come to him to receive any letter which might be given to him by Ruban (A-6) on his return. Vijayendran (PW-111) said that Sivarasan asked him to use his name as Maharaja in. which name he was writing his poems. After arriving at Delhi the group then went to Jaipur on the evening of 19.5.1991. They stayed in Golden Lodge in the names of Ajas Ali, Suresh Kumar and Maharaja. Next day they went to meet the doctor. While at Jaipur on 22.5.1991 Vijayendran (PW-111) came to know about the assassination of Rajiv Gandhi at Sriperumbudur. He said they got into panic as they could be suspected as Tamilians. Ruban (A-6) suggested to vacate the lodge. Next day in the evening they changed to Vikram Lodge. Vijayendran (PW-111) met Mr.Rajan, Manager of the Lodge and asked him to help Ruban (A-6) for getting treatment as Dr. Sethi had given them appointment for 13.6.1991. He along with Ajas Ali left Jaipur on 24.5.1991 for Madras reaching there on the night of 27.5.1991. Ruban (A-6) told him that he would write letter to him addressed as Maharaja and to hand over that to Santhan (A-2). Ruban (A-6) gave him a letter which had already been written by him. Vijayendran (PW-111) saw the photo of Sivarasan published in newspaper on 29.5.1991 with announcement that his whereabouts be informed as he was the main person involved in the assassination of Rajiv Gandhi. That shook Vijayendran (PW-111). On 30.5.1991 Sivarasan came to him and inquired about Ruban (A-6) if he had given any letter. The letter which Ruban (A-6) had written was handed over to Sivarasan.. Vijayendran (PW-111) asked about his picture published in the newspapers. At this he gave sarcastic smile and told him in authoritative tone that he was going to Sri Lanka and would return after three months and then left. One more letter was received from * Ruban (A-6) by Vijayendran (PW-111) on 3/4.6.1991. On 7.6.1991 Santhan (A-2) came to collect that letter. As seen above Santhan (A-2) gave Vijayendran (PW-111) a sum of Rs. 2,000/- and asked him to send it to Ruban (A-6) by telegraphic money order. Entries in the lodge registers at Jaipur were made by Vijayendran (PW-111) (Exh.P-111 and 523).

461. Ruban (A-6) was one of the nine persons who had clandestinely landed at Indian soil in a boat from Sri Lanka on 1.5.1991. In his confession Robert Payas (A-9) said that he met an LTTE boy who had come to his house along with Indrankutti on 9.5.1991. He said the name of that boy was Ruban alias Suresh. He had lost one of his legs in bomb blast in Sri Lanka and had come to India along with Sivarasan for his treatment.

462. Y.R. Nagarajan (PW-106) was working as receptionist in Golden Lodge in Jaipur. He has testified to the stay of Vijayendran (PW-111), Ruban (A-6) and Ajas Ali. He said Ruban (A-6) did not have left leg. Ruban (A-6) stayed in Jaipur till 20.6.1991 when he was arrested. Search was effected in the room in the lodge where Ruban (A-6) was staying. One of the documents seized is a telephone index book (MO-659) containing telephone numbers of Robert Payas (A-9) and Shanmugavadivelu (A-15). In a bunch of papers (MO-667) seized on 15.6.1991 from the house of Murugan (A-3) at Madipakkam, in one of the

papers there was Jaipur address of Ruban (A-6). A letter (Exh.P-1200) dated 18.6.1991 written by Santhan (A-2) to Ruban (A-6) at Vikram Lodge address was also recovered from the lodge. In this letter Santhan (A-2) had advised Ruben (A-6) to again shift from his present place of stay to another safe place. This is an inland letter written after the death of Rajiv Gandhi. This letter is stated to have been handed over by Rajan, Manager of Vikram Lodge, to police inspector R.D. Kalia (PW-236). It is not the original letter rather a Xerox copy. Original is stated to have been lost in the court and as such secondary evidence was allowed to be led. This document is proved by the handwriting expert K. Ramakrishnan (PW-262) but only the address is said to be in the writing of Santhan (A-2). There is no evidence about the contents of the letters as if written by Santhan (A-2). In the notebook (MO-159) there is entry (Exh.P-439) giving details of expenses incurred for Ruban (A-6). In the confession of Irumborai (A-19) he has mentioned about the deceased accused Jamuna alias Jameela an injured LTTE tigress staying in Neyveli in Tamil Nadu for getting an artificial leg fixed as she had lost her leg in the fight at Jaffna against the Army. Ruban (A-6) did not get artificial limb in Jaipur and it was fixed in Madras itself while he was in judicial custody.

463. Arivu (A-18) was little less than 20 years of age on the date of assassination of Rajiv Gandhi. He was sympathizer of LTTE movement. In 1986 he took part in an agitation and was imprisoned for 15 days in Madras. Suba Sundaram (A-22) was known to his father. Arivu (A-18) joined his studio (Suba Studio) in May, 1989. Muthuraja and Baby Subramaniam used to visit Suba Studio. Arivu (A-18) became close to them and started working for LITE. He started selling and distributing LTTE literature. He used to sell these books in public meetings. In Suba Studio he also came in contact with Bhagyanathan (A-20) and deceased accused Haribabu, who were also working there. Even after they had left Suba Studio they used to come there. On account of the influence of Baby Subramaniam and his assistant Muthuraja both Bhagyanathan (A-20) and Haribabu were attracted towards LTTE movement and got involved there. When Arivu (A-18) came to Madras in May, 1989 he started staying with Bhagyanathan (A-20) and also with Muthuraja. Place of Muthuraja was used by LTTE people. In connection with LTTE work Arivu (A-18) used to visit Bangalore quite often. Arivu (A-18) also got in contact with Suresh Master (DA) and Trichy Santhan. Both were having important place in LITE. Arivu (A-18) was being paid by Trichy Santhan for the work done by him for LITE. He was getting a fixed amount every month. After the shooting incident of killing of Padmanabha and others by LTTE at Madras offices of LTTE were closed and thereafter it was an underground movement. Arivu (A-18) went to Sri Lanka with Baby Subramaniam in June, 1990. Irumborai (A-19) also went with them. In Sri Lanka Arivu (A-18) met Prabhakaran and other leaders and assured them to give full support for LTTE movement. During his stay in Sri Lanka there was war between LTTE and Sri Lankan Army. Then he learnt about the atrocities committed by IPKF and a feeling of revenge came to his mind. He and Irumborai (A-19) came back to India in the second week of October, 1990 with other wounded LTTE soldiers. Now he was full-fledged worker of LTTE. It was from February, 1991 that Arivu (A-18) started staying with Bhagyanathan

(A-20). It was on account of the fact that President Rule was extended in January, 1991 and police was taking strong action against LTTE. Arivu (A-18) left his own residence and went to stay with Bhagyanathan (A-20). After Muthuraja went to Sri Lanka his job was taken over by Arivu (A-18). He was getting money from deceased accused Suresh Master and Trichy Santhan for meeting his expenses and was also paying to M. Sankari (PW-210), sister of Muthuraja. Arivu (A-18) in his confession statement said that Murugan (A-3) had come to Tamil Nadu from Sri Lanka for an important work of LTTE and in this work Haribabu was helping him and for that Haribabu had been receiving monthly salary from Murugan (A-3). Murugan (A-3) had been appointed in the spy wing of LTTE. Arivu (A-18) was recording TV news in VCR in Royapettah house. In March, 1991 he went with Murugan (A-3) to Vellore for LTTE work as in Vellore Fort and Jail Sri Lankan Tamils and LTTE personnel were kept in custody. Blast of Vellore Fort and Jail and releasing of LTTE militants was one of the LTTE works in India. Various people connected with LTTE would come to the house of Bhagyanathan (A-20). Arivu (A-18) said when these people were talking among themselves he understood that it was for a very important and dangerous act and he had a strong suspicion that the target would be Rajiv Gandhi.

464. In April, 1991 when Sivarasan came to the house of Padma (A-21) he asked Arivu (A-18) if he was prepared to work with him. Arivu (A-18) agreed to work for him as Sivarasan was a senior LTTE member. Bhagyanathan (A-20) had already accepted to work for Sivarasan, before going to Sri Lanka Muthuraja has handed over his work to Arivu (A-18) and also instructed Bhagyanathan (A-20) to give all help to Arivu (A-18) as may be needed for the movement. Muthuraja had also requested Nalini (A-1) to provide all help to Arivu (A-18) in his absence. Photos and publications of LTTE movement and other books which were with Muthuraja were kept by Arivu (A-18). In March, 1991 he shifted them to the house of V. Radhakrishnan (PW-231), a friend of Arivu (A-18). These contained a 3 volume Black Book and in the 3rd volume of the book there was a diagram of an electric circuit similar to one used for the belt bomb by the assassin Dhanu. Arivu (A-18) said that when the material was being transported Bhagyanathan (A-20) was also with him. On 3.5.1991 Arivu (A-18) met Sivarasan in India and at that time deceased accused Gokul alias Nero and Murugan (A-3) were also with him. Sivarasan asked Arivu (A-18) to buy a large size car battery, clips and other articles. Arivu (A-18) went to a shop along with Nero and bought battery, wire and other articles. Apart from other things battery was meant for a wireless set which Sivarasan wanted.to install, by which he would contact LTTE Headquarters in Sri Lanka. While buying battery he gave his name as Rajan and also wrong address. Sivarasan also told Arivu (A-18) that he wanted a motorcycle to facilitate his travel and for the purpose he had come to India. He asked Arivu (A-18) to make arrangements for it as he himself did not want his name to be exposed. Arivu (A-18) arranged one Kawasaki Bajaj Motorcycle (Registration No. TN-07-A-5203). He took Sivarasan to the showroom on 4.5.1991 and bought the motorcycle in his own name but giving a wrong address. With the same wrong address Arivu (A-18) had also opened a bank account in the bank. Sivarasan had given money for the purchase

of the motorcycle. Arivu (A-18) also bought 9-volt battery (golden power) and gave that to Sivarasan. Arivu (A-18) said in his confession that Sivarasan used this (Battery) only to blast the bomb. On 7.5.1991 Arivu (A-18) had also gone to attend the public meeting of V.P. Singh and there he saw Nalini (A-1), Subha, Dhanu and Murugan (A-3). These three women were trying to step on towards the stage. Nalini (A-1) was requesting the organizers of the meeting and the police while Subha and Dhanu were standing with rose garlands in their hands. Haribabu was also seen on the stage. Arivu (A-18) did not see Sivarasan. Arivu (A-18) knew that Subha and Dhanu were lady tigresses of LTTE brought from Jaffna in Sri Lanka by Sivarasan for his job and they were "going and coming with Nalini (A-1)". After the end of the public meeting Murugan (A-3) gave a colour film roll to Arivu (A-18) for developing. None of the pictures had come out clearly. Arivu (A-18) also bought a multi meter for Sivarasan for use to test the electrical equipments. He had also bought earth wire. Sivarasan asked Arivu (A-18) to look after Vijayanandan (A-5), who was a senior LTTE leader. Vijayanandan (A-5) had come to India along with Sivarasan in the group of nine persons arriving on 1.5.1991. Vijayanandan (A-5) was staying in Komala Vilas lodge. Arivu (A-18) met him and took him to the house of N. Vasantha Kumar (PW-75). Vijayanandan (A-5) was to buy some books for the LTTE movement. In his confession Arivu (A-18) described N. Vasantha Kumar (PW-75) as his partner. He also described N. Vasantha Kumar (PW-75) as an LTTE member and close to Sivarasan. Once he said he had gone with N. Vasantha Kumar (PW-75) to the house of Trichy Santhan (DA). N. Vasantha Kumar (PW-75) was involved in publishing the LTTE propaganda book "Satanic Force" which contained articles relating to atrocities committed by IPKF. It was Trichy Santhan (DA) who was giving finance for that. On 20.5.1991 Arivu (A-18) learnt that in the evening when Nalini (A-1), Murugan (A-3) and Haribabu were in the house of Bhagyanathan (A-20) Sivarasan had a talk with Nalini (A-1) and Haribabu. Padma (A-21) had also come back from hospital at 8.00 p.m. According to Arivu (A-18) Sivarasan had a talk regarding the public meeting of Rajiv Gandhi to be held on the next day. at Sriperumbudur. He gave a Kodak colour film roll to Haribabu. After having their food Haribabu, Murugan (A-3) and Nalini (A-1) left. On 21.5.1991 Arivu (A-18) and Bhagyanathan (A-20) went to see late night movie and when they returned from the show they heard the news that Rajiv Gandhi was murdered. Murugan (A-3) confirmed it. On 22.5.1991 Arivu (A-18) packed his goods from the house of Padma (A-21) and cleared them one by one and kept at the houses of his friends. On 23.5.1991 Sivarasan came to the house of Padma (A-21) in the morning and gave details about the incident resulting in the assassination of Rajiv Gandhi. He also told them about the unexpected death of Haribabu in the bomb blast. He asked Arivu (A-18) to go to Suba Sundaram (A-22) to see the progress in getting the body of Haribabu. That evening Nalini (A-1) also came to the house of Padma (A-21) late in the evening and told about the murder of Rajiv Gandhi. Arivu (A-18) did not feel safe in the house of Bhagyanathan (A-20). Murugan (A-3) had already hidden himself at Bhagyanathan's Press. Arivu (A-18) had a fear that he might be found so he then went and stayed with his parents at Jolarpet. before going to Jolarpet Murugan (A-3) had asked Arivu (A-18) to come to Gandhi Beach on 10.6.1991 in the evening at 7 O'clock to discuss about further proceedings. Arivu (A-

18) came to Gandhi Beach but Murugan (A-3) was not there. He also searched for Bhagyanathan (A-20) next day but again could not meet him. After few days Arivu (A-18) was arrested.

465. N. Vasantha Kumar (PW-75) is an artist. In 1984 he met a person by the name Raghavan in a bookshop who came to the shop to buy books for LTTE. When Raghavan came to know that N. Vasantha Kumar (PW-75) was an artist he asked him if he would print books for LTTE organization. N. Vasantha Kumar (PW-75) agreed. Raghavan introduced himself to Baby Subramaniam and Nithyanandam, President of LTTE Propaganda Committee. N. Vasantha Kumar (PW-75) was promised Rs. 1000/- for his labour in getting the books printed for LITE. In his deposition N. Vasantha Kumar (PW-75) has described as to how he had become close to top rank leaders of LTTE including Pottu Amman, Prabhakaran, Kasi Anandan and others. He also visited LTTE training camp near Mettur in Tamil Nadu. N. Vasantha Kumar (PW-75) in partnership with Basheer Ahamad also published magazine called 'Pudhu Yugam'. The publication was stopped after two issues. In 1988 N. Vasantha Kumar (PW-75) was engaged to print calendars and some other pamphlets for LTTE at a monthly salary of Rs. 1500/-. He got printed various pamphlets like 'Indian Military Offensive', 'An unjust war against Tamils', 'Indo-Sri Lanka Accord', 'LTTE point of view', etc. In 1989 when DMK came to power in Tamil Nadu Baby Subramaniam was moving about openly in all places in an auto. He met N. Vasantha Kumar (PW-75) and asked him to print a book by the name 'Socialistic Tamil Ezham'. That book gave the political programme of LTTE. The book was got printed by N. Vasantha Kumar (PW-75) and his work was appreciated by Prabhakaran. Later Baby Subramaniam asked N. Vasantha Kumar (PW-75) to publish a big book by the name "Satanic Force" containing the atrocities of IPKF and other articles criticizing Rajiv Gandhi. N. Vasantha Kumar (PW-75) was promised Rs. 2000/- per month for the work in printing the book. A separate flat was hired for the purpose. All expenses of printing the book and hiring the flat, etc. were met by Baby Subramaniam. The material for the book "Satanic Force" was supplied by Baby Subramaniam. The book contained statements of LTTE leaders, news published in India and foreign countries, essays, comments, advertisements, cartoons and statements of Sri Lankan Tamilians who had suffered. The book also contained collections of photographs. N. Vasantha Kumar (PW-75) designed the book. Paper for the book was purchased in the name of Ramesh, a member of LTTE for Rs. 3,20,000/-. N. Vasantha Kumar (PW-75) had also gone with Ramesh to buy the paper. Ramesh gave a bogus address to the shopkeeper for preparation of the bill. "Satanic Force" is in two parts which contained information up to March, 1990. N. Vasantha Kumar (PW-75) said he used to often meet Baby Subramaniam in Suba Studio. Arivu (A-18) and Irumborai (A-19) were always with Baby Subramaniam. Since the book "Satanic Force" was against Indian Peace Keeping Force and Rajiv Gandhi it was thought not to mention that it was printed in India. Baby Subramaniam asked N. Vasantha Kumar (PW-75) to show that the book was printed in U.K. Some copies for the books when finished were sent to Sri Lanka to Baby Subramaniam and the mode of transport was informed to Baby Subramaniam. Thereafter Baby Subramaniam went to

Jaffna in Sri Lanka accompanied by Arivu (A-18) and Irumborai (A-19). N. Vasantha Kumar (PW-75) then described the attempt made by him to get the payment of the book to be made to various parties. Four sets of the books were printed and ready. Two sets were kept by N. Vasantha Kumar (PW-75) and two sets were given by him to Arivu (A-18). N. Vasantha Kumar (PW-75) said he received a letter from Prabhakaran appreciating his work who told him that he had written letter to Trichy Santhan (DA) who was in charge at Trichy to make the payment for the book. Prabhakaran also wrote that N. Vasantha Kumar (PW-75) could come to Sri Lanka whenever he wished. He said he tore the letter after reading that. On 2 or 3.5.1991 N. Vasantha Kumar (PW-75) and Arivu (A-18) went to Trichy to get payment from Trichy Santhan. In the morning Arivu (A-18) took N. Vasantha Kumar (PW-75) to a house at Ramalinga Nagar where Irumborai (A-19) was also present along with some other workers. At about 11.00 a.m. Trichy Santhan (DA) came. Arivu (A-18) introduced N. Vasantha Kumar (PW-75) to him. Trichy Santhan (DA) paid Rs. 90,000/- to N. Vasantha Kumar (PW-75) and promised to pay the balance through Arivu (A-18). They then returned to Madras. In the first week of May, 1991 Arivu (A-18) came to the. house of N. Vasantha Kumar (PW-75) with Vijayanandan (A-5). Arivu (A-18) asked him to help Vijayanandan (A-5) in purchasing the books for LTTE library. N. Vasantha Kumar (PW-75) made Vijayanandan (A-5) to stay in his adjoining flat. Vijayanandan (A-5) told N. Vasantha Kumar (PW-75) that he was a supporter of LTTE and that Pottu Amman had called him and had asked him to take charge of the library and for that purpose he had come to purchase the books. He also told him that about seven or eight days ago he had come to Kodiakkarai with eight other persons illegally in an LTTE boat. When N. Vasantha Kumar (PW-75) asked him if he had the list of books to be purchased, he replied that he did not have the list and that he would purchase the books directly. N. Vasantha Kumar (PW-75) sent Basheer Ahmad for helping Vijayanandan (A-5) in purchasing the books. Vijayanandan (A-5) had purchased about 400 books. Vijayanandan (A-5) used to talk about the atrocities committed by IPKF in Sri Lanka and his hatred towards Rajiv Gandhi. He gave him a book 'Alisiya' and its Tamil manuscript and told N. Vasantha Kumar (PW-75) that Pottu Amman had asked him to print three thousand copies of the book in the letter press. Vijayanandan (A-5) for that purpose gave Rs. 10,000/- and again Rs. 20,000/-. He also gave N. Vasantha Kumar (PW-75) a list of books which he could not purchase and asked him to purchase those books and for that purpose also he gave N. Vasantha Kumar (PW-75) Rs. 5,500/-. On 10.5.1991 Arivu (A-18) came to meet N. Vasantha Kumar (PW-75) with Sivarasan on a Kawasaki Bajaj motorcycle. Sivarasan had come to see Vijayanandan (A-5), All three of them talked for about ten minutes and then Arivu (A-18) and Sivarasan left. N. Vasantha Kumar (PW-75) wanted to visit Moogambigai on 19.5.1991. He, therefore, asked Arivu (A-18) to take Vijayanandan (A-5) with him. Arivu (A-18) promised that he would come and take him. On 17.5.1991 early in the morning at 6.00 a.m. Irumborai (A-19) came to the house of N. Vasantha Kumar (PW-75) and inquired about Arivu (A-18). When told Arivu (A-18) had not come Irumborai (A-19) left leaving a message for Arivu (A-18) to meet him urgently. Later when Arivu (A-18) came N. Vasantha Kumar (PW-75) informed him accordingly. Again he asked Arivu (A-18) to take Vijayanandan (A-5) with him. On the morning of

18.5.1991 Sivarasan came on motorcycle and took Vijayanandan (A-5) with him. He asked Vijayanandan (A-5) if he had purchased the books. Vijayanandan (A-5) replied that he had purchased everything. Sivarasan told Vijayanandan (A-5) that he would give him an address where he could stay and asked him to leave immediately. Vijayanandan (A-5) packed his dresses and left. While leaving he told N. Vasantha Kumar (PW-75) that he would take the books later. On the morning of 19.5.1991 Arivu (A-18) again came to the house of N. Vasantha Kumar (PW-75) and told him that Trichy Santhan had sent Rs. 75,000/- for the book "Satanic Force". N. Vasantha Kumar (PW-75) told him that since he was leaving for the tour the money could be given by Arivu (A-18) to Balcon Press. N. Vasantha Kumar (PW-75) after his tour with his family and friends returned to Madras. While away he learnt about the assassination of Rajiv Gandhi through news broadcast on radio on the morning of 22.5.1991 by a bomb blast at Sriperumbudur while attending the meeting. On 29.5.1991 picture of Sivarasan was published in the Hindu newspaper. N. Vasantha Kumar (PW-75) recognized Sivarasan who had been brought to his house by Arivu (A-18). On 30.5.1991 Arivu (A-18) again came, to meet N. Vasantha Kumar (PW-75).and gave him Rs. 25,000/-, He was asked about the photo of Sivarasan and whereabouts of Sivarasan and if Arivu (A-18) was having any connection with the murder. At this Arivu (A-18) laughed sarcastically and left without any reply. Due to fear N. Vasantha Kumar (PW-75) did not inform the matter to anybody. At Balcon Press where Arivu (A-18) had gone to hand over Rs. 75,000/-- he came to know that police was in search of him. He was afraid and left Madras and went to his friend at Neyveli. In his absence on 4.6.1991 Vijayanandan (A-5) had come to his house and gave his wife a bag, Rs. 5,000/- and three sarees and told her that he would come and collect the same later. N. Vasantha Kumar (PW-75) returned from Neyveli and then with his family left Madras and stayed at a place outside the city. At this point of time he learnt the name of Sivarasan though earlier he was never introduced to him by that name. On 18.1.1992 one CBI inspector came to meet N. Vdsantha Kumar (PW-75) and asked him to appear at Malligai police station where he identified the books "Satanic Force" got printed by him. N. Vasantha Kumar (PW-75) identified various material got printed by him from time to time. He identified the notes regarding the books, etc. purchased by Vijayanandan (A-5) when he had come to the house of N. Vasantha Kumar (PW-75) and N. Vasantha Kumar (PW-75) seen him writing (Exh.P-351). He also identified the books 'Aljsiya' and its Tamil manuscript (MO-113 and 114). He also identified various other documents and the articles recovered from the house.

466. Delip Chordia (PW-88) is a dealer of tyres and batteries. The name of his firm is International Tyres Service from whose shop Arivu (A-18) purchased the battery. He identified the battery (MO-209) sold to one Rajan on 3.5.1991. Battery (MO-209) was seized by M. Narayanan (PW-281), D.S.P. from the pit dug in the kitchen of the house occupied by Vijayan (A-12). Mohanraj (PW-254), wireless expert, stated that a wireless set could be operated using the 12 volt battery like MO-209. Wireless set was installed in the house of Vijayan (A-12) by making use of battery MO-209 for communication with

LTTE leaders in Sri Lanka which was operated by deceased accused Nero, who was a wireless operator and came to India in nine member group on 1.5.1991.

467. R. Ravichandran (PW-95) is a salesman of the showroom from where Kawasaki Bajaj motorcycle (MO-82) bearing registration No. TN-07-A-5203 was purchased by Arivu (A-18). The address which Arivu (A-18) gave while buying motorcycle was the address of Padma (A-21) when she was staying in Kalyani Nursing Home quarters. At the relevant time of purchase of motorcycle she was, however, staying in Royapettah house.

468. N. Moideen (PW-91) was working as a salesman in a shop in Royapettah High Road. He said that in the second week of May, 1991 he sold two golden power batteries for Rs. 46. He was asked if he could identify the man whom police officers had brought to the shop as the person to whom he sold the batteries. He identified Arivu (A-18).

469. G.J. Srinivasan (PW-252), Assistant Director, Tamil Nadu Forensic Science Laboratory, Madras after examining the portion of 9 volt golden power battery (MO-678) recovered from the scene of the crime gave opinion that these were the portions of 9 volt golden power battery.

470. Lt. Col. Manik Sabharwal (PW-157), Bomb expert and Dr. P. Chandrasekaran (PW-280), Director, TNFSL, Madras gave opinion that 9 volt golden power battery was used as power source in the belt bomb used by Dhanu. From the statement of N. Vasantha Kumar (PW-75) it was seen that Arivu (A-18) was connected with the printing and publication of propaganda material for LTTE including the book "Satanic Force". Dr. R. Kuppusamy (PW-194) said in his statement that after examining the exposed frames of negatives used by Haribabu at the scene of crime (Exh.P-735) that these were from Kodak colour film and that was used for camera (MO-1). The unexposed portion of the Kodak colour film is MO-542 which was cut and removed from Exh.P-735. The material which had been removed by Arivu (A-18) from the house of Padma (A-21) after learning the assassination of Rajiv Gandhi, was subsequently recovered on the basis of disclosure statement (Exh.P-1343). In his letter (Exh.P-128) written by Trichy Santhan to Irumborai (A-19) he mentioned about the mistake committed in LTTE with the supporters of Sivarasan like Arivu (A-18) connected with Baby Anna.

471. Athirai (A-8) is a Sri Lankan national. At the very young age of 13 years she got involved in LTTE movement. She learnt how to prepare code sheets for conveying messages, making of bombs and driving. In the military camp she got training to use AK-47 rifle. She also got training in photography and videography. Her brothers and sisters are settled in Germany or Switzerland. In her confession she said that one of the principles of LTTE is that it does not brook any opposition and the undisputed leader of LTTE is Prabhakaran. She gave the names of various LTTE leaders in whose contacts she came. She said Pottu Amman is incharge of Intelligence Branch of LTTE and sister Shanthi and Akila are also in that branch. Athirai (A-8) said that her friend, who was 24

years of age and LTTE wireless operator died in fight with IPKF in 1988. Her own boy friend also died in 1989 in a raid by IPKF. Athirai (A-8) also got training in the political wing of LITE. She had been' explained as to how Prabhakaran was compelled to sign the Indo-Sri Lankan Accord and how IPKF instead of protecting Tamilians in Sri Lanka was fighting against them and committing atrocities on the innocent Tamilians there. She said about the organizations of Black Tigers and Black Women Tigers whose members would sacrifice their lives in suicide daring acts. Athirai (A-8) said she was able to recognize all the persons in the LTTE organization. Dhanu, she said, belonged to suicide squad. She was a black woman tiger. She did not wear spectacles but for the purpose of not being identified in Rajiv Gandhi murder case she wore spectacles. Subha also belonged to army branch of LTTE. Both had received the same training in the military camp of LTTE in Sri Lanka. Subha might have come along with Dhanu to encourage her and to give training to her and to tie belt bomb. In March, 1991 Athirai (A-8) met Pottu Amman who introduced her to Kanagasabapathy (A-7). Pottu Amman told her that Kanagasabapathy (A-7) was a helper in LTTE and would be coming with her to Delhi to make arrangements for her stay. The arrangement was that Athirai (A-8) would go to Delhi purportedly to learn Hindi or computer. She understood that the arrangement was with a view to gather information regarding certain marked places in Delhi and the work was in connection with the organization, and further that if persons belonging to LTTE came to Delhi they would be staying there in her house and would finish their work without any suspicion.

472. Relatives of Kanagasabapathy (A-7) were in Madras. He had already been to Delhi earlier. Athirai (A-8) and Kanagasabapathy (A-7) came to India in the end of April, 1991. They came in a fully armed boat of LTTE. On reaching Indian soil they went to the house of V. Kantha Raja (PW-60) alias Chokan, another LTTE sympathizer. That place Was Kodiakkarai. From there V. Kantha Raja (PW-60) took them to Madras and they went to the house of Jayakumari (PW-109) who was a relative of Kanagasabapathy (A-7). While they were staying in the house of Jayakumari (PW-109) Sivarasan came to meet her which was a pre-arranged meeting earlier by Pottu Amman. Sivarasan gave money to Athirai (A-8) for expenses and for her stay in Delhi. It appeared to Athirai (A-8) that Sivarasan was incharge of her. Athirai (A-8) said in her confession that later on she came to understand that when occasion would arise Sivarasan and other LTTE people would come for their purposes to Delhi and would be staying in the house taken by her. Sivarasan also gave money to Kanagasabapathy (A-7) for expenses. Once when Sivarasan came to the house of Jayakumari (PW-109), Athirai (A-8) told him that there were all male members in the house of Jayakumari (PW-109). He, therefore, took her to the house of P. Thirumathi Vimala (PW-62). Athirai (A-8) said that that house was arranged through Shanmugavadivelu (A-15) as both P. Thirumathi Vimala (PW-62) and Shanmugavadivelu (A-15) are sympathizers of LTTE. Athirai (A-8) would either go to the house of Shanmugavadivelu (A-15) or Thangam Stores, a store nearby, to telephone her elder brothers in Germany. P. Thirumathi Vimala (PW-62) or her daughter would company her. Athirai (A-8), P. Thirumathi Vimala (PW-62), her family members and her father then went outside Madras on excursion from 8.5.1991 to 14.5.1991. P. Thirumathi

Vimala (PW-62) in her statement said that on 5.5.1991 Shanmugavadivelu (A-15) with some other person had come to her house in her absence. That person had brought a letter from her mother in Sri Lanka for her. The letter (Exh.P-209) was left in the house. Next day the boy aged about 22 or 23 years came to her house. He was wearing pant and shirt and was also wearing spectacles. P. Thirumathi Vimala (PW-62) said she could not find if that person was having artificial eye in his left eye. By the time that person came she had read the letter. Shanmugavadivelu (A-15) was not there at that time. That person introduced himself as Raghu (Sivarasan). On account of the letter from her mother P. Thirumathi Vimala (PW-62) asked Sivarasan what help she could offer him. Sivarasan said that he brought a lady with him who had to go to Germany and that her name was Gowri (Athirai (A-8)) and he wanted a secured place for her to stay. Sivarasan told P. Thirumathi Vimala (PW-62) that she being mother of daughters might accept his request to allow Athirai (A-8) to stay in her house. He said Athirai (A-8) would leave within a month. P. Thirumathi Vimala (PW-62) agreed. On 7.5.1991 Sivarasan brought Athirai (A-8) along with him to stay with P. Thirumathi. Vimala (PW-62). On 16.5.1991 Sivarasan again came to meet Athirai (A-8) and gave her Rs. 10,000/- to meet her expenses. In between Sivarasan asked Kanagasabapathy (A-7) to make efforts to arrange the house for himself (Kanagasabapathy (A-7)) and for Athirai's (A-8) stay at Delhi and for this purpose he gave Rs. 23,000/- to him. Kanagasabapathy (A-7) accompanied by one Vanan, whom she did not know, left for Delhi on 20.5.1991. Sivarasan came to meet Athirai (A-8) one day after the assassination of Rajiv Gandhi and told her that it was difficult to take charge of her as police might arrest him. He told her that Santhan (A-2) would take charge of her. Speaking about the assassination of Rajiv Gandhi Sivarasan laughed. After his return from Delhi Kanagasabapathy (A-7) did not meet Athirai (A-8). He, therefore, shifted from the house of Jayakumari (PW-109) due to police surveillance. Sivarasan met Athirai (A-8) on 3.6.1991. Thereafter Santhan (A-2) used to visit her frequently. Sivarasan, Kanagasabapathy (A-7), Manju, daughter of P. Thirumathi Vimala (PW-62) and Athirai (A-8) used to meet at Marina Beach and talked about the status of Sri Lankan Tamilians as compared to status of Tamilians in India. In one of these meetings Kanagasabapathy (A-7) told Athirai (A-8) that he had arranged a double bed room house at Delhi. They decided to go to Delhi on 1.7.1991. Three days before that day Santhan (A-2) came and told Athirai (A-8) that police was interrogating Shanmugavadivelu (A-15) and it would be better for her not to stay with P. Thirumathi Vimala (PW-62) any further. He took Athirai (A-8) to the house of one Rajagopal at Pammal and introduced her to him as Sasikala. Santhan (A-2) himself went in hiding. Athirai (A-8) went to the house of P. Thirumathi Vimala (PW-62) for taking leave of her that she and Kanagasabapathy (A-7) were going to Trichy as they did not like to be caught by police. Rajagopal and Santhan (A-2) then took them to the railway station from where they boarded a train for Delhi. At Delhi they were taken into police custody.

473. On The morning of 15.5.1991 Athirai (A-8), who was staying with P. Thirumathi Vimala (PW-62) wanted to make a phone call from the house of Shanmugavadivelu (A-15). Anju, daughter of P. Thirumathi Vimala (PW-62) went along with her but found the

house of Shanmugavadivelu (A-15) locked and came back. P. Thirumathi Vimala (PW-62) then took Athirai (A-8) again to the house of Shanmugavadivelu (A-15) for making a phone call but the house was locked at that time too. She then advised that they could make a call from Thangam Stores which was near to her house. Athirai (A-8) said that they gave their address to the shopkeeper who would immediately come and inform them if there was a call for Athirai (A-8). On 21.5.91 Athirai (A-8) was still staying with P. Thirumathi Vimala (PW-62). When P. Thirumathi Vimala (PW-62) saw the photograph of Sivarasan in the newspaper with the news that he was connected with the murder of Rajiv Gandhi she told this to Athirai (A-8), P. Thirumathi Vimala (PW-62) asked Athirai (A-8) if Sivarasan was the person connected with the murder of Rajiv Gandhi and whether he brought Athirai (A-8) along with him. Athirai (A-8) said it was not so and that Sivarasan was a paper reporter and that he might have gone there (Sriperumbudur) and that by mistake his photograph would have been published. Athirai (A-8) told P. Thirumathi Vimala (PW-62) that she need not get scared about that and that it would not be so. On 3.6.1991 when P. Thirumathi Vimala (PW-62) came back from her school in the afternoon and was climbing stairs to go to her house Sivarasan and Athirai (A-8) were coming down from the upper stairs talking to each other. P. Thirumathi Vimala (PW-62) was shocked and scared and asked Sivarasan as to why he acted in that way. She said her children and grand-father at home were crying bitterly and that he should take away Athirai (A-8) from there and asked him not to come to her house any further. Sivarasan said that he would not come thereafter and that persons who would identify him and give information about him would meet with the same fate as Padmanabha and that it would apply to whomsoever it might be. Saying this he went away and did not come thereafter. P. Thirumathi Vimala (PW-62) told Athirai (A-8) also not to stay there any further and asked her to go away. At this Athirai (A-8) cried and said she did not have anyone else other than P. Thirumathi Vimala (PW-62) and that Sivarasan had already gone away. She pleaded that she be permitted to stay on. P. Thirumathi Vimala (PW-62) kept quiet. She read in the papers requiring all Sri Lankan refugees to get their names registered. Since Athirai (A-8) was not having any passport or any other document P. Thirumathi Vimala (PW-62) sent her daughter Manju along with Athirai (A-8) to get Athirai (A-8) registered as refugee. They returned and said it had been done. Application form requesting for issuance of identification card for Athirai (A-8) is Exh.P-214 and the application for getting name registered is Exh.P215. These were filled and signed by Athirai (A-8) and bear her photograph fixed on it. One day when P. Thirumathi Vimala (PW-62) returned from her school she was told by her children that uncle of Athirai (A-8) by the name Kangasabapathy had come. At this P. Thirumathi Vimala (PW-62) confronted with Athirai (A-8) that from where her uncle had come when she earlier had told her that she had no one to go to. She said that her uncle had come from Trichy and she knew about that only when he came. Next day Kanagasabapathy (A-7) again came and P. Thirumathi Vimala (PW-62) accordingly asked him as to why they were hatching conspiracy at her house and that photograph of the person who brought Athirai (A-8) had been published in the newspapers. She asked him to take away Athirai (A-8). Kanagasabapathy (A-7) said that he was going to Trichy and would come back again and

take her away. After few days Santhan (A-2) came. P. Thirumathi Vimala (PW-62) asked him also to take away Athirai (A-8). A few days thereafter Santhan (A-2) had come to the house of P. Thirumathi Vimala (PW-62) and informed her that CBI had come to the house of Shanmugavadivelu (A-15) and conducted search there and had caught him. He said CBI might come to her house also and since Athirai (A-8) was not holding a passport it would be a problem for her and therefore he had to take Athirai (A-8) as directed by Sivarasan. Athirai (A-8) then went with Santhan (A-2).

474. Kanagasabapathy (A-7) is a Sri Lankan national. He did not make any confession. He came to India in the last week of April, 1991 along with Athirai (A-8). He was having a genuine passport (MO-558) which was seized from him. He did not come to India through proper channel but landed at Kodiakkarai with Athirai (A-8). Jayakumari (PW-109), who is also a Sri Lankan national, came to India in 1986 through proper channel. In between she went to Sri Lanka after her marriage and again returned to India in March, 1988. At that time Kanagasabapathy (A-7) who is her uncle (her mother's sister's husband) had also come along with her. Kanagasabapathy (A-7) went back to Sri Lanka in August, 1988. In September, 1989 he again came to India to attend his son's wedding and then returned to Sri Lanka. On the morning of 26.4.1991 he came to the house of Jayakumari (PW-109) along with a young girl, Athirai (A-8) and another person. Kanagasabapathy (A-7) told Jayakumari (PW-109) that Athirai's (A-8) name was Gowri and she belonged to Sri Lanka and that her mother had expired in military attack and that she had come to study computer and journalism at Delhi. He also said that Athirai (A-8) would not talk much due to the grief of her mother's death. He did not introduce the other person but addressed him as brother, who left in the afternoon. Following day Kanagasabapathy (A-7) and Athirai (A-8) went to a book shop at Mount Road to buy some books. They purchased there Delhi Road map. They were also searching for a book containing addresses of VIPs but it was not available. On 2.5.1991 that person who had come with Kanagasabapathy (A-7) and Athirai (A-8) on 26.4.1991 came with Sivarasan. On 7.5.1991 Sivarasan again came and took Athirai (A-8) with him. before leaving Athirai (A-8) told Jayakumari (PW-109) that she would be staying at her brother's place and later she would go to Delhi. On 10.5.1991 Sivarasan again came on motorcycle and took along with him Kanagasabapathy (A-7). Later Kanagasabapathy (A-7) came back to the house and took his brief case, etc. and told Jayakumari (PW-109) that he was leaving for Delhi and would return after a week. On 30/31.5.1991 Kanagasabapathy (A-7) with two more persons came to the house of Jayakumari (PW-109) in an auto. He stayed in the house while other two left. Jayakumari (PW-109) informed Kanagasabapathy (A-7) that police was searching houses of Sri Lankans stating that Sri Lankans were involved in Rajiv Gandhi murder case and she asked him to register in the police station. He declined and left the house at about 9.00 p.m. He left behind a brief case which Jayakumari (PW-109) opened and found that it contained airlines tickets and a letter written by a person from Tamil Nadu House, Delhi. This letter was written to a person serving in Delhi Airport Authority to assist Kanagasabapathy (A-7). Kanagasabapathy (A-7) kept on coming to the house of Jayakumari (PW-109). He asked her to give the telephone number of Athirai

(A-8). Jayakumari (PW-109) knew earlier that Sivarasan was having one eye and when it was published in the newspaper in the second week of June, 1991 that a person connected with the murder of Rajiv Gandhi was having one eye, she inquired from Kanagasabapathy (A-7) about Sivarasan and his connection with him. Kanagasabapathy (A-7) told her that she was imagining things and if she entertained in her mind anything harmful to Kanagasabapathy (A-7) or Athirai (A-8) God would punish her. Jayakumari (PW-109) did give telephone number of Athirai (A-8) to Kanagasabapathy (A-7) and said he was putting them in unnecessary problem. He said he would not come if she gave him the telephone number. It is only through newspapers that Jayakumari (PW-109) came to know the name of the person as Sivarasan, who had come to her house for the first time on 2.5.1991. Athirai (A-8) telephoned Jayakumari (PW-109) on 17.6.1991 and gave telephone number as 8250228 and told her to give the number to Kanagasabapathy (A-7). That number was given by Jayakumari (PW-109) to Kanagasabapathy (A-7). On 29.6.1991 Kanagasabapathy (A-7) again came to the house of Jayakumari (PW-109), took his belongings and said that he was leaving for Delhi and from where he would go to Johannesburg. When on 30/ 31.5.1991 Kanagasabapathy (A-7) with two other persons came they told her that they had come from Delhi by aeroplane. Kanagasabapathy (A-7) opened an account in Canara Bank and he gave the address of Jayakumari (PW-109). The account opening form is Exh.P-516.

475. On 20.5.1991 Kanagasabapathy (A-7) went to Delhi by flight with one Vanan and stayed in Hotel Krishna there. K. Thiagarajan (PW-57) helped Kanagasabapathy (A-7) to get a house on rent at Moti Bagh in Delhi on monthly rent of Rs. 2,000 and an advance of Rs. 6,000/ -. He was also staying in Krishna Hotel, Delhi. That Kanagasabapathy (A-7) and Vanan travelled by air is evident by flight coupons of Indian Airlines (Exh.P-1329 and Exh.P-1330). In the note book (MO-159), diaries (MO-180 and Exh.P-1253), which are of Sivarasan, amounts have been shown to have been paid to Kanagasabapathy (A-7) and Athirai (A-8) and also to Vanan. In the wireless message (Exh.P-407) dated 14.6.1991 Sivarasan informed Pottu Amman that there was no news of Kanagasabapathy (A-7) who had gone to Delhi. This wireless message had been intercepted by T.P. Sitther (PW-78) and decoded by S. Mani (PW-84). On both the occasions at Delhi Kanagasabapathy (A-7) first time with Vanan and second time with Athirai (A-8) stayed in the Krishna Hotel. Ramkumar (PW-196), partner of the Krishna hotel has given statement with reference to the registers of arrival and departure (Exh.P-931) kept in the hotel. He had identified Kanagasabapathy (A-7) and Athirai (A-8). According to his record K. Thiagarajan (PW-57) along with Rajiv Pant stayed in the hotel from 19.5.1991 to 1.6.1991 and Kanagasabapathy (A-7) and Vanna stayed from 20,5.1991 to 29.5,1991. Entry in the hotel register on 3.7.1991 was made by Kanagasabapathy (A-7). They declared their nationality as Indian. Purpose of visit of Kanagasabapathy (A-7) was mentioned as business and that of Athirai (A-8) studies and place from where they arrived is mentioned as Madras. On 4.7.1991 both Kanagasabapathy (A-7) and Athirai (A-8) were arrested by the CBI at Krishna Hotel, Delhi.

476. Vijayanandan (A-5) is a Sri Lankan national. He came to India on 1.5.1991 and was one of the members of the nine members group. He made no confession. A forged passport (MO-559) was recovered from him and seized during investigation. P.G. Abeykoon Bandara (PW-185) who was Deputy Controller, Deptt. of Immigration and Emigration, Sri Lanka had testified that the passport (MO-559) was a forged document. On arrival from Sri Lanka Vijayanandan (A-5) stayed in Komala Vilas Lodge, Madras. He made entry (Exh. P-497) in the arrival register of the Lodge (Exh.P-496). He wrote that he had come from Madurai and was a teacher by profession. The reason which he gave for coming to Madras was "wedding". This had been testified by A. Ravindra Reddy (PW-100) Manager of Komala Vilas Lodge. Document Exh.P-351 is a slip of paper recovered from the residence of N. Vasantha Kumar (PW-75). This slip of paper has been marked as Exh.P-351 in the statement of N. Vasantha Kumar (PW-75) when he said that he could identify the document regarding the books, etc. purchased by Vijayanandan (A-5) when he was staying in his house. It is doubtful if such a statement is enough to prove the document. This document was put to the accused in his statement under Section 313 Cr.P.C. which he denied. This document shows the arrival of Vijayanandan (A-5) at Kodiakkarai on Indian soil on 1.5.1991 and then his coming to stay in Komala Vilas Lodge. In diary (MO-180) of Sivarasan seized from the house of Jayakumar (A-10) it is mentioned that a sum of Rs. 50,000/- was paid to Vijayanandan (A-5) on 8.5.1991. There is also an entry in this diary which shows that Sivarasan was to meet Vijayanandan (A-5) on 18.5.1991 in the morning from 9 to 12. That he did come to the house of N. Vasantha Kumar (PW-75) has been spoken to by N. Vasantha Kumar (PW-75).

477. Shankar (A-4) is a Sri Lankan national. He is also one of the nine members' group who came to India in a boat on 1.5.1991. At Kodiakkarai where the boat came Shankar (A-4) stayed with one Jagadeesan till 15.5.1991 and then came to Madras and stayed at Easwari Lodge from 16.5.1991 to 23.5.1991. before coming over to Madras Shankar (A-4) met Murugan (A-3) at Kodiakkarai when Murugan (A-3) was going for Jaffna but could not leave as boat had not arrived from Sri Lanka. Murugan (A-3) gave him a slip of paper containing (Ext. 1062) his name Thass' and name of Nalini (A-1) and her telephone number 419493. Santhan (A-2) and Sivarasan met Shankar (A-4) at Easwari Lodge and gave him Rs. 10,000/- Santhan (A-2) and Sivarasan knew the place of stay of Shankar (A-4). On 23.5.1991 Shankar (A-4) sought help of S. Kalyan Krishnan (PW-58) owner of the Easwari Lodge to contact Sivarasan or Robert Payas (A-9) on telephone number 2343402 of Ebenezer Stores. Shankar (A-4) was arrested on 7.6.1991 at Thiruthuraipoondi near Nagapattinam. Exh.P-401 is a wireless message from Sivarasan to Pottu Amman dated 9.6.1991 which reads:- "....There is news that one of my associates was caught at Nagapattinam and he has told all the news, things about me....". In letter (Exh.P-1-29) dated 7.9.1991 from Trichy Santhan (DA) to Prabhakaran it was mentioned that CBI had caught the Shanmugham (DA) only after it was disclosed by Shankar (A-4) Murugan (A-3), Robert Payas (A-9) and Santhan (A-2) that all had come (from Sri Lanka) and landed at Shanmugham's place. In diary (Exh.P-1253) of Sivarasan the fact that Rs. 10,000/- was paid to Shankar (A-4) was mentioned. In note book (MO-159) of Sivarasan there is again

a mention of payment of Rs. 5,000/- by Sivarasan to Shankar (A-4) (Exh.P-439). Ch. Gandhi (PW-267) is hand-writing expert and has proved the hand-writing of Sivarasan.

478. S. Kalyan Krishnan (PW-58) is running Easwari Lodge. With reference to his guest register maintained in his lodge he said that on the evening of 16.5.1991 one Jagadeesan came to his lodge to take a room. He said he was regular customer for the past about 20 or 25 years. He said later a guest whose name he came to know was Shankar (A-4) joined Jagadeesan. Though Jagadeesan left Shankar (A-4) continued to stay in the lodge. On 23.5.1991 Shankar (A-4) told S. Kalyan Krishnan (PW-58) that he was vacating the room and was going to his native place. He wanted to make a phone call. He gave a slip of paper on which it was written in ink as "Payas house, Sivarasa," and a telephone number was also mentioned. S. Kalyan Krishnan (PW-58) telephoned that number and was told that Payas house was situated at a distance of about 1-1/2 furlong and message could not be conveyed. He, however, got the address of Robert Payas (A-9) and made a note of that on the slip of paper given by Shankar (A-4). That slip of paper (Exh.P-164) was identified by S. Kalyan Krishnan (PW-58). The address in pencil on the slip (Exh.P-164) was in the hand of S. Kalyan Krishnan (PW-58). This slip he kept with him and wrote another slip (Exh.P-1645) giving the details of the address of Robert Payas's (A-9) house to Shankar (A-4). S. Kalyan Krishnan (PW-58) also explained to Shankar (A-4) a route to go to Robert Payas (A-9) house. There is, however, nothing in the evidence to show that Shankar (A-4) did go to the house of Robert Payas (A-9).

479. Robert Payas (A-9), his wife Prema, sister Premlatha, brother-in-law Jayakumar(A-10), his wife Shanthi (A-11) and some other 30 or 35 Tamils had come to India in September, 1990 from Sri Lanka and got themselves registered as refugees on 20.9.1990. As noted above Prema, wife of Robert Payas (A-9) and Jayakumar (A-10) are brother and sister. Shanthi (A-11) is Indian national. Others are all Sri Lankan nationals. Shanmugha ingam is the father of Prema and Jayakumar (A-10). In his confession Robert Payas (A-9) said that he had been helping LTTE since 1985 during war first with Sri Lankan army and thereafter with Indian army IPKF. He said a rival organization EPRLF betrayed them to IPKF which caught hold of them and kept them in custody for 15 days. IPKF also raided their houses and beat up the ladies severely. He said at that time due to the action of IPKF his son aged 1-1/2 months died. He said they had developed hatred towards IPKF and even EPRLF. According to him IPKF was subjecting common people to great sufferings like committing murders, rape and other kinds of ill-treatments and harassment. Jayakumar (A-10) was a frequent visitor to Tamil Nadu. Porur house of Jayakumar (A-10) was rented through M. Utham Singh (PW56) proprietor of Ebenezer Stores who was paid commission. Jayakumar (A-10) also shifted to another house in Kodungaiyur. These two houses were arranged in such a way as to accommodate LTTE people comfortably. In the Porur house many LTTE personnel came to visit or even to stay there Robert Payas (A-9) opened a Savings Bank account in the Central Bank of India in his name. He said Kanthan had purchased one red colour Yamaha motorcycle bearing registration No. TN-09-A-8213 in the name Raja. Nishanthan had made arrangement for purchase of the

motorcycle while Kanthan made the payment. Kanthan, Nishanthan and Sivarasan were making use of the motorcycle. Robert Payas (A-9) said that he knew that Sivarasan and Kanthan had come to India for some dreaded jobs and it was a known fact about LTTE's activities and its hand in assassinating Padmanabha and his friends in Madras. After some time Sivarasan started staying in the house of Jayakumar (A-10). Sivarasan used to come over to the residence of Robert Payas (A-9) frequently and to meet Kanthan and Santhan (A-2). In February, 1991 Sivarasan had come to Porur house along with Murugan (A-3), who stayed with Robert Payas (A-9) for two days and thereafter went to stay at Royapettah house. Murugan (A-3) was a frequent visitor to the house of Robert Payas (A-9). He would come over there along with Sivarasan or of his own. He would come to take money from Kanthan or even to see Sivarasan. They used to assemble in the house of Robert Payas (A-9) and plan works for their "movement" and then they would execute those works as per their plans. LTTE members would have contacts with Sivarasan, Kanthan, Nishanthan through the telephone number 2343402 installed in Ebenezer Stores of M. Utham Singh (PW56). Even calls would come from Colombo, Canada and England. T. Soundara Pandian (PW-54), who was working in Ebenezer Stores, would bring the messages. In the absence of Sivarasan, Kanthan and Nishanthan those messages would be received by Robert Payas (A-9) to help them. Kanthan only used to arrange for the money and give them to all for the conspiratorial work of LTTE. He would bring gold biscuits, encash them and give money to Sivarasan, Murugan (A-3) and other LTTE members. Indirankutty, another LTTE activist, would come from Trichy quite frequently. He would also help persons like Sivarasan and Kanthan. In the beginning of May, 1991 Sivarasan brought Santhan (A-2) to the house of Robert Payas (A-9). Santhan (A-2) stayed there for two days and then at Haribabu's house. On 5.5.1991 Robert Payas (A-9), Santhan (A-2), Murugan (A-3), Haribabu: Arivu (A-18) and Sivarasan all met at Marina Beach. On 9.5.1991 Indirankutty came to Robert Payas (A-9) with Ruban (A-6) who had lost one of his legs in a bomb blast in Sri Lanka and had come to India with Sivarasan for medical treatment. Robert Payas (A-9) helped Sivarasan to get a learning licence' for motorcycle. He could not get a regular licence as he had lost one of his eyes. A week before the assassination of Rajiv Gandhi Sivarasan and Kanthan had come to the residence of Robert Payas (A-9) and they had a conference. Kanthan gave money to Sivarasan. Robert Payas (A-9) said that that money was used for their conspiracy work. Between 15.5.1991 to 21.5.1991 Santhan (A-2) came to the residence of Robert Payas (A-9) three times, first time when he came Kanthan gave him Rs. 2.00 lacs to hand over the same to Sivarasan who was staying at the residence of Jayakumar (A-10), second time Santhan (A-2) got Rs. 5.00 lacs and went away. One or two days later Robert Payas (A-9) and Santhan (A-2) went to market to make certain purchases for Ruban (A-6) which were needed for his journey to Jaipur and back. Ruban (A-6) was staying with Robert Payas (A-9). Robert Payas (A-9) also mentioned the name of Vanan being an LTTE member. He said in the month of May he had gone to the residence of Vanan. There he met Vijayanandan (A-5) who had come to India in the boat along with Sivarasan, Santhan (A-2) and others in the beginning of May, 1991. According to Robert Payas (A-9) Sivarasan and Santhan (A-2) would also be going over to the residence of Vanan. On his first visit to Delhi, Kanagasabapathy (A-7)

had gone along with Vanan. This Vanan has not been examined. Robert Payas (A-9) said in his confession that between 15.5.1991 and 20.5.1991 Ramanan, Santhan (A-2), Rangam and Kanthan had come to his residence several times in connection with the LTTE conspiracy and they used to receive phone calls from Sivarasan through Ebenezer Stores. On 21.5.1991 Robert Payas (A-9) was at his residence. On 22.5.1991 he got the news of Rajiv Gandhi assassination. He did not leave his residence on 23.5.1991 expecting message from Sivarasan. On 24.5.1991 Sivarasan came to his house in his Kawasaki Bajaj motorcycle to meet Kanthan but Kanthan was not there. On 25.5.1991 when Kanthan came on his red Yamaha motorcycle Robert Payas (A-9) told him that Sivarasan had come the previous day looking for him. On 27.5.1991 Santhan (A-2) came to the residence of Robert Payas (A-9) and they all decided to leave Madras in order to escape from the police. On 28.5.1991 they bought tickets in assumed names and went to Thiruchendur by night bus on 29.5.1991. They did not check in any lodge in Thiruchendur and on 30.5.1991 again by night bus came to Madurai on 31.5.1991. Robert Payas (A-9) said they took ladies with them to avoid any suspicion. For Madurai also they took night bus and reached Madras on 1.6.1991. Santhan (A-2) went to some other place. Robert Payas (A-9) sent his wife and his younger sister to the residence of his uncle in Vadapalani and he himself went to the residence of one Loga in Nasapakkam to hide. On 3.6.1991 he went to Vadapalani and brought back his family to the Porur house. He did not receive any information either from Sivarasan or Kanthan and in a few days he was arrested by CBI. According to Robert Payas (A-9) all of his expenses were met by Kanthan who also paid for the expenses of other LTTE members staying in his house

480. Jayakumar (A-10), who is husband of Shanthi (A-11) gave a confession. He also talks of war first between Sri Lankan army and LTTE and then LTTE and IPKF. He said that Robert Payas (A-9), his sister's husband, was helping LTTE in his native village. In one raid made by IPKF Robert Payas (A-9) and Jayakumar (A-10) were caught and kept in a camp. Though Jayakumar (A-10) was released after a few days but not Robert Payas (A-9). Lives had become miserable because of raids by IPKF. They were now having close contacts with LTTE movement who were providing northern even financial help. In September, 1990 Jayakumar (A-10) said LTTE "people" told Robert Payas (A-9) and him to go and stay in Madras with instructions to keep houses ready for their purpose. He said on account of the atrocities committed jointly by IPKF and EPRLF, the LTTE movement had thought to teach a lesson to the leaders in India and to the persons belonging to EPRLF hiding in Madras. Since they were sent by LTTE movement to India they did not give two sovereigns of gold and pay Rs. 1500/- for each of the person coming to India which LTTE was charging. After getting themselves registered at Rameshwaram as refugees they all went to stay at Madras. Nishanthan, Saravanan, Raja alias Kalapathy, all LTTE people arranged Porur house which was rented out in the name of Jayakumar (A-10). Nishanthan and Kumaradoss stayed in Porur house with Robert Payas (A-9) and Jayakumar (A-10) families. After about one week of stay in Porur house another LTTE activist Kanthan also came and stayed in the house. Since both Jayakumar (A-10) and Robert Payas (A-9) were unemployed Kanthan was giving them money. In fact Kanthan

was providing money for all the matters of LTTE movement in Madras. A wireless set was installed at Porur house after Kanthan had come to stay there. He and Nishanthan alias Nixon used to talk to the movement at Jaffna by wireless. Another supporter of LTTE Indirankutty also used to come to Porur house in white Maruti van bearing registration number TAY-9444 from Trichy. He would also get money from Kanthan. Jayakumar (A-10) also talks of buying a motorcycle by Kanthan in the name of Shanmugaraja, an LTTE man through Sarvanan and Kalapathi alias Raja. Jayakumar (A-10) said that Robert Payas (A-9) and Kanthan told him that a high ranking person from the movement would come to India during the second week of December and that his name was Sivarasan and was coming to India with a dangerous plot. It was decided that another house should be arranged by Jayakumar (A-10) for his stay. It was so thought that since Jayakumar (A-10) would be staying with family nobody would have suspicion on Sivarasan. Kanthan also told Jayakumar (A-10) that Sivarasan would give him the required money for all the expenses. Accordingly Kodungaiyur house was rented with the help of Ramaswamy, father-in-law of Jayakumar (A-10). The house was taken in the name of Ramaswamy. Jayakumar (A-10) moved with his family to that house in December, 1990 and after a fortnight or so Robert Payas (A-9) brought Sivarasan to his house and told him that Sivarasan would stay there. Jayakumar (A-10) was told that he should be helpful to Sivarasan and to all the activities of the movement. Jayakumar (A-10) said "that Sivarasan was sent to India by the movement to fulfil a dangerous plot". Sivarasan had brought a suitcase with him in which he kept his dresses, AK-47 rifle, a diary and a pistol. Whenever he would go out he would take pistol with him kept concealed in a thick book where he had made a cavity. From January to April, 1991 Sivarasan went to Sri Lanka two or three times and returned. On 2.5.1991 when he returned from Sri Lanka he brought two LTTE lady tigresses Dhanu and Subha. Jayakumar (A-10) said it was known to him that "Sivarasan had. brought those two LTTE movement lady tigers with a murder plan". He said it was also known to him that Sivarasan and lady tigresses had decided to wreak vengeance for the atrocities committed by IPKF. After staying in the house of Jayakumar (A-10) for a day or so those two girls went to stay in the house of Vijayan (A-12) and Bhaskaran (A-14), his father-in-law. Sivarasan also bought one red colour Bajaj Kawasaki motorcycle which he kept in the house of Vijayan (A-12). Subha and Dhanu would often come to the house of Jayakumar (A-10). Shanthi (A-11) would go with them for shopping. Sivarasan would visit the house of Vijayan (A-12) daily. One day when Sivarasan came to stay in the house of Jayakumar (A-10) he brought Santhan (A-2), who was his "partner". Jayakumar (A-10) said that he knew that Santhan (A-2) was in connivance with Sivarasan in all the activities and that Santhan (A-2) was assisting Sivarasan "for the dangerous work which he would carry out". Since Jayakumar (A-10) had no work Sivarasan gave him Rs. 35,000/- and asked him to start a business of grinding coffee seeds. On 19.4.1991 Jayakumar (A-10) paid Rs. 20,000/- as advance and took a shop on rent in the name of his wife Shanthi (A-11) at a monthly rent of Rs. 450/-. He bought coffee seeds grinding machine also for Rs. 15,000/-. Then he applied for a telephone connection paying Rs. 8,000/- for his shop. He applied for telephone connection in the name of his wife Shanthi (A-11). Telephone connection

was applied for the convenience of Sivarasan and other persons of LTTE movement to contact among themselves. Whenever Subha and Dhanu came to the house of Jayakumar (A-10) Sivarasan would take them separately and talk to them secretly. A few days before the assassination of Rajiv Gandhi Sivarasan told Jayakumar (A-10) to stitch a cloth cover for his pistol which Shanthi (A-11) did. If the gun was put in the cover it would not be visible to others. Then Sivarasan also got one kurta and pyzama. The measurements were provided by Jayakumar (A-10) as Sivarasan was not willing to go to the tailoring shop. One day Shanthi (A-11) also took Subha to nearby tailoring shop and got dresses stitched for her. Jayakumar (A-10) was quite often visiting the house of Robert Payas (A-9). In the month of May, 1991 he had seen Sivarasan, Kanthan, Santhan (A-2) and Murugan (A-3) in that house. There they would confer about the plot. Then Jayakumar (A-10) added "about a week before the murder of Rajiv Gandhi, Sivarasan had talked with Santhan (A-2) about his murder plan". Sivarasan left the house of Jayakumar (A-10) on the morning of 21.5.1991 and returned at 1 O'clock and went to his room. He changed his dress and now he wore kurta-pyzama. He hid a pistol in his dress. He was supposed to go to the public meeting of Rajiv Gandhi at Sriperumbudur. From the house of Jayakumar (A-10) he went to the house of Vijayan (A-12). He returned at 12.30 in the night with Subha and Nalini (A-1). It was confirmed that Rajiv Gandhi was murdered by Dhanu. Sivarasan then went upstairs to talk about the incident with Santhan (A-2). In the morning of 22.5.1991 Santhan (A-2) went out and bought newspaper. Afterwards Subha and Nalini (A-1) went to watch news on TV to the neigbour's house (D. J. Swaminathan (PW-85)) while Sivarasan went to the house of Vijayan (A-12). On 23.5.1991 in the morning Sivarasan went out with Nalini (A-1) and then took Subha and left her at the house of Vijayan (A-12). When he came back in the night he said that he had decided to leave within a day or two. He kept all his things in a suitcase which included his cloths and that of Subha, two big dictionaries and notebooks which Sivarasan was keeping, took the pistol separately and packed the bullets in a separate parcel. In the notebooks Sivarasan used to write his income and expenses. In the suitcase he also kept photos, passports, cassettes and the artificial eye which he used to wear. On his directions Jayakumar (A-10) dug a pit in the corner of the kitchen where he placed the suitcase and parcel of bullets and covered the pit with a concrete slab that he had bought, again on the instructions of Sivarasan. Jayakumar (A-10) then painted the area in such a way that nobody could find out. All these things were seized on 26.6.1991 as disclosed in the confession statement of Jayakumar (A-10). Sivarasan then left but Santhan (A-2) kept on staying in the house for two or three days. Then he also left as Sivarasan had instructed Jayakumar (A-10) to change the house. before leaving he gave Rs. 5,000/- to Jayakumar (A-10). On the same day or the following day Nero (DA) another partner of Sivarasan came and received a bag from Jayakumar (A-10) as per instructions of Sivarasan. Earlier also Nero had come to the house of Jayakumar (A-10). He was connected with the LTTE movement and a helper of Sivarasan,

481. M. Utham Singh (PW-56) is the owner of Ebenezer Stores in Porur locality. T. Soundara Pandian (PW-54) was working as assistant in his shop. Telephone number

2343402 was installed in his shop premises. One person by name Shanmugham got acquainted with M. Utham Singh (PW-56) as he had been buying provisions from his shop. Rajakalapathy and his wife, father-in-law and mother-in-law were also residing with Shanmugham. In September, 1990 two Sri Lankan Tamilians came to M. Utham Singh (PW-56) on a red colour Yamaha motorcycle and asked him whether there was any house available for rent. House of Dr. G.J. Srinivasan (PW-252) in the said locality was newly built. Dr. G.J. Srinivasan (PW-252) wanted the house to be let out and for that purpose he had kept a key with M. Utham Singh (PW-56) for him to show the house to any one who wanted to take the same on rent. When M. Utham Singh (PW-56) asked those two persons if they would give the name of any acquaintance in the area they told him about Rajakalapathy. When M. Utham Singh (PW-56) asked them to bring Rajakalapathy he came with them. The house in question was shown and they liked the same. Those two persons, who came on the motorcycle, were Sarvanan and Nishanthan alias Nixon. Rate of rent and the advance amount payable was agreed to during discussion with Dr. G. J. Srinivasan (PW-252). On the request of Dr. G.J. Srinivasan (PW-252) as to how many members would be staying in that house Sarvanan furnished the list of seven members on a white piece of paper (Exh.P-153), who were K. Kumaralingam, K. Kumaradoss, K. Premalatha, K. Nishanthan, S, Jayakumar, J. Shanthi and K. Prema. Families of Robert Payas (A-9) and Jayakumar (A-10) then occupied the house. They used to purchase provision from the shop of M. Utham Singh (PW-56). Robert Payas (A-9) told M. Utham Singh (PW-56) that his relatives were living abroad and requested him if they made any phone call for Robert Payas (A-9) he might call him. To this M. Utham Singh (PW-56) agreed. Jayakumar (A-10) also used to receive calls from Germany and Robert Payas (A-9) from Italy and Denmark. Robert Payas (A-9) also introduced Kanthan to M. Utham Singh (PW-56), who also requested for the facility of receiving phone calls. M. Utham Singh (PW-56) said that when these persons used to attend the calls they would speak only in cerebral 'yes', 'correct', 'O.K.' and some time 'I will come'. Either M. Utham Singh (PW-56) or his assistant T. Soundara Pandian (PW-54) would go to the house of Robert Payas (A-9) to tell them of the receipt of the call. On 22.5.1991 M. Utham Singh (PW-56) did not open the shop because of some ceremony in his house. On 23.5.1991 T. Soundara Pandian (PW-54) came to open the shop in the morning at 7.00 a.m. M. Utham Singh (PW-56) himself did not go. At about 12.30 noon M. Utham Singh (PW-56) made a call to the shop and asked how was the business. T. Soundara Pandian (PW-54) told him that it was on an average. M. Utham Singh (PW-56) instructed him to close the shop and go home since riots had broken out in certain areas. At about 1.30 p.m. T. Soundara Pandian (PW-54) came to the house of M. Utham Singh (PW-56) and told him that he had received a call from one Shankar, who was staying in some lodging house and had requested him to call Robert Payas (A-9) or Sivarasan to which T. Soundara Pandian (PW-54) had replied that he was the only person in the shop and could not go to give the message. He said after two minutes of that call Shankar again called him and asked him to give the address of the shop. According to M. Utham Singh (PW-56) neither Robert Payas (A-9) nor Jayakumar (A-10) was engaged in any work. In December, 1990 Jayakumar (A-10) shifted from Porur house though still he would be visiting the shop of

M. Utham Singh (PW-56) to purchase provisions. Rent agreement was executed bearing signatures of Dr. G.J. Srinivasan (PW-252) and M. Utham Singh (PW-56). In fact there were two agreements one for rent (Exh.P-154) and one for fitting and fixtures (Exh.P-155).

482. T. Soundara Pandian (PW-54) employee of M. Utham Singh (PW-56) said that Robert Payas (A-9) and Jayakumar (A-10) used to get phone calls from the shop Ebenezer Stores of which M. Utham Singh (PW56) was the proprietor. The phone calls used to come from foreign countries and local calls were also received. Apart from Robert Payas (A-9) and Jayakumar (A-10) Kanthan, Sivarasan and Nixon also used to come to the shop to receive phone calls. Some time T. Soundara Pandian (PW-54) would go to Porur house to leave a message that telephone had come. He said on second day of the death of Rajiv Gandhi he came to the shop as usual. There was a telephone call and the person who called wanted him to call either Sivarasan or Robert Payas (A-9). When T. Soundara Pandian (PW-54) declined because of riots nearby the phone was disconnected. After two or three minutes again phone call came and caller identified himself as Shankar and he said that he was the person who spoke earlier and wanted him to call Sivarasan or Robert Payas (A-9) urgently. T. Soundara Pandian (PW-54) told him that he was alone in the shop and could not go to call them. That person (Shankar) said he was speaking from a lodge and he wanted to have the address of Robert Payas's (A-9) house. T. Soundara Pandian (PW-54) told him that he did not know the number of the house of Robert Payas (A-9) but that house was next to Ebenezer Stores. He, therefore, gave the address of Ebenezer Stores. He said he told M. Utham Singh (PW56) about this call of Shankar.

483. Robert Payas (A-9) and Sivarasan had gone to Studio Memory Makers of S. Raghu (PW-59) on 15.12.1990 for getting passport size photographs. They also went to Kavitha Driving School of T. Panneer Selvam (PW-61) on 4.4.1991 and 9.5.1991 to take Driving licence. Robert Payas (A-9) lived in the neighbourhood of Dr. Claud Fernandez (PW-19-7), a Dentist, Dr. Claud Fernandez (PW-197) knew Robert Payas (A-9) as he was President of the residents' association of that area. Robert Payas (A-9) and his friend had come to the clinic of Dr. Claud Fernandez (PW-197) for treatment. The name of his friend was Ramanan. Second time he came with his another friend whose name was Murugan (A-3). On 23.7.1991 police had come from Malligai CBI headquarters to the residence of Robert Payas (A-9) and recovered his passport and other small items. Dr. Claud Fernandez (PW-197) was witness of the recovery. He said assassination of Rajiv Gandhi took place on 21.5.1991 and "when they are feeling sad, on 22nd evening at about 6 or 7 p.m. we heard a sound of blast from the house of Robert Payas (A-9). That was the sound of crackers". He said he could not see the persons when he came out but above the house of Robert Payas (A-9) it was filled with smoke.

484. K. Kottammal (PW-63) is the owner of Kodungaiyur house where Jayakumar (A-10) and Shanthi (A-11) started living from 18.12.1990. As noted above the house was taken on rent in the name of Ramaswamy, father of Shanthi (A-11). Rent agreement is Exh.P-

217, which bears the signature Ramaswamy and husband of K. Kottammal (PW-63). K. Kottammal (PW-63) identified the signature of her husband.

485. D.J. Swaminathan (PW-85) was living in house number E-152, Kodungaiyur. It was next to the house of Jayakumar (A-10) and Shanthi (A-11) which is house No. E-153. He met Sivarasan who was staying in that house and who told him that he lost his left eye in an accident. In the first week of May, 1991 he saw Sivarasan and two girls coming in an auto to the house of Jayakumar (A-10). Their names were Subha and Dhanu. They stayed for about two days and thereafter D. J. Swaminathan (PW-85) said he did not see them while Sivarasan continued to stay in the house. In the first week of May, 1991 Sivarasan came on a new Kawasaki Bajaj bike. The bike was driven by another person. That was without registration number. Both these persons stayed in the house of Jayakumar (A-10). He stayed there till 26.5.1991. On the morning of 22.5.1991 when D.J. Swaminathan (PW-85) put on the TV to hear the news about the Rajiv Gandhi assassination Sivarasan, Nalini (A-1) and Subha also came to his house. After the news was over some one in the family of D.J. Swaminathan (PW-85) remarked that it would be the work of Liberation Tigers only. Sivarasan asked how could they say so. The reply was given that Tamil people could not do such kind of job. Sivarasan then left the place without saying anything. The witness said that they (presumably Sivarasan, Subha and Nalini (A-1)) were telling that not even rice was available for cooking. Since all the shops were closed on account of assassination of Rajiv Gandhi the witness told them that "I will give rice, if wanted". They declined the offer. At about 12.00 noon they distributed sweet mixed with grated coconut which made the witness wonder. On the morning of 23.5.1991 Sivarasan took Nalini (A-1) on his bike. D.J. Swaminathan (PW-85) said that he did not see Subha thereafter. Sivarasan stayed in that house for three days. He saw Santhan (A-2) till 26.5.1991. He saw the photograph of Dhanu on television in the end of May, 1991. When he ' had seen Dhanu first time she did not wear spectacles. Initially, therefore, witness said he could not identify her in the photograph if it was Dhanu. Two days thereafter Sivarasan's photograph was shown on T.V. Now D.J. Swaminathan (PW-85) got suspicious. On 2.6.1991 he dialed telephone number 100 and gave the information. When he told the person receiving the call that Sivarasan and Dhanu stayed in the house of Jayakumar (A-10) no one made any inquiry. He did not give his address. Again in the second week of June, 1991 he himself went to the office of CBI headquarters, Malligai and stated the facts he knew. His statement was recorded. On 26.6.1991 house of Jayakumar (A-10) was searched. At that time Shanthi. (A-11) and her father Ramaswamy were there in the house. Various articles were seized. On 7.7.1991 CBI officers with Jayakumar (A-10) came to his Kodungaiyur house. They were not having key of the house. Lock was broken open. Jayakumar (A-10) entered the house and showed the place in the kitchen at the left side. A slab at that place was removed and it was found that there was a pit 2-1/2 fit deep. From that pit Jayakumar (A-10) took out a plastic bag and a suitcase (Aristocrat make). In that bag one belt and two packets of bullets containing 25 and 18 bullets were found. From the suit case a dictionary was taken out which was cut out inside so that a pistol could be kept there. There was one article like artificial eye and five recorded small

micro cassettes, photographs (MO-163 to MO-166), passport (MO-161) in the name of Thillaiambalam Suthendraraja, notebooks (MO-158, MO-159 and MO-160) and diaries were also found and recovered. A list was prepared (Exh.P-437) which bears the signatures of the witness D.J. Swaminathan (PW-85). D.J. Swaminathan (PW-85) has identified photograph of Sivarasan in colour photographs (MO-163 and MO-164) and black and white photographs (MO-165 and MO-166). Colour photograph (MO-169) and black and white photographs (MO-170 and MO-171) are the photographs of Santhan (A-2).

486. S. Meera (PW-200) was living in the neighbourhood of Jayakumar(A-10) in the same locality. She and Shanthi (A-11) became friends and were visiting each other. When S. Meera (PW-200) asked, Shanthi (A-11) as to who was the person wearing spectacles, she said he was her uncle and had a welding shop at Kodungaiyur. Jayakumar (A-10) was not doing any work and was remaining idle at home. Some time in the first week of May, 1991 Sivarasan and two women came in an auto at 8.00 p.m. One day in the first week of May itself Sivarasan brought a car battery on his cycle to the house of Jayakumar (A-10). He, however, took away that battery same evening itself. The two girls Subha and Dhanu used to come to the house of Jayakumar (A-10) on ladies' bicycle now and then. S. Meera (PW-200) said she did not know the names of Sivarasan, Subha and Dhanu in the first instance but she came to know only when their names were published in the newspapers or telecast on T.V. She said many people kept on coming and going in the month of May, 1991 in the house of Jayakumar (A-10). One such person was husband of Jayakumar's (A-10) younger sister as told to S. Meera (PW-200) by Shanthi (A-11). S. Meera (PW-200) said she was not staying in her house from 7.5.1991 to 23.5.1991 and that she had gone to her mother-in-law's house.

487. M. Janarthanam (PW-71) said that he let out his shop to Shanthi (A-11), wife of Jayakumar (A-10) in Kodungaiyur and received Rs. 20,0001- as advance though he executed the agreement for Rs. 4,500/- only in the month of April, 1991. The purpose of letting was to run a coffee grinding shop. On 25.7.1991 M. Janarthanam (PW-71) was called to Malligai office of CBI headquarters where he handed over the agreement (Exh.P-338). He had also given a letter of consent (Exh.P-339) to Shanthi (A-11) for installing the coffee grinding machine in the shop, which he also handed over to the police. During his statement M. Janarthanam (PW-71) was asked to identify Jayakumar (A-10), who had approached him for running out the shop along with his brother-in-law Damodaran. M. Janarthanam (PW-71) identified Bhagyanathan (A-20) as Jayakumar (A-10). M. Janarthanam (PW-71) said that on 29.1.1992 Ramaswamy, father of Shanthi (A-11) came to the shop and removed the grinding machine and other equipments. He also asked for refund of advance of Rs. 20,000/- which the witness did not give. Shanthi (A-11) wrote a letter (Exh.P-343) on 13.8.1992 to M. Janarthanam (PW-71) from the prison for the purpose but M. Janarthanam (PW-71) said that letter from Jayakumar (A-10) should also come. Then Shanthi (A-11) and Jayakumar (A-10) wrote a letter (Exh.P-344) to M. Janarthanam (PW-71) from the prison. In his statement M. Janarthanam (PW-71) further stated that the

Judge questioned him in the court to which he replied he did receive Rs. 20,000/- advance and said that he had no objection to return that back. The Judge passed the order on 3.11.1992 that the settlement might be made out of court. -M. Janarthanani (PW-71) said that afterwards Ramaswamy called on him and obtained receipt (Exh.P-342) from him on 26.12.1992 and he returned the amount of Rs. 20,000/-.

488. V. Kannan (PW-199) sold the coffee grinding machine for Rs. 15,000/-. Receipt showing the coffee grinding machine is Exh.P-971. Both Jayakumar (A-10) and Shanthi (A-11) had come to V. Kannan (PW-199) to buy the machine.

489. Sowmya Narayanan (PW-70) is one of the staff members from Telecom Department and he has identified application for telephone connection (Exh.P-336) by Shanthi (A-11) in OYT scheme for the shop premises. The application was registered on 22.4.1991. A sum of Rs. 8,000/ - is shown to have been paid with the application.

490. In the diary (MO-180) of Sivarasan seized from the house of Jayakumar (A-10) there is mention of a sum of Rs. 10,000/ -on 11.4.1991 for telephone.

491. Jayakumar (A-10) stated to have made disclosure statement to the police on 9.7.1991 (Exh. P-1436) on the basis of which it is stated that Jayakumar (A-10) took the police to Kodungaiyur house and recoveries made. The trial Judge has strongly commented on the conduct of the police in recording the disclosure statement to boost its case and has criticized the investigating officer in adopting such a course. In the disclosure statement Jayakumar (A-10) said that on 21.5.1991 Sivarasan had dug a pit in the kitchen and kept a brief suitcase and a plastic bag and then covered the same with a cement slab. He said Sivarasan told him not to disclose that to any one and not to give the material placed in the pit to any one except to him.

492. Vijayan (A-12), whose confession was recorded, was a lorry driver in Sri Lanka. He started his own workshop and during the period 1987-89 he used to repair vehicles of LTTE. When IPKF came to Sri Lanka his work was affected. Selvaluxmi (A-13) is his wife. She is daughter of Velayudam alias Bhaskaran (A-14). Vijayan (A-12) decided to come to India in 1990 as his wife was pregnant and he thought that in India she would get necessary medical facility. One Kutty told him that he would make arrangements for him to go to India without making any payment to LTTE. Kutty introduced Vijayan (A-12) to Sivarasan who told him that if he worked for LTTE his expenses would be looked after by the LTTE. Sivarasan told him to take a house on rent and to stay there and that persons belonging to LTTE would come and stay in that house for their work. While staying at Tuticorin, Vijayan (A-12) worked in Tuticorin Port Trust and at SPIC as daily wage earning Rs. 20 to Rs. 30/- per day. His wife gave birth to a son on 17.10.1990. After Vijayan (A-12) settled in his house in Madras as described earlier Sivarasan along with Chokkanathan alias Sabapathi and Munusami, LTTE workers came to his house. Sivarasan told Vijayan (A-12) that in the first week of May, 1991 he would bring some

LTTE men for an important work and he asked him to make necessary arrangements for their stay. He was also cautioned by him not to tell that to anybody. Sivarasan again came on 2.5.1991 with Gokul alias Nero, an LTTE activist. Both came with a suitcase containing wireless set and other things. Sivarasan then informed Vijayan (A-12) that he would bring two LTTE women to the house. He gave him Rs. 10,000/- for his expenses. After three or four days Sivarasan took him to a place nearby and gave him a big car battery and asked him to take that to his house. The battery was for fixing a wireless set. Vijayan (A-12) gave that battery to Nero. Same day Sivarasan brought a black and white TV and kept the same in the house. He said that he had bought this for the family of Vijayan (A-12). Sivarasan asked Nero to have a link with Sri Lanka through wireless which Nero was able to achieve within two/three days. Whenever Nero spoke on the wireless he would use to say from 910 to 91. Vijayan (A-12) bought a battery charger from a shop at Mount Road, Madras and also other articles of furniture. Sivarasan paid for all. On 6.5.1991 Sivarasan brought Dhanu and Subha to Vijayan's (A-12) house. That day his father-in-law Bhaskaran (A-14) had also come from Tuticorin. These two women would keep their important things in a black bag and would always carry that whenever they went out. Sivarasan gave money to Vijayan (A-12) to buy two cycles for the women. Subha and Dhanu would go out on Friday and would come on Monday morning. On 16/17-5-1991 Sivarasan asked Vijayan (A-12) to dig a pit in the kitchen to hide the wireless set and guns. Vijayan (A-12), Sivarasan and Nero dug the pit. On the morning of 21.5.1991 Sivarasan came to the house of Vijayan (A-12). He gave some message to Nero to be transmitted on wireless. Then he said something to Subha and Dhanu who got ready by 12 O'clock after having their lunch. Sivarasan again came at 12.30 p.m. wearing a Kurta-Pyzama with a camera in his hand. He asked Dhanu and Subha to get ready. Vijayan (A-12) said usually his wife would help Subha to wear saree. On that day, however, Subha and Dhanu both closed the door of their room and got dressed. They took about half an hour to dress. Subha was wearing a saree; Dhanu was wearing orange colour kurta and green colour dupatta. She was wearing spectacles. Generally she did not wear spectacles in the house. A photo session started. 10 photographs were taken among themselves with the camera Sivarasan had brought. Vijayan (A-12) took photographs of Subha, Dhanu and Sivarasan together. Dhanu had put on over make-up on her face. Sivarasan asked Vijayan (A-12) and Nero to go and bring an auto. He told them not to bring the auto near the house and to stop that near the bus stand away from the house. This arrangement was so that auto driver would not be able to identify the house. They brought the auto as instructed. Sivarasan, Subha and Dhanu walked up to the auto. Nero went with them but came back and then gave some message through wireless. He used to speak daily through wireless once in the morning and once in evening. On the morning of 22.5.1991, Sivarasan came to the house of Vijayan (A-12) and said that the work was over and that the Rajiv Gandhi was murdered. He asked Nero to send the message to Sri Lanka through wireless and himself went to sleep. Sivarasan would write on a piece of paper in a language which was not understandable and would give that to Nero to send that message through wireless. After lunch Sivarasan went away. On 23.5.1991 he came on a cycle, took the motorcycle and again went away. He used to keep the motorcycle in the house of Vijayan

(A-12). From the evening of 23.5.1991 Sivarasan, Subha and Nero were staying in the house of Vijayan (A-12). Nero used to keep his gun (AK-47) always ready. All these three used to watch carefully if police was coming. This watching started from the day Dhanu's photograph appeared in the newspapers. Sivarasan used to go out with his pistol. While sleeping he used to keep it under his pillow. He and Subha went to Tirupathi on 25.5.1991 and came back the next day in the night. Vijayan (A-12) said that Sivarasan used to say if police would come to arrest him he would kill a dozen of policemen and then only he would be caught. On 27.5.1991 he took out the motorcycle and hid somewhere. Vijayan (A-12) did not see the motorcycle afterwards. In the end of May, 1991 Sivarasan's photo also appeared in the newspapers. Vijayan (A-12) used to buy all the newspapers which Nero would read and tell Sivarasan the progress of investigation made by the police in the case. One day Sivarasan took off his moustache. Movements of Sivarasan got limited after his photo appeared in the newspapers. He used to go out on foot and would give messages to LTTE men. One day in the first week of June, 1991, Sivarasan said that Nero had spoken to Jaffna through wireless and arrangements were made for their escape from India by boat. Sivsrasan took Subha somewhere and returned on 10.6.1991. He said they had gone to Coimbatore. That day Nero told Sivarasan that he spoke through wireless and that there was some problem and that boat won't be coming from Jaffna. By this time photo of Subha also appeared in the newspapers which scared Subha. Sivarasan then put Subha's dresses in a black bag and took that out somewhere and hid it. On that day only Santhan (A-2), who was a close companion of Vijayan (A-12), came for the first time. On 12.6.1991 Sivarasan came to Vijayan's (A-12) house and told him that it was very difficult to stay like that. They should buy photos of Rajiv Gandhi, M.G.R. and Jayalalitha and keep them in front of the room and in that way nobody would doubt them. This Vijayan (A-12) did. Sivarasan paid him Rs. 100/- for that. After few days Sivarasan asked Bhaskaran (A-14) to get help from his relative to arrange for some other house. Bhaskaran (A-14) went to his relative N. Chokkanathan (PW-97) to look for some other house but said that N. Chokkanathan (PW-97) was of no use and it was difficult to get another house. Sivarasan said he would seek help of some other person to see the house. On 23.6.1991 he gave a message to Nero to be transmitted through wireless. Nero told Sivarasan that that was the last message to be given. After that Sivarasan and Nero took off the antenna and wires and kept the wireless set in the pit which had been dug in the kitchen. After a day or two Santhan (A-2) brought another person to take Sivarasan and Subha with him. Later, Vijayan (A-12) came to know that his name was Suresh Master (DA). In the evening they brought an auto. The plan was that Sivarasan, Subha, Nero and Suresh Master would all go together. Thereafter Vijayan (A-12) said he did not see all of them. Vijayan (A-12) and family then decided to go to Tuticorin and after staying for one week returned to their house to take the things and to vacate the house but by that time the police came and arrested Vijayan (A-12).

493. Mangaleswaran (PW-234) and Rose D. Nayagam (PW-235) respectively were in charge of Rameshwaram and Tuticorin refugee camps and they have testified to the

registration of stay of Vijayan (A-12), his wife Selvaluxmi (A-13) and his father-in-law Bhaskaran (A-14) in the refugee camps, as refugees coming from Sri Lanka.

494. J. Duraisamy Naidu (PW-82) is the owner of the house which was taken on rent by Vijayan (A-12). Tenant agreement (Exh.P-426) was executed. The house was occupied on 23.4.1991. The tenant agreement bears signature of Vijayan (A-12) for Plot No. 12, Eveready Colony, No. 12 at Kodungaiyur. Rent agreement was taken into possession by the police.

495. Esylen Mantel (PW-99), who was living in Plot No. 14, Eveready Colony, Kodungaiyur, said that Vijayan (A-12), his wife Selvaluxmi (A-13) and his father-in-la-,v Bhaskaran (A-14) were staying in the neighbouring house. Esylen Mantel (PW-99) said in the first week of May, 1991 two auto rickshaws had come to the house of Vijayan (A-12). I none auto there were two ladies and in the other there were two gents. The girls names came to be known to Esylen Mantel (PW-99) as Subha and Dhanu and the gents' as Sivarasan and Nero. Esylen Mantel (PW-99) said they also brought a TV to the house of Vijayan (A-12) and fixed the antenna on the terrace. They also fixed two casuarina tree posts on the terrace and connected the black wire between posts with the wire connection inside the house of Vijayan (A-12). On 21.5.1991 at about 2.00 p.m. Esylen Mantel (PW-99) saw Sivarasan, Subha and Dhanu standing at the bus stand at Kodungaiyur. Next day the witness came to know about the assassination of Rajiv Gandhi on TV news. Esylen Mantel (PW-99) saw Sivarasan, Subha and Nero at Vijayan's (A-12) house on 24.5.1991 but did not see Dhanu. Same day Dhanu's photograph was published in the newspapers. Esylen Mantel (PW-99) suspected that it was the same girl who was seen by her at the bus stand. On 29.5.1991 Sivarasan's photo was also published. Now it was confirmed to Esylen Mantel (PW-99) that all these persons were involved in the assassination of Rajiv Gandhi. She developed fear on that account. Vijayan (A-12) came to the house of Esylen Mantel (PW-99) in the second week of June, 1991 and borrowed a driller stating that he wanted to fix a regulator for the fan. Since he did not return the driller same day Esylen Mantel (PW-99) went to the house of Vijayan (A-12). On reaching there she saw Sivarasan standing in the hall with one left eye closed. Earlier Esylen Mantel (PW-99) had seen him wearing spectacles. Now he was not wearing spectacles. When she asked Selvaluxmi (A-13) as to what happened to the eye of Sivarasan she told her that he lost his eye while playing. One day Esylen Mantel (PW-99) saw Sivarasan sitting on the steps of the house of Vijayan (A-12). She went near him, wished him and asked him if he was employed somewhere. Sivarasan said he was unemployed and was trying to get a job in Dubai. At that time she noticed he had two eyes. Left eye looked like an artificial eye. Now he did not have even mustache and did not wear spectacles. Mother of Esylen Mantel (PW-99) went to CBI office at Malligai to give information. But because of fear of LTTE she did not do so. She said they should watch the house to collect more clues and then to inform CBI. Thereafter they were keeping watch on Vijayan's (A-12) house and noticing the movements on that house. On 26.6.1991 at 7.30 a.m. Esylen Mantel (PW-99) saw Vijayan (A-12) taking Bhaskaran (A-14) on a cycle. While passing in front of her house Bhaskaran

(A-14) told Esylen Mantel (PW-99) that he was going to Madurai. That day Sivarasan was not in the house of Vijayan (A-12). Vijayan (A-12) said Sivarasan had gone to Madurai to get a job and would return in a month or so. At that time there was a black boy in the house who was later identified as Santhan (A-2). Vijayan (A-12) introduced Santhan (A-2) as his brother who was a driver and was trying for a job in Dubai. On 1.7.1991 again at 7.30a.m. Esylen Mantel (PW-99) saw Vijayan (A-12) and Santhan (A-2) going on a cycle. After ten minutes Vijayan.(A-12) came back alone and now he had changed his dress too, Vijayan (A-12) told Esylen Mantel (PW-99) while passing through her house that he was leaving for Madurai since he received a telegram from his father-in-law. Vijayan (A-12) also said that he would come back after one and a half month or so. That day Vijayan (A-12) also told her that Sivarasan would not be coming back as he was the most wanted person by CBI. On 2.7.1991 Esylen Mantel (PW-99) informed the CBI about the incident. She was examined by the police and identified Santhan (A-2), Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) in the row of accused and Sivarasan, Subha and Dhanu in photographs.

496. In diary (MO-180) of Sivarasan it was mentioned against date 6.4.1991 "Vijayan (A-12) Veedu (house) -15,000/-" meaning that Sivarasan had paid Rs. 15,000/- to Vijayan (A-12) for getting a house on rent in Madras.

497. L.D.N.J. Wijesinghe (PW-67), Senior Superintendent of Police, Sri Lanka has spoken about the wireless network of LTTE. He intercepted LTTE wireless transmissions. He said Nero was using wireless station 910 and 91 while communicating with LTTE leaders in Jaffna. Wireless station 91 belonged Pottu Amman in Sri Lanka and Station 910 is the wireless station belonged to Sivarasan in India.

498. T.P. Sitther (PW-78) is the wireless operator of Government of India in the Ministry of Home Affairs. He has also testified regarding wireless messages monitored during the period from 1988. He also deposed that station 91 belonged to Pottu Amman and station 910 was used by Sivarasan.

499. Hashmuth S. Setal (PW-98) is the owner of Barathi Cycle company and Barathi Cycle Agency. He sold BSA Delux cycle to one P. Vijayan of Plot No. 12, Muthamizh Nagar, Kodungaiyur, Madras as per bill (Exh.P-491). Cycle was sold on 8.5.1991. He identified that cycle (MO-390). Another cycle BSA SLR was also sold to Vijayan (A-12) on 8.5.1991 as per bill (Exh.P-493) having the same address.

500. Mohanraj (PW-254) was working as officer-in-charge of International Monitoring Station at Perungudi, Madras. He has testified that wireless Trans receivers (MO-770) could be operated by using 12 volt D.C. battery like MO-209.

501. N. Chokkanathan (PW-97) is a distant relation of Bhaskaran (A-14). In his deposition he said that he had met Bhaskaran (A-14) in the year 1952 when he went to Sri Lanka to

seek a job. Then suddenly on 20.6.1991 Bhaskaran (A-14) called on him. He entertained him and discussed about family matters. They went for an evening movie show. That day Bhaskaran (A-14) slept in the house of N. Chokkanathan (PW-97). After they had supper Bhaskaran (A-14) asked N. Chokkanathan (PW-97) to get a big house rented for him in an outer area at a monthly rent of Rs. 2000/- to Rs. 3000/-. N. Chokkanathan (PW-97) was surprised and said that a house at the rate of Rs. 300/ - per month would be sufficient for his family. Bhaskaran (A-14) said the house was not for him but was required for some important persons. When N. Chokkanathan (PW-97) inquired who those important persons were Bhaskaran (A-14) said it would create some problem if he disclosed him and their names. N. Chokkanathan (PW-97) said that unless he revealed the names of the important persons he would not take any step to search for a house. Then Bhaskaran (A-14) told him that the house was meant for Sivarasan and Subha who were involved in Rajiv Gandhi assassination case and whose photographs had been exhibited in TV and posters. N. Chokkanathan (PW-97) said he was shocked and asked what was the relation between him and those persons. Bhaskaran (A-14) said that at that time he was residing in a house in Kodungaiyur area and that those persons were residing there. When N. Chokkanathan (PW-97) refused to give any help, Bhaskaran (A-14) then pleaded with N. Chokkanathan (PW-97) to at least permit Subha to stay in his house for some time as a family member. N. Chokkanathan (PW-97) again refused. That made Bhaskaran (A-14) angry. He refused to eat and threatened N. Chokkanathan (PW-97) that he would kill him if he gave any information to the police about him or Sivarasan or Subha. Bhaskaran (A-14) then left the house. Next day, i.e., 22.6.1991 with the assistance of his relative one Srinivasan, with whom N. Chokkanathan (PW-97) discussed the matter, they went to the office of Malligai CBI headquarters. N. Chokkanathan (PW-97) gave his statement to the police. They sent him back saying that they would call him after four days. He was again called by the CBI officials on 28.6.1991 when he was interrogated and his statement was recorded.

502. M. Narayanan (PW-281) is D.S.P., CBI and one of the investigating officers. As far as Bhaskaran (A-14) was concerned he said his presence was secured on 7.7.1991 but how that was done he was unable to say. He said he was brought to the office of CBI on that day but who brought him again he was unable to tell. When he was taken to the house of Vijayan (A-12) and was about to break open the lock of the house Vijayan (A-12) and Selvaluxmi (A-13) with their child came there. They were identified by Bhaskaran (A-14). Vijayan (A-12) had the key with which he opened the house. Thereafter seizure was effected. Vijayan (A-12) voluntarily pointed out the space in the kitchen from which signal making articles were recovered. M. Narayanan (PW-281) said that Vijayan (A-12) voluntarily pointed out towards the pit otherwise that place could not have been found. He said N. Chokkanathan (PW-97) came to his office on 23.6.1991 and was accompanied by Srinivasan. Statement of N. Chokkanathan (PW-97) was not recorded at that time because of immediate action was to be taken to locate the house and to make attempt to apprehend Bhaskaran (A-14). Statement of N. Chokkanathan (PW-97) was recorded on 28.6.1991. As per witness M. Narayanan (PW-281) the recovery was effected on 8.7.1991

on the basis of the disclosure statement made by Vijayan (A-12) (Exh.P-1358). It has come on record during the course of examination of the witness that recovery had already been effected on 7.7.1991 (Exh.D-63). The trial court has accepted Exh.D-63 and has rejected Exh.P-1358 and had adversely commented to the conduct of the witness, the investigating officer, in allegedly manipulating the recovery.

503. Ravi (A-16) is an Indian national. He made confession. He was attracted towards LITE. He got training in military camp run by LTTE on Indian soil. He joined LTTE movement and got deeply involved in it. In his confession he described the details of the training he got and the oath he took. Ravi (A-16) also described some of the activities of LITE. He went to Sri Lanka as well where also he got further training in military operations. Ravi (A-16) then came back to Madras before Indo-Sri Lankan Accord was signed in 1987. In Madras he continued his operation. During holidays, however, he would meet various LTTE personnel like Kittu, Baby Subramaniam, etc. in the LTTE office at Indira Nagar in Madras. When war started between IPKF and LTTE he said he was eager to go to Sri Lanka to take part in the war operations against IPKF. He was kept under house arrest in the month of June-July, 1988. On 8.8.1988, he along with 89 others, belonging to LTTE cadre, was arrested and kept in lock-up in Madras Central Jail. From there all these persons were sent to Sri Lanka by an Indian Air Force plane. Ravi (A-16) said he was sent to Sri Lanka because it was thought that he was a Sri Lankan national. In Sri Lanka firstly, they were kept in Indian Army camp. They learnt about the rapes, murders and other atrocities committed by IPKF. They developed a strong feeling of revenge. Ravi (A-16) was released in 1989. He went to LTTE camp in Sri Lanka where he met various leaders. There he was indoctrinated to start a movement so that entire Tamil people in the world joined hands. Ravi (A-16) said when he asked his role he was told to go to Tamil Nadu and to select youths, who had got feeling for Tamil race and tell them about the struggle of LTTE and the traitorous acts committed by India. Ravi (A-16) said that India thus became their enemy and they were to fight for Tamils' nation. He was advocated for armed revolution to establish a separate Tamil nation. Ravi (A-16) was given a letter and was told that if he gave that letter to the seashore incharge in India he would be given money for his expenses. After coming to India Ravi (A-16) went to Selam along with other LTTE people. He gave that letter to one Richard in Selam, who after reading the letter gave him Rs. 15,000/-. From there Ravi (A-16) went to Madras and was told to go to Subha Studio at Royapettah to meet Muthuraja. It was in the second week of January, 1990 that he came to Madras and met Muthuraja in Subha Studio and apprised him about the instructions he got in Sri Lanka. He met Suseendran (A-17), who was a member of Dravida Kazhagam. He was also told about the need of armed revolutions in Tamil Nadu and the LTTE support of that. Initially they were to collect youths. In his confession Ravi (A-16) further described as to how ten persons were collected by Suseendran (A-17) and arrangements were made for their training in Sri Lanka. Ravi (A-16) also went to Sri Lanka. He further described his activities in India for LTTE. He met Suseendran (A-17) again in May, 1990 at Coimbatore and asked him to enroll more youths. By this time war had started between LTTE and Sri Lankan Army. During these

training days in Sri Lanka Ravi (A-16) had met Pottu Amman as well who explained that to carry on the work assigned to Ravi (A-16) and others it had to be done in three phases (1) to arrange houses for the stay of LTTE cadre personnel, (2) to enroll more people and impart training to them and (3) to develop seashore linkage and to form separate boat line, if possible. Training in wireless operation was also given. In the month of December, 1990 Ravi (A-16), Suseendran (A-17) and two others were brought to a house in Jaffna by Pottu Amman for the purpose of their return to Tamil Nadu. In this House Sivarasan was introduced to Ravi (A 16) by Pottu Amman. Pottu Amman separately called Ravi (A-16) and told him that Sivarasan was also going with them to Tamil Nadu and that he might be contacted if there was any need for money for selection of personnel for the movement and it would be useful to get suggestions from him. Pottu Amman also reminded him the incident of Padmanabha case in Tamil Nadu and said some important matters would be going to occur there and for that his role must be prominent one. He was, therefore, told to follow the instructions of Sivarasan and consult him in case of any doubt. They all were seen off by Pottu Amman. While they were waiting in the boat Ravi (A-16) asked Sivarasan "about this is what work and how many persons". He said "lesser man bigger target". Ravi (A-16) further inquired whether it would be a big shot in Tamil Nadu politics and to that Sivarasan replied that it was something bigger than that. Again when Ravi (A-16) asked whether it could be Rajiv Gandhi but Sivarasan did not give any reply directly and told him that they were going to perform and that "we will see later" and the talk ended. In the training camp in Sri Lanka, Ravi (A-16) said people would often speak about Rajiv Gandhi and IPKF and showed their hatred and emotion and that was the reason why he asked Sivarasan whether it was Rajiv Gandhi to which he replied that it was a big target. Ravi (A-16) further in his confession said that there was no direct reply coming out. Sivarasan, however, spoke his words in such a way that he confirmed his suspicion. Ravi (A-16) gave his aunt's Longamadha (PW-206) address to Sivarasan if he was to be contacted. They reached Kodiakkarai on Indian soil in the last week of December, 1990. Sivarasan said that he would give his address and telephone number to Ravi (A-16) in a few days' time. Firstly, they stayed in the house of Shanmugham (DA). Sivarasan gave him Rs. 2,000/- out of which he gave Rs. 500/- each to Suseendran (A-17) and two others. After ten days of their arrival they met again in Madras as arranged earlier. Sivarasan gave Rs. 3 lacs to Ravi (A-16), 1.5 lacs each on two different occasions and told Ravi (A-16) to buy a vehicle if required for the movement. Sivarasan gave his contact telephone number 2343402 to Ravi (A-16) to contact him if there was any urgent need and in case he was not there to contact Robert Payas (A-9) and to give him the message. Sivarasan again gave him Rs. 50,000/- out of which he gave Rs. 5,000/- each to Suseendran (A-17) and two others. At the end of March, 1991 there was a message lying in the house of Longamadha (PW-206) for Ravi (A-16) to meet Sivarasan. There was a wireless set brought by LTTE cadre and Sivarasan asked Ravi (A-16) to come with him to receive the set. They then went to the house of Jayakumar (A-10). After taking the food while they were sleeping on the terrace, Ravi (A-16) said that Sivarasan had once told him to find out the airport security when a VIP would come. He said he did not remember the name of the VIP. That night Sivarasan asked about the VIP security and Ravi (A-16)

told him that when great leaders come, first gate of the old airport was used and that it was a narrow road and that the "place is advantageous for us". Ravi (A-16) asked Sivarasan that three months had elapsed after they had come to India and that nothing was done 'about the target. Sivarasan told him that "we must not go in search of target and that target would come searching us and we shall see at that time". He also said that it might take place in near future if the election is declared. Sivarasan said that in order to make wireless set functioning to contact Sri Lanka two or three places of shore had to be separately arranged. Sivarasan then told Ravi (A-16) to start a travel agency in Delhi and then asked him to send some person to collect the details to Delhi. When Ravi (A-16) said that that would be an expensive proposition Sivarasan replied that expenses need not be bothered. Ravi (A-16) received another sum of Rs. 2 lacs from Sivarasan. After 15 days when Ravi (A-16) again met Sivarasan he gave him Rs. 5 lacs to start travel agency in Delhi. He, however, said travel agency need not be started immediately but it was enough if arrangements are made. In his confession Ravi (A-16) described the enrollment of some youths for training and for making arrangements for them to go to Sri Lanka by boat for the purpose. Then he described about attempt to get wireless connection with Sri Lanka. Again on one visit to Kodiakkarai when Ravi (A-16) was staying in the house Shanmugham (DA), Murugan (A-3) came there with a big Aristocrat suitcase. It was on 13/14.5.1991. Then he said that when he, Murugan (A-3) and one other person Chokkanathan were sitting separately Chokkanathan asked that work of Sivarasan had not yet occurred. Murugan (A-3) said that "where would it go without occurring and it ought to occur". Nobody then talked about it later. Since boat did not come Murugan (A-3) went back to Madras. Ravi (A-16) was to go to Sri Lanka. The boat did come on 20.5.1991 but Chokkanathan did not allow Ravi (A-16) to go in that boat as that boat was to carry goods for Sri Lanka.

504. On the night of 21.5.1991 while Ravi (A-16) was sleeping in a hut opposite to the house of Shanmugham (DA), in the mid night servant of Shanmugham told him that Rajiv Gandhi had died in a bomb blast in Madras and with him 30 others also died including Moopanar and Vazhapadi Ramamoorthy. He said that message came by telephone to Shanmugham and he advised that Ravi (A-16) should not remain there. Next day when Ravi (A-16) met Chokkanathan he said assassination of Rajiv Gandhi was advantageous to LITE. Since it was not certain that boat would come from Sri Lanka for Ravi (A-16) and others to return he gave his bag and Murugan's (A-3) suitcase to Chokkanathan and asked him to give them to Shanmugham and went to Trichy. He gave a message to Suseendran'(A-17) to meet him at Madras on 26.5.1991. He himself reached Madras on 24.5,1991. When he went to his aunt's (Longamadha (PW-206)) house he was given a letter from Sivarasan dated 23.5.1991 addressed in the name of 'Prakash'. One day after Sivarasan came and took Ravi (A-16) out. He asked Ravi (A-16) why he had not gone to Sri Lanka. Then Ravi (A-16) gave him the details. Sivarasan asked him if the shore was clear and added that suspicion had arisen on LTTE and there might be some problems to Sri Lankan Tamils. Sivarasan wondered how the police came in possession of his photograph and that police was searching him in connection with the murder of

Rajiv Gandhi. That being so he said that there would be problem for Subha and it would be better if she was kept in the custody of Ravi (A-16) in the house of some Indian Tamil family. When Ravi (A-16) met Suseendran (A-17) on 26.5.1991 he brought the problem to his notice. Suseendran (A-17) said that if it was for few days there was no problem in keeping Subha in his custody. Ravi (A-16) and Suseendran (A-17) met Sivarasan in the evening. Then Ravi (A-16), Suseendran (A-17), Sivarasan and Subha gathered at 9.00 p.m. at the bus stand from where Ravi (A-16) took leave. After returning he informed Pottu Amman through wireless that Sivarasan had left Subha in his and Suseendran's (A-17) custody. Ravi (A-16) sent a message to Sivarasan that the shore was now clear. Ravi (A-16) along with Sivarasan went to the house of Karpagam (PW-133), relative of Suseendran (A-17) at Pollachi where Subha had been taken. Both Suseendran (A-17) and Subha were there. Ravi (A-16), Suseendran (A-17), Sivarasan, Subha, Kanthan and Murugesan collected at the seashore to take a boat for Sri Lanka. That was 10.6.1991. A message was, however, received that the boat got hit in the sea near Jaffna and all 11 persons who were coming to India died. Yet another attempt was made to leave India from another shore. Sivarasan said that security would now be tightened. At this Ravi (A-16) told him that "we would try, if not 'consume the capsule'." Ravi (A-16) said that problem for leaving from Indian shore would get aggravated if there was any further delay. In his confession then Ravi (A-16) described the attempts of the group to leave India and their inters meetings to achieve that purpose and the difficulty faced by them because of war in Sri Lanka. Ravi (A-16) thought that their position should be explained to Pottu Amman. He, therefore, contacted Suseendran (A-17) for forming a wireless set connection and for that purpose to arrange a house. In the last week of July, 1991 Suseendran (A-17) arranged a house at Dindigul. Kanthan gave his wireless set to Ravi (A-16) telling him to keep that safe. Through wireless set they could reach Jaffna and sent information that CBI was searching for Kanthan and his picture had been published in newspapers and asked them to arrange for a boat urgently. Later, Ravi (A-16) along with Kanthan and another went to the house of Robert Payas (A-9). While Ravi (A-16) stood outside Kanthan went inside the house through back entry and after a few minutes came out. He told Ravi (A-16) that inmates of the house asked him not to come to their house since police was searching him. Later Kanthan went to a lonely house in Porur and when he returned he said that the old man in that house had been arrested by CBI. On 20 or 21.7.1991 Suseendran (A-17) went to Dindigul and gave information to Pottu Amman about the latest position. In his confession Ravi (A-16) had shown his various attempts for him and others to leave the country and his being in constant touch with Pottu Amman through wireless set installed at Dindigul. On 28.7.1991 Ravi (A-16) along with Kanthan and Ramanan went to Sri Lanka and met Pottu Amman. Ravi (A-16) said when Pottu Amman asked as to the position of Tamil Nadu he told him that there was no place even-to, stand in the existing circumstances. Pottu Amman then asked him as to why Sivarasan went to Bangalore. Ravi (A-16) said he did not know about Sivarasan's going to Bangalore and that he had earlier informed Pottu Amman that he was not in contact with Sivarasan. Ravi (A-16) gave Pottu Amman up-to-date perception of the investigation and the arrest of various persons. Ultimately Ravi (A-16) stated that he returned to India. He left Sri Lanka on

10.8.1991 with various weapons, 12 gold biscuits and 15 code sheets. The weapons included 2 SMG, 10 grenades, 1350 rounds and 5 pistols. Pottu Amman told Ravi (A-16) that now weapons had been handed over to him, time had come for starting the struggle and to fight against a very big super power and asked him to be careful. He told Ravi (A-16) to decide targets and then suggested many other things as to how to go about and use the arms and ammunition. They came to India through a boat. He contacted Suseendran (A-17). 1350 rounds, 2 SMG and 5 grenades were dumped in a place by two LTTE men on the direction of Ravi (A-16). Next morning they came to Dindigul with 2 walkie-talkie, 12 gold biscuits (each weighing 120 grams), code sheets and 3 pistols. Jaffna was informed through wireless set of Kanthan. Ravi (A-16) gave 6 biscuits, 2 grenades, one pistol and code sheets to Suseendran (A-17) and asked him to keep them. One pistol Ravi (A-16) kept with him and one he gave to one Sukumar. 6 gold biscuits were given to one Charles. On 12.8.1991 Ravi (A-16) left Dindigul and reached Madras on the next day. There he got the news in papers that weapons hidden in the ground at Nambuthalai had been taken by the customs. Pottu Amman was informed of this seizure. On 21.8.1991 Ravi (A-16) was arrested by the police. He was shown the letters and other diaries of Sivarasan to identify the handwriting of Sivarasan. He identified various persons in LTTE cadre, they being Chokkanathan, Arivu (A-18), Yogi alias Yoga Ratnam, Shanmugham, Haribabu, Sivarasan, Aruna, Suba Sundaram (A-22), Avadi Manoharan, Robert Payas (A-9), Ramanan, Jayakumar(A-10), Kanthan, Murugan (A-3), Chinna Shanthan, Gundappa, Dixon and Irumborai (A-19).

505. Suseendran (A-17) is another Indian Tamil living in Tamil Nadu. He also became LTTE sympathizer and had been working for LTTE. He got contact with Muthuraja, Baby Subramaniam and Kasi Anandhan (PW-242) and other persons belonging to LITE. In 1989 he went to Sri Lanka and organized there a procession in support of LITE. In end of January, 1990 he came to know Ravi (A-16). They both discussed the creation of separate Tamil Nadu and its liberation. Suseendran (A-17) did not consider this offer seriously. After a few days Ravi (A-16) again talked to him to which Suseendran (A-17) replied that though he felt confident but asked as to how it was going to be attained. Ravi (A-16) said youths who were interested in getting separate Tamil Nadu could be organized and involved in the struggle and that LTTE would help in giving arm training to them. Suseendran (A-17) said he got interested and decided to collect persons interested in separate Tamil Nadu. In his confession Suseendran (A-17) then described the attempt to organize youths and then to make arrangement for them to go to Sri Lanka for training. In Sri Lanka he met Pottu Amman as well. He came to the training camp where Suseendran (A-17) and others were getting training. He told them that they should always be ready at right time to attack important places in Tamil Nadu and that weapons and money required for the struggle would be given by LTTE. He said that they must fight as one under the leadership of Ravi (A-16). The movement which was to be started by Ravi (A-16) and Suseendran (A-17) was called Tamil National Retrieval Troops (as translated in English). In the end of December, 1990 Pottu Amman took him, Ravi (A-16) and others to Jaffna. He took Ravi (A-16) separately and talked to him. In the house there

was one person whose name was Sivarasan. Then Sivarasan, Pottu Amman and Ravi (A-16) talked together for a while. They then left for Indian soil on boat and were seen off by Pottu Amman. In his further confession Suseendran (A-17) described his meeting with various persons connected with LTTE and the expenses met by Sivarasan. He was involved in organizing the youths and went to places like Pollachi. As per earlier arrangement he met Ravi (A-16) at Madras on 26.5.1991. Sivarasan also came there. At that time Ravi (A-16) told him to have a lady tiger stay with him for one week since the police problem was too much at Madras. He requested that the girl could stay in a house of a, sup-porter whom he knew. Sivarasan, Subha, Ravi (A-16) and Suseendran (A-17) then gathered at bus stop at 9 O'clock when Ravi (A-16) left leaving them there. That lady was introduced to Suseendran (A-17) as Malliga. Suseendran (A-17) said that later he came to know that her name was Subha. He, Sivarasan and Subha left for Trichy reaching there in the morning. From there they went to Pollachi. He said there they stayed in the house of D. Shanmugasundaram (PW-208). He introduced Mallika as his wife and sister of Sivarasan. Karpagam (PW-133), wife of D. Shanmugasundaram (PW-208), was a distant relative of Suseendran (A-17). Sivarasan then left saying that he would come back and take Mallika in 5 days. Meanwhile Sivarasan's photo was published in the newspapers. Sivarasan did not come. Suseendran (A-17) thought that it was not right to stay in that house any further as that would give unnecessary trouble to D. Shanmugasundaram (PW-208). He, therefore, with Mallika left the place saying that they were going to Bangalore. When they reached Pollachi bus stand Suseendran (A-17) told Subha that they would go to Madras. She refused. She said that Sivarasan would definitely come within a day or two. For the purpose of hiding, Suseendran (A-17) took her to Trichur by bus, from where to a place at Cochin and went to Trivandrum and then came back to Pollachi after visiting various places and reaching Pollachi by 10 O'clock in the night. They again went to D. Shanmugasundaram's (PW-208) house and told him that they were unable to go to Bangalore and returned after staying with another friend's house. He was informed that Sivarasan had come and searched for him and Subha. That night they stayed there. He said Subha would often talk to him about lady tiger organization named as 'freedom, birds' (English translation). He also saw her once writing poem in coloured autograph book (Exh.P-480). She also read some crime novels which were purchased by Suseendran (A-17). Sivarasan came after about two days and same night Suseendran (A-17), Subha and Sivarasan went to Madras by bus. They got down at Saidapet bus stop. While Sivarasan and Subha went away, Suseendran (A-17) returned to Pollachi itself. After about ten days Suseendran (A-17) went to Palani where he met Ravi (A-16). Suseendran (A-17) made arrangement for installing wireless set in a place near Coimbatore. Then he took a house on rent at Dindigul. In his confession Suseendran (A-17) described further activities connected with LTTE and attempt to go to Sri Lanka. On 27.8.1991 LTTE boat came by night in which Ravi (A-16), Ramanar and Kanthan went to Sri Lanka. In the first week of September, 1991 a message was received from Jaffna to identify the coast for the boat in which Suseendran (A-17) was coming. Suseendran (A-17) identified the coast and informed Pottu Amman by wireless. On 10.9.1991 Ravi (A-16) arrived by boat in the night. Four more persons also came with him,

who had completed their training. Ravi (A-16) brought two wooden boxes containing weapons. In the same boat which had come four more persons were sent to Jaffna for training. Ravi (A-16) and Suseendran (A-17) came to Dindigul. Jaffna was informed by wireless. Ravi (A-16) gave a walkie talkie, three grenades, one nine M.M, pistol, 6 gold biscuits, code sheets and eight cyanide capsules to Suseendran (A-17) and asked him to keep them safely. Ravi (A-16) also gave him Rs. 30,000/- and told him to buy sockets for the wireless. Ravi (A-16) also told Suseendran (A-17) to make arrangement for buying of petrol and diesel and to send them to Jaffna. He told Suseendran (A-17) that in future they had to make arrangement for the petrol needed for the boat to send the weapons and persons. In the month of October, 1991 Suseendran (A-17) went to Pollachi. All the things which Ravi (A-16) gave him he kept locked in a suitcase and gave that to a friend K. Periasami (PW-213) and told him that he would come and collect that later. He then went to Kodiakkarai and gave Rs. 30,000/ - to his friend Jothi Venkatachalam and asked him to arrange for diesel. He gave Jothi's mother one walkie talky and two grenades rapped in plastic paper and told her that he would come and take them afterwards. When he came back to Dindigul again, police arrested him.

506. In his disclosure statement (Exh.P-1323) made on 20.1.1992 Suseendran (A-17) with respect to part of weapons which were given to him by Ravi (A-16) said that if he was taken to the place and to the person with whom he kept the articles he would be able to identify those persons, their residences and the articles which he gave them.

507. K.S. Madhavan (PW-273), Sub-inspector of Police of Tamil Nadu State Police, testified to the disclosure statement made by Suseendran (A-17) (Exh.P-1323) and the recoveries made on that basis both at Pollachi and Kodiakkarai as aforementioned.

508. K. Periasami (PW-213) was involved in Dravida Kazhagam (DK) political organization. He got acquainted with Suseendran (A-17). That was since 1985. In the second week of October, 1991 in the morning Suseendran (A-17) came to his house with one suitcase in his hand. He said he was going out of station and asked him to keep the suitcase with him carefully. That suitcase was locked. He, however, did not come back. He was arrested within two weeks from that time in connection with LTTE. After he read the news of his arrest in newspapers K. Periasami (PW-213) thought that there might be some articles in the suitcase, which Suseendran (A-17) gave, connected with LTTE. Using a screw driver he opened the suitcase and found one walkie talkie, three aerials of walkie talky, one rifle, 18 bullets, one hand grenade, five cyanide bottles and six gold biscuits. K. Periasami (PW-213) after seeing the articles was terrified. He threw all the things except the six gold biscuits inside a well at the back side of his house and also threw the suitcase in a nearby thorny bush. Thereafter Suseendran (A-17) came with the CBI to his house on 22.1.1992 and asked for the box which he had given him. K. Periasami (PW-213) said he had kept the gold biscuits concealed in the false ceiling of his room. He took Suseendran (A-17) and police officers near the well and gave them details of the articles which he found in the suitcase. Services of fire brigade were requisitioned and they

brought out all the articles from the well. Articles (MOs 582-587) were seized by Mahazar Exh.P-1003. Six gold biscuits (collectively MO 588) were seized as per Mahazar Exh.P-1004. Suitcase, however, could not be found.

509. Magarathinam (PW-260) said he was resident of Kodiakkarai. He is in laundry business. He said Sundaramoorthy Pillai and his wife Valliamai were residing in the house next to his door. Later on they got their own house and shifted. About four years back five policemen had come nine days after Pongal festival. There were two pits in the western side of the house of Pillai. In one there were two explosives (MO-754 and MO-755) and in the other one walkie talky (MO-777). Valliamai was showing those objects to the police. A seizure memo was prepared taking into possession the articles (Exh.P-1172). Walkie talky and two explosives were kept by Suseendran (A-17) with Valliamai, who is mother of Jothi Venkatachalam, a friend of Suseendran (A-17).

510. M. Mariappan (PW-86) was working in the house hold of Shanmugham (DA) at Kodiakkarai. He was living in the elder brother's house of Shanmugham (DA). At that time he said that some Sri Lankan people were coming and going. There was a tent in front of Shanmugham's brother's house where they used to stay. One day one Murugan (A-3) came there from Madras. He stayed in the tent for four days and since no boat came from Sri Lanka he returned to Madras. He gave M. Mariappan (PW-86) six items - two boxes and four bags and said he would take back those on his return from Madras. Shanmugham's brother told M. Mariappan (PW-86) and Shanmugham to bury and conceal the items. This he did. Police made inquiry from M. Mariappan (PW-86) and he after digging unearthed the hidden things and gave them to Tahsildar of the area. M. Mariappan (PW-86) said he and his brother Govindan buried those six items. He identified those two boxes (MO-198 and 199) and four boxes (MO-200 to 203), which Murugan (A-3) had given him and he had buried.

511. Karpagam (PW-133), whose husband is D. Shanmugasundaram (PW-208), said that she knew Suseendran (A-17). He was her husband's senior in college and she came to know him after marriage. One day on 28.5.1991 Suseendran (A-17) came to their house. He introduced the girl accompanying him as his wife Malliga and said she was a Sri Lankan refugee and it was a love marriage between them. The person with beard, who was also accompanying them, was introduced as Malliga's brother. Suseendran (A-17) said that since it was a love marriage her parents were opposed to it and they would stay for three or four days. The person, who had beard, went away. When D. Shanmugasundaram (PW-208) came home in the evening she gave him the details. Karpagam (PW-133) also bought one HMT watch as gift for the newly weds with the consent of her husband. Malliga also bought a chappal. Karpagam (PW-133) then bought some sarees for Malliga on the request of Suseendran (A-17). Suseendran (A-17), however, gave Rs. 1,000/- to D. Shanmugasundaram (PW-208), which was the cost of the watch. He said the watch was a gift but Suseendran (A-17) said it was not necessary in the condition they were. They, however, kept the watch. On 1.6.1991 Suseendran (A-17)

told D. Shanmugasundaram (PW-208) that he was taking Malliga to Bangalore where he had got a house to live. On 2.6.1991 they left the house. Next day Malliga's brother (Sivarasan) came to the house of Karpagam (PW-133) whom she informed that Suseendran (A-17) had taken Malliga to Bangalore. Karpagam (PW-133) identified the photo of Sivarasan (MO-470) as the person who was introduced as brother of Malliga by Suseendran (A-17). There was another person who had come with Sivarasan. Karpagam (PW-133) identified him as Ravi (A-16). On 3.6.1991 Suseendran (A-17) and Malliga came back and when D. Shanmugasundaram (PW-208) asked them whether they had gone to Bangalore, Suseendran (A-17) replied that they could not get the tickets and had stayed in a friend's house. Malliga was told that her brother had come on a day before. Suseendran (A-17) left the house on 4.6.1991 and came back the next day. After some time Sivarasan came and then all three left. They did not tell Karpagam (PW-133) as to where they were going. After about ten days Suseendran (A-17) came to the house of Karpagam (PW-133) and when she inquired about Malliga's health he said she was fine and asked her to come to Bangalore where they were staying in a separate rented house. After one month suddenly on one night Suseendran (A-17) came again and told D. Shanmugasundaram (PW-208) that the woman who had stayed in their house was Subha and if they disclose that to anybody they would be put in trouble and also said that he would not be responsible for that. Saying that he went away. Karpagam (PW-133) said that they were afraid and did not divulge about their stay to anybody. When Malliga alias Subha was presented with a new watch the old citizen watch (MO-471), which she was wearing, she left in the house of Karpagam (PW-133). Suseendran (A-17) had left a Philips radio (MO-472). Police took these articles into possession by seizure memo Exh.P-635. Police also took into possession bill for the purchase of the HMT watch (Exh. P-636). There was also a guarantee card of the watch (Exh.P-637). Karpagam (PW-133) identified both Sivarasan and Subha in the photograph and she also identified Ravi (A-16) and Suseendran (A-17). D. Shanmugasundaram (PW-208), husband of Karpagam (PW-133), corroborated the statement of his wife in all respects.

512. Irumborai (A-19) is Indian national. He developed interest in the party Dravida Kazhagam (DK) and became Secretary of Pudukottai District Youth Forum of the party in 1978. In a conference of DK held at Trichy in 1985 a resolution was passed to give full support to LTTE in their struggle. Public meetings were arranged in support of LTTE and funds collected. I rumborai (A-19) took part in arranging the meetings. He met many persons of LTTE cadre. One of whom was Kasi Anandhan (PW-242). For two years in 1986-87 nobody came to collect the funds from Sri Lanka. Then one Ramesh of LTTE cadre was introduced to Irumborai (A-19). He was organizing providing medical treatment to the injured LTTE cadre, who were injured in war in Sri Lanka and had come to India for treatment. He took Irumborai (A-19) to hospital to assist him in looking after the patients who were getting treatment there. During the meeting organized by DK Irumborai (A-19) also met Baby Subramaniarh. In the end of 1989 or beginning of 1990 Irumborai (A-19) and Ramesh went to LTTE headquarters at Indira Nagar, Madras where they met Baby Subramaniam. Irumborai (A-19) was meeting Baby Subramaniam quite

often in public meetings and also at his press at Madras. In his confession Irumborai (A-19) said he also used to cut the news relating to LTTE published in newspapers and paste them in a notebook which he would hand over to Baby Subramaniam who in turn would send that to Jaffna. Irumborai (A-19) said that he also used to go to photo studio run by Suba Sundaram (A-22) along with Baby Subramaniam. Baby Subramaniam would bring copies of video and audio cassettes relating to LTTE to the studio of Suba Sundaram (A-22), which related to LTTE camps in Sri Lanka and the affected places and persons. At the studio of Suba Sundaram (A-22), Irumborai (A-19) also said that he got acquainted with Bhagyanathan (A-20) but he did not see either his sister or his mother. Whenever Irumborai (A-19) came to Madras he would stay in a room near water tank, rent of which was paid by Baby Subramaniam. Irumborai (A-19) had also seen Arivu (A-18) in DK conferences. He also got acquainted with Muthuraja through Baby Subramaniam, who was strong supporter of LTTE. Muthuraja and Arivu (A-18) had also been staying in the room near water tank in Indira Nagar. Irumborai (A-19) said he and others did not accept the policy of Indian Government and specially the action of the IPKF. In June, 1990 Irumborai (A-19), Arivu (A-18) and Baby Subramaniam went to Trichy. When they were staying in a house, Trichy Santhan (DA) came there in a Maruti van. They along with some other LTTE persons went to a place near the coast by van and from there to Jaffna in Sri Lanka by a boat. After spending some days there Irumborai (A-19) and others decided to return to India but by that time there was a conflict started between LTTE and Sri Lankan army with the result that they could not return. Irumborai (A-19) did the same work there in the press of Baby Subramaniam. He met senior members of LTTE. He was also introduced to Prabhakaran. For five months Irumborai (A-19) was in Sri Lanka and he met many women and children who were affected by the conflict with IPKF. That moved Irumborai (A-19). In November, 1990, Irumborai (A-19), Arivu (A-18), Suresh Master and two injured ladies came to India by boat. He met one Kripan who was also the organizer for giving treatment to the injured boys. In March Irumborai (A-19) came to Madras and he met one Kumar, who was the organizer for political wing of LTTE. Irumborai (A-19) went with Suresh Master (DA) to see the boys who were under treatment in various hospitals. During February, 1991 police arrested those persons who were in the house at Adayar. Kripan was also arrested. Irumborai (A-19) said he stayed in Y.V.K. Hospital and Vijaya Hospital and one day in the month of March, 1991 he and Suresh Master (DA) went to Trichy and met Trichy Santhan (DA), who had just then returned from Jaffna. They discussed about the arrest of Kripan and the problem that was being faced in raising funds. Trichy Santhan (DA) said that he would provide the necessary funds. After that they returned to Madras. Suresh Master (DA) hired a house in Alwar Thirunagar in Madras. The house had already been hired by Amman, who was staying there. Other injured LTTE boys were also there. Irumborai (A-19) said he was continuously doing the hospital work and apart from that he also met the LTTE persons who were in prisons at Tiruchy and Vellore and helped them in getting necessary things. As per instructions of Suresh Master (DA) one day in the second week of May, 1991, Irumborai (A-19) said, he went to Tiruchy and told Trichy Santhan (DA) that Suresh Master (DA) asked for money for his expenses. Trichy Santhan gave Rs. 15,000/- to

Irumborai (A-19). At that time Trichy Santhan (DA) told Irumborai (A-19) that LTTE were making arrangements to kill an important leader shortly, and that Suresh Master (DA), the injured boys and others be asked to be careful. At this Irumborai (A-19) asked Trichy Santhan (DA) whether they were going to kill "(Vazhapadi) K. Ramamurthi" (PW-258) of Rajiv Congress to which Trichy Santhan said he did not know the details of the persons and place and alerted all of them to be careful. Irumborai (A-19) then returned to Madras and gave money to Suresh Master and also told him the details told by Trichy Santhan. Irumborai (A-19) said in his confession that after that he did not talk with any one about that. On 21.5.1991 Irumborai (A-19) said he and Suresh Master went to a place called Luz Corner. Arivu (A-18) and Bhagyanathan (A-20) were also there. They all went to M. Sankari's (PW-210) house. Thereafter Irumborai (A-19) and Suresh Master went to Anna Nagar by an auto. Suresh Master got down saying that he was going to see Kasi Anandhan (PW-242). Irumborai (A-19) went home and took a boy Anand to a dentist. He came back by 10 O'clock in the night. Suresh Master also came. Next day on 22.5.1991 in the morning there was news of Rajiv Gandhi being murdered in bomb blast in Sriperumbudur as announced on TV and in newspapers. Irumborai (A-19) said everybody got frightened and did not go out for two days. He thought Rajiv Gandhi's murder was a brave deed and an act of revenge. On third day he and Suresh Master went to Anna Nagar to meet Kasi Anandhan (PW-242). Suresh Master told him that he needed some money. Next day when they again went to meet Kasi Anandhan (PW-242) as told by him he gave money to Suresh Master. Irumborai (A-19) then said that in the last week of May, 1991 he went to Neyveli to see whether an artificial leg had been fitted to a girl Jamuna who was admitted by Irumborai (A-19) in the hospital. Irumborai (A-19) then returned to Madras and as told by Suresh Master went to Salem to get money from Trichy Santhan but he was not available. In the first week of June, 1991 Irumborai (A-19) again went to Selam to meet Trichy Santhan. That night he stayed with him and they discussed about the photos of murderers which were published in the newspapers and who were involved in the murder of Rajiv Gandhi. Both returned to Madras. Trichy Santhan got down at Saidapet and said he was going to Adayar and told Irumborai (A-19) to inform Suresh Master to come and meet him. Irumborai (A-19) went to the house at Alwar Thirunagar and conveyed the message to Suresh Master who then went to Adayar and returned late in the night. Suresh Master then sent the injured boys in pairs to Bangalore. At that time a person named Rangam (A-24) from Thiruvanmiyur was frequently coming to meet Suresh Master. In the second week of June, 1991 Irumborai (A-19) again went to Neyveli to see if the artificial leg was fitted to Jamuna, a girl of 16-17 years of age and who was an LTTE woman tiger. She had lost her leg in war with militants in the fort at Jaffna. He met her this time and he found that artificial leg had been fitted to Jamuna. Now, when he returned to Madras he was told by Suresh Master that his photo has been seized by the police and they were in search of him. Suresh Master advised Irumborai (A-19) not to go any where from the house. After about three or four days in the third week of June, 1991 Suresh Master arranged a Maruti van through Rangam (A-24) and asked Irumborai (A-19) to go to Bangalore. Irumborai (A-19) went to Bangalore with Rangam (A-24) and stayed in a house in Indira Nagar, In that house LTTE injured boys

were already there. Irumborai (A-19) said he came to know later that that house was arranged by K. Jagannathan (PW-211). In the end of June, 1991 Trichy Santhan (DA) came there and told Irumborai (A-19) to bring Jamuna to Bangalore. He also told Irumborai (A-19) to have contacts with Andhra Naxalites and also to find out if boat transport could be available at place Malliapattinam near Pudukottai. Irumborai (A-19) then went to Neyveli and told Jamuna to be ready. He also inquired about the boat transport to Sri Lanka and was told because of security being tightened and there being patrolling by Navy it was not possible. Irumborai (A-19) then accompanied with Jamuna returned to Bangalore. Two days later Trichy Santhan also came to Bangalore. He said Sivarasan and Subha were not able to go to Jaffna and that he had received an order to look after them and he said he would accompany them to Bangalore within two days. Then one day in the end of June, 1991 at about 6.30 in the morning Sivarasan, Subha and Nero came to the house at Indira Nagar where Irumborai (A-19) was staying. Along with them Vicky (A-25), Rangam (A-24) and Dhanasekaran (A-23) also came. Irumborai (A-19) asked Trichy Santhan how they had come and was told that they had come to Bangalore from Madras by hiding in a tanker lorry of Dhanasekaran (A-23). After four days of their arrival Vikky and Dixon also came to that house in Indira Nagar. Trichy Santhan (DA) and Dixon were discussing as to how to send Sivarasan and Subha to Jaffna. They were looking for a safe place to leave Indian soil. In the house at Indira Nagar, Sivarasan told Irumborai (A-19) that police were informed about their identity only because the photo taken by Haribabu and the affairs between Murugan (A-3) and Nalini (A-1). A week or 10 days thereafter Subha, Nero and Sivarasan shifted to another house. Then news came that in the last week of July, 1991 Vicky (A-25) and Raghu were caught in Coimbatore by police and Dixon (DA) had died. Since Vicky (A-25) knew the place in Indira Nagar at Bangalore it was decided to shift from that place. All the injured LTTE boys in the first house at Indira Nagar were shifted to the second house. There were about 20 to 30 of them. Suresh Master suggested that a separate house should be arranged for Sivarasan, Subha and Nero. Then Irumborai (A-19) in his confession described as to how he moved about, shifting some of the injured LTTE cadre to other places and getting news of suicide committed by some of LTTE cadre while consuming cyanide. Both Irumborai (A-19) and Trichy Santhan themselves went in hiding from one place to another. They then heard the news of 12 LTTE boys having died by consuming cyanide in Indira Nagar. Trichy Santhan (DA) then directed Irumborai (A-19) to go to his native place. Within two or three days news came that Sivarasan, Subha, Suresh Master (DA), Nero and Jamnua died in Bangalore. In the first week of September, 1991 Irumborai (A-19) again met Trichy Santhan who told him that he was short of funds and since police was making efforts to search him he could not go to Jaffna. He asked Irumborai (A-19) to some how make arrangement to go to Jaffna to meet Baby Subramaniam and then to meet Prabhakaran directly and to inform him about political situation in India at that time and other things. Ultimately arrangement for Irumborai (A-19) to go to Sri Lanka were made and he was told to be ready on 29.9.1991, Sunday night at a particular place. He conveyed the news to Trichy Santhan (DA). Trichy Santhan sent a cover with a letter written by him to Prabhakaran and also a letter written by him to Irumborai (A-19) and some other letters written by other LTTE

persons for being taken to Sri Lanka. In the cover addressed to Prabhakaran it was super scribed as "very important to the leader". There was another letter which Trichy Santhan (DA) wrote to Irumborai (A-19). It was dated 7.9.1991 and was in two pages. A boat which was to take I rumborai (A-19) and other LTTE persons came from Rameshwaram near a place 'Vil Oondi Theertham' near seashore as arranged earlier. They got into the boat. When the boat was moving in the sea at about 1.30 in the night Navy men who were patrolling surrounded the boat. Three LTTE persons, who were in the boat, took cyanide. Two died and one in serious condition was taken to the hospital. On the morning of 3.10.1991 Irumborai (A-19) and others, who were also in the boat were handed over to the police at Rameshwaram. The letters, which were written by Trichy Santhan (DA) to Prabhakaran and Irumborai (A-19) (Exh.P-128 and 129) and other letters were also seized from him. P.V. Francis (PW-172), Commander in Indian Navy, and P.P.S, Dhillon (PW-239), Flight Commander of the Helicopter Unit of Portblair, both testified to the capturing of boat taking LTTE personnel and seizure of letters Exh.P-128 and 129.

513. Dhanasekaran (A-23) is in lorry business with his brother. They had been taking loan from Sundaram Finance Ltd. for purchase of lorries. Two buses were bought in his name which were plying on two different routes in Tamil Nadu. There was separation in the family business and to his and elder brother Krishnamurthi share one bus and six lorries were allotted. They named the bus service allotted to them as O.K. Transporters (D. for Dhanasekaran and K. for Krishnamurthi). In the year 1985 through an advocate friend Dhanasekaran (A-23) visited LTTE camp situated in the garden of Kollathur Mani in Tamil Nadu. Dhanasekaran (A-23) got attracted to LTTE movement and used to visit the LTTE camp quite often. He came in contact with various important persons of LTTE. He would go and look after the LTTE boys, who got injured in the struggle with Sri Lankan army and had come to India for treatment. By the passage of time he developed strong connections with LTTE persons. In his confession Dhanasekaran (A-23) said that of the LTTE boys he was looking after two of them, namely, Murthy and Vardhan, died after taking cyanide at Bangalore. One Kruppan of LTTE asked him once if he knew anyone to purchase a Maruti Gypsy vehicle. For this purpose Dhanasekaran (A-23) and two other LTTE persons went to Union Motors, Selam. They met V.P. Raghunathan (PW-153), Manager of the Union Motors. He told them that the vehicle would be delivered within three months if full amount was paid in cash. That money was provided by LTTE people. Dhanasekaran (A-23) along with two others again visited Union Motors to make payment but V.P. Raghunathan (PW-153) said that he would not accept cash and that payment might be made by a bank Demand Draft. Accordingly a Demand Draft was obtained from Indian Bank. Similarly Dhanasekaran (A-23) was again approached for purchase of two more Maruti Gypsy vehicles. He again got two Demand Drafts through his account from Vijaya Bank, Mettur and got the vehicles booked at Union Motors, Salem. In November, 1990, he received a phone call from Union Motors that all the Gypsy vehicles were ready for delivery and that delivery would be made at Tiruchy. Dhanasekaran (A-23) said that he would have the vehicle delivered at Salem itself. He got one Maruti Gypsy delivered in the name of K. Prakash by signing as K. Prakash. Similarly two other vehicles were delivered. Dhanasekaran (A-23) said this way he booked six Maruti Gypsy vehicles under

various names for LITE. During December, 1990 he took two seriously injured persons in Maruti van from Mettur to Bangalore for treatment. K. Jagannathan (PW-211) and another person belonging to LTTE helped him and also came with them up to Bangalore and a house was arranged in Bangalore through K. Jagannathan (PW-211). Of the injured persons so transferred one died. His body was brought and buried at the side of the LTTE camp. In April, 1991 Trichy Santhan (DA) and an important member of LTTE came along with Rangam (A-24) whom Dhanasekaran (A-23) already knew as driver. He was also known to Trichy Santhan as he met him in Gokulam Hospital at Salem where LTTE persons were getting treatment. Trichy Santhan told Dhanasekaran (A-23) that more boys of LTTE movement were in prison in Tamil Nadu and he had come to Tamil Nadu to look after them and wanted to see Kolathur Mani where LTTE camp was situated. After some days Dhanasekaran (A-23) got a message to meet Trichy Santhan at Salem. He went there. Trichy Santhan asked him to meet Kolathur Mani and to remind him to send him money. Dhanasekaran (A-23) said that on 21.5.1991 he was in his house at Mettur when he heard the news of Rajiv Gandhi's death due to bomb explosion at Sriperumbudur. He got the news through newspapers and television. He said later he came to know that it was the LTTE cadre who was mainly responsible for the assassination of Rajiv Gandhi and that Sivarasan, Subha and Dhanu were involved in the same. He saw their photographs in the magazine and on T.V. Dhanasekaran (A-23) then said that on 23.6.1991 when he went to attend a marriage he again got a message from Kolathur Mani to meet Trichy Santhan at Salem and to help him to transfer two persons to another place. Dhanasekaran (A-23) along with K. Jagannathan (PW-211) went to Salem. He met Trichy Santhan separately. There he instructed him to take Sivarasan, Subha and Nero from Madras to Bangalore. He gave the idea that they could be taken in an empty tanker lorry by hiding them in the tanker after cleaning it. That idea he gave as nobody would search the empty tanker lorry usually. He said that tanker lorry be arranged in two or three days itself otherwise those three persons would be arrested by the police. Dhanasekaran (A-23) said he selected a tanker lorry bearing registration No. TN-27-Y-0808, which he had bought after obtaining loan from Sundaran Finance Ltd. The loan had not been discharged and to avoid seizure by Sundaram Finance Dhanasekaran (A-23) changed the lorry number as TAM-8998. The lorry having registration No. TAM-8998 was kept in garage as it had met with an accident and Dhanasekaran (A-23) had already received the insurance amount after completing the formalities. After changing the registration plate of the tanker lorry as TAM-8998, Dhanasekaran (A-23) along with driver R. Selvaraj (PW-230) and cleaner Vijayan left Mettur on 27.6.1991 at 1.00 p.m. and reached Salem. From Salem Dhanasekaran (A-23) left for Madras along with Vicky (A-25), Amman (DA), driver R. Selvaraj (PW-230) and cleaner Vijayan. The lorry was driven by R. Selvaraj (PW-230). The tanker was filled with water on the way. Fuel (Diesel) was taken for Rs. 1,000/- from an Indian Oil petrol-pump. Water was released near Sriperumbudur. Next day on 28.6.1991 They arrived at 6 O'clock at Poonamallee. Amman (DA) alighted near yapping Thangal. They further stopped the lorry near Poonamallee by-pass road. They sent away driver R. Selvaraj (PW-230) and cleaner Vijayan. In the.night Amman (DA) came with Rangam (A-24) and asked Dhanasekaran (A-23) and Vicky (A-25) to go with them. Vicky

(A-25), Amman (DA), Rangam (A-24) and Dhanasekaran (A-23) took the tanker and halted it at a certain place after crossing Porur. Vicky (A-25), Amman (DA) and Rangam (A-24) went out and returned along with Suresh Master (DA) who was introduced to Dhanasekaran (A-23). By that time three persons, namely, Sivarasan, Subha and Nero came there with three bags with them. They entered inside the tanker after Vicky (A-25) opened the cap of the container. Vicky (A-25), Amman (DA) and Rangam (A-24) were seated along with Dhanasekaran (A-23) in lorry cabin. It was driven by Dhanasekaran (A-23). Driver R. Selvaraj (PW-230) and cleaner Vijayan boarded the lorry at Poonamallee. They drove the vehicle straight on the Bangalore Road. At two places messages were sent to Bangalore that they were reaching there. They reached Bangalore in the morning at about 7 O'clock on 29.6.1991. Tanker lorry was stopped a little away from Indira Nagar. Driver R. Selvaraj (PW-230) and cleaner Vijayan were again sent away to have tea. Vicky (A-25) was left in the vehicle and Dhanasekaran (A-23) and Rangam (A-24) went to the house at Indira Nagar. There they saw Trichy Santhan and Irumborai (A-19). More injured persons of LTTE cadre were also there. Dhanasekaran (A-23) further said that he took the Fiat car to a place where tanker lorry was parked as directed by Trichy Santhan (DA). Sivarasan, Subha and Nero exited from the tanker and were brought to Indira Nagar house in the Fiat car. Confession of Dhanasekaran (A-23) is silent about Amman (DA) after tanker reached Bangalore. Dhanasekaran (A-23) then went to the tanker again by an auto and drove the tanker lorry to Madras along with driver R. Selvaraj (PW-230) and cleaner Vijayan. Tanker lorry was loaded from SPIC Chemicals and reached Mettur. This tanker lorry was seized by Sundaram Finance Ltd. after a month. Dhanasekaran (A-23) then said that he again went to the house at Indira Nagar on 24.7.1991 and saw Sivarasan. He had conversation with him for nearly half an hour. When Dhanasekaran (A-23) asked him as to why did he murder Rajiv Gandhi, his answer was that "he did it in accordance with the instructions by their leader". Then Dhanasekaran (A-23) asked why Subha accompanied him and his answer was that she was for an alternative arrangement. After he learnt that police was looking for him he went in hiding for some time and consulted his advocate in Madras. He was advised to return to his house. Later he was arrested at Mettur on 13.10.1991.

514. Rangam (A-24) is a Sri Lankan national. In 1983 he joined LTTE movement. He got military training. He took part in the war with Sri Lankan army in 1984. He was injured and after he got the treatment he did not go for military duty and instead he was given the work of transport. In Jaffna he met various important persons belonging to LTTE. He came to know Sivarasan. He also met Prabhakaran. In 1989 he came to India where, he said, he was running a travel agency without permit. In his confession he said he prepared passports and other documents for Sri Lankans, who wanted to go abroad. He said he used to prepare fake documents through a travel agency in Adayar in Madras and made good income. In December, 1990 he got links with LTTE movement in India. He also got acquainted with Amman (DA) who was a driver and was working under Trichy Santhan (DA) and his assistant Suresh Master (DA), who belonged to political wing of LTTE. Rangam (A-24) said he helped Amman and sent Sri Lankan Tamilians to

go abroad during December, 1990 and January, 1991. He brought one Maruti van TN-04A-0337 in the name of Ramesh who also arranged a house for him. He said he came to know Trichy Santhan(DA), Suresh Master (DA) and Irumborai (A-19) through Amman (DA). Rangam (A-24) said that Prabhakaran had entrusted Trichy Santhan the responsibility of looking after the work such as political activities of LTTE in India, necessary supplies to Sri Lanka, arranging for treatment of injured "tigers", arranging houses for the persons in LTTE movement and to take them from place to place. A house at Alwarthirunagar was arranged by Amman (DA) for the stay of LTTE persons. That house was independent and situated in a remote place and was convenient for LTTE men to come and go without being noticed. Rangam (A-24) said that Suresh Master (DA) told him in the beginning of May, 1991 that police would take action very soon and that LTTE men should be shifted to some other place. Rangam'(A-24) said that he was taking LTTE men, who were injured, continuously in his Maruti van. Some of them stayed in the house at Alwar Thirunagar, some in Vijaya Nursing home and some were taking treatment in Asian Hospital. He removed those injured persons from those places in his van and dropped them in places like Thiruvalluvar bus stand and Parrys corner. From there Trichy Santhan, Suresh Master, and Irumborai (A-19) would take them to different places by bus. In his confession Rangam (A-24) further said that during May 18-21,1991 he was busy in sending the Sri Lankan Tamilians abroad. But after assassination of Rajiv Gandhi situation became bad. Photograph of Sivarasan was published in the newspapers and so Rangam (A-24) said he was actively working at that time to send LTTE men out of Madras with the help of Suresh Master and Irumborai (A-19). In June, 1991 Rangam (A-24) went to Benglore to the house of K. Jagannathan (PW-211) at Indira Nagar. His address was given to him by one Balaguru in Madras whom he met in Vijaya Nursing Home. While going to Bangalore Sudha, an LTTE activist and mother of Balagur, and one Ravi went in his van to Bangalore. K. Jagannathan (PW-211) arranged to get treatment to the injured LTTE persons. Rangam (A-24) said that he also met one Vasanthan, who was a partner of Trichy Santhan and working under the leadership of Trichy Santhan. He was actively doing the work in LTTE like arranging safe houses for their mission. In the end of June, 1991 Suresh Master (DA) told Rangam (A-24) that he was being given an important work. At that time Dixon (DA), another LTTE man, was also present. Suresh Master (DA) told Rangam (A-24) to wait in a remote place at Alwar Thirunagar at 7.30 in the evening on the following day. At about 8 O'clock in the night Suresh Master (DA) along with Sivarasan, Subha and Nero came in an auto. They all stayed in the house at Alwar Thirunagar while Rangam (A-24) went to his house in Thiruvanmiyur. Sivarasan, Subha and Nero stayed there for about four or five days. Suresh Master then told Rangam (A-24) that they should be taken to place outside Madras. Amman (DA) took him to a place at Porur-Poonamallee Road where a tanker was parked. Amman (DA) told Rangam (A-24) that Trichy. Santhan had arranged that tanker to take Sivarasan and others to Bangalore. One person by name Dhanasekaran (A-23) with another small boy to assist him by the name Vicky (A-25) was with him. While Dhanasekaran (A-23) stayed in the tanker Rangam (A-24) took Sivarasan, Subha and Nero from their place of stay and made them get into the tanker through the hole at the back of the tanker. Sivarasan and others

were having AK-47 gun and also a pistol with them. Rangam (A-24), Vicky (A-25) and Amman (DA) sat in front portion of the tanker and they left for Bangalore by 9 O'clock in the night. Two more boys, who were working with Dhanasekaran (A-23) were also taken in the tanker on their way. Vicky (A-25) telephoned Bangalore from PCO while they were going to Bangalore and informed Trichy Santhan about their arrival. They reached Bangalore early in the morning. Then Rangam (A-24) in- his confession corroborates what Dhanasekaran (A-23) said. On the same day Rangam (A-24) said, he returned to Madras and shifted the remaining injured LTTE persons to some other places like lodges, etc. He vacated his house at Thiruvanmiyur. He went to stay with Suresh Master (DA) in Vijaya Nursing Home. In the third week of July, 1991 Rangam (A-24) again went to Bangalore on the instructions of Suresh Master. He went by night bus. Suresh Master also reached Bangalore by that time. There they went to the house at Indira Nagar where Sivarasan and others were hiding. Rangam (A-24) met some other LTTE men in that house. After hearing that Vicky (A-25) had been arrested in Coimbatore the house at Indira Nagar was vacated and they all moved to another house nearby. Some LTTE persons were already staying in that house. Trichy Santhan gave Rangam (A-24) a Maruti Gypsy which Rangam (A-24) was driving. Rangam (A-24) then said that when CBI raided the house at Indira Nagar, two of the LTTE persons committed suicide and other injured persons went to different places. He said, in the meanwhile Suresh Master (DA) arranged the house of Ranganath (A-26) for Sivarasan and others to stay. That house was in Puthien Halli. Rangam (A-24) took Sivarasan, Subha, Nero, Suresh Master (DA) and Amman (DA) to that house. They moved to that house in the beginning of August, 1991. After some days Ranganath (A-26) arranged another house in Anaikal for treatment of LTTE persons. Rangam (A-24) and Ranganath (A-26) shifted LTTE persons in Maruti Gypsy to that house in Anaikkal. In the meanwhile an LTTE person was arrested by local police. After that it was decided to change the colour of the Fiat car and Maruti Gypsy. Rangam (A-24) with the help of a mechanic, who war arranged by Ranganath (A-26) went and got repainted the colour of the vehicles. Gypsy from green to white and Fiat car from sky blue to white. Ranganath (A-26) arranged two houses outside Bangalore in two villages called Beroota and Muthathi where injured persons from Anaikkal were shifted. Yet another house was arranged by Ranganath (A-26) in Konanakunta for Sivarasan, Subha and Nero to hide. Around 16.8.1991 Rangam (A-24) said they moved their residence from Puthan Halli to Konanakunta. Rangam (A-24) took Sivarasan Subha and Nero in the Maruti van. Ranganath (A-26) and his wife also went to that house. Thereafter Rangam (A-24) said he went to look after the injured LTTE persons in G.G. Hospital. From there he took one injured LTTE woman Jamuna (DA) to the house at Konanakunta. In that house only Sivarasan, Subha, Nero, Amman, Suresh Master, Driver Anna and Keerthi were staying. On the evening of 18.8.1991 when Rangam (A-24) came to the house in Konanakunta he found that police had surrounded that house from all sides. He turned back. Next day he took Gypsy van and arrived at Madras on the morning of 20.8.1991. He went to Balaguru and handed over the key of the vehicle to him after parking the Gypsy in Vijaya Nursing Home. Since police was looking for him he asked Balaguru to

arrange a house for him at Avadi. One day when he went to Adayar Travel Agency, police caught him.

515. Vicky (A-25) is a Sri Lankan national. His father was having a shop selling cloths. That shop was destroyed in a raid by Sri Lankan Air Force in the year 1985. Vicky (A-25) thereafter came to India illegally by boat carrying with him video cassettes, audio cassettes, sarees, V.C.P., etc. which he sold in India. Instead he carried lungis and food articles and returned back to Sri Lanka and earned some money by way of selling those articles in Sri Lanka. By Sri Lankan military one of their houses was completely damaged by bomb blast in the year 1987. His family resided at certain places as refugees. In 1990 he again came to India to start some business here. Then he met an LTTE activist who said he had come to India for treatment of his wounds and now he was looking those wounded in Sri Lanka and had come to India for treatment. Vicky (A-25) also met LTTE boys who had been injured and were getting treatment in the hospitals in India. Vicky (A-25) assisted that LTTE activist in getting medicines and acted as his helper. In the middle of 1990, Vicky (A-25) said in his confession that he was introduced to Trichy Santhan. He further said that in the month of 'Panguni', 1991 Trichy Santhan met him and told him that he was in need of medicines and that those should be purchased urgently and were to be sent to Sri Lanka. Trichy Santhan gave him Rs. 2.00 lacs and list of medicines to be purchased. Trichy Santhan also introduced Vicky (A-25) to Dixon (DA), who was also a member of LTTE movement. Vicky (A-25) then described his meeting with various LTTE activists. The medicines which had been purchased were given to LTTE activist Bharatham who left for Sri Lanka with the medicines. In a rented house Vicky (A-25) was stocking the medicines in bundles which he had purchased. He said two days after the assassination of Rajiv Gandhi Trichy Santhan met him and told that it was now impossible to stay in Tiruchy and said he would go to Coimbatore and again asked him to purchase all those medicines ordered by him. He further told Vicky (A-25) that if any one of Sivarasan's man wanted to go to home town they should be told to go to Indiran Kutty's house. It was only after Rajiv Gandhi's assassination, Vicky (A-25) said in his confession, that he came to know that his name was Sivarasan. Vicky (A-25) then in his confession described his instructions from Trichy Santhan and his coming to Madras and ultimately his going in the tanker lorry with others to Bangalore. He also described his helping injured LTTE personnel. After leaving Bangalore Vicky (A-25) went to Coimbatore where he was arrested by the police.

516. V.P. Raghunathan (PW-153) was manager of the Union Motors, Salem. He has testified about the four Gypsy being purchased by Dhanasekaran (A-23) in different names on 14.11.1990. He produced delivery receipts and documents connected with the sale of these four Gypsies. Maruti Gypsy, which was purchased in the name of R. Mohan, was subsequently used by Rangam (A-24) to transport Sivarasan, Subha, Nero and other activists to Bangalore. This Gypsy (MO-540) was seized during investigation.

517. S. Syed Ibrahim (PW-232) is Insurance Surveyor, who surveyed the damaged tanker bearing registration No. TAM-8998.

518. S.V. Krishnan (PW-168) is from Sundaram Finance Ltd., who had financed the lorry tanker bearing registration number TN-27-Y-0808 and which was used with fake registration plate (TAM-8998) to transport Sivarasan, Subha, Nero and others from Madras to Bangalore. Since the vehicle was under hire purchase agreement with Sundaram Finance Ltd. it was taken into possession by S.V. Krishnan (PW-168). Subsequently during investigation this tanker lorry (MO-543) was seized by the police.

519. R. Selvaraj (PW-230) was the driver of the tanker lorry (MP-540) and Vijayan was the cleaner. In his statement R. Selvaraj (PW-230) said that he drove the tanker lorry on 27.6.1991 from Mettur to Madras. On the way it was filled with water. The purpose was to clean the tanker. Tanker was also filled with diesel for fuel. Prosecution has produced S. Vasudevan (PW-245) to testify that 238 litres of diesel was put in the tanker lorry (MO-543) on 27.6.1991. R. Selvaraj (PW-230) then said that at Sriperumbudur tanker was emptied of water and cleaned from inside. They reached Poonamallee on 28.6.1991 in the morning where he and Vijayan got down. Now it was Dhanasekaran (A-23) who drove the vehicle with Amman (DA) and Vicky (A-25) visiting in the tanker lorry. When the tanker came back to Poonamallee R. Selvaraj (PW-230) and Vijayan got into the vehicle and the vehicle proceeded toward Bangalore. It was being driven by Dhanasekaran (A-23). On the way Vicky (A-25) got down and made a telephone call on STD. That a call was made has been proved by A. Selvaraj (PW-256). Call was made to telephone number 541824 of Bangalore. In further statement R. Selvaraj (PW-230) said that when the tanker lorry reached Bangalore again he and cleaner Vijayan went away for tea but Vicky (A-25) remained in the tanker, while Dhanasekaran (A-23) and Rangam (A-24) went by an auto rikshaw. Afterwards Dhanasekaran (A-23) came back in an auto where tanker lorry was parked. Tanker lorry now proceeded towards Madras with Dhanasekaran (A-23), R. Selvaraj (PW-230) and Vijayan in the vehicle. In the notebook (Exh.P-1012), regularly maintained by R. Selvaraj (PW-230) there were entries of the trips and other expenses incurred. Notebook (Exh.P-1012) showed that R. Selvaraj (PW-230) drove tanker lorry (MO-543) from Mettur to Salem where a new mattress was purchased and kept on the top of the cabin of the vehicle. The vehicle left for Madras and at Poonamallee both R. Selvaraj (PW-230) and Vijayan got out. When they again brought in the vehicle at Poonamallee R. Selvaraj (PW-230) did not find the mattress. At Bangalore similarly when R. Selvaraj (PW-230) and cleaner Vijayan came back to the vehicle the mattress was again found in the cabin. This mattress was thrown in the river near Hosur when tanker lorry was going back to Madras. Prosecution seeks to draw inference from this that mattress was kept inside the tanker lorry for the comfortable sitting of Sivarasan, Subha and Nero and when its use was over it was thrown away in the river.

519A. Rangam (A-24) had purchased Maruti van in the name of his friend V. Ramesh, bearing registration number TN-4A-0037 (MO-950). A. Nageswara Rao (PW-178) is the

owner of the house No. 13, Park Avenue, Velan Nagar Extension, Alwarthirunagar, Madras which was taken on rent by Rangam (A-24) in March, 1991. Lease documents were also executed (Exh.P-895-897). Rangam (A-24) vacated the house in the first week of July, 1991. before their escape to Bangalore Sivarasan, Subha, Nero and others were staying in this house. That Maruti Gypsy (MO-540) was being driven by Rangam (A-24) in Bangalore has also been testified by Mrudulla (PW-65), wife of Ranganath (A-26). K.N. Mohan (PW-222) is the owner of the workshop where Maruti Gypsy was repainted from green to white.

520. Ranganath (A-26) is an Indian national settled in Bangalore. Mrudulla (PW-65) is his wife. At the relevant time he was without any job. In March, 1991 he was staying with his wife at a house in Puttan Halli which was owned by E. Aanjanappa (PW-218).

521. R. Rajan (PW-223) in his deposition said that he was friendly to one Vasanthan who was Tamilian and whose native place was in Jaffna, Sri Lanka. Both knew each other from Tamil Association in Bangalore. On 29.7.1991 Vasanthan asked R. Rajan (PW-223) that a house was required for stay of four or five persons urgently. After two days Vasanthan again met R. Rajan (PW-223) for the purpose. He told him that no house was available. On 1.8.1991 Jagadish, a friend of R. Rajan (PW-223) met him and told him that he wanted to buy a lathe machine. A lathe machine was owned by Ranganath (A-26) who wanted to sell the same. In that connection R. Rajan (PW-223) met Ranganath (A-26) in his house. R. Rajan (PW-223) introduced Ranganath (A-26) to Vasanthan telling him that he was an LTTE activist and asked Ranganath (A-26) to arrange a house for him. R. Rajan (PW-223) said that he knew Ranganath (A-26) since 1990 as he was friend of Jagadish. R. Rajan (PW-223) said on 2.8.1991 that about 5.30 or 6.30 p.m. he and Vasanthan met near Sivaji Circle, Bangalore. At that time two more persons had come with Vasanthan and those two persons and Vasanthan talked to Ranganath (A-26) privately and left. On 2.8.1991 in the night at 10 O'clock Ranganath (A-26) brought Sivarasan, Rangam (A-24), Amman, Suresh Master, Driver Anna and Amman to his house, through front door and then brought Subha and Nero through back door. All these seven persons continued to stay in the house at Puttan Halli with Ranganath (A-26) till 16.8,1991. They would remain confined themselves in a room and would not come out. While staying in the house only Rangam (A-24) was driving Maruti Gypsy (MO-540) for buying vegetables and taking Mrudulla (PW-65) and Ranganath (A-26) for outside work.

522. K.N. Mohan (PW-222) was a car mechanic and was running garage in Bangalore. He said he did the painting work of green Gypsy of Ranganath (A-26). He painted the Gypsy white. Ranganath (A-26) had brought the Maruti Gypsy to the garage on 8.8.1991 and got its delivery back on 10.8.1991 after paying total charges of Rs. 2,200/-. On 16.9.1991 Ranganath (A-26) again came to the garage with Premier Fiat car bearing registration number CAU 6492. That Fiat car was also painted white though its original colour was sky blue. For the work done on the Fiat car K. N. Mohan (PW-222) charged Rs. 2,500/-. That car was still lying in the garage when K.N. Mohan (PW-222), said that, on 28.8.91

Ranganath (A-26) came to the garage with 4 CBI officers. Ranganath (A-26) had pointed the Fiat car to the CBI officers. The car was taken into possession by the CBI.

523. Mrudulla (PW-65), wife of Ranganath (A-26), is a teacher. She was married to Ranganath (A-26) in June, 1986. She said on 2.8.1991 around 10 O'clock in the night Ranganath (A-26) came with a person who said there were more persons with him and they would stay in the house for four days. The person, who came with Ranganath (A-26), was Suresh Master (DA). Ranganath (A-26) and Suresh Master both went out and brought four persons with them, who were Sivarasan, Rangam (A-24), Driver Anna and Amman (DA). Two persons entered the house from the back door and they were Subha and Nero. Next morning Mrudulla (PW-65) said she saw green Maruti Gypsy van in front of the house which was covered with tarpaulin. She could not see the number plate of the vehicle. Ranganath (A-26), Suresh Master and Rangam (A-24) went out on the morning of 3.8.1991. When Suresh Master and Rangam (A-24) returned it was about 2.30 p.m. They had brought provisions. Her husband did not come at that time. Mrudulla (PW-65) said that when her husband returned in the night she told him that the persons, who were staying, were hesitating to go out and she said some thing was fishy. He replied that they would stay for two or, three days and would leave. Fifth day Mrudulla (PW-65) watched the news on the TV and saw the pictures of Subha and Sivarasan. Mrudulla (PW-65) identified Subha. Subha also knew that she had been identified by Mrudulla (PW-65). In the evening Mrudulla (PW-65) told her husband about this fact who said not to ask any question. Subha afterwards became familiar with Mrudulla (PW-65). She told Mrudulla (PW-65) she was eager to return to Jaffna to meet her leader Prabhakaran. Once Mrudulla (PW-65) saw Sivarasan fixing a lens on his left eye. Mrudulla (PW-65) asked Subha as to why did they kill Rajiv Gandhi, and her reply was that Rajiv Gandhi was responsible in sending the IPKF to Sri Lanka and they had 'spoiled' many women and children. She was wearing a cyanide capsule in a thread around her neck. Persons staying in the house were having arms as well and Mrudulla (PW-65) said that they used to threaten them that "if this was reported to somebody they will kill us". Mrudulla (PW-65) then described the stay of those persons in her house and some time their moving out and meeting certain people. Those persons stayed in the house up till 16.8.1991. On 16.8.1991 Ranganath (A-26) told Mrudulla (PW-65) that he had fixed a house in Konanakunta at a rent of Rs. 800/- per month and advance of Rs. 10,000/- was to be paid. They all went to Konankunte house with provisions. After performing pooja they returned. Mrudulla (PW-65) said that while in her house at Puttanhalli she noticed Ak-47 rifle in Nero's hand and a pistol in Subha's hand. Again when she asked about that they said if she told anything about that to anybody they would not spare her. At 10.30 p.m. Ranganath (A-26), Mrudulla (PW-65), Suresh Master (DA), Nero, Subha, Amman, Driver Anna, Sivarasan left for Konankunte house. They went by Gypsy van. They also carried gas stove and other articles with them to that house. Mrudulla (PW-65) said she refused to accompany them but she was forcefully taken. They all spent that night there. In Konankunte house Mrudulla (PW-65) saw some papers which had the sketches of K.R.S. Dam and Vidhan Soudha. They were also having pictures of the blast that killed Rajiv Gandhi. Again when

she asked those persons reason for killing Rajiv Gandhi they said that they had to kill him because he sent IPKF to Sri Lanka and was responsible for several atrocities committed on women and children. On the morning of 18.8.1991 there was a news item that 12 LTTE cadres had been killed in Muthathi which is in suburban of Bangalore. Mrudulla (PW-65) told her husband that it was not safe to stay any longer with those people. When she and her husband tried to go out of the house Sivarasan confronted them suddenly and asked where they were going. Ranganath (A-26) told Sivarasan that Mrudulla (PW-65) was not well and they would consult a doctor and that they decided to vacate Puttanhalli house. While returning to Puttanhalli they saw Suresh Master and Rangam (A-24). They also questioned as to where Ranganath (A-26) and Mrudulla (PW-65) were going. Again reply was that to consult a doctor. At Puttanhalli they loaded all their household goods in a van. R. Jayasankar (PW-229), a friend of Ranganath (A-26), helped them in this process. From Puttanhalli they went to Mrudulla's (PW-65) brother's house in Vijayanagar. On the way both Ranganath (A-26) and R. Jayasankar (PW-229) got out of the van saying that they had to make a phone call. At about 4.30 P.M. Mrudulla (PW-65) said that after unloading the articles she left the house to give sarees for dry wash but while going to the shop four or five people in civil dress approached her and told her that she should accompany them to ViJayanagar police station. She said she would talk only to Asstt. Commissioner, Dy. Commissioner or Commissioner of Police. She told them that the persons whom they were searching for were in Konunkunte house. She asked if full security would be provided to her she would show the persons whom they searching for. That time there were Deputy Commissioner of Police, Assistant Commissioner of Police and a lady constable with her. She pointed to Konankunte house from a distance. Then they all returned to Vijayanagar police station. Security was provided to Mrudulla (PW-65) and she was taken to her parents house. Officers of CBI examined her. She said they were talking in Tamil among themselves and to her. She knew little Tamil. Her statement was recorded by the Magistrate under Section 164 Cr.P.C. (Exh.P-220). She identified all the persons who stayed in her house and at Konankunte either in photographs or their being present in the Court.

524. K. Premkumar (PW-227) is a friend of Ranganath (A-26). He said he met Ranganath (A-26) near Nanda Theatre in viJayanagar on 18.8.1991. From there he took him to Vijayanagar. That was his wife's house. From there they went to another place called 'West of Guard'. No one was in the house. He and Ranganath (A-26) went to that house in search of Mrudulla (PW-65). She was not there. They took a lodge at a bout 10 or 11 O'clock in the night. They stayed in the lodge on the night of 18/19.8.1991. K. Premkumar (PW-227) said on the morning of 19.8.1991 at 7 O'clock Ranganath (A-26) took him to Konankunte. They went in an auto. Ranganath (A-26) made him stand in a place and then himself went in the auto. Somebody in the public came saying "this is a man, this is a man". K. Premkumar (PW-227) said they were caught at Konankunte. He was put in jail and interrogated by CBI.

525. Suba Sundaram (A-22) is the proprietor of Subha News Photo Services at a place in Royapettah. He is a free lance photographer. He was associated with D.K. and a strong supporter of LTTE. Arivu (A-18), Bhagyanathan (A-20), K. Ravi Shankar (PW-151) and Haribabu (DA) took training in photography from him. At his studio various persons belonging to LTTE cadre used to meet. Some of them were Baby Subramaniam, Irumborai (A-19/, Muthuraja, Arivu (A-18), Bhagyanathan (A-20), Haribabu (DA) and others. During the period 1989-90 Haribabu was working for Subha Studio at a monthly salary of Rs. 350/-. For short while he joined Vignesh Video studio but he kept on visiting to Subha Studio. On 21,5.1991 Haribabu went to Studio of K.Ravi Shankar (PW-151) with a packet containing sandalwood garland which he had purchased from Poompuhar Handicrafts in the morning of that day. Haribabu borrowed a camera (Chinon) (MO-1) from K. Ravi Shankar (PW-151) telling him that he was going to attend the public meeting of Rajiv Gandhi at Sriperumbudur. Thereafter Haribabu went to Subha Studio and met Suba Sundaram (A-22). On 22.5.1991 after the bomb blast at Sriperumbudur in which Haribabu died S. Santhana Krishnan (PW-108), a friend of Haribabu, V.T. Sundaramani (PW-120), his father and K. Ravi Shankar (PW-151), another friend, went to the studio of Suba Sundaram (A-22). It is stated that Suba Sundaram (A-22) exclaimed that only the previous day he had seen Haribabu. Two letters, one (Exh.P-548) dated 18.1.1991 written by Suba Sundaram (A-22) to LTTE leader Kittu and other (Exh.P-544) addressed by Suba Sundaram (A-22) to Prabhakaran as younger brother, were seized from his studio contents of which showed deep involvement of Suba Sundaram (A-22) with LTTE activities. In one of the letters he had criticized the activities of IPKF.

526. T. Ramamurthy (PW-72), a journalist, had also attended the public meeting at Sriperumbudur on 21.5,1991. At mid night he was returning home and as there was chaos and confusion he stayed that night at police station, Poonamallee. At mid night Suba Sundaram (A-22) contacted Meena (PW-74), wife of T. Ramamurthy (PW-72) and asked her whether her husband returned home. She replied in the negative.

527. In her statement Meena (PW-74) said that at the mid night on 21.5.1991 one Anand Viswanathan rang her up to say that Rajiv Gandhi and some others had died due to bomb blast at Sriperumbudur. K. Ravi Shankar (PW-151) then rang her up and asked her whether T. Ramamurthy (PW-72) had come. After a few minutes Suba Sundaram (A-22) rang her up and inquired about T. Ramamurthy (PW-72). Suba Sundaram (A-22) also told Meena (PW-74) that photographer Babu, who was sent by him had also not yet come. At about 1,00 O'clock in the night T. Ramamurthy (PW-72) rang up his wife Meena (PW-74) and said that he was in Poonamallee police station and gave her phone number of the police station. She told her husband about the phone calls received from various persons. She told him that Suba Sundaram (A-22) was asking about his photographer on which T. Ramamurthy (PW-72) said that one photographer sent by Suba Sundaram (A-22) had died. After ten or fifteen minutes later Suba Sundaram (A-22) again rang her up and asked her whether T. Ramamurthy (PW-72) had come. She told him that he was in Poonamallee police station and gave him the telephone number.

528. T. Ramamurthy (PW-72) described the scene at Sriperumbudur public meeting when bomb blast took place. He said while he was at Poonamallee police station Suba Sundaram (A-22) rang him up. He asked him "what Ramamoorthy, Have you taken the photographs?" T. Ramamurthy (PW-72) replied that he did take some photographs and had given those to magazine the 'Dhinamalar' and that he would give photographs to him in the morning. T. Ramamurthy (PW-72) said he stayed in the police station as there were riots on the way. T. Ramamurthy (PW-72) also told Suba Sundaram (A-22) "what, Sundaram, your photographer died in the bomb-blast". Then Suba Sundaram (A-22) asked T. Ramamurthy (PW-72) who it was. T. Ramamurthy (PW-72) said that since he did not know the name of the photographer who died at the place of the occurrence he gave Suba Sundaram (A-22) the identification marks of the deceased photographer. He then asked whether it was Haribabu and wanted to be certain if he had died. T. Ramamurthy (PW-72) told him that the photographer was lying on his back and the camera was lying on his chest and on that account he said he must have died. Suba Sundaram (A-22) persisted and told T. Ramamurthy (PW-72) over the phone that he should have brought the camera. T. Ramamurthy (PW-72) said he replied him that a great VVIP had been assassinated and things which were there might be important material objects and it was wrong to touch them. Suba Sundaram (A-22) then told him to contact him the next day on his reaching Madras. In the morning Suba Sundaram (A-22) again rang up T. Ramamurthy (PW-72) and asked him to give him some photographs and said he would send his son for the purpose. T. Ramamurthy (PW-72) first went to 'Dhinamalar', from there to the studio of Suba Sundaram (A-22), who again asked the details of the occurrence. Again he told T. Ramamurthy (PW-72) that he should have brought the camera and "we could have used the photographs in it". When T. Ramamurthy (PW-72) again said that it was wrong to remove the evidence from that place Suba Sundaram (A-22) said that they could have managed by stating anything and that it was not wrong to have done like that between photographers.

529. On 22.5.1991 when V.T. Sundaramani (PW-120), father of Haribabu (DA) and K. Ravi Shankar (PW-151) went to Subha Studio after making inquiries about the place where Haribabu's dead body was kept, Suba Sundaram (A-22) told V.T. Sundaramani (PW-120) to remove all the papers connected with Haribabu from the house. V.T. Sundaramani (PW-120) on reaching home removed all the papers of Haribabu from his house and kept them in his daughter's house which was close-by. P. Ramalingam (PW-198) is the son-in-law of V.T. Sundaramani (PW-120) and brother-in-law of Haribabu.

530. Arulmani (PW-128) knew the family of V.T. Sundaramani (PW-120) as his house was situated opposite to his house. When death of Rajiv Gandhi took place Arulmani (PW-128) was in Madurai and was on a bus to Madras. Due to disturbance he could reach Madras at 4.30 a.m. on 23.5.1991. When he reached home he was told that Haribabu was dead at the Rajiv Gandhi's function. He went to their house with his father. Mother of Haribabu was crying and Arulmani (PW-128) thought of extending some help. He asked

Haribabu's mother to show him papers connected with LIC agency as in April Haribabu had told him that he had joined an agent in LIC. Haribabu's mother told him that all the papers were kept in a box and placed at the house of P. Ramalingam (PW-198), husband of Haribabu's elder sister. Arulmani (PW-128) went to the house of P. Ramalingam (PW-198) and wanted to see the box. It was concealed in the loft under the roof. In the box there were many letters, Prabhakaran's photo, negatives, love letters written by a girl S. Sundari (PW-171). P. Ramalingam (PW-198) told Arulmani (PW-128) that he was asked to burn those things. Since Arulmani (PW-128) suspected that there was something wrong as V.T. Sundaramani (PW-120) had instructed P. Ramalingam (PW-198) to burn the papers. He thought of giving those to the police as national leader had died. There was also news in the papers that LTTE had a hand in the assassination of Rajiv Gandhi. Arulmani (PW-128) asked the mother of Haribabu if Haribabu was connected with LTTE and she stated that it was because of those 'sinners' that his son was like that. Ultimately police took into possession all those papers.

531. Suba Sundaram (A-22) again tried to retrieve the camera through K. Ramamurthi (PW-258). On 22.5.1991 at about 9 or 10 p.m. he contacted K. Ramamurthi (PW-258), who was in Delhi on phone and told him that "my boy one Haribabu had been to Sriperumbudur for taking photographs and he had not returned. It was not known as to what happened to my camera" and he asked K. Ramamurthi (PW-258) whether he could inquire about that. Yet again on 23.5.1991 at 10 or 11.00 a.m. Suba Sundaram (A-22) asked K. Ramamurthi (PW-258), who was still in Delhi about the camera. At that time Suba Sundaram (A-22) told K. Ramamurthi (PW-258) that Haribabu was dead and that his camera had been seized by the police and asked him whether the said camera could be got back by talking to someone. On 25.5.1991 Hindu newspaper (Exh.P-550) published a news item connecting Haribabu with LITE. Suba Sundaram (A-22) immediately asked V.T. Sundaramani (PW-120), father of Haribabu to come to his studio and asked him to stoutly deny the news item connecting Haribabu with LTTE by issuing a denial statement to the press. Suba Sundaram (A-22) himself dictated the denial statement which was taken down by M. Girija Vallaban (PW-116). The original denial statement prepared by Suba Sundaram (A-22) was seized (Exh.P-543). A copy of Exh.P-543 - denial statement - was seized by the police from Subha studio of Suba Sundaram (A-22). Suba Sundaram (A-22) thereafter asked V.T. Sundaramani (PW-120) to take 12 of 13 copies of the denial statement and to give that to all the newspapers. On 26.5.1991 the denial statement was published in Hindu (Exh.P-551). When V.T. Sundaramani (PW-120) told Suba Sundaram (A-22) about cassette 'Pasarai Padalgal', which contained LTTE propaganda Suba Sundaram (A-22) told him to destroy that immediately.

532. A. Parimalam (PW-205)- said Haribabu was brother-in-law of her brother-in-law P. Ramalingam (PW-198). She said on 25th morning they came to the house of Haribabu to inquire about his death. There was no male member. A boy came there with a chit containing number 867229 and said that Haribabu's father had asked his younger brother Kalyankumar to contact him at that number. Since Kalyankumar was not at home mother

of, Haribabu asked A. Parimalam (PW-205) to telephone to that number. When the phone was picked up on the other side A. Parimalam (PW-205) asked if Haribabu's father was there. The person on the other side asked who was speaking. A. Parimalam (PW-205) said she was Haribabu's elder sister. On the other side the person said that he was Suba Sundaram (A-22) speaking and said that there would be an audio cassette in the house and if there are any papers connected with Haribabu those may be taken away and destroyed. Saying that he put down the receiver abruptly.

533. In letter (Exh.P-128) dated 7.9.1991 written by Trichy Santhan (DA) to Irumborai (A-19) there is mention of Suba Sundaram (A-22) relevant portion of which has already been quoted above.

534. V T. Sundaramani (PW-120), father of Haribabu said that Santhan (A-2) stayed in his house for some time. Haribabu had told that he was his friend. He said on 20.5.1991 Murugan (A-3) came to his house. Haribabu was not present at that time. Murugan (A-3) had earlier been coming to his house. V.T. Sundaramani (PW-120) in his deposition said Murugan (A-3) told them to inform Haribabu to call on him at Royapettah. He asked V.T. Sundaramani (PW-120) to send Haribabu as soon as he came. V.T. Sundaramani (PW-120) said that Haribabu came and was given the message. He went out that evening. V.T. Sundaramani (PW-120) said Haribabu told his mother at about 2.30 p.m. on 21.5.1991 that he was going out to take photographs and would return by night itself. He did not return that night. In the morning newspapers V.T. Sundaramani (PW-120) read about the assassination of Rajiv Gandhi. In the afternoon he came to know through a newspaper that Haribabu, photographer, was dead. He immediately left his house. V.T. Sundaramani (PW-120) said after some time S. Santhana Krishnan (PW-108), a friend of Haribabu and also one Veeraraman came to his house. They told that Haribabu was dead and, therefore, they had to find him out as whereabouts of Haribabu were not known by that time. V.T. Sundaramani (PW-120) said that then Suba Sundaram (A-22) came to his mind and he sent S. Santhana Krishnan (PW-108) and other man to Subha Studio to find out the actual position. Kanan, a photographer, told V.T. Sundaramani (PW-120) that he had seen Haribabu with Sandalwood garland at Sundaram's (A-22) office at 3.00 O'clock at Royapettah. V.T. Sundaramani (PW-120) also came to know that Haribabu had taken a camera from K. Ravi Shankar (PW-151). V.T, Sundaramani (PW-120) went to the studio of Suba Sundaram (A-22) and asked how it had happened and also asked him whether he had sent Haribabu. Suba Sundaram (A-22) replied in the negative. This part of the statement of V.T. Sundaramani (PW-120) may be quoted:

When I reached there I asked him how it had happened and I also asked him whether he sent him, he said No. Yesterday he came to his photo studio at 3 O'clock. He also invited us for taking photos. Haribabu had asked Subha Sundaram whether anybody else was coming from his studio for taking photos. For that he has replied that nobody is coming and that he has sent him for taking photos. Subha Sundaram told me that he did not know who has taken Haribabu.

V.T. Sundaramani (PW-120) told Suba Sundaram (A-22) that Haribabu was dead and asked him in which hospital he was kept and requested him to do the needful. V.T. Sundaramani (PW-120) said that he met Suba Sundaram (A-22) on 22.5.1991 in his office. He talked to him separately in his office and when asked him with whom Haribabu had gone; who had taken him; and whether there might be any link with LTTE; and whether he had gone alone since Suba Sundaram (A-22) told him that he had seen Haribabu. Suba Sundaram (A-22) told V.T. Sundaramani (PW-120) not to worry himself and said that Haribabu might have gone alone. Suba Sundaram (A-22) asked V.T. Sundaramani (PW-120) to discard all the papers in the house relating to Haribabu on reaching home. V.T. Sundaramani (PW-120) asked his wife to remove all the papers connected with Haribabu to their daughter's house. V.T. Sundaramani (PW-120) said on 23.5.1991 early in the morning at 5.00 a.m. Arulmani (PW-128) with his father came to his house. He corroborated as to what Arulmani (PW-128) said about the box kept in the house of P. Ramalingam (PW-198). V.T. Sundaramani (PW-120) also said on 23.5.1991 at 3.00 p.m. one person calling himself Bhagyanathan (A-20) came to his house and introduced himself as a friend of Haribabu and told wife of V.T. Sundaramani (PW-120) that nothing had happened to Haribabu and that he would have sustained injuries and gave Rs. 1000/- to her towards medical expenses of Haribabu. Since wife of V.T. Sundaramani (PW-120) refused to receive the amount he gave that to Vijayarevathi, their daughter. When there was news item in Hindu connecting Haribabu with LTTE and V.T. Sundaramani (PW-120) was called to the studio of Suba Sundaram (A-22). V.T. Sundaramani (PW-120) said Suba Sundaram (A-22) told him that he was thinking of arranging monetary help/assistance from K. Ramamurthi (PW-258) and at that juncture he must issue a counter-statement. He said that counter-statement must be issued in the newspapers since he was making arrangements to help V.T. Sundaramani (PW-120) monetarily for his son's loss. Since V.T. Sundaramani (PW-120) said he did not know how to give counter statement and to whom to give Suba Sundaram (A-22) helped him in writing the same and asked V.T. Sundaramani (PW-120) to put his signature. That counter statement is Exh.P-543.

535. We have set out in sufficient details the confessions and the evidence linking the accused with each other as projected by the prosecution.

536. Mr. Natarajan at the outset submitted that the charges of conspiracy and other charges framed against the accused were highly defective and did not show in what manner the accused had to answer these charges. He said that it was not enough if a statutory provision is merely incorporative charged. He said prosecution may rely on Sections 464 and 465 of the Code to overcome his objections to the charge but these two sections did not completely bar the argument that charge is defective and had prejudiced accused in their defence. He said charge No. 1 was so complicated and conspiracy spread over a number of years and the accused who allegedly joined the conspiracy after the object of conspiracy had been achieved, were all tried together, which in itself caused great prejudice to them in their defence. Mr. Altaf Ahmad, however, quickly interposed

to say that Section 215 of the Code would protect any error in the charge and that the finding arrived at by the Designated Court could not be reversed in view of Section 465 of the Code even if argument of Mr. Natarajan is accepted. We, however, do not think that we should dilate on this objection by Mr. Natarajan as powers of Reference Court are quite wide and we have to examine the evidence regarding conspiracy and to see if there is any irregularity in the charge, which has prejudiced the accused. Mr. Natarajan also said that there has not been proper examination of the accused under Section 313 of the Code inasmuch as long and complex questions have been put to them and not much thought has been given by the Designated Court in properly examining the accused under Section 313 of the Code. Mr. Natarajan appears to be right to an extent. We have, however, again to consider this from the angle of prejudice to the accused. But then if there is any error on this account that can also be corrected by the Reference Court by again examining the accused. Apart from alleging prejudice to the accused, no instance has been pointed out to show if any prejudice has, in fact, been caused to the accused in either understanding the charge or in their defence. We find that the accused had been well represented and they extensively cross-examined the witnesses. At no stage during the trial they complained of any prejudice. We are, therefore, unable to agree to the submission of Mr. Natrajan that any prejudice has been caused to the accused in their defence during the conduct of the trial before the Designated Court.

537. Mr. Natarajan said that there was no evidence against any of the accused to bring home charge either under Section 3 or Section 4 of TADA, yet the prosecution wrongly alleged that there was conspiracy to commit acts of terrorism and disruptive activities under TADA and in that process Rajiv Gandhi was killed. He said apart from the killing of Rajiv Gandhi no other terrorist act had been shown to have been committed or disruptive activity shown to have been committed. There is no such act till May, 1991 though the prosecution has alleged the period of conspiracy being 1987 to 1992. Killing of Rajiv Gandhi could not be a terrorist act under Section 3 of TADA. Also there is no disruptive activity falling under Section 4 of TADA. Only Nalini (A-1) and Arivu (A-18) have been charged for offence under Section 4 of TADA. Charge No. 121 is against Nalini (A-1) and it says that in pursuance of the criminal conspiracy referred to in charge No. 1 and in furtherance of the common intention of Nalini (A-1) and deceased accused Sivarasan, Dhanu, Subha and Haribabu to commit disruptive activity at a public meeting at Sriperumbudur, where Nalini (A-1) was physically present at the scene of crime and provided assassin Dhanu (since deceased) with necessary cover from being detected as a foreigner, which enabled the assassin to move freely in the scene of crime and gained access nearer to Rajiv Gandhi where she (Dhanu) detonated the improvised explosive device concealed in her waist belt resulting in the bomb blast and killing of nine police officials who were public servants and who were at that time with Rajiv Gandhi on duty and Nalini (A-1) thereby committed an offence under Section 4(3) of TADA punishable under Section 4(1) of TADA read with Section 34, IPC.

538. Charge No. 228 is against Arivu (A-18) and it is alleged against him that in pursuance to the criminal conspiracy and in course of the same transaction he abetted the commission of disruptive activity by purchasing two golden power battery cells during the first week of May, 1991, which were used by Dhanu (since deceased) to detonate improvised explosive device at Sriperumbudur on 21.5.1991 resulting in bomb blast and killing of nine police officials, who were public servants and were on duty at that time with Rajiv Gandhi and Arivu.(A-18) committed an offence under Section 4(3) of TADA punishable under Section 4(1) of TADA and Section 109, IPC.

539. Mr. Natarajan said these two charges 121 and 228 showed as to how the court considered the disruptive activity and there is no mention in these charges if it was the killing of Rajiv Gandhi which could be termed as disruptive activity. Charges referred to the killing of police officers on duty. He said there is no discussion whatsoever in the judgment of the Designated Court as to how it considered that the case fell under Section 4(3) of TADA. There is no evidence to show propagation of anything as mentioned in Section 4(3) of TADA. Under Section 4(3) of TADA an accused can be said to have committed disruptive activity if he in any way (a) advocates, etc. or (b) predicts, etc. the killing or destruction of any person bound by oath under the Constitution to uphold the sovereignty and integrity of India or any public servant. The charges do not name Rajiv Gandhi as at the time he was killed he was not bound by any oath under the Constitution. He was not the Prime Minister. He was not an M.P. as Parliament stood dissolved and general elections in the country were in process. There is no evidence on record to show that Rajiv Gandhi was bound by any oath under the Constitution in any capacity whatsoever. As regards nine police officers who were killed they were not killed on account of any of the grounds mentioned in Clauses (a) or (b) of Sub-section (3) of Section 4 of TADA. Sub-section (2) of Section 4 of TADA defines disruptive activity and, in so far as it is relevant to Sub-section (1), means any action taken whether by act or by speech or through any other media or in any other manner whatsoever which questions, disrupts or intended to disrupt directly or indirectly the sovereignty and territorial integrity of India. Mr. Altaf Ahmad said that the accused did question the sovereignty and integrity of India inasmuch as they expressed their resentment to the Indo-Sri Lankan Accord which had been approved by the Parliament. But then questioning or disapproving the Indo-Sri Lankan Accord would not mean that that would be questioning the sovereignty and integrity of India. When a member of the Opposition whether in Parliament or outside criticizes the Accord in public it could not be said that he is questioning the sovereignty and integrity of India. According to Mr. Altaf Ahmad the accused had chosen the target being Rajiv Gandhi and struck the target thus questioning the very ability of the country to take sovereign decisions. Mr. Natarajan said that death of Rajiv Gandhi as target did not find mention in any charge under Section 4 of TADA and no such question was put to any accused under Section 313 of the Code. Death of nine police officers though public servants was not on account of any of the grounds mentioned in Sub-sections (2) or (3) of Section 4 of TADA but since target was Rajiv Gandhi and the intensity of the blast was so vast that the police officers died and so also the assassin Dhanu and

photographer Haribabu. Mr. Natarajan, in our view, is right in his submission that no case under Section 4 of TADA has been made out in the case.

540. Under Section 3 of TADA in order there is a terrorist act three essential conditions must be present and these are contained in Sub-section (1) of Section 3 - (1) criminal activity must me committed with the requisite intention or motive, (2) weapons must have been used, and (3) consequence must have ensued. It was contended by Mr. Natarajan that in the present case though the evidence may show that weapons and consequence as contemplated by Section 3(1) is there it is lacking so far as the intention is concerned. Prosecution had to prove that the act was done with the intention to overawe the Government or to strike terror in people or any section of people or to adversely affect the harmony amongst different sections of people. There is no evidence that any of the accused had such an intention.

541. As to what is a terrorist act and what is the intention contemplated under Section 3 of TADA reference may be made to a decision of this Court in Hitendra Vishnu Thakur and Ors. v. State of Maharashtra and Ors. MANU/SC/0526/1994: 1995 Cri LJ 517. In this judgment Section 3(1) of TADA has been analyzed. It would be useful to quote from the judgment in extenso:-

Terrorism is one of the manifestations of increased lawlessness and cult of violence. Violence and crime constitute a threat to an established order and are a revolt against a civilized society, Terrorism' has not been defined under TADA nor is it possible to give a precise definition of 'terrorism' or lay down what constitutes 'terrorism'. It may be possible to describe it as use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. There may be death, injury, or destruction of property or even deprivation of individual liberty in the process but the extent and reach of the intended terrorist activity travels beyond the effect of an ordinary crime capable of being punished under the ordinary penal law of the land and its main objective is to overawe the Government or disturb harmony of the society or "terrorist" people and the society and not only those directly assaulted, with a view to disturb even tempo, peace and tranquillity of the society and create a sense of fear and insecurity. A 'terrorist' activity does not merely arise by causing disturbance of law and order or of public order. The fall out of the intended activity must be such that it travels beyond the capacity of the ordinary law enforcement agencies to tackle it under the ordinary penal law. Experience has shown us that 'terrorism' is generally an attempt to acquire or maintain power or control by intimidation and causing fear and helplessness in the minds of the people at large or any section thereof and is a totally abnormal phenomenon. What distinguishes 'terrorism' from other forms of violence, therefore, appears to be the deliberate and systematic use of coercive intimidation. More often than not, a hardened criminal today takes advantage of the situation and by wearing the cloak of 'terrorism', aims to achieve for himself acceptability and respectability in the society

because unfortunately in the States affected by militancy, a 'terrorist' is projected as a hero by his group and often even by the misguided youth. It is, therefore, essential to treat such a criminal and deal with him differently than an ordinary criminal capable of being tried by the ordinary courts under the penal law of the land. Even though the crime committed by a 'terrorist' and an ordinary criminal would be overlapping to an extent but then it is not the intention of the Legislature that every criminal should be tried under TADA, where the fall out of his activity does not extent beyond the normal frontiers of the ordinary criminal activity. Every 'terrorist' may be a criminal but every criminal cannot be given the label of a 'terrorist' only to set in motion the more stringent provisions of TADA. The criminal activity in order to invoke TADA must be committed with the requisite intention as contemplated by Section 3(1) of the Act by use of such weapons as have been enumerated in Section 3(1) and which cause or are likely to result in the offences as mentioned in the said section.

"Thus, unless the Act complained of falls strictly within the letter and spirit of Section 3(1) of TADA and is committed with the intention as envisaged by that section by means of the weapons etc. as are enumerated therein with the motive as postulated thereby, an accused cannot be tried or convicted for an offence under Section 3(1) of TADA. When the extent and reach of the crime committed with the intention as envisaged by Section 3(1), transcends the local barriers and the effect of the criminal act can be felt in other States or areas or has the potential of that result being felt there, the provisions of Section 3(1) would certainly be attracted. Likewise, if it is only as a consequence of the criminal act that fear, terror or/and panic is caused but the intention of committing the particular crime cannot be said to be the one strictly envisaged by Section 3(1), it would be impermissible to try or convict and punish an accused under TADA. The commission of the crime with the intention to achieve the result as envisaged by the section and not merely where the consequence of the crime committed by the accused create that result, would attract the provisions of Section 3(1) of TADA. Thus, if for example person goes on a shooting spree and kills a number of persons, it is bound to create terror and panic in the locality but if it was not committed with the requisite intention as contemplated by the section, the offence would not attract Section 3(1) of TADA. On the other hand, if a crime was committed with the intention to cause terror or panic or to alienate a section of the people or to disturb the harmony etc. it would be punishable under TADA, even if no one is killed and there has been only some person who has been injured or some damage etc. has been caused to the property, the provisions of Section 3(1) of TADA would be squarely attracted. Where the crime is committed with a view to overawe the Government as by law established or is intended to alienate any section of the people or adversely affect the harmony amongst different sections of the people and is committed in the manner specified in Section 3(1) of TADA, no difficulty would arise to hold that such an offence falls within the ambit and scope of the said provision. Some difficulty, however, arises where the intended activity of the offender results in striking terror or creating fear and panic amongst the people in general or a section thereof. It is in this situation that the courts have to be cautious to draw alone between the crime punishable

under the ordinary criminal law and the ones which are punishable under Section 3(1) of TADA. It is of course neither desirable nor possible to catalogue the activities which would strictly bring the case of an accused under Section 3(1) of TADA. Each case will have to be decided on its own facts and no rule of thumb can be applied.

542. Sub-section (1) of Section 3 can be analyzed as under:

(1) Whoever with intent

(i) to overawe the Government as by law established; or

(ii) to strike terror in the people or any section of people; or

(iii) to alienate any section of the people; or

(iv) to adversely affect the harmony amongst different sections of the people

does any act or thing by using

(a) bombs, dynamite, or

(b) other explosive substances, or

(c) inflammable substances, or

(d) fire-arms, or

(e) other lethal weapons, or

(f) poisons or noxious gases or other chemicals, or

(g) by any other substances (whether biological or otherwise) of a hazardous nature

in such a manner as to cause

(i) death of, or

(ii) injuries to any person or persons, or

(iii) loss of, or damage to or destruction of property, or

(iv) disruption of any supplies, or

(v) services essential to the life of the community, or

detains any person and threatens to kill or injure such person

in order to compel the Government or any other person to do or abstain from doing any act commits a terrorist act.

542-A. In the present case applying the principles set out above on the interpretation of Section 3(1) and analyses of this subsection of the TADA we do not find any difficulty in concluding that evidence does not reflect that any of the accused entertained any such intention or had any of the motive to overawe the Government or to strike terror among people. No doubt evidence is there that the absconding accused Prabhakaran, supreme leader of LTTE had personal animosity against Rajiv Gandhi and LTTE cadre developed hatred towards Rajiv Gandhi, who was identified with the atrocities allegedly committed by IPKF in Sri Lanka. There was no conspiracy to the indiscriminate killing of persons. There is no evidence directly or circumstantially that Rajiv Gandhi was killed with the intention contemplated under Section 3(1) of TADA. State of Tamil Nadu was notified under TADA on 23.6.1991 and LTTE were declared an unlawful association on 14.5.1992 under the provisions of the Unlawful Activity (Prevention) Act, 1957. Apart from killing of Rajiv Gandhi no other terrorist act has been alleged in the State of Tamil Nadu. Charge may be there but there is no evidence to support the charge. Mr. Natarajan said that prosecution might refer to the killing of Padmanabhan in Tamil Nadu, leader of EPRLF, which fact finds mention in the confession statement of Santhan (A-2). But then he said it was not a terrorist act. It was killing of a rival Sri Lankan and in any case killing of Padmanabhan is not a charge in the case before this Court. Mr. Altaf Ahmad said that when he earlier mentioned the killing of Padmanabhan, it was only to show that LTTE was an organization which brook no opposition and anyone opposing its objective was eliminated. Mr. Natarajan said it was the case of the prosecution itself that Prabhakaran had personal animosity against Rajiv Gandhi developed over a period of time and had motive to kill him.

543. Mr. Altaf Ahmad realised the difficulty he had to face to show that any offence under Sections 3 and/or 4 of TADA had been committed. He submitted that charges in the present case showed the dimension of the conspiracy and the nature of the crime committed on 21.5.1991. He said the object of the conspiracy was to commit terrorist act and use of bomb, etc. was the means to achieve that object and that the consequence was to overawe the Government and to create terror in the minds of the public and it was with that object that Rajiv Gandhi and others were killed. He said object of the conspiracy was not accomplished on the killing of Rajiv Gandhi but it continued even after his death as LTTE targeted places and persons spread across the country. There is no evidence that blasting of the buildings like Vellore Fort, police headquarters, was the object of conspiracy or that was to be done with intention to overawe the Government or to create terror among the public. Charge does not specify any such intention or the places. Similar

is the position regarding unspecified -targets in Delhi. According to him conspiracy was not abandoned and did not culminate with the assassination of Rajiv Gandhi though the assassination of Rajiv Gandhi over-shadowed other activities. He said to continue with the object of conspiracy the accused had to retain their identity in order to commit further acts and thus for the purpose of self-preservation they had to live and for that they committed acts of escapades, screening, destruction of evidence, etc. Charge framed against the accused described their various roles and the offence committed by them. He said ingredients of Sections 3, 4 and 5 of TADA are part of the charge and there is evidence to prove these charges. He said it may be that particulars of all the sections had not mentioned in the charge but that was a curable irregularity and no prejudice has been shown to have been caused to the accused. It would appear that the argument of Mr. Altaf Ahmad is based on the submission that under Section 3 of TADA conspiracy was also to overawe the Government. Reference was made to the definition of 'overawe' in Black's Law Dictionary to mean "to sub judicator or restrain by and or profound reference". Realising the difficulty that there was no charge of conspiracy to overawe the Government Mr. Altaf Ahmad said that since it was a case of reference this Court could return the finding as there was evidence to overawe the Government and it could not be said that the accused would be prejudiced by adopting such a course. He said it was enough if section describing the offence is mentioned in the charges and all the ingredients of the offence need not be in the charge. According to him charge thus gives notice of accusation to the accused and the requirement of law is fulfilled. But then in the present case when some particulars of a charge have been given the accused can certainly assume that they are not being charged with other ingredients of the offence given in a particular section. If we now take into consideration those ingredients as well prejudice would certainly be caused to the accused.

544. Mr. Altaf Ahmad said that Rajiv Gandhi was targeted as he was the Prime Minister when the Indo-Sri Lankan Accord was entered into and his name was synonymous with the Accord. LTTE took it that it was entered into contrary to their aspirations. In an interview before the general elections Rajiv Gandhi did support his stand on the Accord which had been ratified by the Parliament. He said that action of the accused in killing Rajiv Gandhi struck at the sovereign powers of the country and it was to intimidate the Government. That the country was in the midst of election and on account of the assassination of Rajiv Gandhi elections were postponed and formation of the Government was delayed. A notification dated 22.5.1991 was issued by the Election Commission of India postponing the elections. It was mentioned in the Notification that the country had suffered a great tragedy in the death of Sri Rajiv Gandhi at the assassins hands. Country was thus in trauma. Intention of the accused in killing Rajiv Gandhi was that India as sovereign country could not take sovereign decisions. Prime Minister is the pivot of the Parliamentary system and if he is killed because he was party to an Accord entered into in exercise of sovereign powers of the country and even though he may not be the Prime Minister at the relevant time his killing would send shock waves all over the country and to the Government in power and the Government to be. He said

conspiracy to kill Rajiv Gandhi was thus with intent to overawe the Government as by law established. Since there was no such charge, no finding, and no question put to the accused under Section 313 of the Code, it was pointed out to Mr. Altaf Ahmad that unless he referred to any relevant provision of law or any decision of this Court on the powers of this Court in Reference, his argument could not be taken note of. Mr. Altaf Ahmad said that powers of the Court while considering the Reference are wider than that of the appellate court. Under Sub-section (1) of Section 366 of the Code it is for the Supreme Court to confirm the death sentence and under Sub-section (1) of Section 367 of the Code, the Supreme Court, if it thinks that a further inquiry should be made into or additional evidence taken upon any point bearing on the killing or innocence of the accused it may make such inquiry or such trial itself or direct it to be made or taken by the Designated Court. With these powers being there Mr. Altaf Ahmad said that though the approach of the Designated Court may have been different in construing the charge and it may not accord with the submissions made now before us and if we construe the charge of our own it is that the accused had committed a terrorist act on the soil of India and in the course of that killed Rajiv Gandhi in order to overawe the Government established by law not to pursue the Indo-Sri Lankan Accord. It was, however, not suggested as to what inquiry or additional evidence is contemplated by the prosecution. From the arguments of Mr. Altaf Ahmad it would appear that he is seeking amendment of the charge and if that is done it would require additional evidence or even retrial may have to be ordered. We do not think we should adopt any such course. The question before us is to consider the charge in its proper way and to examine the evidence with reference to that. Quite a number of judgments on the question of power of Reference Court were cited, principal of these being two judgments in Jumman and Ors. v. The State of Punjab MANU/SC/0110/1956: 1957 Cri LJ 586 and Ram Shankar Singh and Ors. v. State of West Bengal MANU/SC/0143/1961: 1962 Supp. (1) SCR 49.

545. In Jumman and Ors. v. State of Punjab MANU/SC/0110/1956: 1957 Cri LJ 586 this Court considered scope of the reference under Section 374 and 375 of the old Code (Section 366 and 367 of the new Code) and powers of the High Court in its disposal. Statement of law has been laid in paras 11 and 12 of the judgment which is as under:

(11) Before we propose to discuss the evidence on which reliance has been placed by the counsel in this Court, it is necessary to advert to a circumstance which calls for some comment. Along with the appeals filed by the accused, there was before the High Court, a reference under Section 374, Criminal P.C., by the Sessions Judge, submitting to the High Court the proceedings before him for confirmation of the sentences of death passed by him, Under Section 375, Criminal P.C., the High Court has power to direct further inquiry to be made or additional evidence to be taken in such matters and according to Section 376, Criminal P.C., the High Court has to confirm the sentence, or pass any other sentence warranted by law, or alternatively it may annul the conviction and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge or the High Court may acquit the accused

person. Section 377, Criminal P.C., provides that the confirmation of the sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed and signed by at least two of them.

(12) It is clear from a perusal of these provisions that in such circumstances the entire case is before the High Court and in fact it is a continuation of the trial of the accused on the same evidence and any additional evidence and that is why the High Court is given power to take fresh evidence if it so desires. In an appeal under 0.41, Civil P.C., an appellate Court has to find whether the decision arrived at by the Court of first instance is correct or not on facts and law; but there is a difference when a reference is made under Section 374, Criminal P.C., and when disposing of an appeal under Section 423, Criminal P.C., and that is that the High Court has to satisfy itself as to whether a case beyond reasonable doubt has been made out against the accused persons for the infliction of the penalty of death. In fact the proceedings before the High Court are a reappraisal and the reassessment of the entire facts and law in order that the High Court should be satisfied on the materials about the guilt or innocence of the accused persons. Such being the case, it is the duty of the High Court to consider the proceedings in all their aspects and come to an independent conclusion on the materials, apart from the view expressed by the Sessions Judge. In so doing, the High Court will be assisted by the opinion expressed by the Sessions Judge, but under the provisions of the law above-mentioned it is for the High Court to come to an independent conclusion of its own.

546. In Ram Shankar Singh and Ors. v. State of West Bengal 1962 Suppl. (1) SCR 49 this Court held that powers under Section 374 (1) and Section 376 of the Old Code were manifestly of wide amplitude and exercised thereof was not restricted by the provisions of Section 418(1) and Section 423 of the old Code. Irrespective of whether the accused, who is sentenced to death prefers an appeal, High Court is bound to consider the evidence and arrive at an independent conclusion as to the guilt or innocence of the accused and this the High Court must do even if the trial of the accused was held by jury. Indeed, duty is imposed upon the High Court to satisfy itself that the conviction of the accused is justified on the evidence, and that the sentence of death in the circumstances of the case, is the only appropriate sentence.

547. These are the basic judgments on the scope of reference and the powers of the High Court while disposing of the same. Other judgments of this Court on this aspect reiterate the principles laid in these two judgment. It is, therefore, not necessary for us to refer to all those judgments.

548. We have certainly kept in view principles laid in these judgments.

549. Prosecution case now made out before us is that the object of conspiracy was to commit terrorist acts during the period 1987 to 1992; that the assassination of Rajiv Gandhi was one of such acts with the intention to overawe the Government and to strike

terror; and the assassination was an act which struck terror and was also a disruptive activity. As to how it was intended to overawe the Government it was submitted that it was on account of Indo-Sri Lankan Accord, which the Government of India was to honour and that did not suit the aspirations of LTTE and thus the conspiracy was hatched to eliminate the person who was the author of the Accord and to threaten the successive Governments not to follow the Accord, otherwise that Government would also meet the same fate. But then, as noted above that there was a conspiracy to overawe the Government is nowhere in the charge. Though it could be said that terror was struck by assassination of Rajiv Gandhi but the question is if striking of terror was intended and for that again there is no evidence. Apart from the assassination of Rajiv Gandhi no other act which could be termed as terrorist act has been suggested. The Designated Court in its impugned judgment does not record any such argument now advanced before us. There is no discussion in the judgment and there is no evidence to which judgment refers to hold that there was any terrorist act intended to overawe the Government or to strike terror. The Designated Court has clearly held that on the assassination of Rajiv Gandhi object of conspiracy was successfully accomplished. Even if thus examining the proceedings in reference our decision has to be made on the basis of the evidence on record. When there is no evidence inference cannot be drawn that act of killing of Rajiv Gandhi was to overawe the Government. Even though there is no bar to the examination of the accused under Section 313 of the Code by this Court in these proceedings but then what is required to be put to the accused is to enable him to personally explain any circumstance appearing in the evidence against him and when there is no evidence, there is no necessity to examine the accused at this stage as that would be a futile exercise. When the prosecution during the course of the trial, which lasted over a number of years, had taken the stand that killing of Rajiv Gandhi was a terrorist act, it cannot now turn about and say that killing itself was not a terrorist act but was committed to achieve the object of conspiracy which was to overawe the Government. As a matter of fact in the statement of Kasi Anandhan (PW-242), who was a member of the Central Committee of LTTE, it has come on record that he met Rajiv Gandhi in March, 1991 when Rajiv Gandhi supported the stand of LTTE and had admitted that it was his mistake in sending IPKF to Sri Lanka and wanted LTTE to go ahead with its agitation. That being the evidence brought on record by the prosecution there is no question of it now contending that there was conspiracy to overawe the Government. Its stand throughout has been that it was the personal motive of Prabhakaran and others to commit terrorist act by killing Rajiv Gandhi. Under Section 3(1) of TADA overawing the Government cannot be the consequence but it has to be the primary object. There is nothing on record to show that the intention to kill Rajiv Gandhi was to overawe the Government. Reference to the Indo-Sri Lankan Accord is merely by way of narration.

550. Support to the struggle of LTTE in Sri Lanka was from Tamil Nadu and it does not appeal to reason that LTTE would commit any act to overawe the Government. It is matter of common knowledge that all terrorist acts are publicized and highlighted which is fundamental to terrorism. Whenever a terrorist act is committed some organisation or

the other comes forward to claim responsibility for that. In the present case LTTE tried to. conceal the fact that it was behind the murder of Rajiv Gandhi. The object to assassinate Rajiv Gandhi was kept a closely guarded secret. In the wireless message dated 7.5.1991 (Exh. P-392) from Sivarasan to Pottu Amman he conveyed that "our intention is not known to anybody except we three" meaning thereby himself, Subha and Dhanu. There is another wireless message dated 22.5.1991 (Exh. P-396) from Pottu Amman to Sivarasan that "even to our people in higher places we informed that we have no connection with this" meaning thereby that the assassination of Rajiv Gandhi a day before was not carried out by LTTE. LTTE was not owning the assassination of Rajiv Gandhi and it cannot, therefore, be said that it was done to overawe the Government. LTTE did not want publicity and wanted to keep friendly relations with India and the people of India. Pottu Amman even cautioned Sivarasan in his wireless message dated dated 22.5.1991 (Exh. P-396) not to send long messages as "it will create suspicion" meaning thereby that LTTE might be suspected to be behind the assassination. Two letters of Subha and Dhanu to Akila and Pottu Amman dated 9.5.1991 which were carried by Murugan (A-3) did not spell out their mission. Trichy Santhan (deceased accused) in his letter dated 7.9.1991 (Exh.P-129) to Prabhakaran, which was recovered from Irumburai (A-19) complained about the operation of Sivarasan which led to the name of LTTE being publicized as behind the assassination of Rajiv Gandhi and further about the illicit relationship that developed between Murugan (A-3) and Nalini (A-1), He wrote that due to Murugan (A-3) incident the press was writing ridiculously about the movement and the newspapers were magnifying that Murugan (A-3) and Nalini (A-1) were lovers and that Nalini (A-1) was pregnant of five months.

550A. We accept the argument of Mr. Natarajan that terrorism is synonymous with publicity and it was sheer personal animosity of Prabhakaran and other LTTE cadre developed against Rajiv Gandhi which resulted in his assassination. LTTE would not do any act to overawe the Government in Tamil Nadu or in the center as otherwise their activities in this country in support of their struggle in Sri Lanka would have been seriously hampered.

551. Charge of disruptive activities under Section 4(3) of TADA is against Nalini (A-1) and Arivu (A-18). There is no charge under Section 3(3) of TADA against Rangam (A-24), Vicky" (A-25) and Ranganath (A-26). They are charged under Section 3(4) of TADA. Charge under Section 3(3) is against A-1 to A-23. If we examine one such charge, say charge No. 235 against A-21 which says that she in pursuance to the criminal conspiracy referred to in charge No. 1 and in course of same transaction during the period between January 91 and June, 1991 at Madras and other place in Tamil Nadu she had actively associated with and assisted other conspirators for carrying out the object of criminal conspiracy and thus she knowingly facilitated the commission of terrorist act or any act preparatory to terrorist act and which was committing the terrorist act by detonating the improvised explosive device concealed in waist belt of Dhanu and thereby A-21 committed an offence punishable under Section 3(3) of TADA.

551A. Designated Court held that hatred which developed in the minds of Prabhakaran, further developed into animosity against Rajiv Gandhi in view of the events which took place after IPKF was inducted in Sri Lanka.

552. Thus examining the whole aspect of the matter we are of the opinion that no offence either under Sections 3 or 4 of TADA has been committed. Since we hold that there is no terrorist act and no disruptive activity under Sections 3 and 4 of TADA, charges under Section 3(3), 3(4) and 4(3) of TADA must also fail against all the accused.

553. Arguments were then addressed as to what is nature of conspiracy made out from the evidence on record and the applicability of Section 10 of the Evidence Act. Various judgments of this Court were cited on the nature, scope and existence of criminal conspiracy under Section 120A and 120B, IPC. We may refer to some of them.

554. In Major E.G. Barsay v. The State of Bombay MANU/SC/0123/1961: 1961 Cri LJ 828 this Court said:

The gist of the offence of criminal conspiracy under Section 120A IPC is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under Section 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law. Under the first charge the accused are charged with having conspired to do three categories if illegal acts, and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable.

555. In Sardar Sardul Singh Caveeshar v. State of Maharashtra MANU/SC/0063/1963: 1965 Cri LJ 608a reference of which was made while considering the impact of Section 10 of the Evidence Act, the Court said that the essence of conspiracy was that there should be an agreement between persons to do one or other of the other of the acts described in Section 120A IPC. The said agreement may be proved by direct evidence or may be inferred from acts and conduct of the parties.

556. In Noor Mohammad Mohd. Yusuf Momin v. State of Maharashtra MANU/SC/0157/1970: 1971 Cri LJ 793 it was held that Section 120B IPC makes the criminal conspiracy as a substantive offence which offence postulates an agreement between two or more persons to do or cause to be done an act by illegal means. It differs from other offences where mere agreement is made an offence even if no steps are taken to carry out that agreement.

In Yash Pal Mittal v. State of Punjab MANU/SC/0169/1977: 1978 Cri LJ 189 the Court said as under:

9. The offence of criminal conspiracy under Section 120A is a distinct offence introduced for the first time in 1913 in Chapter V-A of the Penal Code. The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participators in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy.
557. In Shivnarayan Laxminarayan Joshi and Ors. v. State of Maharashtra MANU/SC/0241/1979: 1980 Cri LJ 388 this Court said that it was manifest "that a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same. The offence can be only proved largely from the inference drawn from acts or illegal omission committed by the conspirators in pursuance of a common design."

558. Mohammad Usman Mohammad Hussain Maniyar and Ors. v. State of Maharashtra MANU/SC/0180/1981: 1981 Cri LJ 588 this Court again asserted:

It is true that there is no evidence of any express agreement between the appellants to do or cause to be done the illegal act. For an offence under Section 120B, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or cause to be done the illegal act; the agreement may be proved by necessary implication.
559. In State of Himachal Pradesh v. Kishan Lal Pardhan and Ors. MANU/SC/0290/1987: 1987 Cri LJ 709 the Court said that everyone of the conspirators need not have taken active part in the commission of each and every one of the conspiratorial acts for the offence of conspiracy to be made out. It added that:

The offence of criminal conspiracy consists in a meeting of minds of two or more persons for agreeing to do or causing to be done an illegal act or an act by illegal means, and the performance of an act in terms thereof. If pursuant to the criminal. conspiracy the conspirators commit several offences, then all of them will be liable for the offences even if some of them had not actively participated in the commission of the offences.

560. In Kehar Singh and Ors. v. State (Delhi Administration) MANU/SC/0241/1988: 1989 Cri LJ 1 the Court said that the most important ingredient of the offence of conspiracy is agreement between two or more persons to do an illegal act. The illegal act may or may not be done in pursuance of agreement, but the very agreement is an offence and is punishable. It further added as under:

Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must inquire whether the two persons are independently pursuing the same end or they have come together in the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Gerald Orchard of University of Canterbury, New Zealand explains the limited nature of this proposition:

Although it is not in doubt that the offence requires some physical manifestation of agreement. It is important to note the limited nature of this proposition. The law does not require that the act of agreement take any particular form and the fact of agreement may be communicated by words or conduct. Thus, it has been said that it is unnecessary to prove that the parties "actually came together and agreed in terms" to pursue the unlawful object: there need never have been an express verbal agreement, it being sufficient that there was "a tacit understanding between conspirators as to what should be done".

561. In Ajay Aggarwal v. Union of India and Ors. MANU/SC/0265/1993: 1993 Cri LJ 2516 this Court considering the ingredients of the offence of conspiracy said:

Section 120A of the IPC defines 'conspiracy' to mean that when two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by illegal means, such an agreement is designated as "criminal conspiracy". No agreement except an agreement to commit an offence shall amount to a criminal conspiracy, unless some act besides the agreement is done by one or more parties to such agreement in furtherance thereof. Section 120B of the IPC prescribes punishment for criminal conspiracy. It is not necessary that each conspirator must know all the details of the scheme nor be a participant at every stage. It is necessary that they should agree for design or object of the conspiracy. Conspiracy is conceived as having three elements: (1) agreement (2) between two or more persons by whom the agreement is effected; and (3) a criminal object, which may be either the ultimate aim of the agreement, or may constitute the means, or one of

the means by which that aim is to be accomplished. It is immaterial whether this is found in the ultimate objects.
The Court then considered the common law definition of 'criminal conspiracy' and for that referred to statement of law by Lord Denman in King v. Jones 1832 B & AD 345 that an indictment for conspiracy must "charge a conspiracy to do an unlawful act by unlawful means" and was elaborated by Willies, J. on behalf of the judges while referring the question to the House of Lords in Mulcahy v. Reg (1868) LR 3 HL 306 and the House of Lords in unanimous decision reiterated in Quinn v. Leathern 1901 AC 495:

A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more, to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful; and punishable if for a criminal object, or for the use of criminal means.
The Court also referred to another decision of English House of Lords in Director of Public Prosecutions v. Doot 1973 AC 807 where Lord Pearson held that:

[A] conspiracy involved an agreement express or implied. A conspiratorial agreement is not a contract, not legally binding because it is unlawful. But as an agreement it has its three stages, namely, (1) making or formation; (2) performance or implementation; (3) discharge or termination. When the conspiratorial agreement has been made, the offence of conspiracy is complete, it has been committed, and the conspirator can be prosecuted even though no performance had taken place. But the fact that of the offence of conspiracy is complete at that stage does not mean that the conspiratorial agreement is finished with. It is not dead. If it is being performed, it is very much alive. So long as the performance continues, it is operating, it is being carried out by the conspirators, and it is governing or at any rate influencing their conduct. The conspiratorial agreement continues in operation and therefore in existence until it is discharged (terminated) by completion of its performance or by abandonment or frustration or, however, it may be.
The Court then considered the question whether conspiracy is a continuing offence and said as under:-

Conspiracy to commit a crime itself is punishable as a substantive offence and every individual offence committed pursuant to the conspiracy is separate and distinct offence to which individual offenders are liable to punishment, independent of the conspiracy. Yet, in our considered view, the agreement does not come to an end with its making, but would endure till it is accomplished or abandoned or proved abortive. Being a continuing offence, if any acts or omissions which constitute an offence are done in India or outside its territory the conspirators continuing to be parties to the conspiracy and since part of the acts were done in India, they would obviate the need to obtain sanction of the Central Government. All of them need not be present in India nor continue to remain in India.
Finally the Court said as under:

Thus, an agreement between two or more persons to do an illegal act or legal acts by illegal means is criminal conspiracy. If the agreement is not an agreement to commit an offence, it does not amount to conspiracy unless it is followed up by an overt act done by one or more persons in furtherance of the agreement. The offence is complete as soon as there is meeting of minds and unity of purpose between the conspirators to do that illegal act or legal act by illegal means. Conspiracy itself is a substantive offence and is distinct from the offence to commit which the conspiracy is entered into. It is undoubted that the general conspiracy is distinct from number of separate offences committed while executing the offence of conspiracy. Each act constitutes separate offence punishable, independent of the conspiracy. The law had developed several or different models or techniques to broach the scope of conspiracy. One such model is that of a chain, where each party performs even without knowledge of the other a role that aids succeeding parties in accomplishing the criminal objectives of the conspiracy. An illustration of a single conspiracy, its parts bound together as links in a chain, is the process of procuring and distributing narcotics or an illegal foreign drug for sale in different parts of the globe. In such a case, smugglers, middlemen and retailers are privies to a single conspiracy to smuggle and distribute narcotics. The smugglers knew that the middlemen must sell to retailers; and the retailers knew that the middlemen must buy of importers of some one or another. Thus the conspirators at one end of the chain knew that the unlawful business would not, and could not, stop with their buyers; and those at the other end knew that it had not begun with their settlers. The accused embarked upon a venture in all parts of which each was a participant and an abettor in the sense that, the success of the part with which he was immediately concerned, was dependent upon the success of the whole. It should also be considered as a spoke in the hub. There is a rim to bind all the spokes together in a single conspiracy. It is not material that a rim is found only when there is proof that each spoke was aware of one another's existence but that all promoted in furtherance of some single illegal objective. The traditional concept of single agreement can also accommodate the situation where a well-defined group conspires to commit multiple crimes; so long as all these crimes are the objects of the same agreement or continuous conspiratorial relationship, and the conspiracy continues to subsist though it was entered in the first instance. Take for instance that three persons hatched a conspiracy in country A to kill D in country B with explosive substance. As far as conspiracy is concerned, it is complete in country A. One of them pursuant thereto carried the explosive substance and hands it over to them pursuant thereto carried the explosive substance and hands it over to third one in the country B who implants at a place where D frequents and got exploded with remote control. D may be killed or escape or may be got exploded with remote control. D may be killed or escape or may be diffused. The conspiracy continues till it is executed in country B or frustrated. Therefore, it is a continuing act and all are liable for conspiracy in country B though first two are liable to murder with aid of Section 120B and the last one is liable under Section 302 or 307 IPC, as the case may be. Conspiracy may be considered to be a march under a banner and a person may join or drop out in the march without the necessity of the change in the text

on the banner. In the comity of International Law, in these days, committing offences on international scale is a common feature. The offence of conspiracy would be a useful weapon and there would exist no conflict in municipal laws and the doctrine of autrefois convict or acquit would extend to such offences. The comity of nations are duty-bound to apprehend the conspirators as soon as they set their feet on the country's territorial limits and nip the offence in the bud.

25.A conspiracy thus, is a continuing offence and continues to subsist and committed wherever one of the conspirators does an act or series of acts. So long as its performance continues, it is a continuing offence till it is executed or rescinded or frustrated by choice or necessity. A crime is complete as soon as the agreement is made, but it is not a thing of the moment. It does not end with the making of the agreement. It will continue so long as there are two or more parties to it intending to carry into effect the design. Its continuance is a threat to the society against which it was aimed at and would be dealt with as soon as that jurisdiction can properly claim the power to do so. The conspiracy designed or agreed abroad will have the same effect as in India, when part of the acts, pursuant to the agreement are agreed to be finalised or done, attempted or even frustrated and vice versa.

562. In State of Maharashtra and Ors. v. Som Nath Thapa and Ors. MANU/SC/0451/1996: 1996 Cri LJ 2448 this Court referred to its earlier decision in Ajay Aggarwal case MANU/SC/0265/1993: 1993 Cri LJ 2516) and said:

The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use.
563. In Regina v. Ardalan and Ors. (1972) 1 WLR 463 the appellants were charged and convicted for the offence of conspiracy. On appeal, reference of the Trial Judge to "the cartwheel type of conspiracy"; about "sub-conspiracies" and also about "the chain type of conspiracy" was criticised. The Appeal Court said that care must be taken that words and phrases such as "wheels", "cartwheels", "chain", "sub-conspiracies" and so on are used only to illustrate and to clarify the principle and for no other purpose. It said:

It is right to say that these epithets, or labels, such as "cartwheels" (or wheel without rim) and "chains" have a certain respectable ancestry and have been used in a number of conspiracy cases that from time to time have come before the courts. Metaphors are

invaluable for the purpose of illustrating a particular point or a particular concept to a jury, but there is a limit to the utility of a metaphor and there is sometimes a danger, if metaphors are used excessively, that a point of time arises at which the metaphor tends to obscure rather than to clarify.
564. In United States v. Falcone et at. 109 Federal Reporter (2d Series) 579 (Circuit Court of Appeals - the Second Circuit)], the appellants were convicted for a conspiracy to operate illicit stills. Case against the appellant and others who constituted one set of conspirators was that they supplied sugar etc. to the other group of conspirators who were operating illicit stills. The question before the court was whether the sellers of goods, in themselves innocent, became conspirators with the buyer because they knew that the buyer meant to use the goods to commit a crime. Judge Learned Hand speaking for the Court said:

There are indeed instances of criminal liability of the same kind, where the law imposes punishment merely because the accused did not forbear to do that from which the wrong was likely to follow; but in prosecutions for conspiracy or abetting, his attitude towards the forbidden undertaking must be more positive. It is not enough that he does not forego a normally lawful activity, of the fruits of which he knows that others will make an unlawful use; he must in some sense promote their venture himself, make it his own, have a stake in its outcome. The distinction is especially important today when so many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders. That there are opportunities of great oppression in such a doctrine is very plain, and it is only by circumscribing the scope of such all comprehensive indictments that they can be avoided. We may agree that morally the defendants at bar should have refused to sell to illicit distillers; but, both morally and legally, to do so was toto cockle different from joining with them in running the stills.
Falcon and similarly situated appellants were acquitted of the charge of conspiracy.

565. United States then moved the Supreme Court for a writ of certiorari to review the aforesaid judgment of the Circuit Court setting aside the conviction of the respondents Falcone and others. The Government, however, did not argue that the conviction of conspiracy could rest on proof alone of knowingly supplied an illicit distillers who are not conspiring with others. It was conceded that the act of supplying or some other proof must import an agreement or concert of action between buyer and seller which admittedly was not present in the case. United States of America v. Salvatore Falcone, and Ors. 85 L d. (311 US) 205.

566. In the present case, there is no evidence to support the charge as regards the period of conspiracy. It is as important to know the period as to ascertain the object of conspiracy. It appears that period of conspiracy in the charge from July 1987 to May 1992 has been mentioned as the Indo-Sri Lankan Accord was entered into in July 1987 and LTTE was declared an unlawful association by notification dated May 14, 1992 issued under the

Unlawful Activities (Prevention) Act, 1987. There is, however, no evidence that the conspiracy was hatched immediately on entering into the accord and was terminated only on the issue of the notification. A statement made by a conspirator before the commencement of the conspiracy is not admissible against the co-conspirator under Section 10 of the Evidence Act. Similarly, a statement made after the conspiracy has been terminated on achieving its object or it is abandoned or it is frustrated or the conspirator leaves the conspiracy in between, is not admissible against the co-conspirator. Fixing the period of conspiracy is, thus, important as provisions of Section 10 would apply only during the existence of the conspiracy. We have held that object of the conspiracy was the killing of Rajiv Gandhi. It is not that immediately the object of conspiracy is achieved, Section 10 becomes inapplicable. For example principle like that of res gestae as contained in Section 6 of the Evidence Act will continue to apply.

567. Principle of law governing Section 10 has been succinctly stated in a decision of this Court in Sardar Sardul Singh Caveeshar v. State of Maharashtra MANU/SC/0063/1963: 1965 Cri LJ 608a where this Court said:

before dealing with the individual cases, as some argument was made in regard to the nature of the evidence that should be adduced to sustain the case of conspiracy, it will be convenient to make at this stage some observations thereon. Section 120A of the Indian Penal Code defines the offence of criminal conspiracy thus:

When two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

The essence of conspiracy is, therefore, that there should be an agreement between persons to do one or other of the acts described in the section. The said agreement may be proved by direct evidence or may be inferred from acts and conduct of the parties. There is no difference between the mode of proof of the offence of conspiracy and that of any other offence: it can be established by direct evidence or by circumstantial evidence. But Section 10 of the Evidence Act introduces the doctrine of agency and if the conditions laid down therein are satisfied, the acts done by one are admissible against the conspirators co-conspirators. The said section reads:

Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

This section, as the opening words indicate, will come into play only when the Court is satisfied that there is reasonable ground to believe that two or more persons have

conspired together to commit an offence or an actionable wrong, that is to say, there should be a prima facie evidence that a person was a party to the conspiracy before his acts can be used against his conspirators. co-conspirators. Once such a reasonable ground exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was entertained, is relevant against the others, not only for the purpose of proving the existence of the conspiracy but also for proving that the other person was a party to it. The evidentiary value of the said acts is limited by two circumstances, namely, that the acts shall be in reference to their common intention and in respect of a period after such intention was entertained by any one of them. The expression "in reference to their common intention" is very comprehensive and it appears to have been designedly used to give it a wider scope than the words "in furtherance of in the English law; with the result, anything said, done or written by a co-conspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Another important limitation implicit in the language is indicated by the expressed scope of its relevancy. Anything so said, done or written is a relevant fact only "as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it". It can only be used for the purpose of proving the existence of the conspiracy or that the other person was a party to it. It cannot be used in favour of the other party or for the purpose of showing that such a person was not a party to the conspiracy. In short, the section can be analysed as follows: (1) There shall be a prima facie evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and (5) it can only be used against a co-conspirator and not in his favour.

568. Then in State of Gujarat v. Mohammed Atik and Ors. MANU/SC/0267/1998: 1998 Cri LJ 2251 this Court said as under:

It is well-nigh settled that Section 10 of the Evidence Act is founded on the principle of law of agency by rendering the statement or act of one conspirator binding on the other if it was said during subsistence of the common intention as between the conspirators. If so, once the common intention ceased to exist any statement made by a former conspirator thereafter cannot be regarded as one made "in reference to their common intention". In other words, a post-arrest statement made to a police officer, whether it is a confession or otherwise, touching his involvement in the conspiracy, would not fall within the ambit of Section 10 of the Evidence Act.

569. In Mirza Akbar v. King Emperor MANU/PR/0037/1940 the Privy Council said the following on the scope of Section 10:

This being the principle, their Lordships think the words of Section 10 must be construed in accordance with it and are not capable of being widely construed so as to include a statement made by one conspirator in the absence of the other with reference to past acts done in the actual course of carrying out the conspiracy, after it has been completed. The common intention is in the past. In their Lordships' judgment, the words" common intention" signify a common intention existing at the time when the thing was said, done or written by the one of them. Things said, done or written while the conspiracy was on foot are relevant as evidence of the common intention, once reasonable ground has been shown to believe in its existence. But it would be a very different matter to hold that any narrative or statement or confession made to a third party after the common intention or conspiracy was no longer operating and had ceased to exist is admissible against the other party. There is then no common intention of the conspirators to which the statement can have reference. In their Lordships' judgment Section 10 embodies this principle. That is the construction which has been rightly applied to Section 10 in decisions in India, for instance, in 55 Bom 839 and 38 Call 69. In these cases the distinction was rightly drawn between communications between conspirators while the conspiracy was going on with reference to the carrying out of conspiracy and statements made, after arrest or after the conspiracy has ended, by way of description of events then past.
570. It was submitted that once the conspirator is nabbed that would be an end to the conspiracy and Section 10 would be inapplicable. That may be so in a given case but is not of universal application. If the object of conspiracy has not been achieved and there is still agreement to do the illegal act, the offence of criminal conspiracy is there and Section 10 of the Evidence Act applies. Prosecution in the present case has not led any evidence to show that any particular accused continued to be a member of the conspiracy after his arrest.

571. Though we have held that confession of an accused recorded under Section 15 of TADA is substantive evidence against co-accused we may take note of an alternative argument of Mr. Altaf Ahmad. He said even if it is held that the confession under Section 15 TADA can be admitted only if there is corroboration, under Section 10 of the Evidence Act the confession of an accused can nevertheless be a substantive evidence against co-accused if it satisfies the requirement of that Section.

572. It is true that provision as contained in Section 10 is a departure from the rule of hearsay evidence. There can be two objections to the admissibility of evidence under Section 10 and they are (1) the conspirator whose evidence is sought to be admitted against co-conspirator is not confronted or cross-examined in Court by the co-conspirator and (2) prosecution merely proves the existence of reasonable ground to believe that two or more persons have conspired to commit an offence and that brings into operation the existence of agency relationship to implicate co-conspirator. But then precisely under Section 10 Evidence Act statement of a conspirator is admissible against co-conspirator on the premise that this relationship exists. Prosecution, no doubt, has to produce

independent evidence as to the existence of the conspiracy for Section 10 to operate but it need not prove the same beyond a reasonable doubt. Criminal conspiracy is a partnership in agreement and there is in each conspiracy a joint or mutual agency for the execution of a common object which is an offence or an actionable wrong. When two or more persons enter into a conspiracy any act done by any one of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefore. This means that everything said, written or done by any of the conspirators in execution of or in reference to their common intention is deemed to have been said, done or written by each of them. A conspirator is not, however, responsible for acts done by a conspirator after the termination of the conspiracy as aforesaid. The Court is, however, to guard itself against readily accepting the statement of a conspirator against the co-conspirator. Section 10 is a special provision in order to deal with dangerous criminal combinations. Normal rule of evidence that prevents the statement of one co-accused being used against another under Section 30 of the Evidence Act does not apply in the trial of conspiracy in view of Section 10 of that Act. When we say that court has to guard itself against readily accepting the statement of a conspirator against co-conspirator what we mean is that court looks for some corroboration to be on the safe side. It is not a rule of law but a rule of prudence bordering on law. All said and done ultimately it is the appreciation of evidence on which the court has to embark.

573. In Bhagwandas Keshwani and Anr. v. State of Rajasthan MANU/SC/0107/1974: 1974 Cri LJ 751, this Court said that in cases of conspiracy better evidence than acts and statements of co-conspirators in pursuance of the conspiracy is hardly ever available.

574. Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.

1. Under Section 120A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is legal act by illegal means overt act is necessary. Offence of criminal conspiracy is exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused had the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever, horrendous it may be, that offence be committed.

2. Acts subsequent to the achieving of object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

3. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

4. Conspirators may, for example, be enrolled in a chain - A enrolling B, B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrella-spoke enrollment, where a single person at the center doing the enrolling and all the other members being unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell whether the conspiracy in a particular case falls into which category. It may, however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse role to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.

6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

7. A charge of conspiracy may prejudice the accused because it is forced them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of object of conspiracy but also of the agreement. In the charge of conspiracy court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand that "this distinction is important today when many prosecutors seek to sweep within the dragnet of

conspiracy all those who have been associated in any degree whatever with the main offenders".

8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement, which is the graham of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts, and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is in contemplation of law, the act of each of them and they are jointly responsible therefore. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done, or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incident to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime.

575. Having thus held that the object of the conspiracy was to kill Rajiv Gandhi; that no offence under Sections 3 or 4 of TADA had been committed and after having considered the principles regarding the ingredients of criminal conspiracy; appreciation of evidence in a case of conspiracy; submissions of Mr. Natarajan that he is not challenging the convictions and sentence passed on the accused under the provisions of the Arms Act, Explosives Substance Act, Indian Wireless and Telegraphy Act, Passport Act, Foreigners Act and Sections 201, 212 and 216 IPC, we proceed to consider as to whether all or any

one of the accused before us were members of the criminal conspiracy, still keeping in view the following aspects:-

1. Presence of LTTE on Indian soil before and after Indo-Sri Lankan Accord is undisputed. Its activities went ostensibly underground after the Accord. LTTE was having various activities in India and some of these were (1) printing and publishing of books and magazines for LTTE propaganda, (2) holding of camps for arms training in India and various other places in Tamil Nadu (This was done openly till the Indo-Sri Lankan Accord), (3) collection and raising of funds for its war efforts in Sri Lanka, (4) treatment of injured LTTE cadres in India, (5) medical assistance and (6) transporting of goods like petrol, diesel, lungies, medicines, wireless equipments and explosives and even provisions to Sri Lanka.

2. Hiring of houses in Tamil Nadu was for various activities of the LTTE, which included houses for the treatment of injured LTTE cadres.

3. Sivarasan was having other activities in Tamil Nadu. He was to make arrangements for Santhan (A-2) to go to Switzerland and for Kangasabapathy (A-7) and Athirai (A-8) to go to Delhi and from there to Germany. He was to make arrangement to recruit persons to impart arms training in Sri Lanka through Ravi (A-16) and Suseendran (A-17) and to arrange houses at Madras through Robert Payas(A-9), Jayakumar (A-10) and Vijayan (A-12) for the stay of LTTE cadres not necessarily for conspirators. He financed Vijayanandan (A-5) in Madras for purchase of books for LTTE library in Jaffna. Shanmugham (DA) in his confession (Exh.P-1300) stated that Sivarasan with others stayed in a house at Kodiakkarai and they were arranging to send petrol and diesel oil by boat to LTTE in Sri Lanka.

4. In case of some of the accused including deceased accused there is no evidence whatsoever that they were members of the conspiracy. Prosecution has been unfair to charge them with conspiracy.

5. There is no evidence that all the nine persons, who arrived in India by boat on 1.5.1991, namely, Sivarasan, Subha, Dhanu, Nero, Dixoh, Santhan (A-2), Shankar (A-4), Vijayanandan (A-5) and Ruben (A-6), were members of the conspiracy. In this group there was Ruben (A-6), who came to India to have an artificial leg fixed which he had lost in a battle with Sri Lankan army.

6. Prosecution also named Jamuna alias Jameela (DA) as a conspirator, who had also come to India for fixing an artificial limb, which she had also lost in a battle with Sri Lankan army. There is not even a whisper in the whole mass of evidence that she had even knowledge of any conspiracy to kill Rajiv Gandhi. Simply because she was found dead having committed suicide along with Sivarasan, Subha and others at Bangalore, could not make her a member of the conspiracy.

7. From frequent and unexplained meetings of some of the accused with others, who have been charged with conspiracy, it cannot be assumed that they all were members of the conspiracy. This is particularly so when LTTE was having various activities on Indian soil for its war efforts in Sri Lanka. Notebook (Exh.P-1168) seized by the police gives bio-data of some LTTE cadre working in India though that list is not extensive. It also contains the bio-data of Irumborai (A-19).

8. All the persons, who came from Sri Lanka during the strife, did not come through authorized channels. It is also to be seen if the accused now charged with conspiracy and alleged to have come to India in the guise of refugees were not in fact refugees. Rather evidence shows that Robert Payas (A-9), Jayakumar (A-10) and Shanthi (A-11) as one group and Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) as the second group, were in fact wanting to come to India due to conditions prevailing in Sri Lanka. They had no money to pay to LTTE. They were exempted from paying any toll to LTTE on their agreeing to hire houses in Tamil Nadu for stay of LTTE cadre and on their being promised help by LTTE. When they so agreed they were not aware that what was the object behind their hiring the houses. Evidence regarding providing shelter to the conspirators either before or after the object of the conspiracy has been achieved, is not conclusive to support the charge of conspiracy against them.

9. Robert Payas (A-9), Jayakumar (A-10) and Vijayan (A-12) were hard-core LTTE activists. They were living in Sri Lanka with their families and suffered because of the turmoil there. They may be sympathizers of LTTE having strong feelings against IPKF. Consider the background in which they accepted the offer of LTTE to meet their expenses in India. It could be that they themselves felled into the trap because of the circumstances in which their families were placed in Sri Lanka and the conditions prevailing there.

576. Now, we proceed to examine individual cases keeping in view the evidence and law on the subject.

Dhanasekaran (A-23)

Rangam (A-24)

Vicky(A-25)

Ranganath(A-26)

The object of the conspiracy was achieved on May 21, 1991. There is no evidence against Dhanasekaran (A-23), an Indian national, Rangam (A-24), Sri Lankan national, Vicky (A-25), Sri Lankan National and Ranganath (A-26), Indian national, that they were members of the conspiracy. They came in the picture after the object of the conspiracy had been

achieved. However, they knowingly that Sivrasan and Dhanu had committed the offence of murder of Rajiv Gandhi intentionally screened them from legal punishment. Evidence against Dhanasekaran (A-23) shows that he was fully aware of the involvement of Sivarasan and Subha in the murder of Rajiv Gandhi and with that full knowledge he transported them in an oil tanker (MO-543) owned by him from Madras to Bangalore to evade their arrest. In his confession Dhanasekaran (A-23) described how he was able to transport Sivarasan, Subha and Nero, hidden in his tanker lorry. His confession is corroborated amongst others by S. Syed Ibrahim (PW-232), insurance surveyor, S. Vasudevan (PW-245), cashier of petrol pump and his driver R. Selvaraj (PW-230).

577. Similarly, Rangam (A-24) was having knowledge of the offence of murder committed by Sivarasan and Subha and he helped and assisted Dhanasekaran (A-23) and Vicky (A-25) in transporting them from Madras to Bangalore. At Bangalore also he transported Sivarasan, Subha and others in Maruti Gypsi (MO-540), which had been purchased with the help of Dhanasekaran (A-23) and was given by Trichy Santhan (deceased accused) to Rangam (A-24). This Maruti Gypsy was green in colour but then in order to avoid its detection by the police Rangam (A-24) gave this vehicle to workshop at Bangalore for changing its colour. Rangam (A-24) thus also made efforts to destroy evidence besides harbouring and sheltering Sivarasan, Subha and Nero with full knowledge that they were involved in the assassination of Rajiv Gandhi. In the last week of June, 1991 he was directed by Trichy Santhan (deceased accused) to meet Dhanasekaran (A-23) for shifting Sivarasan, Subha and Nero from Madras to Bangalore. Confession of Rangam (A-24) is corroborated by Mruduila (PW-65), wife of Ranganath (A-26), R. Selvaraj (PW-230), driver and K.N. Mohan (PW-222), mechanic of the workshop, who repainted Maruti Gypsy.

578. Vicky (A-25) was also aware that Sivarasan and Dhanu were involved in the assassination of Rajiv Gandhi. He accompanied Dhanasekaran (A-23) and Rangam (A-24) in tanker lorry (MO-543) for shifting Sivarasan, Subha and Nero from Madras to Bangalore. He had opened the top lid of the tanker for Sivarasan, Subha and Nero to get into the tanker. This was done with a view to evade the arrest of Sivarasan, Subha and Nero. Evidence against Vicky (A-25) is same as against Dhanasekaran (A-23) and Rangam (A-24) and his case is similar to them. He had come to India for the first time in 1985 and again in 1990. He was given the task of looking after wounded LTTE personnel, who had come to India for treatment.

579. Ranganath (A-26) gave shelter to Sivarasan, Subha, Nero and others in his house knowingly that both Sivarasan and Subha were involved in the assassination of Rajiv Gandhi. He helped Rangam (A-24) to take Maruti Gypsy (MO-540-) and Fiat car (CAU 6492) to the workshop for changing colour of the vehicles respectively from green to white and sky blue to white. After colour of Maruti Gypsy had been changed he took delivery of the same. He got the Fiat car recovered from the workshop during investigation. His conduct in getting the colour of the vehicle changed showed his total

involvement in harbouring of Sivarasan, Subha and others. He then helped the accused in renting a house for them in a false name. In the case of Ranganath (A-26), his wife Mruduila (PW-65) has deposed against him. There is no evidence to show that Ranganath (A-26) was under any threat and that on that account he had harboured the accused Sivarasan, Subha and others. Other evidence against Ranganath (A-26) is that of E. Anjanappa (PW-218), landlord of his house, his three friends R. Rajan (PW-223), R. Jayashankar (PW-229) and K. Premkumar (PW-227) and the car mechanic K.N. Mohan (PW-222).

580. These four accused Dhanasekaran (A-23), Dhanasekaran (A-23), Vicky (A-25) and Ranganath (A-26) have been rightly convicted for that offence under Section 212 IPC. The Designated Court sentenced to each of them to undergo rigorous imprisonment for two years. Ranganath (A-26) has also been convicted for an offence under Section 216 IPC and sentenced to undergo rigorous imprisonment for two years, Rangam (A-24) and Vicky (A-25) being foreign nationals have also been convicted and sentenced for an offence under Section 14 of Foreigners Act inasmuch as they came to India through illicit channel without holding any valid travel documents and unauthorizedly stayed in India, Conviction and sentence under all these charges have not been challenged.

Nalini(A-1)

581. Nalini (A-1) in her confession has implicated herself. We have rejected any challenge to her confession being involuntary. She linked many others in the chain of conspiracy. Her confession gives her pivot role in the conspiracy. She made extra judicial confession to Sasikala (PW-132) and Ravi (PW-115). Ravi (PW-115) is not expressive about the extra judicial confession given to him. Sasikala (PW-132) gives details of the extra judicial confession. Confession of Nalini (A-1) also stands corroborated in material particular by other evidence. Nalini (A-1) is educated, She is post-graduate. In her association with Murugan (A-3), Sivarasan, Subha and Dhanu she developed extreme hatred against IPKF and Rajiv Gandhi. She got associated with LTTE activities some time in February, 1991. She did have a lurking feeling that some action was in contemplation by Sivarasan, Subha and Dhanu. On 7.5.1991 she gets a positive feeling that they were planning to kill certain leaders. However, wireless message (Exh.P-392), which was sent on 7.5.1991 by Sivarasan to Pottu Amman and which was intercepted and decoded, showed that till this date Nalini (A-1) had no knowledge about any conspiracy to kill Rajiv Gandhi. Further that till 7.5.1991 only three persons Sivarasan, Subha and Dhanu knew the object of conspiracy to kill Rajiv Gandhi. On 19.5.1991 she got a strong feeling that Rajiv Gandhi was the target but she continues to associate with them. It was on 21.5.1991 that she agreed to associate herself with the killing of Rajiv Gandhi and became member of the conspiracy. On that day she goes with the group comprising Sivarasan, Subha and Dhanu from her house to achieve the object of conspiracy. Haribabu also joins them on way to Sriperumbudur where Rajiv Gandhi was to address the public meeting. She has been given a role. She has to give cover to Subha and Dhanu so that they may not be identified as Sri Lankan

Tamils and when the explosion occurs she acts as per instructions. She takes Subha with her to a particular place, performs the role assigned to her and then goes into hiding. She is fully involved in the crime. When she absconds and goes to the house of Ravi (PW-115) with Murugan (A-3) after the assassination of Rajiv Gandhi she introduced Murugan (A-3) as her brother-in-law by the name Raju. To Sasikala (PW-132) she introduced Murugan (A-3) as her brother-in-law by the name Dass (Thass). No doubt if she had the knowledge that a conspiracy was afoot to kill Rajiv Gandhi that would not make her part of the conspiracy. But then she became a conspirator only when she agreed with the group to go ahead to kill Rajiv Gandhi and became part of the group. Confession of Nalini (A-1) finds corroboration from the confession of her co-accused, extra judicial confession of Sasikala (PW-132), witnesses and exhibits including photographs. Her presence at the scene of crime could not be disputed. Confessions are of her mother Padma (A-21), brother Bhagyanathan (A-20), Arivu (A-18) and Murugan (A-3) and statements of witnesses (PW-96) N. Sujaya Narayan, a colleague of Nalini (A-1) in Anabond Silicons, who deposes to her association with Murugan (A-3); (PW-233) Bharathi, friend of Kalyani, a sister of Nalini (A-1), who deposes to Nalini's (A-1) association with LTTE cadre; (PW-210) Sankari (sister of Muthuraja, an LTTE activist) who also deposes Nalini's (A-1) association with LITE; (PW-90) Rani & (PW-189) Gajalakshimi (neighbours of Nalini (A-1) at Vellivakkam) who depose regarding visits of Sivarasan, Subha, Dhanu and Murugan (A-3) to the house of Nalini (A-1); (PW-93) I, Suyambu (News Correspondent) who identified the video cassette and Sivarasan in the cassette taken of V.P. Singh's public meeting held on 7.5.1991 at Nandanam; (PW-77) Sankaran or Gnani (Journalist) who talks about Sivarasan's presence at the public meeting of V.P. Singh on 7.5.1991 at Nandanam; (PW-81) Manivannan (video graphed) who made video coverage of public meeting of V.P. Singh on 7.5.1991 at Nandanam; (PW-179) Gunanthalalsoni (shopkeeper) who identified Nalini (A-1) as one of the girls who came to his shop with assassin Dhanu; (PW-94) A.K. Anbalagan (employees of Poompuhar, Tamil Nadu Government Sales Store) who deposes sale of sandalwood garland on 21.5.1991; (PW-27) Shanmugam (Congress Partyman) who is an eye witness and identifies Dhanu in photograph (MO-16); (PW-32) Anusuya (Sub-Inspector of Police, Security) an eye witness to the occurrence, who identifies Sivarasan, Subha, Dhanu, Nalini (A-1) and Haribabu in the photograph; (PW-28) Bhagawan Singh (Journalist) also an eye witness, who has seen Sivarasan, Haribabu and the girl (Nalini (A-1)) and identified Sivarasan in MO-2 and Haribabu in MO-17; (PW-19) D. Lakshmi Albert (Congress Party member) an eye witness, who identified Nalini (A-1), Subha in MO-188, Dhanu, Sivarasan in MO-16 and Haribabu in MO-17; (PW-20) Dr. Ramadevi (another Congress Party member and eye witness) who identified Nalini (A-1), and Subha in MO-18 (photograph), Dhanu & Sivarasan in MO-16 and Haribabu in MO-17; (PW-215) Chamundeeswari (Native of Sriperumbadur, who deposes that she had given water to Nalini (A-1), Subha and Sivarasan on the night of 21.5.1991; (PW-183) Varadharajan K. (Auto-driver at Thiruvellore) who transported Sivarasan, Subha, Nalini (A-1) from Sriperumbudur to Madras and is also a spot witness who heard the sound of blast from parking lot; (PW-195) R. Nagarajan (Congress Party member of Thrivellore) who travelled in the auto of

PW-183 to Sriperumbudur; (PW-85) D.J. Swaminathan (Neighbour of Jayakumar (A-10) at Kodungaiyur) who deposes about the visits of Sivarasan, Subha, Dhanu, Robert Payas (A-9), Santhan (A-2) and about Nalini (A-1) Subha and Sivarasan watching TV on 23.5.1991 in his house and distribution of sweets by them; (PW-104) S. Vaidyanathan (Clerk of Sriram Travels) who said regarding hiring of a car for Tirupathi by Bhagyanathan (A-20); (PW-117) R. Shankar (Proprietor of Sriram Travels) who also deposes about the trip to Tirupathi by Nalini (A-1), Murugan (A-3), Padma (A-21), Sivarasan and Subha; (PW-107) Ramasamy (Car driver, who states regarding the trip to Tirupathi and about stay of Nalini (A-1) and Murugan (A-3) at Tirupathi; (PW-115) Ravi Srinivasan (a friend of Nalini (A-1)) who deposes about the stay of Nalini (A-1) and Murugan (A-3) at his house at Madurai after the occurrence; and (PW-288) Raghothaman K. (D.S.P., CBI, SIT, Chief Investigating Officer). These witnesses also prove various documents and material objects which fully corroborate the confession made by Nalini (A-1). Her being a member of the conspiracy to murder Rajiv Gandhi stands fully proved.

Santhan(A-2)

582. Santhan (A-2), a Sri Lankan national, in his confession talks of his role in the elimination of Padmanabhan, EPRLF leader and others in Madras but that is not the subject-matter of the charge and it is no terrorist act. Santhan (A-2) was one of the nine persons, who came from Sri Lanka on a boat arriving at the shore of India on 1.5.1991. His leader was Sivarasan. At the direction of Sivarasan he first stayed in the house of Robert 1 Payas (A-9), then in the house of Haribabu and then with Murugan (A-3) and with Arivu(A-18).

583. Earlier he had come to India with Sivarasan on 15.2.1990. They reached Kodiakarai by boat. They came to Madras on 16.2.1990 when Sivarasan took him to the house of one Nagarajan, a Ceylon Tamilian, who indulged in smuggling. Sivarasan took Santhan (A-2) to MIET (Madras Institute of Engineering Technology) along with Shanmugavadivelu (A-15) and Nagarajan and got him admitted there. He paid a sum of Rs. 2300/-. Nagarajan was introduced as uncle of Santhan (A-2). Sivarasan got cloths and other material purchased for Santhan (A-2). He took the responsibility to meet all the hostel and other expenses of Santhan (A-2). After the murder of Padmanabha in June, 1990 Santhan (A-2) returned to Sri Lanka.

584. On 16.5.1991 Sivarasan had told him that he was going to help Subha and Dhanu to finish Rajiv Gandhi. He was also told that Prabhakaran had paid special attention to him (Santhan (A-2))after the murder of Padmanabha and important works were allotted to him and the reason for all that was the cooperation given by him (Santhan (A-2)) in the matter of killing of Padmanabhan. Earlier it was Kanthan, an LTTE activist, who was handling the finances of Sivarasan and now it was Santhan (A-2), who had taken the charge from Kanthan. On 15.5.1991 on the strength of letter from Sivarasan, addressed to Kanthan, he was given a sum of Rs. 5 lakhs by Kanthan to be handed over to Sivarasan.

Sivarasan took Rs. 2 lakhs out of that and asked Santhan (A-2) to keep the balance with him. On 17.5.1991 Santhan (A-2) and Sivarasan went to Easwari Lodge to meet Shankar (A-4), who had also come with them in the boat carrying nine persons on 1.5.1991. Out of the money lying with Santhan (A-2) Sivarasan gave Rs. 10,000/- to Shankar (A-4). On 18.5.1991 Santhan (A-2) gave another sum of Rs. 20,000/- to Sivarasan. Same day in the afternoon Santhan (A-2) on the instructions of Sivarasan went to the house of Robert Payas (A-9) and gave Rs. 4,000/- to Ruben (A-6), who was there at that time. Another sum of Rs. 1 lakh was given to Santhan (A-2) to be handed over to Sivarasan. Santhan (A-2) in his confession said that he in all received Rs. 9.50 lakhs which money he gave to Sivarasan. Out of that Sivarasan gave him Rs. 50,000/-- to meet his expenses. He also gave account to Sivarasan. Santhan (A-2) gave monies to Murugan (A-3), Jayakumar (A-10), and deceased accused Keerthi. That was after the assassination of Rajiv Gandhi. When Santhan (A-2) was in the house of Jayakumar (A-10) on 20.5.1991 Sivarasan was also there. On the following day, i.e., 21.5.1991 Santhan (A-2) went to see morning show movie in the cinema hall. When he returned home he saw Sivarasan was wearing white kurta pyjama. He saw Sivarasan inserting a white cloth bag containing a pistol at his hip and asked him whether the gun was protruding outside his dress or not. Santhan (A-2) said it was not. Sivarasan went out alone that day and returned around mid night. He woke up Santhan (A-2) and told him that Rajiv Gandhi and Dhanu had died and also told that he had brought Nalini (A-1) with him, who was helper of LTTE. This may show that till that time Santhan (A-2) did not know Nalini (A-1). Thereafter the role of Santhan (A-2) is that of dodging the police and harbouring the fellow co-accused. Santhan (A-2) before, during and after the assassination of Rajiv Gandhi consciously and willingly associated with Sivarasan in achieving the object of conspiracy. He said even after confirming that Sivarasan, Subha and Dhanu were going to kill Rajiv Gandhi he continued to associate with them and after the assassination of Rajiv Gandhi he made strenuous efforts to shift Sivarasan out of Madras with a view to evade arrest. Santhan (A-2) had a strong association with Sivarasan. He remained associated with Sivarasan even after he came to know of his plan to murder Rajiv Gandhi. He paid money to Sivarasan to finance his criminal syndicate. It is not necessary for us to determine how much money given by Santhan (A-2) to Sivarasan was utilized by him to achieve the object of conspiracy but we can impart knowledge to Santhan (A-2) that some of it was so used and from this and other circumstances we can safely infer his participation in the crime and his being a member of the conspiracy to kill Rajiv Gandhi. No doubt as originally planned Santhan (A-2) was to go abroad from India and for that purpose attempt was being made to get him passport, visa, etc. but was not successful, but then in the meanwhile he became member of the conspiracy being a confidante of Sivarasan. It is agreement, which is sine qua non of the offence of conspiracy which is quite discernible in the case of Santhan (A-2).

Murugan (A-3)

585. Murugan (A-3) is a Sri Lankan national and a hard-core LTTE activist. He was member of the suicide squad of LTTE which he joined in January, 1991. In January, 1991 itself he came to India on the direction of absconding accused Pottu Amman and was given specific jobs of preparing sketches of the interior of Madras Fort, Police Headquarters at Madras and various other police stations and their locations. He was also asked to take photographs and video graphs of these places. When he arrived at the Indian shore he was received by Sivarasan. In the course of time he came in contact with Bhagyanathan (A-20), his mother Padma (A-21) and then with Nalini (A-1). He was introduced to Haribabu (deceased accused) by Bhagyanathan (A-20). He gave financial help to the family of Padma (A-21). Murugan (A-3) in his confession statement said that earlier there was a plan to establish a household in Delhi by taking Padma (A-21) there but that plan did not proceed. Sivarasan in his wireless message (Exh.P-378) dated 22.3.1991 to Pottu Amman said that "if it is Delhi, lot of time and lot of efforts will be required". In March, 1991 when Sivarasan asked Murugan (A-3) to go to Delhi and also to find out if Padma (A-21) would come with him he felt that plans were being made for a serious act like murder. In Madras Murugan (A-3) joined Vivekananda Kalvi Nilayam Institute in the name of Rajan alias Doss. After some time he joined Sabari College. This was done to show that he was staying in Madras to learn English, etc. Murugan (A-3) started visiting Nalini (A-1) at her office and at her house at Villivakkam. He fully indoctrinated her and told her about the activities of LTTE in Sri Lanka and the atrocities committed by IPKF and their hatred towards Rajiv Gandhi. When Nalini (A-1) expressed her desire to vacate her house in Villivakkam, Murugan (A-3) persuaded her not to do so. He told her that Sivarasan was bringing two LTTE tigresses from Sri Lanka for LTTE operations who would be staying with her and that she should accommodate them in her house. Nalini (A-1) agreed to the persuasion of Murugan (A-3) and did not vacate the house. Nalini (A-1) was infatuated towards Murugan (A-3) and wanted to marry him. He, however, did not agree as that was against the LTTE code of conduct. He was, however, having sexual relations with Nalini (A-1) at her house. In this house Subha and Dhanu also used to visit Nalini (A-1) after they had come to India. Blasting of Vellore Fort and releasing of the LTTE militants, detained there, was one of the LTTE works in India as confessed by Murugan (A-3). In the end of March, 1991 Sivarasan told Murugan (A-3) that he would garland Rajiv Gandhi in a public meeting and asked Murugan (A-3) whether he could arrange an Indian girl for the purpose. Murugan (A-3) at that time understood that the next target was Rajiv Gandhi since he was responsible for the atrocities committed by IPKF and there were lot of feelings to wreak vengeance on him. Murugan (A-3) understood that Sivarasan had come with a plan to murder Rajiv Gandhi. Murugan (A-3) said he would arrange an Indian girl and introduced Nalini (A-1) to Sivarasan telling her that he was his boss. Murugan (A-3) and Nalini (A-1) attended the public meeting at Marina Beach, which was addressed by Rajiv Gandhi and Jayalalitha.

586. Then in April, 1991 Sivarasan told Murugan (A-3) that he had to bring two girls Subha and Dhanu from Sri Lanka and that in order to finish the job he required an Indian girl as both Subha and Dhanu would speak Tamil in Sri Lankan dialect and in order to

mingle in the group without anyone suspecting there was need of an Indian Tamil girl. Sivarasan and Murugan (A-3) then decided to make use of Nalini (A-1). On 7.5.1991 Murugan (A-3) along with Nalini (A-1), Subha, Dhanu, Sivarasan, Haribabu and Arivu (A-18) attended the public meeting addressed by V.P. Singh, former Prime Minister of India, at Nandanam, Madras. This operation was a 'dry run' operation. Rajiv Gandhi was also former Prime Minister of India. Security arrangements would be same for both V.P. Singh and Rajiv Gandhi. These accused therefore conducted rehearsal at the public meeting for the purpose of gaining access to the VIP under the guise of garlanding him. Now Murugan (A-3) was sure that Rajiv Gandhi would be the target. In order to gain access to V.P. Singh in the public meeting Press Accreditation Cards were forged, which were prepared by Haribabu for Murugan (A-3) and Sivarasan. Forged Press Accreditation Card with the photograph of Murugan (A-3) (Exh.P-521) was seized from the house rented by Murugan (A-3) at Madipakkam after the assassination of Rajiv Gandhi. After this dry run was completed on 7/8.5.1991 Subha and Dhanu wrote two letters, one addressed to absconding accused Pottu Amman (Exh.P-95) and the other to the absconding accused Akila (Exh.P-96). Both these letters are dated 9.5.1991 and were handed over to Murugan (A-3) for their being delivered in Sri Lanka. Another letter (Exh.P-453) written by Bhagyanathan (A-20) to Baby Subramaniam was also given to Murugan (A-3). By this time Murugan (A-3) had received instructions through Sivarasan to go to Sri Lanka. These letters and other materials were carried by Murugan (A-3) to Kodiakarai in the second week of May, 1991. He waited there for the boat to arrive from Sri Lanka. Since the boat did not arrive he handed over six baggages (boxes) to M. Mariappan (PW-86), an employee of the deceased accused Shanmugham and returned to Madras. These six baggages (boxes) were subsequently recovered on the information given by Murugan (A-3), which were kept concealed in a pit near the house of Shanmugham by M. Mariappan (PW-86). These were seized by Velliapandi (PW-282), Inspector, CBI, on 25.7.1991. In the articles so recovered from these baggages (boxes) there were also two volumes of the book 'Satanic Force' (MO-124 and MO-125), video cassettes showing various parts of Fort St. George (MO-323) and photographs of DGP's office, Fort St. George (MO-256 to 259), etc. Murugan (A-3) was present in the house of Padma (A-21) on 20.5.1991 when Sivarasan came there. It was at that time that final plan was discussed and worked out for carrying out the object of conspiracy to kill Rajiv Gandhi at the public meeting at Sriperumbudur. On 21.5.1991 when Nalini (A-1) came to the house of her mother Padma (A-21) Murugan (A-3) reminded her to go to her house at Vellivakkam before 3.00 p.m. where Sivarasan, Subha and Dhanu were to meet her as from there they were to proceed towards Sriperumbudur where Rajiv Gandhi was to address the public meeting. On 20.5.1991 on the instructions of Sivarasan, Murugan (A-3) had gone to the house of Haribabu and told the sister of Haribabu to inform Haribabu to go to the house of Padma (A-21) that day. It was Murugan (A-3), who at the instance of Sivarasan, arranged Nalini (A-1), an Indian girl for accompanying Subha and Dhanu to act as their cover so as not to expose their identity. Conduct of Murugan (A-3) before and after the assassination of Rajiv Gandhi leaves no doubt in our minds that he had agreed to achieve the object of conspiracy which was to murder Rajiv Gandhi. On 7.6.1991

Murugan (A-3) gave two code sheets (MO-107 and MO-108), meant for communicating secret messages through wireless set, to Padma (A-21) and asked her to keep them in safe custody. She gave those two sheets to her colleague Devasena Raj (PW-73), which were subsequently seized from her by the police. There is sufficient evidence on record to show as to how after the assassination of Rajiv Gandhi Murugan (A-3) and Nalini (A-1) absconded and took refuge at various places including Tirupathi, Madurai and Devengere in the State of Karnataka and the fact that identity of Murugan (A-3) was concealed by them. Confession of Murugan (A-3) stands corroborated with the confessions of his co-accused Nalini (A-1), Santhan (A-2), Arivu (A-18), Bhagyanathan (A-20) and Padma (A-21) and by independent witnesses showing his being a member of the criminal conspiracy with the object of killing Rajiv Gandhi.

Shankar(A-4)

587. Shankar (A-4) is a Sri Lankan national. He came to India on 1.5.1991 in the group of nine. This group of nine persons had come to Kodiakarai on the Indian coast. Up to 15.5.1991 Shankar (A-4) stayed with one Jagadisan and thereafter from 16.5.1991 to 23.5.1991 at Easwari Lodge, Madras. While at Kodiakarai he happened to meet Murugan (A-3), who gave him telephone number of Nalini (A-1) on a slip (Exh.P-1062). While at Easwari Lodge Santhan (A-2) and Sivarasan met Shankar (A-4) and gave him Rs. 10,000/-. It was during his stay at Easwari Lodge that he learnt about the assassination of Rajiv Gandhi on 21.5.1991. On 23.5.1991 he tried to contact Sivarasan or Robert Payas (A-9) on telephone number 2343402 installed at Ebenezer Store but was unable to do so. Shankar (A-4) was arrested on 7.6.1991 near Nagapatnam. News of his arrest was flashed in newspapers. Sivarasan sent a wireless message to Pottu Amman on 9.6.1991 (ExhP-401) which reads: "there is news that one of my associates was caught at Nagapatnam. He has told things/news about me". That is all the evidence against Shankar (A-4). Accepting all this evidence to be correct it merely shows that Shankar (A-4) had association with Sivarasan, Santhan (A-2), Robert Payas (A-9) and other members of LTTE. This is far from showing that Shankar (A-4) had even any knowledge of the plan to murder Rajiv Gandhi, the object of conspiracy. Simply because he came to India on 1.5.1991 in the group of nine along with Sivarasan and assassins will not be enough to impart even knowledge to him of the conspiracy with the object to kill Rajiv Gandhi. Apart from the general charge of conspiracy Shankar (A-4) has also been charged for an offence under Section 3(3) of TADA and for offence punishable under Section 14 of Foreigners Act, 1946. Charge under Section 3(3) of TADA must fail in view of what we have said earlier that no offence under TADA has been made out against the accused. As regards the offence under Section 14 of the Foreigners Act he has been convicted and sentenced as he entered India unauthorisedly. In fact his conviction and sentence on this charge have not been challenged.

Vijayanandan(A-S)

588. He is a Sri Lankan national and is also a senior member of LTTE. He was one of the members of the group of nine who arrived in India on 1.5.1991 by the boat reaching at Kodiakarai at the coast of India. He was found in possession of forged passport (MO-559), which was seized during the investigation. In Madras he stayed at Komala Vilas Lodge on 8.5.1991 and 9.5.1991. In the guest register of the lodge (Exh.P-496) he described himself as an Indian hailing from Madurai in Tamil Nadu. In the column 'purpose of visit' he mentioned the same as "marriage" and profession as "teacher". On 9.5.1991 Arivu (A-18) met him in the lodge and took him to the house of N. Vasantha Kumar (PW-75) where he stayed. In his statement N. Vasantha Kumar (PW-75) said that while Vijayanandan (A-5) was staying in his house he used to express his hatred towards Rajiv Gandhi and IPKF and was also narrating the atrocities committed by IPKF in Jaffna. N. Vasantha Kumar (PW-75) also said that Vijayanandan (A-5) brought with him a book titled "Alecia" with Tamil translation (MO-113) for printing. This book, he said, dealt with life of a Jewish lady who sacrificed her life for her nation. In his diary (MO-180) Sivarasan mentioned on the date 8.5.1991 about payment of Rs. 50,000/- to Vijayanandan (A-5). It has come in evidence that the purpose of Vijayanandan (A-5) coming to India was to buy books for LTTE library and in fact books were recovered and seized. In his confession Arivu (A-18) does state about the purchasing of books by Vijayanandan (A-5). There is no evidence to show that Vijayanandan (A-5) had even knowledge of any conspiracy to kill Rajiv Gandhi. Merely association with Sivarasan or Arivu (A-18) would not make Vijayanandan (A-5) a member of the conspiracy alleged against him. Since he came to India clandestinely through illicit channel he has been charged for an offence punishable under Section 14 of the Foreigners Act, 1946. There is no challenge to his conviction and sentence to this charge. The other charge against him is under Section 3(3) of TADA, which stands dismissed.

Ruben (A-6)

589. Ruben (A-6) is a Sri Lankan Tamil and is an LTTE militant. He was again one of the members of the group of nine arrived at Kodiakarai on Indian soil on 1.5.1991 from Sri Lanka. He had lost his one leg during the fight with Sri Lankan army. He went to Jaipur via Delhi from Madras by train on 17.5.1991 in the company of Vijayendran (PW-111) and an attendant. He was seen off at the railway station by Santhan (A-2) and Sivarasan. before his departure for Jaipur his cloths and other necessities had been purchased by Santhan (A-2) and Robert Payas (A-9). Both Robert Payas (A-9) and Santhan (A-2) said in their confessional statements that Ruben (A-6) had come to India for getting an artificial limb fixed. Vijayendran (PW-111) in his statement said in the second week of April, 1991 Sivarasan introduced himself and helped Vijayendran (PW-111) in delivering his letters to his relatives in Sri Lanka and then getting back replies from them. Sivarasan requested Vijayendran (PW-111) to accompany Ruben (A-6) to Jaipur to fix an artificial limb as he had no left leg. When Vijayendran (PW-111) said to Sivarasan that doctors were available at Madras itself his reply was that in India Dr. Sethi, who was based in Jaipur, was a specialist in this field and he wanted the treatment from him only. Sivarasan gave Rs.

15,000/- in cash to Vijayendran (PW-111), which was to meet the medical and conveyance expenses. Vijayendran (PW-111) reserved three seats in G.T. Express going to Delhi in his own name that of Suresh Kumar, which was one of the alias of Ruben (A-6), and other attendant Ajas Ali. Sivarasan asked Vijayendran (PW-111) to use his name as Maharaja which was his pseudo name used by him in his poems. In Jaipur they stayed in Golden Lodge where they had arrived on 19.5:1991. On 22.5.1991 Vijayendran (PW-111) said he read the news of Rajiv Gandhi's assassination at Sriperumbudur. He said they were in panic as they could be suspected being Tamilians and in that situation Ruben (A-6) suggested to vacate the lodge. On 23rd evening they shifted to Vikram Lodge. Vijayendran (PW-111) said he met Rajan, manager of the lodge, and asked him to assist him for taking treatment for Ruben (A-6) as the date of appointment by Dr. Sethi was given for 13th June only. He and Ajas Ali came back to Madras on 27.5.1991, having left Jaipur on 24.5.1991, while Ruben (A-6) stayed in Jaipur, On the morning of 29.5.1991 Vijayendran (PW-111) saw the picture of Sivarasan published in the English newspaper and he was stunned. Ruben (A-6) was arrested at Jaipur, on 26.5.1991. On account of the association with Santhan (A-2) and Sivarasan prosecution seeks to draw inference that he was a member of the conspiracy and that the real purpose of his going to Jaipur was to arrange a hide out and that the ostensible purpose was given as fixing an artificial limb. It is difficult to accept the version advanced by the prosecution as Ruben (A-6) had admittedly lost his one leg. Vijayendran (PW-111) supports the case that Ruben (A-6) did in fact go to Jaipur for fixing an artificial leg and in particular for the treatment to be given by Dr. Sethi, a renown person in the line. Simply because Sivarasan was looking after the interest of Ruben (A-6) and meeting the expenses would certainly not impart him with the knowledge of the conspiracy and even if he had a knowledge there is no evidence to show that he agreed or was a party to the object of the conspiracy. Charge against Ruben (A-6) under Section 3(3) of TADA has to be dismissed. The other individual charge against him is under Section 14 of the Foreigners Act, 1946 since he came to India clandestinely through illicit channel and without any valid document. His conviction and sentence have not been challenged on this charge.

Kangasabapathy (A-7) and Athirai (A-8)

590. Kangasabapathy (A-7) is a Sri Lankan Tamil and an LTTE helper. His son Radha, who was LTTE Area Commander, Jaffna, died in an encounter with the Sri Lankan army in 1987. Kangasabapathy (A-7) was also thus called Radhya lyyah. He along with Athirai (A-8), a hard-core LTTE militant girl, came to India in the last week of April, 1991 in an LTTE boat from Sri Lanka. Athirai (A-8) in her confession said that she got specialised training in LTTE camps. She was assigned the work of gathering intelligence on the operations and movements of Sri Lankan army and other rival organisations like EPRLF, PLOT, etc. Reports, she prepared, would be handed over by her to Mathiah, another LTTE leader. Athirai (A-8) was introduced to Kangasabapathy (A-7) by Pottu Amman some time in March, 1991. She was told that she would go to Delhi with Kangasabapathy (A-7) for making arrangements for her stay under the guise of learning Hindi or

computer. From this she understood that the purpose of this arrangement was to collect information about some targeted places in Delhi relating to the work of the organisation and that if LTTE people came to Delhi they could stay in her house without causing any suspicion. There is nothing to show that she even had the inkling of the object of conspiracy. Kangasabapathy (A-7) was having a passport (MO-558) issued by Sri Lankan Government but he did not use the passport to come to India through authorised channel. After arriving at Kodiakarai on Indian soil Kangasabapathy (A-7) and Athirai (A-8) came to Madras to stay with Jayakumari (PW-109), a relative of Kangasabapathy (A-7). Sivarasan met them in the house of Jayakumari (PW-109). From this fact prosecution seeks to contend that only because Kangasabapathy (A-7) and Athirai (A-8) were to accomplish the object of conspiracy Sivarasan met them and took care of them and he was also to meet their expenses in India. Simply because Sivarasan was looking after them is not enough to infer their being members of the criminal conspiracy. From 7.5.1991 till 1.7.1991 Athirai (A-8) stayed with P. Thirumathi Vimala (PW-62). She was persuaded by Sivarasan to let Athirai (A-8) stay with her. Sivarasan had brought P. Thirumathi Vimala (PW-62) a letter from her mother in Sri Lanka. On 16.5.1991 Sivarasan gave Rs. 10,000/- to Athirai (A-8) for expenses. He also gave Rs. 20,000/--to Kangasabapathy (A-7) and asked him to go to Delhi to arrange an accommodation. On 20.5.1991 Kangasabapathy (A-7) accompanied by one Vanan went to Delhi and arranged a house. From this also an inference is sought to be drawn by the prosecution to which also we are unable to agree, that it was Sivarasan who sent Kangasabapathy (A-7) to Delhi one day before the object of the conspiracy was to be accomplished to fix a house there as otherwise there was no necessity for Kangasabapathy (A-7) to go to Delhi. From the notebook (MO-159) and diary (MO-180) of Sivarasan payments made to Kangasabapathy (A-7) and Athirai (A-8) are recorded. Kangasabapathy (A-7) came back from Delhi on 30.5.1991. In spite of the advice of Jayakumari (PW-109) he did not get his name registered with the police as refugee from Sri Lanka. It was said that this was on account of his fear of exposure of his identity. When Jayakumari (PW-109) asked Kangasabapathy (A-7) about Sivarasan whose photograph had been published in the newspapers he told her that it was her imagination and Sivarasan was not involved. He told Jayakumari (PW-109) that if she betrayed Kangasabapathy (A-7) and Athirai (A-8) God will not forgive her. There is a wireless message (Exh.P-407) from Sivarasan to Pottu Amman dated 14.6.1991 where Sivarasan informed Pottu Amman that there was no news of Kangasabapathy (A-7), who had gone to Delhi. Similarly when P. Thirumathi Vimala (PW-62) asked Athirai (A-8) about Sivarasan whose photo had been published, she said that Sivarasan was not connected with the assassination of Rajiv Gandhi and that he was a newspaper reporter and that he might have gone to Sriperumbudur to cover the public meeting and his photo might have been published by mistake. Kangasabapathy (A-7) and Athirai (A-8) went to New Delhi by train, on 1.7.1991. They were seen off by Santhan (A-2) where they were arrested. Prosecution has not examined Vanan with whom Vijayanandan (A-5) had also stayed and no explanation is forthcoming as to why it was not done. From the facts narrated above prosecution seeks to draw inference that both Kangasabapathy (A-7) and Athirai (A-8) were members of the conspiracy. It is difficult

to reach any such conclusion. The evidence only shows their association with Sivarasan and nothing more. Charges under Section 3(3) and 3(4) of TADA against Kangasabapathy (A-7) and Athirai (A-8) fail and they like other co-accused are acquitted of these charges. There is nothing on the record to show that Kangasabapathy (A-7) and Athirai (A-8) went to Delhi in order to fix a hide out for screening the accused involved in the assassination of Rajiv Gandhi. Charge under Section 212 against both of them must also fail and they are acquitted. However, charge punishable under Section 14 of the Foreigners Act, 1946 is sustained against both of them as they clandestinely came to India through illicit channels without any valid travel document. Their conviction and sentence under Section 14 of the Foreigners Act is upheld.

Robert Payas (A-9)

Jayakumar (A-10)

Shanthi(A-11)

591. Robert Payas (A-9) and Jayakumar (A-10) are Sri Lankan Tamils. Shanthi (A-11) is Indian Tamil, married to Jayakumar (A-10). Wife of Robert Payas (A-9) is the sister of Jayakumar (A-10). From the confession of Robert Payas (A-9) and other evidence the prosecution seeks to contend that:

a) he had knowledge about the conspiracy to kill Rajiv Gandhi;

b) since Shanthi (A-11) was an Indian Tamil this group was sent by Pottu Amman to go to Tamil Nadu to fix a house for Sivarasan and other members of the conspiracy to accomplish the object of conspiracy inasmuch as Robert Payas's (A-9) one and half months son had been killed in an action by IPKF and he had developed great hatred towards IPKF and Rajiv Gandhi. He viewed Rajiv Gandhi as responsible for his sufferings and of all other Tamilians in Sri Lanka by IPKF;

c) this group of Robert Payas (A-9), Jayakumar (A-10) and Shanthi (A-11) was allowed to come to India without paying any tax to LTTE as they had agreed to take houses at Madras to accommodate LTTE militants to accomplish the object of conspiracy;

d) they came to India in the guise of refugees but left the refugee camp and immediately came to Madras;

e) Porur House was taken in the name of Jayakumar (A-10) where wireless set was installed by Kanthan and Nishanthan, who were communicating through this wireless set with LTTE headquarters in Jaffna;

f) Murugan (A-3) was communicating with LTTE headquarters through this wireless set;

g) Robert Payas (A-9) was associated with Sivarasan closely with a view to achieve the object of conspiracy as Sivarasan was meeting all the expenses of Robert Payas (A-9);

h) Porur House was used for accommodating LTTE militants, who came to India for accomplishing the object of conspiracy;

i) Robert Payas (A-9) burst crackers on 22.5.1991 after the assassination of Rajiv Gandhi;

j) while staying in his house he was anxiously waiting for the news from Sivarasan On 23.5.1991;

k) his association with Sivarasan was continued even after assassination of Rajiv Gandhi;

l) Shankar (A-4) tried to contact him on phone on 23.5.1991 though without success; and

m) on 27.5.1991 Robert Payas's (A-9) family with Santhan(A-2) went to Trichendur to evade arrest. They took bus tickets in assumed names but did not stay there and came back to Madras.

592. From all these circumstances even if taken to be correct it is difficult to conclude that Robert Payas (A-9) was member of the conspiracy. His association with Sivarasan or even his knowledge about the conspiracy cannot make him a conspirator. It is the agreement which is the sine qua non of the offence of conspiracy. Suspicion howsoever strong does not take the place of proof. Wireless messages are transmitted and received in coded language. It is no body's case that Robert Payas (A-9) knew the nature or the contents of the messages. It must not be lost sight of that LTTE had various activities and all LTTE men were not necessarily involved in achieving the object of conspiracy. Evidence shows that other LTTE activists who had come to India were also engaged in arranging houses for various purposes like housing the injured LTTE cadre, storing of medicines, etc.

593. In the case of Jayakumar (A-10) it is alleged that he fixed a house in Kodungiyar for his family to stay which was taken in the name of Ramaswamy, father of Shanthi (A-11). This house was in fact for the stay of Sivarasan. It is alleged by the prosecution that it could be inferred that Jayakumar (A-10) and Shanthi (A-11) were members of the conspiracy having the object to kill Rajiv Gandhi from the following circumstances that:-

a) they were selected by Pottu Amman along with Robert Payas (A-9) to go to India to hire houses for the stay of LTTE militants and they did not pay any tax to LTTE for coming to India;

b) after Jayakumar (A-10) had taken a separate house in fact for the stay of Sivarasan, he in the first week of May, 1991 brought Subha, Dhanu and Nero to that house;

c) Sivarasan was meeting the expenses of Jayakumar (A-10) since Jayakumar (A-10) and Shanthi (A-11) were not having any income;

d) Sivarasan paid Rs. 20,000 as advance for renting a shop in the name of Shanthi (A-11) for her to run a coffee grinding shop. The machine was purchased for Rs. 15,000/- payment of which was also made by Sivarasan. He also made payment for registration of a telephone under OYT scheme in the shop in the name of Shanthi (A-11) to be used for conspiratorial work;

e) Jayakumar (A-10) and Shanthi (A-11) were aware of "the dangerous mission" for which Sivarasan had come to India;

f) Jayakumar(A-10) would have definitely told his wife Shantht(A-11) about the purpose for which Sivarasan, Subha and Dhanu had come to the house;

g) even having the knowledge that Subha and Dhanu had been brought by Sivarasan with the planning of an assassination Jayakumar (A-10) and Shanthi (A-11) still continued to associate with Sivarasan and accommodated him in their house;

h) it was in the house of Jayakumar (A-10) that Sivarasan changed his dress to white kurta-pyjama and from where he went to the house of Vijayan (A-12) which was nearby to pick up Subha and Dhanu before going to Sriperumbudur;

i) before that a day or so earlier Shanthi (A-11) had stitched a cloth pouch for concealing the pistol of Sivarasan;

j) it was in the house of Jayakumar (A-10) on 7.5.1991 that Sivarasan informed Santhan (A-2) that he was going to help two LTTE tigresses at Sriperumbudur to kill Rajiv Gandhi;

k) when Sivarasan left the house of Jayakumar (A-10) on 21.5.1991 for Sriperumbudur Santhan (A-2) was present in the house;

l) Jayakumar (A-10) and Shanthi (A-11) continued to associate with Sivarasan even after the assassination of Rajiv Gandhi;.

m) on 22.5.1991 Sivarasan, Subha and Nalini (A-1) came to the house of Jayakumar (A-10) when he told Jayakumar (A-10) that the job was done and that Rajiv Gandhi was murdered by Dhanu;

n) even after having come to know that Dhanu had killed Rajiv Gandhi by becoming human bomb Jayakumar (A-10) and Shanthi (A-11) accommodated Sivarasan, Subha and Nalini (A-1) in their house;

o) after the assassination of Rajiv Gandhi Jayakumar (A-10) and Sivarasan dug a pit in the kitchen in the house and concealed arms, ammunitions and other articles and things belonging to Sivarasan;

p) it is only because Jayakumar (A-10) was involved in the assassination of Rajiv Gandhi along with Sivarasan, Subha and Dhanu that he helped Sivarasan in concealing the incriminating articles; and

q) Shanthi (A-11) would certainly have known all this as the pit was dug in the kitchen where she must have been working all the time.

594. There is nothing on record to show that Jayakumar (A-10) and Shanthi (A-11) knew of the "dangerous mission" or for whose assassination Subha and Dhanu were brought by Sivarasan. True the couple was in dire financial needs and with the promise of financial help and to start some business in India away from the turmoil in Sri Lanka they agreed to come to India and to hire a house for LTTE militants to stay and they did rent a house where Sivarasan could stay. But they did not know what Sivarasan was upto.

595. From all these circumstances it is difficult to infer any agreement to make Robert Payas (A-9), Jayakumar (A-10) and Shanthi (A-11) as members of the conspiracy having the object to kill Rajiv Gandhi. As a matter of fact there is hardly any circumstance against Shanthi (A-11) to make her a member of the conspiracy. These accused may have a strong feeling against Rajiv Gandhi and they may have strong suspicion that Sivarasan, Subha and Dhanu had come for some dangerous mission but there is no evidence to infer that that would make them members of the conspiracy. It is correct that Jayakumar (A-10) harboured Sivarasan, Nalini (A-1) and Subha after having come to know their involvement in the assassination of Rajiv Gandhi but from that again it cannot be inferred that he was a member of the conspiracy. No charge can be levied against Shanthi (A-11) of harbouring merely because she was living in the house with her husband Jayakumar (A-10). Charges under Section 3(3) and Section 3(4) of TADA against Robert Payas (A-9), Jayakumar (A-10) and Shanthi (A-11) are not made out and their conviction and sentence-under these charges are set aside. Charge under Section 212 IPC is, however, made out against Jayakumar (A-10) but not against Shanthi (A-11). She is acquitted of this charge while conviction and sentence of Jayakumar (A-10) is maintained. Jayakumar (A-10) and Shanthi (A-11) had also been charged for an offence punishable under Section 25(1-B)(a) of the Arms Act, 1959 as they were found in unauthorized possession of arms and ammunition without a valid licence, concealed in a pit dug in the kitchen in the house of Shanthi (A-11). No such charge can be fastened on Shanthi (A-11) though it has to be upheld against Jayakumar (A-10). His conviction and sentence, therefore, under Section 25(1-B)(a) of Arms Act is maintained. Shanthi (A-11) is acquitted of the charge of offence under Section 25(1-B)(a) of the Arms Act and her conviction and sentence set aside.

Vijayan (A-12)

Selvaluxmi(A-13)

Bhaskaran(A-14)

596. Vijayan (A-12) is Sri Lankan Tamil and a helper of LTTE. Selvaluxmi (A-13) is his wife and Bhaskaran (A-14) is the father of Selvaluxmi (A-13). Selvaluxmi (A-13) and Bhaskaran (A-14) are Indian Tamils. Vijayan (A-12) has made a confession. According to prosecution physical manifestation of their being members of criminal conspiracy was when they came to India on 12.9.1990 and were sent by Sivarasan at the instance of Pottu Amman. They came to India without paying any tax to LTTE as they had agreed to take a house on rent to accommodate LTTE militants coming to India to accomplish the object of conspiracy. They came to India in the guise of refugees. While they were staying at refugee camp at Tuticorin Sivarasan met them there. In April, 1991 Vijayan (A-12) was directed by Sivarasan to go to Madras and to fix a house in an secluded place on the outskirts of Madras. As per direction Vijayan (A-12) rented a house. Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) moved in that house in the last week of April, 1991. All the expenses for paying advance rent, etc. were met by Sivarasan. On 2.5.1991 Sivarasan brought Nero, Subha and Dhanu to this house. Arivu (A-18) purchased a 12 volt car battery on 3.5.1991 for operating the wireless set installed in the house. With this Nero started communicating with the LTTE leaders in Jaffna. This wireless station installed in the house of Vijayan (A-12) is of Sivarasan being station No. 910 and was communicating with Station No. 91 in Jaffna of Pottu Amman. Thus the prosecution alleges that the house of Vijayan (A-12) was used by Sivarasan to keep informed LTTE leaders in Jaffna through wireless messages as to the progress made by him in the execution of the object of conspiracy. Purchase of two cycles by Vijayan (A-12) is also being taken as part of the conspiracy as these were used by Subha, Dhatiu and others for meeting the members of the conspiracy. While Sivarasan stayed in the house of Jayakumar (A-10) Subha and Dhanu were staying in the house of Vijayan (A-12). As to why Subha and Dhanu were staying in the house of Vijayan (A-12) it was said that it was on account of the fact that both Selvaluxmi (A-13) and Bhaskaran (A-14) were Indian Tamils and as such stay of Subha and Dhanu would not raise any suspicion in the minds of the neighbours. On 16/17.5.1991 Vijayan (A-12), Sivarasan and Nero on the instruction of Sivarasan had dug a pit in the kitchen in the house of Vijayan (A-12) for the purpose of concealing the wireless set, its accessories and other materials used by Sivarasan. This showed according to the prosecution that Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) were not genuine refugees and the conduct of Vijayan (A-12) would show his knowledge of the object of conspiracy and the purpose for which Subha and Dhanu were brought to India by Sivarasan. It is also alleged that the fact of concealment of wireless set in a pit dug in the kitchen could not have been done without the knowledge of Selvaluxmi (A-13) who used to cook food for her family and for Subha and Dhanu. On 21,5.1991 Sivarasan came to the house of Vijayan (A-12) and asked Nero to

send the wireless message to Jaffna. He also gave instructions to Subha and Dhanu and left the house. At about 12.30 p.m. Sivarasan dressed in a white kurta-pyjama came and took Subha and Dhanu with him. When Sivarasan asked Vijayan (A-12) to bring an auto-rikshaw for him, Subha and Dhanu to go, he specified A-12 not to bring the auto-rikshaw near the house and this was done so that the house where they were staying be not identified. Prosecution then alleges that on 21.5.1991 Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) were aware that Sivarasan, Subha and Dhanu had gone for attending Rajiv Gandhi's meeting at Sriperumbudur. On 22.5.1991 Sivarasan came to the house of Vijayan (A-12) and told him that "the work was finished and that Rajiv Gandhi had been killed". This has come in the confession of Vijayan (A-12). Prosecution poses a question as to why Sivarasan should tell Vijayan (A-12) that the work was finished and provides the answer that it could be so only because Vijayan (A-12) was aware of the object of conspiracy and he was anxiously waiting for the result from Sivarasan and also that he was fully aware that Rajiv Gandhi was killed by Dhanu by becoming a human bomb. The fact that Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran8:09 AM 2/18/2008) continued to be associated with Sivarasan and Subha even after the assassination of Rajiv Gandhi and accommodated them would be another circumstance to show their knowledge about the object of conspiracy. They are also guilty of having harboured Sivarasan and Subha knowing fully well that they were the persons involved in the killing of Rajiv Gandhi. After the assassination Sivarasan was staying in the house of Vijayan (A-12) along with Subha and regularly sending messages to Pottu Amman through wireless explaining the developments. Association of Bhaskaran (A-14) is also alleged but this did not end with the harbouring of Sivarasan and Subha as he made efforts to get another accommodation for the hiding of Sivarasan and Subha for which he sought the help of his relative N. Chokkanathan (PW-97). It is also the case of the prosecution that Bhaskaran (A-14), who was all along staying in the house of Vijayan (A-12) and Selvaluxmi (A-13), was also fully aware that Sivarasan, Subha and Dhanu had gone to Sriperumbudur and killed Rajiv Gandhi and when particularly Dhanu did not return. Relying on the confession of Vijayan (A-12) lastly the prosecution said that one or two days after 23.6.1991 Santhan(A-2) came with deceased accused Suresh Master and took Sivarasan and Subha. On 23.6.1991 Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) went to Tuticorin and again returned to Madras after a week. While Vijayan (A-12) and Bhaskaran (A-14) were arrested on 8.7.1991 Selvaluxmi (A-13) was arrested on 16.5.1992.

597. We have carefully gone through the evidence against Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) and the submissions of the prosecution as to how they are members of the conspiracy with the object to kill Rajiv Gandhi. The evidence at the most merely shows that they associated with Sivarasan. The evidence that they had knowledge of the conspiracy is lacking. Their knowledge about the murder of Rajiv Gandhi by Sivarasan, Subha and Dhanu was acquired by them only after Rajiv Gandhi was killed. As we have repeatedly said in any case mere knowledge of the existence of conspiracy is not enough. One has to agree to the object of conspiracy to be guilty of the offence under

Section 120A IPC. Vijayan (A-12) would not know the nature of the messages which were transmitted or received from the wireless set installed in his house as all these were in coded language. Two code sheets were given by Murugan (A-3) to Padma (A-21) to be kept in safe custody. Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) have been charged for offence under Section 3(3) of TADA and have been jointly charged for offence under Section 3(4) TADA but these charges must fail and they are acquitted of these charges. Then Vijayan (A-12), Selvaluxmi (A-13) and Bhaskaran (A-14) are charged for an offence under Section 212 IPC for having harboured Sivarasan Subha and Nero in order to screen them from legal punishment knowing that they had committed murder of Rajiv Gandhi and others. They all have been convicted and sentenced. Vijayan (A-12) and Selvaluxmi (A-13) are also charged for offence under Section 6(1A) of Wireless Telegraphy Act, 1933 for having in unauthorised possession of unlicensed wireless transmitter used for transmitting messages by Sivarasan and Nero using code sheets for such transmission to other conspirators residing in Sri Lanka, namely, absconding accused Prabhakaran and Pottu Amman and they have been convicted and sentenced of this offence. Though in our view Vijayan (A-12) and Bhaskaran (A-14) have been rightly convicted and sentenced under these charges but these charges cannot stand against Selvaluxmi (A-13). All members of the household cannot be charged like this without more. A-13, being the wife of A-12, was living with her husband A-12 and merely on that account knowledge and intention cannot be attributed to her, particularly when no overt act is alleged against her. She is acquitted of all these charges and her conviction and sentence set aside.

Shanmugavadivelu (A-15)

598. Shanmugavadivelu (A-15) is a Sri Lankan Tamil. He is living in India since 1987. As to how he was a member of the conspiracy with the object to kill Rajiv Gandhi the prosecution relies on the following circumstances:-

1. From the papers seized from Ruben (A-6) at Jaipur on 20.6.1991 in one of the folios the name Thambi Anna' is written with telephone number 864249, which in fact is the telephone number of Shanmugavadivelu (A-15).

2. Shanmugavadivelu (A-15) was known to Santhan (A-2) and Sivarasan in early 1990 when Shanmugavadivelu (A-15) helped Santhan (A-2) to get admission in Madras Institute of Engineering Technology.

3. When Sivarasan came to India in a group of nine on 1.5.1991 he brought a letter dated 27.4.1991 (Exh.P-209) addressed to P. Thirumathi Vimala (PW-62) from her mother. To locate the house of P. Thirumathi Vimala (PW-62) Shanmugavadivelu (A-15) took Santhan (A-2) and Sivarasan to her house in the first week of May, 1991. In his confession Shanmugavadivelu (A-15) said that P. Thirumathi Vimala (PW-62) was teacher of his son in a school and was at that time living in the same colony. P. Thirumathi Vimala (PW-62)

says that Shanmugavadivelu (A-15) was her distant relative and came from the same place in Sri Lanka.

4. Arrival of Santhan (A-2) to India in May, 1991 was known to Shanmugavadivelu (A-15) even in April, 1991 and that would be so from the statement of P. Veerappan (PW-102) when Shanmugavadivelu (A-15) approached him towards the end of April, 1991 to send Santhan (A-2) abroad. Further that Shanmugavadivelu (A-15) represented that Santhan (A-2) was Indian national when he knew that he was a Sri Lankan Tamil.

5. Both P. Veerappan (PW-102) and Vamadevan(PW-114)have stated that they demanded Rs. 80,000/- from Shanmugavadivelu (A-15) for sending Santhan (A-2) abroad.

6. During the trial in the Designated Court, Santhan (A-2) filed an application for return of the amount of Rs. 80,000/- paid by him through Shanmugavadivelu (A-15) to P. Veerappan (PW-102). On this application Shanmugavadivelu (A-15) made an endorsement that he had no objection to the return of said amount to Santhan (A-2).

7. Shanmugavadivelu (A-15) was keeping money given to him by Santhan (A-2) and giving him back as and when required by him. That was before the assassination of Rajiv Gandhi.

8. Even after the photo of Rajiv Gandhi was published in the newspaper in connection with the murder of Rajiv Gandhi Shanmugavadivelu (A-15) continued to associate with Santhan (A-2) who was close associate of Sivarasan. One week after the murder of Rajiv Gandhi Santhan (A-2) came to Shanmugavadivelu (A-15) and took Rs. 3,10,000/- from him. One day he again came and took Rs. 40,000/- leaving the balance amount with Shanmugavadivelu (A-15). By this time photo of Sivarasan was published in the newspapers and when Shanmugavadivelu (A-15) inquired from Santhan (A-2) about Sivarasan he told him not to worry about Sivarasan and left. On this count it is alleged that Shanmugavadivelu (A-15) was acting as financier of the LTTE organization.

9. Athirai (A-8) was regularly visiting Shanmugavadivelu (A-15) which proves her association with Shanmugavadivelu (A-15), Santhan (A-2) and Sivarasan.

599. In his confession Shanmugavadivelu (A-15) does not talk of the fact that he approached P. Veerappan (PW-102) and Vamadevan (PW-114) for sending Santhan (A-2) abroad. It is wrong on the part of the prosecution to allege on the basis of evidence that Athirai (A-8) had been regularly visiting Shanmugavadivelu (A-15). There is no such evidence. There is nothing in the evidence to suggest even remotely that when Santhan (A-2) asked Shanmugavadivelu (A-15) to keep certain amount with him and took that amount back on certain dates Shanmugavadivelu (A-15) had even an inkling that there was any conspiracy afoot or that Santhan' (A-2) and Sivarasan were members of that conspiracy. It is difficult to accept the prosecution case that arrival of Santhan (A-2) was

known to Shanmugavadivelu (A-15) even before his arrival in India. When P. Veerappan (PW-102) said that it was in the end of April, 1991 that Shanmugavadivelu (A-15) approached him it could be 1st week of May, 1991 as well. P. Veerappan (PW-102) was not keeping any record of the visit of Shanmugavadivelu (A-15) to him and his statement in court was recorded years later. It appears to us that prosecution is looking at every circumstance with the proverbial jaundiced eye. From what the prosecution alleges no case whatsoever of Shanmugavadivelu (A-15) being member of the conspiracy has been made out. We do not find any basis in the prosecution to prosecute Shanmugavadivelu (A-15) for the offence alleged against him. Rather evidence shows his and his wife's hatred for LTTE and its men. Apart from the charge of conspiracy Shanmugavadivelu (A-15) has also been charged for offence under Section 3(3) of TADA which again stands failed against him. He is acquitted of all the charges and his conviction and sentence set aside.

Ravi (A-16)

Suseendran (A-17)

600. Following circumstances have been alleged by the prosecution to make Ravi (A-16) and Suseendran (A-17) members of the conspiracy:

1. Both Ravi (A-16) and Suseendran (A-17) though Indian Tamils, became strong LTTE activists. Ravi (A-16) had been a frequent visitor to Sri Lanka to meet LTTE leaders there. Because of the atrocities committed by IPKF both developed hatred against it.

2. Ravi (A-16) was indoctrinated by Pottu Amman, who asked him to go to India and make arrangements for initiating armed revolution in Tamil Nadu. Ravi (A-16) involved Suseendran (A-17) in his attempt to start armed revolution with the support of LTTE.

3. Suseendran (A-17) started collecting youths and they were taken to Jaffna for training by LTTE for the purpose of constituting a force for armed revolution in India.

4. Once when in Sri Lanka, Ravi (A-16) was introduced to Sivarasan by Pottu Amman, who told him that he should keep close contacts with Sivarasan. Pottu Amman also made reference to an important event that was going to take place in Tamil Nadu for which he said role of Ravi (A-16) should be a prominent one.

5. While Ravi (A-16), Suseendran (A-17) and Sivarasan were waiting in Sri Lanka for a boat to go to India, Ravi (A-16) pointedly asked if it was Rajiv Gandhi, Sivarasan did not give any reply directly but Sivarasan had uttered words in such a fashion as to confirm the suspicion of Ravi (A-16) that target was Rajiv Gandhi.

6. Ravi (A-16) was in touch with Sivarasan, who also provided finance to him.

7. Ravi (A-16) was also given the task of finding airport security by Sivarasan on the arrival of a VIP there. In March, 1991 Ravi (A-16) asked Sivarasan that three months had gone by when they arrived from Sri Lanka but nothing has been done about the work mentioned by Pottu Amman. Reply of Sivarasan was "we should not go in search of target and that the target should come to us" and further "it may take place in near future if election is declared".

8. On 10.5.1991 Ravi (A-16) was at Kodiakkarai where Murugan (A-3) also came and another LTTE helper Chokkanathan was also present. When Chokkanathan asked Murugan (A-3) in presence of Ravi (A-16) as to "why the work of Sivarasan has not yet been completed". To this Murugan (A-3) answered" how could that not be completed. It has to take place".

9. On the night of 21.5.1991 Ravi (A-16) was sleeping in the hut opposite to the house of Shanmugham (DA) at Kodiakkarai. In the mid night he was told by a servant of Shanmugham that Rajiv Gandhi had died in a bomb blast in Madras and with him 30 others also died and that a message has been received that Shanmugham and others should not remain there.

10. Ravi (A-16) and Suseendran (A-17) harboured Subha and Sivarasan after assassination of Rajiv Gandhi knowing that they had committed the offence of murder. Ravi (A-16) was making all attempts for Sivarasan and Subha to escape from India after the assassination of Rajiv Gandhi.

11. Ravi (A-16) went to Sri Lanka in September, 1991 and came back with arms and ammunition and other articles given to him by Pottu Amman. Some of the arms and ammunition he handed over to Suseendran (A-17).

601. From all these factors prosecution seeks to infer that Ravi (A-16) and Suseendran (A-17) had knowledge of the object of conspiracy, had agreed to the same and were thus members of the conspiracy. At one point of time Ravi (A-16) in his confession did say that he had a strong suspicion that the target was Rajiv Gandhi but that would certainly not make him a member of the conspiracy. In wireless message dated 7.5.1991 sent by Sivarasan to Pottu Amman he categorically stated that only three persons, namely, he, Subha and Dhanu knew about the object of conspiracy. Association, however, strong of Ravi (A-16) with Sivarasan and between Ravi (A-16) and Suseendran (A-17) could not make them members of the conspiracy without more.

602. As regards attempts of Ravi (A-16) and Suseendran (A-17) for creation of a separate armed force in Tamil Nadu they have already been tried in CC 7/92 in the Designated Court No. 2 along with others and acquitted of the charge of conspiracy but convicted under Section 5 of TADA. The confession made by Suseendran (A-17) and Ravi (A-16) in

CC 7/92 and the charges framed against them were produced during the course of hearing of this reference and the position in brief is as under-

In C.C. 7/92 there was a general charge of conspiracy against 32 accused including Ravi (A-16) and Suseendran (A-17), who were arraigned as accused Nos. 2 and 3 in CC 7/92. The charge was of conspiracy of doing illegal acts, viz., (1) to create a force in the name of Tamil Nadu Retrieval Force to separate Tamil Nadu from the Union of India and to strike terror in the country by threatening the lawfully established Government and to kill people who had taken oath to safeguard the sovereignty, unity and integrity of India; (2) to instigate and advise people to go and get arms training in Sri Lanka for preparing plan of establishing the force and building up of arms and ammunition having brought them from Sri Lanka without licence and in contravention of various enactments in force in India; and (3) to give refuge to terrorist and in this offence of conspiracy they did commit various illegal acts under TADA, Arms Act, Explosive Substances Act, Arms Act, Wireless & Telegraphy Act, Passport Act and Emigration Act.
Individual charges against Ravi (A-16) were that (1) he recruited co-accused numbering eight, he himself went to Sri Lanka, got training in arms through Pottu Amman, helped in organizing Tamil Nadu Retrieval Force, assisted co-accused by arranging houses, setting up wireless sets at Dindigul, was found in possession of arms and ammunitions, thus committed various terrorist acts punishable under TADA; (2) that he along with other co-accused clandestinely came to India in LTTE boat with bombs and ammunition; and (3) that he went to Jaffna without valid passport for getting training in wireless there.

In the confession made on 12.12.1991 by Ravi (A-16) in that case, he said as under:

In June 1986, he went to Sri Lanka. He was given training for 31/2 months in arms and ammunition. In August 1987 he is in India in his uncle's house at Madipakkam and had joined a school to continue his studies. He, however, keeps on going to LTTE office at Adyar and helping Kittu alias Krishankumar, an LTTE activist. He was put in house arrest in 1988 along with Kittu in a lodge in Madras Central Prison. Then he was taken to IPKF camp in Sri Lanka. After his release from there, he met LTTE leader "Santhan" who was in-charge of Intelligence Wing who told him that if he could bring young people from Tamil Nadu, they will be given training in arms. He gave him letter in February 1990. He comes back to India to Salem and meets Kiruban, another LTTE activist. On that letter being given, he got Rs. 50,000/-. He met Suseendran (A-17) and asked him to recruit persons for arms training to which Suseendran (A-17) agreed. With Suseendran (A-17) and eight (8) others, he again goes to Sri Lanka and they are given training in arms and ammunition. Since war had started, he had to stay in Sri Lanka for 5 months. During his training, he met Pottu Amman, Chief of LTTE Intelligence Wing who instigated him for armed revolution. These 10 people, i.e., he, Suseendran (A-17) and 8 others resolve to form Tamil National Retrieval Troops under his leadership. He and Suseendran (A-17) were given training in wireless as well. In December 1990, he returns to India in LTTE boat with Suseendran (A-17) and others including Sivarasan who told him to meet him

hear Devi Theatre at Madras. When he met Sivarasan, he gave him Rs. 50,000/-. On various dates Sivarasan gave him a total sum of Rs. 6,00,000/-. He sent more persons for arms training to Sri Lanka. After the assassination of Rajiv Gandhi, Sivarasan met him at his Aunt's (Logamatha) house at B-72, Ml Colony Phase II, Agasthiya Nagar, Villivakkam. Sivarasan asked him to protect Suba and to keep her in a safe place. He sent both of them through Suseendran (A-17) to Pollachi. He talks of his other activities. Then he again went to Sri Lanka on 23.8. 1991 when boat arrived from there. Suseendran (A-17) did not accompany him. He met Pottu Amman on 28.8.1991. He gave him further arms and ammunition and also 12 gold biscuits weighing 10 tolas each. He returned to India, on 10.9,1991. These arms and ammunitions were unloaded in two wooden boxes and two gunny bags. On 12.11.1991 Customs, however, seized those wooden boxes and gunny bags. He concealed gold biscuits in the bed room of mother-in-law of Charles, six gold biscuits he gave to Ganesh, an LTTE activist. He asked Suseendran (A-17) to purchase petrol and diesel. He describes his further activities in organising the Force and buying of a Motorcycle etc. He was arrested on 23.10.1991. Police seized from his suitcase one 9 mm pistol, 2 magazines, 29 cartridges, knife and cyanide capsules. On his statement, gold biscuits concealed by him were recovered.
In his confession also recorded on 12.12.1991, Suseendran (A-17) said as under:

He met Ravi (A-16) in May 1990 and they talked about LTTE. Ravi (A-16) asked him if he was ready to go to Sri Lanka for arms and ammunition training to which he agreed. Suseendran (A-17) collected eight (8) more persons and they all 10 went to Sri Lan ka. They went to sea-shore by a Maruti Gypsy and Ambassador car of LTTE. There LTTE boat was available to go to Sri Lanka. They were given training in handling of arms and ammunition. Since war had started, they have to stay in Sri Lanka for five more months. Pottu Amman had visited them during their training. This group of 10 resolved to form Tamil National Retrieval Troops and decided to work under the leadership of Ravi (A-16) for the purpose of committing terrorist acts in India and for separation of Tamil Nadu from Indian Union. He and Ravi (A-16) were given training in Wireless operation also. In December 1990, they returned to India along with Sivarasan. Ravi (A-16) told him to meet at Madras after three days. Ravi (A-16) gave him Rs. 500/- and he went to Pollachi. When he met Ravi (A-16) he told him to collect more youngsters to send them to Sri Lanka for arms training.
He and one Paulraj were at Palani when Rajiv Gandhi was killed. After four days, he came to Madras and met Ravi (A-16). Sivarasan was also there. Sivarasan told Ravi (A-16) and him to keep safely an LTTE tigress Subha for some days. He agreed. He went to bus stop and reserved three tickets for him, Sivarasan and Subha. Then they left for Trichy and from there to Pollachi. They stayed at the house of Shanmugasundaram whose wife is his distant relative. He told them that Sivarasan and Subha were husband and wife and asked them to arrange their stay for three days. After five days Sivarasan and Subha left for Madras. He told about his other activities and then he said Ravi (A-16) and others left for Sri Lanka. He bought petrol and diesel to be sent to Sri Lanka. Rs. 60,000/- were given to him by Paulraj as directed by Ravi (A-16). He bought 1,000 litres petrol for Rs. 34,800/-

. The petrol was to be smuggled to Sri Lanka. Earlier also, petrol and diesel including explosives were smuggled to LTTE in Sri Lanka. On the night of 10.9.1991, Ravi (A-16) and others arrived in India with two wooden boxes and two gunny bags filled with arms and ammunition. Ravi (A-16) asked him to conceal wooden boxes and gunny bags in the seashore. He again bought petrol. A car was purchased, When he was in the house of mother-in-law of Theodre Charles at Dindigul, he was arrested by the Police. From him one cyanide capsule, Rs. 30,000/- and some personal articles were seized.

603. It would be seen that a charge under Section 212 IPC for harbouring Subha and Sivarasan could also have been framed against Ravi (A-16) and Suseendran (A-17) but that was not done. Question arises if provision of Section 300 of the Code applies that bars trial of Ravi (A-16) and Suseendran (A-17) for the same offences in the present case.

604. Ravi (A-16) and Suseendran (A-17) have been separately charged in the present case for offence under Section 3(3) and Section 3(4) of TADA. These charges fail against them like against other co-accused and they are acquitted of the same. Ravi (A-16) and Suseendran (A-17) have also been separately charged for offence under Section 212 IPC and have been convicted and sentenced. Similarly they have been separately charged for offence under Section 5 of TADA and convicted and sentenced. That certainly could not have been done as in CC 7/92 they have already been tried for an offence under Section 5 of TADA and convicted and sentenced. Facts constituting the charge under Section 5 of TADA in CC 7/92 and in the present case are the same. Conviction of Ravi (A-16) and Suseendran (A-17) in the present case under Section 5 of TADA is set aside and they are acquitted of this charge. Also they have been separately charged under Section 5 of the Explosive Substance Act and similarly convicted and sentenced. They have then been charged for an offence punishable under Section 25 of the Arms Act and convicted and sentenced. Mr. Natarajan, learned Counsel appearing for them, did not press his argument on the applicability of the provision of Section 300 of the Code inasmuch as he said that since these accused have already undergone the period of their sentence they will not challenge their conviction under the charges under IPC, Explosive Substance Act, Section 5 of TADA and Arms Act. In this view of the matter we need not go into the question if Ravi (A-16) and Suseendran (A-17) could have been tried again for these charges as they have been either charged or could have been charged in CC 7/92 which was decided on 23.1.1998. Charges of conspiracy against both of them and others for constituting a force to separate Tamil Nadu from the Union of India as to strike terror etc. was dismissed in CC 7/92.

605. Now, In the cases of Arivu (A-18), lrumborai(A-19), Bhagyanathan(A-20), Padma (A-21) and Suba Sundaram (A-22), following circumstances appear in evidence.

Arivu (A-18)

a) Arivu (A-18), an Indian Tamil, joined the LTTE movement and started his propaganda work for LTTE in India and was on its payroll. He came in contact with Bhagyanathan (A-20), Haribabu (DA) and he took training in Suba Studio of Suba Sundaram (A-22).

b) He went to Sri Lanka along with lrumborai (A-19) and Baby Subramaniam, an LTTE leader, and while there he learnt about the atrocities committed by IPKF. He developed great hatred towards Rajiv Gandhi, whom he held to be responsible for sending IPKF to Sri Lanka.

c) In March, 1991 Arivu (A-18) went to Vellore with Murugan (A-3) for LTTE work to see Vellore Fort where Sri Lankan Tamils and LTTE personnel were detained. According to Arivu (A-18) blasting of Vellore Fort and jail and releasing of the militants from there was one of the LTTE acts in India,

d) In April, 1991 on one of his visits to the house of Padma (A-21) Sivarasan asked Arivu (A-18) if he was prepared to work for him. Arivu (A-18) agreed to work for Sivarasan.

e) Arivu (A-18) purchased a 12 volt car battery (MO-209) for the wireless set which Sivarasan was to install in the house of Vijayan (A-12). Not only the battery but for installation of wireless station Arivu (A-18) also bought wire and other articles. While making the purchases Arivu (A-18) gave his name as Rajan and also a false address. With this wireless set Sivarasan was contacting LTTE headquarters in Jaffna in Sri Lanka. This battery was subsequently recovered from the pit dug in the kitchen of the house of Vijayan (A-12).

f) Arivu (A-18) purchased a Kawasaki Bajaj Motorcycle (MO-82) for Sivarasan to facilitate his movements.

g) On 18.4.1991 Arivu (A-18) attended the election meeting addressed by Rajiv Gandhi and Jayalalitha at Marina Beach, Madras, Nalini (A-1) and Murugan (A-3) also attended that meeting.

h) On 7.5.1991 Arivu (A-18) attended the public meeting of V.P. Singh at Nandanam, Madras where Nalini (A-1), Subha, Dhanu and Murugan (A-3) were also present. He knew Subha and Dhanu, who were the lady tigresses from Jaffna and had been brought by Sivarasan for his job. These two ladies were moving about with Nalini (A-1). Attending the meeting of V.P. Singh was a dry run for some future engagements/acts.

i) After President's Rule was imposed in Tamil Nadu there were restrictions placed on the movement of LTTE cadre in Tamil Nadu. Persons belonging to LTTE cadre went underground. Arivu (A-18), however, continued his propaganda work for LTTE with the material that was kept in a room occupied by Baby Subramaniam in the house of Sankari(PW-210). These materials were removed by Arivu (A-18) with the help of

Bhagyanathan (A-20) and deceased accused Haribabu in the month of April, 1991 to the house of Radhakrishnan (PW-231), a friend of Arivu (A-18). These were subsequently recovered and seized during the course of investigation and among the articles so recovered there was one black book (MO-609), which depicted the electric circuit identical to the electric circuit in the reconstructed explosive device(IED)(MO-722) used by Dhanu to trigger the blast which killed Rajiv Gandhi and others. Arivu (A-18) is a diploma holder in Electronics and Telecommunication Engineering.

j) During the second week of May, 1991 Arivu (A-18) purchased two numbers of 9 volt golden power battery (MO-678) and gave the same to Sivarasan. This battery was used in the belt bomb by Dhanu and portions thereof were seized at the scene of the crime. Arivu (A-18) in his confession admitted that 9 volt battery purchased by him was used by Sivarasan to kill Rajiv Gandhi. It is in evidence that components which were left after the blast also contained pieces of 9 volt cell called golden power which was the source of power for exploding the device.

k) After it was published in the newspapers on 19.5.1991 about the visit of Rajiv Gandhi to Tamil Nadu for 21.5.1991 and 22.5.1991 a meeting was organized on 20.5.1991 in the house of A-21 though she was not a party to that meeting. When Arivu (A-18) came to the house of Padma (A-21) he learnt that Sivarasan had come and had a talk with Nalini (A-1) and Haribabu. He also came to know that that talk was regarding the public meeting of Rajiv Gandhi to be held on the following day at Sriperumbudur. Arivu (A-18) gave a Kodak colour film roll to Haribabu in the house of Padma (A-21).

l) Haribabu used the Kodak film in his camera to take photographs at the scene of crime on 21.5.1991. It has come in evidence that it was that Kodak colour film which was used in the camera by Haribabu.

m) After Rajiv Gandhi was killed on 21.5.1991 Arivu (A-18) on the following day removed his things from the house of Padma (A-21), like TV, VCR, etc., which were subsequently recovered and seized. On the night of 21.5.1991 Arivu (A-18) had gone to see a movie with Bhagyanathan (A-20).

n) When Sivarasan came to the house of Padma (A-21) on 23.5.1991 and narrated the happening at Sriperumbudur on 21.5.1991 he sent Arivu (A-18) to the studio of Suba Sundaram(A-22) to check whether arrangements had been made for getting the dead body of Haribabu.

o) In his letter (Exh.P-128) written by Trichy Santhan to Irumborai (A-19) he complained about Sivarasan associating with him persons like Arivu (A-18) and others.

606. Conduct of Arivu (A-18) before and after the assassination of Rajiv Gandhi leaves no one in doubt that he was member of the conspiracy. It is not necessary for a conspirator

to be present at the scene of the crime to be a member of the Conspiracy. Mr. Natarajan said that Arivu (A-18) was merely an errand boy and was following the instructions of Sivarasan and he himself had no active role to play. He said Arivu (A-18) bought the car battery and 9 volt golden power battery at the instance of Sivarasan and so also Kawasaki Bajaj motorcycle. He further argued that merely on these counts it cannot be said that Arivu (A-18) had knowledge of the conspiracy and that he himself did not agree to achieve the object of the conspiracy. Circumstances rather show that Arivu (A-18) was in the thick of conspiracy. He knew that to explode the I ED power source would be 9 volt battery and that is why he purchased battery of that power and which was ultimately used in exploding the device killing Rajiv Gandhi and others. Mr. Natarajan also said that the version of Arivu (A-18) that this battery was used for explosion of the I ED was his knowledge derived after the explosion cannot be accepted. Arivu (A-18) has, therefore, been rightly convicted for various offences charged against him by the Designated Court.

607. Irumborai(A-19)

a) Irumborai (A-19) was given this name by LTTE. His original name is Duraisingam.

b) Irumborai (A-19) was assisting Suresh Master (DA) in the treatment of injured LTTE cadres in Tamil Nadu and other places. In his confession Irumborai (A-19) narrated important incidents which took place between him and Trichy Santhan (DA).

c) Irumborai (A-19) had gone to Jaffna in Sri Lanka along with Arivu (A-18) and Baby Subramaniam. He returned in November, 1990 along with Suresh Master and two injured ladies.

d) Rangam (A-24) had taken a house on renting March, 1991 in Alwarthirunagar which was used for stay of injured LTTE care.

e) From the letter dated 7.9.1991 (Exh.P-128) written by Trichy Santhan to Irumborai (A-19) prosecution seeks to draw inference that Irumborai (A-19) had prior knowledge about the killing of Rajiv Gandhi. It is difficult to draw any such inference from this letter that Irumborai (A-19) had knowledge of any conspiracy to kill Rajiv Gandhi.

f) Irumborai (A-19) was present in the house at Bangalore when Sivarasan, Subha and Nero were brought there hidden in a tanker lorry by Dhanasekaran (A-23), Rangam (A-24) and Vicky (A-25). Presence of Irumborai (A-19) in that house was not by any prior arrangement but on account of his job to look after the treatment of injured LTTE cadre, who were there. One of such injured cadre was Jamuna alias Jamila, who had been shifted to Bangalore from Neyveli by Irumborai (A-19) where she was getting treatment for fixing of an artificial limb on her leg, which she had lost in battle with Sri Lankan army. Irumborai (A-19) had admitted Jamuna alias Jameela in Neyveli for the purpose of fixing an artificial leg. Jamuna was about 16/17 years of age and was an LTTE tigress. It was at

the instance of Suresh Master (DA) that Jamuna was brought to Bangalore and was in the house at the time when Sivarasan, Suba and Nero came there. It was Trichy Santhan (DA) who told Irumborai (A-19) as to how Sivarasan, Suba and Nero came to Bangalore hidden in a tanker lorry of Dhanasekaran (A-23).

g) When Irumborai (A-19) learnt from Trichi Santhan in the second week of May, 1991 about some impending action of LTTE to kill an important leader he told Suresh Master to inform the injured LTTE boys to be careful. Vicky (A-25) was arrested in Coimbatore and accused Dixon died. Since Vicky (A-25) knew about the place at Indira Nagar, Bangalore, where Sivarasan, Suba and Nero and about 20-25 injured LTTE cadre were staying it was decided to arrange a separate house for Sivarasan, Suba and Nero. Irumborai (A-19) took three LTTE injured boys and left them in a particular house.

h) When Irumborai (A-19) was on his way to Jaffna in Sri Lanka after arranging a boat he was intercepted by the Indian Navy and handed over to the Police. Letters (Exh. P-128 and P-129) were recovered from him.

i) Irumborai (A-19) learnt about the death of Rajiv Gandhi on the morning of 22.5.1991. To him the death of Rajiv Gandhi seemed to be a brave deed and an act of revenge.

But then whatever feeling a person may have that would not make him a member of the conspiracy. Further apart from the fact that Irumborai (A-19) knew certain members of the LTTE operating in India but there is no evidence whatsoever that he had any knowledge of the conspiracy with the object to kill Rajiv Gandhi. Documents (Exh.P-128 and P-129) are not admissible in evidence. There is nothing on record to show that Trichy Santhan (DA) was a member of the conspiracy to kill Rajiv Gandhi. Rather evidence shows that he was looking after the injured LTTE cadre in India and supplying various medicines to Sri Lanka to support the war efforts of LTTE there. It also cannot be presumed that since these documents were recovered from Irumborai (A-19) he knew the contents thereof or that the contents were correct. The letters were written much after the object of conspiracy had been achieved and author dead. Irumborai (A-19) has been charged for offence under Section 3(4) of TADA. This charge against him must fail. He has also been charged for an offence under Section 212 IPC on the allegation that he assisted Sivarasan, Subha and Nero in a house at Indira Nagar to evade their apprehension. He has then been charged for an offence under Section 12 of Passport Act having contravened Section 3 of that Act. His conviction and sentence under these charges have not been challenged. Though we acquit him of charge of conspiracy to murder Rajiv Gandhi we confirm his conviction and sentence under Section 212 IPC and Section 3 of the Passport Act.

608. Bhagyanathan (A-20)

Padma(A-21)

a) Bhagyanathan (A-20) and Padma (A-21), son and mother, are Indian Tamils. Nalini (A-1) and Kalyani are daughters of Padma (A-21). Padma (A-21), who was employed in Kalyani Nursing Home, was staying in the quarters of the Nursing Home till January, 1991 when shifted to Royapettah house.

b) In this house Murugan (A-3), a hard-core LTTE militant stayed concealing his identity.

c) Bhagyanathan (A-20) purchased LTTE press from Baby Subramaniam at a very nominalcost. That was in May, 1990. He had promised to go on printing LTTE publications. He took training in photography from Suba Studio of Suba Sundaram (A-22). Haribabu and Arivu (A-18) had also taken training there. Bhagyanathan (A-20) had been working for LTTE in Tamil Nadu.

d) Bhagyanathan (A-20) and Haribabu helped Arivu (A-18) in shifting LTTE material in March, 1991 from the house of Sankari (PW-210). In this material there was one black book in three volumes (MO-609). There was also a video cassette (MO-143) containing the speech of Sivarasan on the occasion of second death anniversary of LTTE leader Dileepan, who died while on fast unto death. Bhagyanathan (A-20) was helping Arivu (A-18) for recording news, telecast on Doordarshan in Tamil and English and the recorded the cassettes were sent to Sri Lanka.

e) Murugan (A-3) had introduced Sivarasan to Bhagyanathan (A-20). When Murugan (A-3) wanted the help to engage a photographer and video graphed for covering DGP's office in Tamil Nadu, Fort St. George and other places Bhagyanathan (A-20) introduced him to Haribabu.

f) Bhagyanathan (A-20) was aware that Nalini (A-1), Murugan (A-3), Arivu (A-18), Sivarasan, Subha, Dhanu and Haribabu had attended the meeting of V.P. Singh on 7.5.1991 at Nandanam, Madras. He himself did not attend the meeting.

g) On 20,5.1991 Sivarasan, Murugan (A-3), Arivu (A-18) and Haribabu had come to the house of Padma (A-21). There is, however, no evidence as to what conversation, if any, took place at that time and whether Bhagyanathan (A-20) himself attended the meeting and if so what was his part. It was on 23.5.1991 when Sivarasan and Nalini (A-1) came to the house of Padma (A-21) he got narration of the incident that took place at Sriperumbudur on 21.5.1991.

h) Bhagyanathan (A-20) gave a sum of Rs. 1,000/- to Haribabu's family for meeting the expenses on account of death of Haribabu, which money was given by Murugan (A-3).

i) After the death of Rajiv Gandhi Bhagyanathan (A-20) helped Arivu (A-18) to removed his TV, VCR, etc. and other LTTE materials from the house of Padma (A-21) to the house of a friend of Arivu (A-18).

j) Knowing fully well that Sivarasan, Subha, Dhanu, Nalini (A-1) and Haribabu had gone to Sriperumbudur on 21.5.1991 and killed Rajiv Gandhi yet Bhagyanathan (A-20) engaged a taxi on 25.5.1991 for Nalini (A-1), Murugan (A-3), Sivarasan Subha and Padma (A-21) to go to Tirupathi. Padma (A-21), however, was not a willing party initially to go to Tirupathi but was persuaded to go.

k) When this group returned from Tirupathi on the following day Bhagyanathan (A-20) allowed Murugan (A-3) to hide himself in his press. He also brought food from his house for Murugan (A-3). He also kept Kawasaki Bajaj Motorcycle (MO-82), which was used by Sivarasan.

l) After the assassination of Rajiv Gandhi Murugan (A-3) had handed over two code sheets (MO-107 and 108) to Padma (A-21) and asked her to keep them in safe custody. Padma (A-21) in turn handed over those two code sheets to her colleague in the nursing home Devasena Raj (PW-73) who in turn kept those in her locker used for keeping uniform. Prosecution has alleged that Padma (A-21) was aware of the importance of the code sheets used by Murugan (A-3) for communicating with LTTE headquarters in Jaffna. There is, however, no evidence if Padma (A-21) knew what the code sheets were about and how she could know their importance.

m) Murugan (A-3) provided financial help to Padma (A-21), who was in debt with which Padma (A-21) was able to pay off to her creditors but then that was much before the date of assassination of Rajiv Gandhi.

n) A wireless message was sent by Sivarasan to Pottu Amman that Bhagyanathan (A-20) and Padma (A-21) had been arrested which according to the prosecution would show that both Bhagyanathan (A-20) and Padma (A-21) were part of the conspiracy as otherwise there was no necessity for Sivarasan to send a wireless message.

609. We do not think all these factors make out any case against either Bhagyanathan (A-20) or Padma (A-21) that they were having any knowledge of the conspiracy or knew of the object of the conspiracy. Pottu Amman did know about Padma (A-21) and Bhagyanathan (A-20) because of Nalini (A-1) and the fact that Murugan (A-3) was staying in their house. No inference of any conspiracy can be drawn from the mere fact that Sivarasan sent the wireless message about the arrest of Bhagyanathan (A-20) and Padma (A-21). Moreover mere association with LTTE hard-core militants or the fact that those militants turned out to be the persons responsible for the killing of Rajiv Gandhi would not make Bhagyanathan (A-20) and Padma (A-21) members of any conspiracy to kill Rajiv Gandhi. There is nothing unusual in Murugan (A-3) providing financial help to

Padma (A-21) in view of the fact that he was staying in her house and also his having affair with Nalini (A-1). Charge of any conspiracy against Padma (A-21) and Bhagyanathan (A-20) must fail. Charge under Section 3(3) TADA against both of them also fails. They, however, have rightly been convicted and sentenced for offence under Section 212 IPC. Their conviction under Section 212 IPC and sentence was not challenged by Mr. Natarajan. Padma (A-21) has also been charged for an offence under Section 6(1A) of Wireless Telegraphy Act and found guilty and sentenced. This charge against her was that she was in possession of two code sheets used by Murugan (A-3) which was material used for communicating from India to other conspirators, namely, Prabhakaran and Pottu Amman in Sri Lanka and those sheets were handed over to Padma (A-21) for safe custody. We do not think that there is any evidence to suggest that Padma (A-21) had any knowledge of the code sheets or what the code sheets were about. Padma (A-21) was not aware of the contents of the code sheets or for what purpose these were put to use by Murugan (A-3). Prosecution also does not tell us the contents of the code sheets and how these were used by Murugan (A-3). Charge under Section 6(1 A) of Indian Wireless and Telegraphy Act must, therefore, fail.

610. Suba Sundaram (A-22)

a) Suba Sundaram (A-22) is owner of Subha News Photo Services, also known as Suba Studio. Here Arivu (A-18), Bhagyanathan (A-20), Haribabu and Ravishankar (PW-151) took training from Suba Sundaram (A-22). Suba Studio was a meeting point for LTTE activists. Suba Sundaram (A-22) was in regular touch with LTTE leaders and was in correspondence with them. In one of the letters he described the absconding accused Prabhakaran "protector of world Tamils - Younger brother General Prabhakaran". In yet another letter (Exh.P-544) he criticized the performance of IPKF in Sri Lanka.

b) Haribabu worked in Suba Studio during 1988-90 at a monthly salary of Rs. 350/-. Though he left Suba Studio he continued visiting the studio regularly.

c) On 21.5.1991 Haribabu first went to Ravishankar (PW-151) and borrowed camera (MO-1) from him. At that time he was carrying a parcel containing a sandalwood garland purchased by him from Poompuhar Handicrafts that morning. This garland was subsequently used by Dhanu to go near Rajiv Gandhi with the pretext of garlanding him.

d) After getting camera (MO-1) Haribabu went to Subha Studio and thereafter left that place for going to Sriperumbudur. Prosecution wants us to infer from this that going of Haribabu to Sriperumbudur for covering the function of Rajiv Gandhi was known to Suba Sundaram (A-22).

e) On the night of 21.5.1991 after the blast Suba Sundaram (A-22) was fervently trying to find out about Haribabu. He was told by T. Ramamurthy (PW-72) that haribabu had died. Suba Sundaram (A-22) asked T. Ramamurthy (PW-72) as to whether he had taken

photographs of the incident. Suba Sundaram (A-22) told T. Ramamurthy (PW-72) that he could have brought the camera used by Haribabu. To that T. Ramamurthy (PW-72) replied that a WIP had been murdered and all the articles at the scene might be important material object and it was wrong to touch them. Suba Sundaram (A-22) again told T. Ramamurthy (PW-72) that if he could have brought the camera they could have used the photos inside them.

f) Suba Sundaram (A-22) thereafter contacted K. Ramamurthy (PW-258), President of AICC(1) for seeking his help to retrieve the camera of Haribabu.

g) Since Suba Sundaram. (A-22) was making strenuous efforts for getting the camera prosecution says that the sole purpose was to destroy any clue that the investigating agency might get from the photographs taken by Haribabu before he died about the role of LTTE and others in the crime. But then it must not be forgotten that Suba Sundaram (A-22) was running a studio and he was Keen that he should get the photographs taken by Haribabu and use them for his business.

h) Suba Sundaram (A-22) made all attempts to conceal the identity of Haribabu that he was an LTTE activist and that he had been engaged by Sivarasan and others to take the photographs of the incident.

i) Though he was aware that Haribabu had gone to the public meeting of Rajiv Gandhi and that he was working for LTTE he got the statement issued by father of Haribabu V.T. Sundaramani (PW-120) denying that his son was member of LTTE.

j) Suba Sundaram (A-22) wanted all the material relating to LTTE lying in the house of Haribabu to be destroyed so that no one could find the link of Haribabu with LTTE.

611. All these factors will not make Suba Sundaram (A-22) a member of the conspiracy with the object to kill Rajiv Gandhi. Even his knowledge of conspiracy cannot be inferred from the circumstances put at highest from the prosecution point of view. Suba Sundaram (A-22) has been charged for an offence under Section 3(3) of TADA which charge must fail. He has also been charged for an offence under Section 201 IPC for which he has been found guilty and convicted and sentenced. There is no challenge to his conviction under this charge.

612. Having thus considered the case of each accused now charged before us we have to examine what sentence is to be awarded particularly where charge of murder has been proved against some of the accused.

613. In spite of the concession of Mr. Natarajan we have independently examined the evidence with respect to charges against each of the accused. We acquit Shanthi (A-11),

Selvaluxmi (A-13) and Shanmugavadivelu (A-15) of all charges. Their conviction and sentence are set aside.

614. None of the accused has commuted any offence under Section 3, 4 or 5 of TADA. Their conviction and sentence under these Sections are set aside.

615. Conviction and sentence of the accused except, Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) under all other charges are maintained. Conviction and sentence of all the accused under Section 120B IPC read with all other counts as mentioned in charge No. 1 is set aside except conviction of Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) under Section 120B read with Section 302 IPC.

616. Conviction of Nalini (A-1) under Section 302 IPC read with Section 34 IPC on various counts is upheld and so also of Arivu (A-18) under Sections 109 and 302 IPC. Conviction and sentence of Nalini (A-1) under Section 326 IPC read with Section 34 IPC, Section 324 IPC read with Section 34- IPC and that of Arivu (A-18) under Sections 109 and 326 IPC and Sections 109 and 324 IPC are maintained.

617. In view of these discussions Shanthi (A-11), Selvaluxmi (A-13) and Shanmugavadivelu (A-15) are to be released forthwith. All other accused except Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) would also be entitled to be released forthwith as it was pointed out to us that they have already undergone imprisonment for a period of more than the sentence of imprisonment awarded to them. In case they are not required to be detained in any other case they shall also be released forthwith.

618. We confirm the conviction of Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) under Section 120B read with Section 302 IPC.

619. We have been addressed arguments on the question of sentence to be passed against the accused which is the requirement of Sub-section (2) of Section 235 of the Code. Section 354 of the Code deals with the contents of judgment. Sub-section (3) of Section 354 is relevant. It is as under:

(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

620. Mr. Natarajan said that in case we hold that Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) are guilty they do not deserve the extreme penalty.

621. In Bachan Singh v. State of Punjab MANU/SC/0055/1982: 1980 Cri LJ 636 the Constitution Bench of this Court was considering the constitutional validity of Section

302 IPC. Though holding that Section 302 IPC and Section 354(3) of the Code are constitutionally valid this Court referred to the circumstances both aggravating and mitigating for imposing a sentence of death. It also made observations on Sections 354(3) and 235(2) of the Code. It will be advantageous to quote paras 201, 202 and 209 of the judgment which are as under:

201 As we read Sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of "special reasons" in that context, the court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. This is so because 'style is the man'. In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate watertight compartments. In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that "special reasons" can legitimately be said to exist."

202. Drawing upon the penal statutes of the States in U.S.A. framed after Furman v. Georgia 33 L Ed 2d 346: 408 US 238 [1972], in general, and Clauses 2(a), (b), (c) and (d) of the Indian Penal Code (Amendment) Bill passed In 1978 by the Rajya Sabha, in particular, Dr. Chitale has suggested these "aggravating circumstances":

Aggravating circumstances: A court may, however, in the following cases impose the penalty of death in its discretion:

(a) if the murder has been committed after previous planning and involves extreme brutality; or

(b) if the murder involves exceptional depravity; or

(c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed -

(i) while such member or public servant was on duty; or

(ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member of public servant; or

(d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the CrPC, 1973, or who had rendered assistance to a magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code.

"209. There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. "We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society." Nonetheless, it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3). Judges should never be bloodthirsty. Hanging of murderers has never been too good for them. Facts and figures, albeit incomplete, furnished by the Union of India, show that in the past, courts have inflicted the extreme penalty with extreme infrequency-a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guide-lines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3), viz., that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.

622. Judgment in Masalti v. State of U.P. MANU/SC/0074/1964: [1964] 8 SCR 133 was delivered before the new Code, i.e., Criminal Procedure Code, 1973 (Act 2 of 1974) came into operation. 40 persons were put on trial before the Additional Sessions Judge under Section 302 read with Section 149 of the Indian Penal Code and other sections for committing murder of five persons with guns. Of them 35 were found guilty and the Additional Sessions Judge sentenced ten of them, who carried fire arms, to death and the rest to imprisonment for life. On a reference to the High Court under Section 374 of the old Code and also on appeals filed by the convicted persons High Court acquitted seven of the appellants, concurring with the findings of the Additional Sessions Judge and dismissed the appeal of the rest. It confirmed the death sentences passed on the ten accused. This Court said that both the trial court and the High Court were agreed that these sentences of death imposed on ten persons were justified by the circumstances of the case and by the requirements of justice. It said that as a mere proposition of law it should be difficult to accept the argument that the sentence of death could be ultimately imposed only where an accused person was found to have committed the murder himself. This Court then held as under:

Whether or not sentences of death should be imposed on persons who are found to be guilty not because they themselves committed the murder, but because they were members of an unlawful assembly and the offence of murder was committed by one or more of the members of such an assembly in pursuance of the common object of that assembly, is a matter which had to be decided on the facts and circumstances of each case. In the present case, it is clear that the whole group of persons belonged to Laxmi Prasad's faction, joined together armed with deadly weapons and they were inspired by the common object of exterminating the male members in the family of Gayadin, 10 of these persons were armed with fire-arms and the others with several other deadly weapons, and evidence shows that five murders by shooting were committed by the members of this unlawful assembly. The conduct of the members of the unlawful assembly both before and after the commission of the offence has been considered by the courts below and it has been held that in order to suppress such fantastic criminal conduct on the part of villagers it is necessary to impose the sentences of death on 10 members of the unlawful assembly who Were armed with fire-arms. It cannot be said that discretion in the matter has been improperly exercised either by the trial Court or by the High Court. Therefore we see no reason to accept the argument urged by Mr. Sawhney that the test adopted by the High Court in dealing with the question of sentence is mechanical and unreasonable.

There are, however, three cases in which we think we ought to interfere. These are the cases of accused No. 9 Ram Saran who is aged 18; accused No. 11 Asha Ram who is aged 23 and accused No. 16 Deo Prasad who is aged 24, Ram Saran and Asha Ram are the sons of Bhagwati who is accused No. 2. Both of them have been sentenced to death. Similarly, Deo Prasad has also been sentenced to death. Having regard to the circumstances under which the unlawful assembly came to be formed, we are satisfied that these young men must have joined the unlawful assembly under pressure and influence of the elders of their respective families. The list of accused persons shows that the unlawful assembly was constituted by members of different families and having regard to the manner in which these factions ordinarily conduct themselves in villages, it would not be unreasonable to hold that these three young men must have been compelled to join the unlawful assembly that morning by their elders, and so, we think that the ends of justice would be met if the sentences of death imposed on them are modified into sentences of life imprisonment. Accordingly, we confirm the orders of conviction and sentence passed against all the appellants except accused Nos. 9, 11 and 16 in whose cases the sentences are altered to those of imprisonment for life. In the result, the appeals are dismissed, subject to the said modification.

623. In Dhananjoy Chatterjee Alias Dhana v. State of West Bangal MANU/SC/0626/1994: [1994] 1 SCR 37 this Court said:

In recent years, the rising crime rate -particularly violent crime against women has made the criminal sentencing by the courts a subject of concern. Today there are admitted disparities. Some criminals get very harsh sentences while many receive grossly different

sentence for an essentially equivalent crime and a shockingly large number even go unpunished thereby encouraging the criminal and in the ultimate making justice suffer by weakening the system's credibility. Of course, it is not possible to lay down any cut and dry formula relating to imposition of sentence but the object of sentencing should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it. In imposing sentences in the absence of specific legislation, Judges must consider variety of factors and after considering all those factors and taking an overall view of the situation, impose sentence which they consider to be an appropriate one. Aggravating factors cannot be ignored and similarly mitigating circumstances have also to be taken into consideration.

In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state Of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment.

624. In Bheru Singh s/o Kalyan Singh v. State of Rajasthan MANU/SC/0647/1994: [1994] 1 SCR 559 this Court relied on its observations on the question of sentence made in Dhananjoy Chatterjee Alias Dhana's case and then in the case of a writ said as under:

The barbaric, gruesome and heinous type of crime which the appellant committed is a revolt against the society and an affront to human dignity. There are no extenuating or mitigating circumstances whatsoever in this case nor have any been pointed out and in our opinion it is a fit case which calls for no punishment other than the capital punishment and we accordingly confirm the sentence of death imposed upon the appellant. The plea of his learned Counsel for mercy is unjustified and the prayer for sympathy, in the facts and circumstances of the case, is wholly misplaced. We, therefore, uphold the conviction and sentence of death imposed upon the appellant by the courts below for the offence under Section 302 IPC.

625. In Natwarlal Sakarlal Mody v. The State of Bombay (1963) 65 BLR 660 (SC) this Court said as under:

While Section 239 of the CrPC allows a joint trial of persons and offences within defined limits, it is within the discretion of the Court to permit such a joint trial or not, having regard to the circumstances of each case. It would certainly be an irregular exercise of discretion if a Court allows an innumerable number of offences spread over a long period of time and committed by a large number of persons under the protecting wing of all-embracing conspiracy, if each or some of the offences can legitimately and properly form the subject-matter of a separate trial; such a joint trial would undoubtedly prolong the

trial and would be a cause of unnecessary waste of judicial time. It would complicate matters which might otherwise be(simple; it would confuse accused and cause prejudice to them, for more often than not accused who have taken part in one of the minor offences might have not only to undergo the long strain of protracted trial, but there might also be the likelihood of the impact of the evidence adduced in respect of other accused on the evidence adduced against him working to his detriment. Nor can it be said that such an omnibus charge or charges would always be in favour of the prosecution for the confusion introduced in the charges and consequently in the evidence may ultimately benefit some of the accused, as a.clear case against one or other of the accused may be complicated or confused by the attempt to put it in a proper place in a larger setting. A Court should not be overzealous to provide a cover of conspiracy for a number of offences unless it is clearly satisfied on the material placed before it that there is evidence to prove prima facie that the persons who committed separate offences were parties to the conspiracy and they committed the separate acts attributed to them pursuant to the object of the said conspiracy.

626. In Payne v. Tennessee 111 S.Ct. 2597 (91) the Supreme Court of United States overruled by majority of 6:3 its earlier two decisions in Booth v. Maryland 482 U.S. 496 and South Carolina v. Gathers 490 U.S. 805 and upheld the admission during capital sentencing of evidence relating to the victim's personal characteristics and the emotional impact of crime on the victim of his family or friends. Charisse Christopher, her two years old daughter Lacie and her three years old son, Nicholas, were brutally attacked with a butcher knife in their apartment in Tennessee. Only the son Nicholas surviced. The police arrested Payne and a jury found him guilty of two counts of first degree murder and one count of assault with intent to commit murder in the first degree. At the sentencing phase of trial, the state presented the testimony of the mother of Charisse Christopher, who explained how Nicholas continued to be affected by the murders: "He cries for his mom....And he cries for his sister Lacie." In addition, during his closing argument the prosecutor depicted the continuing impact on Nicholas's life: "His mother will never kiss him good night or pat him as he goes off to bed....He doesn't have anybody to watch cartoons with him...." The jury then sentenced Payne to death. The Supreme Court of Tennessee affirmed the conviction. Despite Booth and Gathers, the court found the admission of victim impact evidence "technically irrelevant" but "harmless beyond reasonable doubt." The court even applauded the admission of such evidence and claimed that "It is an affront to the civilized members of the human race to say that at sentencing in a capital case, a parade of witnesses may praise.,., the Defendant.... but nothing may be said that bears upon the character of, or the harm imposed upon, the victims. Although the Tennessee Supreme Court's holding rested on a finding of harmless error, the Supreme Court, upon granting certiorari, specifically asked the parties to address whether Booth and Gathers should be overruled, even though the issue had not been raised in the petition for certiorari or. in its response. In a 6:3 opinion, the Supreme Court affirmed the Tennessee Supreme Court's judgment and explicitly overruled Booth and Gathers. Writing for the majority, Chief Justice Rehnquist noted that Booth and Gathers were premised on the notion that a capital defendant should be

treated as a "uniquely individual human being". This "individualized consideration," he argued, should not occur "wholly apart from the crime" the defendant committed. According to Chief Justice Rehnquist, Booth and Gathers created an unfairly imbalanced process in which the defendant may introduce all mitigating personal evidence, although "the State is barred from...offering 'a glimpse of the life' which the defendant 'chose to extinguish'." (Harvard Law Review)

627. In R v. Howells and Ors. (1999) 1 AII.ER 50 Court of Appeal, Criminal Division said that "Court should always bear in mind that sentences were in almost every case intended to protect the public, whether by punishing the offender or reforming him, or deterring him and others, or all of those things."

628. Mr. Natarajan said that Nalini (A-1) got involved in the conspiracy only to please Murugan (A-3) and to be close to him, who was her lover. It was Murugan (A-3), who first indoctrinated her and then used her as a cover. It was not that any idea to assassinate Rajiv Gandhi had originated with her and she became party to the conspiracy only on the day of the incident itself though she might have suspicion or even knowledge about the same. Mr. Natarajan further said that Nalini (A-1) did not contribute to the conspiracy but merely acted as a cover as she was only obeying the role assigned to her by Sivarasan whom Murugan (A-3) introduced to her as his boss. It was also submitted that in India no woman had been hanged since India attained independence. He said if we look at the criminal, Nalini (A-1) did not belong to any criminal tribe and that though there is no evidence about her character but nothing has been said about her bad antecedents by the Executive Officer from her office, who appeared as a witness. He said in his confession Nalini (A-1) had already expressed regret and repentance and now she is a chastened woman. She is not any threat or menace to the society. Lastly, he said considering the future of the girl child, who is adolescent and born in unfortunate circumstances Nalini (A-1) may be spared the extreme penalty of death. Santhan (A-2), Mr. Natarajan said, came to India in the group of nine with Sivarasan on 1.5.1991 but he had come to India to go abroad. Since arrangements for his passport and visa could not be made till then he continued to stay in India. Otherwise, he would not have been here to be a member of the conspiracy. About Murugan (A-3) Mr. Natarajan said that he was summoned to go to Sri Lanka and was on his way there. But since boat did not arrive from there he had to return to Madras. Had the boat arrived on time from Sri Lanka Murugan (A-3) would not have been here 'during the crucial period culminating in achieving the object of conspiracy. It was submitted that both Santhan (A-2) and Murugan (A-3) were not involved in any policy making for LTTE and were not the perpetrators of the crime. They acted under the domination of others and do not deserve the extreme penalty. About Murugan (A-3) Mr. Natarajan said that he is also father of the girl child. Arivu (A-18), he said, was under the complete domination of Sivarasan and did not understand the implications of the various jobs entrusted to him by Sivarasan. He is a youth of 20 years having born on 30.7.1971 and does not deserve extreme penalty for the crime of abetment to murder, being also a paid employee of LTTE.

629. It is not that Nalini (A-1) did not under stand the nature of the crime and her participation. She was a willing party to the crime. We have to see both the crime and the criminal. Nalini (A-1) in her association with Murugan (A-3) and others developed great hatred towards Rajiv Gandhi and wanted to have a revenge. Merely because Nalini (A-1) is a woman and a mother of the child who was born while she was in custody cannot be the ground not to award the extreme penalty to her. She is an educated woman and was working as a stenographer in a private firm. She was living alone away from her mother, sister and brother since April, 1990 and started living in a rented apartment in Villivakkam from October, 1990. She became friendly to Murugan (A-3) when she was introduced to him in her office by her sister Kalyani and Bharathi (PW-233). Before this date also she was close to some of the LTTE activists. She developed fondness towards Murugan (A-3) and in fact wanted to marry him. He, however, declined as he said he was a committed LTTE activist and as per code of LTTE he could not marry. They were, however, having sexual relations and when they returned from trip to Tirupathi after the assassination of Rajiv Gandhi it was found that Nalini (A-1) was pregnant. Subsequently while both of them were in custody they were married from earlier date. It was in July 1991 that she gave birth to the girl child. When you think of the crime we find that along with Rajiv Gandhi 15 others also lost their lives. Many of them were Police men on duty. Fifteen persons who lost their lives in the bomb blast were: (1) P. K. Gupta, Personal Security officer to Rajiv Gandhi, (2) Latha Kanna, (3) Kokilavani, (4) Iqbal, Superintendent of police, (5) Rajaguru, Inspector of Police, (6) Edward Joseph, Inspector of police, (&) Ethiraj, Sub Inspector of Police, (8) Sudararaju Pillai, Police constanble, (9) Ravi, Commando Police constable, (10) Dharman, Police constable, (11) Chandra, woman police constable, (12) Santhani Begum, (13) Darryl Peter, (14) Kumari Saroja Devi and (15) Munuswamy. It is not disputed that these persons died on account of the bomb blast and others suffered grievous and simple injuries on that account. What about their families, one may ask. In the beginning of the judgment we noted that one small girl Kokila wanted to recite a poem to Rajiv Gandhi. In one of the photographs she is shown standing with her mother Latha Kannan next to Dhanu. Both died in the blast. What about the children, wives and husbands of those who died? Cruelty of the crime committed has known no bounds. The crime sent shock waves in the country. General elections had to be postponed. It was submitted more than once that principal perpetrators in the present case are already dead but then for the support which Nalini(A-1),Santhan (A-2), Murugan (A-3) and Arivu (A-18) afforded for commission of the crime it could not have been committed. Each one of these four accused had a role to play. Crime was committed after previous planning and executed with extreme brutality. There were as many as two dry runs as to how to reach Rajiv Gandhi after penetrating the security cordon. A former Prime Minister of the country was targeted because this country had entered an agreement with a foreign country in exercise of its sovereign powers. Rajiv Gandhi being head of the Government at that time was signatory to the accord which was also signed by the head of the Government of Sri Lanka. The accord had the approval of the Parliament. It was not that Rajiv Gandhi had entered into the accord in his personal

capacity or for his own benefit. Though we have held that object of the conspiracy was not to commit any terrorist act or any disruptive activity nevertheless murder of a former Prime Minister for what he did in the interest of the country was an act of exceptional depravity on the part of the accused, an unparallel act in the annals of crimes committed in this country. In a mindless fashion not only that Rajiv Gandhi was killed along with him others died and many suffered grievous and simple injuries. It is not that intensity of the belt bomb strapped on the waist of Dhanu was not known to the conspirators as after switching on the first switch on her belt bomb Dhanu asked Sivarasan to move away. Haribabu was so keen to have close-up picture of the crime that he met his fate in the blast itself. We are unable to find any mitigating circumstance not to upset the award of sentence of death on the accused.

630. This is a case where all these Nalini (A-1), Santhan (A-2), Murugan (A-3) and Arivu (A-18) deserve extreme penalty. We confirm the award of sentence of death on them.

631. We record our appreciation of the assistance given to us by counsel for the parties. Mr. Natarajan, senior advocate, led the team for all the accused except one. He was ably assisted by Mr. Sunder Mohan, Mr. B. Gopikrishnan, Mr. S. Duraisamy, Mr. V. Elangovan, Mr. N. Chandrasekharan, Mr. T. Ramdass and Mr. R. Jayseelan. A heavy burden lay on the shoulders of Mr. Natarajan. He carried it with aplomb. His presentation of the case showed his complete mastery on facts and law. It was a pleasure to hear him, not losing his poise even for once. He was fair in his submissions conceding where it was unnecessary to contest. Mr. Siva Subramanium, senior advocate assisted by Mr. Thanan, who represented the remaining one accused, rendered his bit to support Mr. Natarajan. Mr. Altaf Ahmad, Additional Solicitor General, was not far behind in any way. He had to face an uphill task defending the sentence of death imposed on all the 26 accused. He in his task was ably assisted by Mr. Jacob Baniel, Mr. Ranganathan, Mr. P. Parmeshwaran, Mr. A.D.N. Rao, Mr. Romy Chacko, Mr. T.G.N. Nair, Ms. Meenakshi Arora, Mr. S.A. Matoo and Mr. Mariaputam, advocates. Mr. Altaf Ahmad was forthright in his submissions. He presented his case with learning and assiduity. We express our sense of gratitude to all the counsel and admire their profound learning and experience. They did their job remarkably well.

632. We would also like to record our appreciation for the Special Investigation Team (SIT) constituted by the Central Bureau of Investigation to investigate the case. Under the stewardship of Mr. D.R. Karthikeyan, SIT did assiduous work and was able to solve the crime within a short time. Investigation was meticulous. Loose ends tied to bring out a clear picture of conspiracy and the part played by each of the conspirators. Members of SIT performed their job with dedication and determination. We have also a word of praise for Mr. R.K. Raghavan, who was at the relevant time Inspector General of Police, Forest Cell (CID), Madras and was entrusted with the election arrangements in Chinglepet range. He was on duty at the time the crime was committed at Sriperumbudur. He immediately realised the gravity of situation. He stayed on at the

scene of crime, organised relief and ensured that material evidence was not tempered with. It was he who found the camera (MO-1) on the body of Haribabu which provided a breakthrough in the case.

633. Appeals filed by the accused and the proceeding submitted by the Designated Court to this Court under Section 366 of the Code read with Sub-section (6) of Section 20 of TADA are disposed of in the terms mentioned above.

S.S.M. Quadri, J.

634. I have had the advantage of going through the draft judgments prepared by my noble and learned brethern, Hon'ble Mr. Justice K.T. Thomas and Hon'ble Mr. Justice D.P. Wadhwa. In view of different notes struck by them on some aspects, I am expressing my views separately.

635. The facts are stated somewhat exhaustively in their judgments. To recapitulate briefly, it may be noted that May 21, 1991 witnessed a terrible happening - explosion of human bomb, an unprecedented event in Sriperambudur (Tamil Nadu) at 10.20 p.m. - which resulted in extirpation of a National leader, a former Prime Minister of India, Shri Rajiv Gandhi, killing of 18 others and leaving 43 persons seriously injured. This incident was a result of wickedly hatched conspiracy which was skillfully planned and horridly executed. While in office as Prime Minister of India, Shri Rajiv Gandhi, to bring about a settlement of disputes between Tamil-speaking ethnic minority and Government of Sri Lanka, signed Indo-Sri Lankan Accord on July 22, 1987 under which the Government of India took upon itself certain role. A prominent organisation of Tamils - Liberation Tiger of Tamil Elam(LTTE) -was among the signatories to that Accord. In discharge of its obligation under the Accord, Government of India sent Indian Peace Keeping Force (IPKF) to Sri Lanka to disarm LTTE. This fact together with the alleged atrocities of IPKF against Tamilians in Sri Lanka and non-cooperation of Government of India with the LTTE, at what is termed as the hour of their need, gave rise to grouse which culminated in plotting of a conspiracy to assassinate Shri Rajiv Gandhi, which was put through on the fateful day, May 21, 1991. It caused severe blow to the democratic process, sent shock waves throughout the world and the nation had to pass through excruciating time.

636. The investigation of that horrible incident was entrusted to the Central Bureau of Investigation (CBI)/Special Investigating Team (SIT). On June 26, 1992, after a lengthy investigation, the SIT filed charge sheet in respect of offences under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), Indian Penal Code, 1890 (IPC), Explosive Substances Act, 1908, Arms Act, 1959, Passport Act, 1967, Foreigners Act, 1946 and the Indian Wireless Telegraphy Act, 1933, against 41 persons, 12 of them died (2 in the blast and 10 having committed suicide) and three were declared absconding. The case was thus tried against the following 26 accused persons: A-1 (S. Nalini), A-2 (T. Suthendraraja alias Santhan), A-3 (Sriharan alias Murugan alias Thas alias Indu Master),

A-4 (Shankar alias Koneswaran), A-5 (D. Vijayanandan alias Hari Ayya), A-6 (Sivaruban alias Suresh alias Suresh Kumar alias Ruban), A-7 (S. Kanagasabapathy alias Radhayya), A-8 (A. Chandralekha alias Athirari alias Sonia alias Gowri), A-9 (B. Robert Payas alias Kumaralingam), A-10 (S. Jayakumar alias Jayakumaran alias Jayam), A-11 (J. Shanthi), A-12 (S. Vijayan alias Perumal Vijayan), A-13 (V. Selvaluxmi), A-14 (S. Bhaskaran alias Velayudam), A-15 (S. Shanmugavadivelu alias Thambi Anna), A-16 (P. Ravichandran alias Ravi alias Pragasam), A-17 (M. Suseemdram alias Mahesh), A-18 (G. Perarivelan alias Arivu), A-19 (S. lrumborai alias Duraisingam), A-20 (S. Bhagyanathan), A-21 (S. Padma), A-22 (A. Sundaram), A-23 (K. Dhanasekaran alias Raju), A-24 (N. Rajasuriya alias Rangan), A-25 (T. Vigneswaran alias Vicky), A-26 (J. Ranganath). Thirteen of these accused are Sri Lankan and an equal number comprises of Indians.

637. The Designated Court framed as many as 251 charges of which Charge No. 1 is common to all the accused for the other 250 charges, accused are charged separately under different heads. For the sake of brevity, all charges can be conveniently classified under three categories -

A. Under Section 120-B read with Section 302 IPC;

B. Under Sections 3, 4 and 5 of the TADA Act; and

C. (i) Under various provisions of IPC

(ii) Under Sections 3, 4 and 5 of the Explosive Substances Act, 1908;

(iii) Section 25 of the Arms Act, 1959;

(iv) Section 12 of the Passport Act, 1967;

(v) Section 14 of the Foreigners Act, 1946;

(vi) Section 6(1A) of the Wireless Telegraphy Act, 1933.

638. To bring home the guilt of the accused in respect of the charges framed against each of them, the prosecution placed on record confessions of seventeen accused and also plethora of evidence. It examined 288 witnesses exhibited 1448 documents, marked Exs.P-1 to P-1448.

639. The Designated Court, on consideration of the material placed before it, found all the twenty six accused guilty of all the charges framed against them and awarded punishment of fine of varying amounts, rigorous imprisonment of different period and sentenced all of them to death. The Designated Court referred the case to this Court for confirmation of death sentence of all the convicts, numbered as Death Reference No. 1 of

1998. The convicts filed appeals, Criminal Appeals 321 to 324 of 1998, against their conviction for various offences and the sentence awarded to them. These cases were heard together.

640. Mr. Natarajan, learned senior counsel for the appellants (except Appellant No. 15), assisted by the team of able and thoroughly prepared instructing counsel, Mr. Subramaniam for the appellant No. 15 and Mr. Altaf Ahmed, learned Additional Solicitor General for the Prosecution, assisted by competent and proficient advocates and departmental officers, very ably and exhaustively argued the cases for over three months.

641. Regarding conviction of the appellants for offences mentioned in Category 'C' noted above, the learned Counsel for appellants submitted that they were not pressing the appeals on that aspect as all the appellants had served out the sentence thereunder.

642. The conviction of appellants under the provisions of TADA Act, noted in category 'B' above, had been found to be unsustainable by my learned brethern in their separate opinions and I am in respectful agreement with the same.

643. The provisions of Sub-sections (2), (3) and (4) of Section 3 of TADA Act would be attracted only when a person accused of the offences under the said provisions, has committed 'a terrorist act' within the meaning of Section 3(1) of the TADA Act. Section 3(1) reads as under:

3(1). Punishment for terrorist acts - Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire-arms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, commits a terrorist act."

A perusal of the provision, extracted above, shows that it embodies the principle expressed in the maxim 'actus non facit reum nisi menssit rea'; both 'mens rea' and a criminal act are the ingredients of the definition of Terrorist Act'. The mens rea required is the intention (i) to overawe the Government as by law established; or (ii) to strike terror in the people or any section of the people; or (iii) to alienate any section of the people; or (iv) to adversely affect the harmony amongst different sections of the people. The actus reus should comprise of doing any act or thing by using bombs, dynamite or other

explosive substances or inflammable substances or fire-arms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manners to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, or detaining any person and threatening to kill or injure such persons in order to compel the Government or any other persons to do or abstain from doing any act.

644. Mr. Altaf Ahmed, learned Additional Solicitor General, has developed an ingenious argument that as the acts which are committed by the accused persons have the potentiality to overawe the Government and to strike terror in the people or any section of the people, the required mens rea has to be inferred. A perusal of the charges discloses that the intention to overawe the Government is not mentioned therein. However, Mr. Altaf Ahmed relying upon the provisions of Sections 211, 212, 215, 464 and 465 of the Criminal Procedure Code has submitted that omission to mention the ingredient of the charge did not result in misleading the accused persons and though the words 'to overawe the Government' were not mentioned in the charge, the charge is not bad in law. He relied on Tulsi Ram v. State of U.P. (1963) Suppl. 1 SCR 382; Willie (William) Slaney v. The State of Madhya Pradesh (1956) 2 SCR 1140; R.S. Pandit v. State of Bihar (1963) Suppl. 2 SCR 652 Chittaranjan Das v. State of West Bengal MANU/SC/0068/1963: [1964] 3 SCR 237 ; and Jaswantri Manilal Akhaney v. The State of Bombay MANU/SC/0030/1956: 1956 Cri LJ 1116 in support Of his contentions. In my view, the question here does not relate to defect in the charge but to the content of the charge and without the said germane words in the charge, it cannot be said that the charge includes the intention to overawe the Government. The charge framed is confined only to those acts which are referred to therein. This is also the view expressed by my learned brethern. Therefore, the conviction recorded by the Designated Court in the judgment under appeal for offences noted in Category 'B' under the TADA Act cannot be maintained. The appellants are accordingly acquitted of the charges under TADA Act.

645. Now remains the charge under Section 120B read with Section 302 IPC noted in Category 'A' above, which is substantial and important. Brother Thomas, J. in his precise and well considered opinion found A-1 (Nalini), A-2 (Santhan), A-3 (Murugan), A-9 (Robert Payas), A-10 (Jayakumar), A-16 (Ravichandran) and A-18 (Arivu) guilty of offence under Section 120B read with Section 302 IPC and sentenced A-1, A-9, A-10 and A-16 to life imprisonment and A-2, A-3 and A-18 to death, while brother Wadhwa, J., on very exhaustive consideration, held A-1 (Nalini), A-2 (Santhan), A-3 (Murugan) and A-18 (Arivu) guilty of the said offence and sentenced them to death.

646. There is no controversy about the horrible occurrence of human bomb blast in Sriperumbudur in the night of May 21, 1991 causing death of Shri Rajiv Gandhi and eighteen others and grievous injuries to 43 persons. The controversy is about who are

responsible for this horrendous crime? The question is whether the conviction of the appellants or any of them under Section 120B r/w 302 IPC is sustainable in law and in respect of whom the punishment of death sentence can be confirmed.

647. To record conviction under Section 120B, it is necessary to find the accused guilty of criminal conspiracy as defined in Section 120A of IPC which reads as under:

120A. Definition of criminal conspiracy - When two or more persons agree to do, or cause to be done -

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation - It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

648. The ingredients of the offence of criminal conspiracy are: (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. The proviso and the explanation are not relevant for the present discussion.

649. Though the meeting of minds of two or more persons for doing/or causing to be done an illegal act or an act by illegal means is a sine qua non of the criminal conspiracy, yet in the very nature of the offence which is shrouded with secrecy no direct evidence of the common intention of the conspirators can normally be produced before the Court. Having regard to the nature of the offence, such a meeting of minds of the conspirators has to be inferred from the circumstances proved by the prosecution, if such an inference is possible.

650. In Sardar Sardul Singh Caveeshar v. State of Maharashtra MANU/SC/0063/1963: 1965 Cri LJ 608a, Subba Rao.J. speaking for himself and his learned colleagues, observed: "The essence of conspiracy is, therefore, that there should be an agreement between persons to do one or other of the acts described in the section. The said agreement may be proved by direct evidence or may be inferred from acts and conduct of the parties."

651. In Shivnarayan Laxminarayan Joshi and Ors. v. State of Maharashtra MANU/SC/0241/1979: 1980 Cri LJ 388, S. Murtaza Fazal Ali, J., speaking for a two-Judge Bench, observed:

It is manifest that a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same. The offence can be only proved largely from the inferences drawn from acts or illegal omission committed by the conspirators in pursuance of a common design which has been amply proved by the prosecution as found as a fact by the High Court.

652. In Mohammad Usman Mohammed Hussain Maniyar and Ors. v. State of Maharashtra MANU/SC/0180/1981: 1981 Cri LJ 588, another two-Judge Bench of this Court pointed out:

For an offence under Section 120B, the prosecution need not necessarily prove that the perpetrators expressly agreed to do and/or caused to be done the illegal act; the agreement may be proved by necessary implication. In this case, the fact that the appellants were possessing and selling explosive substances without a valid licence for a pretty long time leads to the inference that they agreed to do and/or caused to be done the said illegal act, for, without such an agreement the act could not have been done for such a long time.

653. In State of Himachal Pradesh v. Krishan Lal Pardhan and Ors. MANU/SC/0290/1987: 1987 Cri LJ 709 Natarajan, J. observed:

In the opinion of Special Judge every one of the conspirators must have taken active part in the commission of each and every one of the conspiratorial acts and only then the offence of conspiracy will be made out. Such a view is clearly wrong. The offence of criminal conspiracy consists in a meeting of minds of two or more persons for agreeing to do or causing to be done an illegal act or an act by illegal means, and the performance of an act in terms thereof. If pursuant to the criminal conspiracy the conspirators commit several offences, then all of them will be liable for the offences even if some of them had not actively participated in the commission of the offences.

654. In State of Maharashtra and Ors. v. Somnath Thapa and Ors. MANU/SC/0451/1996: 1996 Cri LJ 2448, Hansaria, J., speaking for a three-Judge Bench of this Court after elaborate discussions of the various judgments of this Court, concluded thus:

To establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the

conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use.

655. From a survey of cases, referred to above, the following position emerges:

In reaching the stage of meeting of minds, two or more persons share information about doing an illegal act or a legal act by illegal means. This is the first stage where each is said to have knowledge of a plan for committing an illegal act or a legal act by illegal means. Among those sharing the information some or all may performance intention to do an illegal act or a legal act by illegal means. Those who do form the requisite intention would be parties to the agreement and would be conspirators but those who drop out cannot be roped in as collaborators on the basis of mere knowledge unless they commit acts or omissions from which a guilty common intention can be inferred. It is not necessary that all the conspirators should participate from inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one of them and some others may quit from the conspiracy. All of them cannot but be treated as conspirators. Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for such offences even if some of them have not actively participated in the commission of those offences.

656. The agreement, sine qua non of conspiracy, may be proved either by direct evidence which is rarely available in such cases or it may be inferred from utterances, writings, acts, omissions and conduct of the parties to the conspiracy which is usually done. In view of Section 10 of the Evidence Act anything said, done or written by those who enlist their support to the object of conspiracy and those who join later or make their exit before completion of the object in furtherance of their common intention will be relevant facts to prove that each one of them can justifiably be treated as a conspirator.

657. Section 10 of the Evidence Act recognises the principle of agency and it reads as follows:

10. Things said or done by conspirator in reference to common design.-Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

658. To apply this provision, it has to be shown that (1) there is reasonable ground to believe that two or more persons have conspired together; and (2) the conspiracy is to commit an offence or an actionable wrong. If these two requirements are satisfied then anything said, done or written by any one of such persons after the time when such intention was entertained by any one of them in furtherance of their common intention, is a relevant fact against each of the persons believed to be so conspiring as well as for

the purpose of proving the existence of conspiracy and also for the purpose of showing that any such person is a party to it.

659. To establish the charge of conspiracy to commit the murder of Shri Rajiv Gandhi, reliance is placed mainly on seventeen confessional statements made by the accused persons. The confessions of the accused persons have been recorded under Section 15(1) of the TADA Act. Before adverting to the confessional statements, it is necessary to consider the incidental questions as to whether they can be used against the appellants for the charge under Section 120B read with Section 302, IPC when the accused are found to be not guilty of various' offences under the TADA Act.

660. Mr. Natarajan has referred to the judgment of this Court in Bilal Ahmed Kaloo v. State of Andhra Pradesh MANU/SC/0861/1997: 1997 Cri LJ 4091, in support of his contention that the confession recorded under Section 15(1) of the TADA Act cannot be made use of to record the conviction of appellants under Section 120B read with Section 302 IPC.

661. Mr. Altaf Ahmed, however, submitted that that case could not be treated as authority for the proposition canvassed by the learned Counsel for appellants as Section 12 of the TADA Act has not been considered in that case by this Court.

662. Here, it would be necessary to refer to Section 12 of the TADA Act, which is reproduced herein:

12. Power of Designated Courts with respect to other offences - (1) When trying any offence, a Designated Court may also try and other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or any rule made thereunder or under any other law, the Designated Court may convict such person of such other offence and pass and sentence authorised by this Act or such rule or, as the case may be, such other law, for the punishment thereof.

Section 12(1) authorises the Designated Court to try offences under the TADA Act along with another offence with which the accused may be charged, under the Cr.P.C., at the same trial. The only limitation on the exercise of the power is that the offence under the TADA Act is connected with the offence being tried together. Sub-section (2) provides that the Designated Court may convict the accused person of offence under that Act or any rule made thereunder or under any other law and pass any sentence authorised under that Act or the rules or under any other law, as the case may be, for the punishment

thereof if in the course of any trial under the TADA Act the accused persons are found to have committed any offence either under that Act or any rule or under any other law.

663. A perusal of the judgment in Kaloo's case (supra) shows that Section 12 of the TADA Act was not brought to the notice of this Court and moreover the point was conceded by the learned Counsel for the State. I concur with my learned brethern that Kaloo's case does not lay down the correct law. It follows that confessions recorded under Section 15 of the TADA Act and admitted in the trial of offences under the TADA Act and under Section 120B read with Section 302 IPC can be relied upon to record conviction of the appellants for the said offences under IPC even though they are acquitted of offences under the TADA Act.

664. The next question that arises for consideration is the ambit of Section 15 of the TADA Act, which is in the following terms:

15. Certain confessions made to police officers to be taken into consideration - (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence under this Act or rules made thereunder.

Provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

(2). The police officer shall, before recording any confession under Sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily.

665. Sub-section (1) of Section 15 opens with a non obstante clause -'notwithstanding anything in the CrPC or in the Indian Evidence Act' - and says that 'subject to the provisions of this section', a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence under that Act or the Rules made thereunder. The admissibility of the confession of an accused in the trial of a co-accused, abettor or conspirator is subject to the condition that the co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

666. Sub-section (2) incorporates safeguards for the person whose confession is to be recorded under Sub-section (1) and it is not necessary to refer to it for the present discussion.

667. Having regard to the provisions of Section 12 of the TADA Act, the confession recorded under Section 15 will be admissible in the trial of a person, co-accused, abettor or conspirator for an offence under the TADA Act or the rules made thereunder and such other offence with which such a person may be charged at the same trial under the provisions of the Criminal Procedure Code provided the offence under the TADA Act or the Rules made thereunder is connected with such other offence.

668. An analysis of Sub-section (1) of Section 15 shows that it has two limbs. The first limb bars application of provisions of the CrPC and the Indian Evidence Act to a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by him in any of the modes noted in the section. The second limb makes such a confession admissible, de hors the provisions of the Evidence Act in the trial of such person or co-accused, abettor or conspirator for an offence under the TADA Act or rules made thereunder provided the co-accused, abettor or conspirator is charged and tried in the same case together with the accused. The import of Section 15(1) is that insofar as the provisions of the Cr.P.C. and the Evidence Act come in conflict with either recording of a confession of a person by a police officer of the rank mentioned therein, in any of the modes specified in the section, or its admissibility at the trial, they will have to yield to the provision of Section 15(1) of the TADA Act as it is given overriding effect.

669. Thus, Sections 162, 164, 281 and 463 of the CrPC which have a bearing on the question of recording of statement/confession of a person and Sections 24 to 30 of the Evidence Act which deal with various aspects of confession of an accused stand excluded vis-a-vis Section 15(1) of the TADA Act and cannot be called in aid to invalidate recording of confession of an accused by a police officer of the specified rank and/or its admissibility in the trial of the, co-accused, abettor or conspirator charged and tried in the same case together with the accused for an offence under the TADA Act or rules made thereunder. It must be made clear that the non obstante clause in Section 15(1) of the TADA Act does not exclude the application of all the provisions of the Cr.P.C. and the Indian Evidence Act in the trial of offences under TADA Act.

670. What remains to be examined is what is the evidential value of a confession recorded under Section 15 of the TADA Act against the maker thereof and as against a co-accused, abettor or conspirator?

671. Thomas, J. took the view that the confession of an accused is a substantive evidence as against the maker thereof but it is not so as against the co-accused, abettor or conspirator against whom it can be used only as corroborative evidence. Wadhwa, J. took

the contrary view; according to him, confession of an accused is a substantive evidence against himself as well as against co-accused, abettor or conspirator.

672. Section 3 of the Indian Evidence Act defines, inter alia, the term 'evidence' to mean and include all statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under the inquiry (which is called 'oral evidence') and all documents produced for the inspection of the court (which is called 'documentary evidence'). The plea of 'guilty' by the accused at the trial cannot, therefore, be treated as falling within the meaning of evidence as it is not a statement made by a witness before the Court, The extra judicial confession made to any person which is allowed to be proved by the Court will be a part of the statement of a witness made before the Court, so it will be evidence within the meaning of that term. A confession recorded by a Magistrate under Section 164 Cr.P.C. also satisfies the requirements of the definition of the term 'evidence'. A confession recorded under Section 15(1) of the TADA Act is also within the ambit of evidence under Section 3(1) of the Evidence Act and there is no dissension on this.

673. The expression "substantive evidence" is not employed in the Evidence Act. It connotes evidence of a fact in issue or a relevant fact. In Black's Law Dictionary (at P. 1597), the following meaning is noted:

SUBSTANTIVE EVIDENCE. That adduced for the purpose of proving a fact in issue, as opposed to evidence given for the purpose of discrediting a witness, (i.e. showing that he is unworthy of belief,) or of corroborating his testimony. Best, Ev. 246,773,803.
In Words and Phrases (Vol.40), "substantive evidence" is defined as follows:

'SUBSTANTIVE EVIDENCE Although subordinate feature of case, certain types of evidence, such as character evidence or prior criminal acts, can be considered as 'substantive evidence' on question of guilt or innocence. State v. Wallace, N.C.A. pp.283 S.E.2d. 404, 407. '

'Substantive evidence' is that offered for purpose of persuading trier of fact as to truth of proposition on which determination of tribunal is to be asked, whereas 'impeachment evidence' is that evidence designed to discredit the witness, i.e. to reduce effectiveness of his testimony by bringing forth evidence explaining why jury should not put faith in his testimony. Zimmerman v. Superior Court In and For Maricopa County 402, P.2d. 212,215,98, Ariz 85, 18A.L.R. 3d. 900.

Thus, plea of guilty by an accused at the.commencement of the trial or in his statement under Section 313 Cr.P.C. will not be substantive evidence but extra judicial confession and confession recorded by a Magistrate under Section 164 Cr.P.C. of an accused will be substantive evidence. So also a confession of a person recorded under Section 15 of the TADA Act; I shall elaborate this point presently.

674. In regard to evidential value of confessions both academicians and Judges have expressed conflicting opinions.

675. Blackston described confession as the weakest and most suspicious of all evidence.

676. In Wigmore on Evidence, para 866, third edition, it is noted:

Now, assuming the making of a confession to be a completely proved fact - its authenticity beyond question and conceded, - -then it is certainly true that we have before us the highest sort of evidence. The confession of crime is usually as much against a man's permanent interests as anything well can be; and, in Mr. Starkie's phrase, no innocent man can be supposed ordinarily to be willing to risk life, liberty, or property by a false confession. Assuming the confession as an undoubted fact, it carries a persuasion which nothing else does, because a fundamental instinct of human nature teaches each one of us its significance.

(Emphasis supplied)

Similar view is expressed in Treatise on the Law of Evidence, Volume 1, Twelfth Edition, by Taylor in para 865:

Indeed, all reflecting men are now generally agreed that, deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in the law, their value depending on the sound presumption that a rational being will not make admissions prejudicial to his interest and safety, unless when urged by the promptings of truth and conscience.
In Principles and Digest of the Law of Evidence, Volume 1, New Edition, by Chief Justice M. Monir, after noticing conflicting views and discussing various authorities, the learned author stated the rule as follows:

The rule may, therefore, be stated to be that whereas the evidence in proof of a confession having been made is always to be suspected the confession, if once proved to have been made and made voluntarily, is one of the most effectual proofs in the law.
There is a plethora of case law holding that confession of an accused recorded in the manner provided under Cr.P.C. and admissible under the provisions of the Evidence Act, even if retracted later, is substantive evidence as against the maker thereof.

677. Section 30 of the Evidence Act which deals with consideration of proved confession affecting person making it and others jointly under trial for same offence, is quoted below:

30. Consideration of proved confession affecting person making it and others jointly under trial for same offence - When more persons than one are being tried jointly for the same Offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Explanation - 'Offence' as used in this section, includes the abetment of, or attempt to commit, the offence.

This Section says that when more persons than one are being tried jointly for the same offence and a confession, made by one of such persons affecting himself and some other of such persons, the Court may take into consideration such confession against the maker of the confession as well as against such other person when such a confession is proved in Court.

678. Speaking for a two-Judge Bench of this Court in Kalpnath Rai v. State (Through CBI) MANU/SC/1364/1997: 1998 Cri LJ 369, Thomas, J. observed:

confession made admissible under Section 15 of TADA can be used as against a co-accused only in the same manner and subject to the same conditions as stipulated in Section 30 of the Evidence Act.
679. A plain reading of Section 30 of the Evidence Act discloses that when the following conditions exist, namely, (i) more persons than one are being tried jointly; (ii) the joint trial of the persons is for the same offence; (iii) a confession is made by one of such persons (who are being tried jointly for the same offence); (iv) such a confession affects the maker as well as such persons {who are being tried jointly for the same offence); and (v) such a confession is proved in Court, the Court may take into consideration such confession against the maker thereof as well as against such persons (who are being jointly tried for the same offence).

680. It has been noticed above that Section 15(1) of the TADA Act enacts that a confession recorded thereunder shall be admissible in the trial of the maker of the confession, or co-accused, abettor or conspirator provided the co-accused, abettor or conspirator is charged and tried In the same case together with the accused.

681. The difference between Section 30 of the Indian Evidence Act and Section 15(1) of the TADA Act may also be noticed here. Whereas the former provision requires that the maker of the confession and others should be tried jointly for the same offence, the latter provision does not require that joint trial should be for the same offence. Another point of distinction is that under Section 30 of the Evidence Act, the Court is given discretion to take into consideration the confession against the maker as well as against those who are being tried jointly for the same offence, but Section 15(1) of TADA Act mandates that confession of an accused recorded thereunder shall be admissible In the trial of the maker

of confession or co-accused, abettor or conspirator, provided the co-accused, abettor or conspirator is charged and tried in with the accused the same case. Both Section 30 of the Evidence Act as well as Section 15 of the TADA Act require joint trial of the accused making confession and co-accused, abettor or conspirator.

682. Having excluded the application of Sections 24 to 30 of the Evidence Act to a confession recorded under Section 15(1) of the TADA Act, a self-contained scheme is incorporated therein for recording confession of an accused and its admissibility in his trial with co-accused, abettor or conspirator for offences under the TADA Act or the rules made thereunder or any other offence under any other law which can jointly be tried with the offence with which he is charged at the same trial. There is thus no room to import the requirements of Section 30 of the Evidence Act in Section 15 of the TADA Act.

683. Under Section 15(1) of the TADA Act the position, in my view, is much stronger, for it says, "a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence under this Act or rules made thereunder, Provided that the co-accused, abettor or conspirator is charged and tried in the same case together with the accused". On the language of Sub-section (1) of Section 15, a confession of an accused is made admissible evidence as against all those tried jointly with him, so it is implicit that the same can be considered against all those tried together. In this view of the matter also, Section 30 of the Evidence Act need not be invoked for consideration of confession of an accused against a co-accused, abettor or conspirator charged and tried in the same case along with the accused.

684. Therefore, with great respect to the learned Judges, I am unable to agree with the above-quoted observations made in Kalpnath Rai's case (supra) and the view of brother Thomas, J. in his judgment in this case.

685. In support of the said view, Thomas, J. pointed out, in his judgment, that (i) a confession can be used as relevant evidence against its maker under and subject to conditions mentioned in Section 21 of the Evidence Act; (ii) there is no provision in the Evidence Act except Section 30 which authorises consideration of confession against co-accused and posed a question that if Section 30 is to be excluded by virtue of non-obstante clause in Section 15(1) of the TADA Act, under what provision could a confession of one accused be used against another co-accused at all? With great respect to my learned brother, I am not persuaded to adopt that view. On analysis of Section 15(1) of the TADA Act and Section 30 of the Evidence Act, I have reached a different conclusion, noted above,

686. It is true that Section 21 of the Evidence Act declares that admission is-relevant and permits its proof against the person who makes it. Even when confessions which are species of admissions are not hit by Sections 24, 25 or 26 and are relevant or when they became relevant under Sections 27, 28 and 29, they can only be proved against the maker thereof. Admittedly, there is no provision in the Evidence Act for making confession of an accused relevant or admissible against the co-accused. In the setting of those provisions Section 30 of the Evidence Act is enacted which is a clear departure from the principles of English Law. It permits taking into consideration of a confession made by one of the persons being tried jointly for the same offence as against the co-accused. It is in such a case a confession of an accused, recorded in accordance with the provisions of the Cr.P.C. and the Evidence Act, has to satisfy the requirements of Section 30 of the Evidence Act for using it against the co-accused.

687. It is now well settled that the expression 'the court may take into consideration such confession' means to lend assurance to the other evidence against the co-accused.

688. Sir John Beaumont, speaking for the Privy Council, in Bhuboni Sahu v. The King MANU/PR/0014/1949, an oft-quoted authority, observed in regard to Section 30 of the Evidence Act, thus:

Section 30 seems to be based on the view that an admission by an accused person of his own guilt affords some sort of sanction in support of the truth of his confession against others as well as himself. But a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of 'evidence' contained in Section 3. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver which is not subject to any of those infirmities. Section 30, however, provides that the Court may take the confession into consideration and thereby, no doubt, makes it evidence on which the Court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case; it can be put into the scale and weighed with the other evidence. The confession of a co-accused can be used only in support of other evidence and cannot be made the foundation of a conviction.
About the nature of the evidence of an accomplice, it was pointed out therein:

The danger of acting upon accomplice evidence is not merely that the accomplice is on his own admission a man of bad character who took part in the offence and afterwards to save himself betrayed his former associates, and who has placed himself in a position in which he can hardly fail to have a strong bias in favour of the prosecution; the real danger is that he is telling a story which in its general outline is true, and it is easy for him to work into the story matter which is untrue.

689. In Kashmira Singh v. State of Madhya Pradesh MANU/SC/0031/1952: 1952 Cri LJ 839 this Court approved the principles laid down by the Privy Council in Bhuboni Sahu's case (supra) and observed:

But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept.

690. In Hari Charan Kurmi and Jogia Hajam v. State of Bihar MANU/SC/0059/1964: 1964 Cri LJ 344, a Constitution Bench of this Court after referring to Bhuboni Sahu's case (supra) and Kashmira Singh's case (supra), observed:

Normally, if a statement made by an accused person is found to be voluntary and it amounts to a confession in the sense that it implicates the maker, it is not likely that the maker would implicate himself untruly, and so, Section 30 provides that such a confession may be taken into consideration even against a co-accused who is being tried along with the maker of the confession...When Section 30 provides that the confession of a co-accused may be taken into consideration, what exactly is the scope and effect of such taking into consideration, is precisely the problem which has been raised in the present appeals.

It was held that technically construed, the definition of the term "evidence" in Section 3 would not apply to confession. It was observed:

Even so, Section 30 provides that a confession may be taken into consideration not only against its maker, but also against a co-accused person; that is to say, though such a confession may not be evidence as strictly defined by Section 3 of the Act, it is an element which may be taken into consideration by the criminal court and in that sense, it may be described as evidence in a non-technical way. But it is significant that like other evidence which is produced before the Court, it is not obligatory on the court to take the confession into account. When evidence as defined by the Act is produced before the Court, it is the duty of the Court to consider that evidence. What weight should be attached to such evidence, is a matter in the discretion of the Court. But a Court cannot say in respect of such evidence that it will just not take that evidence into account. Such an approach, can, however, be adopted by the Court in dealing with a confession, because Section 30 merely enables the Court to take the confession into account.

691. In the cases referred to above, it was held that the confession of a co-accused is not evidence as defined in Section 3 of the Evidence Act and that Section 30 enables the Court to take into consideration the confession of a co-accused to lend assurance to other evidence against the co-accused. The expression 'may take into consideration' means that the use of the evidence of confession of an accused may be used for purposes of corroborating the evidence on record against the co-accused and that no conviction can be based on such confession.

692. The amendments effected in Section 15(1) and Section 21(1) of the TADA Act by Act 43 of 1993 may be noticed here. The words 'co-accused, abettor or conspirator' and the proviso are added in Sub-section (1) of Section 15; Clauses (c)and (d) of Sub-section (1) of Section 21 are deleted. before the amendment of Sections 15 and 21, the sweep of the legal presumption contained therein was that in a prosecution for any offence under Sub-section (1) of Section 3 of the TADA Act on proof of the facts mentioned in Clauses (a), (b), (c) and (d) of Sub-section (1) of Section 21, it was mandated that the Designated Court shall presume, unless the contrary is proved, that the accused had committed such offence. Clauses (c) and (d), which are deleted from Sub-section (1) of Section 21 by Act 43 of 1993, related to a confession made by a co-accused that the accused had committed the offence and to the confession made by the accused of the offence to any person other than a police officer. The effect of the said clauses was that in the event of the co-accused making confession inculpating the accused or in the event of the accused himself making an extra-judicial confession to any person other than a police officer the legal presumption that the accused had committed such offence would arise.

693. Section 4 of the Evidence Act defines "shall presume" as follows:

Shall presume.-whenever it is directed by this Act that the court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.
694. The presumption is, however, rebuttable so the burden of showing that the offence was not committed would shift to the accused. The normal presumption in criminal cases is that till it is proved to the contrary the accused will be deemed to be innocent and that position is altered by Section 21(1). After deletion of Clauses (c) and (d) by Act 43 of 1993 the statutory presumption under Section 21(1) will not apply to situations where a confession is made by a co-accused that the accused had committed the offence (clause (c)) or where the accused himself made a confession of the offence to any person other than a police officer (clause (d)) and the normal rule of presumption of innocence of the accused will apply. What was in the realm of 'as proved' has after the amendment become only substantive evidence admissible as against the co-accused.

695. I have already pointed out the difference in the phraseology of Section 15 of the TADA Act. The Parliament used the expression "shall be admissible in the trial of such person or co-accused, abettor or conspirator" in Section 15 which is different from the language employed in Section 30 of the Evidence Act which says that the Court may take into consideration such confession as against such other person as well as against the person who makes such confession. It has to be presumed that the Parliament was aware of the interpretation placed by the courts including Privy Council and Supreme Court on Section 30 of the Evidence Act but chose to frame Section 15 differently obviously intending to avoid the meaning given to the phrase the court may take into consideration such confession as against such other person....' used in Section 30 of the Evidence Act. On the language of Section 15(1), it is clear that the intention of the Parliament is to make

the confession of an accused substantive evidence both against the accused as well as the co-accused.

696. Brother Thomas, J. proceeded on the assumption that under unamended Section 21(1), the confession of an accused as against a co-accused was to be treated by the court as 'substantive evidence'. But in view of the use of the expression 'shall presume' in Section 21(1) of the TADA Act, the confession of one accused as against the other co-accused cannot be said to be 'substantive evidence'; such a confession will be regarded as proof of the fact that the accused had committed such offence unless the contrary is proved. In my view, 'substantive evidence' of a fact by itself does not amount to 'proof of that fact'. There is no presumption in law that substantive evidence of a fact has to be treated as proof of that fact.

697. After the amendment of Section 21(1), the confession of an accused recorded by the police officer under Section 15(1) of the TADA Act is in the same position as that recorded by a Magistrate under Section 164 Cr.P.C. and that it cannot be placed on a higher pedestal in regard to its evidential value. If that be so, in a trial under the TADA Act when there are two categories of confessions - one a judicial confession recorded by a Magistrate under Section 164 Cr.P.C. and the other by a police officer under Section 15(1) of the TADA Act, the court will have to give the same evidential value to such confessions as against the co-accused.

698. If the expression 'substantive evidence' is understood in the sense of evidence of a fact in issue or a relevant fact and not proof of what it contains and that it has to be evaluated by the Court like any other category of evidence no difficulty arises. The difficulty will, however, arise if 'substantive evidence' is equated with the position flowing from the application of legislative mandate by incorporating 'shall presume' as Brother Thomas, J. has indicated in his judgment as that will, in my view, nullify the effect of legal presumption in Section 21(1) of the TADA Act. I, therefore, respectfully differ from the view taken by the Bench in Kalpnath Rai's case (supra) and brother Thomas, J. in his judgment in this case and in respectful agreement with the view expressed by brother Wadhwa, J. in his judgment that a confession of an accused under Section 15(1) of the TADA Act is substantive evidence against the co-accused, abettor or conspirator jointly tried with the accused.

699. But I wish to make it clear that even if confession of an accused as against co-accused tried with accused in the same case is treated 'substantive evidence' understood in the limited sense of fact in issue or relevant fact, the rule of prudence requires that the court should examine the same with great care keeping in mind the following caution given by the Privy Council in Bhuboni Sahu's case which has been noted with approval by this Court in Kashmira Singh (supra) and I quote:

This tendency to include the innocent with the guilty is peculiarly prevalent in India, as Judges have noted on innumerable occasions, and it is very difficult for the Court to guard the danger.

700. It is also to be borne in mind that the evidence of confession of co-accused is not required to be given on oath, nor is given in the presence of the accused, and its veracity cannot be tested by cross examination. Though the evidence of an accomplice is free from these shortcomings yet an accomplice is a person who having taken part in the commission of offence, to save himself, betrayed his former associates and placed himself on a safer plank - 'a position in which he can hardly fail to have a strong bias in favour of the prosecution' the position of the accused who has given confessional statement implicating a co-accused is that he has placed himself on the same plank and thus he sinks or sails along with the co-accused on the basis of his confession. For these reasons, in so far as use of confession of an accused against a co-accused is concerned, rule of prudence cautions the judicial discretion that it cannot be relied upon unless corroborated generally by other evidence on record.

701. Now adverting to merits of the appeals, learned brother Thomas, J. having considered the confession of A-20 (S. Bhagyanathan) Exh.P-69, A-21 (S. Padma) Exh. P-73, A-1 (S. Nalini) Exh.P-77, A-3 (V. Sriharan) Exh.P-81. A-9 (Robert Payas) Exh.P-85, A-18 (Arivu) Exh.P-87, A-10 (Jayakumar) Exh.P-91, A-8 (Athirai) Exh.P-97, A-12 (Vijayan) Exh.P-101, A-2 (Santhan) Exh.P-104, A-24 (Rangan) Exh.P-109, A-23 (Dhanasekaran) Exh.P-113, A-19 (Irumborai) Exh.P-117, A-16 (Ravichandran) Exh. P-121, A-17 (Suseendran) Exh.123, A-25 (Vigneswara).Exh.P-127, A-15 (Thambianna alias Shanmugavadivelu) Exh.P-139, meticulously examined other oral and documentary evidence in support of such confessional statement and found A-1 (Nalini), A-2 (Santhan), A-3 (Murugan), A-9 (Robert Payas), A-10 (Jayakumar), A-16 (Ravichandran) and A-18 (Arivu) guilty of offences under Section 120B read with Section 302 IPC and altered death sentence of A-1, A-9, A-10 and A-16 to life imprisonment while confirming death sentence of A-2, A-3 and A-18.

702. Brother Wadhwa, J. on consideration of all the aforementioned confessions and other evidence against the appellants confirmed conviction of only A-1, A-2, A-3 and A-18 under Section 120B read with Section 302 I.P.C. and confirmed death sentence of all of them while acquitting all other appellants.

703. In the view I have taken in the light of the above discussions and on examining the said statements of confession and the evidence, both oral and documentary, on record, it would be duplication to record here the same reasoning over again on the question of confirmation of conviction of appellants, A-1,A-2, A-3, A-9, A-10, A-16 and A-18. In so far as the conviction of any other appellant is concerned it would serve no practical purpose and will be only of academic interest and an exercise in futility. I, therefore, consider it appropriate to record my respectful agreement with the reasoning and

conclusion arrived at by Thomas, J. in confirming the conviction of A-1, A-2, A-3, A-9, A-10, A-16 and A-18 for the aforementioned offences.

704. The last crux in these cases is the question of punishment. The Indian Penal Code gives a very wide discretion to the Court in the matter of awarding punishment. The maximum and the minimum punishments are prescribed under the IPC and awarding of appropriate punishment is left to the discretion of the court. There are no general guidelines in the IPC but in the exercise of its discretion the Courts have to take into consideration the aggravating and mitigating circumstances of each case to determine appropriate sentence commensurate with the gravity of the offence and role of the convict.

705. On the question of awarding the sentence for the offences for which the punishment prescribed is life imprisonment or the death sentence, there has been a complete change in the legislative policy which is reflected in Sub-section (3) of Section 354 of the CrPC. It enjoins that in the case in which the court awards sentence of death, the judgment shall state special reasons for such sentence.

706. In Bachan Singh v. State of Punjab AIR 1980 SC 989, the constitutional validity of Section 354(3) Cr.P.C. was considered by a Constitution Bench of this Court. The change in the policy of sentencing is pointed out thus:

Section 354(3) of the CrPC, 1973, marks a significant shift in the legislative policy underlying the Code of 1898, as in force immediately before April 1, 1974, according to which both the alternative sentences of death or imprisonment of life provided for murder and for certain other capital offences under the Penal Code were normal sentences. Now, according to this changed legislative policy which is patent on the face of Section 354(3), the normal punishment for murder and six other capital offences under the Penal Code, is imprisonment for life (or imprisonment for a term of years) and death penalty is an exception.
It will be useful to note the principles for awarding punishment contained in the following observations:

...for making the choice of punishment or for ascertaining the existence or absence of 'special reasons' in that context, the Court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case.... In many cases, the extremely cruel and beastly manner of the commission of murder is itself a demonstrated index of a depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate water-tight compartments. In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only

when the culpability assumes the proportion of extreme depravity that 'special reasons' can legitimately be said to exist.

(Emphasis supplied)

707. In Machhi Singh and Ors. v. State of Punjab MANU/SC/0211/1983: 1983 Cri LJ 1457 the following observations of Thakkar, J., speaking for a three-Judge Bench of this Court, are worth noticing. The very existence of the rule of law and the fear of being brought to book operates as a deterrent to those who have no scruples in killing others if it suits their ends. In such a situation the community feels that for the sake of self preservation the killer has to be killed and it may withdraw the protection afforded to him from being killed. It might do so in 'rarest of the rare' cases. When its collective conscience is so shocked, it would expect the holders of the judicial power center to inflict death penalty irrespective of their personal opinion as regards the desirability or otherwise of retaining death penalty. The learned Judge catalogued various factors which would bring a case in the 'rarest of the rare' cases. Among them is included the case where the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.

708. In Kehar Singh and Ors. v. State (Delhi Administration) MANU/SC/0241/1988: 1989 Cri LJ 1, the security guards of Smt. Indira Gandhi, the then Prime Minister of India, assassinated her. This Court confirmed the death sentence of Satwant Singh who actually committed the murder as well as of Kehar Singh who conspired and inspired for commission of the crime. Applying the principles laid down in Bachan Singh's case (supra) and Machhi Singh's case (supra) that case was classified as a 'rarest of the rare' case, inter alia, on the ground that the convicts were involved in assassinating a great daughter of India and the Prime Minister of India and that the act of the accused not only took away the life of the popular leader but also undermined our democratic system which had been working so well for the last 40 years.

709. To determine the rarest of the rare case it was suggested that the answers to the following questions would be helpful

(a) Is there something uncommon about the crime which renders sentence of the imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence after according maximum weightage to the mitigating circumstances which speak in favour of the offender.

710. The leading cases on the subject suggest that discretion of the Court in awarding punishment when conviction is for an offence punishable with death or with imprisonment for life is controlled by Section 354(3) Cr.P.C. so if the Court proposes to

impose capital punishment it must record 'special reasons' for so doing. What constitutes special reasons cannot be stated with any precision and that has to be determined having regard to the facts and circumstances of each case. If a case falls in the category of 'rarest of the rare case' it would justify the requirement of special reasons. But again in deciding whether a case falls within 'rarest of the rare case', the Court has to consider both aggravating as well as the mitigating circumstances in each case in the light of the above noted principles.

711. In numerous cases these principles are being applied. There is no need to multiply the cases here. It is now time to address to the facts of the case.

712. On applying the well-settled principles laid down by this Court, Brother Thomas, J, felt that the confirmation of death sentence awarded by the Designated Court to A-2, A-3 and A-18 is justified whereas brother Wadhwa, J. on the same principles confirmed the death sentence awarded by the Designated Court to A-1, A-2, A-3 and A-18. So far as the confirmation of death sentence of A-2. A-3 and A-18 is concerned both the learned brethern concur and I record my respectful agreement with their conclusions. The difference of opinion between them is with regard to confirmation of death sentence of A-1. It is now my view which determines the result of this issue.

713. I may express my feelings that ill behoves a person to order the death of another. He who gives life alone has the authority to take life. In dispensing justice a Judge is not only discharging a sovereign function but he is also doing a divine function. Even so the most difficult task for a Judge is to choose the punishment of death in preference to the punishment of life imprisonment for he is conscious of the fact that once the life of a person is taken away by a judicial order it cannot be restored by another judicial order of the highest authority in this world. Having taken upon himself the onerous responsibility of doing justice according to Constitution and the laws the Judge must become independent of his conviction and ideology to maintain the balance of scales of justice.

714. Mr. Natarajan pleaded for not confirming the death sentence of A-1 highlighting the mitigating circumstances. She is a woman and is mother of a small girl who was born during the period of her confinement in jail. She is very young. She has also subsequently regretted her act and her participation was the result of indoctrination by A-3. She did not play any major role. These are indisputably the mitigating circumstances and I am not unmindful of these facts. Indeed the dilemma whether sentence of death should be pronounced upon a woman has been troubling my mind for a considerable time. Surely in our culture a woman has to be treated with beneficence and kindness. But then in this case the person Dhanu who opted to become a human bomb was a woman. Subha who gave moral support to sacrifice her life on the anvil of some ideology and to end up by annihilating others lives, was also a woman. About the role of A-1 (Nalini), it is not a case where she was caught up in a sudden situation and became a mute comrade, the mind not towing the body. It was indeed the other way round.

715. On her own saying she had developed a strong feeling against Shri Rajiv Gandhi and decided that the lesson should be taught for the mass killings and rapes in Sri Lanka and particularly in view of the death of eleven LTTE leaders by consuming cyanide and thought that she was justified for taking any retaliatory action. She admitted that she was mentally prepared by Sivarasan, Murugan, Dhanu and Subha for any kind of retaliatory action including killing of leaders. Even on May 2, 1991, she felt that the said persons were going to assassinate the leaders and she voluntarily participated thereafter and attended the meeting addressed by Shri V.P. Singh on the night of 7th May, 1991 in Madras. She had never been free from the feeling that Sivarasan, Murugan, Dhanu and Subha had come for a dangerous mission and after the meeting of Mr. V.P. Singh it had become clear to her that Dhanu and Subha had come for a dangerous mission. She was, however, closely associated with them. On 19th May itself, according to her Sivarasan came to her house along with a clipping of an evening newspaper of Tamil Nadu in which there was news of the visit of Shri Rajiv Gandhi to Tamil Nadu for election campaign. He said that they had come only for that and that they would attend the meeting. She entertained strong feeling about the danger ahead after briefing of Sivarasan about attending the meeting of Shri Rajiv Gandhi at Sriperumbudur on 21st May, 1991. On 21st May, 1991 at about 3.45 p.m. Subha told her that Dhanu was going to create history that day by assassinating Shri Rajiv Gandhi and that they would be very happy if she also participated in that and she agreed. before leaving for Sriperambudur she was aware of the fact that Dhanu was concealing an apparatus inside her dress. Nonetheless she went along with Subha and Dhanu to provide cover to them as planned by Sivarasan for which she had already agreed earlier. She did accompany them and provided the required cover. Without her providing cover to Dhanu and Subha, perhaps they would not have the confidence for attending the meetings including the fateful meeting. She was actually present at the scene of occurrence along with Dhanu and Subha when Dhanu exploded herself as a human bomb as a result of which Shri Rajiv Gandhi and 18 other persons died and 43 persons were seriously injured which included police officers and innocent persons.

716. Brother Thomas, J. noted that in the confessional statement of A-20 (Baghyanathan) it is stated A-1 (Nalini) had confided to him that she realised only at Sriperumbudur that Dhanu was going to kill Shri Rajiv Gandhi. He appears to have been impressed by that statement and observed that perhaps that might be a true fact and if that be so, she would not have dared to retreat from the scene as she was tucked into the tentacles of the conspiracy octopus from where it was impossible for a woman like A-1 (Nalini) to get extricated herself would have been justified.

717. From the facts pointed out above which strongly suggest her participation was not the result of helplessness but a well designed action with her free will to make her part of the contribution to the unholy plan and wicked conspiracy so I am not inclined to place

any reliance on that confessional statement of her brother A-20 which is referred to by my learned brother Thomas, J.

718. I am convinced that the facts of this case are uncommon; A crime committed on Indian soil against the popular national leader, a former Prime Minister of India, for a political decision taken by him in his capacity as the head of the executive and which met with the approval of the Parliament, by persons running political organisation in a foreign country and their agents in concert with some Indians for the reason that it did not suit their political objectives and of their organisation, cannot but be a 'rarest of the rare' case. In such a case the part played by A-1 (Nalini) is a candid participation in the crime of conspiracy to assassinate Shri Rajiv Gandhi who was himself a young popular leader so much loved and respected by his fellow citizens and had been the Prime Minister of India. The conspirators including A-1 (Nalini) had nothing personal against him but he was targeted for the political decision taken by him as the Prime Minister of India. She inspite of being an Indian citizen joined the gang of conspirators and engaged herself in pursuit of common intention to commit the crime only because she was infatuated by the love and affection developed for A-3 (Murugan), and thus played her part in execution of the conspiracy which resulted in the assassination of Shri Rajiv Gandhi and death of many police officers and innocent citizens including a small girl. For a person like A-1, taking into consideration all the mitigating circumstances, in my view, there is no room for any leniency, kindness and beneficence.

719. On the facts of this case, discussed above, once A-1 (Nalini) is found to fall in the rarest of the rare case, declining to confirm the death sentence will, in my view, stultify the course of law and justice.

720. It is apt to quote here the following observations of this Court in Mahesh v. State of Madhya Pradesh MANU/SC/0246/1987: 1987 Cri LJ 1073, with which I am in respectful agreement:

It will be a mockery of justice to permit these appellants to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the appellants would be to render the justicing system of this country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon.
721. Thus, I conclude that the sentence of imprisonment for life is inadequate and there is no alternative but to confirm the death sentence awarded by the Designated Court to A-1 (Nalini). Therefore, with respect I concur with brother Wadhwa, J. in confirming the death sentence of first appellant A-1 (Nalini) awarded by the Designated Court.

722. In the result I agree with brother Thomas, J. and set aside the conviction of all the appellants recorded by the Designated Court for offences under the TADA Act mentioned in category 'B' and also the conviction A-4 (Shankar alias Koneswaran), A-5

(D. Vijayanandan alias Hari Ayya), A-6 (Sivaruban alias Suresh alias Suresh Kumar alias Ruban), A-7 (S. Kanagasabapathy alias Radhayya), A-8 (A. Chandralekha alias Athirari alias Sonia alias Gowri), A-11 (J. Shanthi), A-12 (S. Vijayan alias Perumal Vijayan), A-13 (V. Selvaluxmi), A-14 (S. Bhaskaran alias Velayudam), A-15 (S. Shanmugavadivelu alias Thambi Anna), A-17 (M. Suseemdram alias Mahesh), A-19 (S. Irumborai alias Duraisingam), A-20 (S. Bhagyanathan), A-21 (S. Padma), A-22 (A. Sundaram), A-23 (K. Dhanasekaran alias Raju), A-24 (N. Rajasuriya alias Rangan), A-25 (T. Vigneswaran alias Vicky), A-26 (J. Ranganath) for the offences under Section 120B read with Section 302 IPC. Their appeals are accordingly allowed.

723. Agreeing with brother Thomas, J. confirm the conviction of A-1 (Nalini), A-2 (Santhan) and A-3 (Murugan), A-9 (Robert Payas), A-10 (Jayakumar), A-16 (Ravichandran) and A-18 (Arivu) finding them guilty of offences under Section 120B read with Section 302 IPC. them guilty of offences under Section 120B read with Section 302 IPC.

724. On the facts and in the circumstances. I am also of the same view as expressed by brother Thomas, J. that it is not a fit case to confirm the death sentence awarded to A-9 (Robert Payas), A-10 (Jayakumar) and A-16 (Ravichandran) and their death sentence is commuted to life imprisonment and their appeals are allowed to this extent.

725. The death sentence awarded to A-1 (Nalini), A-2 (Santhan), A-3 (Murugan) and A-18 (Arivu) is confirmed the death sentence of A-2 (Santhan), A-3 (Murugan) and A-18 (Arivu) agreeing with Thomas, J. as well as Wadhwa, J. and the death sentence of A-1 (Nalini) agreeing with Wadhwa, J. Their appeals are dismissed and Death Reference is accordingly answered.

(S.S.M. Quadri)
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ORDER

726. The conviction and sentence passed by the trial court of the offences of Section 3(3), Section 3(4) and Section 5 of the TADA are set aside in respect of all those appellants who were found by the trial court guilty under the said counts.

727. The conviction and sentence passed by the trial court of the offences under Section 212 and 216 of the Indian Penal Code, Section 14 of the Foreigners Act, 1946, Section 25(1-5) of the Arms Act, Section 5 of the Explosive Substance Act, Section 12 of the passports Act, and Section 6(1-A) of the Wireless and Telegraph Act, 1933, in respect of those accused who were found guilty of those offences, are confirmed. If they have already undergone the period of sentence under those Counts it is for the jail authorities to release such of those against whom no other conviction and sentence exceeding the said period have been passed.

728. The conviction for the offence under Section 120-B read with Section 302, Indian Penal Code as against A-1 (Nalini), A-2 (Santhan alias Raviraj) A-3 (Murugan alias Thas), A-9 (royert Pauyyas), A-10 (Jayakumar), A-16 (Ravichandran alias Ravi) and A-13 (Perarivlan alias Arivu), is confirmed.

729. We set aside the conviction and sentence of the offences under Section 302 read with Section 120B passed by the trial court on the remaining accused.

730. The sentence of death passed by the trial court on A-1 (Nalini), A-2 (Santhan), AA-3 (Murugan and A-18 (Aivu), is cofirmed. The death sentence passed on A-9 (Royert), A-10 (Jayakumar) and A-16 (Ravichandran) is altered to imprisonment for life. The reference is answered accordingly.

731. In other words, except A-1 (Nalini), A-2 (Santhan), A-3 (Murugan, A-9 (Royert Payas), A-10 (Jayakumaro, A-16 (Ravichandran and A-18 (Arivu), all the remaining appellants shall appellants shall be set at liberty forth with.

MANU/SC/0781/2012

Back to Section 120B of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

SLP (Crl.) No. 8989 of 2010 and SLP (Crl.) Nos. 6138 of 2006, 5921 of 2009, 6324 of 2009, 7148 of 2009, 259 of 2011, 5203 of 2011 and Criminal Appeal Nos. 2107-2125 of 2011

Decided On: 24.09.2012

Gian Singh Vs. State of Punjab and Ors.

Hon'ble Judges/Coram:
R.M. Lodha, Anil R. Dave and S.J. Mukhopadhaya, JJ.

Counsels:
For Appearing Parties: P.P. Malhotra, ASG, P.P. Rao, Abhishek Manu Singhvi, V. Giri, Sr. Advs., Rajiv Kataria, Adv., for Delhi Law Chambers, P. Parmeswaran, Rajiv Nanda, T.A. Khan, Ranjana Narayan, Priyanka Mathur, Arvind Kumar Sharma, Baldev Krishan Satija, Sameer Sodhi, Amit Bhandari, Ashok Jain, Pankaj Jain, Bijoy Kumar Jain, Pragati Neekhra, Suryanarayana Singh, Yashoda Sharma, Sushil Karanjkar, Nikhilesh Kumar, Mohammed Sadique T.A., K.N. Rai, A.V. Rangam, Buddy A. Ranganadhan, Richa Bhardwaj, V. Prabhakar, R. Chandrachud, Jyoti Parashar, Yasir Rauf, Vishwaaman Kandwal, Kailash Chand, Sunil Kumar Verma, Asha Gopalan Nair, Praveen Swarup, Nikhil Jain, Atishi Dipankar, Manu Beni, Ashish Agarwal, Yash Pal Dhingra, Deepak Dhingra, Partha Sil, Rajesh Tyagi, Anil Kumar Bakshi, Pawan Kumar, Shekhar Kumar and Ravi Bassi, Advs.

JUDGMENT
R.M. Lodha, J.

1. When the special leave petition in Gian Singh v. State of Punjab and Anr. came up for hearing, a two-Judge Bench (Markandey Katju and Gyan Sudha Misra, JJ.) doubted the correctness of the decisions of this Court in B.S. Joshi and Ors. v. State of Haryana and Anr. MANU/SC/0230/2003: (2003) 4 SCC 675, Nikhil Merchant v. Central Bureau of Investigation and Anr. MANU/SC/7957/2008: (2008) 9 SCC 677 and Manoj Sharma v. State and Ors. MANU/SC/8122/2008: (2008) 16 SCC 1 and referred the matter to a larger Bench. The reference order reads as follows:

Heard Learned Counsel for the Petitioner.

The Petitioner has been convicted Under Section 420 and Section 120B, Indian Penal Code by the learned Magistrate. He filed an appeal challenging his conviction before the learned Sessions Judge. While his appeal was pending, he filed an application before the

learned Sessions Judge for compounding the offence, which, according to the Learned Counsel, was directed to be taken up along with the main appeal. Thereafter, the Petitioner filed a petition Under Section 482, Code of Criminal Procedure. for quashing of the FIR on the ground of compounding the offence. That petition Under Section 482 Code of Criminal Procedure. has been dismissed by the High Court by its impugned order. Hence, this petition has been filed in this Court.

Learned Counsel for the Petitioner has relied on three decisions of this Court, all by two Judge Benches. They are B.S. Joshi v. State of Haryana MANU/SC/0230/2003: (2003) 4 SCC 675; Nikhil Merchant v. Central Bureau of Investigation and Anr. MANU/SC/7957/2008: (2008) 9 SCC 677; and Manoj Sharma v. State and Ors. MANU/SC/8122/2008: (2008) 16 SCC 1. In these decisions, this Court has indirectly permitted compounding of non-compoundable offences. One of us, Hon'ble Mr. Justice Markandey Katju, was a member to the last two decisions.

Section 320, Code of Criminal Procedure. mentions certain offences as compoundable, certain other offences as compoundable with the permission of the Court, and the other offences as non-compoundable vide Section 320(7).

Section 420, Indian Penal Code, one of the counts on which the Petitioner has been convicted, no doubt, is a compoundable offence with permission of the Court in view of Section 320, Code of Criminal Procedure. but Section 120B Indian Penal Code, the other count on which the Petitioner has been convicted, is a non-compoundable offence. Section 120B (Criminal conspiracy) is a separate offence and since it is a non-compoundable offence, we cannot permit it to be compounded.

The Court cannot amend the statute and must maintain judicial restraint in this connection. The Courts should not try to take over the function of the Parliament or executive. It is the legislature alone which can amend Section 320 Code of Criminal Procedure.

We are of the opinion that the above three decisions require to be re-considered as, in our opinion, something which cannot be done directly cannot be done indirectly. In our, prima facie, opinion, non-compoundable offences cannot be permitted to be compounded by the Court, whether directly or indirectly. Hence, the above three decisions do not appear to us to be correctly decided.

It is true that in the last two decisions, one of us, Hon'ble Mr. Justice Markandey Katju, was a member but a Judge should always be open to correct his mistakes. We feel that these decisions require re-consideration and hence we direct that this matter be placed before a larger Bench to reconsider the correctness of the aforesaid three decisions.

Let the papers of this case be placed before Hon'ble Chief Justice of India for constituting a larger Bench.

2. This is how these matters have come up for consideration before us.

3. Two provisions of the Code of Criminal Procedure, 1973 (for short, 'Code') which are vital for consideration of the issue referred to the larger Bench are Sections 320 and 482. Section 320 of the Code provides for compounding of certain offences punishable under the Indian Penal Code, 1860 (for short, 'Indian Penal Code'). It reads as follows:

Section. 320. Compounding of offences.-(1) The offences punishable under the sections of the Indian Penal Code, (45 of 1860) specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table:

TABLE

Offence	Section of the Indian Penal Code applicable	Person by whom offence may be compounded
1	2	3

(2) The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table:-

TABLE

Offence	Section of the Indian Penal Code applicable	Person by whom offence may be compounded
1	2	3

(3) When an offence is compoundable under this section, the abatement of such offence or an attempt to commit such offence (when such attempt is itself an offence) or where the accused is liable Under Section 34 or 149 of the Indian Penal Code (45 of 1860) may be compounded in like manner.

(4) (a) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf, may, with the permission of the Court, compound such offence.

(b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 of such person may, with the consent of the Court, compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(6) A High Court or Court of Session acting in the exercise of its powers of revision Under Section 401 may allow any person to compound any offence which such person is competent to compound under this section.

(7) No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.

(8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(9) No offence shall be compounded except as provided by this section.

4. Section 482 saves the inherent power of the High Court and it reads as follows:

Section. 482. Saving of inherent power of High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.
5. In B.S. Joshi MANU/SC/0230/2003: (2003) 4 SCC 675, the undisputed facts were these: the husband was one of the Appellants while the wife was Respondent No. 2 in the appeal before this Court. They were married on 21.7.1999 and were living separately since 15.7.2000. An FIR was registered Under Sections 498-A/323 and 406, Indian Penal Code at the instance of the wife on 2.1.2002. When the criminal case registered at the instance of the wife was pending, the dispute between the husband and wife and their family members was settled. It appears that the wife filed an affidavit that her disputes with the husband and the other members of his family had been finally settled and she and her husband had agreed for mutual divorce. Based on the said affidavit, the matter was taken to the High Court by both the parties and they jointly prayed for quashing the criminal proceedings launched against the husband and his family members on the basis of the FIR registered at the wife's instance Under Sections 498-A and 406 Indian Penal Code. The High Court dismissed the petition for quashing the FIR as in its view the offences Under Sections 498-A and 406, Indian Penal Code were non-compoundable and the inherent powers Under Section 482 of the Code could not be invoked to by-pass Section

320 of the Code. It is from this order that the matter reached this Court. This Court held that the High Court in exercise of its inherent powers could quash criminal proceedings or FIR or complaint and Section 320 of the Code did not limit or affect the powers Under Section 482 of the Code. The Court in paragraphs 14 and 15 (Pg. 682) of the Report held as under:

14. There is no doubt that the object of introducing Chapter XX-A containing Section 498-A in the Indian Penal Code was to prevent torture to a woman by her husband or by relatives of her husband. Section 498-A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hypertechnical view would be counterproductive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of the Indian Penal Code.

15. In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers Under Section 482 of the Code.

6. In Nikhil Merchant MANU/SC/7957/2008: (2008) 9 SCC 677, a company, M/s. Neemuch Emballage Ltd., Mumbai was granted financial assistance by Andhra Bank under various facilities. On account of default in repayment of loans, the bank filed a suit for recovery of the amount payable by the borrower company. The bank also filed a complaint against the company, its Managing Director and the officials of Andhra Bank for diverse offences, namely, Section 120-B read with Sections 420, 467, 468, 471 of the Indian Penal Code read with Sections 5(2) and 5(1)(d) of the Prevention of Corruption Act, 1947 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The suit for recovery filed by the bank against the company and the Managing Director of the Company was compromised. The suit was compromised upon the Defendants agreeing to pay the amounts due as per the schedule mentioned in the consent terms. Clause 11 of the consent terms read, "agreed that save as aforesaid neither party has any claim against the other and parties do hereby withdraw all the allegations and counter-allegations made against each other". Based on Clause 11 of the consent terms, the Managing Director of the Company, the Appellant who was accused No. 3 in charge sheet filed by CBI, made application for discharge from the criminal complaint. The said application was rejected by the Special Judge (CBI), Greater Bombay, which came to be challenged before the Bombay High Court. The contention before the High Court was that since the subject matter of the dispute had been settled between the Appellant and the bank, it would be unreasonable to continue with the criminal proceedings. The High Court rejected the application for discharge from the criminal cases. It is from this order that the matter reached this Court by way of special leave. The Court having regard to the facts of the case and the earlier decision of this Court in B.S.

Joshi MANU/SC/0230/2003: (2003) 4 SCC 675, set aside the order of the High Court and quashed the criminal proceedings by consideration of the matter thus:

28. The basic intention of the accused in this case appears to have been to misrepresent the financial status of the Company, M/s Neemuch Emballage Ltd., Mumbai, in order to avail of the credit facilities to an extent to which the Company was not entitled. In other words, the main intention of the Company and its officers was to cheat the Bank and induce it to part with additional amounts of credit to which the Company was not otherwise entitled.

29. Despite the ingredients and the factual content of an offence of cheating punishable Under Section 420 Indian Penal Code, the same has been made compoundable under Sub-section (2) of Section 320 Code of Criminal Procedure with the leave of the court. of course, forgery has not been included as one of the compoundable offences, but it is in such cases that the principle enunciated in B.S. Joshi case becomes relevant.

30. In the instant case, the disputes between the Company and the Bank have been set at rest on the basis of the compromise arrived at by them whereunder the dues of the Bank have been cleared and the Bank does not appear to have any further claim against the Company. What, however, remains is the fact that certain documents were alleged to have been created by the Appellant herein in order to avail of credit facilities beyond the limit to which the Company was entitled. The dispute involved herein has overtones of a civil dispute with certain criminal facets. The question which is required to be answered in this case is whether the power which independently lies with this Court to quash the criminal proceedings pursuant to the compromise arrived at, should at all be exercised?

31. On an overall view of the facts as indicated hereinabove and keeping in mind the decision of this Court in B.S. Joshi case and the compromise arrived at between the Company and the Bank as also Clause 11 of the consent terms filed in the suit filed by the Bank, we are satisfied that this is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings, since, in our view, the continuance of the same after the compromise arrived at between the parties would be a futile exercise.

7. In Manoj Sharma MANU/SC/8122/2008: (2008) 16 SCC 1, the Court was concerned with the question whether an F.I.R. Under Sections 420/468/471/34/120-B Indian Penal Code can be quashed either Under Section 482 of the Code or under Article 226 of the Constitution when the accused and the complainant have compromised and settled the matter between themselves. Altamas Kabir, J., who delivered the lead judgment referred to B.S. Joshi MANU/SC/0230/2003: (2003) 4 SCC 675 and the submission made on behalf of the State that B.S. Joshi MANU/SC/0230/2003: (2003) 4 SCC 675 required a second look and held that the Court was not inclined to accept the contention made on behalf of the State that the decision in B.S. Joshi MANU/SC/0230/2003: (2003) 4 SCC 675 required

reconsideration, at least not in the facts of the case. It was held that what was decided in B.S. Joshi MANU/SC/0230/2003: (2003) 4 SCC 675 was the power and authority of the High Court to exercise jurisdiction Under Section 482 of the Code or under Article 226 of the Constitution to quash offences which were not compoundable. The law stated in B.S. Joshi MANU/SC/0230/2003: (2003) 4 SCC 675 simply indicated the powers of the High Court to quash any criminal proceeding or first information report or complaint whether the offences were compoundable or not. Altamas Kabir, J. further observed, "The ultimate exercise of discretion Under Section 482 Code of Criminal Procedure or under Article 226 of the Constitution is with the court which has to exercise such jurisdiction in the facts of each case. It has been explained that the said power is in no way limited by the provisions of Section 320 Code of Criminal Procedure. We are unable to disagree with such statement of law. In any event, in this case, we are only required to consider whether the High Court had exercised its jurisdiction Under Section 482 Code of Criminal Procedure legally and correctly." Then in paragraphs 8 and 9 (pg. 5) of the Report, Altamas Kabir, J., inter alia, held as under:

8....Once the complainant decided not to pursue the matter further, the High Court could have taken a more pragmatic view of the matter. We do not suggest that while exercising its powers under Article 226 of the Constitution the High Court could not have refused to quash the first information report, but what we do say is that the matter could have been considered by the High Court with greater pragmatism in the facts of the case.

9....In the facts of this case we are of the view that continuing with the criminal proceedings would be an exercise in futility....

8. Markandey Katju, J. although concurred with the view of Altamas Kabir, J. that criminal proceedings in that case deserved to be quashed but observed that question may have to be decided in some subsequent decision or decisions (preferably by a larger Bench) as to which non-compoundable cases can be quashed Under Section 482 of the Code or Article 226 of the Constitution on the basis that the parties have entered into compromise. In paragraphs 27 and 28 (pg. 10) of the report he held as under:

27. There can be no doubt that a case Under Section 302 Indian Penal Code or other serious offences like those Under Sections 395, 307 or 304-B cannot be compounded and hence proceedings in those provisions cannot be quashed by the High Court in exercise of its power Under Section 482 Code of Criminal Procedure or in writ jurisdiction on the basis of compromise. However, in some other cases (like those akin to a civil nature), the proceedings can be quashed by the High Court if the parties have come to an amicable settlement even though the provisions are not compoundable. Where a line is to be drawn will have to be decided in some later decisions of this Court, preferably by a larger Bench (so as to make it more authoritative). Some guidelines will have to be evolved in this connection and the matter cannot be left at the sole unguided discretion of Judges, otherwise there may be conflicting decisions and judicial anarchy. A judicial discretion

has to be exercised on some objective guiding principles and criteria, and not on the whims and fancies of individual Judges. Discretion, after all, cannot be the Chancellor's foot.

28. I am expressing this opinion because Shri B.B. Singh, Learned Counsel for the Respondent has rightly expressed his concern that the decision in B.S. Joshi case should not be understood to have meant that Judges can quash any kind of criminal case merely because there has been a compromise between the parties. After all, a crime is an offence against society, and not merely against a private individual.

9. Dr. Abhishek Manu Singhvi, learned senior Counsel for the Petitioner in SLP(Crl.) No. 6324 of 2009 submitted that the inherent power of the High Court to quash a non-compoundable offence was not circumscribed by any of the provisions of the Code, including Section 320. Section 482 is a declaration of the inherent power pre-existing in the High Court and so long as the exercise of the inherent power falls within the parameters of Section 482, it shall have an overriding effect over any of the provisions of the Code. He, thus, submitted that in exercise of its inherent powers Under Section 482, the High Court may permit compounding of a non-compoundable offence provided that in doing so it satisfies the conditions mentioned therein. Learned senior Counsel would submit that the power to quash the criminal proceedings Under Section 482 of the Code exists even in non-compoundable offence but its actual exercise will depend on facts of a particular case. He submitted that some or all of the following tests may be relevant to decide whether to quash or not to quash the criminal proceedings in a given case; (a) the nature and gravity of case; (b) does the dispute reflect overwhelming and pre-dominantly civil favour; (c) would the quashing involve settlement of entire or almost the entire dispute; (d) the compromise/settlement between parties and/or other facts and the circumstances render possibility of conviction remote and bleak; (e) not to quash would cause extreme injustice and would not serve ends of justice and (f) not to quash would result in abuse of process of court.

10. Shri P.P. Rao, learned senior Counsel for the Petitioner in Special Leave Petition (Crl.) No. 5921 of 2009 submitted that Section 482 of the Code is complete answer to the reference made to the larger Bench. He analysed Section 482 and Section 320 of the Code and submitted that Section 320 did not limit or affect the inherent powers of the High Court. Notwithstanding Section 320, High Court can exercise its inherent power, inter alia, to prevent abuse of the process of any court or otherwise to secure the ends of justice. To secure the ends of justice is a wholesome and definite guideline. It requires formation of opinion by High Court on the basis of material on record as to whether the ends of justice would justify quashing of a particular criminal complaint, FIR or a proceeding. When the Court exercises its inherent power under Section 482 in respect of offences which are not compoundable taking into account the fact that the accused and the complainant have settled their differences amicably, it cannot be viewed as permitting compounding of offence which is not compoundable.

11. Mr. P.P. Rao, learned senior Counsel submitted that in cases of civil wrongs which also constitute criminal offences, the High Court may pass order Under Section 482 once both parties jointly pray for dropping the criminal proceeding initiated by one of them to put an end to the dispute and restore peace between the parties.

12. Mr. V. Giri, learned senior Counsel for the Respondent (accused) in Special Leave Petition (Crl.) No. 6138 of 2006 submitted that the real question that needs to be considered by this Court in the reference is whether Section 320(9) of the Code creates a bar or limits or affects the inherent powers of the High Court Under Section 482 of the Code. It was submitted that Section 320(9) does not create a bar or limit or affect the inherent powers of the High Court in the matter of quashing any criminal proceedings. Relying upon various decisions of this Court, it was submitted that it has been consistently held that the High Court has unfettered powers Under Section 482 of the Code to secure the ends of justice and prevent abuse of the process of the Court. He also submitted that on compromise between the parties, the High Court in exercise of powers Under Section 482 can quash the criminal proceedings, more so the matters arising from matrimonial dispute, property dispute, dispute between close relations, partners or business concerns which are predominantly of civil, financial or commercial nature.

13. Learned Counsel for the Petitioner in Special Leave Petition (Crl.) No. 8989 of 2010 submitted that the court should have positive view to quash the proceedings once the aggrieved party has compromised the matter with the wrong doer. It was submitted that if the court did not allow the quashing of FIR or complaint or criminal case where the parties settled their dispute amicably, it would encourage the parties to speak lie in the court and witnesses would become hostile and the criminal proceeding would not end in conviction. Learned Counsel submitted that the court could also consider the two questions (1) can there be partial quashing of the FIR qua accused with whom the complainant/aggrieved party enters into compromise. (2) can the court quash the proceedings in the cases which have not arisen from the matrimonial or civil disputes but the offences are personal in nature like grievous hurt (Section 326), attempt to murder (Section 307), rape (Section 376), trespassing (Section 452) and kidnapping (Section 364, 365) etc.

14. Mr. P.P. Malhotra, learned Additional Solicitor General referred to the scheme of the Code. He submitted that in any criminal case investigated by police on filing the report Under Section 173 of the Code, the Magistrate, after applying his mind to the chargesheet and the documents accompanying the same, if takes cognizance of the offences and summons the accused and/or frames charges and in certain grave and serious offences, commits the accused to be tried by a court of Sessions and the Sessions Court after satisfying itself and after hearing the accused frames charges for the offences alleged to have been committed by him, the Code provides a remedy to accused to challenge the order taking cognizance or of framing charges. Similar situation may follow in a

complaint case. Learned Additional Solicitor General submitted that power Under Section 482 of the Code cannot be invoked in the non-compoundable offences since Section 320(9) expressly prohibits the compounding of such offences. Quashing of criminal proceedings of the offences which are non-compoundable would negative the effect of the order of framing charges or taking cognizance and therefore quashing would amount to taking away the order of cognizance passed by the Magistrate.

15. Learned Additional Solicitor General would submit that when the Court takes cognizance or frames charges, it is in accordance with the procedure established by law. Once the court takes cognizance or frames charges, the method to challenge such order is by way of appropriate application to the superior court under the provisions of the Code.

16. If power Under Section 482 is exercised, in relation to non-compoundable offences, it will amount to what is prohibited by law and such cases cannot be brought within the parameters 'to secure ends of justice'. Any order in violation and breach of statutory provisions, learned Additional Solicitor General would submit, would be a case against the ends of justice. He heavily relied upon a Constitution Bench decision of this Court in Central Bureau of Investigation and Ors. v. Keshub Mahindra and Ors. MANU/SC/0589/2011: (2011) 6 SCC 216 wherein this Court held, 'no decision by any court, this Court not excluded, can be read in a manner as to nullify the express provisions of an Act or the Code.' With reference to B.S. Joshi MANU/SC/0230/2003: (2003) 4 SCC 675, learned Additional Solicitor General submitted that that was a case where the dispute was between the husband and wife and the court felt that if the proceedings were not quashed, it would prevent the woman from settling in life and the wife had already filed an affidavit that there were temperamental differences and she was not supporting continuation of criminal proceedings. As regards, Nikhil Merchant MANU/SC/7957/2008: (2008) 9 SCC 677, learned Additional Solicitor General submitted that this Court in State of Madhya Pradesh v. Rameshwar and Ors. MANU/SC/0521/2009: (2009) 11 SCC 424 held that the said decision was a decision under Article 142 of the Constitution. With regard to Manoj Sharma MANU/SC/8122/2008: (2008) 16 SCC 1, learned Additional Solicitor General referred to the observations made by Markandey Katju, J. in paragraphs 24 and 28 of the Report.

17. Learned Additional Solicitor General submitted that the High Court has no power to quash criminal proceedings in regard to offences in which a cognizance has been taken by the Magistrate merely because there has been settlement between the victim and the offender because the criminal offence is against the society.

18. More than 65 years back, in Emperor v. Khwaja Nazir Ahmed MANU/MH/0097/1944: (1945) 47 Bom. L.R. 245, it was observed by the Privy Council that Section 561A (corresponding to Section 482 of the Code) had not given increased powers to the Court which it did not possess before that section was enacted. It was

observed, `The section gives no new powers, it only provides that those which the court already inherently possess shall be preserved and is inserted lest, as their Lordships think, it should be considered that the only powers possessed by the court are those expressly conferred by the Code of Criminal Procedure and that no inherent power had survived the passing of the Code'.

19. In Khushi Ram v. Hashim and Ors. AIR 1959 SC 542, this Court held as under:

It is unnecessary to emphasis that the inherent power of the High Court Under Section 561A cannot be invoked in regard to matters which are directly covered by the specific provisions of the Code...
20. The above view of Privy Council in Khwaja Nazir Ahmed and Anr. MANU/MH/0097/1944: (1945) 47 Bom. L.R. 245 decision in Lala Jairam Das and Ors. v. Emperor MANU/PR/0005/1945: AIR 1945 PC 94 was expressly accepted by this Court in State of Uttar Pradesh. v. Mohammad Naim MANU/SC/0062/1963: AIR 1964 SC 703. The Court said:

7. It is now well settled that the section confers no new powers on the High Court. It merely safeguards all existing inherent powers possessed by a High Court necessary (among other purposes) to secure the ends of justice. The section provides that those powers which the court inherently possesses shall be preserved lest it be considered that the only powers possessed by the court are those expressly conferred by the Code and that no inherent powers had survived the passing of the Code....
21. In Pampathy v. State of Mysore MANU/SC/0090/1966: 1966 (Supp) SCR 477, a three-Judge Bench of this Court stated as follows:

The inherent power of the High Court mentioned in Section 561A, Code of Criminal Procedure can be exercised only for either of the three purposes specifically mentioned in the section. The inherent power cannot be invoked in respect of any matter covered by the specific provisions of the Code. It cannot also be invoked if its exercise would be inconsistent with any of the specific provisions of the Code. It is only if the matter in question is not covered by any specific provisions of the Code that Section 561A can come into operation....
22. In State of Karnataka v. L. Muniswamy and Ors. MANU/SC/0143/1977: (1977) 2 SCC 699, a three- Judge Bench of this Court referred to Section 482 of the Code and in paragraph 7 (pg. 703) of the Report held as under:

7.... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of

harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.
23. The Court then observed that the considerations justifying the exercise of inherent powers for securing the ends of justice naturally vary from case to case and a jurisdiction as wholesome as the one conferred by Section 482 ought not to be encased within the straitjacket of a rigid formula.

24. A three-Judge Bench of this Court in Madhu Limaye v. The State of Maharashtra MANU/SC/0103/1977: (1977) 4 SCC 551, dealt with the invocation of inherent power Under Section 482 for quashing interlocutory order even though revision Under Section 397(2) of the Code was prohibited. The Court noticed the principles in relation to the exercise of the inherent power of the High Court as under:

(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

(3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

25. In Raj Kapoor and Ors. v. State and Ors. MANU/SC/0210/1979: (1980) 1 SCC 43, the Court explained the width and amplitude of the inherent power of the High Court Under Section 482 vis-à-vis revisional power Under Section 397 as follows:

10....The opening words of Section 482 contradict this contention because nothing of the Code, not even Section 397, can affect the amplitude of the inherent power preserved in so many terms by the language of Section 482. Even so, a general principle pervades this branch of law when a specific provision is made: easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code. In Madhu Limaye's case this Court has exhaustively and, if I may say so with great respect, correctly discussed and delineated the law beyond mistake. While it is true that Section 482 is pervasive it should not subvert legal interdicts written into the same Code,

such, for instance, in Section 397(2). Apparent conflict may arise in some situations between the two provisions and a happy solution

would be to say that the bar provided in Sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one or the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction.

In short, there is no total ban on the exercise of inherent power where abuse of the process of the court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more. The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the court in the face. In between is a tertium quid, as Untwalia, J. has pointed out as for example, where it is more than a purely interlocutory order and less than a final disposal. The present case falls under that category where the accused complain of harassment through the court's process. Can we state that in this third category the inherent power can be exercised? In the words of Untwalia, J.: (SCC p. 556, para 10)

The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible.

I am, therefore clear in my mind that the inherent power is not rebuffed in the case situation before us. Counsel on both sides, sensitively responding to our allergy for legalistics, rightly agreed that the fanatical insistence on the formal filing of a copy of the order under cessation need not take up this Court's time. Our conclusion concurs with the concession of counsel on both sides that merely because a copy of the order has not

been produced, despite its presence in the records in the court, it is not possible for me to hold that the entire revisory power stands frustrated and the inherent power stultified.

26. In Simrikhia v. Dolley Mukherjee and Chhabi Mukherjee and Anr. MANU/SC/0440/1990: (1990) 2 SCC 437, the Court considered the scope of Section 482 of the Code in a case where on dismissal of petition Under Section 482, a second petition Under Section 482 of the Code was made. The contention before this Court was that the second petition Under Section 482 of the Code was not entertainable; the exercise of power Under Section 482 on a second petition by the same party on the same ground virtually amounts to review of the earlier order and is contrary to the spirit of Section 362 of the Code and the High Court was in error in having quashed the proceedings by adopting that course. While accepting this argument, this Court held as follows:

3....The inherent power Under Section 482 is intended to prevent the abuse of the process of the court and to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code. If any consideration of the facts by way of review is not permissible under the Code and is expressly barred, it is not for the court to exercise its inherent power to reconsider the matter and record a conflicting decision. If there had been change in the circumstances of the case, it would be in order for the High Court to exercise its inherent powers in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the court. Where there is no such changed circumstances and the decision has to be arrived at on the facts that existed as on the date of the earlier order, the exercise of the power to reconsider the same materials to arrive at different conclusion is in effect a review, which is expressly barred Under Section 362.

5. Section 362 of the Code expressly provides that no court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error save as otherwise provided by the Code. Section 482 enables the High Court to make such order as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. The inherent powers, however, as much are controlled by principle and precedent as are its express powers by statute. If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction.

7. The inherent jurisdiction of the High Court cannot be invoked to override bar of review Under Section 362. It is clearly stated in Sooraj Devi v. Pyare Lal, that the inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code. The law is therefore clear that the inherent power cannot be exercised for doing that which cannot be done on account of the bar under other provisions of the Code. The court is not empowered to review its own decision under the purported exercise of inherent power. We find that the impugned order in this case is in effect one reviewing

the earlier order on a reconsideration of the same materials. The High Court has grievously erred in doing so. Even on merits, we do not find any compelling reasons to quash the proceedings at that stage.

27. In Dharampal and Ors. v. Ramshri (Smt.) and Ors. MANU/SC/0214/1993: 1993 Cri. L.J. 1049, this Court observed as follows:

...It is now well settled that the inherent powers Under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred by the Code....
28. In Arun Shankar Shukla v. State of Uttar Pradesh and Ors. MANU/SC/0410/1999: AIR 1999 SC 2554, a two-Judge Bench of this Court held as under:

...It is true that Under Section 482 of the Code, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any court or otherwise to secure the ends of justice. But the expressions "abuse of the process of law" or "to secure the ends of justice" do not confer unlimited jurisdiction on the High Court and the alleged abuse of the process of law or the ends of justice could only be secured in accordance with law including procedural law and not otherwise. Further, inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned in Section 482 of the Code in cases where there is no express provision empowering the High Court to achieve the said object. It is well-neigh settled that inherent power is not to be invoked in respect of any matter covered by specific provisions of the Code or if its exercise would infringe any specific provision of the Code. In the present case, the High Court overlooked the procedural law which empowered the convicted accused to prefer statutory appeal against conviction of the offence. The High Court has intervened at an uncalled for stage and soft-pedalled the course of justice at a very crucial stage of the trial.
29. In G. Sagar Suri and Anr. v. State of U.P. and Ors. MANU/SC/0045/2000: (2000) 2 SCC 636, the Court was concerned with the order of the High Court whereby the application Under Section 482 of the Code for quashing the criminal proceedings Under Sections 406 and 420 of the Indian Penal Code pending in the Court of Chief Judicial Magistrate, Ghaziabad was dismissed. In paragraph 8 (pg. 643) of the Report, the Court held as under:

8. Jurisdiction Under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction Under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.

30. A three-Judge Bench of this Court in State of Karnataka v. M. Devendrappa and Anr. MANU/SC/0027/2002: (2002) 3 SCC 89 restated what has been stated in earlier decisions that Section 482 does not confer any new powers on the High Court, it only saves the inherent power which the court possessed before the commencement of the Code. The Court went on to explain the exercise of inherent power by the High Court in paragraph 6 (Pg.94) of the Report as under:

6....It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice....
The Court in paragraph 9 (Pg. 96) further stated:

9.....the powers possessed by the High Court Under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. of course, no hard-and-fast rule can be laid down in regard

to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage....
31. In Central Bureau of Investigation v. A. Ravishankar Prasad and Ors. MANU/SC/0808/2009: (2009) 6 SCC 351, the Court observed in paragraphs 17, 19, 20 and 39 (Pgs. 356, 357 and 363) of the Report as follows:

17. Undoubtedly, the High Court possesses inherent powers Under Section 482 of the Code of Criminal Procedure. These inherent powers of the High Court are meant to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court.

19. This Court time and again has observed that the extraordinary power Under Section 482 Code of Criminal Procedure should be exercised sparingly and with great care and caution. The Court would be justified in exercising the power when it is imperative to exercise the power in order to prevent injustice. In order to understand the nature and scope of power under Section 482 Code of Criminal Procedure it has become necessary to recapitulate the ratio of the decided cases.

20. Reference to the following cases would reveal that the Courts have consistently taken the view that they must use the court's extraordinary power only to prevent injustice and secure the ends of justice. We have largely inherited the provisions of inherent powers from the English jurisprudence, therefore the principles decided by the English courts would be of relevance for us. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. The English courts have also used inherent power to achieve the same objective.

39. Careful analysis of all these judgments clearly reveals that the exercise of inherent powers would entirely depend on the facts and circumstances of each case. The object of incorporating inherent powers in the Code is to prevent abuse of the process of the court or to secure ends of justice.

32 In Devendra and Ors. v. State of Uttar Pradesh and Anr. MANU/SC/0941/2009: (2009) 7 SCC 495, while dealing with the question whether a pure civil dispute can be subject matter of a criminal proceeding Under Sections 420, 467, 468 and 469 Indian Penal Code, a two-Judge Bench of this Court observed that the High Court ordinarily would exercise its jurisdiction Under Section 482 of the Code if the allegations made in the First Information Report, even if given face value and taken to be correct in their entirety, do not make out any offence.

33. In Sushil Suri v. Central Bureau of Investigation and Anr. MANU/SC/0563/2011: (2011) 5 SCC 708, the Court considered the scope and ambit of the inherent jurisdiction of the High Court and made the following observations in para 16 (pg. 715) of the Report:

16. Section 482 Code of Criminal Procedure itself envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely, (i) to give effect to an order under Code of Criminal Procedure; (ii) to prevent an abuse of the process of court; and (iii) to otherwise secure the ends of justice. It is trite that although the power possessed by the High Court under the said provision is very wide but it is not unbridled. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the Court exists. Nevertheless, it is neither feasible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Yet, in numerous cases, this Court has laid down certain broad principles which may be borne in mind while exercising jurisdiction Under Section 482 Code of Criminal Procedure. Though it is emphasised that exercise of inherent powers would depend on the facts and circumstances of each case, but the common thread which runs through all the decisions on the subject is that the Court would be justified in invoking its inherent jurisdiction where the allegations made in the complaint or charge-sheet, as the case may be, taken at their face value and accepted in their entirety do not constitute the offence alleged.
34. Besides B.S. Joshi MANU/SC/0230/2003: (2003) 4 SCC 675, Nikhil Merchant MANU/SC/7957/2008: (2008) 9 SCC 677 and Manoj Sharma MANU/SC/8122/2008: (2008) 16 SCC 1, there are other decisions of this Court where the scope of Section 320 vis-à-vis the inherent power of the High Court under Section 482 of the Code has come up for consideration.

35. In Madan Mohan Abbot v. State of Punjab MANU/SC/1204/2008: (2008) 4 SCC 582, in the appeal before this Court which arose from an order of the High Court refusing to quash the FIR against the Appellant lodged Under Sections 379, 406, 409, 418, 506/34, Indian Penal Code on account of compromise entered into between the complainant and the accused, in paragraphs 5 and 6 (pg. 584) of the Report, the Court held as under:

5. It is on the basis of this compromise that the application was filed in the High Court for quashing of proceedings which has been dismissed by the impugned order. We notice from a reading of the FIR and the other documents on record that the dispute was purely a personal one between two contesting parties and that it arose out of extensive business dealings between them and that there was absolutely no public policy involved in the nature of the allegations made against the accused. We are, therefore, of the opinion that no useful purpose would be served in continuing with the proceedings in the light of the compromise and also in the light of the fact that the complainant has on 11-1-2004 passed away and the possibility of a conviction being recorded has thus to be ruled out.

6. We need to emphasis that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilised in

deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law.

36. In Ishwar Singh v. State of Madhya Pradesh MANU/SC/8126/2008: (2008) 15 SCC 667, the Court was concerned with a case where the accused - Appellant was convicted and sentenced by the Additional Sessions Judge for an offence punishable Under Section 307, Indian Penal Code. The High Court dismissed the appeal from the judgment and conviction. In the appeal, by special leave, the injured - complainant was ordered to be joined as party as it was stated by the counsel for the Appellant that mutual compromise has been arrived at between the parties, i.e. accused on the one hand and the complainant - victim on the other hand during the pendency of the proceedings before this Court. It was prayed on behalf of the Appellant that the appeal be disposed of on the basis of compromise between the parties. In para 12 (pg. 670) of the Report, the Court observed as follows:

12. Now, it cannot be gainsaid that an offence punishable Under Section 307 Indian Penal Code is not a compoundable offence. Section 320 of the Code of Criminal Procedure, 1973 expressly states that no offence shall be compounded if it is not compoundable under the Code. At the same time, however, while dealing with such matters, this Court may take into account a relevant and important consideration about compromise between the parties for the purpose of reduction of sentence.

37. The Court also referred to the earlier decisions of this Court in Jetha Ram v. State of Rajasthan MANU/SC/2586/2005: (2006) 9 SCC 255, Murugesan v. Ganapathy Velar MANU/SC/2358/2000: (2001) 10 SCC 504, Ishwarlal v. State of M.P. (2008) 15 SCC 671 and Mahesh Chand and Anr. v. State of Rajasthan MANU/SC/0268/1988: 1990 (supp) SCC 681 and noted in paragraph 13 (pg. 670) of the Report as follows:

13. In Jetha Ram v. State of Rajasthan, Murugesan v. Ganapathy Velar and Ishwarlal v. State of M.P. this Court, while taking into account the fact of compromise between the parties, reduced sentence imposed on the Appellant-accused to already undergone, though the offences were not compoundable. But it was also stated that in Mahesh Chand v. State of Rajasthan such offence was ordered to be compounded.

Then, in paragraphs 14 and 15 (pg. 670) the Court held as under:

14. In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. In our judgment, however, limited submission of the Learned Counsel for the Appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which the Court may keep in mind.

15. In the instant case, the incident took place before more than fifteen years; the parties are residing in one and the same village and they are also relatives. The Appellant was

about 20 years of age at the time of commission of crime. It was his first offence. After conviction, the Petitioner was taken into custody. During the pendency of appeal before the High Court, he was enlarged on bail but, after the decision of the High Court, he again surrendered and is in jail at present. Though he had applied for bail, the prayer was not granted and he was not released on bail. Considering the totality of facts and circumstances, in our opinion, the ends of justice would be met if the sentence of imprisonment awarded to the Appellant (Accused 1) is reduced to the period already undergone.

38. In Rumi Dhar (Smt.) v. State of West Bengal and Anr. MANU/SC/0544/2009: (2009) 6 SCC 364, the Court was concerned with applicability of Section 320 of the Code where the accused was being prosecuted for commission of offences Under Sections 120-B/420/467/468/471 of the Indian Penal Code along with the bank officers who were being prosecuted Under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988. The accused had paid the entire due amount as per the settlement with the bank in the matter of recovery before the Debts Recovery Tribunal. The accused prayed for her discharge on the grounds (i) having regard to the settlement arrived at between her and the bank, no case for proceeding against her has been made out; (ii) the amount having already been paid and the title deeds having been returned, the criminal proceedings should be dropped on the basis of the settlement and (iii) the dispute between the parties were purely civil in nature and that she had not fabricated any document or cheated the bank in any way whatsoever and charges could not have been framed against her. The CBI contested the application for discharge on the ground that mere repayment to the bank could not exonerate the accused from the criminal proceeding. The two-Judge Bench of this Court referred to Section 320 of the Code and the earlier decisions of this Court in CBI v. Duncans Agro Industries Limited MANU/SC/0622/1996: (1996) 5 SCC 591, State of Haryana v. Bhajan Lal MANU/SC/0115/1992: 1992 Supp (1) SCC 335 State of Bihar v. P.P. Sharma MANU/SC/0542/1992: 1992 Supp (1) SCC 222 Janata Dal v. H.S. Chowdhary MANU/SC/0532/1992: (1992) 4 SCC 305 and Nikhil Merchant MANU/SC/7957/2008: (2008) 9 SCC 677 which followed the decision in B.S. Joshi MANU/SC/0230/2003: (2003) 4 SCC 675 and then with reference to Article 142 of the Constitution and Section 482 of the Code refused to quash the charge against the accused by holding as under:

24. The jurisdiction of the Court under Article 142 of the Constitution of India is not in dispute. Exercise of such power would, however, depend on the facts and circumstances of each case. The High Court, in exercise of its jurisdiction Under Section 482 of the Code of Criminal Procedure, and this Court, in terms of Article 142 of the Constitution of India, would not direct quashing of a case involving crime against the society particularly when both the learned Special Judge as also the High Court have found that a prima facie case has been made out against the Appellant herein for framing the charge.

39. In Shiji alias Pappu and Ors. v. Radhika and Anr. (2011) 10 SCC 705 this Court considered the exercise of inherent power by the High Court Under Section 482 in a

matter where the offence was not compoundable as the accused was already involved in commission of the offences punishable Under Sections 354 and 394 Indian Penal Code. The High Court rejected the prayer by holding that the offences with which Appellants were charged are not 'personal in nature' to justify quashing the criminal proceedings on the basis of a compromise arrived at between the complainant and the Appellants. This Court considered earlier decisions of this Court, the provisions contained in Sections 320 and 394 of the Code and in paragraphs 17, 18 and 19 (pgs. 712 and 713) of the Report held as under:

17. It is manifest that simply because an offence is not compoundable Under Section 320 Code of Criminal Procedure is by itself no reason for the High Court to refuse exercise of its power Under Section 482 Code of Criminal Procedure. That power can in our opinion be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility. There is a subtle distinction between compounding of offences by the parties before the trial court or in appeal on the one hand and the exercise of power by the High Court to quash the prosecution Under Section 482 Code of Criminal Procedure on the other. While a court trying an accused or hearing an appeal against conviction, may not be competent to permit compounding of an offence based on a settlement arrived at between the parties in cases where the offences are not compoundable Under Section 320, the High Court may quash the prosecution even in cases where the offences with which the accused stand charged are non-compoundable. The inherent powers of the High Court Under Section 482 Code of Criminal Procedure are not for that purpose controlled by Section 320 Code of Criminal Procedure.

18. Having said so, we must hasten to add that the plenitude of the power Under Section 482 Code of Criminal Procedure by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power Under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law. The High Court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition Under Section 482 of the Code of Criminal Procedure. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked.

19. Coming to the case at hand, we are of the view that the incident in question had its genesis in a dispute relating to the access to the two plots which are adjacent to each

other. It was not a case of broad daylight robbery for gain. It was a case which has its origin in the civil dispute between the parties, which dispute has, it appears, been resolved by them. That being so, continuance of the prosecution where the complainant is not ready to support the allegations which are now described by her as arising out of some "misunderstanding and misconception" will be a futile exercise that will serve no purpose. It is noteworthy that the two alleged eyewitnesses, who are closely related to the complainant, are also no longer supportive of the prosecution version. The continuance of the proceedings is thus nothing but an empty formality. Section 482 Code of Criminal Procedure could, in such circumstances, be justifiably invoked by the High Court to prevent abuse of the process of law and thereby preventing a wasteful exercise by the courts below.

40. In Ashok Sadarangani and Anr. v. Union of India and Ors. JT 2012 (3) SC 469, the issue under consideration was whether an offence which was not compoundable under the provisions of the Code could be quashed. That was a case where a criminal case was registered against the accused persons Under Sections 120-B, 465, 467, 468 and 471 of Indian Penal Code. The allegation was that accused secured the credit facilities by submitting forged property documents as collaterals and utilized such facilities in a dishonest and fraudulent manner by opening Letters of Credit in respect of foreign supplies of goods, without actually bringing any goods but inducing the Bank to negotiate the Letters of Credit in favour of foreign suppliers and also by misusing the cash credit facility. The Court considered the earlier decisions of this Court including B.S. Joshi MANU/SC/0230/2003: (2003) 4 SCC 675, Nikhil Merchant MANU/SC/7957/2008: (2008) 9 SCC 677, Manoj Sharma MANU/SC/8122/2008: (2008) 16 SCC 1, Shiji alias Pappu (2011) 10 SCC 705, Duncans Agro Industries Limited MANU/SC/0622/1996: (1996) 5 SCC 591, Rumi Dhar (Smt.) MANU/SC/0544/2009: (2009) 6 SCC 364 and Sushil Suri MANU/SC/0563/2011: (2011) 5 SCC 708 and also referred to the order of reference in one of the cases before us. In paragraphs 17, 18, 19 and 20 of the Report it was held as under:

17. Having carefully considered the facts and circumstances of the case, as also the law relating to the continuance of criminal cases where the complainant and the accused had settled their differences and had arrived at an amicable arrangement, we see no reason to differ with the views that had been taken in Nikhil Merchant's case or Manoj Sharma's case (supra) or the several decisions that have come thereafter. It is, however, no coincidence that the golden thread which runs through all the decisions cited, indicates that continuance of a criminal proceeding after a compromise has been arrived at between the complainant and the accused, would amount to abuse of the process of court and an exercise in futility, since the trial could be prolonged and ultimately, may conclude in a decision which may be of any consequence to any of the other parties. Even in Sushil Suri's case on which the learned Additional Solicitor General had relied, the learned Judges who decided the said case, took note of the decisions in various other cases, where it had been reiterated that the exercise of inherent powers would depend

entirely on the facts and circumstances of each case. In other words, not that there is any restriction on the power or authority vested in the Supreme Court in exercising powers under Article 142 of the Constitution, but that in exercising such powers the Court has to be circumspect, and has to exercise such power sparingly in the facts of each case. Furthermore, the issue, which has been referred to a larger Bench in Gian Singh's case (supra) in relation to the decisions of this Court in B.S. Joshi's case, Nikhil Merchant's case, as also Manoj Sharma's case, deal with a situation which is different from that of the present case. While in the cases referred to hereinabove, the main question was whether offences which were not compoundable, Under Section 320 Code of Criminal Procedure. could be quashed Under Section 482 Code of Criminal Procedure., in Gian Singh's case the Court was of the view that a non-compoundable offence could not be compounded and that the Courts should not try to take over the function of the Parliament or executive. In fact, in none of the cases referred to in Gian Singh's case, did this Court permit compounding of non-compoundable offences. On the other hand, upon taking various factors into consideration, including the futility of continuing with the criminal proceedings, this Court ultimately quashed the same.

18. In addition to the above, even with regard to the decision of this Court in Central Bureau of Investigation v. Ravi Shankar Prasad and Ors.: [MANU/SC/0808/2009: (2009) 6 SCC 351], this Court observed that the High Court can exercise power Under Section 482 Code of Criminal Procedure. to do real and substantial justice and to prevent abuse of the process of Court when exceptional circumstances warranted the exercise of such power. Once the circumstances in a given case were held to be such as to attract the provisions of Article 142 or Articles 32 and 226 of the Constitution, it would be open to the Supreme Court to exercise its extraordinary powers under Article 142 of the Constitution to quash the proceedings, the continuance whereof would only amount to abuse of the process of Court. In the instant case the dispute between the Petitioners and the Banks having been compromised, we have to examine whether the continuance of the criminal proceeding could turn out to be an exercise in futility without anything positive being ultimately achieved.

19. As was indicated in Harbhajan Singh's case (supra), the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in Gian Singh's case (supra) need not, therefore, detain us. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field.

20. In the present case, the fact situation is different from that in Nikhil Merchant's case (supra). While in Nikhil Merchant's case the accused had misrepresented the financial status of the company in question in order to avail of credit facilities to an extent to which the company was not entitled, in the instant case, the allegation is that as part of a larger conspiracy, property acquired on lease from a person who had no title to the leased properties, was offered as collateral security for loans obtained. Apart from the above,

the actual owner of the property has filed a criminal complaint against Shri Kersi V. Mehta who had held himself out as the Attorney of the owner and his family members. The ratio of the decisions in B.S. Joshi's case and in Nikhil Merchant's case or for that matter, even in Manoj Sharma's case, does not help the case of the writ Petitioners. In Nikhil Merchant's case, this Court had in the facts of the case observed that the dispute involved had overtures of a civil dispute with criminal facets. This is not so in the instant case, where the emphasis is more on the criminal intent of the Petitioners than on the civil aspect involving the dues of the Bank in respect of which a compromise was worked out.

The Court distinguished B.S. Joshi MANU/SC/0230/2003: (2003) 4 SCC 675 and Nikhil Merchant MANU/SC/7957/2008: (2008) 9 SCC 677 by observing that those cases dealt with different fact situation.

41. In Rajiv Saxena and Ors. v. State (NCT of Delhi) and Anr. MANU/SC/0062/2012: (2012) 5 SCC 627, this Court allowed the quashment of criminal case Under Sections 498-A and 496 read with Section 34 Indian Penal Code by a brief order. It was observed that since the parties had settled their disputes and the complainant agreed that the criminal proceedings need not be continued, the criminal proceedings could be quashed.

42. In a very recent judgment decided by this Court in the month of July, 2012 in Jayrajsinh Digvijaysinh Rana v. State of Gujarat and Anr. MANU/SC/0585/2012: JT 2012 (6) SC 504, this Court was again concerned with the question of quashment of an FIR alleging offences punishable Under Sections 467, 468, 471, 420 and 120-B Indian Penal Code. The High Court refused to quash the criminal case Under Section 482 of the Code. The question for consideration was that inasmuch as all those offences, except Section 420 Indian Penal Code, were non-compoundable offences Under Section 320 of the Code, whether it would be possible to quash the FIR by the High Court Under Section 482 of the Code or by this Court under Article 136 of the Constitution of India. The Bench elaborately considered the decision of this Court in Shiji alias Pappu (2011) 10 SCC 705 and by invoking Article 142 of the Constitution quashed the criminal proceedings. It was held as under:

10. In the light of the principles mentioned above, inasmuch as Respondent No. 2 -the Complainant has filed an affidavit highlighting the stand taken by the Appellant (Accused No. 3) during the pendency of the appeal before this Court and the terms of settlement as stated in the said affidavit, by applying the same analogy and in order to do complete justice under Article 142 of the Constitution, we accept the terms of settlement insofar as the Appellant herein (Accused No. 3) is concerned.

11. In view of the same, we quash and set aside the impugned FIR No. 45/2011 registered with Sanand Police Station, Ahmedabad for offences punishable Under Sections 467, 468, 471, 420 and 120-B of Indian Penal Code insofar as the Appellant (Accused No. 3) is concerned. The appeal is allowed to the extent mentioned above.

43. In Y. Suresh Babu v. State of A.P. MANU/SC/0900/1987: (2005) 1 SCC 347 decided on April 29, 1987, this Court allowed the compounding of an offence Under Section 326 Indian Penal Code even though such compounding was not permitted by Section 320 of the Code. However, in Ram Lal and Anr. v. State of J and K (MANU/SC/0034/1999: 1999 2 SCC 213, this Court observed that Y. Suresh Babu MANU/SC/0900/1987: (2005) 1 SCC 347 was per incuriam. It was held that an offence which law declares to be non-compoundable cannot be compounded at all even with the permission of the Court.

44. Having surveyed the decisions of this Court which throw light on the question raised before us, two decisions, one given by the Punjab and Haryana High Court and the other by Bombay High Court deserve to be noticed.

45. A five-Judge Bench of the Punjab and Haryana High Court in Kulwinder Singh and Ors. v. State of Punjab and Anr. MANU/PH/0222/2007: (2007) 4 CTC 769 was called upon to determine, inter alia, the question whether the High Court has the power Under Section 482 of the Code to quash the criminal proceedings or allow the compounding of the offences in the cases which have been specified as non-compoundable offences under the provisions of Section 320 of the Code. The five-Judge Bench referred to quite a few decisions of this Court including the decisions in Madhu Limaye MANU/SC/0103/1977: (1977) 4 SCC 551, Bhajan Lal MANU/SC/0115/1992: 1992 Supp (1) SCC 335, L. Muniswamy MANU/SC/0143/1977: (1977) 2 SCC 699, Simrikhia MANU/SC/0440/1990: (1990) 2 SCC 437, B.S. Joshi MANU/SC/0230/2003: (2003) 4 SCC 675 and Ram Lal (MANU/SC/0034/1999: 1999 2 SCC 213 and framed the following guidelines:

a. Cases arising from matrimonial discord, even if other offences are introduced for aggravation of the case.

b. Cases pertaining to property disputes between close relations, which are predominantly civil in nature and they have a genuine or belaboured dimension of criminal liability. Notwithstanding a touch of criminal liability, the settlement would bring lasting peace and harmony to larger number of people.

c. Cases of dispute between old partners or business concerns with dealings over a long period which are predominantly civil and are given or acquire a criminal dimension but the parties are essentially seeking a redressal of their financial or commercial claim.

d. Minor offences as Under Section 279, Indian Penal Code may be permitted to be compounded on the basis of legitimate settlement between the parties. Yet another offence which remains non-compoundable is Section 506 (II), Indian Penal Code, which is punishable with 7 years imprisonment. It is the judicial experience that an offence Under Section 506 Indian Penal Code in most cases is based on the oral declaration with

different shades of intention. Another set of offences, which ought to be liberally compounded, are Sections 147 and 148, Indian Penal Code, more particularly where other offences are compoundable. It may be added here that the State of Madhya Pradesh vide M.P. Act No. 17 of 1999 (Section 3) has made Sections 506(II) Indian Penal Code, 147 Indian Penal Code and 148, Indian Penal Code compoundable offences by amending the schedule Under Section 320, Code of Criminal Procedure.

e. The offences against human body other than murder and culpable homicide where the victim dies in the course of transaction would fall in the category where compounding may not be permitted. Heinous offences like highway robbery, dacoity or a case involving clear-cut allegations of rape should also fall in the prohibited category. Offences committed by Public Servants purporting to act in that capacity as also offences against public servant while the victims are acting in the discharge of their duty must remain non-compoundable. Offences against the State enshrined in Chapter-VII (relating to army, navy and air force) must remain non-compoundable.

f. That as a broad guideline the offences against human body other than murder and culpable homicide may be permitted to be compounded when the court is in the position to record a finding that the settlement between the parties is voluntary and fair.

While parting with this part, it appears necessary to add that the settlement or compromise must satisfy the conscience of the court. The settlement must be just and fair besides being free from the undue pressure, the court must examine the cases of weaker and vulnerable victims with necessary caution.

To conclude, it can safely be said that there can never be any hard and fast category which can be prescribed to enable the Court to exercise its power Under Section 482 of the Code of Criminal Procedure. The only principle that can be laid down is the one which has been incorporated in the Section itself, i.e., "to prevent abuse of the process of any Court" or "to secure the ends of justice.

It was further held as under:

23. No embargo, be in the shape of Section 320(9) of the Code of Criminal Procedure., or any other such curtailment, can whittle down the power Under Section 482 of the Code of Criminal Procedure.

25. The only inevitable conclusion from the above discussion is that there is no statutory bar under the Code of Criminal Procedure. which can affect the inherent power of this Court Under Section 482. Further, the same cannot be limited to matrimonial cases alone and the Court has the wide power to quash the proceedings even in non-compoundable offences notwithstanding the bar Under Section 320 of the Code of Criminal Procedure., in order to prevent the abuse of law and to secure the ends of justice. The power Under

Section 482 of the Code of Criminal Procedure. is to be exercised ex-debito Justitiae to prevent an abuse of process of Court. There can neither be an exhaustive list nor the defined para-meters to enable a High Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The power Under Section 482 of the Code of Criminal Procedure. has no limits. However, the High Court will exercise it sparingly and with utmost care and caution. The exercise of power has to be with circumspection and restraint. The Court is a vital and an extra-ordinary effective instrument to maintain and control social order. The Courts play role of paramount importance in achieving peace, harmony and ever-lasting congeniality in society. Resolution of a dispute by way of a compromise between two warring groups, therefore, should attract the immediate and prompt attention of a Court which should endeavour to give full effect to the same unless such compromise is abhorrent to lawful composition of the society or would promote savagery.

46. A three-Judge Bench of the Bombay High Court in Abasaheb Yadav Honmane v. State of Maharashtra MANU/MH/0218/2008: 2008 (2) Mh.L.J. 856 dealt with the inherent power of the High Court Under Section 482 of the Code vis-à-vis the express bar for compounding of the non-compoundable offences in Section 320(9) of the Code. The High Court referred to various decisions of this Court and also the decisions of the various High Courts and then stated as follows:

The power of compounding on one hand and quashing of criminal proceedings in exercise of inherent powers on the other, are incapable of being treated as synonymous or even inter-changeable in law. The conditions precedent and satisfaction of criteria in each of these cases are distinct and different. May be, the only aspect where they have any commonality is the result of exercise of such power in favour of the accused, as acquittal is the end result in both these cases. Both these powers are to be exercised for valid grounds and with some element of objectivity. Particularly, the power of quashing the FIR or criminal proceedings by the Court by taking recourse to inherent powers is expected to be used sparingly and that too without losing sight of impact of such order on the criminal justice delivery system. It may be obligatory upon the Court to strike a balance between the nature of the offence and the need to pass an order in exercise of inherent powers, as the object of criminal law is protection of public by maintenance of law and order.

47. Section 320 of the Code articulates public policy with regard to the compounding of offences. It catalogues the offences punishable under Indian Penal Code which may be compounded by the parties without permission of the Court and the composition of certain offences with the permission of the court. The offences punishable under the special statutes are not covered by Section 320. When an offence is compoundable Under Section 320, abatement of such offence or an attempt to commit such offence or where the accused is liable Under Section 34 or 149 of the Indian Penal Code can also be compounded in the same manner. A person who is under 18 years of age or is an idiot or a lunatic is not competent to contract compounding of offence but the same can be done

on his behalf with the permission of the court. If a person is otherwise competent to compound an offence is dead, his legal representatives may also compound the offence with the permission of the court. Where the accused has been committed for trial or he has been convicted and the appeal is pending, composition can only be done with the leave of the court to which he has been committed or with the leave of the appeal court, as the case may be. The revisional court is also competent to allow any person to compound any offence who is competent to compound. The consequence of the composition of an offence is acquittal of the accused. Sub-section (9) of Section 320 mandates that no offence shall be compounded except as provided by this Section. Obviously, in view thereof the composition of an offence has to be in accord with Section 320 and in no other manner.

48. The question is with regard to the inherent power of the High Court in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime but the crime in which he is allegedly involved is not compoundable Under Section 320 of the Code.

49. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, 'nothing in this Code' which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e., to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court necessary to prevent abuse of the process of any Court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

50. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power Under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court or (ii) to secure the ends of justice, is a sine qua non.

51. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised

in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court Under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.

52. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers Under Section 482. No precise and inflexible guidelines can also be provided.

53. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court Under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

54. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under Indian Penal Code or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the

framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.

55. B.S. Joshi MANU/SC/0230/2003: (2003) 4 SCC 675, Nikhil Merchant MANU/SC/7957/2008: (2008) 9 SCC 677, Manoj Sharma MANU/SC/8122/2008: (2008) 16 SCC 1 and Shiji alias Pappu (2011) 10 SCC 705 do illustrate the principle that High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power Under Section 482 of the Code and Section 320 does not limit or affect the powers of the High Court Under Section 482. Can it be said that by quashing criminal proceedings in B.S. Joshi MANU/SC/0230/2003: (2003) 4 SCC 675, Nikhil Merchant MANU/SC/7957/2008: (2008) 9 SCC 677, Manoj Sharma MANU/SC/8122/2008: (2008) 16 SCC 1 and Shiji alias Pappu (2011) 10 SCC 705, this Court has compounded the non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence Under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power Under Section 482. The two powers are distinct and different although ultimate consequence may be same viz., acquittal of the accused or dismissal of indictment.

56. We find no incongruity in the above principle of law and the decisions of this Court in Simrikhia MANU/SC/0440/1990: (1990) 2 SCC 437, Dharampal MANU/SC/0214/1993: 1993 Cri. L.J. 1049, Arun Shankar Shukla MANU/SC/0410/1999: AIR 1999 SC 2554, Ishwar Singh MANU/SC/8126/2008: (2008) 15 SCC 667, Rumi Dhar (Smt.). MANU/SC/0544/2009: (2009) 6 SCC 364 and Ashok Sadarangani JT 2012 (3) SC 469. The principle propounded in Simrikhia MANU/SC/0440/1990: (1990) 2 SCC 437 that the inherent jurisdiction of the High Court cannot be invoked to override express bar provided in law is by now well settled. In Dharampal MANU/SC/0214/1993: 1993 Cri. L.J. 1049, the Court observed the same thing that the inherent powers Under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred by the Code. Similar statement of law is made in Arun Shankar Shukla MANU/SC/0410/1999: AIR 1999 SC 2554. In Ishwar Singh MANU/SC/8126/2008: (2008) 15 SCC 667, the accused was alleged to have committed an offence punishable Under Section 307, Indian Penal Code and with reference to Section 320 of the Code, it was held that the offence punishable Under Section 307 Indian Penal Code was not compoundable offence and there was express bar in Section 320 that no offence shall be compounded if it is not compoundable under the Code. In Rumi Dhar (Smt.)28 although the accused had paid the entire due amount as per the settlement with the bank in the matter of recovery before the Debts Recovery Tribunal, the accused was being proceeded with for commission of offences Under Section 120-B/420/467/468/471 of the Indian Penal Code along with the bank officers

who were being prosecuted Under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act. The Court refused to quash the charge against the accused by holding that the Court would not quash a case involving a crime against the society when a prima facie case has been made out against the accused for framing the charge. Ashok Sadarangani JT 2012 (3) SC 469 was again a case where the accused persons were charged of having committed offences Under Sections 120-B, 465, 467, 468 and 471, Indian Penal Code and the allegations were that the accused secured the credit facilities by submitting forged property documents as collaterals and utilized such facilities in a dishonest and fraudulent manner by opening letters of credit in respect of foreign supplies of goods, without actually bringing any goods but inducing the bank to negotiate the letters of credit in favour of foreign suppliers and also by misusing the cash-credit facility. The Court was alive to the reference made in one of the present matters and also the decisions in B.S. Joshi MANU/SC/0230/2003: (2003) 4 SCC 675, Nikhil Merchant MANU/SC/7957/2008: (2008) 9 SCC 677 and Manoj Sharma MANU/SC/8122/2008: (2008) 16 SCC 1 and it was held that B.S. Joshi MANU/SC/0230/2003: (2003) 4 SCC 675, and Nikhil Merchant MANU/SC/7957/2008: (2008) 9 SCC 677 dealt with different factual situation as the dispute involved had overtures of a civil dispute but the case under consideration in Ashok Sadarangani JT 2012 (3) SC 469 was more on the criminal intent than on a civil aspect. The decision in Ashok Sadarangani JT 2012 (3) SC 469 supports the view that the criminal matters involving overtures of a civil dispute stand on a different footing.

57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences Under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominatingly civil favour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc.

or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

58. In view of the above, it cannot be said that B.S. Joshi MANU/SC/0230/2003: (2003) 4 SCC 675, Nikhil Merchant MANU/SC/7957/2008: (2008) 9 SCC 677 and Manoj Sharma MANU/SC/8122/2008: (2008) 16 SCC 1 were not correctly decided. We answer the reference accordingly. Let these matters be now listed before the concerned Bench(es).

MANU/SC/0074/1962

Back to Section 124 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 169 of 1957

Decided On: 20.01.1962

Kedar Nath Singh Vs. State of Bihar

Hon'ble Judges/Coram:
B.P. Sinha, C.J., A.K. Sarkar, J.R. Mudholkar, N. Rajagopala Ayyangar and S.K. Das, JJ.

JUDGMENT
B.P. Sinha, C.J.

1. In these appeals the main question in controversy is whether Sections 124A and 505 of the Indian Penal Code have become void in view of the provisions of Article 19(1)(a) of the Constitution. The constitutionality of the provisions of s. 124A, which was mainly canvassed before us, is common to all the appeals, the facts of which may shortly be stated separately.

2. In Criminal Appeal 169 of 1957, the appellant is one Kedar Nath Singh, who was prosecuted before a Magistrate, 1st Class, at Begusarai, in the district of Monghyr, in Bihar. He framed the following charges against the accused person, which are set out in extenso in order to bring out the gravamen of the charge against him.

"First. - That you on 26th day of May, 1953 at village Barauni, P. S. Taghra (Monghyr) by speaking the words, to wit,

(a) To-day the dogs of the C.I.D. are loitering round Barauni. Many official dogs are sitting even in this meeting. The people of India drove out the Britishers from this country and elected these Congress goondas to the gaddi and seated them on it. To-day these Congress goondas are sitting on the gaddi due to mistake of the people. When we drove out the Britishers, we shall strike and turn out these Congress goondas as well. These official dogs will also be liquidated along with these Congress goondas. These Congress goondas are banking upon the American dollars and imposing various kinds of taxes on the people to-day. The blood of our brothers - mazdoors and Kishans is being sucked. The capitalists and the zamindars of this country help these Congress goondas. These zamindars and capitalists will also have to be brought before the people's court along with these Congress goondas.

(b) On the strength of the organisation and unity of Kisans and mazdoors the Forward Communists Party will expose the black deeds of the Congress goondas, who are just like the Britishers. Only the colour of the body has changed. They have to-day established a rule of lathis and bullets in the country. The Britishers had to go away from this land. They had aeroplanes, guns, bombs and other weapons with them.

(c) The Forward Communist Party does not believe in the doctrine of vote itself. The party had always been believing in revolution and does so even at present. We believe in that revolution, which will come and in the flames of which the capitalists, zamindars and the Congress leaders of India, who have made it their profession to loot the country, will be reduced to ashes and on their ashes will be established a Government of the poor and the downtrodden people of India.

(d) It will be a mistake to expect anything from the Congress rulers. They (Congress rulers) have set up V. Bhave in the midst of the people by causing him wear a langoti in order to divert the people's attention from their mistakes. To-day Vinova is playing a drama on the stage of Indian politics. Confusion is being created among the people. I want to tell Vinova and advice his agents, "you should understand it that the people cannot be deceived by this Yojna, illusion and fraud of Vinova". I shall advise Vinova not to become a puppet in the hands of the Congress men. These persons, who understand the Yojna of Vinova, realise that Vinova is an agent of the Congress Government.

(e) I tell you that this Congress Government will do no good to you.

(f) I want to tell the last word even to the Congress Tyrants, "you play with the people and ruin them by entangling them in the mesh of bribery, black-marketing and corruption. To-day the children of the poor are hankering for food and you Congress men are assuming the attitude of Nawabs sitting on the chairs....."

3. Brought or attempted to bring into hatred or contempt or excited or attempted to excite disaffection towards the Government established by law in the Indian Union and thereby committed an offence punishable under section 124A of the Indian Penal Code and within my cognizance.

Secondly. - That you on the 26th day of May, 1953 at village Barauni, P. S. Tegra (Monghyr) made the statement, to wit,

(a) To-day the dogs of the C.I.D. are loitering round Barauni. Many official dogs are sitting even in this meeting. The people of India drove out the Britishers from this country, and elected these Congress Goondas to the gaddi and seated them on it. To-day these Congress Goondas are sitting on the gaddi due to the mistake of the people. When we have driven out the Britishers, we shall strike and turn out these Congress Goondas as well. These official dogs will also be liquidated along with these Congress Goondas.

These Congress Goondas are banking upon the American dollars and imposing various kinds of taxes on the people to-day. The blood of our brothers Mazdoors and Kisans is being sucked. The capitalists and the zamindars of this country help these Congress Goondas. These zamindars and capitalists will also have to be brought before the people's Court along with these Congress Goondas.

(b) On the strength of organisation and unity of kisans and mazdoors the Forward Communist Party will expose the black-deeds of the Congress Goondas, who are just like the Britishers. Only the colour of the body has changed. They have, to-day, established a rule of lathis and bullets in the country. The Britishers had to go away from this land. They had aeroplanes, guns, bombs, and other reasons with them.

(c) The Forward Communist party does not believe in the doctrine of votes itself. The party had always been believing in revolution and does so even at present. We believe in that revolution, which will come and in the flames of which the capitalists, zamindars and the Congress leaders of India, who have made it their profession to loot the country, will be reduced to ashes, and on their ashes will be established a Government of the poor and the downtrodden people of India.

(d) It will be a mistake to expect anything from the Congress rulers. They (Congress rulers) have set up V. Bhave in the midst of the people by causing him wear a langoti in order to divert the attention of the people from their mistakes. To-day Vinova is playing a drama on the stage of Indian politics. Confusion is being created among the people. I want to tell Vinova and advise his agents, "You should understand it that the people cannot be delivered by this Yojna, illusion and fraud of Vinova. I shall advise Vinova not to become a puppet in the hands of the Congress men. Those persons who understand the Yojna of Vinova, realise that Vinova is an agent of Congress Government.

(e) I tell you that no good will be done to you by this Congress Government.

(f) I want to tell the last word even to Congress tyrants "you play with the people and ruin them by entangling them in the mesh of bribery, black-marketing and corruption. To-day the children to the poor are hankering for food and you (Congress men) are assuming the attitude of Nawabs sitting on the chairs".....

with intent to cause or which was likely to cause fear or alarm to the public whereby any persons might be induce to commit an offence against the State of Bihar and against the public tranquillity, and thereby committed an offence punishable under section 505(b) of the Indian Penal Code and within my cognizance."

4. After recording a substantial volume of oral evidence, the learned Trial Magistrate convicted the accused person both under Sections 124A and 505(b) of the Indian Penal

Code, the sentenced him to under go rigorous imprisonment for one year. No separate sentence was passed in respect of the conviction under the latter section.

5. The convicted person preferred an appeal to the High Court of Judicature at Patna, which was heard by the late Mr. Justice Naqui Imam, sitting singly. By his judgment and order dated April 9, 1956, he upheld the convictions and the sentence and dismissed the appeal. In the course of his Judgment, the learned Judge observed that the subject-matter of the charge against the appellant was nothing but a vilification of the Government; that it was full of incitements to revolution and that the speech taken as a whole was certainly seditious. It is not a speech criticising any particular policy of the Government or criticising any of its measures. He held that the offences both under Sections 124A and 505(b) of the Indian Penal Code had been made out.

6. The convicted person moved this Court and obtained special leave to appeal. It will be noticed that the constitutionality of the provisions of the sections under which the appellant was convicted had not been canvassed before the High Court. But in the petition for special leave, to this Court, the ground was taken that Sections 124A and 505 of the Indian Penal Code "are inconsistent with Art. 19(1)(a) of the Constitution". The appeal was heard in this Court, in the first instance, by a Division Bench on May 5, 1959. The Bench, finding that the learned counsel for the appellant had raised the constitutional issue as to the validity of Sections 124A and 505 of the Indian Penal Code, directed that the appeal be placed for hearing by a Constitution Bench. The case was then placed before a Constitution Bench, on November 4, 1960, when that Bench directed notice to issue to the Attorney General of India under r. 1, O. 41 of the Supreme Court Rules. The matter was once again placed before constitution Bench on February 9, 1961, when it was adjourned for two months in order to enable the State Governments concerned with this appeal, as also with the connected Criminal Appeals Nos. 124-126 of 1958 (in which the Government of Uttar Pradesh is the appellant) to make up their minds in respect of the prosecutions, as also in view of report that the Law Commission was considering the question of amending the law of sedition in view of the new set-up. As the States concerned have instructed their counsel to press the appeals, the matter has finally come before us.

7. In Criminal Appeals 124-126 of 1958, the State of Uttar Pradesh is the appellant, though the respondents are different. In Criminal Appeal 124 of 1958, the accused person is one Mohd. Ishaq Ilmi. He was prosecuted for having delivered a speech at Aligarh as Chairman of the Reception Committee of the All India Muslim Convention on October 30, 1953. His speech on that occasion, was thought to be seditions. After the necessary sanction, the Magistrate held an enquiry, and finding a prima facie case made out against the accused, committed him to the Court of Session. The learned Sessions Judge, by his Judgment dated January 8, 1955, acquitted him of the charge under s. 153A, but convicted him of the other charge under s. 124A, of the Indian Penal Code, and sentenced him to rigorous imprisonment for one year. The convicted person preferred an appeal to the

High Court. In the High Court the constitutionality of s. 124A of the Indian Penal Code was challenged.

8. In Criminal Appeal No. 125 of 1958, the facts are that on May 29, 1954, a meeting of the Bolshovik Party was organised in village Hanumanganj, in the District of Basti, in Uttar Pradesh. On that occasion, the respondent Rama and was found to have delivered an objectionable speech in so far as he advocated the use of violence for overthrowing the Government established by law. After the sanction of the Government to the prosecution had been obtained, the learned Magistrate held an enquiry and ultimately committed him to take his trial before the Court of Sessions. In due course, the learned Sessions Judge convicted the accused person under s. 124A of the Indian Penal Code and sentenced him to rigorous imprisonment for three years. He held that the accused person had committed the offence by inciting the audience to an open violent rebellion against the Government established by law, by the use of arms. Against the aforesaid order of conviction and sentence, the accused person preferred an appeal to the High Court of Allahabad.

9. In Criminal Appeal 126 of 1958, the respondent is one Parasnath Tripathi. He is alleged to have delivered a speech in village Mansapur, P. S. Akbarpur, in the district of Faizabad, on September 26, 1955, in which he is said to have exhorted the audience to organise a volunteer army and resist the Government and its servants by violent means. He is also said to have excited the audience with intent to create feelings of hatred and enmity against the Government. When he was placed on trial for an offence under s. 124A of the Indian Penal Code, the accused person applied for a writ of Habeas Corpus in the High Court of Judicature at Allahabad on the ground that his detention was illegal inasmuch as the provisions s. 124A of the Indian Penal Code were void as being in contravention of his fundamental rights of free speech and expression under Art. 19(1)(a) of the Constitution. This matter, along with the appeals which have given rise to appeals Nos. 124 and 125, as aforesaid, were ultimately placed before a Full Bench, consisting of Desai, Gurtu and Beg, JJ. The learned judges, in separate but concurring judgments, took the view that s. 124A of the Indian Penal Code was ultra vires Art. 19(1)(a) of the Constitution. In that view of the matter, they acquitted the accused persons, convicted as aforesaid in the two appeals Nos. 124 and 125, and granted the writ petition of the accused in Criminal Appeal No. 126. In all these cases the High Court granted the necessary certificate that the case involved important questions of law relating to the interpretation of the Constitution. That is how these appeals are before us on a certificate of fitness granted by the High Court.

10. Shri C. B. Agarwala, who appeared on behalf of the State of Uttar Pradesh in support of the appeals against the orders of acquittal passed by the High Court, contended that the judgment of the High Court, contended that the judgment of the High Court, (now reported in Ram Nandan v. State I.L.R. (1958) All. 84 in which it was laid down by the Full Bench that s. 124A of the Indian Penal Code was ultra vires Art. 19(1)(a) of the Constitution and, therefore, void for the person that it was not in the interest of public

order and that the restrictions imposed thereby were not reasonable restrictions on the freedom of speech and expression, was erroneous. He further contended that the section impugned came within the saving clause (2) of Art. 19, and that the reasons given by the High Court to the contrary were erroneous. He relied upon the observations of the Federal Court in Niharendu Dutt Majumdar v. The King Emperor [1943] F.C.R. 38. He also relied on Stephen's Commentaries on the Laws of England, Volume IV, 21st Edition, page 141, and the Statement of the Law in Halsbury's Laws of England, 3rd Edition, volume 10, page 569, and the cases referred to in those volumes. Mr. Gopal Behari, appearing on behalf of the respondents in the Allahabad cases has entirely relied upon the full Bench decision of the Allahabad High Court in his favour. Shri Sharma appearing on behalf of the appellant in the appeal from the Patna High Court has similarly relied upon the decision aforesaid of the Allahabad High Court.

11. Before dealing with the contentions raised on behalf of the parties, it is convenient to set out the history of the law, the amendments it has undergone and the interpretations placed upon the provisions of s. 124A by the Courts in India, and by their Lordships of the judicial Committee of the Privy Council. The section corresponding to s. 124A was originally s. 113 of Macaulay's Draft Penal Code of 1837-39, but the section was omitted from the Indian Penal Code as it was enacted in 1860. The reason for the omission from the Code as enacted is not clear, but perhaps the legislative body did not feel sure above its authority to enact such a provision in the Code. Be that as it may, s. 124A was not placed on the Statute Book until 1870, by Act XXVII of 1870. There was a considerable amount of discussion at the time the amendment was introduced by Sir James, Stephen, but what he said while introducing the bill in the legislature may not be relevant for our present purposes. The section as then enacted ran as follows:-

"124A. Exciting Disaffection -

Whoever, by words, either spoken or intended to be read, or by signs, or by visible representation, or otherwise, excites, or attempts to excite, feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.
Explanation - Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation, is not an offence within this clause."

12. The first case in India that arose under the section is what is known as the Bangobasi case (Queen-Emprees v. Jogendra Chunder Bose I.L.R. (1892) Cal. 35 which was tried by

a Jury before Sir Comer Petheram, C.J. while charging the jury, the learned Chief Justice explained the law to the jury in these terms:

"Disaffection means a feeling contrary to affection, in other words, dislike or hatred. Disapprobation means simply disapproval. It is quite possible to disapprove of a men's sentiments or action and yet to like him. The meaning of the two words is so distinct that I feel it hardly necessary to tell you that the contention of Mr. Jackson cannot be sustained. If a person uses either spoken or written words calculated to create in the minds of the persons to whom they are addressed a disposition not to obey the lawful authority of the Government, or to subvert or resist that authority, if and when occasion should arise, and if he does so with the intention of creating such a disposition in his bearers or readers, he will be guilty of the offence of attempting to excite disaffection within the meaning of the section though no disturbance is brought about by his words or any feeling of disaffection, in fact, produced by them. It is sufficient for the purposes of the section that the words used are calculated to excite feelings of ill-will against the Government and to hold it up to the hatred and contempt of the people, and that they were used with the intention to create such feeling."

13. The next case is the celebrated case of Queen-Empress v. Balgangadhar Tilak I.L.R. (1898) 22 Bom. 112 which came before the Bombay High Court. The case was tried by a jury before Strachey, J. The learned judge, in the course of his charge to the jury, explain the law to them in these terms:

"The offence as defined by the first clause is exciting or attempting to excite feelings of disaffection to the Government. What are "feelings of disaffection"? I agree with Sir Comer Petheram in the Bangobasi case that disaffection means simply the absence of affection. It means hatred, enmity dislike, hostility, contempt and every from of ill-will to the Government. "Disloyalty" is perhaps the best general term, comprehending every possible form of bad feeling to the Government. That is what the law means by the disaffection which a man must not excite or attempt to excite; he must not make or try to make others feel enmity of any kind towards the Government. You will observe that the amount or intensity of the disaffection is absolutely immaterial except perhaps in dealing with the question of punishment; if a man excites or attempts to excite feelings of disaffection, great or small, he is guilty under the section. In the next place, it is absolutely immaterial whether any feelings of disaffection have been excited or not by the publication in question. It is true that there is before you a charge against each prisoner that he has actually excited feelings of disaffection to the Government. If you are satisfied that he has done so, you will, of course, find him guilty. But if you should hold that that charge is not made out, and that no one is proved to have been excited to entertain feelings of disaffection to the Government by reading these articles, still that alone would not justify you in acquitting the prisoners. For each of them is charged not only with exciting feelings of disaffection, but also with attempting to excite such feelings. You will observe that the section places on absolutely the same footing the successful exciting of feelings of disaffection and the unsuccessful attempt to excite them, so that, if you find

that either of the prisoners has tried to excite such feeling in others, you must convict him even if there is nothing to show that he succeeded. Again, it is important that you should fully realise another point. The offence consists in exciting or attempting to excite in others certain bad feeling towards the Government. It is not the exciting or attempting to excite in others certain bad feeling towards the Government. It is not the exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any disturbance or outbreak was caused by these articles, is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within section 124A, and would probably fall within other sections of the Penal Code. But even if he neither excited nor intended to excite any rebellion or outbreak or forcible resistance to the authority of the Government, still if he tried to excite feelings of enmity to the Government, that is sufficient to make him guilty under the section. I am aware that some distinguished persons have thought that there can be no offence against the section unless the accused either counsels or suggests rebellion or forcible resistance to the Government. In my opinion, that view is absolutely opposed to the express words of the section itself, which as plainly as possible makes the exciting or attempting to excite certain feelings, and not the inducing or attempting to induce to any course of action such as rebellion or forcible resistance, the test of guilt. I can only account for such a view by attributing it to a complete misreading of the explanation attached to the section, and to a misapplication of the explanation beyond its true scope."

14. The long quotation has become necessary in view of what followed later, namely, that this statement of the law by the learned judge came in for a great deal of comment and judicial notice. We have omitted the charge to the jury relating to the explanation to s. 124A because that explanation has not yielded place to three separate explanations in view of judicial opinions expressed later. The jury, by a majority of six to three, found Shri Balgangadhar Tilak guilty. Subsequently, he, on conviction, applied under clause 41 of the Letters Patent for leave to appeal to the Privy Council. The application was heard by a Full Bench consisting of Farran, C.J. Candy and Strachey, JJ. It was contended before the High Court at the leave stage, inter alia, that the sanction given by the Government was not sufficient in law in that it had not set out the particulars of the offending articles, and, secondly, that the judge misdirected the jury as to the meaning of the word "disaffection" insofar as he said that it might be equivalent to "absence of affection". With regard to the second point, which is only relevant point before us; the Full Bench expressed itself to the following effect:

"The other ground upon which Mr. Russell has asked as to certify that this is a fit case to be sent to Her Majesty in Council is that there has been a misdirection, and he based his argument on one major and two minor grounds. The major ground was that the section cannot be said to have been contravened unless there is a direct incitement to stir up disorder or rebellion. That appears to us to be going much beyond the words of the section, and we need not say more upon that ground. The first of the minor points is that Mr. Justice Strachey in summing up the case to the jury stated that disaffection meant the

"absence of affection". But although if that phrase has stood alone it might have misled the jury, yet taken in connection with the context we think it is impossible that the jury could have been misled by it. That expression was used in connection with the law as led down by Sir Comer Petheram, in Calcutta in the Bangobashi case. There the Chief Justice instead of using the words "absence of affection" used the words "contrary to affection". If the words "contrary to affection" had been used instead of "absence of affection" in this case there can be no doubt that the summing up would have been absolutely correct in this particular. But taken in connection with the context it is clear that by the words "absence of affection" the learned Judge did not mean the negation of affection but some active sentiment on the other side. Therefore on that point we consider that we cannot certify that this is a fit case for appeal."
In this connection is must be remembered that it is not alleged that there has been a miscarriage of Justice."

15. After making those observations, the Full Bench refused the application for leave. The case was then taken to Her Majesty in Council, by way of application for special leave to appeal to the Judicial Committee. Before their Lordships of the Privy Council, Asquith, Q.C. assisted by counsel of great experience and eminence like Mayne, W. C. Bonnerjee and others, contended that there was a misdirection as to the meaning of section 124A of the Penal Code in that offence had been defined in terms to wide to the effect that "disaffection" meant simply "absence of affection" and that it comprehended every possible form of bad feeling to the Government. In this connection reference was made to the observations of Petheram, C.J. in Queen-Empress v. Jogender Bose I.L.R. (1892) Cal. 35. It was also contended that the appellant's comments had not exceeded what in England would be considered within the functions of a Public journalist and that the misdirection complained of was of the greatest importance not merely to the affected person but to the whole of the Indian Press and also to all her Majesty's subjects; and that it injuriously affected the liberty of the press and the right free speech in public meetings. But in spite of the strong appeal made on behalf of the petitioner for special leave, the Lord Chancellor, delivering the opinion of the Judicial Committee, while dismissing the application, observed that taking in view of the whole of the summing up they did not see any reason to dissent from it, and that keeping in view the rules which Their Lordships observed in the matter of granting leave to appeal in criminal cases, they did not think that the case raised questions which deserve further consideration by the Privy Council. (vide Gangadhar Tilak v. Queen Empress) I.L.R. (1897) IndAp 1.

16. Before noticing the further changes in the Statute, it is necessary to refer to the Full Bench decision of the Allahabad High Court in Queen Empress v. Amba Prasad MANU/UP/0084/1897: I.L.R. (1898) All. 55. In that case, Edge, C.J., who delivered the judgment of the Court, made copious quotations from the judgments of the Calcutta and the Bombay High Courts in the cases above referred to. While generally adopting the reasons for the decisions in the aforesaid two cases, the learned Chief Justice observed that a man may be guilty of the offence defined in s. 124A of attempting to excite feelings

of disaffection against the Government established by law in British India, although in particular article or speech he may insist upon the desirability or expediency of obeying and supporting the Government. He also made reference to the decision of Bombay High Court in the Satara I.L.R. (1898) 22 Bom. 452 case. In that case a Full Bench, consisting of Farran, C.J., and Parsons and Ranade, JJ. had laid down that the word "disaffection" in the section is used in a special sense as meaning political alienation or discontent or disloyalty to the Government or existing authority. They also held that the meaning of word "disaffection" in the main portion of the section was not varied by the explanation. Parsons, J., held that the word "disaffection" could not be construed as meaning "absence of or contrary of affection or love'. Ranade J., interpreted the word "disaffection" not as meaning mere absence or negation of love or good will but a positive feeling of aversion, which is akin to ill will, a definite insubordination of authority or seeking to alienate the people and weaken the bond of allegiance, a feeling which tends to bring the Government into hatred and discontent, by imputing base and corrupt motives to it. The learned Chief Justice of the Allahabad High Court observed that if those remarks were meant to be in any sense different from the construction placed upon the section by Strachey, J., which was approved, as aforesaid, by the Judicial Committee of the Privy Council, the later observations of the Bombay High Court could not be treated as authoritative. As the accused in the Allahabad case had pleaded guilty and the appeal was more or less on the question of sentence, it was not necessary for their Lordships to examine in detail the implications of the section, though they expressed their general agreement with the view of the Calcutta and the Bombay High Courts in the first two cases, referred to above.

17. The section was amended by the Indian Penal Code Amendment Act (IV of 1898). As a result of the amendment, the single explanation to the section was replaced by three separate explanations as they stand now. The section, as it now stands in its present form, is the result of the several A.O.s of 1937, 1948 and 1950, as a result of the constitutional changes, by the Government of India Act, 1935, by the Independence Act of 1947 and by the Indian Constitution of 1950. Section 124A, as it has emerged after successive amendments by way of adaptations as aforesaid, reads as follows:

"Whoever by words, either spoken or written, or by signs or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India shall be punished with transportation for life or any shorter term to which fine may be added or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1. The expression "disaffection" includes disloyalty and all feelings or enmity.

Explanation 2. Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection do not constitute an offence under this section.

Explanation 3. Comments expressing disapprobation of the administrative of other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section."

18. This offence, which is generally known as the offence of Sedition, occurs in Chapter VI of the Indian Penal Code, headed 'Of offences against the State'. This species of offence against the State was not an invention of the British Government in India, but has been known in England for centuries. Every State, whatever its form of Government, has to be armed with the power to punish those who, by their conduct, jeopardise the safety and stability of the State, or disseminate such feelings of disloyalty as have the tendency to lead to the disruption of the State or to public disorder. In England, the crime has thus been described by Stephen in his Commentaries, on the Laws of England, 21st Edition, volume IV, at pages 141-142, in these words:

"Section IX. Sedition and Inciting to Disaffection - We are now concerned with conduct which, on the one hand, fall short of treason, and on the other does not involve the use of force or violence. The law has here to reconcile the right of private criticism with the necessity of securing the safety and stability of the State. Sedition may be defined as conduct which has, either as its object or as its natural consequence, the unlawful display of dissatisfaction with the Government or with the existing order of society.

The seditions conduct may be by words, by deed, or by writing. Five specific heads of sedition may be enumerated according to the object of the accused. This may be either

1. to excite disaffection against the King, Government, or Constitution, or against Parliament or the administration of justice;

2. to promote, by unlawful means, any alteration in Church or State;

3. to incite a disturbance of the peace;

4. to raise discontent among the King's subjects;

5. to excite class hatred.

It must be observed that criticism on political matters is not of itself seditions. The test is the manner in which it is made. Candid and honest discussion is permitted. The law only interferes when the discussion passes the bounds of fair criticism. More especially will this be the case when the natural consequence of the prisoner's conduct is to promote public disorder."

22. This statement of the law is derived mainly from the address to the Jury by Fitzerald, J., in the case of Reg v. Alexander Martin Sullivan (1868) 11 CCLC 44. In the course of his address to the Jury the learned Judge observed as follows:

"Sedition is a crime against society, nearly allied to that of treason, and it frequently precedes treason by a short interval. Sedition in itself is comprehensive term, and it embraces all those practices, whether by word deed or writing, which are calculated to disturb the tranquility of the State, and lead ignorant persons to endeavour to subvert the Government and the laws of the empire. The objects of sedition generally are to induce discontent and insurrection and stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. Sedition has been described as disloyalty in action and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitution of the realm, and generally all endeavours to promote public disorder."

23. That the law has not changed during the course of the centuries is also apparent from the following statement of the law by Coleridge, J., in the course of his summing up to the Jury in the case of Rex. v. Aldred (1909) 22 CCLC 1:

"Nothing is clearer than the law on this head - namely, that whoever by language, either written or spoken incites or encourages other to use physical force or violence in some public matter connected with the State, is guilty of publishing a seditions libel. The word "sedition" in its ordinary natural signification denotes a tumult, an insurrection, a popular commotion, or an uproar; it implies violence or lawlessness in some form....."

24. In that case, the learned Judge was charging the Jury in respect of the indictment which contained the charge of seditious libel by a publication by the defendant.

25. While dealing with a case arising under Rule 34(6)(e) of the Defence of India Rules under the Defence of India Act (XXXV of 1939) Sir Maurice Gwyer, C.J., speaking for the Federal Court, made the following observations in the case of Niharendu Dutt Majumdar v. The King Emperor MANU/FE/0005/1942: (1942) F.C.R. 38; and has pointed out that the language of s. 124A of the Indian Penal Code, which was in pari materia with that of the Rule in question, had been adopted from the English Law, and referred with approval to the observations of Fitzerald, J., in the case quoted above; and made the following observations which are quite apposite:

".... generally speaking, we think that the passage accurately states the law as it is to be gathered from an examination of a great number of judicial pronouncements.

The first and most fundamental duty of every Government is the preservation of order, since order is the condition precedent to all civilisation and the advance of human happiness. This duty has no doubt been sometimes performed in such a way as to make

the remedy worse than the disease; but it does not cease to be a matter of obligation because some on whom the duty rests have performed it ill. It is to this aspect of the functions of government that in our opinion the offence of sedition stands related. It is the answer of the State to those who, for the purpose of attacking or subverting it, seek (to borrow from the passage cited above) to disturb its tranquillity, to create public disturbance and to promote disorder, or who incite others to do so. Words, deeds or writings constitute sedition, if they have this intention or this tendency; and it is easy to see why they may also constitute sedition, if they seek, as the phrase is, to bring Government into contempt. This is not made an offence in order to minister to the wounded vanity of Government, but because where Government and the law cease to be obeyed because no respect is felt any longer for them, only anarchy can follow. Public disorder, or the reasonable anticipation or likelihood of public disorder, is thus the gist of the offence. The acts or words complained of must either incite to disorder or must be such as to satisfy reasonable mean that that is their intention or tendency."

26. This statement of the law was not approved by their Lordships of the Judicial Committee of the Privy Council in the case of King-Emperor v. Sadashiv Narayan Bhalerao I.L.R. (1947) IndAp 89. The Privy Council, after quoting the observations of the learned Chief Justice in Niharendu's case MANU/FE/0005/1942: (1942) F.C.R. 38, while disapproving of the decision of the Federal Court, observed that there was no statutory definition of "Sedition" in England, and the meaning and content of the crime had to be gathered from any decisions. But those were not relevant considerations when one had to construe the statutory definition of 'Sedition' as in the Code. The Privy Council held that the language of s. 124A, or of the Rule aforesaid, under the Government of India Act, did not justify the statement of the law as made by the learned Chief Justice in Niharendu's case MANU/FE/0005/1942: (1942) F.C.R. 38 they also held that the expression "excite disaffection" did not include "excite disorder", and that, therefore, the decision of the Federal Court in Niharendu's case MANU/FE/0005/1942: (1942) F.C.R. 38 proceeded on a wrong construction of s. 124A of the Penal Code, and of sub-para (e), sub-rule (6) of Rule 34 of the Defence of India Rules. Their Lordships approved of the dicta in the case of Bal Gangadhar Tilak I.L.R. (1898) 22 Bom. 112, and in the case of Annie Basant v. Advocate General of Madras I.L.R. (1919) IndAp 176, which was a case under s. 4 of the Indian Press Act. (I of 1910), which was closely similar in language to s. 124A of the Penal Code.

27. The Privy Council also referred to their previous decision in Wallace-Johnson v. The King [1940] A.C. 231 which was a case under sub-s. 8 of s. 326 of the Criminal Code of the Gold Coast, which defined "seditious intention" in terms similar to the words of s. 124A of the Penal Code. In that case, their Lordships had laid down that incitement to violence was not a necessary ingredient of the Crime of sedition as defined in that law.

28. Thus, there is a direct conflict between the decision of the Federal Court in Niharendu's case MANU/FE/0005/1942: (1942) F.C.R. 38 and of the Privy Council in a

number of cases from India and the Gold Coast, referred to above. It is also clear that either view can be taken and can be supported on good reasons. The Federal Court decision takes into consideration, as indicated above, the pre-existing Common Law of England in respect of sedition. It does not appear from the report of the Federal Court decision that the rulings aforesaid of the Privy Council had been brought to the notice of their Lordships of the Federal Court.

29. So far as this Court is concerned, the question directly arising for determination in this batch of cases has not formed the subject matter of decision previously. But certain observations made by the Court in some cases, to be presently noticed, with reference to the interpretation between freedom of speech and seditious writing or speaking have been made in the very first year of the coming into force of the Constitution. Two cases involving consideration of the fundamental right of freedom of speech and expression and certain laws enacted by some of the States imposing restrictions on that right came up for consideration before this Court. Those cases reported in Romesh Thappar v. The State of Madras MANU/SC/0006/1950: 1950CriLJ1514, and Brij Bhushan v. The State of Delhi MANU/SC/0007/1950: 1950CriLJ1525 were heard by Kania C.J. Pazl Ali, Patanjali Shastri, Mehr Chand Mahajan, Mukherjea and Das, JJ, and judgments were delivered on the same day (May 26, 1950). In Romesh Thappar's case MANU/SC/0006/1950: 1950CriLJ1514, the majority of the Court declared s. 9(1-A) of the Madras Maintenance of Public Order Act (Mad. XXXIII of 1949), which had authorised imposition of restrictions on the fundamental right of freedom of speech, to be in excess of clause (2) of Art. 19 of the Constitution authorising such restrictions, and, therefore void and unconstitutional. In Brij Bhushan's case MANU/SC/0007/1950: 1950CriLJ1525, the same majority struck down s. 7(1)(c) of the East Punjab Public Safety Act, 1949, as extended to the Province of Delhi, authorising the imposition of restrictions on the freedom of speech and expression for preventing or combating any activity prejudicial to the public safety or the maintenance of public order. The Court held those provisions to be in excess of the powers conferred on the Legislature by clause (2) of Art. 19 of the Constitution. Mr. Justice Patanjali Sastri, speaking for the majority of the Court in Romesh Thapper's case MANU/SC/0006/1950: 1950CriLJ1514 made the following observations with reference to the decisions of the Federal Court and the Judicial Committee of the Privy Council as to what the law of Sedition in India was:

"It is also worthy of note that the word "sedition" which occurred in article 13(2) of the Draft Constitution prepared by the Drafting Committee was deleted before the article was finally passed as article 19(2). In this connection it may be recalled that the Federal Court had, in defining sedition Niharendu Dutt Majumdar v. The King emperor MANU/FE/0005/1942: (1942) F.C.R. 38 held that "the acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency", but the Privy Council overruled that decision and emphatically reaffirmed the view expressed in Tilak's case to the effect that "the offence consisted in exciting or attempting to excite in others certain bad feelings towards the Government

and not in exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small" - King Emperor v. Sadashiv Narayan Bhalerao. Deletion of the word "sedition" from the draft article 13(2), therefore, shows that criticism of Government exciting disaffection or bad feelings towards it is not to be regarded as a justifying ground for restricting the freedom of expression and of the press, unless it is such as to undermine the security of or tend to overthrow the State. It is also significant that the corresponding Irish formula of "undermining the public order or the authority of the State" (article 40(6)(i) of the Constitution of Fire, 1937) did not apparently find favour with the framers of the Indian Constitution. Thus, very narrow and stringent limits have been set to permissible legislative abridgment of the right of free speech and expression, and this was doubtless due to the realisation that freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular government, is possible, freedom of such amplitude might involve risks of abuse. But the framers of the Constitution may well have reflected, with Madison who was "the leading spirit in the preparation of the First Amendment of the Federal Constitution" that "it is better the leave a few of its noxious branches to their luxuriant growth, than, by pruning them away to injure the vigour of those yielding the proper fruits": (quoted in Near v. Minnesotta).

30. Those observations were made to bring out the difference between the "security of the State" and "public order". As the latter expression did not find a place in Art. 19(2) of the Constitution, as it stood originally, the section was struck down as unconstitutional. Fazl Ali, J., dissented from the views thus expressed by the majority and reiterated his observations in Brij Bhushan's case MANU/SC/0007/1950: 1950CriLJ1525. In the course of his dissenting judgment, he observed as follows:

"It appears to me that in the ultimate analysis the real question to be decided in this case is whether "disorders involving menace to the peace and tranquillity of the Province" and affecting "Public safety" will be a matter which undermines the security of the State or not. I have borrowed the words quoted within inverted commas from the preamble of the Act which shows its scope and necessity and the question raised before us attacking the validity of the Act must be formulated in the manner I have suggested. If the answer to the question is in the affirmative, as I think it must be, then the impugned law which prohibits entry into the State of Madras of "any document or class of documents" for securing public safety and maintenance of public order should satisfy the requirements laid down in article 19(2) of the Constitution. From the trend of the arguments addressed to us, it would appear that if a document is seditious, its entry could be validly prohibited, because sedition is a matter which undermines the Security of the State; but if on the other hand, the document is calculated to disturb public tranquillity and affect public safety, its entry cannot be prohibited, because public disorder and disturbance of public tranquillity are not matters which undermine the security of the State. Speaking for myself, I cannot understand this argument. In Brij Bhushan v. The State. I have quoted good authority to show that sedition owes its gravity to its tendency to create disorders

and an authority on Criminal Law like Sir James Stephen has classed sedition as an offence against public tranquility

31. In Brij Bhushan case MANU/SC/0007/1950: 1950CriLJ1525, Fazl Ali, J., who was again the dissenting judge, gave his reasons to greater detail. He referred to the judgment of the Federal Court in Niharendu Dutt Majumdar's case [1942 S.C.R. 38 and to the judgment of the Privy Council to the contrary in King Emperor v. Sada Shiv Narayan 74 I.A. 89. After having pointed out the divergency of opinion between the Federal Court of India and the Judicial Committee of the Privy Council, the learned Judge made the following observations in order to explain why the term "sedition" was not specifically mentioned in Art. 19(2) of the Constitution:

"The framers of the Constitution must have therefore found themselves face to face with the dilemma as to whether the word "sedition" should be used in article 19(2) and if it was to be used in what sense it was to be used. On the one hand, they must have had before their mind the very widely accepted view supported by numerous authorities that sedition was essentially an offence against public tranquillity and was connected in some way or other with public disorder; and, on the other hand, there was the pronouncement of the Judicial Committee that sedition as defined in the Indian Penal Code did not necessarily imply any intention or tendency to incite disorder. In these circumstances, it is not surprising that they decided not to use the word "sedition" in clause (2) but used the more general words which cover sedition and everything else which makes sedition such a serious offence. That sedition does undermine the security of the State is a matter which cannot admit of much doubt. That it undermines the security of the state usually through the medium of public disorder is also a matter on which eminent Judges and jurists are agreed. Therefore, it is difficult to hold that public disorder or disturbance of public tranquillity are not matters which undermine the security of the State."

32. As a result of their differences in the interpretation of Art. 19(2) of the Constitution, the Parliament amended clause (2) of Art. 19, in the form in which it stands at present, by the Constitution (First Amendment) Act, 1951, by s. 3 of the Act, which substituted the original c. (2) by the new clause (2). This amendment was made with retrospective effect, thus indicating that it accepted the statement of the law as contained in the dissenting judgment of Fazl Ali, J., in so far as he had pointed out that the concept of "security of the state" was very much allied to the concept of "public order" and that restrictions on freedom of speech and expression could validly be imposed in the interest of public order.

33. Again the question of the limits of legislative powers with reference to the provisions of Arts. 19(1)(a) and 19(2) of the Constitution came up for decision by a Constitution Bench of this Court in Ramji Lal Modi v. The State of U.P. MANU/SC/0101/1957: 1957CriLJ1006. In that case, the validity of s. 295A of the Indian Penal Code was challenged on the ground that it imposed restrictions on the fundamental right of freedom of speech and expression beyond the limits prescribed by clause (2) of Art. 19 of the Constitution. In this connection, the Court observed as follows:

"the question for our consideration is whether the impugned section can be properly said to be a law imposing reasonable restrictions on the exercise of the fundamental rights to freedom of speech and expression in the interests of public order. It will be noticed that language employed in the amended clause is "in the interests of" and not "for the maintenance of". As one of us pointed out in Debi Saron v. The State of Bihar, the expression "in the interests of" makes the ambit of the protection very wide. A law may not have been designed to directly maintain public order and yet it may have been enacted in the interests of public order." Though the observations quoted above do not directly bear upon the present controversy, they throw a good deal of light upon the ambit of the power of the legislature to impose reasonable restrictions on the exercise of the fundamental right of freedom of speech and expression.

35. In this case, we are directly concerned with the question how for the offence, as defined in s. 124A of the Indian Penal Code, is consistent with the fundamental right guaranteed by Art. 19(1)(a) of the Constitution, which is in these terms:

"19. (1) All citizens shall have the right.

(a) to freedom of speech and expression..." This guaranteed right is subject to the right of the legislature to impose reasonable restrictions, the ambit of which is indicated by clause (2), which, in its amended form, reads as follows:

"(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

36. It has not been questioned before us that the fundamental right guaranteed by Art. 19(1)(a) of the freedom of speech and expression is not an absolute right. It is common ground that the right is subject to such reasonable restrictions as would come within the purview of clause (2), which comprises (a) security of the State, (b) friendly relations with foreign States, (c) public order, (d) decency or morality, etc., etc. With reference to the constitutionality of s. 124A or s. 505 of the Indian Penal Code, as to how far they are consistent with the requirements of clause (2) of Art. 19 with particular reference to security of the State and public order, the section, it must be noted, penalises any spoke or written words or signs or visible representations, etc., which have the effect of bringing, or which attempt to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law. Now, the expression "the Government established by law" has to be distinguished from the person's for the time being engaged in carrying on the administration. "Government established by law" is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted. Hence the continued existence of the Government established by law is an essential condition of the stability of the State. That

is why 'sedition', as the offence in s. 124A has been characterised, comes under Chapter VI relating to offences against the State. Hence any acts within the meaning of s. 124A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence. In other words, any written or spoken words, etc., which have implicit in them the idea of subverting Government by violent means, which are compendiously included in the term 'revolution', have been made penal by the section in question. But the section has taken care to indicate clearly that strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence.

37. It has not been contended before us that if a speech or a writing excites people to violence or have the tendency to create public disorder, it would not come within the definition of 'sedition'. What has been contended is that a person who makes a very strong speech or uses very vigorous words in a writing directed to a very strong criticism of measures of Government or acts of public officials, might also come within the ambit of the penal section. But, in our opinion, such words written or spoke would be outside the scope of the section. In this connection, it is pertinent to observe that the security of the State, which depends upon the maintenance of law and order is the very basic consideration upon which legislation, with view to punishing offences against the State, is undertaken. Such a legislation has, on the one hand, fully to protect and guarantee the freedom of speech and expression, which is the sine quo non of a democratic form of Government that our Constitution has established. This Court, as the custodian and guarantor of the fundamental rights of the citizens, has the duty cast upon it of striking down any law which unduly restricts the freedom of speech and expression with which we are concerned in this case. But the freedom has to be guarded against becoming a licence for vilification and condemnation of the Government established by law, in words, which incite violence or have the tendency to create public disorder. A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder. The Court, has, therefore, the duty cast upon it of drawing a clear line of demarcation between the ambit of a citizen's fundamental right guaranteed under Art. 19(1)(a) of the

Constitution and the power of the legislature to impose reasonable restrictions on that guaranteed right in the interest of, inter alia, security of the State and public order. We have, therefore, to determine how far the Sections 124A and 505 of the Indian Penal Code could be said to be within the justifiable limits of legislation. If is held, in consonance with the views expressed by the Federal Court in the case of Niharendu Dutt Majumdar v. The King Emperor MANU/FE/0005/1942: (1942) F.C.R. 38 that the gist of the offence of 'sedition' is incitement to violence or the tendency or the intention to create public disorders by words spoken or written, which have the tendency or the effect of bringing the Government established by law into hatred or contempt or creating disaffection in the sense of disloyalty to the State in other words bringing the law into line with the law of sedition in England, as was the intention of the legislators when they introduced s. 124A into the Indian Penal Code in 1870 as aforesaid, the law will be within the permissible limits laid down in clause (2) of Art. 19 of the Constitution, if on the other hand we give a literal meaning to the words of the section, divorced from all the antecedent background in which the law of sedition has grown, as load down in the several decisions of the Judicial Committee of the Privy Council, it will be true to say that the section is not only within but also very much beyond the limits laid down in clause (2) aforesaid.

38. In view of the conflicting decisions of the Federal Court and of the Privy Council, referred to above, we have to determine whether and how far the provisions of Sections 124A and 505 of the Indian Penal Code have to be struck down as unconstitutional. If we accept the interpretation of the Federal Court as to the gist of criminality in an alleged crime of sedition, namely, incitement to disorder or tendency or likelihood of public disorder or reasonable apprehension thereof, the section may lie within the ambit of permissible legislative restrictions on the fundamental right of freedom of speech and expression. There can be no doubt that apart from the provisions of clause (2) of Art. 19, Sections 124A and 505 are clearly violative of Art. 19(1)(a) of the Constitution. But then we have to see how far the saving clause, namely, clause (2) of Art. 19 protects the sections aforesaid. Now, as already pointed out, in terms of the amended clause (2), quoted above, the expression "in the interest of.... public order" are words of great amplitude and are much more comprehensive than the expression "for the maintenance of", as observed by this Court in the case of Virendra v. The State of Punjab MANU/SC/0023/1957: [1958]1SCR308. Any law which is enacted in the interest of public order may be saved from the vice of constitutional invalidity. If, on the other hand, we were to hold that even without any tendency to disorder or intention to create disturbance of law and order, by the use of words written or spoke which merely create disaffection or feelings of enmity against the Government, the offence of sedition is complete, then such an interpretation of the sections would make then unconstitutional in view of Art. 19(1)(a) read with clause (2). It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction. The provisions of the sections read as a whole, along with the explanations, make it

reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So construed, the section, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order. It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress (vide (1)). The Bengal Immunity Company Limited v. The State of Bihar MANU/SC/0083/1955: [1955]2SCR603 and MANU/SC/0020/1957: [1957]1SCR930 R. M. D. Chamarbaugwalla v. The Union of India MANU/SC/0020/1957: [1957]1SCR930. Viewed in that light, we have no hesitation in so construing the provisions of the sections impugned in these cases as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence.

39. We may also consider the legal position, as it should emerge, assuming that the main s. 124A is capable of being construed in the literal sense in which the Judicial Committee of the Privy Council has construed it in the cases referred to above. On that assumption, it is not open to this Court to construe the section in such a way as to avoid the alleged unconstitutionality by limiting the application of the section in the way in which the Federal Court intended to apply it? In our opinion, there are decisions of this Court which amply justify our taking that view of the legal position. This Court, in the case of R.M.D. Chamarbaugwalla v. The Union of India MANU/SC/0020/1957: [1957]1SCR930 has examined in detail the several decisions of this Court, as also of the Courts in America and Australia. After examining those decisions, this Court came to the conclusion that if the impugned provisions of a law come within the constitutional powers of the legislature by adopting one view of the words of the impugned section or Act, the Court will take that view of the matter and limit its application accordingly, in preference to the view which would make it unconstitutional on another view of the interpretation of the words in question. In that case, the Court had to choose between a definition of the expression "Prize Competitions" as limited to those competitions which were of a gambling character and those which were not. The Court chose the former interpretation which made the rest of the provisions of the Act, Prize Competitions Act (XLII of 1955), with particular reference to Sections 4 and 5 of the Act and Rules 11 and 12 framed thereunder, valid. The Court held that the penalty attached only to those competitions which involved the element of gambling and those competitions in which success depended to a substantial degree on skill were held to be out of the purview of the Act. The ratio decidendi in that case, in our opinion, applied to the case in hand in so far as

we propose to limit its operation only to such activities as come within the ambit of the observations of the Federal Court, that is to say, activities involving incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace.

40. We do not think it necessary to discuss or to refer in detail to the authorities cited and discussed in the reported case R. M. D. Chamarbaugwalla v. The Union of India MANU/SC/0020/1957: [1957]1SCR930. We may add that the provisions of the impugned sections, impose restrictions on the fundamental freedom of speech and expression, but those restrictions cannot but be said to be in the interest of public order and within the ambit of permissible legislative interference with that fundamental right.

41. It is only necessary to add a few observations with respect to the constitutionality of s. 505 of the Indian Penal Code. With reference to each of the three clauses of the section, it will be found that the gravamen of the offence is making, publishing or circulating any statement, rumour or report (a) with intent to cause or which is likely to cause any member of the Army, May or Air Force to mutiny or otherwise disregard or fail in his duty as such; or (b) to cause fear or alarm to the public or a section of the public which may induce the commission of an offence against the State or against public tranquility or (c) to incite or which is likely to incite one class or community of persons to commit an offence against any other class or community. It is manifest that each one of the constituent elements of the offence under s. 505 has reference to, and a direct effect on, the security of the State or public order. Hence, these provisions would not exceed the bounds of reasonable restrictions on the right of freedom of speech and expression. It is clear, therefore, that clause (2) of Art. 19 clearly saves the section from the vice of unconstitutionality.

42. It has not been contended before us on behalf of the appellant in C.A. 169 of 1957 or on behalf of the respondents in the other appeals (No. 124-126 of 1958) that the words used by them did not come within the purview of the definition of sedition as interpreted by us. No arguments were advanced before us to show that even on the interpretation given by us their cases did not come within the mischief of the one or the other section, as the case may be. It follows, therefore, that the Criminal Appeal 169 of 1957 has to be dismissed. Criminal Appeals 124-126 of 1958 will be remanded to the High Court to pass such order as it thinks fit and proper in the light of the interpretation given by us.

43. Appeal No. 169 of 1957 dismissed.
44. Appeals Nos. 124 to 126 of 1958 allowed.

MANU/SC/0471/2021

Neutral Citation: 2021/INSC/352

Back to Section 146 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal Nos. 606 and 630-631 of 2021

Decided On: 23.07.2021

Lakshman Singh and Ors. Vs. State of Bihar

Hon'ble Judges/Coram:
Dr. D.Y. Chandrachud and M.R. Shah, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Manoj Swarup, Sr. Adv., Dharmendra Kumar Sinha, AOR, Neelmani Pant, Rajeev Kumar Jha and Sunil Rai, Advs.
For Respondents/Defendant: Arunabh Chowdhury, AAG, Pallavi Langar, AOR, Tapesh Kumar Singh, AOR, Aditya Pratap Singh and Bhaswati Singh, Advs.

JUDGMENT
M.R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 31.10.2018 passed by the High Court of Jharkhand at Ranchi in Criminal Appeal Nos. 232/1999 and 242/1999, by which the High Court has dismissed the said appeals preferred by the Appellants herein and has confirmed the judgment and order of conviction and sentence passed by the learned trial Court convicting the Appellants for the offences Under Sections 323 and 147 Indian Penal Code and sentencing them to undergo six months simple imprisonment under both sections, original Accused Nos. 9, 8, 12, 11, 10, 14, 2 and 13-Lakshman Singh, Shiv Kumar Singh, Upendra Singh, Vijay Singh, Sanjay Prasad Singh, Rajmani Singh, Ayodhya Prasad Singh and Ramadhar Singh have preferred the present appeals.

2. As per the case of the prosecution, an FIR was lodged at Paatan Police Station by the first informant-Rajeev Ranjan Tiwari on 26.11.1989 alleging inter alia that on the eve of general election, he was working as a worker of Bhartiya Janta Party at village Golhana Booth No. 132 under Paatan Police Station and was issuing slips to the voters towards two hundred yards north away from the polling booth; at that time, at around 10:40 a.m., the Accused persons who belong to another village Naudiha came armed with lathis, sticks, country made pistols and asked him to stop issuing voter slips and handover the voters list which he was possessing and on his refusal the Accused persons started

physically beating him (P.W. 8.-Rajiv Ranjan Tiwari) with hands, fists, lathis and sticks; the brother of the first informant- P.W. 8, Priya Ranjan Tiwari (P.W. 10) upon knowing about the incident came to rescue him and at that time Accused Dinanath Singh @ Dina Singh fired gun shot at P.W. 10 with his country made pistol, due to which he received pellet injuries. Accused Ajay Singh fired at Dinesh Tiwari (P.W. 12), due to which he was injured. It was further alleged that due to scuffle, Accused Hira Singh snatched wrist watches of P.W. 8 & P.W. 10; the villagers rushed there and then all the Accused persons ran away towards village Naudhia. Based on the statement of P.W. 8-Rajiv Ranjan Tiwari, which was recorded at 12:30 p.m. on 26.11.1989, an FIR was registered at about 2:00 p.m. on the very day, i.e., 26.11.1989 against 16 Accused named persons for the offences Under Sections 147, 148, 149, 307, 326, 324, 323 Indian Penal Code and Section 27 of the Arms Act. At this stage, it is required to be noted that even some of the Accused-Lakshman Singh, Shiv Kumar Singh and Ayodhya Prasad Singh also sustained injuries. After conclusion of the investigation, the investigating officer filed chargesheet against 15 Accused including the Appellants herein.

2.1. The learned trial Court framed the charge against the Accused persons for the offences Under Sections 323, 307, 147, 149 and 379 Indian Penal Code. Accused Dinanath Singh and Ajay Singh were further charged Under Sections 148 Indian Penal Code and Accused Hira Singh was also charged Under Section 379 Indian Penal Code. As the case was exclusively triable by the Court of Sessions, the case was committed to the learned Sessions Court, which was numbered as Sessions Trial No. 36 of 1991.

2.2. To prove the case against the Accused, the prosecution examined in all 15 witnesses including P.W. 8, the first informant-Rajiv Ranjan Tiwari, Priya Ranjan Tiwari (P.W. 10) the brother of the first informant and P.W. 5-Dilip Kumar Tiwari, who all were injured eye witnesses. The prosecution also examined Dr. Jawahar Lal (P.W. 7), who examined P.W. 10, P.W. 12 and P.W. 5 on the very day at Sadar Hospital, Daltonganj and who found injuries on the said persons. The prosecution also examined the investigating officer-Shivnandan Mahto (P.W. 13). Prosecution also examined independent witnesses, i.e., P.W. 1, P.W. 3 & P.W. 4. After closure of the evidence on behalf of the prosecution, statements of the Accused persons Under Section 313 Code of Criminal Procedure were recorded. They denied to the allegations. The defence also examined D.W. 1 to prove the injuries on Accused Ayodhya Prasad Singh, Rama Singh, Shiv Kumar Singh and Lakshman Singh and brought on record their injury reports.

2.3. Thereafter, on conclusion of the full-fledged trial and on appreciation of the entire evidence on record and relying upon the deposition of P.W. 8, P.W. 10 & P.W. 5, who all were injured eyewitnesses and other eyewitnesses, the learned trial Court convicted the Appellants herein for the offences Under Sections 323 and 147 Indian Penal Code and sentenced them to undergo six months simple imprisonment for both the offences. The learned trial Court also convicted Accused Dinanath Singh for the offences Under Sections 326 & 148 Indian Penal Code and sentenced him to undergo seven years and two

years RI respectively. The learned trial Court also convicted Accused Ajay Singh for the offences Under Sections 324 & 148 Indian Penal Code and sentenced him to undergo three years & two years RI respectively.

2.4. Feeling aggrieved and dissatisfied with the judgment and order of conviction and sentence, convicting and sentencing the Appellants herein, original Accused Nos. 9, 8, 12, 11, 10, 14, 2 preferred appeal along with other Accused being Criminal Appeal No. 232 of 1999 and Accused No. 13 preferred appeal being Criminal Appeal No. 242 of 1999 before the High Court. By the common impugned judgment and order, the High Court has dismissed the said appeals and has confirmed the judgment and order of conviction and sentence passed by the learned trial Court.

2.5. Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court, original Accused Nos. 9, 8, 12, 11, 10, 14, 2 & 13 have preferred the present appeals.

3. Shri Manoj Swarup, learned Senior Advocate has appeared on behalf of the Appellants-Accused and Shri Arunabh Chowdhury, learned Additional Advocate General in Criminal Appeal No. 606/2021 and Shri Tapesh Kumar Singh, learned Advocate in Criminal Appeal Nos. 630-631/2021 have appeared for the State of Jharkhand.

3.1. Learned Senior Advocate appearing on behalf of the Appellants-Accused has vehemently submitted that in the facts and circumstances of the case both, the learned trial Court as well as the High Court have committed a grave error in convicting the Accused for the offences Under Sections 323, 147 Indian Penal Code.

3.2. It is further submitted that both the courts below have materially erred in relying upon the deposition of P.W. 8, P.W. 10 & P.W. 5. It is submitted that the aforesaid witnesses are unreliable and untrustworthy. It is submitted that they are not the independent witnesses. It is submitted that as such P.W. 12-Dinesh Tiwary turned hostile. It is submitted that the aforesaid witnesses belong to the same village.

3.3. It is further submitted that even both the courts below have materially erred in coming to the conclusion that the Appellants were part of the unlawful assembly and thereby have committed a grave error in convicting the Accused for the offence Under Section 147 Indian Penal Code.

3.4. It is further submitted that the motive has not been established and proved. It is submitted that the common object was alleged to be to cast bogus votes, which was never cast. It is submitted that even the voter slip was also available with all other parties and therefore the motive as per the prosecution case is questionable.

3.5. It is further submitted that so far as the impugned judgment and order passed by the High Court is concerned, the individual role and/or the merits of the case qua the respective Appellants-Accused have not at all been considered by the High Court. It is submitted that the High Court has only stated at page 26, para 23 qua the present Appellants that so far as the rests of the Appellants are concerned, they have been rightly held guilty Under Sections 323 & 147 Indian Penal Code. It is submitted that there is no independent assessment of the evidence qua the Appellants herein.

3.6. It is further submitted that both the courts below have not properly appreciated the fact that the presence of the Accused at the polling station was natural. It is submitted that because of the bye-election, the Accused persons along with the other persons belonging to different political parties were present. It is submitted that it was natural for the people belonging to different parties to call persons from different villages or otherwise to be present at booth and that itself would not be sufficient to prove the guilt.

3.7. It is further submitted that even otherwise, the courts below have materially erred in convicting the Accused for the offence Under Section 323 Indian Penal Code. It is submitted that so far as P.W. 8-informant is concerned, there was no injury sustained by him. It is submitted that no injury certificate of P.W. 8 has been brought on record. It is submitted that the prosecution has brought on record the injury certificates of three persons only, namely, P.W. 10 -Priya Ranjan Tiwari, P.W. 12-Dinesh Tiwari and P.W. 5-Dilip Tiwari. It is submitted that all the injuries are by gunshot except two simple injuries caused to Dinesh Tiwari-P.W. 12. It is submitted that P.W. 12 turned hostile. It is submitted that the Appellants are alleged to have used lathis and sticks only against the first informant-P.W. 8 as per the prosecution case. It is submitted that therefore in the absence of any corroborating evidence/material in support of the case of the prosecution that the Appellants have beaten P.W. 8 and sustained injuries, the courts below have materially erred in convicting the Accused for the offence Under Section 323 Indian Penal Code.

3.8. It is further submitted that even the conduct on the part of the first informant-P.W. 8 creates doubt about his credibility. It is submitted that he has roped in several persons belonging to the opposite camp. It is submitted that after the incident he went to the village and the police SHO came to his house and taken him to the government hospital, Patan and thereafter recorded his fardbyan (statement). It is submitted that neither he went to his injured brother nor he has ever gone to see him at the hospital nor any family member went to see the injured in the hospital. It is submitted that in such circumstances, P.W. 8 is not a reliable and trustworthy witness and therefore the courts below ought not to have relied upon the deposition of P.W. 8.

3.9. It is further submitted that even there is no recovery of lathis and sticks. It is submitted that even the voting slips have also not been recovered from the informant. It is submitted that non-exhibit of voter slips demolishes the case of the prosecution. It is

submitted that FIR, P.W. 1 and informant and consistently all witnesses have stated that Rajiv Ranjan Tiwari refused to give voter slips to the Accused, upon which scuffle occurred. It is submitted that the voting slips are not exhibited. It is submitted therefore uncorroborated testimony of asking voter slips is not proved.

3.10. Making the above submissions and relying upon the decisions of this Court in the cases of Kutumbaka Krishna Mohan Rao v. Public Prosecutor, High Court of A.P., reported in MANU/SC/0313/1991: 1991 Supp. 2 SCC 509 and Inder Singh v. State of Rajasthan, reported in MANU/SC/0009/2015: (2015) 2 SCC 734, it is prayed to allow the present appeals.

4. The present appeals are opposed by the learned Counsel appearing on behalf of the State of Jharkhand.

4.1. It is submitted that as such there are concurrent findings of fact recorded by both, the learned trial Court as well as the High Court, holding the Appellants guilty for the offences Under Sections 323 & 147 Indian Penal Code.

4.2. It is submitted that in the present case the prosecution has been successful in proving the case against the Accused by examining P.W. 8, P.W. 10 & P.W. 5, who are the injured eyewitnesses. It is submitted that the injured eyewitnesses-P.W. 8, P.W. 10 & P.W. 5 are reliable and trustworthy. It is submitted that all the aforesaid three witnesses were thoroughly cross-examined and from cross-examination, nothing adverse to the case of the prosecution has been brought on record by the Accused. It is submitted that even the prosecution examined thee other witnesses, P.W. 1, P.W. 3 & P.W. 4 who are independent witnesses, who supported the case of the prosecution. It is submitted that as such the learned trial Court has discussed the entire evidence on record and analysed the injury reports and thereafter by a detailed judgment has convicted the Appellants for the offence of voluntarily causing hurt Under Section 323 Indian Penal Code and for the offence of rioting Under Section 147 Indian Penal Code. It is submitted that all the Appellants have been guilty for the offence of rioting punishable Under Section 147 Indian Penal Code. It is submitted that for the offence of rioting, there has to be,

i) an unlawful assembly of 5 or more persons as defined in Section 141 Indian Penal Code, i.e., an assembly of 5 or more persons and such assembly was unlawful;

ii) the unlawful assembly must use force or violence. Force is defined in Section 349 Indian Penal Code; and

iii) the force or violence used by an unlawful assembly or by any member thereof must be in prosecution of the common object of such assembly in which case every member of such assembly is guilty of the offence of rioting.

It is submitted that in the present case, all the ingredients of rioting as defined Under Section 146 of the Indian Penal Code has been established and proved.

4.3. It is submitted that as held by this Court in the case of Mahadev Sharma v. State of Bihar, MANU/SC/0078/1965: (1966) 1 SCR 18: AIR 1966 SC 302, 'that every member of the unlawful assembly is guilty of the offence of rioting even though he may not have himself used force or violence'. It is submitted that as held by this Court, 'offence of rioting Under Section 146 Indian Penal Code is said to be committed when the unlawful assembly or any member thereof in prosecution of the common object of such assembly uses force or violence'. It is submitted that therefore once the unlawful assembly is established in prosecution of the common object, i.e., in the present case, as held by the courts below, the common object was "to snatch the voter list and to cast bogus voting", each member of the unlawful assembly is guilty for the offence of rioting. It is submitted that the use of force, even though it be the slightest possible character by any one member of the assembly, once established as unlawful constitutes rioting. It is submitted that it is not necessary that force or violence must be by all but the liability accrues to all the members of the unlawful assembly. It is submitted that some may encourage by words, others by signs while others may actually cause hurt and yet all members of the unlawful assembly would be equally guilty of rioting. It is submitted that in the present case both the courts below have found the Appellants as an active participant in the offence and they cannot be said to be the wayfarers or spectators.

4.4. It is submitted that so far as the offence of voluntarily causing hurt as defined Under Section 321 Indian Penal Code and punishable Under Section 323 Indian Penal Code is concerned, it is submitted that the injuries sustained by P.W. 5 to P.W. 8 and P.W. 12 are simple injuries while P.W. 10 sustained grievous injuries. It is submitted that as such considering the nature of the injuries, the Appellants have been let off lightly by the courts below.

It is further submitted that as such the Accused Lakshman Singh, Shiv Kumar Singh and Ayodhya Prasad Singh sustained injuries which establish beyond doubt their presence and participation. It is submitted that in their statement Under Section 313 Code of Criminal Procedure, they have not explained their injuries at all.

4.5. It is further submitted that as P.W. 5, P.W. 8 & P.W. 10 are injured witnesses, as held by this Court in catena of decisions, evidence of an injured eye witness has great evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. It is submitted that very cogent and convincing grounds are required to discard the evidence of the injured witness. Reliance is placed on the judgments of this Court in the cases of State of MP v. Mansingh MANU/SC/0596/2003: (2003) 10 SCC 414(para 9); Abdul Sayeed v. State of MP MANU/SC/0702/2010: (2010) 10 SCC 259; Ramvilas v. State of Madhya Pradesh, MANU/SC/0876/2015: (2016) 16 SCC 316 (para

6); State of Uttar Pradesh v. Naresh, MANU/SC/0228/2011: (2011) 4 SCC 324 (para 27); and the recent decision in the case of Kalabhai Hamirbhai Kachhot v. State of Gujarat.

4.6. It is further submitted that in the present case, right from the very beginning, all the Accused were named in the FIR and their role and complicity have been established with trustworthy, reliable and cogent evidence. It is submitted that all the Accused persons including the present Appellants formed the unlawful assembly in furtherance of the common object "to snatch the voter list and to cast bogus voting" and actually participated in the occurrence and committed the offences. It is submitted that as such there is no ground to disbelieve the evidence of the injured eye witnesses/eye witnesses.

4.7. It is further submitted that as such the learned trial Court took a very lenient view in imposing the sentence of only six months simple imprisonment. It is submitted that once the Appellants were found to be the members of the unlawful assembly with a common object and looking to the injuries sustained by P.W. 5, P.W. 10 & P.W. 12 who sustained injuries by fired arm also, as such, all the Appellants-Accused ought to have been convicted along with other Accused for the offences Under Sections 307, 326, 324 and 148 Indian Penal Code also.

4.8. It is further submitted that bogus voting seriously undermines the most basic feature of democracy and interferes with the conduct of free and fair election which has been held by this Court in the case of People's Union for Civil Liberties v. Union of India, MANU/SC/0987/2013: (2013) 10 SCC 1, to include within its ambit the right of an elector to cast his vote without fear or duress. It is submitted that as held by this Court in the aforesaid decision, free and fair election is a basic structure of the Constitution and necessarily includes within its ambit the right of an elector to cast his vote without fear of reprisal, duress or coercion. It is submitted that therefore when the trial Court has shown leniency to the Appellants in sentencing them only for six months simple imprisonment, no interference of this Court is called for.

4.9. Making the above submissions and relying upon the aforesaid decisions, it is prayed to dismiss the present appeals.

5. We have heard the learned Counsel for the respective parties at length. We have meticulously scanned the entire evidence on record and also the findings recorded by the learned trial Court, which are on appreciation of the evidence on record. At the outset, it is required to be noted that all the Accused herein are convicted for the offences Under Section 323 and 147 Indian Penal Code and are sentenced to undergo six months simple imprisonment for both the offences and the sentences are directed to run concurrently.

It is true that in the impugned judgment the High Court has not at all dealt with and/or considered the case on behalf of the Accused/Appellants herein and has not discussed the evidence qua each Accused, which ought to have been done while deciding the first

appeal against the judgment and order of conviction. However, as for the reasons stated hereinbelow and ultimately, we agree with the final conclusion of the High Court confirming the judgment and order passed by the learned trial Court, instead of remanding the matter to the High Court, we ourselves have re-appreciated the entire evidence on record.

5.1. In the present case, while convicting the Accused, the learned trial Court has heavily relied upon the deposition of P.W. 1, P.W. 3 and P.W. 4, who are the independent witnesses and P.W. 5, P.W. 8 & P.W. 10, who are the injured witnesses. The presence of the independent witnesses and even the injured witnesses at the place of the incident is natural. P.W. 1, P.W. 3 & P.W. 4, all of whom were the residents of the village and they came there to cast their votes and witnessed the incident. All the witnesses, P.W. 1, P.W. 3 & P.W. 4 have identified all the Accused persons and supported the case of the prosecution fully. P.W. 5, P.W. 8, P.W. 10 and even P.W. 12 are injured eyewitnesses. Injuries on P.W. 5, P.W. 10 & P.W. 12 have been established and proved by the prosecution by examining Dr. Jawahar Lal (P.W. 7), who examined the above injured witnesses. Their injury reports are placed on record by way of Exhibit 1, 1/1 and ½. All the witnesses have unequivocally and in the same voice have stated that at the relevant time when the voting was going on for the Lok Sabha constituency and at that time P.W. 8 - Rajiv Ranjan Tiwari was giving slips to the voters and at that time at about 10:40 a.m. all the Accused persons belonging to another village came there and asked him to stop giving slips and to handover the voter list and on refusal the Accused persons assaulted him with fists, slaps and lathis and he sustained injuries. Meanwhile, his brother Priya Ranjan Tiwari came for his rescue and at that time one Dinanath Singh took out his country made pistol and fired upon him causing several fire-armed injuries. All the Accused persons were named right from the very beginning of lodging the FIR and all the Accused persons were specifically named by all the witnesses and/or fully supported the case of the prosecution. At this stage, it is required to be noted that even some of the Accused namely,-Lakshman Singh, Shiv Kumar Singh and Ayodhya Prasad Singh sustained injuries and they have failed to explain their injuries in their 313 statements. Thus, their presence at the time and place of incident has been established and proved even otherwise. At the cost of the repetition, it is observed that P.W. 5, P.W. 8 and P.W. 10 are the injured witnesses. Even after they have been fully cross-examined, they have fully supported the case of the prosecution, even after thorough cross-examination on behalf of the Accused.

6. In the case of Mansingh (supra), it is observed and held by this Court that "the evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly".

It is further observed in the said decision that "minor discrepancies do not corrode the credibility of an otherwise acceptable evidence".

It is further observed that "mere non-mention of the name of an eyewitness does not render the prosecution version fragile".

6.1. A similar view has been expressed by this Court in the subsequent decision in the case of Abdul Sayeed (supra). It was the case of identification by witnesses in a crowd of assailants. It is held that "in cases where there are large number of assailants, it can be difficult for witnesses to identify each assailant and attribute specific role to him". It is further observed that "when incident stood concluded within few minutes, it is natural that exact version of incident revealing every minute detail, i.e., meticulous exactitude of individual acts, cannot be given by eyewitnesses". It is further observed that "where witness to occurrence was himself injured in the incident, testimony of such witness is generally considered to be very reliable, as he is a witness that comes with an inbuilt guarantee of his presence at the scene of crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone". It is further observed that "thus, deposition of injured witness should be relied upon unless there are strong grounds for rejection of his evidence on basis of major contradictions and discrepancies therein".

6.2. The aforesaid principle of law has been reiterated again by this Court in the case of Ramvilas (supra) and it is held that "evidence of injured witnesses is entitled to a great weight and very cogent and convincing grounds are required to discard their evidence". It is further observed that "being injured witnesses, their presence at the time and place of occurrence cannot be doubted".

7. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we see no reason to doubt the credibility and/or trustworthiness of P.W. 1, P.W. 3 & P.W. 4 and more particularly P.W. 5, P.W. 8 & P.W. 10, who are the injured witnesses. All the witnesses are consistent in their statements and they have fully supported the case of the prosecution. Under the circumstances, the courts below have not committed any error in convicting the Accused, relying upon the depositions of P.W. 1, P.W. 3, P.W. 4, P.W. 5, P.W. 8 & P.W. 10.

8. Now so far as the submission on behalf of the Appellants-Accused that all the Appellants were alleged to have armed with lathis and so far as P.W. 8 is concerned, no injury report is forthcoming and/or brought on record and therefore they cannot be convicted for the offence Under Section 323 Indian Penal Code is concerned, at the outset, it is required to be noted that P.W. 8 in his examination-in-chief/deposition has specifically stated that after he sustained injuries, treatment was provided at Government Hospital, Paatan. He has further stated in the cross-examination on behalf of all the Accused persons except Accused Dinanath Singh that he sustained 2-3 blows of truncheons. He has also stated that he does not exactly remember that how many blows he suffered. According to him, he first went to Police Station, Paatan along with the SHO of Police Station, Paatan, where his statement was recorded and thereafter the SHO sent him to Paatan Hospital for treatment. Thus, he was attacked by the Accused persons by lathis/sticks and he sustained injuries and was treated at Government Hospital, Paatan

has been established and proved. It may be that there might not be any serious injuries and/or visible injuries, the hospital might not have issued the injury report. However, production of an injury report for the offence Under Section 323 Indian Penal Code is not a sine qua non for establishing the case for the offence Under Section 323 Indian Penal Code. Section 323 Indian Penal Code is a punishable Section for voluntarily causing hurt. "Hurt" is defined Under Section 319 Indian Penal Code. As per Section 319 Indian Penal Code, whoever causes bodily pain, disease or infirmity to any person is said to cause "hurt". Therefore, even causing bodily pain can be said to be causing "hurt". Therefore, in the facts and circumstances of the case, no error has been committed by the courts below for convicting the Accused Under Section 323 Indian Penal Code.

9. Now so far as the conviction of the Accused Under Section 147 Indian Penal Code is concerned, the presence of all the Accused persons at the time of incident and their active participation has been established and proved by the prosecution by examining the aforesaid witnesses who are the independent witnesses and injured witnesses also. The Accused persons belong to another village. They formed an unlawful assembly in prosecution of common object, i.e., "to snatch the voters list and to cast bogus voting". It has been established and proved that they used the force and, in the incident, P.W. 5, P.W. 8, P.W. 10 & P.W. 12 sustained injuries. All the Accused persons-Appellants were having lathis. Section 147 Indian Penal Code is a punishable Section for "rioting". The offence of "rioting" is defined in Section 146 Indian Penal Code, which reads as under:

146. Rioting-Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

On a fair reading of the definition of "rioting" as per Section 146 Indian Penal Code, for the offence of "rioting", there has to be,

i) an unlawful assembly of 5 or more persons as defined in Section 141 Indian Penal Code, i.e., an assembly of 5 or more persons and such assembly was unlawful;

ii) the unlawful assembly must use force or violence. Force is defined in Section 349 Indian Penal Code; and

iii) the force or violence used by an unlawful assembly or by any member thereof must be in prosecution of the common object of such assembly in which case every member of such assembly is guilty of the offence of rioting.

9.1. "Force" is defined Under Section 349 Indian Penal Code. As per Section 349 Indian Penal Code, "force" means "A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other....."

As observed hereinabove, all the Accused persons were the members of the unlawful assembly and the common intention was "to snatch the voters slips and to cast bogus voting". They used force and violence also, as observed hereinabove. It is the case on behalf of the Accused that there is no specific role attributed to them for the offence of rioting Under Section 147 Indian Penal Code. However, as observed hereinabove and as held by this Court in the case of Abdul Sayeed (supra), where there are large number of assailants, it can be difficult for witnesses to identify each assailant and attribute specific role to him. In the present case, the incident too concluded within few minutes and therefore it is natural that exact version of incident revealing every minute detail, i.e., meticulous exactitude of individual acts cannot be given by eyewitnesses. Even otherwise, as held by this Court in the case of Mahadev Sharma (supra), every member of the unlawful assembly is guilty of the offence of rioting even though he may not have himself used force or violence. In paragraph 7, it is observed and held as under:

7. Section 146 then defines the offence of rioting. This offence is said to be committed when the unlawful assembly or any member thereof in prosecution of the common object of such assembly uses force or violence. It may be noticed here that every member of the unlawful assembly is guilty of the offence of rioting even though he may not have himself used force or violence. There is thus vicarious responsibility when force or violence is used in prosecution of the common object of the unlawful assembly.

Thus, once the unlawful assembly is established in prosecution of the common object, i.e., in the present case, "to snatch the voters list and to cast bogus voting", each member of the unlawful assembly is guilty of the offence of rioting. The use of the force, even though it be the slightest possible character by any one member of the assembly, once established as unlawful constitutes rioting. It is not necessary that force or violence must be by all but the liability accrues to all the members of the unlawful assembly. As rightly submitted by the learned Counsel appearing on behalf of the State, some may encourage by words, others by signs while others may actually cause hurt and yet all the members of the unlawful assembly would be equally guilty of rioting. In the present case, all the Accused herein are found to be the members of the unlawful assembly in prosecution of the common object, i.e., "to snatch the voters list and to cast bogus voting" and P.W. 5, P.W. 8, P.W. 10 & P.W. 12 sustained injuries caused by members of the unlawful assembly, the Appellants-Accused are rightly convicted Under Section 147 Indian Penal Code for the offence of rioting.

10. In view of the above, we are of the firm view that the Appellants are rightly convicted Under Sections 323 and 147 Indian Penal Code and sentenced to undergo six months simple imprisonment only for the said offences.

Before parting, we may observe that though in the present case it has been established and proved that all the Accused were the members of the unlawful assembly in prosecution of the common object, namely, "to snatch the voters list and to cast bogus

voting" and have been convicted for the offence Under Section 147 Indian Penal Code, the trial Court has imposed the sentence of only six months simple imprisonment. In the case of People's Union for Civil Liberties (supra), it is observed by this Court that freedom of voting is a part of the freedom of expression. It is further observed that secrecy of casting vote is necessary for strengthening democracy. It is further observed that in direct elections of Lok Sabha or State Legislature, maintenance of secrecy is a must and is insisted upon all over the world in democracies where direct elections are involved to ensure that a voter casts his vote without any fear or being victimised if his vote is disclosed. It is further observed that democracy and free elections are a part of the basic structure of the Constitution. It is also further observed that the election is a mechanism which ultimately represents the will of the people. The essence of the electoral system should be to ensure freedom of voters to exercise their free choice. Therefore, any attempt of booth capturing and/or bogus voting should be dealt with iron hands because it ultimately affects the Rule of law and democracy. Nobody can be permitted to dilute the right to free and fair election. However, as the State has not preferred any appeal against imposing of only six months simple imprisonment, we rest the matter there.

11. In view of the above and for the reasons stated hereinabove, all the appeals fail and deserve to be dismissed and are accordingly dismissed. Since, the applications for exemption from surrendering of the Accused-Appellants herein were allowed by this Court vide orders dated 15.03.2019 and 08.07.2019 respectively, the Accused-Appellants are directed to surrender forthwith to serve out their sentence.

MANU/SC/0175/2019

Back to Section 149 of Indian Penal Code, 1860

Neutral Citation: 2019/INSC/180

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 1144 of 2009

Decided On: 12.02.2019

Mala Singh and Ors. Vs. State of Haryana

Hon'ble Judges/Coram:
Abhay Manohar Sapre and R. Subhash Reddy, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Karan Bharihoke, (A.C.), Sunny Choudhary and Manoj Kumar, Advs.
For Respondents/Defendant: Atul Mangla, AAG, Ashish Pandey, Inderjeet, Advs. for Monika Gusain, Adv.

JUDGMENT
Abhay Manohar Sapre, J.

1. This appeal is filed by the three Accused persons against the final judgment and order dated 11.02.2008 passed by the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 65-DB of 1999 whereby the Division Bench of the High Court allowed the appeal in respect of eight Accused persons and acquitted them from the charges Under Sections 148, 302/149, 323/149 and 506/149 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") but dismissed the appeal in respect of the three Accused persons (Appellants herein) and convicted them Under Section 302/34 Indian Penal Code instead of Section 302/149 Indian Penal Code.

2. In order to appreciate the controversy involved in this appeal, it is necessary to set out the facts in detail hereinbelow.

3. Eleven (11) Accused persons (hereinafter referred to as "A-1 to A-11") were tried for the offences punishable Under Sections 148, 302/149, 323/149 and 506/149 Indian Penal Code for committing murder of one lady-Mahendro Bai in Sessions Case No. 19 of 1997.

4. Additional Sessions Judge, Faridabad, by judgment/order dated 04.12.1998, convicted all the Accused (A-1 to A-11) Under Sections 148, 302/149, 323/149 and 506/149 Indian Penal Code and accordingly sentenced them to undergo life imprisonment apart from

imposing other lesser sentences. The Additional Sessions Judge held that the prosecution was able to prove the case against all the Accused persons (A-1 to A-11) beyond reasonable doubt and, therefore, all of them deserve to be convicted accordingly.

5. All the Accused persons, namely, Ranjit Singh (A-1), Boor Singh (A-2), Puran Singh (A-3), Balwant Singh (A-4), Inder Singh (A-5), Bagga Singh (A-6), Mala Singh (A-7), Phuman Singh (A-8), Kashmiro (A-9), Laxmi Bai (A-10) and Taro Bai (A-11) were sentenced to suffer rigorous imprisonment for six months Under Section 148 Indian Penal Code, rigorous imprisonment for life and to pay a fine of Rs. 2,000/- (Rs. Two Thousand) Under Section 302/149 Indian Penal Code, in default of payment of fine to further undergo rigorous imprisonment for six months, rigorous imprisonment for three months Under Section 323/149 Indian Penal Code and rigorous Imprisonment for six months Under Section 506/149 Indian Penal Code. All the sentences were to run concurrently.

6. All the Accused persons (A-1 to A-11) felt aggrieved by their conviction and sentence and they filed one common criminal appeal in the High Court of Punjab & Haryana at Chandigarh (Criminal Appeal No. 65-DB of 1999).

7. By impugned order, the High Court allowed the appeal in respect of the eight Accused persons, namely, A-1 to A-6, A-10 & A-11 and acquitted them from all the charges whereas dismissed the appeal in respect of three Accused persons, namely, A-7 to A-9 and accordingly upheld their conviction by taking recourse to Section 34 Indian Penal Code. In other words, the High Court upheld the conviction Under Section 302 read with Section 34 Indian Penal Code in place of 302/149 Indian Penal Code.

8. The three Accused persons, namely, Mala Singh (A-7), Phuman Singh (A-8) and Kashmiro (A-9), who suffered the conviction/sentence felt aggrieved by the aforesaid order of the High Court and they filed the present appeal by way of special leave in this Court.

9. So far as the order of the High Court, which resulted in acquittal of eight Accused, namely, A-1 to A-6, A-10 and A-11 is concerned, the State did not challenge their acquittal order and, therefore, this part of the order of the High Court has now attained finality.

10. We are, therefore, not required to examine the legality and correctness of this part of the impugned order by which eight co-accused (A-1 to A-6, A-10 and A-11) were acquitted.

11. Learned Counsel for the Appellants, at the outset, stated that so far as Appellant No. 1 - Mala Singh (A-7) is concerned, he expired during pendency of the appeal. The appeal of Mala Singh (A-7) (Appellant No. 1 herein) therefore, stands abated. His appeal is accordingly dismissed as having abated.

12. We are, therefore, now concerned with the case of two Accused persons, namely, Phuman Singh (A-8) [Appellant No. 2 herein] and Smt. Kashmiro (A-9) [Appellant No. 3 herein].

13. In other words, now we have to examine in this appeal as to whether the High Court was justified in upholding the conviction and the sentence of Appellant No. 2 (A-8) and Appellant No. 3 (A-9).

14. In order to examine this question, it is necessary to set out the prosecution case in brief hereinbelow.

15. The death of Mahendro Bai occurred as a result of some disputes between the members of one family. One group consisted of one branch of brothers, their sons and the wives whereas the other group consisted of another branch of brothers, their sons and the wives. The dispute was in relation to the ownership and possession of an ancestral property of the family members, i.e., one agricultural land.

16. One Mehar Singh had six brothers. They owned 22 killas of land. This land was orally partitioned amongst all the brothers 30 years back and each brother was cultivating his share. Mehar Singh then purchased some other land measuring 2 1/2 acres in the same area. His three brothers-Mala Singh (A-7), Bagga Singh (A-6) and Inder Singh (A-5) then started demanding their share in this 2 1/2 acres of land from Mehar Singh which he refused saying that it was not an ancestral land and, therefore, no need to partition. This became the cause of dispute among the brothers.

17. On 21.09.1996 at around 12 noon, Mehar Singh, Mal Singh (son of Mehar Singh), Mahendro Bai (wife of Mal Singh-daughter in law of Mehar Singh), Dara Singh (son of Mehar Singh) and Palo Devi (wife of Dara Singh) were sitting on the land (field) and talking to each others then, Mala Singh (A-7), Inder Singh (A-5), Bagga Singh (A-6) Boor Singh (A-2), Balwant Singh (A-4), Puran Singh (A-3), Ranjit Singh (A-1), Phuman Singh (A-8), Taro Bai (A-11) and Kashmiro (A-9) came there with weapons (lathi, country made pistol, sword, ballaum) in their hands.

18. Mala Singh (A-7) gave "Lalkara" saying that they should be taught lesson for non-partitioning the land and be finished. This led to a fight between the two groups resulting in death of Mahendro Bai and also causing injuries to Mehar Singh and Palo Bai.

19. This led to registration of the FIR (Ex-PN/2) by Dara Singh followed by the investigation. The statements of several persons were recorded, evidence was collected, post-mortem report of the deceased was obtained, weapons were seized, FSL report was obtained which led to arrest of the aforementioned eleven persons.

20. The charge-sheet was filed against all the 11 Accused persons (A-1 to A-11). The case was then committed to the Sessions Court for trial. The prosecution examined as many as 14 witnesses. All the Accused persons (A-1 to A-11) were examined Under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.). They denied their involvement in the crime.

21. By judgment/order dated 04.12.1998, the Additional Sessions Judge convicted all the 11 Accused persons (A-1 to A-11) Under Sections 148, 302/149, 323/149 & 506/149 Indian Penal Code, as detailed above, which gave rise to filing of the criminal appeal by all the 11 Accused persons (A-1 to A-11) in the High Court.

22. As mentioned above, the High Court acquitted eight Accused persons (A-1 to A-6, A-10 & A-11) from all the charges by giving them benefit of doubt but upheld the conviction of the present three Appellants (A-7 to A-9) Under Section 302/34 Indian Penal Code instead of 302/149 Indian Penal Code, which was awarded by the Additional Sessions Judge. Against this order of the High Court, the three Accused persons (A-7 to A-9) have felt aggrieved and filed this appeal after obtaining the special leave to appeal in this Court.

23. Heard Mr. Karan Bharihoke, learned amicus curiae, Mr. Sunny Choudhary, learned Counsel for the Appellants-Accused persons and Mr. Atul Mangla, learned Additional Advocate General for the Respondent-State.

24. Learned Counsel for the Appellants (Accused persons A-7 to A-9) while assailing the conviction and sentence of the Appellants submitted that the High Court erred in upholding the conviction of the Appellants. His submission was that the High Court should also have acquitted the Appellants herein along with other eight co-accused persons. Learned Counsel urged that, in any case, the High Court erred in upholding the Appellants' conviction and sentence Under Section 302/34 Indian Penal Code.

25. Learned Counsel urged that it was not in dispute that the Appellants along with other eight co-accused were originally charged and eventually convicted also for an offence punishable Under Section 302 read with Section 149 Indian Penal Code. With this background, when the matter was carried in appeal at the instance of all the eleven Accused persons challenging their conviction, the only question, which fell for consideration before the High Court, was whether the conviction of all the 11 Accused persons Under Section 302/149 is justified or not.

26. Learned Counsel urged that the High Court was, therefore, not justified in altering the charge from Section 302 read with Section 149 Indian Penal Code to Section 302 read with Section 34 Indian Penal Code suo moto and then was not justified in upholding the conviction and that too only qua three Accused persons (Appellants herein) and acquitting other eight co-accused.

27. In other words, his submission was that once the charges were framed Under Section 302/149 Indian Penal Code against all the 11 Accused persons which resulted in their conviction Under Section 302/149 Indian Penal Code, the Appellate Court had no jurisdiction to suo moto alter the charges and convict the Appellants Under Section 302/34 Indian Penal Code without giving them any opportunity to meet the altered charge and simultaneously acquitting remaining eight co-accused from the charge of Section 302/149 Indian Penal Code.

28. Learned Counsel urged that assuming that the Appellate Court had the jurisdiction to alter the charges qua the Appellants (A-7 to A-9) only, yet, in his submission, there was no evidence adduced by the prosecution to split the charges only against the present Appellants Under Section 34 Indian Penal Code for upholding their conviction Under Section 302 Indian Penal Code.

29. In substance, the submission was against the splitting of the charges at the appellate stage by the High Court for convicting the Appellants Under Section 302/34 Indian Penal Code and acquitting the remaining eight co-accused persons Under Section 302/149 Indian Penal Code but not extending the similar benefit of acquittal to the Appellants herein.

30. The last submission of the learned Counsel was that, in a case of this nature, the Appellate Court having acquitted the eight co-accused should have examined the role of each Accused (Appellants herein) in the crime. The reason being, when no case Under Section 149 Indian Penal Code was held made out qua all the Accused persons inasmuch as when eight co-accused stood acquitted Under Section 302/149 Indian Penal Code by the High Court and when there was no evidence to sustain the plea of Section 34 against the three Appellants, the only option available to the Appellate Court was to examine the role of each Appellant individually in the crime in question.

31. It was, therefore, his submission that if the role of the present two Appellants is examined in the commission of the crime then it is clear that the death of Mahendro Bai occurred on account of gun shot injury hit by Puran Singh (A-3) who stood acquitted and Farsa injury inflicted by Mala Singh (A-7), who has since died, and not on account of the injury caused by the present two Appellants.

32. Learned Counsel pointed out from the evidence that so far as Appellant No. 2 - Phuman Singh (A-8) and Appellant No. 3-Kashmiro (lady) (A-9) is concerned, both individually hit the deceased with lathi which caused one simple injury on the right hand and other on left cheek of the deceased and that too before others could inflict the fatal injuries to the deceased.

33. It was, therefore, his submission that in these circumstances, Appellant Nos. 2 and 3 could at best be convicted for an offence punishable Under Section 324 Indian Penal Code but not beyond it keeping in view the law laid down by this Court on such question in Mohd. Khalil Chisti v. State of Rajasthan and Ors. MANU/SC/1090/2012: (2013) 2 SCC 541.

34. Lastly, it was urged that since both these Appellants (A-8 & A-9) have already undergone around seven years of jail sentence and were also released on bail in the year 2009 by this Court and both still continue to be on bail for the last 10 years, the ends of justice would be met, if both the Appellants are awarded the jail sentence of "already undergone" Under Section 324 Indian Penal Code with any fine amount.

35. Mr. Karan Bharihoke, learned amicus curiae brought to our notice the legal position, which apply in this case and argued ably by pointing out the evidence and how the legal principle laid down by this Court apply to the case at hand. He also submitted his written note.

36. In reply, learned Additional Advocate General for the Respondent (State) supported the impugned order and urged that the same be upheld calling for no interference.

37. Having heard the learned Counsel for the parties and learned amicus curiae, we are inclined to allow the appeal finding force in the submissions urged by the learned Counsel for the Appellants as detailed below.

38. Four questions arise for consideration in this appeal-first, whether the High Court was justified in convicting the Appellants Under Section 302 read with Section 34 Indian Penal Code when, in fact, the initial trial was on the basis of a charge Under Section 302 read with Section 149 Indian Penal Code?

39. Second, whether the High Court was justified in altering the charge Under Section 149 to one Under Section 34 in relation to three Accused (Appellants herein) after acquitting eight co-accused from the charges of Section 302/149 Indian Penal Code and then convicting the three Accused (Appellants herein) on the altered charges Under Section 302/34 Indian Penal Code?

40. Third, whether there is any evidence to sustain the charge Under Section 34 Indian Penal Code against the three Accused (Appellants herein) so as to convict them for an offence Under Section 302 Indian Penal Code?

41. And Fourth, in case the charge Under Section 34 Indian Penal Code is held not made out for want of evidence and further when the charge Under Section 149 is already held not made out by the High Court, whether any case against three Accused persons (Appellants herein) is made out for their conviction and, if so, for which offence?

42. Before we examine the facts of the case, it is necessary to take note of the relevant sections, which deal with alter of the charge and powers of the Court/Appellate Court in such cases.

43. Section 216 of Code of Criminal Procedure deals with powers of the Court to alter the charge. Section 386 of Code of Criminal Procedure deals with powers of the Appellate Court and Section 464 of Code of Criminal Procedure deals with the effect of omission to frame, or absence of, or error in framing the charge. These Sections are quoted below:

216. Court may alter charge.

(1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the Accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the Accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the Accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

386. Powers of the Appellate Court. After perusing such record and hearing the Appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal Under Section 377 or Section 378, the Accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may-

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the Accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction-

(i) reverse the finding and sentence and acquit or discharge the Accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the Same;

(c) in an appeal for enhancement of sentence-

(i) reverse the finding and sentence and acquit or discharge the Accused or order him to be re-tried by a Court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) in an appeal from any other order, alter or reverse such order;

(e) make any amendment or any consequential or incidental order that may be just or proper;

Provided that the sentence shall not be enhanced unless the Accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the Accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.

464. Effect of omission to frame, or absence of, or error in, charge.

(1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may-

(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge;

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the Accused in respect of the facts proved, it shall quash the conviction.

44. Combined reading of Sections 216, 386 and 464 of Code of Criminal Procedure would reveal that an alteration of charge where no prejudice is caused to the Accused or the prosecution is well within the powers and the jurisdiction of the Court including the Appellate Court.

45. In other words, it is only when any omission to frame the charge initially or till culmination of the proceedings or at the appellate stage results in failure of justice or causes prejudice, the same may result in vitiating the trial in appropriate case.

46. The Constitution Bench of this Court examined this issue, for the first time, in the context of old Code of Criminal Procedure in a case reported in Willie (William) Slaney v. State of M.P. (MANU/SC/0038/1955: AIR 1956 SC 116).

47. Learned Judge Vivian Bose J. speaking for the Bench in his inimitable style of writing held, "Therefore, when there is a charge and there is either error or omission in it or both, and whatever its nature, it is not to be regarded as material unless two conditions are fulfilled both of which are matters of fact: (1) the Accused has 'in fact' been misled by it 'and' (2) it has occasioned a failure of justice. That, in our opinion, is reasonably plain language."

48. In Kantilal Chandulal Mehta v. State of Maharashtra and Anr. MANU/SC/0111/1969: (1969) 3 SCC 166, this Court again examined this very issue arising under the present Code of Criminal Procedure with which we are concerned in the present case. Justice P. Jaganmohan Reddy, speaking for the Bench after examining the scheme of the Code held inter alia "In our view the Code of Criminal Procedure gives ample power to the courts to alter or amend a charge whether by the trial court or by the appellate court provided that the Accused has not to face a charge for a new offence or is not prejudiced either by keeping him in the dark about that charge or in not giving a full opportunity of meeting it and putting forward any defence open to him, on the charge finally preferred against him."

49. Now coming to the question regarding altering of the charge from Section 149 to Section 34 Indian Penal Code read with Section 302 Indian Penal Code, this question was

considered by this Court for the first time in the case of Lachhman Singh and Ors. v. The State (MANU/SC/0036/1952: AIR 1952 SC 167) where Justice Fazl Ali speaking for the bench held as under:

It was also contended that there being no charge Under Section 302 read with Section 34 of the Indian Penal Code, the conviction of the Appellants Under Section 302 read with Section 149 could not have been altered by the High Court to one Under Section 302 read with Section 34, upon the acquittal of the remaining Accused persons. The facts of the case are however such that the Accused could have been charged alternatively, either Under Section 302 read with Section 149 or Under Section 302 read with Section 34. The point has therefore no force.

50. This question was again examined by this Court in Karnail Singh and Anr. v. State of Punjab (MANU/SC/0051/1954: AIR 1954 SC 204) wherein the learned Judge Venkatarama Ayyar, J. elaborating the law on the subject held as under:

(7) Then the next question is whether the conviction of the Appellant Under Section 302 read with Section 34, when they had been charged only, Under Section 302 read with Section 149, was illegal The contention of the Appellants is that the scope of Section 149 is different from that of Section 34, that while what Section 149 requires is proof of a common object, it would be necessary Under Section 34 to establish a common intention and that therefore when the charge against the Accused is Under Section 149, it cannot be converted in appeal into one Under Section 34. The following observations of this Court in Dalip Singh v. State of Punjab MANU/SC/0031/1953: AIR 1953 SC 364 were relied on in support of this position:

Nor is it possible in this case to have recourse to Section 34 because the Appellants have not been charged with that even in the alternative and the common intention required by Section 34 and the common object required by Section 149 are far from being the same thing.

It is true that there is substantial difference between the two Sections but as observed by Lord Sumner in Barendra Kumar Ghosh v. Emperor MANU/PR/0064/1924: AIR 1925 PC 1, they also to some extent overlap and it is a question to be determined on the facts of each case whether the charge Under Section 149 overlaps the ground covered by Section 34. If the common object which is the subject matter of the charge Under Section 149 does not necessarily involve a common intention, then the substitution of Section 34 for Section 149 might result in prejudice to the Accused and ought not therefore to be permitted. But if the facts to be proved and the evidence to be adduced with reference to the charge Under Section 149 would be the same 'if the charge were Under Section 34, then the failure to charge the Accused Under Section 34 could not result in any prejudice and in such cases, the substitution of Section 34 for Section 149 must be held to be a formal matter.

We do not read the observations in Dalip Singh v. State of Punjab as an authority for the broad proposition that in law there could be no recourse to, Section 34 when the charge is only Under Section 149. Whether such recourse can be had or not must depend on the facts of each case. This is in accord with the view taken by this Court in Lachhman Singh v. The State, where the substitution of Section 34 for Section 149 was upheld on the ground that the facts were such

that the Accused could have been charged alternatively either Under Section 302 read with Section 149, or Under Section 302 read with Section 34.

51. The law laid down in Lachman Singh (supra) and Karnail Singh (supra) was reiterated in Willie (William) Slaney (Supra) wherein Justice Vivian Bose speaking for the Bench while referring to these two decisions held as under:

(49). The following cases afford no difficulty because they directly accord with the view we have set out at length above. In Lachman Singh v. The State MANU/SC/0036/1952: AIR 1952 SC 167, it was held that when there is a charge Under Section 302 of the Indian Penal Code read with Section 149 and the charge Under Section 149 disappears because of the acquittal of some of the Accused, a conviction Under Section 302 of the Indian Penal Code read with Section 34 is good even though there is no separate charge Under Section 302 read with Section 34, provided the Accused could have been so charged on the facts of the case.

The decision in Karnail Singh v. The State of Punjab MANU/SC/0051/1954: AIR 1954 SC 204 is to the same effect and the question about prejudice was also considered.

52. This principle of law was then reiterated after referring to law laid down in Willie (William) Slaney (Supra) in the case reported in Chittarmal v. State of Rajasthan MANU/SC/0008/2003: (2003) 2 SCC 266 in the following words:

14. It is well settled by a catena of decisions that Section 34 as well as Section 149 deal with liability for constructive criminality i.e. vicarious liability of a person for acts of others. Both the Sections deal with combinations of persons who become punishable as sharers in an offence. Thus they have a certain resemblance and may to some extent overlap. But a clear distinction is made out between common intention and common object in that common intention denotes action in concert and necessarily postulates the existence of a pre-arranged plan implying a prior meeting of the minds, while common object does not necessarily require proof of prior meeting of minds or pre-concert. Though there is substantial difference between the two sections, they also to some extent overlap and it is a question to be determined on the facts of each case whether the charge Under Section 149 overlaps the ground covered by Section 34. Thus, if several persons numbering five or more, do an act and intend to do it, both Sections 34 and Section 149

may apply. If the common object does not necessarily involve a common intention, then the substitution of Section 34 for Section 149 might result in prejudice to the Accused and ought not, therefore, to be permitted. But if it does involve a common intention then the substitution of Section 34 for Section 149 must be held to be a formal matter. Whether such recourse can be had or not must depend on the facts of each case. The non applicability of Section 149 is, therefore, no bar in convicting the Appellants Under Section 302 read with Section 34 Indian Penal Code, if the evidence discloses commission of an offence in furtherance of the common intention of them all. (See Barendra Kumar Ghosh v. King Emperor: MANU/PR/0064/1924: AIR 1925 PC 1; Mannam Venkatadari and Ors. v. State of Andhra Pradesh: MANU/SC/0137/1971: AIR 1971 SC 1467; Nethala Pothuraju and Ors. v. State of Andhra Pradesh: MANU/SC/0479/1991: AIR 1991 SC 2214 and Ram Tahal and Ors. v. State of U.P.: MANU/SC/0171/1971: AIR 1972 SC 254)

53. In the light of the aforementioned principle of law stated by this Court which is now fairly well settled, we have to now examine the evidence of this case with a view to find out as to whether the High Court was justified in convicting Appellant Nos. 2 and 3 herein for commission of offence of murder with the aid of Section 34 Indian Penal Code which was initially not the charge framed against the Appellants herein by the Sessions Judge.

54. Having perused the entire evidence and legal position governing the issues arising in the case, we have formed an opinion that the appeal filed by Appellant Nos. 2 and 3 deserves to be allowed and the conviction of Appellant Nos. 2 and 3 deserves to be altered to Section 324 Indian Penal Code. This we say for the following reasons:

55. First, once eight co-accused were acquitted by the High Court Under Section 302/149 Indian Penal Code by giving them the benefit of doubt and their acquittal attained finality, the charge Under Section 149 Indian Penal Code collapsed against the three Appellants also because there could be no unlawful assembly consisting of less than five Accused persons. In other words, the Appellants (3 in number) could not be then charged with the aid of Section 149 Indian Penal Code for want of numbers and were, therefore, rightly not proceeded with Under Section 149 Indian Penal Code.

56. Second, keeping in view the law laid down by this Court in the cases referred supra, the High Court though had the jurisdiction to alter the charge from Section 149 Indian Penal Code to Section 34 Indian Penal Code qua the three Appellants, yet, in our view, in the absence of any evidence of common intention qua the three Appellants so as to bring their case within the net of Section 34 Indian Penal Code, their conviction Under Section 302/34 Indian Penal Code is not legally sustainable.

57. In other words, in our view, the prosecution failed to adduce any evidence against the three Appellants to prove their common intention to murder Mahendro Bai. Even the High Court while altering the charge from Section 149 Indian Penal Code to Section 34

Indian Penal Code did not refer to any evidence nor gave any reasons as to on what basis these three Appellants could still be proceeded with Under Section 34 Indian Penal Code notwithstanding the acquittal of remaining eight co-accused.

58. It was the case of the prosecution since inception that all the eleven Accused were part of unlawful assembly and it is this case, the prosecution tried to prove and to some extent successfully before the Sessions Judge which resulted in the conviction of all the eleven Accused also but it did not sustain in the High Court.

59. In our view, the evidence led by the prosecution in support of charge Under Section 149 Indian Penal Code was not sufficient to prove the charge of common intention of three Appellants Under Section 34 Indian Penal Code though, as mentioned above, on principle of law, the High Court in its appellate jurisdiction could alter the charge from Section 149 to Section 34 Indian Penal Code.

60. Section 34 Indian Penal Code does not, by itself, create any offence whereas it has been held that Section 149 Indian Penal Code does. As mentioned above, the prosecution pressed their case since inception and accordingly adduced evidence against all the Accused alleging that all were the members of unlawful assembly Under Section 149 Indian Penal Code and not beyond it. The Sessions Court, therefore, rightly framed a charge to that effect.

61. If the prosecution was successful in proving this charge in the Sessions Court against all the Accused persons, the prosecution failed in so proving in the High Court.

62. The prosecution, in our view, never came with a case that all the 11 Accused persons shared a common intention Under Section 34 Indian Penal Code to eliminate Mahendro Bai and nor came with a case even at the appellate stage that only 3 Appellants had shared common intention independent of 8 co-accused to eliminate Mahendro Bai.

63. When prosecution did not set up such case at any stage of the proceedings against the Appellants nor adduced any evidence against the Appellants that they (three) prior to date of the incident had at any point of time shared the "common intention" and in furtherance of sharing such common intention came on the spot to eliminate Mahendro Bai and lastly, the High Court having failed to give any reasons in support of altered conviction except saying in one line that conviction is upheld Under Section 302/34 Indian Penal Code in place of Section 302/149 Indian Penal Code, the invoking of Section 34 Indian Penal Code at the appellate stage by the High Court, in our view, cannot be upheld.

64. True it is that "Lalkara" was given by Mala Singh-Appellant No. 1 (since dead) but it was not to eliminate Mahindrao Bai-the deceased.

65. Learned Counsel for the Respondent (State) was not able to point out any evidence that the Appellants ever shared common intention to eliminate Mahendro Bai independent of acquitted eight Accused. We are, therefore, unable to find any basis to sustain the conviction of the Appellants Under Section 302 read with Section 34 Indian Penal Code for want of any evidence of the prosecution.

66. Now we come to the next issue. It has come in evidence that Mala Singh (A-7) hit with a Farsa and Puran Singh (A-3) fired gun shot which hit Mahendro Bai. As per post-mortem report, Mahendro Bai died due to gun shot injury. So far as the role of Appellant Nos. 2 and 3 in the crime is concerned, both hit single blow-one on hand and other on cheek of Mahendro Bai prior to other two Accused-Mala Singh and Puran Singh inflicting their assault on her.

67. As per post-mortem report, both the assault made by the Appellant Nos. 2 and 3 caused simple injury to Mahendro Bai which did not result in her death and nor could result in her death. (see injury Nos. 2 and 3 in the evidence of PW-3 Dr. P.S. Parihar)

68. In a case of this nature, when there is a fight between the two groups and where there are gun shots exchanged between the two groups against each other and when on evidence eight co-accused are completely let of and where the State does not pursue their plea of Section 149 Indian Penal Code against the acquitted eight Accused which attains finality and where the plea of Section 34 Indian Penal Code is not framed against any Accused and where even at the appellate stage no evidence is relied on by the prosecution to sustain the charge of Section 34 Indian Penal Code qua the three Accused Appellants independent of eight acquitted co-accused and when out of two main Accused assailants, one has died and the other is acquitted and lastly, in the absence of any reasoning given by the High Court for sustaining the conviction of the three Appellants in support of alteration of the charge, we are of the considered view that the two Appellants are entitled to claim the benefit of entire scenario and seek alteration of their conviction for commission of the offence punishable Under Section 324 Indian Penal Code simplicitor rather than to suffer conviction Under Section 302/34 Indian Penal Code, if not complete acquittal alike other eight co-accused.

69. We are, therefore, of the considered opinion that Appellant Nos. 2 and 3 could at best be convicted for an offence punishable Under Section 324 Indian Penal Code and not beyond it on the basis of their individual participation in the commission of the crime.

70. Learned Counsel for the Appellants then stated that out of the total jail sentence awarded, Appellant Nos. 2 and 3 has already undergone around seven years of jail sentence when both were released on bail by orders of this Court on 07.07.2009. So far as the Appellant No. 3 is concerned, she is an aged lady.

71. Taking into consideration the fact that the Appellants Nos. 2 and 3 have already undergone seven years of jail sentence and Appellant No. 3 is an aged lady and is also on bail for the last 10 years and that both did not breach any condition of the bail in last the 10 years, we are inclined to allow the appeal and while setting aside the conviction and sentence of the Appellant Nos. 2 and 3 Under Section 302/34 Indian Penal Code, convert their conviction Under Section 324 Indian Penal Code and sentence them to what they have "already undergone" and impose a fine of Rs. 10,000/- on each Appellant and in default in payment of fine, to further undergo three months' simple imprisonment.

72. In other words, the Appellants (Nos. 2 & 3) need not undergo any jail sentence than what they have already undergone provided each of the Appellants deposit Rs. 10,000/- as fine amount within three months from the date of this order else both the Appellants will have to undergo three months simple imprisonment in default of non-deposit of fine amount.

73. Before parting, we place on record a word of appreciation for the valuable services rendered by Mr. Karan Bharihoke amicus curiae appointed by this Court. He argued the case ably and fairly and also filed effective written submissions, which enabled us to examine the issue involved in this appeal properly.

74. The appeal thus succeeds and is allowed in part. The impugned order is modified to the extent indicated above.

MANU/SC/0404/1988

Back to Section 153a of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Writ Petition (Civil) No. 107 of 1988

Decided On: 16.02.1988

Ramesh Vs. Union of India (UOI) and Ors.

Hon'ble Judges/Coram:
S. Ranganathan and Sabyasachi Mukherjee, JJ.

For Respondents/Defendant:

JUDGMENT
Sabyasachi Mukherjee, J.

1. This writ Petition was disposed of by our Order MANU/SC/0403/1988: JT1988(1)SC262 dated 1st of February, 1988, we indicated therein that we will give our reasons shortly. This we do by this judgment.

2. The Writ Petition No. 107 of 1988 is a petition under Article 32 of the Constitution. The petitioner is a practising advocate of the Bombay High Court. He approached this Court by means of the petition under Article 32 of the Constitution for issue of a writ in the nature of Prohibition or any other appropriate order restraining the respondents, namely, the Union of India, the Director General of Doordarshan, New Delhi, Blaze Advertising Pvt. Ltd. and Govind Nehalani, being the producer from telecasting or screening the serial titled "Tamas" and to enforce petitioner's fundamental rights under Articles 21 and 25 of the Constitution and declaring the Screening or televising of "Tamas" as violative of Section 5B of the Cinematograph Act, 1952.

3. One Javed Ahmed Siddique filed a writ petition in the High Court of Bombay being Writ Petition No. 201 of 1988. The same came up before a learned single Judge of the High Court of Bombay who while admitting the same on 21st of January, 1988 had granted stay of further telecasting of the said serial on T.V. till further orders. The respondents herein challenged the said order before the Division Bench of the Bombay High Court. The two learned Judges, namely, Justice Lentin and Justice Mrs. Sujata Manohar saw the complete serial on 22nd of January, 1988 and vacated the stay by an order dated 23rd of January, 1988. The judgment is impugned in the special leave petition which is taken on board and is also disposed of by this common judgment. It may also be mentioned that four episodes of the said serial have already been telecast.

4. The petitioner states that the exhibition of the said serial is against public order and is likely to incite the people to indulge in the commission of offences and it is therefore, violative of Section 5B(1) of the Cinematograph Act, 1952 (hereinafter called 'the Act') and destructive of principle embodied under Article 25 of the Constitution. It is also contended that under Section 153A of the Indian Penal Code, this presentation is likely to promote or attempts to promote, on grounds of religion, caste or community disharmony or feelings of enmity, hatred or ill-will among different religious, racial, language or regional groups or castes, or communities and is further prejudicial to the maintenance of harmony between different religious, racial, language or regional groups and incites people to participate or trains them to the use of criminal force or violence or participate in such criminal acts. So, therefore, it is an offence under Section 153A of the Indian Penal Code and it was submitted that the serial is prejudicial to the national integration.

5. Serial "Tamas" depicts the Hindu-Muslim tension and sikh-muslim tension before the partition of India. It further shows how the killings and looting took place between these communities before the pre-independence at Lahore. "Tamas" is based on a book written by Sree Bhisham Sahni. It depicts the period prior to partition and how communal violence was generated by fundamentalists and extremists in both communities and how innocent persons were duped into serving the ulterior purpose of fundamentalists and communalists of both sides and how an innocent boy is seduced to violence resulting in his harming both communities. It further shows how extremist elements in both communities infused tension and hatred for their own ends. That is how the two learned Judges of the High Court of Bombay mentioned hereinbefore have viewed it. They have also seen that realisation ultimately dawns as to the futility of it all and finally how inherent goodness in human mind triumphs and both communities learn to live in amity. They saw that the people learnt this lesson in a hard way. This is the opinion expressed by two experienced Judges of the High Court after viewing the serial.

6. The location of the story is Lahore. The period is just before independence. The very introductory part of the serial which was telecast on 9th of January, 1988 displayed that the idea and message behind the serial is to keep people away from getting involved in such violence arising out of communal animosity. By telecasting it on Doordarshan, Dr. Chitale appearing for the petitioner said, now seen by vast majority of people, the said serial is exposed to persons of all ages, who will fail to grasp the message if any behind the serial. The very first serial, according to the petitioner, depicts one person who is reported to be a member of Scheduled Caste from the Hindu community being asked by one Thekedar to get a pig killed and bring its dead body in order to serve the meal for an English man. The dead body is shown to be axed and collected by one person named 'Kalu' Who is represented to be a Christian. Kalu gets a dead pig from the said member of the Scheduled Caste Hindu who killed it. That dead pig is shown to be found at the door steps of a mosque. This, according to the petitioner, was provocative and was bound to result in instigation in Hindus against Muslims and consequently to rouse Muslim

anger resulting in some reaction on the part of the Muslims, which in its own turn is bound to have reaction by way of some acts of violence on the part of Hindus. According to the petitioner, the total result would be that there is likelihood that members of both the communities will rise in passion and anger against each other and take to acts which would lead to communal violence and riots.

7. The petitioner further states that in the first episode shown on 9th January, 1988 one elderly Hindu Who it depicted as a 'Guru', a preceptor, and is shown as giving inspiration/advice and instigation to a young boy to practise violence, to begin with, by asking the boy to cut the throat of the hen, and when the boy gets nervous and shows his unwillingness and unpreparedness, the Guru warns him that unless he showed his courage to kill a hen to begin with, how can he become bold and courageous to kill his enemy. The petitioner further alleges that in the background of this incident and in context of what precedes and succeeds this incidents between the Guru and the boy, it is clear that Guru has instigated the boy to get into the trend of thought and feeling to be ready to commit, violence against his enemies, in order to kill them, and on viewing the first part of the said serial as a Whole this instigation is to Hindu young boys to take to violence against Muslims. This is nothing but promoting feelings of enmity and hatred between Hindus and Muslims.

8. The petitioner further states that in the first serial the dialogue between the Hindu leaders and Muslim leaders is so arranged that Indian National Congress is suggested to be a Hindu Organisation. In the present background, therefore, the petitioner claims that the exhibition of said serial is likely to create communal disharmony.

9. "Tamas" had been given 'U' certificate by the Central Board of Film Censor. In this connection we may refer to the relevant provisions of the Cinematograph Act, 1952, which is an Act to make provision for the certification of cinematograph films for exhibition and regulating exhibitions by means of cinematograph. Section 3 of the Act provides for Board of Film Censors. Section 4 of the Act provides for examination of films. A film is examined in the first instance by an Examining Committee under Section 4A and, in certain circumstances, it is further examined by a Revising Committee under Section 5. Members of both the Committees are expected to set out not only their recommendations but also the reasons therefore in cases where there is difference of opinion amongst the members of the Committee. Section 5A of the Act provides that if after examining a film or having it examined in the prescribed manner, the Board considers that the film is suitable for unrestricted public exhibition, such a certificate is given which is called 'U' certificate. Section 5B of the Act provides for guidance in certifying films. The said Section 5B provides as follows:

5B. Principles for guidance in certifying films- (1) A film shall not be entitled for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of (the sovereignty and integrity of India) the security

of the State, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of Court or is likely to incite the commission of any offence.

(2) Subject to the provisions contained in Sub-section (1) the Central Government may issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under this Act in sanctioning films for public exhibition.

10. Section 5C of the Cinematograph Act provides for the Constitution of Appellate Tribunals, consisting of persons who are familiar with the social, cultural or political institutions of India, have special knowledge of the various regions of India and also special knowledge of films and their impact on society, to hear appeals from the orders of the Censor Board. Under Section 5D, as it stands at present, the Tribunals can hear appeals by persons who, having applied for a certificate in respect of a film, are aggrieved by an order of the Board refusing to grant a certificate or granting a restricted certificate or directing the appellant to carry out certain excisions or modifications in the film. In addition, there is also an overall revisional power in the Central Government to call for the record of any proceeding in relation to any film at any stage, where it is not made the subject matter of appeal to the Appellate Tribunal, to enquire into the matter and make such order in relation thereto as it thinks fit, including a direction that the exhibition of the film should be suspended for a period not exceeding two months. Under the newly added Sub-section 5 of Section 6, Central Government has also been given revisional power in respect of a film certified by the Appellate Tribunal on the ground that it is necessary to pass an order in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or decency or morality.

11. Learned Additional Solicitor General, Shri Kuldeep Singh, for the Central Government, strongly urged before us that the film should be allowed to be exhibited. As a matter of fact in his enthusiasm, he submitted that there should be an order to the Government to exhibit the film again and again. He urged that all the appropriate authorities have considered the film and Doordarshan authorities have also independently examined this question. It has to be borne in mind that there is no allegation of any mala fide or bad motive on the part of the authorities concerned. The only question, therefore, is whether the film has been misjudged or wrongly judged and allowed to be exhibited or serialized in T.V. on a wrong approach. This film indubitably depicts violence. That violence between the communities took place before the pre-partition days is a fact and it is the truth. Dr. Chitale, however, submits that truth in its naked form may not always and in all circumstances be desirable to be told or exhibited.

12. During the course of the arguments before us on the 1st of February, 1988 our attention was drawn to an item in the Hindustan Times of that day which contained an

interview with the author Sree Bhisham Sahni. Strictly speaking such evidence is not admissible but since it is a matter of public interest, we have looked into it. The author has received the Sahitya Akademi award for this novel. It was written in 1974. The book is being taught in various universities. There has been no adverse reaction to the novel during the past fourteen years. The author further said "certain nuances which were however clear in the book are not so in the serial". The author has drawn attention to the incident that the mischief of getting a pig slaughtered and having it placed outside a mosque, was done by a character referred to as "Chaudhuri" in the film. In the novel his full name is mentioned as Murad Ali, which is obviously not a Hindu name, according to the author.

13. Vivian Bose, J. as he then was in the Nagpur High Court in the case of Bhagwati Charan Shukla v. Provincial Government MANU/NA/0057/1946 has indicated the yardstick by which this question has to be judged. There at page 18 of the report the Court observed that the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view.

This in our opinion, is the correct approach in judging the effect of exhibition of a film or of reading a book. It is the standard of ordinary reasonable man or as they say in English law "the man on the top of a clapham omnibus".

14. This question came to be examined by this Court from a different angle in the case of K.A. Abbas v. The Union of India and Ors. MANU/SC/0053/1970: [1971]2SCR446. There K.A. Abbas the petitioner made documentary film called "A Tale of four Cities", which attempted to portray the contrast between the life of the rich and the poor in the four principal cities of the country. The film included certain shots of the red light district in Bombay. Although the petitioner applied to the Board of Film Censors for a "U" Certificate for unrestricted exhibition of the film, he was granted a certificate only for exhibition restricted to adults, the petitioner then filed the writ petition in this Court. At 'the hearing of the petition the Central Government indicated that it had decided to grant a 'U' certificate to the petitioner's film without the cuts previously ordered. Hidayatullah, C.J. has exhaustively dealt with the question and noted the statutory requirements. In that film there was a scanning shot of a very short duration, much blurred by the movement of the photographer's camera, in the words of Chief Justice, in Which the red light district of Bombay was shown with the inmates of the brothels waiting at the doors or windows. Some of them wore abbreviated skirts showing bare legs upto the knees and sometimes a short above them. This was objected to. The film was shown to the learned Judges in the presence of the lawyers. The learned Chief Justice at page 468 of the report addressed himself to the question: "How far can these restrictions go and how are these to be imposed" The Court examined the provisions of Section 5B(2) of the Act. After examining the relevant provisions and large number of authorities, the Chief Justice noted that the task of the censor was extremely delicate and its duties cannot be the

subject of an exhaustive set of commands established by prior ratiocination. Chief Justice at page 474 of the report observed as follows:

Sex and obscenity are not always synonymous and it is wrong to classify sex as essentially obscene or even indecent or immoral. It should be our concern, however, to prevent the use of sex designed to play a commercial role by making its own appeal. This draws in the censors scissors. Thus audiences in India can be expected to view with equanimity the story of Oedipus son of Latius who committed patricide and incest with his mother. When the seer Tiresias exposed him, his sister Jocasta committed suicide by hanging herself and Oedipus put out his own eyes. No one after viewing these episodes would think that patricide or incest with one's own mother is permissible or suicide in such circumstances or tearing out one's own eyes is a natural consequence. And yet if one goes by the letter of the directions the film cannot be shown. Similarly, scenes depicting leprosy as a theme in a story or in a documentary are not necessarily outside the protection. If that were so Verrier Blwyn's Phulmat of the Hills or the Same episode in Henryson's Testament of Cresseid (from where Verrier Elwyn borrowed the idea) would never see the light of the day. Again carnage and bloodshed may have historical value and the depiction of such scenes as the sack of Delhi by Nadirshah may be permissible, if handled delicately and as part of an artistic portrayal of the confrontation with Mohammad shah Rangila. If Nadir Shah "made golgothas of skulls, must we leave them out of the story because people must be made to view a historical theme without true history? Rape in all its nakedness may be objectionable but Voltaire's Candide would be meaningless without Cunegonde's episode with the soldier and the story of Lucrece could never be depicted on the screen.
(emphasis supplied)

15. Chief Justice observed that our standards must be so framed that we are not reduced to a level where the protection of the least capable and the most depraved amongst us determines what the morally healthy cannot view or read. The standards that we set for our censors must make a substantial allowance in favour of freedom thus leaving a vast area for creative art to interpret life and society with some of its foibles along with what is good. We must not look upon such human relationship as banned in toto and for ever from human thought and must give scope for talent to put them before society. In our scheme of things, the Chief Justice noted, ideas having redeeming social or artistic value must also have importance and protection for their growth.

16. Our attention was also drawn by Dr. Chitale to the decision of this Court in Ebrahim Sulaiman Sait v. M.C.Muhammad and Anr. MANU/SC/0347/1979: [1980]1SCR1148, where Gupta, J. speaking for the Court observed that truth was not an answer to a charge of corrupt practice under Section 123(3A) of the said Act; what was relevant was whether the speech promoted or sought to promote feelings of enmity or hatred as mentioned in that provision. But the likelihood must be judged from healthy and reasonable standards.

17. The question was again considered by this Court in Rajkapoor v. Laxman MANU/SC/0211/1979: 1980CriLJ436. This court reiterated that the Penal Code is general and the Cinematograph Act, 1952 is special. The scheme of the Cinematograph Act is deliberately drawn up to meet the explosively expanding cinema menace if it were not strictly policed. No doubt, the cinema is a great instrument for public good if geared to social ends and can be a public curse if directed to antisocial objectives. The decision reiterated that a balance has to be struck. On the evidence available before this Court it appears that a balance has been struck.

18. Dr. Chitale emphasised that in an interview with the author, the author said that "Tamas" was not a historical novel. It merely takes into account certain events from history and builds upon them. He further said that life provided the raw material and a writer moulded it according to his imagination and perception of reality.

19. We have given full thought to the contentions urged on behalf of the petitioner and come to the conclusion that these contentions cannot be accepted for two reasons. Firstly, as we have already pointed out, the Cinematograph Act itself contains several provisions to ensure the fulfilment of the conditions laid down in Section 5B and to ensure that any film which is likely to offend the religious susceptibilities of the people are not screened for public exhibition of the film. That apart we are informed that the Doordarshan authorities also scrutinise a film before it is exhibited on the television screen. Though we do not have the details of the authority or body Which scrutinised the film for purposes of exhibition on the television, the procedure does involve further examination of the film from standards of public acceptability before it is shown on the television. It is true that the remedy of an approach to the Appellate Tribunal is available only to persons aggrieved by the refusal of the Board to grant a certificate or the cuts and modifications proposed by it. It is for the consideration of the Central Government whether the scope of this section should be expanded to permit appeals to the Tribunals even by persons who are aggrieved by the grant of certificate of exhibition to a film on the ground that the principles laid down for the grant of certificates in Section 5B have not been fulfilled. But, even on the statute as it presently stands, the procedure for grant of certificate of exhibition to a film is quite elaborate and the unanimous approval by the examining Committee must be given full weight. As pointed out by Krishna Iyer, J. in the Rajkapoor Case (supra), a Court would be slow to interfere with the conclusion of a body specially constituted for this purpose.

20. Secondly, in this case we have the advantage of the view of two experienced Judges of one of the premier High Courts of this country. The learned Judges found that the message of the film was good. They have stated that the film shows how realisation ultimately dawns as to futility of violence and hatred, and how the inherent goodness in human nature triumphs. Dr. Chitale submitted that the Judges have viewed the film from their point of view but the average persons in the country are not as sober and experienced as Judges of the High Court. But the Judges of the High Court of Bombay

have viewed it, as they said, from the point of view of "how the average person for whom the film is intended will view it" and the learned Judges have come to the conclusion that the average person will learn from the mistakes of the past and realise the machinations of the fundamentalists and will not perhaps commit those mistakes again. The learned Judges further observed that illiterates are not devoid of common sense, or unable to grasp the calumny of the fundamentalist and extremists when it is brought home to them in action on the screen. This is how they have viewed it: those who forget history are condemned to repeat it. It is out of the tragic experience of the past that we can fashion our present in a rational and reasonable manner and view our future with wisdom and care. Awareness in proper light is a first step towards that realisation. It is true that in certain circumstances truth has to be avoided. Tamas takes us to a historical past - unpleasant at times, but revealing and instructive. In those years which Tamas depicts a human tragedy of great dimension took place in this subcontinent - though 40 years ago - it has left a lasting damage to the Indian psyche. It has been said by Lord Morley in "On Compromise" that it makes all the difference in the world whether you put truth in the first place or in the second place. It is true that a writer or a preacher should cling to truth and right, if the very heavens fall. This is a universally accepted basis. Yet in practice, all schools alike are forced to admit the necessity of a measure of accommodation in the very interests of truth itself. Fanatic is a name of such ill repute, exactly because one Who deserves to be so called injuries good causes by refusing timely and harmless concession; by irritating prejudices that a wiser way of urging his own opinion might have turned aside; by making no allowances, respecting no motives, and recognising none of those qualifying principles that are nothing less than necessary to make his own principle true and fitting in a given society. Judged by all standards of a common man's point of view of presenting history with a lesson in this film, these boundaries appear to us could have been kept in mind. This is also the lesson of history that naked truth' in all times will not be beneficial but truth in its proper light indicating the evils and the consequences of those evils is instructive and that message is there in "Tamas" according to the views expressed by the two learned Judges of the High Court. They viewed it from an average, healthy and commonsense point of view. That is the yardstick. There cannot be any apprehension that it is likely to affect public order or it is likely to incite into the commission of any offence. On the other hand, it is more likely that it will prevent incitement to such offences in future by extremists and fundamentalists.

21. Dr. Chitale, relying strongly on certain observations in Abbas Case (supra, at p. 459 of the reports) contended that there was real danger of the film in this case inciting people to violence and to commit other offences arising out of communal disharmony. It is no doubt true that the motion picture is a powerful instrument with a much stronger impact on the visual and aural senses of the spectators than any other medium of communications; likewise, it is also true that the television, the range of which has vastly developed in our country in the past few years, now reaches out to the remotest corners of the country catering to the not so sophisticated, literary or educated masses of people living in distant villages. But the argument overlooks that the potency of the motion

picture is as much for good as for evil. If some scenes of violence, some nuances of expression or some events in the film can stir up certain feelings in the spectator, an equally deep strong, lasting and beneficial impression can be conveyed by scenes revealing the machinations of selfish interests scenes depicting mutual respect and tolerance, scenes showing comradeship, help and kindness which transcend the barriers of religion. Unfortunately, modern developments both in the field of cinema as well as in the field of national and international politics have rendered it inevitable for people to face the realities of internecine conflicts, inter alia, in the name of religion. Even contemporary news bulletins very often carry scenes of pitched battle or violence. What is necessary sometimes is to penetrate behind the scenes and analyse the causes of such conflicts. The attempt of the author in this film is to draw a lesson from our country's past history, expose the motives of persons who operate behind the scenes to generate and foment conflicts and to emphasise the desire of persons to live in amity and the need for them to rise above religious barriers and treat one another with kindness, sympathy and affection. It is possible only for a motion picture to convey such a message in depth and if it is able to do this, it will be an achievement of great social value. In the present case the finding of the learned Judges of Bombay High Court is that the picture viewed in its entirety, is capable of creating a lasting impression of this message of peace and coexistence and that people are not likely to be obsessed, overwhelmed or carried away by the scenes of violence or fanaticism shown in the film. we see no reason to differ from this conclusion.

22. Before we conclude we note that the petition was based on alleged violation of Articles 21 and 25 of the Constitution. We are unable to see any alleged violation of those articles. We, however accept the position that the petitioner has a right to draw attention of this Court to ensure that the communal atmosphere is kept clean and unpolluted. He has done well to draw attention to this danger. We have examined and found that there is no such danger and the respondents have not acted improperly or imprudently.

23. In the aforesaid view of the matter this petition under Article 32 of the Constitution fails and is accordingly dismissed.

24. Similarly, on similar grounds the special leave petition arising out of the judgement and order of the Bombay High Court dated 23rd January, 1988 in Appeal No. 96/88 is also dismissed.

25. In the facts and circumstances of the case, there will be no order as to costs.

MANU/SC/0080/1964

Back to Section 292 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 178 of 1962

Decided On: 19.08.1964

Ranjit D. Udeshi Vs. State of Maharashtra

Hon'ble Judges/Coram:
P.B. Gajendragadkar, C.J., K.N. Wanchoo, M. Hidayatullah, N. Rajagopala Ayyangar and J.C. Shah, JJ.

JUDGMENT
M. Hidayatullah J.

1. The appellant is one of four partners of a firm which owns a book-stall in Bombay. He was prosecuted along with the other partners under s. 292, Indian Penal Code. All the facts necessary for out purpose appear from the simple charge with two counts which was framed against them. It reads:

"That you caused Nos. 1, 2, 3, 4 on or about the 12th day of December, 1959 at Bombay being the partners of a book-stall named Happy Book Stall were found in possession for the purpose of sale copies of an obscene book called Lady Chatterley's Lover (unexpurgated edition) which inter alia contained, obscene matter as detailed separately and attached herewith and thereby committed an offence punishable u/s 292 of the I.P. Code;

AND

That you Gokuldas Shamji on or about the 12th day of December 1959 at Bombay did sell to Bogus Customer Ali Raza Sayeed Hasan a copy of an obscene book called Lady Chatterley's Lover (unexpurgated edition) which inter alia contained obscene matter as detailed separately and attached herewith and thereby committed an offence punishable u/s 292 of the I.P. Code."

2. The first count applied to the appellant who was accused No. 2 in the case. The Additional Chief Presidency Magistrate, III Court, Esplanade, Bombay, convicted all the partners on the first count and fined each of them Rs. 20 with one week's simple imprisonment in default. Gokuldas Shamji was additionally convicted on the second count and was sentenced to a further fine of Rs. 20 or like imprisonment in default. The Magistrate held that the offending book was obscene for purposes of the section. The

present appellant filed a revision in the High Court of Bombay. The decision of the High Court was against him. He has now appealed to this Court by special leave and has raised the issue of freedom of speech and expression guarantied by the nineteenth Article. Before the High Court he had questioned the finding of the Magistrate regarding the novel.

3. It is convenient to set out s. 292 of the Indian Penal Code at this stage:

"292. Sale of obscene books etc.: whoever -

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offence under this section,

shall be punished with imprisonment for either description for a term which may extend to three months, or with fine, or with both.

Exception. - This section does not extend to any book, pamphlet, writing, drawing or painting kept or used bona fide for religious purposes or any representation sculptured, engraved, painted or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose."

4. To prove the requirements of the section the prosecution examined two witnesses. One was the test purchaser named in the charge and the other an Inspector of the Vigilance Department. these witnesses proved possession and sale of the book which facts are not denied. The Inspector in his testimony also offered his reasons for considering the book to be obscene. On behalf of the accused Mr. Mulkraj Anand, a writer and art critic gave

evidence and in a detailed analysis of the novel, he sought to establish that in spite of its apparent indicate theme and the candidness of its delineation and diction, the novel was a work of considerable literary merit and a classic and not obscene. The question does not altogether depend on oral evidence because the offending novel and the portions which are the subject of the charge must be judged by the court in the light of s. 292, India Penal Code, and the provisions of the Constitution. This raises two broad and independent issues of law - the validity of s. 292, Indian Penal code, and the proper interpretation of the section and its application to the offending novel.

5. Mr. Garg who argued the case with ability, raised these two issues. He bases his argument on three legal grounds which briefly are:

(i) that s. 292 of the Indian Penal code is void as being an impermissible and vague restriction on the freedom of speech and expression guaranteed by Art. 19(1)(a) and is not saved by clause (2) of the same article;

(ii) that even if s. 292, Indian Penal Code, be valid, the book is not obscene if the section is properly construed and the book as a whole is considered; and

(iii) that the possession or sale to be punishable under the section must be with the intention to corrupt the public in general and the purchasers in particular.

6. On the subject of obscenity his general submission is that a work of art is not necessarily obscene if it treats with sex even with nudity and he submits that a work of art or a book of literary merit should not be destroyed if the interest of society requires that it be preserved. He submits that it should be viewed as a whole, and its artistic or literary merits should be weighed against the so-called obscenity, the context in which the obscenity occurs and the purpose it seeks or serve. If on a fair consideration of these opposite aspects, he submits, the interest of society prevails, than the work of art or the book must be preserved, for then the obscenity is overborne. In no case, he submits, can stray passage or passages serve to stamp an adverse verdict on the book. He submits that the standard should not be that of an immature teenager or a person who is abnormal but of one who is normal, that is to say, with a mens sana in corporis sana. He also contends that the test adopted in the High Court and the Court below from Queen v. Hicklin (1868) L.R. 3 Q.B. 360 is out of date and needs to be modified and he commends for our acceptance the views expressed recently by the courts in England and the United States.

7. Article 19 of the Constitution which is the main plank to support these arguments reads:

"19(1) All citizens shall have the right -

(a) to freedom of speech and expression;

.....

.....

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of... public order, decency or morality...."

8. No doubt this article guarantees complete freedom of speech and expression but it also makes an exception in favour of existing laws which impose restrictions on the exercise of the right in the interests of public decency or morality. The section of the Penal Code in dispute was introduced by the Obscene Publications Act (7 of 1925) to give effect to Article I of the International Convention for the suppression of or traffic in obscene publications signed by India in 1923 at Geneva. It does not go beyond obscenity which falls directly within the words "public decency and morality" of the second clause of the article. The word, as the dictionaries tell us, denotes the quality of being obscene which means offensive to modesty or decency; lewd, filthy and repulsive. It cannot be denied that it is an important interest of society to suppress obscenity. There is, of course, some difference between obscenity and pornography in that the latter denotes writings, pictures etc. intended to arouse sexual desire while the former may include writings etc. not intended to do so but which have that tendency. Both, of course, offend against public decency and morals but pornography is obscenity in a more aggravated form. Mr. Garg seeks to limit action to cases of intentional lewdness which he describes as "dirt for dirt's sake" and which has now received the appellation of hard-core pornography by which term is meant libidinous writings of high erotic effect unredeemed by anything literary or artistic and intended to arouse sexual feelings.

9. Speaking in terms of the Constitution it can hardly be claimed that obscenity which is offensive to modesty or decency is within the constitutional protection given to free speech or expression, because the article dealing with the right itself excludes it. That cherished right on which our democracy rests is meant for the expression of free opinions to change political or social conditions or for the advancement of human knowledge. This freedom is subject to reasonable restrictions which may be thought necessary in the interest of the general public and one such is the interest of public decency and morality. Section 292, Indian Penal Code, manifestly embodies such a restriction because the law against obscenity, of course, correctly understood and applied, seeks no more than to promote public decency and morality.

The word obscenity is really not vague because it is a word which is well-understood even if persons differ in their attitude to what is obscene and what is not. Lawrence

thought James Joyce's Ulysses to be an obscene book deserving suppression but it was legalised and he considered Jane Eyre to be pornographic but very few people will agree with him. The former he thought so because it dealt with excretory functions and the latter because it dealt with sex repression. (See Sex, Literature and Censorship pp. 26, 201). Condemnation of obscenity depends as much upon the mores of the people as upon the individual. It is always a question of degree or as the lawyers are accustomed to say, of where the line is to be drawn. It is, however, clear that obscenity by itself has extremely "poor value in the propagation of ideas, opinions and informations of public interest or profit." When there is propagation of ideas, opinions and informations of public interest or profit, the approach to the problem may become different because then the interest of society may tilt the scale in favour of free speech and expression. It is thus that books on medical science with intimate illustrations and photographs, though in a sense immodest, are not considered to be obscene but the same illustrations and photographs collected in book form without the medical text would certainly be considered to be obscene. Section 292, Indian Penal Code deals with obscenity in this sense and cannot thus be said to be invalid in view of the second clause of Art. 19.

The next question is when can an object be said to be obscene?

10. Before dealing with that problem we wish to dispose of Mr. Garg's third argument that the prosecution must prove that the person who sells or keeps for sale any obscene object knows that it is obscene, before he can be adjudged guilty. We do not accept this argument. The first sub-section of s. 292 (unlike some others which open with the words "whoever knowingly or negligently etc.") does not make knowledge of obscenity an ingredient of the offence. The prosecution need not prove something which the law does not burden it with. If knowledge were made a part of the guilty act (acts reus), and the law required the prosecution to prove it, it would place an almost impenetrable defence in the hands of offenders. Something much less than actual knowledge must therefore suffice. It is argued that the number of books these days is so large and their contents so varied that the question whether there is mens rea or not must be based on definite knowledge of the existence of obscenity. We can only interpret the law as we find it and if any exception is to be made it is for Parliament to enact a law. As we have pointed out, the difficulty of obtaining legal evidence of the offender's knowledge of the obscenity of the book etc., has made the liability strict. Under our law absence of such knowledge, may be taken in mitigation but it does not take the case out of the sub-section.

11. Next to consider is the second part of the guilty act (actus reus), namely, the selling or keeping for sale of an object which is found to be obscene. Here, of course, the ordinary guilty intention (mens rea) will be required before the offence can be said to be complete. The offender must have actually sold or kept for sale, the offending article. The circumstances of the case will then determine the criminal intent and it will be a matter of a proper inference from them. The argument that the prosecution must give positive evidence to establish a guilty intention involves a supposition that mens rea must always be established by the prosecution through positive evidence. In criminal prosecution mens rea must necessarily be proved by circumstantial evidence alone unless the accused

confesses. The sub-section makes sale and possession for sale one of the elements of the offence. As sale has taken place and the appellant is a book-seller the necessary inference is readily drawn at least in this case. Difficulties may, however, arise in cases close to the border. To escape liability the appellant can prove his lack of knowledge unless the circumstances are such that he must be held guilty for the acts of another. The court will presume that he is guilty if the book is sold on his behalf and is later found to be obscene unless he can establish that the sale was without his knowledge or consent. The law against obscenity has always imposed a strict responsibility. When Wilkes printed a dozen copies of his Essay on Woman for private circulation, the printer took an extra copy for himself. That copy was purchased from the printer and it brought Wilkes to grief before Lord Mansfield. The gist of the offence was taken to be publication-circulation and Wilkes was presumed to have circulated it. Of course, Wilkes published numerous other obscene and libellous writings in different ways and when Madame Pampadour asked him: "How far does the liberty of the Press extend in England?" he gave the characteristic answer: "I do not know. I am trying to find out !" (See 52 Harv. L. Rev. 40)

12. The problem of scienter (knowingly doing an act) has caused anxious thought in the United States under the Comstock law 19 U.S.C. 1461 (1958) which deals with the non-availability of obscene matter. We were cited Manual Enterprises Inc. v. J. Edward Day 370 U.S. 478: 8 L. ed. 2nd 639 but there was so little concurrence in the Court that it has often been said, and perhaps rightly, that the case has little opinion value. The same is perhaps true of the latest case Nico Jacobellis v. State of Ohio (decided on June 22, 1964) of which a copy of the judgment was produced for our perusal.

13. It may, however, be pointed out that one may have to consider a plea that the publication was for public good. This bears on the question whether the book etc. can in those circumstances be regarded as obscene. It is necessary to bear in mind that this may raise nice points of the claims of society to suppress obscenity and the claims of society to allow free speech. No such plea has been raised in this case but we mention it to draw attention to the fact that this may lead to different results in different cases. When Savage published his Progress of a Divine, and was prosecuted for it, his plea was that he had "introduced obscene ideas with a view to exposing them to detestation, and of amending the age by showing the depravity of wickedness" and the plea was accepted (See Dr. Johnson's Life of Savage in his Lives of the Poets). In Hicklin's case (1868) L.R. 3 Q.B. 360 Blackburn J. did not accept a similar plea in respect of the pamphlet before him observing that it would "justify the publication of anything however indecent, however obscene, and however mischievous." We are not called upon to decide this issue in this case but we have found it necessary to mention it because ideas having social importance will prima facie be protected unless obscenity is so gross and decided that the interest of the public dictates the other way. We shall now consider what is meant by the word "obscene" in s. 292, Indian Penal Code.

14. The Indian Penal Code borrowed the word from the English Statute. As the word "obscene" has been interpreted by English Courts something may be said of that interpretation first. The Common law offence of obscenity was established in England three hundred years ago when Sir Charles Sedley exposed his person to the public gaze on the balcony of a tavern. Obscenity in books, however, was punishable only before the spiritual courts because it was so held down to 1708 in which year Queen v. Read 11 Mod 205 Q.B. was decided, In 1727 in the case against one Curl it was ruled for the first time that it was a Common Law offence 2 Stra. 789 K.B.. In 1857 Lord Campbell enacted the first legislative measure against obscene books etc. and his successor in the office of Chief Justice interpreted his statute (20 & 21 Vict. C. 83) in Hicklin's case (1868) L.R. 3 Q.B. 360. The section of the English Act is long (they were so in those days), but it used the word "obscene" provided for search, seizure and destruction of obscene books etc. and made their sale, possession for sale, distribution etc. a misdemeanour. The section may thus be regarded as substantially in pari materia with s. 292, Indian Penal Code, in spite of some differences in language. In Hicklin's case (1868) L.R. 3 Q.B. 360 the Queen's Bench was called upon to consider a pamphlet, the nature of which can be gathered from the title and the colophon which read; "The Confession Unmasked, showing the depravity of Romish priesthood, the iniquity of the confessional, and the questions put to females in confession." It was bilingual with Latin and English texts on opposite pages and the latter half of the pamphlet according to the report was "grossly obscene, as relating to impure and filthy acts, words or ideas". Cockburn, C.J. laid down the test of obscenity in these words:

"..... I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.... it is quite certain that it would suggest to the minds of the young of either sex, or even to persons of more advanced years, thoughts of a most impure and libidinous character."
15. This test has been uniformly applied in India.

16. The important question is whether this test of obscenity squares with the freedom of speech and expression guaranteed under our Constitution, or it needs to be modified and, if so, in what respects. The first of these questions invites the Court to reach a decision on a constitutional issue of a most far-reaching character and we must beware that we may not lean too far away from the guaranteed freedom. The laying down of the true test is not rendered any easier because art has such varied facets and such individualistic appeals that in the same object the insensitive sees only obscenity because his attention is arrested, not by the general or artistic appeal or message which he cannot comprehend, but by what he can see, and the intellectual sees beauty and art but nothing gross. The Indian Penal Code does not define the word "obscene" and this delicate task of how to distinguish between that which is artistic and that which is obscene has to be performed by courts, and in the last resort by us. The test which we evolve must obviously be of a general character but it must admit of a just application from case to

case by indicating a line of demarcation not necessarily sharp but sufficiently distinct to distinguish between that which is obscene and that which is not. None has so far attempted a definition of obscenity because the meaning can be laid bare without attempting a definition by describing what must be looked for. It may, however, be said at once that treating with sex and nudity in art and literature cannot be regarded as evidence of obscenity without something more. It is not necessary that the angles and saints of Michaelangelo should be made to wear breeches before they can be viewed. If the rigid test of treating with sex as the minimum ingredient were accepted hardly any writer of fiction today would escape the fate Lawrence had in his days. Half the book-shops would close and the other half would deal in nothing but moral and religious books which Lord Campbell boasted was the effect of his Act.

17. The question is now narrowed to what is obscenity as distinguished from a permissible treating with sex? Mr. Garg relies on some passages from the opinions expressed in the Supreme Court of the United States in Samuel Roth v. U. S. A. (354 U.S. 476; 1 L ed. 2d. 1498 (1957)) and from the charge to the jury by Stable J. in Regina v. Martin Secker and Warburg Ltd. [1954] 1 W.L.R. 738 and invites us to adopt the test of "hard-core pornography" for the interpretation of the word "obscene" in the Indian Penal Code. He points out that the latest statute in England now makes exceptions leading to the same result. He has also referred to some books and literary and artistic publications which have not been considered objectionable.

18. It may be admitted that the world has certainly moved far away from the times when Pamela, Moll Flanders, Mrs. Warren's Profession, and even Mill on the Floss were considered immodest. Today all these and authors from Aristophanes to Zola are widely read and in most of them one hardly notices obscenity. If our attitude to art versus obscenity had not undergone a radical change, books like Caldwell's God's Little Acre and Andre Gide's If It Die would not have survived the strict test. The English novel has come out of the drawing room and it is a far cry from the days when Thomas Hardy described the seduction of Tess by speaking of her guardian angels. Thomas Hardy himself put in his last two novels situations which "were strongly disapproved of under the conventions of the age", but they were extremely mild compared with books today. The world is now able to tolerate much more than formerly, having become indurated by literature of different sorts. The attitude is not yet settled. Curiously, varying results are noticeable in respect of the same book and in the United States the same book is held to be obscene in one State but not in another [See A Suggested Solution to the Riddle of Obscenity (1964), 112 Penn. L. Rev. 834.

19. But even if we agree thus far, the question remains still whether the Hicklin test is to be discarded? We do not think that it should be discarded. It makes the court the judge of obscenity in relation to an impugned book etc. and lays emphasis on the potentiality of the impugned object to deprave and corrupt by immoral influences. It will always remain a question to decide in each case and it does not compel an adverse decision in all

cases. Mr. Garg, however, urges that the test must be modified in two respects. He wants us to say that a book is not necessarily obscene because there is a word here or a word there, or a passage here and a passage there which may be offensive to particularly sensitive persons. He says that the overall effect of the book should be the test and secondly, that the book should only be condemned if it has no redeeming merit at all, for then it is "dirt for dirt's sake", or as Mr. Justice Frankfurter put it in his inimitable way "dirt for money's sake." His contention is that judged of in this light the impugned novel passes the Hicklin test if it is reasonably modified.

20. Mr. Garg is not right in saying that the Hicklin case (1868) L.R. 3 Q.B. 360 emphasised the importance of a few words or a stray passage. The words of the Chief Justice were that "the matter charged" must have "a tendency to deprave and corrupt". The observation does not suggest that even a stray word or an insignificant passage would suffice. Any observation to that effect in the ruling must be read secundum subjectam materiam, that is to say, applicable to the pamphlet there considered. Nor is it necessary to compare one book with another to find the extent of permissible action. It is useful to bear in mind the words of Lord Goddard, Chief Justice in the Reiter case. (1954) 2 Q.B. 16

"The character of other books is a collateral issue, the exploration of which would be endless and futile. If the books produced by the prosecution are indecent or obscene, their quality in that respect cannot be made any better by examining other books..."
21. The Court must, therefore, apply itself to consider each work at a time. This should not, of course, be done in the spirit of the lady who charged Dr. Johnson with putting improper words in his Dictionary and was rebuked by him: "Madam, you must have been looking for them." To adopt such an attitude towards art and literature would make the courts a board of censors. An overall view of the obscene matter in the setting of the whole work would, of course, be necessary, but the obscene matter must be considered by itself and separately to find out whether it is so gross and its obscenity so decided that it is likely to deprave and corrupt those whose minds are open to influences of this sort and into whose hands the book is likely to fall. In this connection the interests of out contemporary society and particularly the influence of the book etc. on it must not overlooked. A number of considerations may here enter which it is not necessary to enumerate, but we must draw attention to one fact. Today our national and regional languages are strengthening themselves by new literary standards after a deadening period under the impact of English. Emulation by our writers of an obscene book under the aegis of this Court's determination likely to pervert our entire literature because obscenity pays and true art finds little popular support. Only an obscurant will deny the need for such caution. This consideration marches with all law and precedent on this subject and so considered we can only say that where obscenity and art are mixed, art must so preponderate as to throw the obscenity into a shadow or the obscenity so trivial and insignificant that it can have no effect and may be overlooked. In other words, treating with sex in a manner offensive to public decency and morality (and these are the words of our Fundamental Law), judged of by our national standards and considered

likely to pander to lascivious, prurient or sexually precocious minds, must determine the result. We need not attempt to bowdlerize all literature and thus rob speech and expression of freedom. A balance should be maintained between freedom of speech and expression and public decency and morality but when the letter is substantially transgressed the former must give way.

22. We may now refer to Roth's case 354 U.S. 476: 1 L. ed. 2d. 1498 (1957) to which a reference has been made. Mr. Justice Brennan, who delivered the majority opinion in that case observed that if obscenity is to be judged of by the effect of an isolated passage or two upon particularly susceptible persons, it might well encompass material legitimately treating with sex and might become unduly restrictive and so the offending books must be considered in it entirety. Chief Justice Warren on the other hand made "Substantial tendency to corrupt by arousing lustful desires" as the test. Mr. Justice Harlan regarded as the test that must "tend to sexually impure thoughts". In our opinion, the test to adopt in our country (regard being had to our community mores) is that obscenity without a preponderating social purpose or profit cannot have the constitutional protection of free speech and expression, and obscenity is treating with sex in a manner appealing to the carnal sides of human nature, or having that tendency. Such a treating with sex it offensive to modesty and decency but the extent of such appeal in a particular book etc. are matters for consideration in each individual case.

23. It now remains to consider the book Lady Chatterley's Lover. The story is simple. A baronet, wounded in the war is paralysed from the waist downwards. He married Constance (Lady Chatterley) a little before he joined up and they had a very brief honeymoon. Sensing the sexual frustration of his wife and their failure to have an heir he leaves his wife free to associate with other men. She first experiences with one Michaelis and later with a game-keeper Mellors in charge of the grounds. The first lover was selfish sexually, the other was something of an artist. He explains to Constance the entire mystery of eroticism and they put it into practice. There are over a dozen descriptions of their sexual intimacies. The game-keeper's speech and vocabulary were not genteel. He knew no Latin which could be used to appease the censors and the human pudenda and other erogenous parts are freely discussed by him and also named by the author in the descriptions. The sexual congress each time is described with great candidness and in prose as tense as it is intense and of which Lawrence was always a consummate master. The rest of the story is a mundane one. There is some criticism of the modern machine civilization and its enervating effects and the production of sexually inefficient men and women and this, according to Lawrence, is the cause of maladjustment of sexes and their unhappiness.

24. Lawrence had a dual purpose in writing the book. The first was to shock the genteel society of the country of his birth which had hounded him and the second was to portray his ideal of sexual relations which was never absent from any of his books. His life was a long battle with censor-morons, as he called them. Even before he became an author he

was in clash with conventions. He had a very repressive mother who could not reconcile herself to the thought that her son had written the White Peacock. His sisters were extremely prim and correct. In his letters he said that he would not like them to read Lady Chatterley's Lover. His school teacher would not let him use the word 'stallion' in an essay and his first love Jessie could not read aloud Ibsen as she considered him immodest. This was a bad beginning for a hyper-sensitive man of "wild and untamed masculinity." Then came the publishers and last of all censors. From 1910 the publishers asked him to prune and prune his writings and he wrote and rewrote his novels to satisfy them. Aldous Huxley tells us that Lady Chatterley's Lover was written three times [Essays (Dent)]. Aldington in his Portrait of a Genius has seen in this a desire to avoid being pornographic but the fact is that Lawrence hated to be bowdlerized. His first publisher Heinemann refused his Sons and Lovers and he went over to Duckworths. They refused his Rainbow and he went to Secker. They brought out his Lost girl and it won a prize but after the Rainbow he was a banned author whose name could not be mentioned in genteel society. He became bitter and decided to produce a "taboo-shattering bomb". At the same time he started writing in defence of his fight for sexual liberation in English writing. This was Lawrence's first reason for writing the book under out review.

25. Lawrence viewed sex with indifference and also with passion. He was indifferent to it because he saw in it nothing to hide and he saw it with passion because to him it was the only "motivating power of life" and the culmination of all human strength and happiness. His thesis in his own words was - "I want men and women to be able to think of sex fully, completely, honestly and cleanly" and not to make of it "a dirty little secret". The taboo on sex in art and literature which was more strict thirty-five years ago, seemed to him to corrode domestic and social life and his definite view was that a candid discussion of sex through art was the only catharsis for purifying and relieving the congested emotions. This is the view he expounded through his writings and sex is never absent from his novels, his poems and his critical writings. As he was inclined freely to use words which Swift had used before him and many more, he never considered his writings obscene. He used them in this book with profusion and they occur in conversation between Mellors and Constance and in the descriptions of the sexual congresses and the erotic love play. The realism is staggering and outpaces the French Realists. But he says of himself:

"I am abused most of all for using the so called 'obscene words'. Nobody quite knows what the word 'obscene' itself means, or what it is intended to mean; but gradually all the old words that belong to the body below the navel, have come to be judged obscene." (introduction to Pansies).

That was the second motivating factor in the book.

One cannot doubt the sincerity of Lawrence's belief and his missionary zeal. Boccaccio seemed fresh and wholesome to him and Dante was obscene. He prepared a theme which

would lend itself to treating with sex on the most erotic plane and one from which the genteel society would get the greatest shock and introduced a game-keeper in whose mouth he could put all the taboo words and then he wrote of sex, of the sex organs and sex actions with brutal candidness. With the magic of words he made the characters live and what might even have passed for allegory and symbolism became extreme realism. He went too far. While trying to edit the book so that it could be published in England he could not excise the prurient parts. He admitted defeat and wrote to Seckers that he "got colour-blind and did not know any more what was supposed to be proper and what not." Perhaps he got colour-blind when he wrote it. He wanted to shock genteel society, a society which had cast him out and banned him. He wrote a book which in his own words was "a revolution - a bit of a bomb". No doubt he wrote a flowering book with pistil and stamens standing but it was to quote his on words again "a phallic novel, a shocking novel". He admitted it was too good for the public. He was a courageous writer but his zeal was misplaced because it was born of hate and his novel was "too phallic for the gross public."

26. This is where the law comes in. The law seeks to protect not those who can protect themselves but those whose prurient minds take delight and secret sexual pleasure from erotic writings. No doubt this is treating with sex by an artist and hence there is some poetry even in the ugliness of sex. But as Judge Hand said obscenity is a function of many variables. If by a series of descriptions of sexual encounters described in language which cannot be more candid, some social good might result to us there would be room for considering the book. But there is no other attraction in the book. As J.B. Priestly said, "Very foolishly he tried to philosophize upon instead of merely describing these orgiastic impulses: he is the poet of a world in rut, and and lately he has become its prophet, with unfortunate results in his fiction." [The English Novel. p. 142 (Nelson)]. The expurgated copy is available but the people who would buy the unexpurgated copy do not care for it. Perhaps the reason is as was summed up by Middleton Murray:

"Regarded objectively, it is a wearisome and oppressive book; the work of a weary and hopeless man. It is remarkable, indeed notorious for its deliberate use or unprintable words."

"The whole book really consists of detailed descriptions of their sexual fulfilment. They are not offensive, sometimes very beautiful, but on the whole strangely wearisome. The sexual atmosphere is suffocating. Beyond this sexual atmosphere there is nothing, nothing." [Son of woman (Jonathan Cape)].

27. No doubt Murray says that in a very little while and on repeated readings the mind becomes accustomed to them but he says that the value of the book then diminishes and it leaves no permanent impression. The poetry and music which Lawrence attempted to put into sex apparently cannot sustain it long and without them the book is nothing. The promptings of the unconscious particularly in the region of sex is suggested as the

message in the book. But it is not easy for the ordinary reader to find it. The Machine Age and its impact on social life which is its secondary theme does not interest the reader for whose protection, as we said, the law has been framed.

28. We have dealt with the question at some length because this is the first case before this court invoking the constitutional guarantee against the operation of the law regarding obscenity and the book is one from an author of repute and the center of many controversies. The book is probably an unfolding of his philosophy of life and of the urges of the unconscious but these are unfolded in his other books also and have been fully set out in his Psychoanalysis and the Unconscious and finally in the Fantasia of the Unconscious. There is no loss to society if there was a message in the book. The divagations with sex are not a legitimate embroidery but they are the only attractions to the common man. When everything said in its favour we find the in treating with sex the impugned portions viewed separately and also in the setting of the whole book pass the permissible limits judged of from our community standards and as there is no social gain to us which can be said to preponderate, we must hold the book to satisfy type test we have indicated above.

29. In the conclusion we are of the opinion that the High Court was right in dismissing the revision petition. The appeal fails and is dismissed.

30. Appeal dismissed.

MANU/SC/0180/1976

Back to Section 299 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 214 of 1971

Decided On: 15.09.1976

State of Andhra Pradesh Vs. Rayavarapu Punnayya and Ors.

Hon'ble Judges/Coram:
R.S. Sarkaria and S. Murtaza Fazal Ali, JJ.

JUDGMENT
R.S. Sarkaria, J.

1. This appeal by special leave is directed against a judgment of the High Court of Andhra Pradesh. It arises out of these facts.

2. In Rompicherla village, there were factions belonging to three major communities viz., Reddys, Kammas and Bhatrajus. Rayavarapu (Respondent No. 1 herein) was the leader of Kamma faction, while Chopparapu Subbareddi was the leader of the Reddys. In politics, the Reddys were supporting the Congress Party, while Kammas were supporters of Swatantra Party. There was bad blood between the two factions which were proceeded against under Section 107, Cr. P. C. In the Panchayat elections of 1954, a clash took place between the two parties. A member of the Kamma faction was murdered. Consequently, nine persons belonging to the Reddy faction were prosecuted for that murder. Other incidents also took place in which these warring factions were involved. So much so, a punitive police force was stationed in this village to keep the peace during the period from March 1966 to September 1967. Sarikonda Kotamraju, the deceased person in the instant case, was the leader of Bhatrajus. In order to devise protective measures against the onslaughts of their opponents, the Bhatrajus held a meeting at the house of the deceased, wherein they resolved to defend themselves against the aggressive actions of the respondents and their party-men. PW 1, a member of Bhatrajus faction has a cattle shed. The passage to this cattle-shed was blocked by the other party. The deceased took PW 1 to Police Station Nekarikal and got a report lodged there. On July 22, 1968, the Sub-Inspector of Police came to the village and inspected the disputed wall in the presence of the parties. The Sub-Inspector went away directing both the parties to come to the Police Station on the following morning so that a compromise might be effected.

3. Another case arising out of a report made to the police by one Kallam Kotireddi against Accused 2 and 3 and Anr. in respect of offences under Sections 324, 323 and 325, Penal

Code was pending before a Magistrate at Narasaraopet and the next date for hearing fixed in that case was July 23, 1968.

4. On the morning of July 23, 1968, at about 6-30 a.m., PWs 1, 2 and the deceased boarded Bus No. AP 22607 at Rompicherla for going to Nekarikal. Some minutes later, Accused 1 to 5 (hereinafter referred to as A-l, A2, A3, A4 and A5) also got into the same bus. The accused had obtained tickets for proceeding to Narasaraopet. When the bus stopped at Nekarikal Cross Roads, at about 7-30 a.m., the deceased and his companions alighted for going to the Police Station. The five accused also got down. The deceased and PW 1 went towards a Choultry run by PW 4, While PW 2 went to the roadside to case himself. A-l and A2 went towards the Coffee Hotel situate near the Choultry. From there, they picked up heavy sticks and went after the deceased into the Choultry. On seeing the accused, PW 1 ran away towards a hut nearby. 'The deceased stood up.

5. He was an old man of 55 years. He was not allowed to run. Despite the entreaties made by the deceased with folded hands, A-l and A-2 indiscriminately pounded the legs and arms of the deceased. One of the by-standers, PW 6, asked the assailants as to why they were mercilessly beating a human being, as if he were a buffalo. The assailants angrily retorted that the witness was nobody to question them and continued the beating till the deceased became unconscious. The accused then threw their sticks at the spot, boarded another vehicle, and went away. The occurrence was witnessed by PVVs 1 to 7. The victim was removed by PW 8 to Narasaraopet Hospital in a temporar. There, at about 8.45 a.m., Doctor Konda Reddy examined him and found 19 injuries, out of which, no less than 9 were (internally) found to be grievous. They were:

1. Dislocation of distal end of proximal phalanx of left middle finger.

2. Fracture of right radius in its middle.

3. Dislocation of lower end of right ulna.

4. Fracture of lower end of right femur.

5. Fracture of medial malleolus of right tibia.

6. Fracture of lower 1/3 of right fibula.

7. Dislocation of lower end of left ulna.

8. Fracture of upper end of left tibia.

9. Fracture of right patella.

6. Finding the condition of the injured serious, the Doctor sent information to the Judicial Magistrate for getting his dying declaration recorded. On Dr. K. Reddy's advice, the deceased was immediately removed to the Guntur Hospital where he was examined and given medical aid by Dr. Sastri. His dying declaration, Ex. P-5, was also recorded there by a Magistrate (PW 10) at about 8.05 p.m. The deceased, however, succumbed to his injuries at about 4.40 a.m. on July 24, 1968, despite medical aid.

7. The autopsy was conducted by Dr. P.S. Sarojini (PW 12) in whose opinion, the injuries found on the deceased were cumulatively sufficient to cause death in, the ordinary course of nature. The cause of death, according to the Doctor, was shock and hemorrhage resulting from multiple injuries.

8. The trial Judge convicted A-1 and A-2 under Section 302 as well as under Section 302 read with Section 34, Penal Code and sentenced each of them to imprisonment for life.

9. On appeal by the convicts, the High Court altered their conviction to one under Section 304, Pt. II, Penal Code and reduced their sentence to five years rigorous imprisonment, each.

10. Aggrieved by the judgment of the High Court, the State has come in appeal to this Court after obtaining special leave.

11. A-l, Rayavarappu Punnayya (Respondent 1) has, as reported, by his Counsel, died during the pendency of this appeal. This information is not contradicted by the Counsel appearing for the State. This appeal therefore, in so far as it relates to A-l, abates. The appeal against A-2 (Respondent 2), however, survives for decision.

12. The principal question that falls to be considered in this appeal is whether the offence disclosed by the facts and circumstances established by the prosecution against the respondent, is 'murder' or 'culpable homicide not amounting to murder'.

13. In the scheme of the Penal Code, 'culpable homicide' is genus and 'murder' its specie. All 'murder' is 'culpable homicide' but not vice-versa. Speaking generally, 'culpable homicide' sans 'special characteristics of murder', is 'culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, culpable homicide of the first degree. This is the gravest form of culpable homicide which is defined in Section 300 as 'murder'. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the 1st part of Section 304. Then, there is 'culpable homicide of the third degree.' This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second Part of Section 304.

14. The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has vexed the courts for more than a century. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the key words used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences.

15. Clause (b) of Section 299 corresponds with cls. (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under Clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the intentional harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the 'intention to cause death' is not an essential requirement of Clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of Clause (2) is borne out by illustration (b) appended to Section 300.

16. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under Clause (2) of Section 300 can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given.

17. In Clause (3) of Section 300, instead of the words 'likely to cause death' occurring in the corresponding Clause (b) of Section 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real, and, if overlooked, may result in miscarriage of) justice. The difference between Clause (b) of Section 299 and Clause (3) of Section 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word "likely" in Clause (b) of Section 299 conveys the sense of 'probable' as distinguished from a mere

possibility. The words "bodily injury...sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury having regard to the ordinary course of nature.

18. For cases to fall within Clause (3), it is not necessary that the offender intended to cause death, so long as death ensues from the intentional-bodily injury or injuries sufficient to cause death in the ordinary course of nature. Rajwant and am. v. State of Kerala MANU/SC/0086/1966: A.I.R. 1966 S.C. 1874 is an apt illustration of this point.

19. In Virsa Singh v. The State of Punjab MANU/SC/0041/1958: 1958CriLJ818 Vivian Bose J. speaking for this Court, explained the meaning and scope of Clause (3), thus (at p. 1500):

The prosecution must prove the following facts before it can bring a case under Section 300, 3rdly'. First, it must establish, quite objectively, that a bodily injury is present; secondly the nature of the injury must be proved. These are purely objective investigations. It must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and, fourthly it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

20. Thus according to the rule laid down in Virsa Singh's case (supra) even if the intention of accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Section 300 clearly brings out this point.

21. Clause (c) of Section 299 and Clause (4) of Section 300 both require knowledge of the probability of the causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that Clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general-as distinguished from a particular person or persons-being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

22. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder,' on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection

between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima jade found in the affirmative, the stage for considering the operation of Section 300, Penal Code is reached. This is [the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of murder' contained in Section 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of Section 304, depending, respectively, on. whether the second or the third Clause of Section 299 is applicable. If this question is found in the positive, but the case comes, within any of the Exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the First Part of Section 304, Penal Code.

23. The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the court. But sometimes the facts are so inter-twined and the second and the third stages so telescoped into each other, that it may not be convenient to give a separate treatment to the matters involved in the second and third stages.

24. Now let us consider the problem before us in the light of the above enunciation.

25. It is not disputed that the death of the deceased was caused by the accused, there being a direct causal connection between the beating administered by A-1 and A-2 to the deceased and his death. The accused confined the beating to the legs and arms of the deceased, and therefore, it can be said that they perhaps had no "intention to cause death" within the contemplation Clause (a) of Section 299 or Clause. (1) of Section 300. It is nobody's case that the instant case falls within Clause (4) of Section 300. This clause, as already noticed, is designed for that class of cases where the act of the offender is not directed against any particular individual but there is in his act that recklessness and risk of imminent danger, knowingly and unjustifiably incurred, which is directed against the man in general, and places the lives of many in jeopardy. Indeed, in all fairness, Counsel for the appellant has not contended that the case would fall under Clause (4) of Section 300. His sole contention is that even if the accused had no intention to cause death, the facts established fully bring the case within the purview of Clause (3) of Section 300 and as such the offence committed is murder and nothing less. In support of this contention reference has been made to Anda v. State of Rajasthan MANU/SC/0386/1965: 1966CriLJ171 and Rajwant Singh v. State of Kerala (supra).

26. As against this, Counsel for the respondent submits that since the accused selected only non-vital parts of the body of the deceased, for inflicting the injuries, they could not be attributed the mens rea requisite for bringing the case under Clause (3) of Section 300; at the most, it could be said that they had knowledge that the injuries inflicted by them

were likely to cause death and as such the case falls within the third clause of Section 299, and the offence committed was only "culpable homicide not amounting to murder", punishable under Section 304, Part II Counsel has thus tried to support the reasoning of the High Court.

27. The trial Court, us already noticed, had convicted the respondent of the offence of murder. It applied the rule in Virsa Singh's case (supra), and the ratio of Anda v. State and held that the case was clearly covered by clause Thirdly of Section 300. The High Court has disagreed with the trial court and held that the offence was not murder but one under Section 304, Pt. II.

28. The High Court reached this conclusion on the following reasoning:

(a) There was no premeditation in the attack. It was almost a impulsive act.

(b) Though there were 21 injuries, they were all on the arms and legs and not on the head or other vital parts of the body.

(c) There was no compound fracture to result in heavy hemorrhage; there must have been some bleeding, (which) according to PWI might have stopped with in about half an hour to one hour.

(d) Death that had occurred 21 hours later, could have been only due to shock and not due to hemorrhage also, as stated by PW 12... who conducted the autopsy. This reference is strengthened by the evidence of PW 26 who says that the patient was under shock and he was treating him for shock by sending fluids through his vein. From the injuries inflicted the accused therefore could not have intended to cause death.

(e) Al and A2 had beaten the deceased with heavy sticks. These beatings had resulted in fracture of the right radius, right femur, right tibia, right fibula, right patella and left tibia and dislocation of...., therefore considerable force must have been used while inflicting the blows. Accused 1 and 2 should have therefore inflicted these injuries with the knowledge that they are likely, by so beating, to cause the death of the deceased, though they might not have had the knowledge that they were so imminently dangerous that in all probability their acts would result in such injuries as are likely to cause the death. The offence...is therefore culpable homicide falling under.... Section 299, I.P.C. punishable under Section 304 Part II and not murder.

29. With respect, we are unable to appreciate and accept this reasoning. It appears to us to be inconsistent, erroneous and largely speculative.

30. To say that the attack was not premeditated or preplanned is not only factually incorrect but also at war with High Court's own finding that the injuries were caused to

the deceased in furtherance of the common intention of A-1 and A-2 and therefore, Section 34, I.P.C. was applicable. Further, the finding that there was no compound fracture, no heavy hemorrhage and the cause of the death was shock, only, is not in accord with the evidence on the record. The best person to speak about hemorrhage and the cause of the death was Dr. P. S. Sarojini (PW 12) who had conducted the autopsy. She testified that the cause of death of the deceased was "shock and hemorrhage due to multiple injuries". This categorical opinion of the Doctor was not assailed in cross-examination. In the post-mortem examination report Ex. P-8, the Doctor noted that the heart of the deceased was found full of clotted blood. Again in injury No. 6, which also was an internal fracture, the bone was visible through the wound. Dr. D. A. Sastri, PW 26, had testified that he was treating Kotamraju injured of shock, not only by sending fluids through his vein, but also blood. This part of his statement wherein he spoke about the giving of blood transfusion to the deceased, appears to have been overlooked by the High Court. Dr. Kondareddy, PW 11, who was the first Medical Officer to examine the injuries of the deceased, had noted that there was bleeding and swelling around injury No. 6 which was located on the left leg 3 inches above the ankle. Dr. Sarojini, PW 12, found fracture of the left tibia underneath this injury. There could therefore, be no doubt that this was a compound fracture. P.W. 11 found bleeding from the other abraded injuries, also. He however found the condition of the injured grave and immediately sent an information to the Magistrate for recording his dying declaration. PW 11 also advised immediate removal of the deceased to the bigger Hospital at Guntur. There, also. Dr. Sastri finding that life in the patient was ebbing fast, took immediate two-fold action. First, he put the patient on blood transfusion. Second, he sent an intimation for recording his dying declaration. A Magistrate (PW 10) came there and recorded the statement. These are all tell-tale circumstances which unerring by show that there was substantial hemorrhage from some of the injuries involving compound fractures. This being the case, there was absolutely no reason to doubt the sworn word of the Doctor, (PW 12) that the cause of the death was shock and hemorrhage. Although the learned Judges of the High Court have not specifically referred to the quotation from page 289, of Modi's book on Medical Jurisprudence and Toxicology (1961 Edn.) which was put to Dr. Sarojini in cross-examination, they appear to have derived support from the same for the argument that fractures of such bones "are not ordinarily dangerous"; therefore, the accused could not have intended to cause death but had only knowledge that they were likely by such "beating to cause the death of the deceased.

31. It will be worthwhile to extract that Quotation from Mody, as a reference to the same was made by Mr. Subba Rao before us, also. According to Mody: "Fractures are not ordinarily dangerous unless they are compound, when death may occur from loss of blood, if a big vessel is wounded by the split end of a fractured bone."

32. It may be noted, in the first place, that this opinion of the learned author is couched in too general and wide language. Fractures of some vital bones, such as those of the skull and the vertebral column are generally known to be dangerous to life. Secondly, even

this general statement has been qualified by the learned author, by saying that compound fractures involving hemorrhage, are ordinarily dangerous. We have seen, that some of the fractures underneath the injuries of the deceased, were compound fractures accompanied by substantial hemorrhage. In the face of this finding, Mody's opinion, far from advancing the contention of the defence, discounts it.

33. The High Court has held that the accused had no intention to-cause death because they deliberately avoided to hit any vital part of the body, and confined the beating to the legs and arms of the deceased. There is much that can be said in support of this particular finding. But that finding-assuming it to be correct-does not necessarily take the case out of the definition of 'murder'. The crux of the matter is, whether the facts established bring the case within Clause Thirdly of Section 300. This question further narrows down into a consideration of the two-fold issue:
(i) Whether the bodily injuries found on the deceased were intentionally inflicted by the accused?
(ii) If so, were they sufficient to cause death in the ordinary course of nature'? If both these elements are satisfactorily established, the offence will be 'murder', irrespective of the fact whether an intention on the part of the accused to cause death, had or had not been proved.

34. In the instant case, the existence of both these elements was clearly established by the prosecution. There was bitter hostility between the warring factions to which the accused and the deceased belonged. Criminal litigation was going on between these factions since long. Both the factions had been proceeded against under Section 107, Cr. P.C. The accused had therefore a motive to beat the deceased. The attack was premeditated and pre-planned, although the interval between the conception and execution of the plan was not very long. The accused had purchased tickets for going further to Narasaraopet, but on seeing the deceased, their bete noire, alighting at Nekarikal, they designedly got down there and trailed him. They selected heavy sticks about 3 inches in diameter, each, and with those lethal weapons, despite the entreaties of the deceased, mercilessly pounded his legs and arms causing no less than 19 or 20 injuries, smashing at least seven bones, mostly major bones, and dislocating two more. The beating was administered in a brutal and reckless manner. It was pressed home with an unusually fierce, cruel and sadistic determination. When the human conscience of one of the shocked bystanders spontaneously cried out in protest as to why the accused were beating a human being as if he were a buffalo, the only echo it could draw from the assailants, was a mendacious retort, who callously continued their malevolent action, and did not stop the beating till the deceased became unconscious. May be, the intention of the accused was to cause death and they stopped the beating under the impression that the deceased was dead. But this lone circumstance cannot take this possible inference to the plane of positive proof. Nevertheless, the formidable weapons used by the accused in the beating, the savage manner of its execution, the helpless state of the unarmed victim, the intensity of the violence caused, the callous conduct of the accused in persisting in the assault even

against the protest of feeling bystanders-all, viewed against the background of previous animosity between the parties, irresistibly lead to the conclusion that the injuries caused by the accused to the deceased were intentionally inflicted, and were not accidental. Thus the presence of the first element of Clause Thirdly of Section 300 had been cogently and convincingly established.

35. This takes us to the second element of Clause (3). Dr. Sarojiui, PW 12. testified that the injuries of the deceased were cumulatively sufficient in the ordinary course of nature to cause death. In her opinion-which we have found to be entirely trustworthy-the cause of the death was shock and hemorrhage due to the multiple injuries. Dr. Sarojini had conducted the post-mortem examination of the deadtody of the deceased. She had dissected the body and examined the injuries to the internal organs. She was therefore the best informed expert who could opine with authority as to the cause of the death and as to the sufficiency or otherwise of the injuries from which the death ensued. Dr. Sarojini's evidence on this point stood on a better footing than that of the Doctors (PWs. 11 and 26) who had externally examined the deceased in his life-time. Despite this position, the High Court has not specifically considered the evidence of Dr. Sarojini with regard to the sufficiency of the injuries to cause death in the ordinary course of nature. There is no reason why Dr. Sarojini's evidence with regard to the second element of Clause (3) of Section 300 be not accepted. Dr. Sarojini's evidence satisfactorily establishes the presence of the second element of this clause.

36. There is therefore, no escape from the conclusion, that the offence committed by the accused was 'murder', notwithstanding the fact that the intention of the accused to cause death has not been shown beyond doubt.

37. In Anda v. State of Rajasthan (supra), this Court had to deal with a very similar situation. In that case, several accused beat the victim with sticks after dragging him into a house and caused multiple injuries including 16 lacerated wounds on the arms and legs, a hematoma on the forehead and a bruise on the chest. Under these injuries to the arms and legs lay fractures of the right and left ulnas, second and third metacarpal bones on the right hand and second metacarpal bone of the left hand, compound fractures of the right tibia and right fibula. There was loss of blood from the injuries. The Medical Officer who conducted the autopsy opined that the cause of the death was shock and syncope due to multiple injuries; that all the injuries collectively could be sufficient to cause death in the ordinary course of nature, but individually none of them was so sufficient.

38. Question arose whether in such a case when no significant injury had been inflicted on a vital art of the body, and the weapons used were ordinary lathis, and the accused could not be said to have the intention of causing death, the offence would be 'murder' or merely 'culpable homicide not amounting to murder'. This Court speaking through Hidayatullah J. (as he then was), after explaining the comparative scope of and the distinction between Sections 299 and 300, answered the question in these terms:

The injuries were not on a vital part of the body and no weapon was used which can be described as specially dangerous. Only lathis were used. It cannot, therefore, be said safely that there was an intention to cause the death of Bherun within the first clause of Section 300. At the same time, it is obvious that his hands and legs were smashed and numerous bruises and lacerated wounds were caused. The number of injuries shows that every one joined in beating him. It is also clear that the assailants aimed at breaking his arms and legs. Looking at the injuries caused to Bherun in furtherance of the common intention of all it is clear that the injuries intended to be caused were sufficient to cause death in the ordinary course of nature, even if it cannot be said that his death was intended. This is sufficient to bring the case within 3rdly of Section 300.

39. The ratio of Anda v. State of Rajasthan (supra) applies in full force to the facts of the present case. Here, a direct causal connection between the act of the accused and the death was established. The injuries were the direct cause of the death. No secondary factor such as gangrene, tetanus etc., supervened. There was no doubt whatever that the beating was premeditated and calculated. Just as in Anda's case, here also, the aim of the assailants was to smash the arms and legs of the deceased, and they succeeded in that design, causing no less than 19 injuries, including fractures of most of the bones of the legs and the arms. While in Anda's case, the sticks used by the assailants were not specially dangerous, in the instant case they were unusually heavy, lethal weapons. All these acts of the accused were pre-planned and intentional, which, considered objectively in the light of the medical evidence, were sufficient in the ordinary course of nature to cause death. The mere fact that the beating was designedly confined by the assailants to the legs and arms, or that none of the multiple injuries inflicted was individually sufficient in the ordinary course of nature to cause death, will not exclude the application of Clause 3rdly of Section 300. The expression "bodily injury" in Clause 3rdly includes also its plural, so that the clause would cover a case where all the injuries intentionally caused by the accused are cumulatively sufficient to cause the death in the ordinary course of nature, even if none of those injuries individually measures upto such sufficiency. The sufficiency spoken of in this clause, as already noticed, is the high probability of death in the ordinary course of nature, and if such sufficiency exists and death is caused and the injury causing it is intentional, the case would fall under Clause 3rdly of Section 300. All the conditions which are a pre-requisite for the applicability of this clause have been established and the offence, committed by the accused in the instant case was 'murder'.

40. For all the foregoing reasons, we are of opinion that the High Court was in error in altering the conviction of the accused-respondent from one under Section 302, 302/34, to that under Section 304, Part II, Penal Code. Accordingly we allow this appeal and restore the order of the trial Court convicting the accused (Respondent 2 herein) for the offence of murder, with a sentence of imprisonment for life. Respondent 2, if he is not already in jail shall be arrested and committed to prison to serve out the sentence inflicted on him.

MANU/SC/0150/1954

Back to Section 300 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 78 of 1954

Decided On: 15.09.1954

Kapur Singh Vs. State of Pepsu

Hon'ble Judges/Coram:
N.H. Bhagwati, B. Jagannadhadas and T.L. Venkatarama Aiyyar, JJ.

JUDGMENT
N.H. Bhagwati, J.

1. Special leave was granted to the appellant limited to the question of sentence only.

2. About a year before the date of the occurrence, Bachan Singh son of the deceased caused a severe injury on the leg of Pritam Singh, son of the appellant resulting in the amputation of his leg. The appellant harboured a grudge against the father and the son since that time and he was trying to take revenge on a suitable opportunity presenting itself. That opportunity came on 30-9-1952 when the Appellant encountered the deceased, and he and his companion, one Chand Singh, were responsible for the occurrence. Chand Singh held the deceased by the head and the appellant inflicted as many as 18 injuries on the arms and legs of the deceased with a gandasa.

It is significant that out of all the injuries which were thus inflicted none was inflicted on a vital part of the body. The appellant absconded and his companion was in the meantime convicted of an offence under Section 302 and a sentence of transportation for life was imposed on him, which was confirmed by the High Court. The appellant was arrested thereafter and his trial resulted in his conviction under Section 302, The learned Sessions Judge awarded him a sentence of death subject to confirmation by the High Court. The High Court, in due course, confirmed the death sentence.

3. The motive which actuated the appellant in committing this crime was to wreak his vengeance on the family of Bachan Singh. It appears that the appellant intended to inflict on the arms and legs of the deceased such injuries as would result in the amputation of both the arms and both the leg's of the deceased, thus wreaking his vengeance on the deceased for what his son, Bachan Singh, had done to his own son Pritam Singh.

The fact that no injury was inflicted on any vital part of the body of the deceased goes to show in the circumstances of this case that the intention of the appellant was not to kill

the deceased outright. He inflicted the injuries not with the intention of murdering the deceased, but caused such bodily injuries as, he must have known, would likely cause death having regard to the number and nature of the injuries.

4. We, therefore, feel that, under the circumstances of the case, the proper section under which the appellant should have been convicted was Section 304(1) and not Section 302. We, accordingly, alter the conviction of the appellant from that under Section 302 to one under Section 304(1) and instead of the sentence of death which has been awarded to him which we hereby set aside, we award him the sentence of transportation for life

MANU/TN/0083/1912

Back to Section 301 of Indian Penal Code, 1860

IN THE HIGH COURT OF MADRAS

Decided On: 02.01.1912

Emperor Vs. Mushnooru Suryanarayana Murthy

JUDGMENT
Authored By: Benson, Sundara Aiyar, Benson, Rahim
Benson, J.

1. This is an appeal by the Public Prosecutor on behalf of Government against the acquittal of one Suryanarayana Murthi, on a charge of having murdered the girl, Rajalakshmi.

2. The facts of the case, so far as it is necessary to state them for the purposes of this appeal, are as follows:

The accused, with the intention of killing Appala Narasimhulu, (on whose life he had effected large insurances without Appala Narasimhulu's knowledge, and in order to obtain the sums for which he was insured), gave him some sweetmeat (halva) in which a poison containing arsenic and mercury in soluble form had been mixed. Appala Narasimhulu ate a portion of the sweetmeat, and threw the rest away. This occured at the house of the accused's brother-in-law where the accused had asked Appala Narasimhulu to meet him. Rajalakshmi, who was aged 8 or 9 years, and who was niece of the accused, being,the daughter of accused's brother-in-law, took some of the sweetmeat and ate it and gave some to another little child who also ate it. According it one account Rajalakshmi asked the accused for a portion of the sweetmeat, but according to the other account, which we accept as the true account, Appala Narasimhulu, after eating a portion of the sweetmeat threw away the remainder, and it was then picked up by Rajalakshmi without the knowledge of the accused. The two children who had eaten the poisoned sweetmeat, died from the effects of it, but Appala Narasimhulu, though the poison severely affected him, eventually recovered. The accused has been sentenced to transpiration for life for having attempted to murder Appala Narasimhulu. The question which we have to consider in this appeal is whether, on the facts stated above, the accused is guilty of the murder of Rajalakshmi.
3. I am of opinion that the accused did cause the death of Rajalakshmi and is guilty of her murder. The law on the subject is contained in Sections 299 to 301 of the Indian Penal Code and the whole question is whether it can properly be said that the accused "caused the death" of the girl, in the ordinary sense in which those words should be understood, or whether the accused was so indirectly or remotely connected with her death that he cannot properly be said to have "caused" it. It is not contended before us that the accused

intended to cause the death of the girl, and we may take it for the purpose of this appeal that he did not know that his act was even likely to cause her death. But it is clear that he did intend to cause the death of Appala Narasimhulu. In order to effect this he concealed poison in a sweetmeat and gave it to him eat. It was these acts of the accused which caused the death of the girl, though no doubt her own action, in ignorantly picking up and eating the poison, contributed to bring about the result. Section 299 of the Indian Penal Code says: " Whoever causes death by doing an act with the intention of causing death, or with the intention of Causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.'' It is to be observed that the section does not require that the offender should intend to kill (or know himself to be likely to kill) any particular person. It is enough if he "causes the death" of any one by doing an act with the intention of "causing death" to any one, whether the person intended to be killed or any one else. This is clear from the first illustration to the section, "A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide."

4. Nor is it necessary that the death should be caused directly by the action of the offender, without contributory action by the person whose death is caused or by some other person. That contributory action by the person whose death is caused will not necessarily prevent the act of the offender from being culpable homicide, even if the death could not have occurred without such contributory action, is clear from the above illustration, and that contributory action by a third person will not necessarily prevent the act of the offender from being culpable homicide, even if the death could not have occurred without such contributory action, is clear from the second illustration, viz., "A knows Z to. be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely t6 cause, Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence ; but A has committed the offence of culpable homicide.

5. The language of the section and the illustration seem to me to show that neither the contributory action of Appala Narasimhulu in throwing away part of the sweetmeat, nor the contributory action of the girl in picking it up and eating it prevent our holding that it was the accused who caused the girl's death. The Indian Law Commissioners in their report (1846) on the Indian Penal Code call attention to the unqualified use of the words "to cause death " in the definition of culpable homicide, and rightly point out that there is a great difference between acts which cause death immediately, and acts which cause death remotely, and they point out that the difference is a matter to be considered by the courts when estimating the effect of the evidence in each case. Almost all, perhaps all, results are caused by a combination of causes, yet we ordinarily speak of a result as caused by the most conspicuous or efficient cause, without specifying all the contributory causes. In Webster's Dictionary " cause " is defined as " that which produces or effects a result; that from which anything proceeds and without which it would not exist " and

again " the general idea of cause is that without which another thing, called the effect, cannot be; and it is divided by Aristotle into lour kinds known by the name of the material, the formal, the efficient and the final cause. The efficient cause is the agent that is prominent or conspicuous in producing a change or result."

6. In the present case 1 think that the accused's action was the efficient cause of the girl's death, though her own action in picking up and eating the poison was also necessary in order to effect her death ; just as in the illustration given in the Code the man who laid the turf and sticks over the pit with the intention of causing death was held to be the cause of the death of the man who ignorantly fell into the pit ; although the death would not have occurred if he had hot of his own free will walked to the spot where the pit was. The Code says that the man who made the pit is guilty of culpable homicide, and, in my opinion, the accused in the present case, who mixed the poison in sweetmeat and gave it to be eaten, is equally guilty of that offence. The mens rea which is essential to criminal responsibility existed with reference to the act done by the accused in attempting to kill Apala Narasimhulu, though not in regard to the girl whose death he, in fact, caused, and that is all that the section requires. It does not say " whoever voluntarily causes death," or require that the death actually caused should have been voluntarily caused. It is sufficient if death is actually, even though involuntarily, caused to one person by an act intended to cause the death of another. It is the criminality of the intention with regard to the latter that makes the act done and the consequence which follows from it an offence.

7. Turning now to Section 300, Indian Penal Code, we find that culpable homicide is murder if the act by which death ' is caused is done with the intention of causing death, and does not fall within certain specified exceptions, none of which are applicable to the present case.

8. It follows that the accused in the present case is guilty of murder, and this is rendered still more clear by Section 301 of the Code. The cases in which culpable homicide is murder under Section 300 are not confined to cases in which the act by which the death is caused is done with the intention of causing death. Section 300 specifies other degrees of intention or knowledge which may cause the act to amount to murder, and then Section 301 enacts that " if a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause."

9. The section does not enact any rule not deducible from the two preceding sections, but it declares in plain language an important rule deducible, as we have seen, from those sections, just as an explanation to a section does. The rule could not well be stated as an

explanation to either Section 299 or Section 300 as it relates to both. It was, therefore, most convenient to state the rule by means of a fresh section., The rule makes it clear that culpable homicide may be committed by causing the death of a person whom the offender neither intended, nor knew himself to be likely, to kill, a rule which though it does not lie on the surface of Section 299, yet is, as we have seen, deducible from the generality of the words '' causes death" and from the illustration to the section ; and the rule then goes on to state that the quality of the homicide, that is, whether it amounts to murder or not, will depend on the intention or knowledge which the offender had in regard to the person intended or known to be likely to be killed or injured, and not with reference to his intention or knowledge with reference to the person actually killed, a rule deducible from the language of the Sections 299 and 300 though not, perhaps, lying on their very surface. The conclusion, then, at which I arrive is that the accused in this case is guilty of murder as defined in Sections 299 to 301, Indian Penal Code.

10. This conclusion is in accord with the view of Norman Offg., C.J., and Jackson, J., in the case reported in 13 W. R. 2 where it is said: "The prisoner gave some poisoned rice water to an old woman who drank part herself and gave part to a little girl who died from the effect of the poison. The offence of the prisoner, under Section 301 of the Indian Penal Code, is murder." That the present accused would be guilty of murder under English Law is clear from the case of Agnes Gore. In that case Agnes Gore mixed poison in some medicine sent by an Apothecary, Martin, to her husband, which he ate but which did not kill him, but afterwards killed the Apothecary, who to vindicate his reputation, tasted it himself, having first stirred it about. " It was resolved by all the Judges that the said Agnes was guilty of the murder of the said Martin, for the law conjoins the murderous intention of Agnes in putting the poison into the electuary to kill her husband, with the event which thence ensued; i.e., the death of the said Martin; for the putting of the poison into the electuary is the occasion and cause ; and the poisoning and death of the said Martin is the event, quia eventus est qui ex causa sequitur, et dicuntur eventus quia ex causis eveniunt, and the stirring of the electuary by Martin with his knife without the putting in of the poison by Agnes could not have been the cause of his death." (King's Bench 77 ER 854.

11. A number of other English cases have been referred to, but it is unnecessary to discuss them as we must decide the case in accordance with the provisions of the Indian Penal Code, and these are not necessarily the same as the English Law.

12. In the result, I would allow the appeal by Government and convict the accused of the murder of Rajalakshmi.

13. The accused was originally sentenced to seven years' rigorous imprisonment for having attempted to murder Appala Narasimhulu. This sentence was enhanced to one of transportation for life by this court acting as a court of revision in December, 1910, when this appeal was not before them. Looking to these facts I am unwilling to now impose a

sentence of death, though it would have been appropriate if the accused had been convicted of murder at the original trial.

Sundara Aiyar, J.

14. In this case the accused Suryanarayana Murthi was charged by the Sessions Court of Ganjam with the murder of a young girl named Rajalakshmi and with attempt to murder one Appala Narasimhulu by administering poison to each of them on the 9th February 1910. He was convicted by the Sessions Court on the latter count but was acquitted on the former count and was sentenced to seven years' rigorous imprisonment. He appealed against the conviction and sentence in Criminal Appeal No. 522 of 1910, and this court confirmed the conviction and enhanced the sentence to transportation for life. The present appeal is by the Government against his acquittal on the charge of murdering Rajalakshmi.

15. The facts as found by the lower court are that the accused, who was a clerk in the Settlement Office at Chicacole, got the life of Appala Narasimhulu, the prosecution 1st witness, insured in two Insurance Companies for the sum of Rs. 4,000 in all, having paid the premia himself; that the 2nd premium for one of the insurances fell due on the 12th January, 1910, and the grace period for its payment would elapse on the 12th February, 1910; that the prosecution 1st witness being at the same time badly pressed for means of subsistence asked the accused for money on the morning of 9th February ; that the latter asked him to meet him in the evening at the house of his (the accused's) brother-in-law, the prosecution 8th witness; that at the house the accused gave the prosecution 1st witness a while substance which he called ' halva' but which really contained arsenic and mercury in soluble form ; that the prosecution 1st witness having eaten a portion of the halva threw aside the rest; that it was picked up by the daughter of the prosecution 8th witness, the deceased Rajalakshmi, who ate a portion of it herself and gave another portion to a child of a neighbour ; and that both Rajalakshmi and the other child were seized with vomiting and purging and finally died, Rajalakshmi some four days after she ate the halva and the child two days earlier. After the prosecution 1st witness had thrown away the halva both he and the accused went to the bazaar and the accused gave prosecution 1st witness some more halva. The prosecution 1st witness suffered in consequence for a number of days but survived. The accused, as already stated, has been sentenced to transportation for life for attempting to murder the prosecution 1st witness.

16. The case for the prosecution with reference to the poisoning of Rajalakshmi was, as sworn to by the prosecution 1st witness, that, when the accused gave him the halva, the girl asked for a piece of it and that the accused, though he reprimanded her at first, gave her a small portion. But I agree with the learned Sessions Judge that this story is improbable. The girl was the accused's own niece being his sister's daughter. He and her father (the prosecution 8th witness) were on good terms. He had absolutely no motive to kill her, and there was no necessity for giving her the halva. The accused, in his statement

to the Magistrate (the prosecution 22nd witness) soon after the occurrence, said that the girl had picked up the halva and eaten it. He had made a similar statement to the prosecution 8th witness when the latter returned to his house on the evening of the 9th immediately after the girl had eaten it. This statement is in accordance with the probabilities of the case, and I accept the Sessions Judge's finding that the halva was not given to the girl by the accused but picked up by her after the prosecution 1st witness had thrown it way. The question we have to decide is whether, on these facts, the accused is guilty of the murder of the girl. At the conclusion of the arguments we took time to consider our judgment, as the point appeared to us to be one of considerable importance, but we intimated that, even if the accused should be held to be guilty of murder, we would not consider it necessary, in the circumstances, to inflict on him the extreme penalty of the law.

17. It is clear that the accused had no intention of causing the death of the girl Rajalakshmi. But it is contended that the accused is guilty of murder as he had the intention of causing the death of the prosecution 1st witness, and it is immaterial that he had not the intention of causing the death of the girl herself. Section 299, Indian Penal Code, enacts that whoever causes death by doing an act with the intention of causing death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide." Section 300 says "culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death." Section 301 lays down that " if a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause." The contention of the learned Public Prosecutor, to put it very shortly, is (1) that it was the accused's act that caused the death of the girl and (2) that the accused had the intention of causing death when he gave the poison to the prosecution 1st witness and was, therefore, guilty of any death that resulted from his act. He urges that the sections of the Penal Code practically reproduce the English Law according to which the causing of death with malice aforethought, though the malice may not be directed against a particular individual whose death ensues, would amount to murder. Before referring to the English Law, I shall consider the provisions of the Penal Code bearing on the subject. If Mr. Napier's contention be sound it would make no difference whether Appala Narasimhulu, the prosecution 1st witness, also died in consequence of the poison or not; nor would it make any difference if, instead of the poison being picked up by the girl and eaten by herself, she gave it to some one else and that one to another again and so on if it changed any number of hands. The accused would be guilty of the murder of one and all of the persons who might take the poison, though it might' have been impossible for him to imagine that it would change hands in the manner that it did. The contention practically amounts to saying that the intervention of other agencies, and of any number of them, before death results, would make no difference in the guilt of the accused, that

causing death does not mean being the proximate cause of death, but merely being a link in the chain of the cause or events leading to the death and that further any knowledge on the part of the accused that such a chain of events might result from his act is quite immaterial. It is, prima facie, difficult to uphold such an argument. Now is there anything in the sections of the Penal Code to support it? Section 39 provides that " a person is said to cause an effect' voluntarily ' when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it." The illustration to the section is that if a person sets fire by night to an inhabited house in a large town for the purpose of facilitating robbery, and thus causes the death of a person, he would be taken to have caused the death voluntarily if he knew that he was likely to cause it even though he may not have intended to cause death and may even be sorry that death had been caused by his act. The section and the illustration both show that causation with respect to any event involves that the person should have knowledge that the event was likely to result from his act. Section 299, Indian Penal Code, in my opinion, does not lead to a different conclusion. But before dealing with it, I must turn to Section 301, Indian Penal Code. That section apparently applies to a cause where the death of the person whose death was intended or known to be likely to occur by the person doing the act, does not, as a fact, occur but the death of some one else occurs as the result of the act done by him. It evidently does not apply where the death both of the person whose death was in contemplation and of another person or persons, had occurred. Can it be said that, in such a case, the doer of the act is guilty of homicide with reference to those whose death was not intended by him and could not have been foreseen by him as likely to occur? Are we to hold that a man who knows that his act is likely to cause the death of one person is guilty of the death of all the others who happen to die, but whose death was far beyond his imagination? Such a proposition it is impossible to maintain in criminal law. Section 301 of the Indian Penal Code has reference to a case where a person intending to cause the death of A, say by striking or shooting him, kills B because B is in the place where he imagined A to be, or B rushes in to save A and receives the injury intended for A. The reason for not exculpating the wrong-doer in such cases is that he must take the risk of some other person being in the place where he expected to find A, or, of some one else intervening between him and A. The section is a qualification of the rule laid down in Section 299 and is evidently confined to cases where the death of the person intended or known to be likely to be killed does not result. If the Public Prosecutor's general proposition were right, Section 301 of the Indian Penal Code would seem to be unnecessary, as Section 299 would be quite enough. If a person is intended by Section 299 to be held to be guilty for deaths which are not known to be likely to occur, then that section might itself have been worded differently so as to show that the particular death caused need not have been intended or foreseen and what is more important, Section 301 of the Indian Penal Code would not be limited to cases where the death of the particular individual intended or foreseen does not occur. The general theory of the criminal law is that the doer of an act is responsible only for the consequences intended or known to be likely to ensue; for otherwise he could not be said to have caused the effect " voluntarily," and a person is not responsible for the involuntary effects of his

acts. Illustrations A and B, in my opinion, support this view. Sections 323 and 324 show that a person is responsible in the case of hurt or grievous hurt only for what he causes voluntarily ; and Section 321 shows that hurt to the particular person in question must have been intended or foreseen. In the eye of the law, no doubt, a man will be taken to have foreseen what an ordinary individual ought to foresee, and it will not be open to him to plead that he himself was so foolish as, in fact, not to foresee the consequence of his act. A person might, in some cases, be responsible for effects of which his act is not the proximate cause where the effect is likely to arise in the ordinary course of events to result from the act. This rule will certainly hold good where a person's act set in motion only physical causes which lead to the effects actually occurring ; when the effect is not due merely to physical causes set in operation by an act, but other persons' wills intervening are equally necessary causes with the original act to lead to the result, it is more difficult to decide whether the act in question can be said to be the cause of the effect finally produced. The Code throws very little light on the question, Ordinarily, a man is not criminally responsible for the acts of another person, and ordinarily his act should not be held to be the cause of a consequence which would not result without the intervention of another human agency. Sir J. Fitz James Stephen in his 'History of the Criminal Law of England,' Vol. III, p. 8, says: " A more remarkable set of cases are those in which death is caused by some act which does unquestionably cause it, but does so through the intervention of the independent voluntary act of some other person. Suppose, for instance, A tells B of facts which operate as a motive to B for the murder of C. It would be an abuse of language to say that A had killed C, though no doubt he has been the remote cause of C's death." The learned author proceeds to point out that, even when a person counsels, procures or commands another to do an act, he would be only guilty as an abettor but not as a principal offender whose act caused the result, say murder. This is the well settled principle of the English Law, though there appear to be one or two exceptions, to be hereafter pointed out. No such exceptions are mentioned in the Indian Code. They may perhaps be recognised where the doer of the act knew that it would be likely that his own act would lead other persons, not acting wrongfully, to act in such a manner as to cause the effect actually produced. But the scope of the exceptions cannot cover those cases where the doer could not foresee that other persons would act in the manner indicated above. This is the principle adopted in determining civil liability for wrongs. See the discussion of the question in Baker v. Snell (1908) 2 K.B. 825. A stricter rule cannot be applied in cases of criminal liability.

18. Now, can it be said that the accused, in this case, knew it to be likely that the prosecution 1st witness would give a portion of the halva to the girl Rajalakshmi? According to Section 26 of the Indian Penal Code " a person is said to have 'reason to believe' a thing if he has sufficient cause to believe that thing but not otherwise." A trader who sells a basket of poisoned oranges may be said to have sufficient ' reason to believe' that the buyer would give them to various persons to eat; but one who gives a slice of an orange to another to eat on the spot could not be said to have sufficient ' reason to believe' that he would give half of that slice to another person to eat or that he would throw away

a portion and that another would eat it. The poison was thrown aside here not by the accused but by the prosecution 1st witness. The girl's death could not have been caused but for the intervention of the prosecution 1st witness's agency. The case, in my opinion, is not one covered by Section 301 of the Indian Penal Code. The conclusion, therefore, appears to follow that the accused is not guilty of culpable homicide by doing an act which caused the death of the girl. Mr. Napier, as already mentioned, has contended that the law in this country on the question is really the same as in England; and he relies on two English cases in support of his contention, viz., Saunder's case and Agnes Gore's case. I may preface my observations on the English Law by citing Mr. Mayne's remark that "culpable homicide is perhaps the one branch of criminal law in which an Indian student must be most careful in accepting the guidance of English authorities." According to the English Law " murder is the unlawful killing, by any person of sound memory and discretion, of any person under the King's peace, with malice aforethought, either express or implied by law. This malice aforethought which distinguishes murder from other species of homicide is not limited to particular ill-will against the persons slain, but means that the fact has been attended with such circumstances as are the ordinary symptoms of a wicked, depraved, and malignant spirit ; a heart regardless of social duty, and deliberately bent upon mischief. Any formed design of doing mischief may be called malice ; and therefore, not only killing from premeditated hatred or revenge against the person killed, but also, in many other cases, killing accompanied with circumstances that show the heart to be previously wicked is adjudged to be killing of malice aforethought and, consequently, murder."-RUSSELL on Crimes and Misdemeanors, 7th Edition, Volume I, page 655. It will be observed that, in this definition, malice is made an essential requisite, and all cases have to be brought under it. Knowledge that the act is likely to cause death is not part of the definition Nor have we any words to import what is contained in the explanations to Section 299 of the Indian Penal Code or in Cls. 2, 3 and 4 of Section 300. The law was worked out of England to its present condition by a series of judicial decisions. This accounts for the statement that general malice is enough and that it need not be directed against the particular individual killed. Hence also the proposition that wicked intention to injure is enough and intention to kill that individual is not necessary. See ROSCOE'S Criminal Evidence, 13th Edition, pages 617 to 619. Malice again is explained to mean malice implied by law as well as malice in fact. The result is, the law in England is not as different from that in India as a comparison of the definitions might, at first sight, indicate. This is apparent from the statement of the English Law at pp. 20-22, Vol. III of Stephen's History of the Criminal Law. The statement, however, shows that the law is not identical in both countries. In England an intention to commit any felony will make the act murder if death results. Again " if a child under years of discretion, a madman, or any other person of defective mind, is incited to commit a crime, the inciter is the principal ex necessitate, though absent when the thing was done. In point of law, the act of the innocent agent is as much the act of the procurer as if he were present and did the act himself." See RUSSELL on Crimes, Vol. I, page 104. The Indian law does not make the abettor guilty of the principal offence in such circumstances. There is also a presumption in the English Law that " all homicide is malicious and murder, until the

contrary appears from circumstances of alleviation, excuse, or justification ; and it is incumbent upon the prisoner to make out such circumstances to the satisfaction of the Court and Jury, unless they arise out of the evidence produced against him." See Russell on Crimes, Vol. I, page 657. There is no such presumption here. In Saunder's case as stated in Roscoe's Criminal Evidence, p. 154, the prisoner intending to poison his wife gave her a poisoned apple which she, ignorant of its nature, gave to a child who took it and died. This was held murder in the husband, although being present he endeavoured to dissuade his wife from giving it to the child. In Hale'S Pleas of the Crown, Vol. I, p. 436, it is not stated that the prisoner endeavoured, to dissuade his wife from giving the apple to the child. On the other hand, the author says: '' If A commands or counsels B to kill C and before the fact is dose A repents and comes to B and expressly discharges him from the fact and countermands it, if after this countermand B does it, it is murder in B; but A is not accessory." The decision apparently proceeded on the English rule that the innocence of the intervening agent had the effect of holding the prisoner liable as the principal offender. In Agnes Gore's case (1614) 77 E.R. 853 the wife who mixed ratsbane in a potion sent by the apothecary to her husband which did not kill him but killed the apothecary who, to vindicate his reputation, tasted it himself, having first stirred it up, was held guilty of murder because the wife had the intention of killing the husband though not of killing the apothecary. It is possible that an Indian court may hold in such a case that it was the duty of the wife to warn and prevent the apothecary from tasting the potion and that she was guilty of an illegal omission in not doing so. Whether the case might not come under Section 301, Indian Penal Code, also it is unnecessary to consider. In The Queen v. Latimer (1886) 17 Q.B.D.359 " the prisoner, in striking at a man, struck and wounded a woman beside him. At the trial of an indictment against the prisoner under 24 and 25 Vic. C 100, Section 20, for unlawfully and maliciously wounding her, the Jury found that the blow ' was unlawful and malicious and did in fact wound her, but that the striking of her was purely accidental and not such a consequence of the blow as the prisoner ought to have expected.' The Court of Crown Cases Reserved held that the prisoner was guilty. The decision proceeded upon the words of the statute. Section 18 enacted that "whosoever shall unlawfully and maliciously cause any grievous bodily harm to any person with malicious intent shall be guilty of felony." Then Section 20, leaving out the intent, provided that whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person shall be guilty of misdemeanour. Lord Coleridge, C.J., pointed out that the language of Sections 18 and 20 was different and that the earlier statute had been altered which provided that the intention should be against the person injured. In Regina v. Michael, where a bottle containing poison was put on the mantel-piece where a little child found it and gave part of the contents to the prisoner' child who soon after died, the Judges were of opinion that " the administering of the poison by the child was under the circumstances of the case as much in point of law an administering by the prisoner as if the prisoner had actually administered it with her own hand." This decision also, no doubt, proceeded on the ground of want of discretion in the intervenor, the child. The Indian courts may hold that a person who keeps poison at a place where others might have access to it must be taken

to know that death is likely to result from the act. It is clear that English decisions are not always a safe guide in deciding cases in this country where the provisions of the Penal Code must be applied. In Shankar Balkrishna v. King-Emperor I.L.R. (1904) Cal. 73 the Calcutta High Court held that the prisoner in the case, an Assistant Railway Station Master, was not liable where death would not have resulted if the guard had not acted carelessly, as the prisoner could not be taken to know that the accident to the train which resulted in the loss of human life was likely to lead to death. In In re The Empress v. Sahae Rae I.L.R. (1877) Cal. 623 which may be usefully compared with The Queen v. Latimer (1886) 17 Q.B.D.359 and where also the prisoner was held guilty, the decision was put on the ground that the prisoner knew it to be likely that the blow would fall on a person for whom he had not intended it. Holding, as I do, that, in the circumstances of this case, the prisoner could not be said to have known that it was likely that the prosecution 1st witness would throw aside the halva so as to be picked up and eaten by some one else and that the prisoner was not responsible, in the circumstances, for the voluntary act of prosecution 1st witness, I must come to the conclusion that the prisoner is not guilty of the murder of the girl Rajalakshmi. It is not contended that there was a legal duty on the part of the accused to prevent the girl from eating the halva and that he was guilty of murder by an illegal omission.

19. I would uphold the finding of acquittal of the lower court and dismiss the appeal.

Benson, J.

20. As we differ in our opinion as to the guilt of the accused, the case will be laid before another Judge of this court, with our opinions under Section 429, Criminal Procedure Code.

21. This appeal coming on for hearing under the provisions of Section 429 of the Code Criminal Procedure

The Court delivered the following

Rahim, J.

22. The question for decision is whether the accused Suryanarayanamurti is guilty of an offence under Section 302, Indian Penal Code, in the following circumstances He wanted to kill one Appala Narasimhulu on whose life he had effected rather large insurances and for that purpose gave him some halva (a sort of sweet meat), in which he had mixed arsenic and mercury in a soluble form, to eat. This was at the house of the accused's brother in-law, where Appala Narasimhulu had called by appointment. The man ate a portion of the halva, but not liking its taste threw away the remainder on the spot. Then, according to the view of the evidence accepted by my learned brothers Benson and Sundara Aiyar JJ., as well as by the Sessions Judge, a girl of 8 or 9 years named

Rajalakshmi, the daughter of the accused's brother-in-law, picked up the poisoned halva, ate a portion of it herself, and gave some to another child of the house. Both the children died of the effects of the poison, but Appala Narasimhulu, the intended victim, survived though after considerable suffering. It is also found as a fact, and I agree with the finding, that Rajalakshmi and the other girl ate the halva without the knowledge of the accused, who did not intend to cause their deaths. Upon these facts Benson J. would find the accused guilty of the murder of Rajalakshmi, while Sundara Aiyar J., agreeing with the Sessions Judge, holds a contrary view.

23. The question depends upon the provisions of the Indian Penal Code on the subject as contained in Section 299 to 301. The first point for enquiry is whether the definition of culpable homicide as given in Section 299 requires that the accused's intention to cause death or his knowledge that death is likely to be caused by his act in question must be found to exist with reference to the particular person whose death has actually been caused by such act, or is it sufficient for the purposes of the section if criminal intention or knowledge on the part of the accused existed with reference to any human being, though the death oi the person who actually fell a victim to the accused's act was never compassed by him. I find nothing in the words of the section which would justify the limited construction. Section 299 says: "Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide." The language is perfectly general; all that it requires is that there should be an intention to cause death or a knowledge that death is likely to be the result, and there is nothing in reason which, in my opinion, would warrant us in saying that the homicidal intention or knowledge must be with reference to the life of the person whose death is actually caused. The law affords protection equally to the lives of all persons, and once the criminal intention, that is, an intention to destroy human life, is found, I do not see why it should make any difference whether the act done with such intention causes the death of the person aimed at or of some one else. Illustration (a) to Section 299 makes it quite clear that the legislature deliberately employed general and unqualified language in order to cover cases where the person whose death is caused by the act of the accused was not the person intended to be killed by him but some other person. Section 301 also supports this construction as it assumes that the accused in such cases would be guilty of culpable homicide; and I may here point out that the object of this section is to lay down that the nature of culpable homicide of which the accused in these cases would be guilty, namely whether murder or not, would be the same as he would have been guilty of, if the person whose death was intended to be brought about had been killed. Now the first paragraph of Section 300 declares that culpable homicide shall be deemed to be murder if the act by which death is caused is done with the intention of causing death, using so far the very words of Section 299. In the 2nd and 3rd paragraphs of Section 300 the language is not quite identical with that of the corresponding provisions in Section 299, and questions may possibly arise whether where the fatal act was done not with the intention of causing death but with the intention

of causing such bodily injury as as likely to cause death, or with the knowledge that the accused is likely by such act to cause death, the offence would be one of murder or culpable homicide not amounting to murder. But it is not necessary for me to express any opinion on these matters as in the present case the prisoner undoubtedly intended to cause death.

24. The next point for consideration is whether the death of Rajalakshmi was caused by the accused's act within the meaning of Section 299. The question is really one of fact or of proper inference to be drawn from the facts. That girl's death was caused by eating the sweetmeat in which the accused had mixed poison and which he brought to the house where the girl lived in order to give it to the man for whom it was intended. It was given to him, but he, not relishing the taste of it, threw it down. The deceased girl soon afterwards picked it up and ate it, But the accused was not present when Rajalakshmi ate it, and we may even take it that, if the accused had been present, he would have prevented the girl from eating the sweetmeat. These being the facts, there can be, however, no doubt, that the act of the accused in mixing arsenic in the halva and giving it to Appala Narasimhalu in Rajalakshmi's house was one cause in the chain of causes which brought about the girl's death. The question then is whether this act of the accused was such a cause of Rajalakshmi's death as to justify us in imputing it to such act. In my opinion it was. Obviously it is not possible to lay down any general test as to what should be regarded in criminal law as the responsible cause of a certain result when that result, as it often happens, is due to a series of causes. We have to consider in each case the relative value and efficiency of the different causes in producing the effect and then to say whether responsibility should be assigned to a particular act or not as the proximate and efficient cause. But it may be observed that it cannot be a sufficient criterion in this connection whether the effect could have been produced in the case in question without a particular cause, for it is involved in the very idea of a cause that the result could not have been produced without it. Nor would it be correct to lay down generally that the intervention of the act of a voluntary agent must necessarily absolve the person between whose act and the result it intervenes. For instance, if A mixes poison in the food of B with the intention of killing B and B eats the food and is killed thereby, A would be guilty of murder even though the eating of the poisoned food which was the voluntary act of B intervened between the act of A and B's death. So here the throwing aside of the sweetmeat by Appala Narasimhulu and the picking and the eating of it by Rajalakshmi cannot absolve the accused from responsibility for his act. No doubt the intervening acts or events may sometimes be such as to deprive the earlier act of the character of an efficient cause. Now, suppose, in this case Appala Narasimhulu had discovered that the sweetmeat was poisoned and then gave it to Rajalakshmi to eat, it is to his act that Rajalakshmi's death would be imputed and not to the accused's. Or suppose Appala Narasimhulu, either suspecting that the sweetmeat was poisoned or merely thinking that it was not fit to be eaten, threw it away in some unfrequented place so as to put it out of harm's way and Rajalakshmi happening afterwards to pass that way, picked it up, and ate it and was killed, the act of the accused in mixing the poison in the sweetmeat could

in that case hardly be said to have caused her death within the meaning of Section 299. On the other hand, suppose Appala Narasimhulu, finding Rajalakshmi standing near him and without suspecting that there was anything wrong with the sweetmeat, gives a portion of it to her and she ate it and was killed, could it be said that the accused who had given the poisoned sweetmeat to Appala Narsimhulu was not responsible for the death of Rajalakshmi? I think not. And there is really no difference between such a case and the present case. The ruling reported in 13 W.R. 2 also supports the view of the law which I have tried to express.

25. Reference has been made to the English law on the point and though the case must be decided solely upon the provisions of the Indian Penal Code, I may observe that there can be no doubt that under the English Law as well the accused would be guilty of murder. In English Law it is sufficient to show that the act by which death was caused was done with malice aforethought, and it is not necessary that malice should be towards the person whose death has been actually caused. This is well illustrated in the well-known case of Agnes Gore (1614) 77 E.R. 853 and in Saunder's case I. Hale P.C. 431 and also in Regina V. Michael 9 C & P. 356. No doubt" malice aforethought," at least according to the old interpretation of it as including an intention to commit any felony, covers a wider ground in the English Law than the criminal intention or knowledge required by Sections 299 and 300, Indian Penal Code, but the law in India on the point in question in this case is undoubtedly, in my opinion, the same as in England.

26. Agreeing therefore with Benson J., I set aside the order of the Sessions Judge acquitting the accused of the charge of murder and convict him of an offence under Section 302, Indian Penal Code. I also agree with him that, in the circumstances of the case, it is not necessary to impose upon the accused the extreme penalty of the law, and I sentence the accused under Section 303, Indian Penal Code, to transportation for life.

MANU/SC/0356/1982

Back to Section 302 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 273 of 1979 and Writ Petn. Nos. 89, 165, 168, 179, 434, 564, 754, 756 and 976 of 1979 and SLP (Crl.) No. 1732 of 1979

Decided On: 16.08.1982

Bachan Singh and Ors. Vs. State of Punjab and Ors.

Hon'ble Judges/Coram:
P.N. Bhagwati, J.

JUDGMENT

1. These writ petitions challenge the constitutional validity of Section 302 of the Indian Penal Code read with Section 354, Sub-section (3) of the CrPC in so far as it provides death sentence as an alternative punishment for the offence of murder. There are several grounds on which the constitutional validity of the death penalty provided in Section 302 of the Indian Penal Code read with Section 354 Sub-section (3) of the CrPC is assailed before us, but it is not necessary to set them out at this stage, for I propose to deal with them when I examine the arguments advanced on behalf of the parties. Suffice it to state for the present that I find, considerable force in some of these grounds and in my view, the constitutional validity of the death penalty provided as an alternative punishment in Section 302 of the Indian Penal Code read with Section 354 Sub-section (3) of the CrPC cannot be sustained. I am conscious that my learned brethren on the Bench who constitute the majority have taken a different view and upheld the constitutional validity of the death penalty but, with the greatest respect to them and in all humility, I cannot persuade myself to concur with the view taken by them. Mine is unfortunately a solitary dissent and it is therefore with a certain amount of hesitation that I speak but my initial diffidence is overcome by my deep and abiding faith in the dignity of man and worth of the human person and passionate conviction about the true spiritual nature and dimension of man. I agree with Bernad Shaw that "Criminals do not die by the hands of the law. They die by the hands of other men. Assassination on the scaffold is the worst form of assassination because there it is invested with the approval of the society.... Murder and capital punishment are not opposites that cancel one another but similar that breed their kind." It was the Father of the nation who said years ago, reaffirming what Prince Satyavan said on capital punishment in Shanti Parva 10 of Mahabarata that "Destruction of individuals can never be a virtuous act" and this sentiment has been echoed by many eminent men such as Leonardo Da Vinci, John Bright, Victor Hugo and Berdyaev. To quote again from Bernard Shaw from Act IV of his play "Caesar and Cleopatra:

And so to the end of history, murder
shall breed murder, always in the name
of right and honour and peace, until
the Gods are tired of blood and create
a race that can understand.

I share this sentiment because I regard men as an embodiment of divinity and I am therefore morally against death penalty. But my dissent is based not upon any ground of morality or ethics but is founded on constitutional issues, for as I shall presently show, death penalty does not serve any social purpose or advance any constitutional value and is totally arbitrary and unreasonable so as to be violative of Articles 14, 19, 21 of the Constitution.

2. Before I proceed to consider the various constitutional issues arising out of the challenge to the validity of the death penalty, I must deal with a preliminary objection raised on behalf of the respondents against our competence to entertain this challenge. The learned Counsel appearing on behalf of the respondents urged that the question of constitutional validity of the death penalty stood concluded against the petitioners by the decision of a Constitution bench of five Judges of this Court in Jagmohan v. State of U.P. MANU/SC/0139/1972: 1973CriLJ370 and it could not therefore be allowed to be reagitated before this Bench consisting of the same number of Judges. This Bench, contended the respondents, was bound by the decision in Jagmohan's case (supra) and the same issue, once decided in Jagmohan's case (supra), could not be raised again and reconsidered by this Bench. Now it is true that the question of constitutional validity of death penalty was raised in Jagmohan's case (supra) and this Court by a unanimous judgment held it to be constitutionally valid and therefore, ordinarily, on the principle of stare decisis, we would hold ourselves bound by the view taken in that case and resist any attempt at reconsideration of the same issue. But there are several weighty considerations which compel us to depart from this presidential rule in the present case. It may be pointed out that the rule of adherence to precedence is not a rigid and inflexible rule of law but it is a rule of practice adopted by the courts for the purpose of ensuring uniformity and stability in the law. Otherwise, every Judge will decide an issue according to his own view and lay down a rule according to his own perception and there will be no certainty and predictability in the law, leading to chaos and confusion and in the process, destroying the rule of law. The labour of the judges would also, as pointed out by Cardozo J. in his lectures on "Nature of Judicial Process" increase "almost to the breaking point if every past decision could be reopened in every case and one could not lay one's own course of bricks on the secure foundation of the courses laid by others who had gone before him." But this rule of adherence to precedents, though a necessary tool in what Maitland called the legal smithy," is only a useful servant and cannot be allowed to turn into a tyrannous master. We would do well to recall what Brandies J. said in his dissenting judgment in State of Washington v. Dawson and company, 264 US 646: 68 L E. 219 namely; "Stare decisis is ordinarily a wise rule of action. But it is not a universal and inexorable command." If the rule of stare decisis were followed blindly and

mechanically, it would dwarf and stultify the growth of the law and affect its capacity to adjust itself to the changing needs of the society. That is why Cardozo painted out in his New York State Bar Address:

That was very well for a time, but now at last the precedents have turned upon us and are engulfing and annihilating us-engulfing and annihilating the very devotees that Worshiped at their shrine. So the air is full of new cults that disavow the ancient faiths. Some of them tell us that instead of seeking certainty in the word, the outward sign, we are to seek for something deeper, a certainty of ends and aims. Some of them tell us that certainty is merely relative and temporary, a writing on the sands to be effaced by the advancing tides. Some of them even go so far as to adjure us to give over the vain guest, to purge ourselves of these yearnings for an unattainable idea), and to be content with an empiricism that is untroubled by strivings for the absolute. With all their diversities of form and doctrine, they are at one at least in their emphasis upon those aspects of truth that are fundamental and ultimate. They exemplify the method approach, the attitude and outlook, the concern about the substance of things, which in all its phases and disguises is the essence of philosophy.

We must therefore rid stare decisis of something of its petrifying rigidity and warn ourselves with Cardozo that in many instances the principles and rules and concepts of our own creation are merely apercus and glimpses of reality" and remind ourselves of the need of reformulating them or at times abandoning them altogether when they stand condemned as mischievous in the social consciousness of the hour,...the social consciousness which it is our business as Judges to interpret as best as we can." The question at issue in the present writ petitions is one of momentous significance namely, whether the State can take the life of an individual under the cover of judicial process and whether such an act of killing by the State is in accord with the constitutional norms and values and if, on an issue like this, a Judge feels strongly that it is not competent to the State to extinguish the flame of life in an individual by employing the instrumentality of the judicial process, it is his bounden duty, in all conscience, to express his dissent, even if such killing by the State is legitimized by a previous decision of the court. There are certain issues which transcend technical considerations of stare decisis and if such an issue is brought before the court, it would be nothing short of abdication of its constitutional duty for the court to refuse to consider such issue by taking refuge under the doctrine of stare decisis. The court may refuse to entertain such an issue like the constitutional validity of death penalty because it is satisfied that the previous decision is correct but it cannot decline to consider it on the ground that it is barred by the rule of adherence to precedents. Moreover, in the present case, there are two other supervening circumstances which justify, and compel, reconsideration of the decision in Jagmohan's case (supra). The first is the introduction of the new CrPC in 1973 which by Section 354 Sub-section (3) has made life sentence the rule in case of offences punishable with death or in the 5 alternative imprisonment for life and provided for imposition of sentence of death only in exceptional cases for special reasons. I shall presently refer to this section enacted in the new CrPC and show how, in view of that provision, the imposition of

death penalty has, become still more indefensible from the constitutional point of view. But the more important circumstance which has supervened since the decision in Jagmohan's case (supra)'is the new dimension of Articles 14 and 21 unfolded by this Court in Maneka Gandhi v. Union of India 1978 (2) SCR 663. This new dimension of Articles 14 and 21 renders the death penalty provided in Section 302 of the Indian Penal Code read with Section 354(3) of the CrPC vulnerable to attack on a ground not available at the time when Jagmohan's case (supra) was decided. Furthermore, it may also be noted, and this too is a circumstance not entirely without significance, that since Jagmohan's case (supra) was decided, India has ratified two international instruments on Human rights and particularly the International Covenant on Civil and Political Rights. We cannot therefore consider ourselves bound by the view taken in Jagmohan's case (supra) and I must proceed to consider the issue as regards the constitutional validity of death penalty afresh, without being in any manner inhibited by the decision in Jagmohan's case (supra).

3. It must be realised that the question of constitutional validity of death penalty, is not just a simple question of application of constitutional standards by adopting a mechanistic approach. It is a difficult problem of constitutional interpretation to which it is not possible to give an objectively correct legal answer. It is not a mere legalistic problem which can be answered definitively by the application of logical reasoning but it is a problem which raises profound social and moral issues and the answer must therefore necessarily depend on the judicial philosophy of the Judge, This would be so in case of any problem of constitutional interpretation but much more so would it be in a case like the present where the constitutional conundrum is enmeshed in complex social and moral issues defying a formalistic judicial attitude. That is the reason why in some countries like the United States and Canada where there is power of judicial review, there has been judicial disagreement on the constitutionality of death penalty. On an issue like this, as pointed out by David Pannick in his book on "Judicial Review of the Death Penalty" judicial conclusions emanate from the judicial philosophy of those who sit in judgment and not from the language of the Constitution." But even so, in their effort to resolve such an issue of great constitutional significance, the Judges must take care to see that they are guided by "objective factors to the maximum possible extent." The culture and ethos of the nation as ' gathered from its history, its tradition and its literature would clearly be relevant factors in adjudging the constitutionality of death penalty 50 and so would the ideals and values embodied in the Constitution which lays down the basic frame-work of the social and political structure of the country, and which sets out the objectives and goals to be pursued by the people in a common endeavour to secure happiness and welfare of every member of the society. So also standards or, norms set by International organisations and bodies have relevance in determining the constitutional validity of death penalty and equally important in construing and applying the equivocal formulae of the Constitution would be the "wealth of non-legal learning and experience that encircles and illuminates" the topic of death penalty. "Judicial dispensers," said Krishna Iyer, J. in Dalbir Singh and Ors. v. State of Punjab 1979 (3) SCR 1959 "do not

behave like cavemen but breathe the fresh air of finer culture." There is no reason why, in adjudicating upon the constitutional validity of death penalty, Judges should not obtain assistance from the writings of men like Dickens, Tolstoy, Dostoyevsky, Koestter and Camus or from the investigations of social scientists or moral philosophers in deciding the circumstances in which and the reasons why the death penalty could be seen as arbitrary or a denial of equal protection. It is necessary to bear in mind the wise and felicitous words of Judge Learned Hand in his "Spirit of Liberty" that while passing on a question of constitutional interpretation, it is as important to a Judge:

...to have at least a bowing acquaintance with Acton and Maitland. With Thucydides, Gibbon and Carlyle, with Homer, Dante, Shakespeare and Milton, with Machiavelli, Montaigne and Rabelais, with Plato, Bacon, Hume and Kant, as with the books which have been specifically written on the subject. For in such matters everything turns upon the spirit in which he approaches the question before him. The words he must construe are empty vessels into which he can pour nearly anything he will. Men do not gather figs of thistles, nor supply institutions from judges whose outlook is limited by parish or class. They must be aware that there are before them more than verbal problems; more than final solutions cast in generalisations of universal applicability.
Constitutional law raises, in a legal context, problems of economic, social, moral and political theory and practice to which non-lawyers have much to contribute. Non-lawyers have not reached unanimity on the answers to the problems posed; nor will they ever do so. But when judges are confronted by issues to which there is no legal answer, there is no reason (other than a desire to maintain a fiction that the law provides the answer) for judicial discretion to be exercised in a vacuum, immune from non-legal learning and extra-legal dispute. 'Quotations from noble minds are not for decoration (in hard constitutional cases) but for adaptation within the framework of the law. "Vide: David Pannick on 'Judicial Review of the Death Penalty.' The Judges must also consider while deciding an issue of constitutional adjudication as to what would be the moral, social and economic consequences of a decision either way. The consequences of course do not alter the meaning of a constitutional or statutory provision but they certainly help to fix its meaning. With these prefatory observations I shall now proceed to consider the question of constitutional validity of death penalty.

4. I shall presently refer to the constitutional provisions which bear on the question of constitutionality of death penalty, but before I do so, it would be more logical if I first examine what is the international trend of opinion in regard to death penalty. There are quite a large number of countries which have abolished death penalty de jure or in any event, de facto. The Addendum to the Report of the Amnesty International on "The Death Penalty" points out that as of 30th May 1979, the following countries have abolished death penalty for all offences: Australia, Brazil, Colombia, Costa Rica, Denmark, Dominican Republic, Ecuador, Fiji, Finland, Federal Republic of Germany, Honduras, Iceland, Luxembourg, Norway, Portugal, Sweden, Uruguay and Venezuela, and according to this Report, Canada, Italy, Malta, Netherlands, Panama, Peru, Spain and Switzerland have

abolished death penalty in time of peace, but retained it for specific offences committed in time of war. The Report also states that Algeria, Belgium, Greece, Guyana, Ivory Coast, Seychelles and Upper Volta have retained the death penalty on their statute book but they did not conduct any executions for the period from 1973 to 30th May 1979. Even in the United States of America there are several States which have abolished death penalty and so also in the United Kingdom, death penalty stands abolished from the year 1965 save and except for offences of treason and certain forms of piracy and offences committed by members of the armed forces during war time. It may be pointed out that an attempt was made in the United Kingdom in December 1975 to reintroduce death penalty for terrorist offences involving murder but it was defeated in the House of Commons and once again a similar motion moved by a conservative member of Parliament that "the sentence of capital punishment should again be available to the courts" was defeated in the House of Commons in a free vote on 19th July 1978. So also death penalty has been abolished either formally or in practice in several other countries such as Argentina, Bolivia, most of the federal States of Mexico and Nicaragua. Israel, Turkey and Australia do not use the death penalty in practice. It will thus be seen that there is a definite trend in most of the countries of Europe and America towards abolition of death penalty.

5. It is significant to note that the United Nations has also taken great interest in the abolition of capital punishment. In the Charter of the United Nations signed in 1945, the founding States emphasized the value of individual's life, stating their will to "achieve international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion". Though the San Francisco Conference did not address itself to the issue of death penalty specifically, the provisions of the charter paved the way for further action by United Nations bodies in the field of human rights, by establishing a Commission on Human Rights and, in effect, charged that body with formulating an International Bill of Human Rights. Meanwhile the 40 Universal Declaration of Human Rights was adopted by the General Assembly in its Resolution 217 A (III) of 10 December 1948. Articles 3 and 5 of the Declaration provided:

3. Everyone has the right to life, liberty and security of person

5. "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

The United Nations position on the question of death penalty was expected to be stated more specifically in the International Covenant on Civil and Political Rights, the drafting of which had been under way since the first session of the Commission on Human Rights in 1947. But during the 11-year period of drafting of the relevant provision of the Covenant, two main approaches to the issue of capital punishment became evident: one stressed the need for barring the death penalty and the second placed emphasis on

restricting its apply to certain cases. The proponents of the first position suggested either the total abolition of the death penalty or its abolition in time of peace or for political offences. This approach was however regarded as unfeasible, since many countries, including abolitionist ones, felt that the provision for an outright ban on the death penalty would prevent some States from ratifying the Covenant, but at the same time, it was insisted by many countries that the Covenant should not create the impression of supporting or perpetuating death penalty and hence a provision to this effect should be included. The result was that the second approach stressing everyone's right to life and emphasizing the need for restricting the application of capital punishment with a view to eventual abolition of the death penalty, won greater support and Article 6 of the Covenant as finally adopted by the General Assembly in its resolution 2200 (XXI) of 16 December 1966 provided as follows:

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In 'countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provision of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7 of the Covenant corresponding to Article 5 of the Universal Declaration of Human Rights reaffirmed that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

6. So deep and profound was the United Nation's concern with the issue of death penalty that the General Assembly in its resolution 1396 (XIV) of 20th November, 1959 invited the Economic and Social Council to initiate study of the question of capital punishment, of the laws and practices relating thereto, and of the effects of capital punishment and the abolition thereof on the rate of criminality. Pursuant to this resolution, the Economic and Social Council activised itself on this issue and at its instance a substantive report was prepared by the noted French Jurist Marc Ancel. The report entitled "Capital Punishment" was the first major survey of the problem from 50 an international standpoint on the deterrent aspect of the death penalty and in its third chapter, it contained a cautious statement "that the deterrent effect of the death penalty is, to say the least, not demonstrated." This view had been expressed not only by abolitionists countries in their replies to the questionnaires but also by some retentions countries. The Ancel report along with the Report of the ad hoc Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders which examined it in January 1963 was presented to the Economic and Social Council at its 35th Session when its Resolution 934 (XXXV) of 9th April 1963 it was adopted. By this Resolution the Economic and Social Council urged member governments inter alia to keep under review the efficacy of capital punishment as a deterrent to crime in their countries and to conduct research into the subject and to remove this punishment from the criminal law concerning any crime to which it is, in fact, not applied or to which there is no intention to apply it. This Resolution clearly shows that there was no evidence supporting the supposed deterrent effect of the death penalty and that is why the Economic and Social Council suggested further research on the topic. Moreover, the urging of the de facto abolitionist countries by this Resolution to translate the position into de jure terms constituted an implicit acceptance of the principle of abolition. The same year, by Resolution 1918 (XVIII) of 5th December, 1963, the General Assembly endorsed this action of the Economic and Social Council and requested the Economic and Social Council to invite the Commission on Human Rights to study and make recommendations on the Ancel Report and the comments of the ad hoc Advisory Committee of Experts. The General Assembly also requested the Secretary General to present a report on new developments through the Economic and Social Council. Norval Morris, an American Professor of criminal law and criminology, accordingly prepared a Report entitled "Capital Punishment; Developments 1961-1965" and amongst other things, this Report pointed out that there was a steady movement towards legislative abolition of capital punishment and observed with regard to the deterrent effect of death penalty, that:

with respect to the influence of the abolition of capital punishment upon the incidence of murder, all of the available data suggest that where the murder rate is increasing, abolition does not appear to hasten the increase; where the rate is decreasing abolition does not appear to interrupt the decrease; where the rate is stable, the presence or absence of capital punishment does not appear to affect it.

The Commission on Human Rights considered this report and adopted a draft General Assembly Resolution which was submitted by the Economic and Social Council to the

General Assembly and on, 26th November 1968, the General Assembly adopted this draft with 40 certain modifications as its Resolution 2393 (XXIII) inviting member governments to take various measures and requesting the Secretary General to invite member governments "to inform him of their present attitude to possible further restricting the use of the death penalty or to its total abolition" and to submit a report to the Economic and Social Council. The Secretary General accordingly submitted his report to the Economic and Social Council at its 50th session in 1971. This report contained a finding that "most countries are gradually restricting the number of offences for which the death penalty is to be applied and a few have totally abolished capital offences even in war times". The discussion in the Economic and Social Council led to the adoption of Resolution 1574 (L) of 20th May 1971 which was reaffirmed by General Assembly Resolution 2857 (XXVI) of 20th December 1971. This latter resolution clearly affirmed that:

In order to guarantee fully the right to life, provided for in Article 3 of the Universal Declaration of Human Rights, the main objective to be pursued is that of progressively restricting the number of offences for which capital punishment may be imposed, with a view to the desirability of abolishing this punishment in all countries".

(Emphasis supplied.)

7. In 1973 the Secretary-General submitted to the Economic and Social Council at its 54th session his third report on capital punishment as requested by the Council and at this session, the Council adopted Resolution 1745 (LIV) in which, inter alia, it invited the Secretary General to submit to it periodic updated reports on capital punishment at five-year intervals starting from 1975. A fourth report on capital punishment was accordingly submitted in 1975 and a fifth one in 1980. Meanwhile the General Assembly at its 32nd Session adopted Resolution 32/61 on 8th December 1977, and this Resolution reaffirmed "the desirability of abolishing this" that is capital "punishment" in all countries.

8. It will thus be seen that the United Nations has gradually shifted from the position of a neutral observer concerned about but not committed on the question of death penalty, to a position favouring the eventual abolition of the death penalty. The objective of the United Nations has been and that is the standard set by the world body that capital punishment should ultimately be abolished in all countries. This normative standard set by the world body must be taken into account in determining whether the death penalty can be regarded as arbitrary, excessive and unreasonable so as to be constitutionally invalid.

9. I will now proceed to consider the relevant provisions of the Constitution bearing on the question of constitutional validity of death penalty. It may be pointed out that our Constitution is a unique document. It is not a mere pedantic legal text but it embodies certain human values cherished principles and spiritual norms and recognises and

upholds the dignity of man. It accepts the individual as the focal point of all development and regards his material, moral and spiritual development as the chief concern of its various provisions. It does not treat the individual as a cog in the mighty all-powerful machine of the State but places him at the center of the constitutional scheme and focuses on the fullest development of his personality. The Preamble makes it clear that the Constitution is intended to secure to every citizen social, economic and political justice and equality of status and opportunity and to promote fraternity assuring the dignity of the individual. The Fundamental Rights lay down limitations on the power of the legislature and the executive with a view to protecting the citizen and confer certain basic human rights which are enforceable against the State in a court of law. The Directive Principles of State Policy also emphasise the dignity of the individual and the worth of the human person by obligating the State to take various measures for the purpose of securing and protecting a social order in which justice, social, economic and political, shall inform all the institutions of national life. What is the concept of social and economic justice which the founding fathers had in mind is also elaborated in the various Articles setting out the Directive Principles of State Policy. But all these provisions enacted for the purpose of ensuring the dignity of the individual and providing for his material, moral and spiritual development would be meaningless and ineffectual unless there is rule of law to invest them with life and force.

10. Now if we look at the various constitutional provisions including the Chapters on Fundamental Rights and Directive Principles of State Policy, it is clear that the rule of law permeates the entire fabric of the Constitution and indeed forms one of its basic features. The rule of law excludes arbitrariness; its postulate is 'intelligence without passion' and 'reason freed from desire'. Wherever we find arbitrariness or unreasonableness there is denial of the rule of law. That is why Aristotle preferred a government of law rather than of men. 'Law', in the context of the rule of law, does not mean any law enacted by the legislative authority, howsoever arbitrary or despotic it may be. Otherwise even under a dictatorship it would be possible to say that there is rule of law, because every law made by the dictator howsoever arbitrary and unreasonable has to be obeyed and every action has to be taken in conformity with such law. In such a case too even 10 where the political set up is dictatorial, it is law that governs the relationship between men and men and between men and the State. But still it is not rule, of law as understood in modern jurisprudence, because in jurisprudential terms, the law itself in such a case being an emanation from the absolute will of the dictator it is in effect and substance the rule of man and not of law which prevails in such a situation. What is a necessary element of the rule of law is that the law must not be arbitrary or irrational and it must satisfy the test of reason and the democratic form of polity seeks to ensure this element by making the framers of the law accountable to the people. Of course, in a country like the United Kingdom, where there is no written Constitution imposing fetters on legislative power and providing for judicial review of legislation, it may be difficult to hold a law to be invalid on the ground that it is arbitrary and irrational and hence violative of an essential element of the rule of law and the only remedy if at all would be an appeal to the

electorate at the time when a fresh mandate is sought at the election. But the situation is totally different in a country like India which has a written Constitution enacting Fundamental Rights and conferring power on the courts to enforce them not only against the executive but also against the legislature. The Fundamental Rights erect a protective armour for the individual against arbitrary or unreasonable executive or legislative action.

11. There are three Fundamental Rights in the Constitution which are of prime importance and which breathe vitality in the concept of the rule of law. They are Articles 14, 19 and 21 which in the words of Chandrachud, C.J. in Minerva Mills case MANU/SC/0075/1980: [1981]1SCR206 constitute a golden triangle. It is now settled law as a result of the decision of this Court in Maneka Gandhi's case (supra) that Article 14 enacts primarily a guarantee against arbitrariness and inhibits State action, whether legislative or executive, which suffers from the vice of arbitrariness. This interpretation placed on Article 14 by the Court in Maneka Gandhi's case has opened up a new dimension of that Article which transcends the classificatory principle. For a long time in the evolution of the constitutional law of our country, the courts had construed Article 14 to mean only this, namely, that you can classify persons 45 and things for the application of a law but such classification must be based on intelligible differentia having rational relationship to the object sought to be achieved by the law. But the court pointed out in Maneka Gandhi's case that Article 14 was not to be equated with the principle of classification. It was primarily a guarantee against arbitrariness in State action and the doctrine of classification was evolved only as a subsidiary rule for testing or determining whether a particular State action was arbitrary or not. The Court said "Equality is antithetical to arbitrariness. In fact, equality and arbitrariness are sworn enemies. One belongs to the rule of law while the other to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14." The Court thus laid down that every State action must be non-arbitrary and reasonable; if it is not, the court would strike it down as invalid.

12. This view was reaffirmed by the Court in another outstanding decision in Ramana Dayaram Shetty v. International Airport Authority of India and Ors. (1979) 3 CSR 1014 There, tenders were invited by the Airport Authority for giving a contract for running a canteen at they Bombay Airport. The invitation for tender included a condition that the applicant must have at least 5 years' experience as a registered 2nd class hotelier. Several persons tendered. One was a person who had considerable experience in the catering business but he was not a registered 2nd class hotelier as required by the condition in the invitation to tender. Yet his tender was accepted because it was the highest. The contract given to him was challenged and court held that the action of the Airport Authority was illegal. The court pointed out that a new form of property consisting of government largesse in the shape of jobs, contracts, licences, quotas, mineral rights and other benefits and services was emerging in the social welfare State that India was and it was necessary

to develop new forms of protection in regard to this new kind of property. The court held that in regard to government largesse, the discretion of the government is not unlimited in that the government cannot give or withhold largesse in its arbitrary discretion or at its sweet will. The government action must be based on standards that are not arbitrary or irrational. This requirement was spelt out from the application of Article 14 as a constitutional requirement and it was held that having regard to the constitutional mandate of Article 14, the Airport Authority was not entitled to act arbitrarily in accepting the tender but was bound to conform to the standards or norms laid down by it. The Court thus reiterated and reaffirmed its commitment against arbitrariness in State action.

13. It can therefore now be taken to be well-settled that if a law is arbitrary or irrational, it would fall foul of Article 14 and would be liable to be struck down as invalid. Now a law may contravene Article 14 because it enacts provisions which are arbitrary: as for example, they make discriminatory classification which is not founded on intelligible differentia having rational relation to the object sought to be achieved by the law or they arbitrarily select persons or things for discriminatory treatment. But there is also another category of cases where without enactment of specific provisions which are arbitrary, a law may still offend Article 14 because it confers discretion on an authority to select person or things for application of the law without laying down any policy or principle to guide the exercise of such discretion. Where such unguided and unstructured discretion is conferred on an authority, the law would be violative of Article 14 because it would enable the authority to exercise such discretion arbitrarily and thus discriminate without reason. Unfettered and uncharted discretion conferred on any authority, even if it be the judiciary, throws the door open for arbitrariness, for after all a judge does not cease to be a human being subject to human limitations when he puts on the judicial rove and the nature of the judicial process being what it is, it cannot be entirely free from judicial subjectivism. Cardozo, J. has frankly pointed this out in his lectures on "Nature of the Judicial Process":

There has been a certain lack of candor in much of the discussion of the theme, or rather perhaps in the refusal to discuss it, as if judges must lose respect and confidence by the reminder that they are subject to human limitations...if there is anything of reality in my analysis of the judicial process, they do not stand aloof on these chill and distant heights; and we shall not help the cause of truth by acting and speaking as if they do. The great tides and currents which engulf the rest of men do not turn aside in their course and pass the judges by.
This facet of the judicial process has also been emphasized by Richard B. Brandt in his book on "Judicial Discretion" where he has said:

Much of law is designed to avoid the necessity for the judge to reach what Holmes called his 'can't helps,' his ultimate convictions or values. The force of precedent, the close applicability of statute law, the separation of powers, legal presumptions, statutes of

limitations, rules of pleading and evidence, and above all the pragmatic assessments of fact that point to one result whichever ultimate values be assumed, all enable the judge in most cases to stop short of a resort to his personal standards. When these prove unavailing, as is more likely in the case of courts of last resort at the frontiers of the law, and most likely in a supreme constitutional court, the judge necessarily resorts to his own scheme of values. It may, therefore, be said that the most important thing about a judge is his philosophy; and if it be dangerous for him to have one, it is at all events less dangerous than the self-deception of having none.
That is why Lord Camden described the discretion of a judge to be the law of tyrants; it is always unknown; it is different in different men; it is casual and depends on Constitution, Temper, and Passion.' In the best it is often times Caprice, in the worst it is every Vice, Folly and Passion to which human Nature is liable." Doe d. Hindson v. Kersey (1765) at p. 53 of the pamphlet published in London by J. Wilkes in 1971 entitled "Lord Camden's Genuine Argument in giving Judgment on the Ejectment between Hindson, and others against Kersey." Megarry J. also points out in his delightful book "Miscellany at Law" that "discretion is indeed a poor substitute, for principles, however great the Judge." Therefore, where discretion is conferred on an authority by a statute, the court always strains to find in the statute the policy or principle laid down by the legislature for the purpose of guiding the exercise of such discretion and, as pointed out by Subba Rao, J. as he then was, the court some times even tries to discover the policy of principle in the crevices of the statute in order to save the law from the challenge of Article 14 which would inevitably result in striking down of the law if the discretion conferred were unguided and unfettered. But where after the utmost effort and intense search, no policy or principle to guide the exercise of discretion can be found, the discretion conferred by the law would be unguided 45 and unstructured, like a tumultuous river overflowing its banks and that would render the law open to attack on ground of arbitrariness under Article 14.

14. So also Article 19 strikes against arbitrary legislation in so far as such legislation is violative of one or the other provision of Clause (1) of that Article. Sub-clauses (a) to (g) of Clause (1) of Article 19 enact various Fundamental freedoms: Sub-clause (1) guarantees freedom of speech and expression, Sub-clause (b), freedom to assemble peacefully and without arms; Sub-clause (c), freedom to form associations or unions; Sub-clause (d), freedom to move freely throughout the territory of India; Sub-clause (e), to reside and settle in any part of the territory of India and Sub-clause (g), freedom to practise any profession or to carry on any occupation, trade or business. There was originally Sub-clause (f) in Clause (1) of Article 19 which guaranteed freedom to acquire, hold, and dispose of property but that sub-clause was deleted by the Constitution (Forty fourth Amendment) Act 1978. Now the freedoms guaranteed under these various sub-clauses of Clause (1) of Article 19 are not absolute freedoms but they can be restricted by law, provided such law satisfies the requirement of the applicable provision in one or the other of Clauses (2) to (6) of that Article. The common basic requirement of the saving provision enacted in Clauses (2) to (6) of Article 19 is that the restriction imposed by the law must

be reasonable. If, therefore, any law is enacted by the legislature which violates one or the other provision of Clauses (1) of Article 19, it would not be protected by the saving provision enacted in Clauses (2) to (6) of that Article, if it is arbitrary or irrational, because in that event the restriction imposed by it would a fortiori be unreasonable.

15. The third Fundamental Right which strikes against arbitrariness in State action is that embodied in Article 21. This Article is worded in simple language and it guarantees the right to life and personal liberty in the following terms.

21. No person shall be deprived of his life or personal liberty except according to procedure established by law.
This Article also came up for interpretation in Maneka Gandhi's case (supra). Two questions arose before the Court in that case: one was as to what is the content of the expression "personal liberty" and the other was as to what is the meaning of the expression "except according to procedure established by law." We are not concerned here with) the first question and hence I shall not dwell upon it. But so far as second question is concerned? it provoked a decision from the Court which was to mark the beginning of a most astonishing development of the law. It is with this decision that the Court burst forth into unprecedented creative activity and gave to the law a new dimension and a new vitality. Until this decision was given, the view held by this Court was that Article 21 merely embodied a facet of the Diceyian concept of the rule of law that no one can be deprived of his personal liberty by executive action unsupported by law. It was 35 intended to be no more than a protection against executive action which had no authority of law. If there was a law which provided some sort of procedure, it was enough to deprive a person of his life or personal liberty. Even if, to take an example cited by S.R. Das, J. in his Judgment in A.K. Gopalan v. State of Madras MANU/SC/0012/1950: 1950CriLJ1383 the law provided that the Bishop of Rochester be boiled in oil, it would be valid under Article 21. But in Maneka Gandhi's case (supra) which marks a watershed in the history of development of constitutional law in our country, this Court for the first time took the view that Article 21 affords protection not only against executive action but also against legislation and any law which deprives a person of his life or personal liberty would be invalid unless it prescribes a procedure for such deprivation which is reasonable fair and just. The concept of reasonableness, it was held, runs through the entire fabric of the Constitution and it is not enough for the law merely to provide some semblance of a procedure but the procedure for depriving a person of his" life or personal liberty must be reasonable, fair and just. It is for the court to determine whether in a particular case the procedure is reasonable, fair and just and if it is not, the court will strike down the law as invalid. If therefore a law is enacted by the legislature which deprives a person of his life-and 'life' according to the decision of this Court in Francis Coralie Mullen's v. Administrator, Union Territory of Delhi and Ors. MANU/SC/0517/1981: 1981CriLJ306 would include not merely physical existence but also/the use of any faculty or limb as also the right to live with human dignity-or any aspect of his personal liberty, it would offend against Article 21 if the procedure

prescribed for such deprivation is arbitrary and unreasonable. The word 'procedure' in Article 21 is wide enough to cover the entire process by which deprivation is effected and that would include not only the adjectival but also the substantive part of the law. Take for example, a law of preventive detention which sets out the grounds, on which a person may be preventively detained. If a person is preventively detained on a ground other than those set out in the law, the preventive detention would obviously not be according to the procedure prescribed by the law, because the procedure set out in the law for preventively detaining a person prescribes certain specific grounds on which alone a person can be preventively detained, and if he is detained on any other ground, it would be violative of Article 21. Every facet of the law which deprives a person of his life or personal liberty would therefore have to stand the test of reasonableness, fairness and justness in order to be outside the inhibition of Article 21.

16. It will thus be seen that the rule of law has much greater vitality under our Constitution than it has in other countries like the United Kingdom which has no constitutionally enacted Fundamental Rights. The rule of law has really three basic and fundamental assumptions; one is that law making must be essentially in the hands of a democratically elected legislature, subject of course to any power in the executive in an emergent situation to promulgate ordinances effective for a short duration while the legislature is not in session as also to enact delegated legislation in accordance with the guidelines laid down by the legislature; the other is that, even in the hands of a democratically elected legislature, there should not be unfettered legislative power, for, as Jefferson said: "Let no man be trusted with power but tie him down from making mischief by the chains of the Constitution; and lastly there must be an independent judiciary to protect the citizen against excesses of executive and legislative power. Fortunately, whatever uncharitable and irresponsible critics might say when they find a decision of the court going against the view held by them, we can confidently assert that we have in our country all these three elements essential to the rule of law. It is plain and indisputable that under our Constitution law cannot be arbitrary or irrational and if it is, it would be clearly invalid, whether under Article 14 or Article 19, 40 or Article 21, whichever be applicable.

17. It is in the light of these constitutional provisions that I must consider whether death penalty provided under Section 302 of the Indian Penal Code read with Section 354 Sub-section (3) of the CrPC is constitutionally valid. Now one thing is certain that the Constitution does not in so many terms prohibit capital punishment. In fact, it recognises death sentence as one of the penalties which may be imposed by law. Article 21 provides inter alia that no one shall be deprived of his life except according to procedure established by law and this clearly postulates that a person may be deprived of his life in accordance with the procedure, which, of course, according to the decision of this Court in Maneka Gandhi's case (supra) must be reasonable, fair and just procedure, for inflicting death penalty on a person depriving him of his life. Clause (c) of Article 72 also recognises the possibility of a sentence of death being imposed on person convicted of an

offence inasmuch as it provides that the President shall have the power to suspend, remit or commute the sentence of any person who is convicted of an offence and sentenced to death. It is therefore not possible to contend that the imposition of death sentence for conviction of an offence is in all cases forbidden by the Constitution. But that does not mean that the infliction of death penalty is blessed by the Constitution or that it has the imprimatur or seal of approval of the Constitution. The Constitution is not a transient document but it is meant to endure for a long time to come and during its life, situations may arise where death penalty may be found to serve a social purpose and its prescription may not be liable to be regarded as arbitrary or unreasonable and therefore to meet such situations, the Constitution had to make a provision and this it did in Article 21 and Clause (c) of Article 72 so that, even where death penalty is prescribed by any law and it is otherwise not unconstitutional, it must still comply with the requirement of Article 21 and it would be subject to the clemency power of the President under Clause (c) of Article 72. The question would however still remain whether the prescription of death penalty by any particular law is violative of any provision of the Constitution and is therefore rendered unconstitutional. This question has to be answered in the present case with reference to Section 302 of the Indian Penal Code read with Section 354 Sub-section (3) of the CrPC.

18. Now in order to answer this question it is necessary first of all to examine the legislative trend in our country so far as the imposition of death penalty is concerned. A "brief survey of the trend of legislative endeavors will, as pointed out by Krishna Iyer, J. in Rajendra Prasad v. State of U.P. (1979) 3 SCR 646 "serve to indicate whether! the people's consciousness has been projected towards narrowing or widening the scope for infliction of death penalty." If we look at the legislative history of the relevant provisions of the Indian Penal 30 Code and the CrPC, we find that in our country there has been a gradual shift against the imposition of death penalty. The legislative development, through several successive amendments has shifted the punitive center of gravity from life taking to life sentence. Sub-section (5) of Section 367 of the CrPC 1898 as it stood prior to its amendment by Act 26 of 1955 provided:

If the accused is convicted of an offence punishable with death, and the court sentences to any punishment other than death, the court shall in its judgment state the reasons why sentence of death. was not passed.
This provision laid down that if an accused was convicted of an offence punishable with death, the imposition of death sentence was the rule and the awarding of a lesser sentence was an exception and the court had to state the reasons for not passing the sentence of death. In other words, the discretion was directed positively towards death penalty. But, by the Amending Act 26 of 1955 which came into force with effect from 1st January 1956, this provision was deleted with the result that from and after that date, it was left to the discretion of the court on the facts of each case to pass a sentence of death or to award a lesser sentence. Where the court found in a given case that, on the facts and circumstances of the case, the death was not called for or there were extenuating circumstances to justify

the passing of the lesser sentence, the court would award the lesser sentence and not impose the death penalty. Neither death penalty nor life sentence was the rule under the law as it stood after the abolition of Sub-section (5) of Section 367 by the Amending Act 26 of 1955 and the court was left "equally free to award either sentence." But then again, there was a further shift against death penalty by reason of the abolitionist pressure and when the new CrPC 1973, was enacted, Section 354 Sub-section (3) provided:

When the conviction is for a sentence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded and. in the case of sentence of death special reasons for such sentence.
The court is now required under this provision to state the reasons for the sentence awarded and in case of sentence of death, special reasons are required to be stated. It will thus be seen that life sentence is now the rule and it is only in exceptional cases, for special reasons,, that death sentence can be imposed. The legislature has however not indicated what are the special reasons for which departure can be made from the normal rule and death penalty may be inflicted. The legislature has not given any guidance as to what are those exceptional cases in which, deviating from the normal rule, death sentence may be imposed. This is left entirely to the unguided discretion of the court, a feature, which, in my opinion, has lethal consequences so far as the constitutionality of death penalty is concerned. But one thing is clear that through these legislative changes the disturbed conscience of the State on the question of legal threat to life by way of death sentence has sought to express itself legislatively," the stream of tendency being towards cautious abolition.

19. It is also interesting to note that a further legislative attempt towards restricting and rationalising death penalty was made in the late seventies. A Bill called Indian Penal Code (Amendment) Bill 1972 for amending Section 302 was passed by the Rajya Sabha in 1978 and it was pending in the Lok Sabha at the time when Rajendra Prasad's case was decided and though it ultimately lapsed with the dissolution of the Lok Sabha, it shows how strongly were the minds of the elected representatives of the people agitated against "homicidal exercise of discretion" which is often an '"obsession with retributive justice in disguise." This Bill sought to narrow drastically the judicial discretion to imposing death penalty and tried to formulate the guidelines which should control the exercise of judicial exercise in this punitive area. But unfortunately the Bill though passed by the Rajya Sabha could not see its way through the Lok Sabha and was not enacted into law. Otherwise perhaps the charge against the present section of 302 of the Indian Penal Code read with Section 354 Sub-section (3) of the CrPC that it does not indicate any policy or principle to guide the exercise of judicial discretion in awarding death penalty, would have been considerably diluted, though even then, I doubt very much whether that section could have survived the attack against its constitutionality on the ground that it still leaves the door open for arbitrary exercise of discretion in imposing death penalty.

20. Having traced the legislative history of the relevant provisions in regard to death penalty, I will now turn my attention to what great and eminent man have said in regard to death penalty, for their words serve to bring out in bold relief the utter barbarity and futility of the death penalty. Jaiprakash Narain, the great humanist, said, while speaking on abolition of death penalty:

To my mind, it is ultimately a question of respect for life and human approach to those who commit grievous hurts to others. Death sentence is no remedy for such crimes. A more humane and constructive remedy is to remove the culprit concerned from the normal milieu and treat him as a mental case. I am sure a large proportion of the murderers could be weaned away from their path and their mental condition sufficiently improved to become useful citizens. In a minority of cases, this may not be possible. They may be kept in prison houses till they die a natural death. This may cast a heavier economic burden on society than hanging. But I have no doubt that a humane treatment even of a murderer will enhance man's dignity and make society more human,
Andrei Sakharov in a message to the Stockholm Conference on Abolition of Death Penalty organised by Amnesty International in 1978 expressed himself firmly against death penalty:

I regard the death penalty as a savage and immoral institution which undermines the moral and legal foundations of a society. A State, in the person of its functionaries, who like all people are inclined to making superficial conclusions, who like all people are subject to influence, connections, prejudices and egocentric motivations for their behaviour, takes upon itself the right to the most terrible and irreversible act-the deprivation of life. Such a State cannot expect an improvement of the moral atmosphere in its country. I reject the notion that the death penalty has any essential deterrent effect on potential offenders. I am convinced that the contrary is true-that savagery begets only savagery.... I am convinced that society as a whole and each of its members individually, not just the person who comes before the courts, bears a responsibility for the occurrence of a crime.... I believe that the death penalty has no moral or practical justification and represents a survival of barbaric customs of revenge. Bloodthirsty and calculated revenge with no temporary insanity on the part of the judges, and therefore, shameful and disgusting.
Tolstoy also protested against death sentences in an article "I Cannot be Silent."

Twelve of those by whose labour we live the very men whom we have depraved and are still depraving by every means in our power from the poison of vodka to the terrible falsehood of a creed we impose on them with all our might, but do not ourselves believe in-twelve of those men strangled with cords by those whom the feed and clothe and house, and who have depraved and still continue to deprave them. Twelve husbands, fathers, and sons, from among those upon whose kindness, industry, and simplicity alone rests the whole of Russian life, are seized, imprisoned, and shackled. Then their hands

are tied behind their backs lest they should seize the ropes by which they are to be hung, and they are led to the gallows.
So also said Victor Hugo in the spirit of the Bishop created by him in his 'Les Miserables':

We shall look upon crime as a disease. Evil will be treated in charity instead of anger. The change will be simple and sublime. The cross shall displace the scaffold, reason is on our side, feeling is on our side, and experience is on our side.
Mahatma Gandhi also wrote to the same effect in his simple but inimitable style:

Destruction of individuals can never be a virtuous act. The evildoers cannot be done to death. Today there is a movement afoot for the abolition of capital punishment and attempts are being made to convert prisons into hospitals as if they are persons suffering from a disease.
This Gandhian concept was translated into action with commendable success in the case of Chambal dacoits who laid down their arms in response to the call of Vinobha Bhave and Jaiprakash Narayan. See "Crime and Non-violence" by Vasant Nargolkar. There is also the recent instance of surrender of Malkhan Singh, a notorious dacoit of Madhya Pradesh., Have these dacoits not been reformed? Have they not been redeemed and saved? What social purpose would have been served by killing them?

21. I may also at this stage make a few observations in regard to the barbarity and cruelty of death penalty, for the problem of constitutional validity of death penalty cannot be appreciated in its proper perspective without an adequate understanding of the true nature of death penalty and what it involves in terms of human anguish and suffering. In the first place, death penalty is irrevocable; it cannot be recalled. It extinguishes the flame of life for ever and is plainly destructive of the right to life, the most precious right of all, a right without which enjoyment of no other rights is possible. It silences for ever a living being and dispatches him to that 'undiscovered country from whose bourn no traveller returns' nor, once executed, 'can storied urn or animated bust back to its mansion call the fleeting breath.' It is by reasons of its cold and cruel finality that death penalty is qualitatively different from all other forms of punishment. If a person is sentenced to imprisonment, even if it be for life, and subsequently it is found that he was innocent and was wrongly convicted, he can be set free. Of course, the imprisonment that he has suffered till then cannot be undone and the time he has spent in the prison cannot be given back to him in specie but he can come back and be restored to normal life with his honour vindicated, if he is found innocent. But that is not possible where a person has been wrongly convicted and sentenced to death and put out of existence In pursuance of the sentence of death. In his case, even if any mistake is subsequently discovered, it will be too late; in every way and for every purpose it will be too late, for he cannot be brought back to life. The execution of the sentence of death in such a case makes miscarriage of justice irrevocable. On whose conscience will this death of an innocent man lie? The State through its judicial instrumentality would have killed an innocent man. How is it

different from a private murder? That is why Lafavatte said: "I shall ask for the abolition of the penalty of death until I have the infallibility of human judgment demonstrated me."

22. It is argued on behalf of the retentions that having regard to the elaborate procedural safeguards enacted by the law in cases involving capital punishment, the possibility of mistake is more imaginary than real and these procedural safeguards virtually make conviction of an innocent person impossible. But I do not think this argument is well founded. It is not supported by factual data. Hugo Bedau in his well known book, "The Death Penalty in America" has individually documented seventy four cases since 1893 in which it has been responsibly charged and in most of them proved "beyond doubt, that persons were wrongly convicted of criminal homicide in America. Eight out of these seventy four, though innocent, were executed. Redin, Gardener, Frank and others have specifically identified many more additional cases. These are cases in which it has been possible to show discovery of subsequent facts that the convictions were erroneous and innocent persons were put to death, but there may be many more cases where by reason of the difficulty of uncovering the facts after conviction, let alone after execution, it may not be possible to establish that there was miscarriage of justice. The jurist Olivecroix, applying a calculus of probabilities to the chance of judicial error, concluded as far back as in 1860 that approximately one innocent man was condemned out of every 257 cases. The proportion seems low but only in relation to moderate punishment. In relation to capital punishment, the proportion is infinitively high. When Huge wrote that he preferred to call the guillotine Lesurques (the name of an innocent man guillotined in the Carrier de Lyon case) he did not mean that every man who was decapitated was a Lesurques, but that one Lesurques was enough to wipe out the value of capital punishment forever. It is interesting to note that where cases of wrongful execution have come to public attention, they have been a major force responsible for bringing about abolition of death penalty. The Evans case in England in which an innocent man was hanged in 1949 played a large role in the abolition of capital punishment in that country. Belgium also abjured capital punishment on account of one such judicial error and so did Wisconsin,, Rhode Island and Maine in the United States of America.

23. Howsoever careful may be the procedural safeguards erected by the law before death penalty can be imposed, it is impossible to eliminate the chance of judicial error. No possible judicial safeguards can prevent conviction of the innocent. Students of the criminal process have identified several reasons why innocent men may be convicted of crime. In the first place, our methods of investigation are crude and archaic. We are, by and large, ignorant of modern methods of investigation based on scientific and technological advances. Our convictions are based largely on oral evidence of witnesses. Often, witnesses perjure themselves as they are motivated by caste, communal and factional considerations. Some times they are even got up by the police to prove what the police believes to be a true case. Sometimes there is also-mistaken eye witness identification, and this evidence is almost always difficult to shake in cross-examination. Then there is also the possibility of a frame up of innocent men by their enemies. There

are also cases where an over zealous prosecutor may fail to disclose evidence of innocence known to him but not known to the defence. The possibility of error in judgment cannot therefore be ruled out on any theoretical considerations. It is indeed a very live possibility and it is not at all unlikely that so long as death penalty remains a constitutionally valid alternative, the court or the State acting through the instrumentality of the court may have on its conscience the blood of an innocent man.

24. Then again it is sometimes argued that, on this reasoning, every criminal trial must necessarily raise the possibility of wrongful conviction and if that be so, are we going to invalidate every form of punishment? But this argument, I am afraid, is an argument of despair. There is a qualitative difference between death penalty and other forms of punishment. I have already pointed out that the former extinguishes the flame of life altogether and is irrevocable and beyond recall while the latter can, at least to some extent beset right, if found mistaken. This vital difference between death penalty and imprisonment was emphasized by Mahatma Gandhi when he said, in reply to a German writer:

I would draw distinction between killing and detention and even corporal punishment. I think there is a difference not merely in quantity but also in quality. I can recall the punishment of detention. I can make reparation to the man upon whom J inflict corporal punishment. But once a man is killed, the punishment is beyond recall or reparation.
The same point was made by the distinguished criminologist Leon Radzinowicz when he said: "The likelihood of error in a capital sentence case stands on a different footing altogether." Judicial error in imposition of death penalty would indeed be a crime beyond punishment. This is the drastic nature of death penalty, terrifying in its consequences, which has to be taken into account in determining its constitutional validity.

25. It is also necessary to point out that death penalty is barbaric and inhuman in its effect, mental and physical upon the condemned man and is positively cruel. Its psychological effect on the prisoner in the Death Row is disastrous. One Psychiatrist has described Death Row as a "grisly laboratory" "the ultimate experimental stress in which the condemned prisoner's personality is incredibly brutalised." He points out that "the strain of existence on Death Row is very likely to produce...acute psychotic breaks." Vide the article of West on Medicine and Capital Punishment." Some inmates are driven to ravings or delusions but the majority sink into a sort of catatonic numbness under the over-whelming stress." Vide "The case against Capital Punishment" by the Washington Research Project. Intense mental suffering is inevitably associated with confinement, under sentence of death. Anticipation of approaching death can and does produce stark terror. Vide article on "Mental Suffering under Sentence of Death." 57 Iowa Law Review 814. \Justice Brennan in his opinion in Furman v. Georgia 408 US 238 gave it as a reason for holding the capital punishment to be unconstitutional that mental pain is an inseparable part of our practice of punishing criminals by death, for the prospect of pending execution exacts a frightful toll 35 during the inevitable long wait between the

imposition of sentence and the actual infliction of death." Krishna Iyer, J. also pointed out in Rajendra Prasad's case (supra) that because the condemned prisoner had "the hanging agony hanging over his head since 1973 (i.e. for six years) "he must by now be more a vegetable than a person." He added that "the excruciation of long pendency of the death sentence with the prisoner languishing near-solitary suffering all the time, may make the death sentence unconstitutionally cruel and agonising." The California Supreme Court also, in finding the death penalty per se unconstitutional remarked with a sense of poignancy:

The cruelty of capital punishment lies not only in the execution It self and the pain incident thereto, but also in the dehumanizing effects of the lengthy imprisonment prior to execution during which the judicial and administrative procedures essential to due process of law are carried out. Penologists and medical experts agree that the process of carrying out a verdict of death is often so degrading and brutalizing to the human spirit as to constitute psychological torture.
In Re Kemmler 136 us 436 the Supreme Court of the United States accepted that "punishments are cruel when they involve a lingering death, something more than the mere extinguishment of life." Now a death would be as lingering if a man spends several years in a death cell awaiting execution as it would be if the method of execution takes an unacceptably long time to kill the victim. The pain of mental lingering can be as intense as the agony of physical lingering. See David Pannick on "Judicial Review of the Death Penalty." Justice Miller also pointed out in Re Medley 134 US 160 that "when a prisoner sentenced by a court to death is confined to the penitentiary awaiting the execution of the, sentence, one of the most horrible feelings to which he can be subjected during that time is the uncertainty during the whole of it...as to the precise time when his execution shall take place." He acknowledged that such uncertainty is inevitably 'accompanied by an immense mental anxiety amounting to a great increase of the oflender's punishment.'

26. But quite apart from this excruciating mental anguish and severe psychological strain which the condemned prisoner has to undergo on account of the long wait from the date when the sentence of death is initially passed by the sessions court until it is confirmed by the High Court and then the appeal against the death sentence is disposed of by the Supreme Court and if the appeal is dismissed, then until the clemency petition is considered by the President and if it is turned down, then until the time appointed for the actual execution of the sentence of death arrives, the worst time for most of the condemned prisoners would be the last few hours when all certainty is gone and the moment of death is known. Dostoyevsky who actually faced a firing squad only to be reprieved at the last instant, described this experience in the following words:

...the chief and the worst pain is perhaps not inflicted by wounds, but by your certain knowledge that in an hour, in ten minutes, in half a minute, now this moment your soul will fly out of your body, and that you will be a human being no longer, and that that's certain-the main thing is that it is certain.... Take a soldier and put him in front of a cannon

in battle and fire at him and he will still hope, but read the same soldier his death sentence for certain, and he will go mad or burst out crying. Who says that human nature is capable of bearing this without madness? Why this cruel, hideous, unnecessary and useless mockery? Possibly there are men who have sentences of death read out to them and have been given time to go through this torture, and have then been told, You can go now, you've been reprieved. Such men could perhaps tell us. It was of agony like this and of such horror that Christ spoke. No. you can't treat a man like that !
We have also accounts of execution of several prisoners in the United States which show how in these last moment condemned prisoners often simply disintegrate. Canns has in frank and brutal language bared the terrible psychological cruelly of capital punishment:

Execution is not simply death. It is just as different in essence, from the privation of life as a concentration camp is from prison.... It adds to death a rule, a public premeditation known to the future victim, an organisation, in short, which is in itself a source of moral sufferings more terrible than death. For there to be equivalence, the death penalty would have to punish a criminal who had warned his victim of the date at which he would inflict a horrible death on him and who, from that moment onward, had confined him at his mercy for months. Such a monster is not encountered in private life.
There can be no stronger words to describe the utter depravity and inhumanity of death sentence.

27. The physical pain and suffering which the execution of the sentence of death involves is also no less cruel and inhuman. In India, the method of execution followed is hanging by the rope. Electrocution or application of lethal gas has not yet taken its place as in some of the western countries. It is therefore with reference to execution by hanging that I must consider whether the sentence of death is barbaric and inhuman as entailing physical pain and agony. It is no doubt true that the Royal Commission on Capital Punishment 1949-53 found that hanging is the most humane method of execution and so also in Ichikawa v. Japan, 13 the Japanese Supreme Court held that execution by hanging does not correspond to 'cruel punishment' inhibited by Article 36 of the Japanese Constitution. But whether amongst all the methods of execution, hanging is the most humane or in the view of the Japanese Supreme Court, hanging is not cruel punishment within the meaning of Article 36, one thing is clear that hanging is undoubtedly accompanied by intense physical torture and pain. Warden Duffy of San Quentin, a high security prison in the United States of America, describes the hanging process with brutal frankness in lurid details:

The day before an execution the prisoner goes through a harrowing experience of being weighed, measured for length of drop to assure breaking of the neck, the size of the neck, body measurements et cetera. When the trap springs he dangles at the end of the rope. There are times when the neck has not been broken and the prisoner strangles to death. His eyes pop almost out of his head, his tongue swells and protrudes from his mouth, his neck may be broken, and the rope many times takes large portions of skin and flesh from

the side of the face that the noose is on. He urinates, he defecates, and droppings fall to the floor while witnesses look on, and almost all executions one or more faint or have to be helped out of the witness room. The prisoner remains dangling from the rope for from 8 to 14 minutes before the doctor, who has climbed up a small ladder and listens to his heart beat with a stethoscope, pronounces him dead. A prison guard stands at the feet of the hanged person and holds the body steady, because during the first few minutes there is usually considerable struggling in an effort to breathe.
If the drop is too short, there will be a slow and agonising death by strangulation. On the other hand, if the drop is too long, the head will be torn off. In England centuries of practice have produced a detailed chart relating a man's weight and physical condition to the proper length of drop, but even there mistakes have been made. In 1927, a surgeon who witnessed a double execution wrote:

The bodies were cut down after fifteen minutes and placed in an antechamber, when I was horrified to hear one of the supposed corpses give a gasp and find him making respiratory efforts, evidently a prelude to revival. The two bodies were quickly suspended again for a quarter of an hour longer.... Dislocation of the neck is the ideal aimed at, but, out of all my post-mortem findings, that has proved rather an exception, which in the majority of instances the cause of death was strangulation and asphyxin.
These passages clearly establish beyond doubt that the execution of sentence of death by hanging does involve intense physical pain and suffering, though it may be regarded by some as more humane than electrocution or application of lethal gas.

28. If this be the true mental and physical effect of death sentence on the condemned prisoner and if it causes such mental anguish, psychological strain and physical agony and suffering, it is difficult to see how it can be regarded as anything but cruel and inhuman. The only answer which can be given for justifying this infliction of mental and physical pain and suffering is that the condemned prisoner having killed a human being does not merit any sympathy and must suffer this punishment because he 'deserves' it. No mercy can be shown to one who did not show any mercy to others. But, as I shall presently point out, this justificatory reason cannot commend itself to any civilised society because it is based on the theory of retribution or retaliation and at the bottom of it lies the desire of the society to avenge itself against the wrong doer. That is not a permissible penological goal.

29. It is in the context of this background that the question has to be considered whether death penalty provided under Section 302 of the Indian Penal Code read with Section 354 Sub-section (3) of the CrPC is arbitrary and irrational, for if it is, it would be clearly violative of Articles 14 and 21. I am leaving aside for the moment challenge to death penalty under Article 19 and confining myself only to the challenge under Article 14 and 21. So far as this challenge is concerned, the learned Counsel appearing on behalf of the petitioners contended that the imposition of death penalty under Section 302 of the Indian Penal Code read with Section 354 Sub-section (3) of the CrPC was arbitrary and

unreasonable, firstly because it was cruel and inhuman, disproportionate and excessive, secondly because it was totally unnecessary and did not serve any social purpose or advance any constitutional value and lastly because the discretion conferred on the court to award death penalty was not guided by any policy or principle laid down by the legislature but was wholly arbitrary. The Union of India as also the States supporting it sought to counter this argument of the petitioners by submitting first that death penalty is neither cruel nor inhuman, neither disproportionate nor excessive, secondly, that it does serve a social purpose inasmuch as it fulfils two penological goals namely, denunciation the community and deterrence and lastly, that the judicial discretion in awarding death penalty is not arbitrary and the court can always evolve standards or norms for the purpose of guiding the exercise of its discretion in this punitive area. These were broadly the rival contentions urged on behalf of the parties and I shall now proceed to examine them in the light of the observations made in the preceding paragraph.

30. The first question that arises for consideration on these contentions is and that is a vital question which may well determine the fate of this challenge to the constitutional validity of death penalty-on whom does the burden of proof lie in a case like this? Does it lie on the petitioners to show that death penalty is arbitrary and unreasonable on the various grounds urged by them or does it rest on the State to show that death penalty is not arbitrary or unreasonable and serves a legitimate social purpose. This question was debated before us at great length and various decisions were cited supporting one view or the other. The earliest decision relied on was that of Saghir Ahmed v. State of Uttar Pradesh MANU/SC/0110/1954: [1955]1SCR707 where it was held by this Court that if the petitioner succeeds in showing that the impugned law ex facie abridges or transgresses the rights coming under any of the sub-clauses of Clause (1) of Article 19, the onus shifts on the respondent State to show that the legislation comes within the permissible limits authorised by any of Clauses (2) to (6) as may be applicable to the case, and also to place material before the court in support of that contention. If the State fails to discharge this burden, there is no obligation on the petitioner to prove negatively that the impugned law is 10 not covered by any of the permissive clauses. This view as to the onus of proof was reiterated by this Court in Khyerbari Tea Co. v. State of Assam MANU/SC/0048/1963: [1964]5SCR975. But, contended the respondents, a contrary trend was noticeable in some of the subsequent decisions of this Court and the respondents relied principally on the decision in B. Banerjee v. Anita Pan MANU/SC/0449/1974: [1975]2SCR774 where Krishna Iyer, J. speaking on behalf of himself and Beg, J. as he then was, recalled the following statement of the law from the judgment of this Court in Ram Krishna Dalmia v. S.R. Tendolkar and Ors.: 1959 SCR 297

there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;" and

that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds.

and added that "if nothing is placed on record by the challengers, the verdict ordinarily goes against them." Relying inter alia on the decision of this Court in State of Bombay v. R.M.D. Chamarbaugwala MANU/SC/0019/1957: [1957]1SCR874 the learned Judge again emphasized:

Some courts have gone to the extent of holding that their is a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt.
These observations of Krishna Iyer, J. undoubtedly seem to support the contention of the respondents, but it may be pointed out that what was said by this Court in the passage quoted above from the judgment in Ram Krishna Dalmia's case (supra) on which reliance was placed by Krishna Iyer, J. was only with reference to the challenge under Article 14 and the Court was not considering there the challenge under Article 19 or 21. This statement of the law contained in Ram Krishna Dalmia's case (supra) could not therefore be applied straightaway without anything more in a case where a law was challenged under Articles 19 or 21. The fact, however, remains that Krishna Iyer, T. relied on this statement of the law even though the case before him involved a challenge under Article 19(1)(f) and not under Article 14. Unfortunately, it seems that the attention of the learned Judge was not invited to the decisions of this Court in Sagir Ahmed's case and Khyerbari Tea Company's case (supra) which were cases directly involving challenge under Article 19. These decisions were binding on the learned Judge and if his attention had been drawn to them, I am sure that he would not have made the observations that he did casting on the petitioners the onus of establishing "excessive ness or perversity in the restrictions imposed by the statute" in a case alleging violation of Article 19. These observations are clearly contrary to the law laid down in Saghir Ahmed and Khyerbari Tea Company cases (supra).

31. The respondents also relied on the observations of Fazal Ali, J. in Pathumma v. State of Kerala (1970) 2 SCR 537. There the constitutional validity of the Kerala Agriculturists' Debt Relief Act 1970 was challenged on the ground of violation of both Articles 14 and 19(1)(f) Before entering upon a discussion of the arguments bearing on the validity of this challenge, Fazal Ali, J. speaking on behalf of himself, Beg, C.J. Krishna Iyer and Jaswant Singh, JJ. observed that the court will interfere with a statute only "when the statute is clearly violative of the right conferred on the citizen under Part III of the Constitution" and proceeded to add that it is on account of this reason "that courts have recognised that there is always a presumption in favour of the constitutionality of a statute and the onus to prove its invalidity lies on the party which assails the same." The learned Judge then quoted with approval the following passage from the Judgment of S.R. Das, C.J., in Mohd. Hanif v. State of Bihar MANU/SC/0027/1958: [1959]1SCR629:

The pronouncements of this Court further establish, amongst other things, that there is always a presumption in favour of the constitutionality of an enactment and that the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. The Courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds.

It is difficult to see how these observations can be pressed into service on behalf of the respondents. The passage from the judgment of S.R. Das, C.J. in Mohd. Hanif's case (supra) relied upon by Fazal Ali, J. occurs in the discussion relating to the challenge under Article 14 and obviously it was not intended to have any application in a case involving challenge under Article 19 or 21. In fact, while discussing the challenge to the prevention of cow slaughter statutes under Article 19(1)(g), S.R. Das, C.J. proceeded to consider whether the restrictions imposed by the impugned statutes on the Fundamental Rights of the petitioners under Article 19(1)(g) were reasonable in the interest of the general public so as to be saved by Clause (6) of Article 19. Moreover, the observations made by Fazal Ali, J. were general in nature and they were not directed towards consideration of the question as to the burden of proof in cases involving violation of Article 19. What the learned Judge said was that there is always a presumption in favour of the constitutionality of a statute and the court will not interfere unless the statute is clearly violative of the Fundamental Rights conferred by Part III of the Constitution. This is a perfectly valid statement of the law and no exception can be taken to it. There must obviously be a presumption in favour of the constitutionality of a statute and initially it would be for the petitioners to show that it violates a Fundamental Right conferred under one or the other sub-clauses of Clause (1) of Article 19 and is therefore unconstitutional, but when that is done, the question arises, on whom does the burden of showing whether the restrictions are permissible or not, lie? That was not a question dealt with by Fazal Ali, J. and I cannot therefore read the observations of the learned Judge as, in any manner, casting doubt on the validity of the statement of law contained in Sagir Ahmed and Khyerbari Tea Company's cases (supra), It is clear on first principle that Sub-clauses (a) to (g) of Clause (1) of Article 19 enact certain fundamental freedoms and if Sub-clauses (2) to (6) were not there, any law contravening one or more of these fundamental freedoms would have been unconstitutional. But Clauses (2) to (6) of Article 19 save laws restricting these fundamental freedoms, provided the restrictions imposed by them fall within certain permissible categories. Obviously, therefore, when a law is challenged on the ground that it imposes restrictions on the freedom guaranteed by one or the other sub-clause of Clause (1) of Article 19 and the restrictions are shown to exist by the petitioner, the burden of establishing that the restrictions fall within any of the permissive Clauses (2) to (6) which may be applicable, must rest upon the State. The State would have to produce material for satisfying the court that the restrictions imposed by the impugned law fall within the appropriate permissive clause from out of Clauses (2) to (6) of Article 19. Of course there may be cases where the nature of the legislation and the

restrictions imposed by it may be such that the court may, without more, even in the absence of any positive material produced by the State, 20 conclude that the restrictions fall within the permissible category, as for example, where a law is enacted by the legislature for giving effect to one of the Directive Principles of State policy and prima facie, the restrictions imposed by it do not appear to be arbitrary or excessive. Where such is the position, the burden would again shift and it would be for the petitioner to show that the restrictions are arbitrary or excessive and go beyond what is required in public interest. But, once it is shown by the petitioner that the impugned law imposes restrictions which infringe one or the other sub-clause of Clause (1) of Article 19, the burden of showing that such restrictions are reasonable and fall within the permissible category must be on the State and this burden the State may discharge either by producing socio-economic data before the court or on consideration of the provisions in the impugned law read in the light of the constitutional goals set out in the Directive Principles of State policy. The test to be applied 35 for the purpose of determining whether the restrictions imposed by the impugned law are reasonable or not cannot be cast in a rigid formula of universal application, for, as pointed out by Patanjali Shastri, J. in State of Madras v. V.J. Row MANU/SC/0013/1952: 1952CriLJ966 no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases". The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied, the value of human life, the disproportion of the imposition, the social philosophy of the Constitution and the prevailing conditions at the time would all enter into the judicial verdict. And we would do well to bear in mind that in evaluating such elusive factors and forming his own conception of what is reasonable in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judge participating in the decision would play a very important part.

32. Before I proceed to consider the question of burden of proof in case of challenge under Article 14, it would be convenient first, to deal with the question as to where does the burden of proof lie when the challenge to a law enacted by the legislature is based on violation of Article 21. The position in regard to onus of proof in a case where the challenge is under Article 21 is in my opinion much clearer and much more free from doubt or debate than in a case where the complaint is of violation of Clause (1) of Article 19. Wherever there is deprivation of life, and by life I mean not only physical existence, but also use of any faculty or limb through which life is enjoyed and basic human dignity, or of any aspect of personal liberty, the burden must rest on the State to establish by producing adequate material or otherwise that the procedure prescribed for such deprivation is not arbitrary but is reasonable, fair and just. I have already discussed various circumstances bearing upon the true nature and character of death penalty and these circumstances clearly indicate that it is reasonable to place on the State the onus to prove that death penalty is not arbitrary or unreasonable and serves a compelling State interest. In the first place, death penalty destroys the most fundamental right of all, namely, the right to life which is the foundation of all other fundamental rights. he right

to life stands on a higher footing than even personal liberty, because personal liberty too postulates a sentient human being who can enjoy it. Where therefore a law authorises deprivation of the right to life, the reasonableness, fairness and justness of the procedure prescribed by it for such deprivation must be established by the State. Such a law would be 'suspect' in the eyes of the court just as certain kinds of classification are regarded as 'suspect' in the United States of America. Throwing the burden of proof of reasonableness, fairness and justness on the State in such a case is a homage which the Constitution and the courts must pay to the right to life. It is significant to point out that even in case of State action depriving a person of his personal liberty, this Court has always cast the burden of proving the validity of such action on the State, when it has been challenged on behalf of the person deprived of his personal liberty, ft has been consistently held by this Court that when detention of a person is challenged in a habeas corpus petition, the burden of proving the legality of the detention always rests on the State and it is for the State to justify the legality of the detention. this Court has shown the most zealous regard for personal liberty and treated even letters addressed by prisoners and detenus as writ petitions and taken action upon them and called upon the State to show how the detention is justified. If this be the anxiety and concern shown by the court for personal liberty, how much more should be the judicial anxiety and concern for the right to life which indisputably stands on a higher pedestal. Moreover, as already pointed out above, the international standard or norm set by the United Nations is in favour of abolition of death penalty and that is the ultimate objective towards which the world body is moving. The trend of our national legislation is also towards abolition and it is only in exceptional cases for special reasons that death sentence is permitted to be given. There can be no doubt that even under our national legislation death penalty is looked upon with great disfavour. The drastic nature of death penalty involving as it does the possibility of error resulting in judicial murder of an innocent man as also its brutality in inflicting excruciating mental anguish, severe psychological strain and agonising physical pain and suffering on the condemned prisoner are strong circumstances which must compel the State to 50 justify imposition of death penalty. The burden must lie upon the State to show that death penalty is not arbitrary and unreasonable and serves a legitimate social purpose, despite the possibility of judicial error in convicting and sentencing an innocent man and the brutality and pain, mental as well as physical, which death sentence invariably inflicts upon the condemned prisoner. The State must place the necessary material on record for the purpose of discharging this burden which lies upon it and if it fails to show by presenting adequate evidence before the court or otherwise that death penalty is not arbitrary and unreasonable and does serve a legitimate social purpose, the imposition of death penalty under Section 302 of the Indian Penal Code read with Section 354 Sub-section (3) of the CrPC would have to be struck down as violative of the protection of Article 21.

33. So far as the question of burden of proof in a case involving challenge under Article 14 is concerned, I must concede that the decisions in Ram Krishan Dalmia's case (supra) and Mohd. Hunnif Qureshi's case (supra) and several other subsequent decisions of this

Court have clearly laid down that there is a presumption in favour of constitutionality of a statute and the burden of showing that it is arbitrary or discriminatory lies upon the petitioner, because it must be presumed "that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds." Sarkaria, J. has pointed out in the majority judgment that underlying this presumption of constitutionality "is the rationale of judicial restraint, a recognition of the limits of judicial review, a respect for the boundaries of legislative and judicial functions and the judicial responsibility to guard the trespass from one side or the other." The learned Judge with a belief firmly rooted in the tenets of mechanical jurisprudence, has taken the view that "the primary function of the Courts is to interpret and apply the laws according to the will of those who made them and not to transgress into the legislative domain of policy making." Now there can be no doubt that in adjudicating upon the constitutional validity of a statute, the Judge should show deference to the legislative judgment and should not be anxious to strike it down as invalid. He does owe to the legislature a margin of tolerance and he must constantly bear in mind that 30 he is not the legislator nor is the court a representative body. But I do not agree with Sarkaria, J. when he seems to suggest that the judicial role is, as it was for Francis Bacon, 'jusdicere and not jus dare; to interpret law and not to make law or give law.' The function of the Court undoubtedly is to interpret the law but the interpretative process is a highly creative function and in this process, the Judge, as pointed out by Justice Holmes, does and must legislate. Lord Reid ridiculed as 'a fairytale' the theory that in some Aladdin's cave is hidden the key to correct judicial interpretation of the law's demands and even Lord Diplock acknowledged that The court may describe what it is doing in tax appeals as interpretation. So did the priestess of the Delphic Oracle. But whoever has final authority to explain what Parliament meant by the words that it used, makes law as if the explanation it has given were contained in a new Act of Parliament. It will need a new Act of Parliament to reverse it." Unfortunately we are so much obsessed with the simplicities of judicial formalism which presents the judicial role as jusdicere, that, as pointed out by David Pannick in his "Judicial Review of the Death Penalty," "we have, to a substantial extent, ignored the Judge in administering the judicial process. So heavy a preoccupation we have made with the law, its discovery and its application by independent agents who play no creative role, that we have paid little, if any, regard to the appointment, training, qualities, demeanour and performance of the individuals selected to act as the mouth of the legal oracle." It is now acknowledged by leading jurists all over the world that judges are not descusitized and passionless instruments which weigh on inanimate and impartial scales of legal judgment, the evidence and the arguments presented on each side of the case. They are not political and moral eunuchs able and willing to avoid impregnating the law with their own ideas and judgment. The Judicial exercise in constitutional adjudication is bound to be influenced, consciously or subconsciously, by the social philosophy and scale of values of those who sit in judgment. However, I agree with Sarkaria, J. that ordinarily the judicial function must be characterised by deference to legislative judgment because the legislature represents the voice of the people and it might be

dangerous for the court to trespass into the sphere demarcated by the Constitution for the legislature unless the legislative judgment suffers from a constitutional infirmity. It is a trite saying that the Court has "neither force nor will but merely judgment" and in the exercise of this judgment, it would be a wise rule to adopt to presume the constitutionality of a statute unless it is shown to be invalid. But even here it is necessary to point out that this rule is not a rigid inexorable rule applicable at all times and in all situations. There may conceivably be cases where having regard to the nature and character of the legislation, the importance of the right affected and the gravity the injury caused by it and the moral and social issues involved in the determination, the court may refuse to proceed on the basis of presumption of constitutionality and demand from the State justification of the legislation with a view to establishing that it is not arbitrary or discriminatory. There are times when commitment to the values of the Constitution and performance of the constitutional role as guardian of fundamental rights demands dismissal of the usual judicial deference to legislative judgment. The death penalty, of which the constitutionality is assailed in the present writ petitions, is a fundamental issue to which ordinary standards of judicial review are inappropriate. The question here is one of the most fundamental which has arisen under the Constitution, namely, whether the State is entitled to take the life of a citizen under cover of judicial authority. It is a question so vital to the identity and culture of the society and so appropriate for judicial statement of the standards of a civilised community-often because of legislative apathy-that "passivity and activism become platitudes through which judicial articulation of moral and social values provides a light to guide an uncertain community." The same reasons which have weighed with me in holding that the burden must lie on the State to prove that the death penalty provided under Section 302 of the Indian Penal Code read with Section 354 Sub-section (3) of the CrPC is not arbitrary and unreasonable and serves a legitimate penological purpose where the challenge is under Article 21 must apply equally to cast the burden of the proof upon the State where the challenge is under Article 14.

34. Now it is an essential element of the rule of law that the sentence 45 imposed must be proportionate to the offence. If a law provides for imposition of a sentence which is disproportionate to the offence, it would be arbitrary and irrational, for it would not pass the test of reason and would be contrary to the rule of law and void under Article 14, 19 and 21. The principle of proportionality is implicit in these three Articles of the Constitution. If, for example, death penalty, was prescribed for the simple offence of theft-as indeed it was at one time in the seventeenth century England-it would be clearly excessive and wholly disproportionate to the offence and hence arbitrary and irrational by any standards of human decency and it would be impossible to sustain it against the challenge of these three Articles of the Constitution. It must therefore be taken to be clear beyond doubt that the proportionality principle constitutes an important constitutional criterion for adjudging the validity of a sentence imposed by law.

35. The Courts in the United States have also recognised the validity of the proportionality principle. In Gregg v. Georgia 428 US 153 Stewart, J. speaking for the plurality of the American Supreme Court said that "to satisfy constitutional requirements, the punishment must not be excessive...the punishment must not be out of proportion to the severity of the crime." This constitutional criterion was also applied in Coker v. Georgia 433 US 584 to invalidate the death penalty for rape of an adult woman. White, J. with whom Stewarts and Blackmun, JJ. agreed, said, with regard to the offence of rape committed against an adult woman: "a sentence of death is grossly disproportionate and excessive punishment for the crime of rape and is therefore forbidden by the Eighth Amendment as cruel and unusual punishment." Likewise in Lockette v. Ohio 438 US 586 where the defendant sat outside the scene of robbery waiting to drive her accomplices away and contrary to plan, the robbers murdered three victims in the course of their robbery and she was convicted and sentenced to death by resort to the doctrine of vicarious liability, the Supreme Court of the United States applying the same principle of proportionality held the death sentence unconstitutional. Marshall J. pointed out that because the appellant was convicted under a theory of vicarious liability, the death penalty imposed on her "violates the principle of proportionality embodied in the Eighth Amendment's Prohibition" and White, J. also subscribed to the same reasoning when he said, "the infliction of death upon those who had no intent to bring about the death of the victim is...grossly out of proportion to the severity of the crime." Of course, the Supreme Court of the United States relied upon the Eighth Amendment which prohibits cruel and unusual treatment or punishment and we have no such express prohibition in our Constitution, but this Court has held in Francis Mullen's case (supra) that protection against torture or cruel and inhuman treatment or punishment is implicit in the guarantee of Article 21 and therefore even on the basis of the reasoning in these three American decisions, the principle of proportionality would have relevance under our Constitution. But, quite apart from this, it is clear and we need not reiterate what we have already said earlier, that the principle of proportionality flows directly as a necessary element from Articles 14, 19 and 21 of the Constitution. We find that in Canada too, in the case of Rex v. Miller and Cockriell 70 DLR (3d) 324 the principle of proportionality has been recognised by Laskin CJ. speaking on behalf of Canadian Supreme Court as "one of the constitutional criteria of 'cruel and unusual treatment or punishment' prohibited under the Canadian Bill of Rights." Laskin C.J. pointed out in that case "It would be patent to me, for example, that death as a mandatory penalty today for theft would be offensive to Section 2(b). That is because there are social and moral considerations that enter into the scope and application of Section 2(b). Harshness of punishment and its severity in consequences are relative to the offence involved but, that being said; there may still be a question (to which history too may be called in aid of its resolution) whether the punishment prescribed is so excessive as to outrage standards of decency. That is not a precise formula for Section 2(b) but I doubt whether a more precise one can be found." Similarly, as pointed out by Mr. David Pannick in his book on "Judicial Review of the Death Penalty" international charters of rights express or imply the principle of proportionality. Article 7 of the International Covenant on Civil and Political Rights

forbids torture and cruel, inhuman or degrading treatment or punishment and so does Article 3 of the European Convention on Human Rights. It has been suggested by Francis Jacobs, a commentator on the European Convention that "among the factors to be considered in deciding whether the death penalty, in particular circumstances was contrary to Article 3, would be whether it was disproportionate to the offence.

36. It is necessary to point out at this stage that death penalty cannot be said to be proportionate to the offence merely because it may be or is believed to be an effective deterrent against the commission of the offence. In Coker v. Georgia (supra) the Supreme Court of the United States held that capital punishment is disproportionate to rape even though it may measurably serve the legitimate ends of punishment and therefore is not invalid for its failure to do so The absence of any rational purpose to the punishment inflicted is a separate ground for attacking its constitutionality. The existence of a rational legislative purpose for imposing the sentence of death is a necessary condition of its constitutionality but not a sufficient one The death penalty for theft would, for example, deter most potential thieves and may have a unique deterrent effect in preventing the commission of the offence; still it would be wholly disproportionate and excessive, for the social effect of the penalty is not decisive of the proportionality to the offence. The European Court of Human Rights also observed in Tyrer v. United Kingdom 2E. H.R.R.I. (1978) that "a punishment does not lose its degrading character just because it is believed to be or actually is, an effective deterrent or aid to crime control. Above all, as the court must emphasize, it is never permissible to have recourse to punishments which are contrary to Article 3, whatever their deterrent effect may be." The utilitarian value of the punishment has nothing to do with its proportionality to the offence. It would therefore be no answer in the present case for the respondents to say that death penalty has a unique deterrent effect in preventing the crime of murder and therefore it is proportionate to the offence. The proportionality between the offence and death penalty has to be judged by reference to objective factors such as international standards or norms or the climate of international opinion, modern penological theories and evolving standards of human decency. I have already pointed out and 1 need not repeat that the international standard or norms which is being evolved by the United Nations is against death penalty and so is the climate of opinion in most of the civilized countries of the world. I will presently show that penological goals also do not justify the imposition of death penalty for the offence of murder. The prevailing standards of human decency are also incompatible with death penalty. The standards of human decency with reference to which the proportionality of the punishment to the offence is required to be judged vary from society to society depending on the cultural and spiritual tradition of the society, its history and philosophy and its sense of moral and ethical values. To take an example, if a sentence of cutting off the arm for the offence of theft or a sentence of stoning to death for the offence of adultery were prescribed by law, there can be no doubt that such punishment would be condemned as barbaric and cruel in our country, even though it may be regarded as proportionate to the offence and hence reasonable and just in some other countries. So also the standards of human decency vary from time to time even

within the same society. In an evolutionary society, the standards of human decency are progressively evolving to higher levels and what was regarded as legitimate and reasonable punishment proportionate to the offence at one time may now according to the evolving standards of human decency, be regarded as barbaric and inhuman punishment wholly disproportionate to the offence. There was a time when in the United Kingdom a sentence of death for the offence of theft or shop lifting was regarded as proportionate to the offence and therefore quite legitimate and reasonable according to the standards of human decency then prevailing, but today such punishment would be regarded as totally disproportionate to the offence and hence arbitrary and unreasonable. The question, therefore, is whether having regard to the international standard or norm set by the United Nations in favour of abolition of death penalty, the climate of opinion against death penalty in many civilized countries of the world and the prevailing standards of human decency, a sentence of death for the offence of murder can be regarded as satisfying the test of proportionality and hence reasonable and just. I may make it clear that the question to which I am addressing my self is only in regard to the proportionality of death sentence to the offence of murder and nothing that I say here may be taken as an expression of opinion on the question whether a sentence of death can be said to be proportionate to the offence of treason or any other offence involving the security of the State.

37. Now in order to determine what are the prevailing standards of human decency, one cannot ignore the cultural ethos and spiritual tradition of the country. To quote the words of Krishna Iyer, J. in Rajendra Prasad's case "The values of a nation and ethos of a generation mould concepts of crime and punishment. So viewed, the lode-star of penal policy today, shining through the finer culture of former centuries, strengthens the plea against death penalty.... The Indian cultural current also counts and so does our spiritual chemistry, based on divinity in everyone, catalyzed by the Buddha-Gandhi compassion.... Many humane movements and sublime souls have cultured the higher consciousness of mankind," and emphasized the reformatory potential in every man. In this land of Buddha and Gandhi, where from times immemorial, since over 5000 years ago, every human being is regarded as embodiment of Brahman and where it is a firm conviction based not only on faith but also on experience that "every saint has a past and every sinner a future," the standards of human decency set by our ancient culture and nourished by our constitutional values and spiritual norm frown upon imposition of death penalty for the offence of murder. It is indisputable that the Constitution of a nation reflects its culture and ethos and gives expression to its sense of moral and ethical values. It affords the surest indication of the standards of human decency cherished by the people and sets out the socio-cultural objectives and goals towards which the nation aspires to move. There can be no better index of the ideals and aspirations of a nation than its Constitution. When we turn to our Constitution, we find that it is a humane document which respects the dignity of the individual and the worth of the human person and directs every organ of the State to strive for the fullest development of the personality of every individual. Undoubtedly, as already pointed out above, our Constitution does

contemplate death penalty, and at the time when the Constitution came to be enacted, death penalty for the offence of murder was on the statute book, but the entire thrust of the Constitution is in the direction of development of the full potential of every citizen and the right to life along with basic human dignity is highly prized and cherished and torture and cruel or inhuman treatment or punishment which would be degrading and destructive of human dignity are constitutionally forbidden. Moreover, apart from the humanistic quintessence of the Constitution, the thoughts, deeds and words of the great men of this country provide the clearest indication of the prevailing standards of human decency. They represent the conscience of the nation and are: the most authentic spokesmen of its culture and ethics. Mahatma Gandhi, the Father of the Nation wrote long ago in the Harijan; "God alone can take life because He alone gives it." He also said and this I may be permitted to emphasize even at the cost of repetition: "Destruction of individuals can never be a virtuous act. The evil doers cannot be done to death.... Therefore all crimes including murder will have to be treated as a disease." I have also quoted above what Jai Prakash Narain said in his message to the Delhi Conference against Death Penalty. The same humanistic approach we find in the utterances of Vinoba Bhave. His approach to the problem of dacoits in Chambal Valley and the manner in which he brought about their surrender through soul-force bear eloquent testimony to the futility of death penalty and shows how even dacoits who have committed countless murders can be reclaimed by the society. But, the more important point is that this action of Vinoba Bhave was applauded by the whole nation and Dr. Rajendra Prasad who was then the President of India, sent the following telegram to Vinoba Bhave when he came to know that about 20 dacoits from the Chambal region had responded to the Saint's appeal to surrender:

The whole nation looks with hope and admiration upon the manner in which you have been able to rouse the better instincts and moral sense, and thereby inspire faith in dacoits which has led to their voluntary surrender. Your efforts, to most of us, come as a refreshing proof of the efficacy of the moral approach for reforming the misguided and drawing the best out of them. I can only pray for the complete success of your mission and offer you my regards and best wishes.

These words coming from the President of India who is the Head of the nation reflect not only his own admiration for the manner in which Vinoba Bhave redeemed the dacoits but also the admiration of the entire nation and that shows that what Vinoba Bhave did, had the approval of the people of the country and the standards of human decency prevailing amongst the people commended an approach favouring reformation and rehabilitation of the dacoits rather than their conviction for the various offences of murder committed by them and the imposition of death penalty on them. Moreover, it is difficult to see how death penalty can be regarded as proportionate to the offence of murder when legislatively it has been ordained that life sentence shall be the rule and it is only in exceptional cases for special reasons that death penalty may be imposed. It is obvious from the provision enacted in Section 354(3) of the CrPC that death sentence is legislatively regarded as disproportionate and excessive in most cases of murder and it

is only in exceptional cases what Sarkaria, J. speaking on behalf of the majority, describes as "the rarest of rare" cases, that it can at all be contended that death sentence is proportionate to the offence of murder. But, then the legislature does not indicate as to what are those exceptional cases in which death sentence may be regarded as proportionate to the offence and, therefore, reasonable and just. Merely because a murder is heinous or horrifying, it cannot be said that death penalty is proportionate to the offence when it is not so for a simple murder. How does it become proportionate to the offence merely because it is a 'murder most foul'. I fail to appreciate how it should make any difference to the penalty whether the murder is a simple murder or a brutal one. A murder is a murder all the same, whether it is carried out quickly and inoffensively or in a gory and gruesome manner. If death penalty is not proportionate to the offence in the former case, it is difficult to see how it can be so in the latter. I may usefully quote in this connection the words of Krishna Iyer, J. in Rajendra Prasad's case where the learned Judge said:

Speaking illustratively, is shocking crime, without more, good to justify the lethal verdict? Most murders are horrifying, and an adjective adds but sentiment, not argument. The personal story of an actor in a shocking murder, if considered, may bring tears and soften the sentence. He might have been a tortured child, an ill-treated orphan, a jobless starveling, a badgered brother, a wounded son, a tragic person hardened by societal cruelty or vengeful justice, even a Hamlet or Parasurama. He might have been an angelic boy but thrown into mafia company or inducted into dopes and drugs by parental neglect or morally-mentally retarded or disordered. Imagine a harijan village hacked out of existence by the genocidal fury of a kulak group and one survivor, days later, cutting to pieces the villain of the earlier outrage. Is the court in error in reckoning the prior provocative barbarity as a sentencing factor?

Another facet. Maybe, the convict's poverty had disabled his presentation of the social milieu or other circumstances of extenuation in defence.... When life is at stake, can such frolics of fortune play with judicial verdicts?

The nature of the crime-too terrible to contemplate-has often been regarded a traditional peg on which to hang a death penalty. Even Ediga Anamrna (supra) has hardened here. But 'murder most foul' is not the test, speaking scientifically. The doer may be a patriot, a revolutionary, a weak victim of an overpowering passion who, given better environment, may be a good citizen, a good administrator, a good husband, a great saint. What was Valmiki once? And that sublime spiritual star, Shri Aurobindo, tried once for murder but by history's fortune acquitted.

I agree with these observations of the learned Judge which clearly show that death penalty cannot be regarded as proportionate to the offence of murder, merely because the murder is brutal, heinous or shocking. The nature and magnitude of the offence or the motive and purposes underlying it or the manner and extent of its commission cannot

have any relevance to the proportionality of death penalty to the offence. It may be argued that though these factors may not of themselves be relevant, they may go to show that the murderer is such a social monster, a psychopath, that he cannot be reformed and he should therefore be regarded as human refuse, dangerous to society, and deserving to be hanged and in such a case, death penalty may legitimately be regarded as proportionate to the offence. But I do not think this is a valid argument. It is for reasons which I shall presently state, wholly untenable and it has dangerous implications. I do not think it is possible to hold that death penalty is, in any circumstances, proportionate to the offence of murder. Moreover, when death penalty does not serve any legitimate social purpose, and this is a proposition which 1 shall proceed to establish in the succeeding paragraphs, infliction of mental and physical pain and suffering on the condemned prisoner by sentencing him to death penalty cannot but be regarded as cruel and inhuman and therefore arbitrary and unreasonable.

38. I will now examine whether death penalty for the offence of murder serves any legitimate social purpose. There are three justifications traditionally advanced in support of punishment in general, namely, (1) reformation; (2) denunciation by the community or retribution and (3) deterrence. These are the three ends of punishment, its three penological goals, with reference to which any punishment prescribed by law must be justified. If it cannot be justified with reference to one or the other of these three penological purposes, it would have to be condemned as arbitrary and irrational, for in a civilised society governed by the rule of law, no punishment can be inflicted on an individual unless it serves some social purpose. It is a condition of legality of a punishment that it should serve a rational legislative purpose or in other words, it should have a measurable social effect. Let us therefore examine whether death penalty for the offence of murder serves any legitimate end of punishment.

It would be convenient first to examine the constitutionality of death penalty with reference to the reformatory end of punishment. The civilised goal of criminal justice is the reformation of the criminal and death penalty means abandonment of this goal for those who suffer it. Obviously death penalty cannot serve the reformatory goal because it extinguishes life and puts an end to any possibility of reformation. In fact, it defeats the reformatory end of punishment. But the answer given by the protagonists of death penalty to this argument is that though there may be a few murderers whom it may be possible to reform and rehabilitate, what about those killers who cannot be reformed and rehabilitated? Why should the death penalty be not awarded to them? But even in their cases, I am afraid, the argument cannot be sustained. There is no way of accurately predicting or knowing with any degree of moral certainty that murderer will not be reformed or is incapable of reformation. All we know is that there have been many many successes even with the most vicious of cases. Was Jean Valjean of Les Miserbles not reformed by the kindness and magnanimity of the Bishop? Was Valmiki a sinner not reformed and did he not become the author of one of the world's greatest epics? Were the dacoits of Chambal not transformed by the saintliness of Vinoba Bhave and Jai Prakash

Narain? We have also the examples of Nathan Leopold. Paul Crump and Edger Smith who were guilty of the most terrible and gruesome murders but who, having escaped the gallows, became decent and productive human beings. These and many other examples clearly show that it is not possible to know before hand with any degree of certainty that a murderer is beyond reformation. Then would it be right to extinguish the life of a human being merely on the basis of speculation and it can only be speculation and not any definitive inference-that he cannot be reformed. There is divinity in every man and to my mind no one is beyond redemption. It was Ramakrishna Paramhansa, one of the greatest saints of the last century, who said, "Each soul is potentially divine." There is Brahman in every living being, lo± [kyq bna czã] as the Upanishad says and to the same effect we find a remarkable utterance in the Brahmasukta of Atharvaveda where a sage exclaims: "Indeed these killers are Brahman; these servants (or slaves) are Brahman; these cheats and rogues are also manifestation of one and the same Brahman itself." Therefore once the dross of Tamas is removed and satva is brought forth by methods of rehabilitation such as community service, yoga, meditation and sat sang or holy influence, a change definitely takes place and the man is reformed. This is not just a fancy or idealised view taken by Indian philosophical thought, but it also finds support from the report of the Royal Commission on Capital Punishment set up in the United Kingdom where it has been said: "Not that murders in general are incapable of reformation, the evidence plainly shows the contrary. Indeed, as we shall see later" (in paragraphs 651-652) "the experience of countries without capital punishment indicates that the prospects of reformation are at least as favourable with murderers as with those who have committed other kinds of serious crimes." The hope of reforming even the worst killer is based on experience as well as faith and to legitimise the death penalty even in the so called exceptional cases where a killer is said to be beyond reformation, would be to destroy this hope by sacrificing it at the alter of superstition and irrationality. I would not therefore, speaking for myself, be inclined to recognise any exception, though Justice Krishna Iyer has done so in Rajendra Prasad's case, that death penalty may be legally-permissible where it is found that a killer is such a monster or beast that he can never be reformed. Moreover, it may be noted, as pointed out by Albert Camus, that in resorting to this philosophy of elimination of social monsters, we would be approaching some of the worst ideas of totalitarianism or the selective racism which the Hitler regime propounded. Sir Ernest Gowers, Chairman of the Royal Commission on Capital Punishment also emphasized the disturbing implications of this argument favouring elimination of a killer who is a social monster and uttered the following warning "If it is right to eliminate useless and dangerous members of the community why should the accident of having committed a capital offence determine who should be selected. These are only a tiny proportion and not necessarily the most dangerous.... It can lead to Nazism." This theory that a killer who is believed to be a social monster or beast should be eliminated in defence of the society cannot therefore be accepted and it cannot provide a justification for imposition of death penalty even in this narrow class of cases.

39. I will now turn to examine the constitutional validity of death penalty with reference to the second goal of punishment, namely, denunciation by the community or retribution. The argument which is sometimes advanced in support of the death penalty is that every punishment is to some extent intended to express the revulsion felt by the society against the wrong doer and the punishment must, therefore, be commensurate with the crime and since murder is one of the gravest crimes against society, death penalty is the only punishment which fits such crime and hence it must be held to be reasonable. This argument is founded on the denunciatory theory of punishment which apparently claiming to justify punishment, as the expression of the moral indignation of the society against the wrong doer, represents in truth and reality an attempt to legitimise the feeling of revenge entertained by the society against him. The denunciatory theory was put forward as an argument in favour of death penalty by Lord 45 Denning before the Royal Commission on Capital Punishment:

The punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them. It is a mistake to consider the objects of punishment as being deterrent or reformative or preventive and nothing else. The ultimate justification of any punishment is not that it is a deterrent but that it is the emphatic denunciation by the community of a crime, and from this point of view there are some murders which in the present state of opinion demand the most emphatic denunciation of all, namely, the death penalty.... The truth is that some crimes are so outrageous that it, irrespective of whether it is a deterrent or not.

The Royal Commission on Capital Punishment seemed to agree with Lord Denning's view about this justification for the death penalty and observed. "...the law cannot ignore the public demand for retribution which heinous crimes undoubtedly provoke; it would be generally agreed that, though reform of the criminal law ought, some times, to give a lead to public opinion, it is dangerous to move too far in advance of it." Though garbed in highly euphemistic language by labelling the sentiment underlying this observation as reprobation and not revenge, its implication can hardly be disguised that the death penalty is considered necessary not because the preservation of the society demands it, but because the society wishes to avenge itself for the wrong done to it. Despite its high moral tone and phrase, the denunciatory theory is nothing but an echo of what Stephen said in rather strong language: The criminal law stands to the passion of revenge in much the same relation as marriage to the sexual appetite." The denunciatory theory is a remnant of a primitive society which has no respect for the dignity of man and the worth of the human person and seeks to assuage its injured conscience by taking revenge on the wrong doer. Revenge is an elementary passion of a brute and betrays lack of culture and refinement. The manner in which a society treats crime and criminals affords the surest index of its cultural growth and development. Long ago in the year 1910 Sir Winston Churchill gave expression to this social truth when he-said in his inimitable language:

The mood and temper of the public with regard to the treatment of crime and the criminals is one of the most unfailing tests of civilization of any country. A calm

dispassionate recognition of the right of the accused, and even of the convicted, criminal against the State, a constant heart-searching by all charged with the duty of punishment...tireless efforts towards the discovery of curative and regenerative processes, unfailing faith that there is a treasure if you can only find it in the heart of every man-these are the symbols, which, in treatment of crime and the criminals, mark and measure the stored-up strength of a nation and are sign and proof of the living virtue in it.

A society which is truly cultured-a society which is reared on a spiritual foundation like the Indian society-can never harbour a feeling of revenge against a wrong doer. On the contrary, it would try to reclaim the wrong doer and find the treasure that is in his heart. The wrong doer is as much as part of the society as anyone else and by exterminating him, would the society not injure itself? if a limb of the human body becomes diseased, should we not try to cure it instead of amputating it? Would the human body not be partially disabled: would it not be rendered imperfect by the amputation? Would the amputation not leave a scar on the human body? Would the human body not cease to be what it was intended by its maker? 45 But if the diseased limb can be cured, would it not be so much better that the human body remains intact in all its perfection. Similarly the society also would benefit if one of its members who has gone astray and done some wrong can be reformed and regenerated. It will strengthen the fabric of the society and increase its inner strength and vitality. Let it not be forgotten that no human being is beyond redemption. There is divinity in every human being, if only we can create conditions in which it can blossom forth in its full glory and effulgence. It can dissolve the dross of criminality and make God out of man. "Each soul", said Shri Ramakrishna Paramhansa, "is potentially divine" and it should be the endeavour of the society to reclaim the wrong doer and bring out the divinity in him and not to destroy him in a fit of anger or revenge. Retaliation can have no place in a civilised society and particularly in the land of Budha and Gandhi. The law of Jesus must prevail over the lex tallionis of Moses, "Thou shalt not kill" must pen logically over-power "eye for an eye and tooth for a tooth." The society has made tremendous advance in the last few decades and today the concept of human rights has taken firm root in our soil and there is a tremendous wave of consciousness in regard to the dignity and divinity of man. To take human life even with the sanction of the law and under the cover of judicial authority, is retributive barbarity and violent futility: travesty of dignity and violation of the divinity of man. So long as the offender can be reformed through the rehabilitate therapy which may be administered to him in the prison or other correctional institute and he can be reclaimed as a useful citizen and made conscious of the divinity within him by techniques such as meditation, how can there be any moral justification for liquidating him out of existence? In such a case, it would be most unreasonable and arbitrary to extinguish the flame of life within him, for no social purpose would be served and no constitutional value advanced by doing so. I have already pointed out that death penalty runs counter to the reformatory theory of punishment and I shall presently discuss the deterrent aspect of death penalty and show that death penalty has not greater deterrent effect than life imprisonment. The only ground on which the death penalty may therefore be sought to

be justified is reprobation which as already pointed out, is nothing but a different name for revenge and retaliation. But in a civilised society which believes in the dignity and worth of the human person, which acknowledges and protects the right to life as the most precious possession of mankind, which recognises the divinity in man and describes his kind as ve`rL; iq=k% that is, "children of Immortality," it is difficult to appreciate how retaliatory motivation can ever be countenanced as a justificatory reason. This reason is wholly inadequate since it does not justify punishment by its results, but it merely satisfies the passion for revenge masquerading as righteousness.

40. I may point that in holding this view I am not alone, for I find that most philosophers have rejected retribution as a proper goal of punishment. Plato wrote:

He who desires to inflict rational punishment does not retaliate for a past wrong which cannot be undone; he has regard to the future, and is desirous that the man who is punished, and he who sees him punished, may be deterred from doing wrong again. He punishes for the sake of prevention....
Even in contemporary America, it is firmly settled that retribution has no proper place in our criminal system. The New York Court of Appeals pointed out in a leading judgment in People v. Oliver 1 N.Y. 2d. 152:

The punishment or treatment of offenders is directed toward one or more of three ends: (1) to discourage and act as a deterrent upon future criminal activity. (2) to confine the offender so that he may not harm society; and (3) to correct and rehabilitate the offender. There is no place in the scheme for punishment for its own sake, the product simply of vengeance or retribution.
Similarly, the California Supreme Court has held that to "to conclude that the Legislature was motivated by a desire for vengeance" would be " a conclusion not permitted in view of modern theories of penology."

41. The same view has been adopted in official studies of capital punishment. The British Royal Commission on Capital Punishment concluded that "modern penological thought discounts retribution in the sense of vengeance. "The Florida Special Commission on capital punishment, which recommended retention of the death penalty on other grounds, rejected "vengeance or retaliation" as justification for the official taking of life."

42. The reason for the general rejection of retribution as a purpose of the criminal system has been stated concisely by Professors Mechael and Wechsler ;

Since punishment consists in the infliction of pain it is, apart from its consequence, an evil: consequently it is good and therefore just only if and to the degree that it serves the common good by advancing the welfare of the person punished or of the rest of the population-Retribution is itself unjust since it requires some human beings to inflict pain upon others, regardless of its effect upon them or upon the social welfare.

The Prime Minister of Canada Mr. Pierre Trudeaux, addressing the Canadian Parliament, pleading for abolition of death penalty posed a question in the same strain:

Are we as a society so lacking in respect for ourselves, so lacking in hope for human betterment, so socially bankrupt that we are ready to accept state vengeance as our penal philosophy?
It is difficult to appreciate how a feeling of vengeance whether on the part of the individual wronged or the society can ever be regarded as a healthy sentiment which the State should foster. It is true that when a heinous offence is committed not only the individual who suffers as a result of the crime but the entire society is oppressed with a feeling of revulsion, but as Arthur Koestler has put it in his inimitable style in his "Reflections on Hanging":

Though easy to dismiss in reasoned argument on both moral and logical grounds, the desire for vengeance has deep, unconscious roots and is roused when we feel strong indignation or revulsion- whether the reasoning mind approves or not. This psychological fact is largely ignored in abolitionist propaganda-yet it has to be accepted as a fact. The admission that even confirmed abolitionists are not proof against occasional vindictive impulses does not mean that such impulses should be legally sanctioned by society, any more than we sanction some other unpalatable instincts of our biological inheritance. Deep inside every civilized being their lurks a tiny Stone Age man, dangling a club to robe and rape, and screaming an eye for an eye for an eye. But we would rather not have that little fur-clad figure dictate the law of the land.
I have no doubt in my mind that if the only justification for the death penalty is to be found in revenge and retaliation, it would be clearly arbitrary and unreasonable punishment falling foul of Article 14 and 21.

43. I must Then turn to consider the deterrent effect of death penalty, for deterrence is undoubtedly an important goal of punishment.

44. The common justification which has been put forward on behalf of the protagonists in support of capital punishment is that it acts as a deterrent against potential murderers. This is, to my mind, a myth, which has been carefully nurtured by a society which is actuated not so much by logic or reason as by a sense of retribution. It is really the belief in retributive justice that makes the death penalty attractive but those supporting it are not inclined to confess to their instinct for retribution but they try to bolster with reasons their un willingness to abandon this retributive instinct and seek to justify the death penalty by attributing to it a deterrent effect. The question whether the death penalty has really and truly a deterrent effect is an important issue which has received careful attention over the last 40 years in several countries including the United States of America. Probably no single subject in criminology has been studied more. Obviously, no penalty will deter all murders and probably any severe penalty will deter many. The key question therefore is not whether death penalty has a deterrent effect but whether

death penalty has a greater deterrent effect than life sentence. Does death penalty deter potential murderers better than life imprisonment? I shall presently consider this question but before I do so let me repeat that the burden of showing that death penalty is not arbitrary and unreasonable and serves a legitimate penological goal is on the State. I have already given my reasons for taking this view on principle but I find that the same view has also been taken by the Supreme Judicial Court of Massachusettes in Commonwealth v. 0' Neal (No. 2) 339 N.E. 2d 675 where it has been held that because death penalty impinges on the right to life itself, the onus lies on the State to show a compelling State interest to justify capital punishment and since in that case the State was unable to satisfy this onus, the Court ruled that death penalty for murder committed in the course of rape or attempted rape was unconstitutional. The Supreme Judicial Court of Massachusettes also reiterated the same view in Opinion of the Justices 364 N E. 2d 184 while giving its opinion whether a Bill before the House of Representatives was compatible with Article 26 of the Constitution which prohibits cruel or unusual punishment. The majority Judges stated that Article 26 "forbids the imposition of a death penalty in this Commonwealth in the absence of a showing on the part of the Commonwealth that the availability of that penalty contributes more to the achievement of a legitimate State purpose-for example, the purpose of deterring criminal conduct-than the availability in like cases of the penalty of life imprisonment." It is therefore clear that the burden rests on the State to establish by producing material before the Court or otherwise, that death penalty has greater deterrent effect than life sentence in order to justify its imposition under the law. If the State fails to discharge this burden which rests upon it, the Court would have to hold that death penalty has not been shown to have greater deterrent effect and it does not therefore serve a rational legislative purpose.

45. The historical course through which death penalty has passed in the last 150 years shows that the theory that death penalty acts as a greater deterrent than life imprisonment is wholly unfounded. Not more than a century and a half ago, in a civilized country like England, death penalty was awardable even for offences like shoplifting, cattle stealing and cutting down of trees. It is interesting to note that when Sir Samuel Romully brought proposals for abolition of death penalty for such offences, there was a hue and cry from lawyers, judges, Parliamentarians and other so called protectors of social order and they opposed the proposals on the ground that death penalty acted as a deterrent against commission of such offences and if this deterrent was removed, the consequences would be disastrous. The Chief Justice said while opposing abolition of capital punishment for shop-lifting:

Where terror of death which now, as the law stood, threatened the depredator to be removed, it was his opinion the consequence would be that shops would be liable to unavoidable losses from depredations and, in many instances, bankruptcy and ruin must become the lot of honest and laborious tradesmen. After all that had been said in favour of this speculative humanity, they must all agree that the prevention of crime should be

the chief object of the law; and terror alone would prevent the commission of that crime under their consideration.
and on a similar Bill, the Lord Chancellor remarked:

So long as human nature remained what it was, the apprehension of death would have the most powerful co-operation in deterring from the commission of crimes; and he thought it unwise to with draw the salutary influence of that terror.
The Bill for abolition of death penalty for cutting down a tree was opposed by the Lord Chancellor in these terms:

It did undoubtedly seem a hardship that so heavy a punishment as that of death should be affixed to the cutting down of a single tree, or the killing or wounding of a cow. But if the Bill passed in its present state a person might root up or cut down whole acres of plantations or destroy the whole of the stock of cattle of a farmer without being subject to capital punishment.
Six times the House of Commons passed the Bill to abolish capital punishment for shop lifting and six times the House of Lords threw out the Bill, the majority of one occasion including all the judicial members, one Arch Bishop and six Bishops. It was firmly believed by these opponents of abolition that death penalty acted as a deterrent and if it was abolished, offences of shop-lifting etc. would increase. But it is a matter of common knowledge that this belief was wholly unjustified and the abolition of death penalty did not have any adverse effect on the incidence of such offences. So also it is with death penalty for the offence of murder. It is an irrational belief unsubstantiated by any factual data or empirical research that death penalty acts as a greater deterrent than life sentence and equally unfounded is the impression that the removal of death penalty will result in increase of homicide. The argument that the rate of homicide will increase if death penalty is removed from the statute book has always been advanced by the established order out of fear psychosis, because the established order has always been apprehensive that if there is any change and death penalty is abolished, its existence would be imperilled. This argument has in my opinion no validity because, beyond a supertitious belief for which there is no foundation in fact and which is based solely on unreason and fear, there is nothing at all to show that 40 death penalty has any additionally deterrent effect not possessed by life sentence. Arther Koestler tells us an interesting story that in the period when pick-pockets were punished by hanging in England other thieves exercised their talents in the crowds surrounding the scaffold where the convicted pick-pocket was being hanged. Statistics compiled during the last 50 years in England show that out of 250 men hanged, 170 had previously attended one or even two public executions and yet they were not deterred from committing the offence of murder which ultimately led to their conviction and hanging. It is a myth nurtured by superstition and fear that death penalty has some special terror for the criminal which acts as a deterrent against the commission of the crime. Even an eminent Judge like Justice Frankfurter of the Supreme Court of the United States expressed the same opinion when he said in the course of his examination before the Royal Commission on Capital Punishment:

I think scientifically the claim of deterrence is not worth much.
The Royal Commission on Capital Punishment, after four years of investigation which took it throughout the continent and even to the United States, also came to the same conclusion:

Whether the death penalty is used or not and whether executions are frequent or not, both death penalty states and abolition states show rates which suggests that these rates are conditioned by other factors than the death penalty.
and then again, it observed in support of this conclusion:

The general conclusion which we have reached is that there is no clear evidence in any of the figures we have examined that the abolition of capital punishment has led to an increasing homicide rate or that its reintroduction has led to a fall.
Several studies have been carried out in the United States of America for the purpose of exploring the deterrent effect of death penalty and two different methods have been adopted. The first and by far the more important method seeks to prove the case of the abolitionists by showing that the abolition of capital punishment in other countries has not led to an increase in the incidence of homicide. This is attempted to be shown either by comparing the homicide statistics of countries where capital punishment has been abolished with the statistics for the same period of countries where it has been retained or by comparing statistics of a single country in which capital punishment has been abolished, for periods before and after abolition or where capital punishment has been reintroduced, then for the period before and after its reintroduction. The second method relates to comparison of the 25 number of executions in a country in particular years with the homicide rate in the years succeeding. Now, so far as the comparison of homicide statistics of countries which have abolished capital punishment with the statistics of countries which have retained it, is concerned, it may not yield any definitive inference, because in most cases abolition or retention of death penalty may not be the only differentiating factor but there may be other divergent social, cultural or economic factors which may affect the homicide rates. It is only if all other factors are equal and the only variable is the existence or non-existence of death penalty that a proper comparison can be made for the purpose of determining whether death penalty has an additional deterrent effect which life sentence does not possess, but that would be an almost impossible controlled experiment. It may however be possible to find for comparison a small group of countries or States, preferably contiguous and closely similar in composition of population and social and economic conditions generally, in some of which capital punishment has been abolished and in others not. Comparison of homicide rates in these countries or States may afford a fairly reliable indication whether death penalty has a unique deterrent effect greater than that of life sentence. Such groups of States have been identified by Professor Sellin in the United States of America and similar conditions perhaps exist also in New Zealand and the Australian States. The figures of homicide rate in these States do not show any higher incidence of homicide in States

which have abolished death penalty than in those which have not. Professor Sellin points out that the only conclusion which can be drawn from these figures is that there is no clear evidence of any influence of death penalty on the homicide rates of these States. In one of the best known studies conducted by him, Professor Sellin compared homicide rates between 1920 and 1963 in abolition States with the rates in neighbouring and similar retention States. He found that on the basis of the rates alone, it was impossible to identify the abolition States within each group. A similar study comparing homicide rates in States recently abolishing the death penalty and neighbouring retention States during the 1960's reached the same results. Michigan was the first State in the United States to abolish capital punishment and comparisons between Michigan and the bordering retention states of Ohio and Indiana-States with comparable demographic characteristics-did not show any significant differences in homicide rates. Professor Sellin therefore concluded:

You cannot tell from...the homicide rates alone, in contiguous states, which are abolition and which are retention states; this indicates that capital crimes are dependent upon factors other than the mode of punishment.

46. Students of capital punishment have also studied the effect of abolition and reintroduction of death penalty upon the homicide rate in a single-state. If death penalty has a significant deterrent effect, abolition should produce a rise in homicides apart from the general trend and reintroduction should produce a decline. After examining statistics from 11 states, Professor Sellin concluded that "there is no evidence that the abolition of capital punishment generally causes, an increase in criminal homicides, or that its reintroduction is followed by a decline. The explanation of changes in homicide rates must be sought elsewhere."

47. Some criminologists have also examined the short term deterrent effects of capital punishment. One study compared the number of homicides during short periods before and after several well-publicized executions during the twenties and thirties in Philadelphia. It was found that there were significantly more homicides in the period after the executions than before-the opposite of what the deterrence theory would suggest. Other studies have also shown that in those localities where capital punishment is carried out, the incidence of homicide does not show any decline in the period immediately following well publicized executions when, if death penalty had any special deterrent effect, such effect would be greatest. Sometimes, as Bowers points out in his book on "Executions in America," the incidence of homicide is higher. In short, there is no correlation between the ups and downs of the homicide rate on the one hand and the presence or absence of the death penalty on the other.

48. I may also refer to numerous other studies made by jurists and sociologists in regard to the deterrent effect of death penalty. Barring only one study made by Ehrlich to which I shall presently refer, all the other studies are almost unanimous that death penalty has no greater deterrent effect than life imprisonment. Dogan D. Akman, a Canadian

Criminologist, in a study made by him on the basis of data obtained from the records of all Canadian penitentiaries for the years 1964 and 1965 observed that the threat of capital punishment has little influence on potential assaulters. So also on the basis of comparison of homicide and execution rates between Queensland and other Australian States for the period 1860-1920, Barber and Wilson concluded that the suspension of capital punishment from 1915 and its abolition from 1922 in Queensland did not have any significant effect on the murder rate. Chambliss, another Criminologist, also reached the same conclusion in his Article on "Types of Deviance and the Effectiveness of Legal Sanctions" (1967) Wildconcin Law Review 703 namely, that "given the preponderance of evidence, it seems safe to conclude that capital punishment does not act as an effective deterrent to murder." Then we have the opinion of Fred J. Cook who says in his Article on "Capital Punishment: Does it Prevent Crime? " that "abolition of the death penalty may actually reduce rather than encourage murder." The European Committee on Crime Problems of the Council of Europe gave its opinion on the basis of data obtained from various countries who are Members of the Council of Europe that these data did not give any "positive indication regarding the value of capital punishment as a deterrent." 1 do not wish to burden this judgment with reference to all the studies which have been conducted at different times in different parts of the world but I may refer to a few of them, namely "Capital Punishment as a Deterrent to Crime in Georgia" by Frank Gibson, "The Death Penalty in Washington State" by Hayner and Crannor, Report of the Massachusetes Special Commission Relative to the Abolition of the Death Penalty in Capital Cases, "The use of the Death Penalty-Factual Statement" by Walter C Reckless, "Why was Capital Punishment resorted in Delware" by Glenn W Samuelson, "A Study in Capital Punishment" by Leonard O. Savitz, "The Deterrent Influence of the Death Penalty" by Karl F. Schuessler, "Murder and the Death Penalty" by E. H. Sutherland, "Capital Punishment: A case for Abolition" by Tidmarsh, Halloran and Connolly, "Can the Death Penalty Prevent Crime" by George B, Void and "Findings en Detterence with Regard to Homicide" by Wilkens and Feyerherm. Those studies, one and all, have taken the view that "statistical findings and case studies converge to disprove the claim that the death penalty has any special deterrent value" and that death penalty "fails as a deterrent measure." Arthur Kcestler also observes in his book on "Reflections on Hanging" that the figures obtained by him from various jurisdictions which have abolished capital punishment showed a decline in the homicide rate following abolition. The Report made by the Department of Economic and Social Affairs of the United Nations also reaches the conclusion that "the information assembled confirms the now generally held opinion that the abolition or...suspension of the death penalty does not have the immediate effect of appreciably increasing the incidence of crime." These various studies to which I have referred clearly establish beyond doubt that death penalty does not have any special deterrent effect which life sentence does not possess and that in any event there is no evidence at all to suggest that penalty has any such special deterrent effect.

49. There is unfortunately no empirical study made in India to assess, howsoever imperfectly, the deterrent effect of death penalty. But we have the statistics of the crime

of murder in the former States of Travancore and Cochin during the period when the capital punishment was on the statute book as also during the period when it was kept in abeyance. These figures have been taken by me from the Introduction of Shri Mohan Kumar Mangalam to the book entitled "Can the State Kill its Citizen" brought out by Shri Subramaniam:

Statistics of murder cases during the period when Capital punishment was kept in abeyance.

Statistics of murder cases during the period when Capital punishment was in vogue.

These figures show that the incidence of the crime of murder did not increase at all during the period of six years when the capital punishment was in abeyance. This is in line with the experience of other countries where death penalty has been abolished.

50. I must at this stage refer to the study carried out by Ehrlich on which the strongest reliance has been placed by Sarkaria, J. in the majority judgment. Ehrlich was the first to introduce regression analysis in an effort to isolate the death penalty effect, if it should exist, uncontaminated by other influences on the capital crime rate. His paper was catapulted into the center of legal attention even before it was published, when the Solicitor General of the United States cited it in laudatory terms in his brief in Fowler v. North Carolina (1976) S.C.R. 3212 and delivered copies of it to the court. The Solicitor General called it an "important empirical support for the a priori logic belief that use of the death penalty decreases the number of murders." In view of the evidence available up to that time, Ehrlich's claim was indeed formidable both in substance and precision. The conclusion he reached was; "an additional execution per year...may have resulted in...seven or eight fewer murders." The basic data from which he derived this conclusion were the executions and the homicide rates as recorded in the United States during the years 1933 to 1969, the former generally decreasing, the latter, especially during the sixties, sharply increasing. Ehrlich considered, simultaneously with the execution and homicide rates, other variables that could affect the capital crime rate and sought to isolate the effect of these variables through the process of regression analysis. It is not necessary for the purpose of the present judgment to explain this process of mathematical purification or the various technical refinements of this process, but it is sufficient to point out that the conclusion reached by Ehrlich was that death penalty had a greater deterrent effect than the fear of life imprisonment. Ehrlich's study, because it went against all the hitherto available evidence, received extra ordinary attention from the scholarly community.

51. First, Peter Passell and John Taylor attempted to replicate Ehrlich's findings and found that they stood scrutiny only under an unusually restrictive set of circumstances. They found, for example, that the appearance of deterrence is produced only when the regression equation is in logarithmic form and in the more conventional linear regression framework, the deterrent effect disappeared. They also found that no such effect emerged when data for the years after 1962 were omitted from the analysis and only the years 1953-61 were considered. Kenneth Avio of the University of Victoria made an effort to replicate Ehrlich's findings from Canadian experience but that effort also failed and the conclusion reached by the learned jurist was that the evidence would appear to indicate that Canadian offenders over the period 1926-60 did not behave in a manner consistent with an effective deterrent effect of capital punishment." William Bowers and Glenn Pierce also made an attempt to replicate Ehrlich's results and in replicating Ehrlich's work they confirmed the Passell Taylor finding that Ehrlich's results were extremely sensitive as to whether the logarithmic specification was used and whether the data for the latter part of 1960's were included. During 1975 the Yale Law Journal published a series of Articles reviewing the evidence on the deterrent effect of death penalty and in the course of an Article in this series, Ehrlich defended his work by addressing himself to some of the criticisms raised against his study. Hans Zeisel,. Professor Emeritus of Law and-Sociology in the University of Chicago points out in his article on "The deterrent effect of death penalty: Facts V. Faith" that in this article contributed by him to the Yale Law Journal, Ehrlich did refute some criticisms but the crucial ones were not met. Ehrlich in this Article referred to a second study made by him, basing it this time on a comparison by States for the years 1940 and 1950. He claimed that this study bolstered his original thesis but conceded that his findings were "tentative and inconclusive." In the mean time Passell made a State-by-State comparison for the years 1950 and 1960 and as a result of his findings, concluded that "we know of no reasonable way of interpreting the cross sections (i.e. State-by-State) data that would lend support to the deterrence hypothesis."

52. A particularly extensive review of Ehrlich's time series analysis was made by a team led by Lawrence Klein, President of the American Economic Association. The authors found serious methodological problems with Ehrlich's analysis. They raised questions about his failure to consider the feedback effect of crime on the economic variables in his model, although he did consider other feedback effects in his analysis. They found some of Ehrlich's technical manipulations to be superfluous and tending to obscure the accuracy of his estimates. They, too, raised questions about variables omitted from the analysis, and the effects of these omissions on the findings.

53. Like Passell Taylor and Bowers-Pierce, Klein and his collaborators replicated Ehrlich's results, using Ehrlich's own data, which by that time he had made available. As in previous replications, Ehrlich's results were found to be quite sensitive to the mathematical specification of the model and the inclusion of data at the recent end of the time series.

54. By this time, Ehrlich's model had been demonstrated to be peculiar enough. Klein went onto reveal further difficulties. One was that Ehrlich's deterrence finding disappeared after the introduction of a variable reflecting the factors that caused other crimes to increase during the latter part of the period of analysis. The inclusion of such a variable would seem obligatory not only to substitute for the factors that had obviously been omitted but also to account for interactions between the crime rate and the demographic characteristics of the population.

55. Klein also found Ehrlich's results to be affected by an unusually construction of the execution rate variable, the central determinant of the analysis. Ehrlich constructed this variable by using three other variables that appeared elsewhere in his regression model: the estimated homicide arrest rate, the estimated homicide conviction rate, and the estimated number of homicides. Klein showed that with this construction of the execution rate, a very small error in the estimates, of any of these three variables produced unusually strong spurious appearances of a deterrent effect. He went on to show that the combined effect of such slight errors in all three variables was likely to be considerable, and that in view of all these considerations, Ehrlich's estimates of the deterrent effect were so weak that they "could be regarded as evidence.... (of) a counter deterrent effect of capital punishment." In view of these serious problems with Ehrlich's analysis, Klein concluded: "We see too many plausible explanations for his finding a deterrent effect other than the theory that capital punishment deters murder" and further observed: "Ehrlich's results cannot be used at this time to pass judgment on the use of the death penalty."

56. This is the analysis of the subsequent studies of Passell and Taylor, Bowers and Pierce and Klein and his colleagues made by Hans Zeisel in his Article on "The deterrent effect of the Death Penalty: Facts v. Faith." These studies which were definitely more scientific and refined than Ehrlich's demolish to a large extent the validity of the conclusion reached by Ehrlich and establish that death penalty does not possess an additional deterrent effect which life sentence does not. But, according to Hans Zeisel, the final blow to the work of Ehrlich came from a study of Brian Forst, one of Klein's collaborators on the earlier study. Since it had been firmly established that the Ehrlich phenomenon, if it existed, emerged from developments during the sixties, Forst' concentrated on that decade. He found a rigorous way. of investigating whether the ending of executions and the sharps increase in homicides during this period was casual or coincidental. The power of Forst's study derives from his having analysed changes both over time and across jurisdictions. The aggregate United States time series data Ehrlich used were unable to capture important regional differences. Moreover, they did not vary as much as cross-state observations; hence they did not provide as rich an opportunity to infer the effect of changes in executions on homicides. Forst's analysis, according to Hans Zeisel, was superior to Ehrlich's and it led to a conclusion that went beyond that of Klein. "The findings" observed Forst "give no support to the hypothesis that capital punishment deters homicide" and added: "Our finding that capital punishment does not deter

homicide is remarkably robust with respect to a wide range of alternative constructions." It will thus be seen that the validity of Ehrlich's study which has been relied upon very strongly by Sarkaria, J. in the majority judgment is considerably eroded by the studies carried out by leading criminologists such as Passell and Taylor, Bowers and Pierce, Klein and his colleagues and Forst and with the greatest respect, I do not think that Sarkaria, J. speaking on behalf of the majority was right in placing reliance on that study. The validity, design and findings of that study have been thoroughly discredited by the subsequent studies made by these other econometricians and particularly by the very scientific and careful study carried out by Forst. I may point out that apart from Ehrlich's study there is not one published econometric analysis which supports Ehrlich's results.

57. I may also at this stage refer once again to the opinion expressed by Professor Sellin. The learned Professor after a serious and thorough study of the entire subject in the United States on behalf of the American Law Institute stated his conclusion in these terms:

Any one who carefully examines the above data is bound to arrive at the conclusion that the death penalty as we use it exercises no influence on the extent or fluctuating rate of capital crime. It has failed as a deterrent.

(Emphasis supplied.)

So also in another part of the world very close to our country, a Commission of Inquiry on capital punishment was appointed by late Prime Minister Bhandarnaike of Sri Lanka and it reported:

If the experience of the many countries which have suspended or abolished capital punishment is taken into account, there is in our view cogent evidence of the unlikelihood of this 'hidden protection'.... It is, therefore, our view that the statistics of homicide in Ceylon when related to the social changes since the suspension of the death penalty in Ceylon and when related to the experience of other countries tend to disprove the assumption of the uniquely deterrent effect of the death penalty, and that in deciding on the question of reintroduction or abolition of the capital punishment reintroduction cannot be justified on the argument that it is a more effective deterrent to potential killers than the alternative of protracted imprisonment.
It is a strange irony of faith that Prime Minister Bhandarnaike who suspended the death penalty in Sri Lanka was himself murdered by a fanatic and in the panic that ensued death penalty was reintroduced in Sri Lanka.

58. The evidence on whether the threat of death penalty has a deterrent effect beyond the threat of life sentence is therefore overwhelmingly on one side. Whatever be the measurement yardstick adopted and howsoever sharpened may be the analytical instruments, they have not been able to discover any special deterrent effect. Even

regression analysis, the most sophisticated of these instruments, after careful application by the scholarly community, has failed to detect special, deterrent effect in death penalty which is not to be found in life imprisonment. One answer which the protagonists of capital punishment try to offer to combat the inference arising from these studies is that one cannot prove that capital punishment does not deter murder be cause people who are deterred by it do not report good news to their police departments. They argue that there are potential murderers in our midst who would be deterred from killing by the death penalty, but would not be deterred by life imprisonment and there is no possible way of knowing about them since these persons do not commit murder and hence are not identified. Or to use the words of Sarkaria, J. "Statistics of deterred potential murderers are difficult to unravel as they remain hidden in the innermost recesses of their mind." But this argument is plainly unsound and cannot be sustained. It is like saying, for example, that we have no way of knowing about traffic safety because motorists do not report when they are saved from accidents by traffic safety programmes or devices. That however cannot stop us from evaluating the effectiveness of those programmes and devices by studying their effect on the accident rates where they are used for a reasonable time. Why use a different standard for evaluating the death penalty, especially when we can measure its effectiveness by comparing homicide rates between countries with similar social and economic conditions in some of which capital punishment has been abolished and in others not or homicide rates in the same country where death penalty has been abolished or subsequently reintroduced. There is no doubt that if death penalty has a special deterrent effect not possessed by life imprisonment, the number of those deterred by capital punishment would appear statistically in the homicide rates of abolitionist jurisdictions but according to all the evidence gathered by different studies made by jurists and criminologists, this is just not to be found.

59. The majority speaking through Sarkaria, J. has observed that "in most of the countries of the world including India, a very large segment of the population including note able penologists, Judges, jurists, legislators and other enlightened people believe that death penalty for murder and certain other capital offences does serve as a deterrent and a greater deterrent than life imprisonment." I do not think this statement represents the correct factual position. It is of course true that there are some penologist?, judges, jurists, legislators and other people who believe that death penalty acts as a greater deterrent but it would not be correct to say that they form a large segment of the population. The enlightened opinion in the world, as pointed out by me, is definitely veering round in favour of abolition of death penalty. Moreover, it is not a rational conviction but merely an unreasoned belief which is entertained by some people including a few penologists, judges, jurists and legislators that death penalty has a uniquely deterrent effect. When you ask these persons as to what is the reason why they entertain this belief, they will not be able to give any convincing answer beyond stating that basically every human being dreads death and therefore death would naturally act as a greater deterrent than life imprisonment. That is the same argument advanced by Sir James Fitz James Stephen, the

draftsman of the Indian Penal Code, in support of the deterrent effect of capital punishment. That great Judge and author said in his Essay on Capital Punishment:

No other punishment deters men so effectually from committing, crimes as the punishment of death. This is one of those propositions which it is difficult to prove simply because they are in themselves more obvious than any proof can make them. It is possible to display ingenuity in arguing against it, but that is all. The whole experience of mankind is in the other direction. The threat of instant death is the one to which resort has always been made when there was an absolute necessity of producing some results.... No one goes to certain inevitable death except by compulsion. Put the matter the other way, was there ever yet a criminal who when sentenced to death and brought out to die would refuse the 35 offer of a commutation of a sentence for a severest secondary punishment? Surely not. Why is this? It can only be because 'all that a man has will be given for his life'. In any secondary punishment however terrible, there is hope; but death is death; its tenors cannot be described more forcibly.

The Law Commission in its thirty-fifth report also relied largely on this argument for taking the view that "capital punishment does act as a deterrent." It set out the main points that weighed with it in arriving at this conclusion and the first and foremost amongst them was that: "Basically every human being dreads death," suggesting that death penalty has therefore a greater deterrent effect than any other punishment. But this argument is not valid and a little scrutiny will reveal that it is wholly unfounded. In the first place, even Sir James Fitz James Stephen concedes that the proposition that death penalty has a uniquely deterrent effect not possessed by any other punishment, is one which is difficult to prove, though according to him it is self-evident. Secondly, there is a great fallacy underlying the argument of Sir James Fitz James Stephen and the Law Commission. This argument makes no distinction between a threat of certain and imminent punishment which faces the convicted murderer and the threat of a different problematic punishment which may or may not influence a potential murderer. Murder may be unpremeditated under the stress of some sudden outburst of emotion or it may be premeditated after planning and deliberation. Where the murder is unpremeditated, as for example, where it is the outcome of a sudden argument or quarrel or provocation leading to uncontrollable anger or temporary imbalance of the mind-and most murders fall within this category any thought of possibility of punishment is obliterated by deep emotional disturbance and the penalty of death can no more deter than any other penalty. Where murder is premeditated it may either be the result of lust, passion, jealousy, hatred frenzy or frustration or it may be a cold calculated murder for monetary or other consideration. The former category of murder would conclude any possibility of deliberation or a weighing of consequences; the thought of the likelihood of execution after capture, trial and sentence would hardly enter the mind of the killer. So far as the latter category of murder is concerned, several considerations make it unlikely that the death penalty would play any significant part in his thought. Since both the penalties for murder, death as well as life sentence, are so severe as to destroy the future of any one subjected to them, the crime would not be committed by a rational man unless he thinks

that there is little chance of detection. What would weigh with him in such a case is the uncertainty of detection and consequent punishment rather than the nature of punishment. It is not the harshness or severity of death penalty which acts as a deterrent. A life sentence of twenty years would act as equally strong deterrent against crime as death penalty, provided the killer feels that the crime would not go unpunished. More than the severity of the sentence, it is the certainty of detection and punishment that acts as a deterrent. The Advisory Council on the Treatment of Offenders appointed by the Government of Great Britain stated in its report in 1960 "We were impressed by the argument that the greatest deterrent to crime is not the fear of punishment but the certainty of detection."

Professor Hart emphasized the same point, refuting the argument of Sir James Fitz James Stephen in these words:

This (Stephen's) estimate of the paramount place in human motivation of the fear of death reads impressively but surely contains a suggestio falsi and once this is detected its cogency as an argument in favour of the death penalty for murder vanishes for there is really no parallel between the situation of a convicted murderer over the alternative of life imprisonment in the shadow of the gallows and the situation of the murderer contemplating his crime. The certainty of death is one thing, perhaps for normal people nothing can be compared with it. But the existence of the death penalty does not mean for the murderer certainty of death now. It means not very high probability of death in the future. And, futurity and uncertainty, the hope of an escape, rational or irrational, vastly diminishes the difference between death and imprisonment as deterrent, and may diminish to vanishing point.... The way in which the convicted murderer may view the immediate prospect of the gallows after he has been caught must be a poor guide to the effect of this prospect upon him when he is contemplating committing his crime.
It is also a circumstance of no less significance bearing on the question of deterrent effect of death penalty, that, even after detection and arrest, the likelihood of execution for the murderer is almost nil. In the first place, the machinery of investigation of offences being what it is and the criminal law of our country having a tilt in favour of the accused, the killer can look forward to a chance of acquittal at the trial. Secondly, even if the trial results in a conviction, it would not in all probability, be followed by a sentence of death. Whatever may have been the position prior to the enactment of the CrPC, 1973, it is now clear that under Section 354 Sub-section (3), life sentence is the rule and it is only in exceptional cases for special 5 reasons that death sentence may be awarded. The entire drift of the legislation is against infliction of death penalty and the courts are most reluctant to impose it save in the rarest of rare cases. It is interesting to note that in the last 2 years, almost every case where death penalty is confirmed by the High Court has come up before this Court by way of petition for special leave, and, barring the case of Ranga and Billa, I do not think there is a single case in which death penalty has been affirmed by this Court. There have been numerous cases where even after special leave petitions against sentence of death were dismissed, review petitions have been

entertained and death sentence commuted by this Court. Then there is also the clemency power of the President under Article 72 and of the Governor under Article 161 of the Constitution and in exercise of this power, death sentence has been commuted by the President or the Governor, as the case may be, in a number of cases. The chances of imposition of death sentence following upon a conviction for the offence of murder are therefore extremely slender. This is also evident from the figures supplied to us by the Government of India for the years 1974 to 1978 pursuant to the inquiry made by us. During the course of the hearing, we called upon the Government of India to furnish us statistical information in regard to following three matters, namely, (i) the number of cases in which and the number of persons on whom death sentence was imposed and whose death sentence was confirmed by various High Courts in India; (ii) the number of cases in which death sentence was executed in the various States and the various Union Territories; and 30 (iii) the number of cases in which death sentence was commuted by the President of India under Article 72 or by the Governors under Article 161 of the Constitution. The statistical information sought by us was supplied by the Government of India and our attention was also drawn to the figures showing the total number of offences of murder committed inter alia during the years 1974-77. These figures showed that on an average about 17,000 offences of murder were committed in India every year during the period 1974 to 1977, and if we calculate on the basis of this average, the total number of offences of murder during the period of five years from 1974 to 1978 would come to about 85.000. New, according to the statistical information supplied by the Government of India, out of these approximately 85000 cases of murder, there were only 288 in which death sentence was imposed by the sessions court and confirmed by the High Courts and out of them, in 12 cases death sentence was commuted by the President and in 40 cases, by the Governors and death sentence was executed in only 29 cases. It will thus be seen that during the period of five years from 1974 to 1978, there was an infinite singly small number of cases, only 29 out of an aggregate number of approximately 85COO cases of murder, in which death sentence was executed. Of course, the figures supplied by the Government of India did not include the figures from the State of Bihar, Jammu and Kashmir, West Bengal and Delhi Administration but the figures from these three States and from the Union Territory of Delhi would not make any appreciable difference. It is obvious therefore that even after conviction in a trial, there is high degree of probability that death sentence may not be imposed-by the sessions court and even if death sentence is imposed by the sessions court, it may not be confirmed by the High Court and even after confirmation by the High Court, it may not be affirmed by this Court and lastly, even if affirmed by this Court, it may be commuted by the President of India under Article 72 or by the Governor under Article 161 of the Constitution in exercise of the power of clemency. The possibility of execution pursuant to a sentence of death is therefore almost negligible, particularly after the enactment of Section 354 Sub-section (3) of the CrPC 1973 and it is difficult to see how in these circumstances death penalty can ever act as a deterrent. The knowledge that death penalty is rarely imposed and almost certainly, it will not be imposed takes away what-ever deterrent value death penalty might otherwise have. The expectation, bordering

almost on certainty, that death sentence is extremely unlikely to be imposed is a factor that would condition the behaviour of the offender and death penalty cannot in such a situation have any deterrent effect. The risk of death penalty being remote and improvable, it cannot operate as a greater deterrent than the threat of life imprisonment. Justice Brennan and Justice White have also expressed the same view in Furman v. Georgia (supra), namely, that, when infrequently and arbitrarily imposed, death penalty is not a greater deterrent to murder than is life imprisonment.

60. The majority speaking through Sarkaria, J. has referred to a few decisions of this Court in which, according to majority Judges, the deterrent value of death penalty has been judicially recognised. But I do not think any reliance can be placed on the observations in these decisions in support of the view that death penalty has a uniquely deterrent effect. The learned Judges who made these observations did not have any socio-legal data before them on the basis of which they could logically come to the conclusion that death penalty serves as a deterrent. They merely proceeded upon an impressionistic view which is entertained by quite a few lawyers, judges and legislators with out any scientific investigation or empirical research to support it. It appears to have been assumed by these learned judges that death penalty has an additional deterrent effect which life sentence does not possess. In fact, the learned judges were not concerned in these decisions to enquire and determine whether death penalty has any special deterrent effect and therefore if they proceeded on any such assumption, it cannot be said that by doing so they judicially recognised the deterrent value of death penalty. It is true that in Jagmohan's case (supra) Palekar, J. speaking on behalf of the court did take the view that death penalty has a uniquely deterrent effect but I do not think that beyond a mere traditional belief the validity of which cannot be demonstrated either by logic or by reason, there is any cogent and valid argument put forward by the learned Judge in support of the view that death sentence has greater deterrent effect than life sentence. The majority judges have relied on some of the observations of Krishna Iyer, J. but it must not be forgotten that Krishna Iyer, J. has been one of the strongest opponents of death penalty and he has pleaded with passionate conviction for 'death sentence on death sentence.' In Dalbir Singh and Ors. v. State of Punjab (supra) he emphatically rejected the claim of deterrence in most unequivocal terms: "...the humanity of our Constitution historically viewed (does not) subscribe to the hysterical assumption or facile illusion that a crime free society will dawn if hangmen and firing squads were kept feverishly busy." It would not be right to rely on stray or casual observations of Krishna Iyer, J. in support of the thesis that death penalty has a uniquely deterrent effect. It would be doing grave injustice to him and to the ideology for Which he stands. In fact, the entire basis of the judgment of Krishna Iyer, J. in Rajendra Prasad's case is that death penalty has. no deterrent value and that is only where the killer is found to be a social monster or a beast incapable of reformation that he can be liquidated out of existence. Chinnappa Reddy, J. has also in Bishnu Deo Shaw's case (supra) taken the view that "there is no positive indication that the death penalty has been deterrent" or in other words, "the efficacy of the death penalty as a deterrent is unproven."

61. Then reliance has been placed by Sarkaria, J. speaking on behalf of the majority on the observations of Stewart, J. in Furman v. Georgia (supra) where the learned Judge took the view that death penalty serves a deterrent as well as retributive purpose. In his view, certain criminal conduct is so atrocious that society's interest in deterrence and retribution wholly outweighs any considerations of reform or rehabilitation of the perpetrator and that, despite the inconclusive empirical evidence, only penalty of death will provide maximum deterrence. It has also been pointed out by Sarkaria, J. that in Gregg v. Georgia (supra) Stewart, J. reiterated the same view in regard to the deterrent and retributive effect of death penalty. But the view taken by Stewart, J. cannot be regarded as decisive of the present question as to the deterrent effect of death penalty. It is just one view like any other and its validity has to be tested on the touchstone of logic and reason. It cannot be accepted merely because it is the view of an eminent judge, I find that as against the view taken by him, there is a contrary view taken by at least two judges of the United States Supreme Court, namely, Brennan J. and Marshall, J. who were convinced in Gregg v. Georgia (supra) that "capital punishment is not necessary as a deterrent to crime in our society." It is natural differing judicial observations supporting one view or the other that these should be particularly on a sensitive issue like this, but what is necessary is to examine objectively and critically the logic and rationale behind these observations and to determine for ourselves which observations represent the correct view that should find acceptance with us. The majority Judges speaking through Sarkaria, J. have relied upon the observations of Stewart, J. as also on the observations made by various other Judges and authors for the purpose of concluding that when so many eminent persons have expressed the view that capital punishment is necessary for the protection of society, how can it be said that it is arbitrary and unreasonable and does not serve any rational penological purpose. It has been observed by Sarkaria, J: "It is sufficient to say that the very fact that persons of reason, learning and light are rationally and deeply divided in their opinion on this issue, is a ground among others, for rejecting the petitioners' argument that retention of death penalty in the impugned provision, is totally devoid of reason and purpose. If, notwithstanding the view of the Abolitionists to the contrary, a very large segment of people, the world over including sociologists legislators, jurists, judges and administrators still firmly believe in the worth and necessity of capital punishment for the protection of society...it is not possible to hold that the provision of death penalty as an alternative punishment for murder...is unreasonable and not in the public interest." I find it difficult to accept this argument which proceeds upon the hypothesis that merely because some lawyers, judges and jurists are of the opinion that death penalty sub-serves a penological goal and is therefore in public interest, the court must shut its eyes in respectful deference to the views expressed by these scholars and refuse to examine whether their views are correct or not. It is difficult to understand how the court, when called upon to determine a vital issue of fact, can surrender its judgment to the views of a few lawyers, judges and jurists and hold that because such eminent persons have expressed these views, there must be some substance in what they say and the provision of death penalty as an alternative punishment for

murder cannot therefore be regarded as. arbitrary and unreasonable. It is to my mind inconceivable that a properly informed judiciary concerned to uphold Fundamental Rights should decline to come to its own determination of a factual dispute relevant to the issue whether death penalty serves a legitimate penological purpose and rest its decision only on the circumstance that there are sociologists, legislators, judges and jurists who firmly believe in the worth and necessity of capital punishment. The court must on the material before it find whether the views expressed by lawyers, judges, jurists and criminologists on one side or the other are well founded in logic and reason and accept those which appear to it to be correct and sound. The Court must always remember that it is charged by the Constitution to act as asentinal on the qui vive guarding the fundamental rights guaranteed by the Constitution and it cannot shirk its responsibility by observing that since there are strong divergent views on the subject, the court need not express any categorical opinion one way or the other as to which of these two views is correct. Hence it is that, in the discharge of my constitutional duty of protecting and upholding the right to life which is perhaps the most basic of all human rights. I have examined the rival views and come to the conclusion, for reasons which I have already discussed, that death penalty has no uniquely deterrent effect and does not serve a penological purpose. But even if we proceed on the hypothesis that the opinion in regard to the deterrent effect of death penalty is divided and it is not possible to say which opinion is right and which opinion is wrong, it is obvious that, in this state of affairs, it cannot be said to be proved that death penalty has an additional deterrent effect not possessed by life sentence and if that be so, the legislative provision for imposition of death penalty as alternative punishment for murder fail, since, as already pointed out above, the burden of showing that death penalty has a uniquely deterrent effect and therefore serves a penological goal is on the State and if the State fails to discharge this burden which lies upon it, death penalty as alternative punishment for murder must be held to be arbitrary and unreasonable.

62. The majority Judges have, in the Judgment of Sarkaria, J. placed considerable reliance on the 35th Report of the Law Commission and I must therefore briefly refer to that Report before I part with this point. The Law Commission set out in their Report the following main-points that weighed with them in arriving at the conclusion that capital punishment does act as a deterrent:

(a) Basically, every human being dreads death.

(b) Death, as a penalty, stands on a totally different level from imprisonment for life or any other punishment. The difference is one of quality, and not merely of degree.

(c) Those who are specifically qualified to express an opinion on the subject, including particularly the majority of the replies received from State Governments, Judges, Members of Parliament and legislatures and Members of the Bar and police officers-are

definitely of the view that the deterrent object of capital punishment is achieved in a fair measure in India.

(d) As to conduct of prisoners released from jail (after undergoing imprisonment for life), it would be difficult to come to a conclusion, without studies extending over a long period of years.

(e) Whether any other punishment can possess all the advantages of capital punishment is a matter of doubt.

(f) Statistics of other countries are inconclusive on the subject. If they are not regarded as proving the deterrent effect, neither can they be regarded as conclusively disproving it.

So far as the first argument set out in Clause (a) is concerned, I have already shown that the circumstance that every human being dreads death cannot lead to the inference that death penalty acts as a deterrent. The statement made in Clause (b) is perfectly correct and I agree with the Law Commission that death as a penalty stands on a totally different level from life imprisonment and the difference between them is one of quality and not merely of degree, but I fail to see how from this circumstance an inference can necessarily follow that death penalty has a uniquely deterrent effect. Clause (c) sets out that those who are specially qualified to express an opinion on the subject have in their replies to the questionnaire stated their definite view that the deterrent effect of capital punishment is achieved in a fair measure in India. It may be that a large number of persons who send replies to the questionnaire issued by the Law Commission might have expressed the view that death penalty does act as a deterrent in our country, but mere expression of opinion in reply to the questionnaire, unsupported by reasons, cannot have any evidentiary value. There are quite a number of people in this country who still nurture the superstitions and irrational belief, ingrained in their minds by a century old practice of imposition of capital punishment and fostered, though not consciously, by the instinct for retribution, that death penalty alone can act as an effective deterrent against the crime of murder. I have already demonstrated how this belief entertained by lawyers, judges, legislators and police officers is a myth and it has no basis in logic or reason. In fact, the statistical research to which I have referred completely falsifies this belief. Then, there are the arguments in Clauses (d) and (e) but these arguments even according to the Law Commission itself are inconclusive and it is difficult to see how they can be relied upon to support the thesis that capital punishment acts as a deterrent. The Law Commission states in Clause (f) that statistics of other countries are inconclusive on the subject. I do not agree. I have already dealt with this argument and shown that the statistical studies carried out by various jurists and criminologists clearly disclose that there is no evidence at all to suggest that death penalty acts as a deterrent and it must therefore be held on the basis of the available material that death penalty does not act as a deterrent. But even if we accept the proposition that the statistical studies are inconclusive and they can not be regarded as proving that death penalty has no deterrent effect, it is clear that at the same

time they also do not establish that death penalty has a uniquely deterrent effect and in this situation, the burden of establishing that death penalty has an additional deterrent effect which life sentence does not have and therefore serves a penological purpose being on the State, it must be held that the State has failed to discharge the burden which rests upon it and death penalty must therefore be held to be arbitrary and unreasonable.

63. There was also one other argument put forward by the Law Commission in its 35th Report and that argument was that having regard to the conditions in India to the variety of social up-bringing of its inhabitants, to the disparity in the level of morality and education in the country, to the vastness of its area, to the diversity of its population and to the paramount need to maintain law and order in the country at the present juncture, India cannot risk the experiment of abolition of capital punishment. This argument does not commend itself to me as it is based more on fear psychosis than on reason. It is difficult to see how any of the factors referred to by the Law Commission, barring the factor relating to the need to maintain law and order, can have any relevance to the question of deterrent effect of the capital punishment. I cannot subscribe to the opinion that, because the social upbringing of the people varies from place to place or from class to class or there are demographic diversities and variations, they tend to increase the incidence of homicide and even if they do, I fail to see how death penalty can counteract the effect of these factors. It is true that the level of education in our country is low, because our developmental process started only after we became politically free, but it would be grossly unjust to say that uneducated people are more prone to crime than the educated ones. I also cannot agree that the level of morality which prevails amongst our people is low. I firmly hold the view that the large bulk of the people in our country, barring only a few who occupy positions of political, administrative or economic power, are actuated by a high sense of moral and ethical values. In fact, if we compare the rate of homicide in India with that in the United States, where there is greater homogeneity in population and the level of education is fairly high, we find that India compares very favourably with the United States, The rate of homicide for the year 1952 was 4.7 in the United States as against the rate of only 2.9 in India per 1,00,000 population and the figures for the year 1960 show that the rate of homicide in the United States was 5.1 as against the rate of only 2.5 in India per 1,00,000 population. The comparative figures for the year 1967 also confirm that the rate of homicide per 1,00,000 population in the United States was definitely higher than in India because in the United States it was 6.1 while in India it was only 2.6. It is therefore obvious that, despite the existence of the factors referred to by the Law Commission, the conditions in India, in so far as the rate of homicide is concerned, are definitely better than in the United States and I do not see how these factors can possibly justify an apprehension that it may be risky to abolish capital punishment. There is in fact statistical evidence to show that the attenuation of the area in which death penalty may be imposed and the remoteness and infrequency of abolition of death penalty have not resulted in increase in the rate of homicide. The figures which were placed before us on behalf of the Union clearly show that there was no increase in the rate of homicide even though death sentence was made awardable only in exceptional

cases under Section 354 Sub-section (3) of the new CrPC 1973. I must therefore express my respectful dissent from the view taken by the Law Commission that the experiment of abolition of capital punishment would involve a certain element of risk to the law and order situation.

64. It will thus be seen that death penalty as provided under Section 302 of the Indian Penal Code read with Section 354 Sub-section (3) of the CrPC, 1973 does not sub-serve any legit mate end of punishment, since by killing the murderer it totally rejects the reformative purpose and it has no additional deterrent effect which life sentence does not possess and it is therefore not justified by the deterrence theory of punishment. Though retribution or denunciation is regarded by some as a proper end of punishment, I do not think, for reasons I have already discussed, that it can have any legitimate place in an enlightened philosophy of punishment. It must therefore be held that death penalty has no rational nexus with any legitimate penological goal or any rational penological purpose and it is arbitrary and irrational and hence violative of Articles 14 and 21 of the Constitution.

65. I must now turn to consider the attack against the constitutional validity of death penalty provided under Section 302 of the Indian Penal Code read with Section 354 Sub-section (3) of the CrPC, 1973 on the ground that these sections confer an unguided and standardless discretion on the court whether to liquidate an accused out of existence or to let him continue to live and the vesting of such discretion in the court renders the death penalty arbitrary and freakish. This ground of challenge is in my opinion well founded and it furnishes one additional reason why the death penalty must be struck down as violative of Articles 14 and 21. It is obvious on a plain reading of Section 302 of the Indian Penal Code which provides death penalty as alternative punishment for murder that it leaves it entirely to the discretion of the Court whether to impose death sentence or to award only life imprisonment to an accused convicted of the offence of murder. This section does not lay down any standards or principles to guide the discretion of the court in the matter of imposition of death penalty. The critical choice between physical liquidation and life long incarceration is left to the discretion of the court and no legislative light is shed as to how this deadly discretion is to be exercised. The court is left free to navigate in an uncharted sea without any compass or directional guidance. The respondents sought to find some guidance in Section 354 Sub-section (3) of the CrPC 1973 but I fail to see how that section can be of any help at all in providing guidance in the exercise of discretion. On the contrary it makes the exercise of discretion more difficult and uncertain. Section 354 Sub-section (3) provides I that in case of offence of murder, life sentence shall be the rule and it is only in exceptional cases for special reasons that death penalty may be awarded. But what are the special reasons for which the court may award death penalty is a matter on which Section 354 Sub-section (3) is silent nor is any guidance in that behalf provided by any other provision of law. It is left to the Judge to grope in the dark for himself and in the exercise of his unguided and unfettered discretion decide what reasons may be considered as 'special reasons' justifying award of death penalty

and whether in a given case any such special reasons exist which should persuade the court to depart from the normal rule and inflict death penalty on the accused. There being no legislative policy or principle to guide the court in exercising its discretion in this delicate and sensitive area of life and death, the exercise of discretion of the Court is bound to vary from judge to judge. What may appear as special reasons to one judge may not so appear to another and the decision in a given case whether to impose the death sentence or to let off the offender only with life imprisonment would, to a large extent, depend upon who is the judge called upon to make the decision. The reason for this uncertainty in the sentencing process is two-fold. Firstly, the nature of the sentencing process is such that it involves a highly delicate task calling for skills and talents very much different from those ordinarily expected of lawyers. This was pointed out clearly and emphatically by Mr. Justice Frankfurter in the course of the evidence he gave before the Royal I Commission on Capital Punishment:

I myself think that the bench-we lawyers who become Judges are not very competent, are not qualified by experience, to impose sentence where any discretion is to be exercised. I do not think it is in the domain of the training of lawyers to know what to do with a fellow after you find out he is a thief. I do not think legal training has given you any special competence. I, myself, hope that one of these days, and before long, we will divide the functions of criminal justice. I think the lawyers are people who are competent to ascertain whether or not a crime has been committed. The whole scheme of common law judicial machinery-the rule of evidence, the ascertainment of what is relevant and what is irrelevant and what is fair, the whole question of whether you can introduce prior crimes in order to prove intent-I think lawyers are peculiarly fitted for that task. But all the questions that follow upon ascertainment of guilt, I think require very different and much more diversified talents than the lawyers and judges are normally likely to possess. Even if considerations relevant to capital sentencing were provided by the legislature, it would be a difficult exercise for the judges to decide whether to impose the death penalty or to award the life sentence. But without any such guidelines given by the legislature, the task of the judges becomes much more arbitrary and the sentencing decision is bound to vary with each judge. Secondly, when unguided discretion is conferred upon the Court to choose between life and death, by providing a totally vague and indefinite criterion of 'special reasons' without laying down any principles or guidelines for determining what should be considered to be 'special reasons,' the choice is bound to be influenced by the subjective philosophy of the judge called upon to pass the sentence and on his value system and social philosophy will depend whether the accused shall live or die. No doubt the judge will have to give 'special reasons' if he opts in favour of inflicting the death penalty, but that does not eliminate arbitrariness and caprice, firstly because there being no guidelines provided by the legislature, the reasons which may appeal to one judge as 'special reasons' may not appeal to another, and secondly, because reasons can always be found for a conclusion that the judge instinctively wishes to reach and the judge can bona fide and conscientiously find such reasons to be 'special reasons.' It is now recognised on all hands that judicial conscience is not a fixed conscience; it varies from judge to judge

depending upon his attitudes and approaches, his predilections and prejudices, his habits of mind and thought and in short all that goes with the expression "social philosophy." We lawyers and judges like to cling to the myth that every decision which we make in the exercise of our judicial discretion is guided exclusively by legal principles and we refuse to admit the subjective element in judicial decision making. But that myth now stands exploded and it is acknowledged by jurists that the social philosophy of the judge plays a not inconsiderable part in moulding his judicial decision and particularly the exercise of judicial discretion. There is nothing like complete objectivity in the decision making process and especially so, when this process involves making of decision in the exercise of judicial discretion. Every judgment necessarily bears the impact of the attitude and approach of the judge and his social value system. It would be pertinent here to quote justice Cardozo's analysis of the mind of a Judge in his famous lectures on "Nature of Judicial Process:

We are reminded by William James in a telling page of his lectures on Pragmatism that every one of us has in truth an underlying philosophy of life, even those of us to whom the names and the notions of philosophy are unknown or anathema. There is in each of us a stream of tendency, whether you choose to call it philosophy or not, which gives coherence and direction to thought and action. Judges cannot escape that current any more than other mortals. All their lives, forces which they do not recognize and cannot name, have been tugging at them-inherited instincts, traditional beliefs, acquired convictions; and the resultant is an outlook on life, a conception of social needs, a sense in James's phrase of 'the total push and pressure of the cosmos,' which when reasons are nicely balanced, must determine where choice shall fall. In this mental background every problem finds its setting. We may try to see things as objectively as we please. Nonetheless, we can never see them with any eyes except our own.

It may be noted that the human mind, even at infancy, is no blank sheet of paper. We are born with predispositions and the process of education, formal and informal, and, our own subjective experiences create attitudes which affect us in judging situations and coming to. decisions. Jerome Frank says in his book: "Law and the Modern Mind," in an observation with which I find myself in entire agreement:

Without acquired 'slants' preconceptions, life could not go on. Every habit constitutes a pre-judgment; were those pre-judgments which we call habits absent in any person, were he obliged to treat every event as an unprecedented crisis presenting a wholly new problem, he would go mad. Interests, points of view, preferences, are the essence of living. Only death yields complete dispassionateness, for such dispassionateness signifies utter indifference.... An 'open mind' in the sense of a mind containing no pre-conceptions whatever, would be a mind incapable of learning anything, would be that of an utterly emotionless human being.

It must be remembered that "a Judge does not shed the attributes of common humanity when he assumes the ermine." The ordinary human mind is a mass of pre-conceptions inherited and acquired, often unrecognised by their possessor. "Few minds are as neutral

as a sheet of plain glass and indeed a mind of that quality may actually fail in judicial efficiency, for the warmer tints of imagination and sympathy are needed to temper the cold light of reason, if human justice is to be done." It is, therefore, obvious that when a Judge is called upon to exercise his discretion as to whether the accused shall be killed or shall be permitted to live, his conclusion would depend to a large extent on his approach and attitude, his predilections and preconceptions, his value system and social philosophy and his response to the evolving norms of decency and newly developing concepts and ideas in penological jurisprudence. One Judge may have faith in the Upanishad doctrine that every human being is an embodiment of the Divine and he may believe with Mahatma Gandhi that every offender can be reclaimed and transformed by love and it is immoral and unethical to kill him. while another Judge may believe that it is necessary for social defence that the offender should be put out of way and that no mercy should be shown to him who did not show mercy to another. One Judge may feel that the Naxalites, though guilty of murders, are dedicated souls totally different from ordinary criminals as they are motivated not by any self-interest but by a burning desire to bring about a revolution by eliminating vested interests and should not therefore be put out of corporeal existence while another Judge may take the view that the Naxalites being guilty of cold premeditated murders are a menace to the society and to innocent men and women and therefore deserve to be liquidated. The views of Judges as to what may be regarded as 'special reasons' are bound to differ from Judge to Judge depending upon his value system and social philosophy with the result that whether a person shall live or die depends very much upon the composition of the bench which tries his case and this renders the imposition of death penalty arbitrary and capricious.

66. Now this conclusion reached by me is not based merely on theoretical or a priori considerations. On an analysis of decisions given over a period of years we find that in fact there is no uniform pattern of judicial behaviour in the imposition of death penalty and the judicial practice does not disclose any coherent guidelines for the award of capital punishment. The Judges have been awarding death penalty or refusing to award it according to their own scale of values and social philosophy and it is not possible to discern any consistent approach to the problem in the judicial decisions. It is apparent from a study of the judicial decisions that some Judges are readily and regularly inclined to sustain death sentences, other are similarly disinclined and the remaining waver from case to case. Even in the Supreme Court there are divergent attitudes and opinions in regard to the imposition of capital punishment. If a case comes before one Bench consisting of Judges who believe in the social efficacy of capital punishment, the death sentence would in all probability be confirmed but if the same case comes before another Bench consisting of Judges who are morally and ethically against the death penalty, the death sentence would most likely be commuted to life imprisonment. The former would find and I say this not in any derogatory or disparaging sense, but as a consequence of psychological and attitudinal factors operating on the minds of the Judges constituting the Bench-'special reasons' in the case to justify award of death penalty while the latter would reject any such reasons as special reasons. It is also quite possible that one Bench

may, having regard to its perceptions, think that there are special reasons in the case for which death penalty should be awarded while another Bench may bonafide and conscientiously take a different view and hold that there are no special reasons and that only life sentence should be imposed and it may not be possible to assert objectively and logically as to who is right and who is wrong, because the exercise of discretion in a case of this kind, where no broad standards or guidelines are supplied by the legislature, is bound to be influenced by the subjective attitude and approach of the Judges constituting the Bench, their value system, the individual tone of their mind, the colour of their experience and the character and variety of their interests and their predispositions. This arbitrariness in the imposition of death penalty is considerably accentuated by the fragmented bench structure of our Courts where benches are inevitably formed with different permutations and combinations from time to time and cases relating to the offence of murder come up for hearing sometimes before one Bench, sometimes before another sometimes before a third and so on. Prof. Blackshield has in his Article on 'Capital Punishment in India' published in Volume 21 of the Journal of the Indian Law Institute pointed out how the practice of bench formation contributes to arbitrariness in the imposition of death penalty. It is well-known that so far as the Supreme Court is concerned, while the number of Judges has increased over the years, the number of Judges on Benches which hear capital punishment cases has actually decreased. Most cases are now heard by two judge Benches. Prof. Blackshield has abstracted 70 cases in which the Supreme Court had to choose between life and death while sentencing an accused for the offence of murder and analysing these 70 cases he has pointed out that during the period 28th April 1972 to 8th March 1976 only eleven Judges of the Supreme Court participated in 10% or more of the cases. He has listed these eleven Judges in an ascending order of leniency based on the proportion for each Judge of plus votes (i.e. votes for the death sentence) to total votes and observed that according to these statistics "the preponderance from November 1972 to January 1973 of the Benches consisting of Justice Vaidialingam, Dua and Alagiriswamy may have been unfortunate for the appellants involved." It is significant to note that out of 70 cases analysed by Prof. Blackshield, 37 related to the period subsequent to the coming into force of Section 354 Sub-section (3) of the CrPC 1973. If a similar exercise is performed with reference to cases decided by the Supreme Court after 8th March 1976, that being the date up to which the survey carried out by Prof. Blackshield was limited, the analysis will reveal the same pattern of incoherence and arbitrariness, the decision to kill or not kill being guided to a large extent by the composition of the Bench. Take for example Rajendra Prasad's case (supra) decided on 9th February 1979. In this case, the death sentence imposed on Rajendra Prasad was commuted to life imprisonment by a majority consisting of Krishna Iyer, J. and Desai, J. A.P. Sen, J. dissented and was of the view that the death sentence should be confirmed. Similarly in one of the cases before us, namely, Bachan Singh v. State of Punjab, MANU/SC/0077/1979: 1980CriLJ211. when it was first heard by a Bench consisting of Kailasam and Sarkaria, JJ., Kailasarn, J. was definitely of the view that the majority decision in Rajendra Prasad's case was wrong and that is why he referred that case to the Constitution Bench. So also in Dalbir Singh v. State of Punjab (supra), the

majority consisting of Krishna Iyer, J. and Desai, J. took the view that the death sentence imposed on Dalbir Singh should be commuted to life imprisonment while A.P. Sen, J. stuck to the original view taken by him in Rajendra Prasad's case and was inclined to confirm the death sentence. It will thus be seen that the exercise of discretion whether to inflict death penalty or not depends to a considerable extent on the value system and social philosophy of the Judges constituting the Bench. If for example Justice A.P. Sen and Justice Kailasam had constituted the Bench hearing Rajendra Prasad's case, then without meaning the slightest disrespect to these two eminent Judges, one can hazard a guess that perhaps the death sentence of Rajendra Prasad would have been confirmed.

67. The most striking example of freakishness in imposition of death penalty is provided by a recent case which involved three accused, namely, Jeeta Singh, Kashmira Singh and Harbans Singh. These three persons were sentenced to death by the Allahabad High Court by a judgment and order dated 20th October 1975 for playing an equal part in jointly murdering a family of four persons. Each of these three persons preferred a separate petition in the Supreme Court for special leave to appeal against the common judgment sentencing them all to death penalty. The special leave petition of Jeeta Singh came up for hearing before a bench consisting of Chandrachud, J. (as he then was) Krishna Iyer, J. and N.L. Untwalia, J. and it was dismissed on 15th April 1976. Then came the special leave petition preferred by Kashmira Singh from jail and this petition was placed for hearing before another bench consisting of Fazal Ali, J. and myself. We granted leave to Kashmira Singh limited to the question of sentence and by an order dated 10th April 1977 we allowed his appeal and commuted his sentence of death into one of imprisonment for life. The result was that while Kashmira Singh's death sentence was commuted to life imprisonment by one Bench, the death sentence imposed on Jeeta Singh was confirmed by another bench and he was executed on 6th October 1981, though both had played equal part in the murder of the family and there was nothing to distinguish the case of one from that of the other. The special leave petition of Harbans Singh then came up for hearing and this time, it was still another bench which heard his special leave petition. The Bench consisted of Sarkaria and Singhal, JJ. and they rejected the special leave petition of Harbans Singh on 16th October, 1978. Harbans Singh applied for review of this decision, but the review petition was dismissed by Sarkaria, J. and A.P. Sen, J. on 9th May 1980. It appears that though the registry of this Court had mentioned in its office report that Kashmira Singh's death sentence was already commuted, that fact was not brought to the notice of the court specifically when the special leave petition of Harbans Singh and his review petition were dismissed. Now since his special leave petition as also his review petition were dismissed by this Court, Harbans Singh would have been executed on 6th October 1981 along with Jeeta Singh, but fortunately for him he filed a writ petition in this Court and on that writ petition, the court passed an order staying the execution of his death sentence. When this writ petition came up for hearing before a still another bench consisting of Chandrachud, C.J., D.A. Desai and A.N. Sen, JJ., it was pointed out to the court that the death sentence imposed on Kashmira Singh had been commuted by a bench consisting of Fazal Ali, J. and myself and when this fact was

pointed out, the Bench directed that the case be sent back to the President for reconsideration of the clemency petition filed by Harbans Singh. This is a classic case which illustrates the judicial vagaries in the imposition of death penalty and demonstrates vividly, in all its cruel and stark reality, how the infliction of death penalty is influenced by the composition of the bench, even in cases governed by Section 354 Sub-section (3) of the CrPC 1973. The question may well be asked by the accused: Am I to live or die depending upon the way in which the Benches are constituted from time to time? Is that not clearly violative of the fundamental guarantees enshrined in Articles 14 and 21.

68. If we study the judicial decisions given by the courts over a number of years, we find Judges resorting to a wide variety of factors in justification of confirmation or commutation of death sentence and these factors when analysed fail to reveal any coherent pattern. This is the inevitable consequence of the failure of the legislature to supply broad standards or guidelines which would structure and canalize the discretion of the court in the matter of imposition of death penalty. Of course, I may make it clear that when I say this I do not wish to suggest that if broad standards or guidelines are supplied by the legislature, they would necessarily cure death penalty of the vice of arbitrariness or freakishness. Mr. Justice Harlan pointed out in Me Gautha v. California 402 US 183 the difficulty of formulating standards or guidelines for canalizing or regulating the discretion of the court in these words:"

Those who have come to grips with the hard task of actually attempting to draft means of channeling capital sentencing discretion have confirmed the lesson taught by...history.... To identify before the fact those characteristics of criminal homicides and their perpetrators which call for the death penalty, and to express these characteristics in language which can be fairly understood and applied by the sentencing authority, appear to be tasks which are beyond present human ability.
But whether adequate standards or guidelines can be formulated or not which would cure the aspects of arbitrariness and capriciousness, the fact remains that no such standards or guidelines are provided by the legislature in the present case, with the result that the court has unguided and untrammelled discretion in choosing between death and life imprisonment as penalty for the crime of murder and this has led to considerable arbitrariness and uncertainty. This is evident from a study of the decided cases which clearly shows that the reasons for confirmation or commutation of death sentence relied upon by the court in different cases defy coherent analysis. Dr. Raizada has, in his monumental doctoral study entitled "Trends in sentencing: a study of the important penal statutes and judicial pronouncements of the High Courts and the Supreme Court" identified a large number of decisions of this Court where inconsistent awards of punishment have been made and the judges have frequently articulated their inability to prescribe or follow consistently any standards or guidelines. He has classified cases up to 1976 in terms of the reasons given by the court for awarding or refusing to award death sentence. The analysis made by him is quite rewarding and illuminating.

(i) One of the reasons given by the courts in a number of cases for imposing death penalty is that the murder is "brutal", "cold blooded", "deliberate", "unprovoked", "fatal", "gruesome", "wicked," "heinous" or "violent". But the use of these labels for describing the nature of the murder is indicative only of the degree of the courts' aversion for the nature or the manner of commission of the crime and it is possible that different judges may react differently to these situations and moreover, some judges may not regard this factor as having any relevance to the imposition of death penalty and may therefore decline to accord to it the status of "special reasons'. In fact, there are numerous cases, where despite the murder being one falling within these categories, the court has refused to award death sentence. For example, Janardharan whose appeal was decided along-with the appeal of Rajendra Prasad had killed his innocent wife and children in the secrecy of night and the murder was deliberate and cold blooded, attended as it was with considerable brutality, and yet the majority consisting of Krishna Iyer, J. and D.A. Desai, J. commuted his death sentence to life imprisonment. So also Dube had committed triple murder and still his death sentence was commuted to life imprisonment by the same two learned Judges, namely, Krishna Iyer, J. and D.A. Desai, J. It is therefore clear that the epithets mentioned above do not indicate any clear-cut well defined categories but are merely expressive of the intensity of judicial reaction to the murder, which may not be uniform in all Judges and even if the murder falls within one of these categories, that factor has been regarded by some judges as relevant and by others, as irrelevant and it has not been uniformly applied as a salient factor in determining whether or not death penalty should be imposed.

(ii) There have been cases where death sentence has been awarded on the basis of constructive or joint liability arising under Sections 34 and 149. Vide: Babu v. State of U.P. 1965 C L J SC 539 Mukhtiar Singh v. State of Punjab 1965 C L J SC 1298 Masalt v. State of U.P. 1965 C L J SC 226 Gurcharan Singh v. State of Punjab 1973 C L J SC 323 But, there are equally a large number of cases where death sentence has not been awarded because the criminal liability of the accused was only under Section 34 or Section 149. There are no established criteria for awarding or refusing to award death sentence to an accused who himself did not give the fatal blow but was involved in the commission of murder along with other assailants under Section 34 or Section 149.

(iii) The position as regards mitigating factors also shows the same incoherence. One mitigating factor which has often been relied upon for the purpose of commuting the death sentence to life imprisonment is the youth of the offender. But this too has been quite arbitrarily applied by the Supreme Court. There are such cases as State of U. P. v. Suman Das 1972 C L J SC 489: Raghubir Singh v. State of Haryana MANU/SC/0185/1974: 1974CriLJ603 and Gurudas Singh v. State of Rajasthan MANU/SC/0126/1975: 1975CriLJ1218 where the Supreme Court took into account the young age of the appellant and refused to award death sentence to him. Equally there are cases such as Bhagwan Swamp v. State of U.P. 1971 C L J SC 413 and Raghomani v. State

of U.P. MANU/SC/0189/1975: 1977CriLJ345 where the Supreme Court took the view that youth is no ground for extenuation of sentence. Moreover there is also divergence of opinion as to what should be the age at which an offender may be regarded as a young man deserving of commutation. The result is that as pointed out by Dr. Raizada, in some situations young offenders who have committed multiple murders get reduction in life sentence whereas in others, "where neither the loss of as many human lives nor of higher valued properly" is involved, the accused are awarded death sentence.

(iv) One other mitigating factor which is often taken into account is delay in final sentencing. This factor of delay after sentence received great emphasis in Ediga Anamma v. State of Andhra Pradesh MANU/SC/0128/1974: 1974CriLJ683 Chawla v. State of Haryana, MANU/SC/0119/1974: 1974CriLJ791 Raghubir Singh v. State of Haryana (supra) Bhur Singh v. State of Punjab MANU/SC/0109/1974: 1974CriLJ929 State of Punjab v. Hari Singh MANU/SC/0227/1974: 1974CriLJ822 and Gurudas Singh v. State of Rajasthan and in these cases delay was taken into account for the purpose of awarding the lesser punishment of life imprisonment. In fact, in Raghubir Singh v. State of Haryana (supra) the fact that for months the specter of death penalty must have been to impending his soul was held sufficient to entitle the accused to reduction in sentence. But equally there are a large number of cases where death sentences have been confirmed, even when two or more years were taken in finally disposing of the appeal; Vide: Rishdeo v. State of U.P. MANU/SC/0126/1975: 1975CriLJ1218 Bharmal Mapa v. State of Bombay 1960 C L J SC 494 1955 Criminal Law Journal SC 873. given by Dr. Raizada in foot-note 186 to chapter III. These decided cases show that there is no way of predicting the exact period of prolonged proceeding which may favour an accused. Whether any importance should be given to the factor of delay and if so to what extent are matters entirely within the discretion of the court and it is not possible to assert with any definitiveness that a particular period of delay after sentencing will earn for the accused immunity from death penalty. It follows as a necessary corollary from these vagaries in sentencing arising from the factor of delay, that the imposition of capital punishment becomes more or less a kind of cruel judicial lottery. If the case of the accused is handled expeditiously by the prosecution, defence lawyer, sessions court, High Court and the Supreme Court, then this mitigating factor of delay is not available to him for reduction to life sentence. If, on the other hand, there has been lack of despatch, engineered or natural, then the accused may escape the gallows, subject of course to the judicial vagaries arising from other causes. In other words, the more efficient the proceeding, the more certain the death sentence and vice-versa.

(v) The embroilment of the accused in an immoral relationship has been condoned and in effect, treated as an extenuating factor in Raghubir Singh, v. State of Haryana (supra) and Basant Laxman More v. State of Maharashtra MANU/SC/0234/1974: 1974CriLJ1166 while in Lajar Masih v. State of U.P MANU/SC/0128/1974: 1974CriLJ683 it has been condemned and in effect treated as an aggravating factor. There is thus no uniformity of approach even so far as this factor is concerned.

69. All these factors singly and cumulatively indicate not merely that there is an enormous potential of arbitrary award of death penalty by the High Courts and the Supreme Court but that, in fact, death sentences have been awarded arbitrarily and freakishly. Vide: Dr. Upendra Baxi's note on "Arbitrariness of Judicial Imposition of Capital Punishment."

70. Professor Blackshield has also in his article on "Capital Punishment in India" commented on the arbitrary and capricious nature of imposition of death penalty and demonstrated forcibly and almost conclusively, that arbitrariness and uneven incidence are inherent and inevitable in a system of capital punishment. He has taken the decision of this Court in Ediga Anamma v. State of Andhra Pradesh (supra) as the dividing line and examined the judicial decisions given by this Court subsequent to the decisions in Ediga Anamma's case, where this Court had to choose between life and death under Section 302 of the Indian Penal Code. The cases subsequent to the decision in Ediga Anamma's case have been chosen for study and analysis presumably because that was the decision in which the court for the first time set down some working formula whereby a synthesis could be reached between death sentence and life imprisonment and Krishna Iyer, J. speaking on behalf of the court, formulated various grounds which, in his opinion, might warrant death sentence as an exceptional measure, But, despite this attempt made in Ediga Anamma's case to evolve some broad standards or guidelines for imposition of death penalty, the subsequent decisions, as pointed out by Professor Black shield, display the same pattern of confusion, contradictions and aberrations as the decisions before that case. The learned author has taken 45 reported decisions given after Ediga Anamma's case, and 'shown that it is not possible to discern any coherent pattern in these decisions and they reveal contradictions and inconsistencies in the matter of imposition of death penalty. This is how the learned author has summed up his conclusion after an examinations of these judicial decisions:

But where life and death are at stake, inconsistencies which are understandable may not be acceptable. The hard evidence of the accompanying "kit of cases" compels the conclusion that, at least in contemporary India, Mr. Justice Douglas' argument in Funman v. Georgia is correct: that arbitrariness and uneven incidence are inherent and inevitable in a system of capital punishment; and that therefore-in Indian constitutional terms, and in spite of Jagmohan Singh-the retention of such a system necessarily violates Article 14's guarantee of "equality before the law.
It is clear from a study of the decisions of the higher courts on the life-or-death choice that judicial adhocism or judicial impressionism dominates the sentencing exercise and the infliction of death penalty suffers from the vice of arbitrariness and caprice.

71. I may point out that Krishna Iyer, J. has also come to the same conclusion on the basis of his long experience of the sentencing process. He has analysed the different factors which have prevailed with the Judges from time to time in awarding or refusing to award

death penalty and shown how some factors have weighed with one Judge, some with another; some with a third and so on, resulting in chaotic arbitrariness in the imposition of death penalty. I can do no better than quote his own words in Rajendra Prasad's case (supra):

Law must be honest to itself. Is it not true that some judges count the number of fatal wounds, some the nature of the weapon used, others count the corpses or the degree of horror and yet others look into the age or sex of the offender and even the lapse of time between the trial Court's award of death sentence and the final disposal of the appeal? With some judges, motives, pro vocations, primary or constructive guilt, mental disturbance and old feuds, the savagery of the murderous moment or the plan which has preceded the killing, the social milieu, the sublimated class complex and other odd factors enter the sentencing calculas. Stranger still, a good sentence, of death by the trial Court is some times upset by the Supreme Court because of law's delays. Courts have even directed execution of murderers who are mental cases, who do not fall within the McNaughten rules, because of the insane fury of the slaughter. A big margin of subjectivism, a preference for old English precedents, theories of modern penology, behavioral emphasis or social antecedents, judicial hubris or human rights perspectives, criminological literacy or fanatical reverence for outworn social philosophers buried in the debris of time except as part of history-this plurality of forces plays a part in swinging the pendulum of sentencing justice erratically.
This passage from the judgment of the learned Judge exposes, in language remarkable for its succinctness as well as eloquence, the vagarious nature of the imposition of death penalty and highlights a few of the causes responsible for its erratic operation. I find myself totally in agreement with these observations of the learned Judge.

72. But when it was contended that sentencing discretion is inherent in our legal system, and, in fact, it is desirable, because no two cases or criminals are identical and if no discretion is left to the court and sentencing is to be done according to a rigid pre-determined formula leaving no room for judicial discretion, the sentencing process would cease to be judicial and would de-generate into a bed of procrustean cruelty. The argument was that having regard to the nature of the sentencing process, it is impossible to lay down any standards or guidelines which will provide for the endless and often unforeseeable variations in fact situations and sentencing discretion has necessarily to be left to the court and the vesting of such discretion in the court, even if no standards or guidelines are provided by the legislature for structuring or channeling such discretion, cannot be regarded as arbitrary or unreasonable. This argument, plausible though it may seem, is in my opinion not well founded and must be rejected. It is true that criminal cases do not fall into set behaviorist patterns and it is 10 almost impossible to find two cases which are exactly identical. There are, as pointed out by Sarkaria, J. in the majority judgment, "countless permutations and combinations which are beyond the anticipatory capacity of the human calculus." Each case presents its own distinctive 'features, its peculiar combinations of events and its unique configuration of facts. That is why, in the

interest of individualised justice, it is necessary to vest sentencing discretion in the court so that appropriate sentence may be imposed by the court in the exercise of its judicial discretion, having regard to the peculiar facts and circumstances of a given case, or else the sentencing process would cease to be just and rational and justice would be sacrificed at the altar of blind uniformity. But at the same time, the sentencing discretion conferred upon the court cannot be altogether uncontrolled or unfettered. The stratagem which is therefore followed by the legislatures while creating and defining offences is to prescribe the maximum punishment and in some cases, even the minimum and leave it to the discretion of the court to decide upon the actual term of imprisonment. This cannot be regarded as arbitrary or unreasonable since the discretion that is left to the court is to choose an appropriate term of punishment between the limits laid down by the legislature, having regard to the distinctive features and the peculiar facts and circumstances of the case. The conferment of such sentencing discretion is plainly and indubitably essential for rendering individualised justice. But where the discretion granted to the court is to choose between life and death without any standards or guidelines provided by the legislature, the death penalty does become arbitrary and unreasonable. The death penalty is qualitatively different from a sentence of imprisonment. Whether a sentence of imprisonment is for two years or five years or for life, it is qualitatively the same, namely, a sentence of imprisonment, but the death penalty is totally different. It is irreversible; it is beyond recall or reparation; it extinguishes life. It is the choice between life and death which the court is required to make and this is left to its sole discretion unaided and unguided by any legislative yardstick to determine the choice. The only yardstick which may be said to have been provided by the legislature is that life sentence shall be the rule and it is only in exceptional cases for special reasons that death penalty may be awarded, but it is nowhere indicated by the legislature as to what should be regarded as 'special reasons' justifying imposition of death penalty. The awesome and fearful discretion whether to kill a man or to let him live is vested in the court and the court is called upon to exercise this discretion guided only by its own perception of what may be regarded as 'special reasons' without any light shed by the legislature. It is difficult to appreciate how a law which confers such unguided discretion on the court without any standards or guidelines on so vital an issue as the choice between life and death can be regarded as constitutionally valid. If I may quote the words of Harlan, J:

Our scheme of ordered liberty is based, like the common law, on enlightened and uniformly applied legal principles, not on ad hoc notions of what is right or wrong in a particular case.

There must be standards or principles to guide the court in making the choice between life and death and it cannot be left to the court to decide upon the choice on an ad hoc notion of what it conceives to be 'special reasons' in a particular case. That is exactly what we mean when we say that the government should be of laws and not of men and it makes no difference in the application of this principle, whether 'men 'belong to the administration or to the judiciary. It is a basic requirement of the equality clause

contained in Article 14 that the exercise of discretion must always be guided by standards or norms so that it does not degenerate into arbitrariness and operate unequally on persons similarly situate. Where unguided and unfettered discretion is conferred on any authority, whether it be the executive or the judiciary, it can be exercised arbitrarily or capriciously by such authority, because there would be no standards or principles provided by the legislature with reference to which the exercise of the discretion can be tested. Every form of arbitrariness, whether it be executive waywardness or judicial adhocism is anathema in our constitutional scheme. There can be no equal protection without equal principles in exercise of discretion. Therefore the equality clause of the Constitution obligates that whenever death sentence is imposed, it must be a principled sentence, a sentence based on some standard or principle and not arbitrary or indignant capital punishment. It has been said that 'a Judge undeterred by a text is a dangerous instrument' and I may well add that Judge power, uncanalised by clear principles, may be equally dangerous when the consequence of the exercise of discretion may result in the hanging of a human being. It is obvious that if judicial discretion is not guided by any standard or norms, it would degenerate into judicial caprice, which, as is evident from the foregoing discussion, has in fact happened and in such a situation, unregulated and unprincipled sentencing discretion in a highly sensitive area involving a question of life and death would clearly be arbitrary and hence violative of the equal protection clause contained in Article 14. It would also militate against Article 21 as interpreted in Maneka Gandhi's case (supra) because no procedure for depriving a person of his life can be regarded as reasonable, fair and just, if it vests uncontrolled and unregulated discretion in the court whether to award death sentence or to inflict only the punishment of life imprisonment. The need for well recognised principles to govern the 'deadly' discretion is so interlaced with fair procedure that unregulated power not structured or guided by any standards or principles would fall foul of Article 21.

73. The respondents however contended that the absence of any standards or guidelines in the legislation did not affect the constitutional validity of the death penalty, since the sentencing discretion being vested in the court, standards or principles for regulating the exercise of such discretion could always be evolved by the court and the court could by a judicial fiat lay down standards or norms which would guide the Judge in exercising his discretion to award the death penalty. Now it is true that there are cases where the court lays down principles and standards for guidance in the exercise of the discretion conferred upon it by a statute, but that is done by the court only in those cases where the principles or standards are gatherable from the provisions of the statute. Where a statute confers discretion upon a court, the statute may lay down the broad standards or principles which should guide the court in the exercise of such discretion or such standards or principles may be discovered from the object and purpose of the statute, its underlying policy and the scheme of its provisions and some times, even from the surrounding circumstances. When the court lays down standards or principles which should guide it in the exercise of its discretion, the court does not evolve any new standards or principles of its own but merely discovers them from the statute. The

standards or principles laid down by the court in such a case are not standards or principles created or evolved by the court but they are standards or principles enunciated by the legislature in the statute and are merely discovered by the court as a matter of statutory interpretation. It is not legitimate for the court to create or evolve any standards or principles which are not found in the statute, because enunciation of such standards or principles is a legislative function which belongs to the legislative and not to the judicial department. Moreover, it is difficult to see how any standards or principles which would adequately guide the exercise of discretion in the matter of imposition of death penalty can be evolved by the court. Sarkaria, J. himself has lamented the impossibility of formulating standards or guidelines in this highly sensitive area and pointed out in the majority judgment:

...there is little agreement among penologists and jurists as to what information about the crime and criminal is relevant and what is not relevant for fixing the dose of punishment for a person convicted of a particular offence. According to Cessare Beccaria, who is supposed to be the intellectual progenitor of today's fixed sentencing movement, 'crime are only to be measured by the injury done to society. But the 20th Century sociologists do not wholly agree with this view. In (he opinion of Von Hirsch, the "seriousness of a crime depends both on the harm done (or risked) by the act and degree of actor's culpability." But how is the degree of that culpability to be measured. Can any thermo meter be devised to measure its degree?
This passage from the majority judgment provides a most complete and conclusive answer to the contention of the respondents that the court may evolve its own standards or principles for guiding the exercise of its discretion. This is not a function which can be satisfactorily and adequately performed by the court more particularly when the judicial perception of what may be regarded as proper and relevant standards or guidelines is bound to vary from judge to judge having regard to his attitude and approach, his predilections and prejudices and his scale of values and social philosophy.

74. I am fortified in this view by the decision of the Supreme Court of the United States in Furman v. Georgia (supra). The question which was brought before the court for consideration in that case was whether the imposition and execution of death penalty constituted "cruel and unusual punishment" within the meaning of the Eighth Amendment as applied to the States by the Fourteenth. The court, by a majority of five against four, held that the death penalty as then administered in the United States was unconstitutional, because it was being used in an arbitrary manner and such arbitrariness in capital punishment was a violation of the Eighth Amendment prohibition against "cruel and unusual punishment" which was made applicable to the States by the Fourteenth Amendment. Brennan J. and Marshall, J. took the view that the death penalty was per se unconstitutional as violative of the prohibition of the Eighth Amendment. Brennan, J. held that the death penalty constituted cruel and unusual punishment as it did not comport with human dignity and it was a denial of human dignity for a State arbitrarily to subject a person to an unusually severe punishment which society indicated

that it did not regard as acceptable and which could not be shown to serve any penal purpose more effectively than a significantly less drastic punishment. Marshal], J. stated that the death penalty violated the Eighth Amendment because it was an excessive and unnecessary punishment and also because it was morally unacceptable to the people of the United States. The other three learned Judges namely, Douglas, J. Stewart, J. and White, J. did not subscribe to the view that the death penalty was per se unconstitutional in all circumstances but rested their judgment on the limited ground that the death penalty as applied in the United States was unconstitutional. Douglas J. argued that "we deal with a system of law and of justice that leaves' to the uncontrolled discretion of judges or juries the determination whether defendants committing these crimes should die or be imprisoned. Under these laws no standards govern the selection of the penalty. People live or die dependent on the whim of one man or of twelve." Stewart, J. also voiced his concern about the unguided and unregulated discretion in the sentencing process and observed: "the Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed." The remaining four Judges, namely, Burger, C.J. Blackmun, J. Powell, J. and Rehnquist J. took the opposite view and upheld the constitutional validity of the death penalty in its entirety. It will thus be seen that the view taken by the majority decision in this case was that a law which gives uncontrolled and unguided discretion to the Judge (or the jury) to choose arbitrarily between death sentence and life imprisonment for a capital offence violates the Eighth Amendment which inhibits cruel and unusual punishment. Now Sarkaria, J. speaking on behalf of the majority, has brushed aside this decision as inapplicable in India on the ground that we "do not have in our Constitution any provision like the Eighth Amendment nor are we at liberty to apply the test of reasonableness with the freedom with which the Judges of the Supreme Court of America are accustomed to apply the 'due process' clause" I am unable to agree with this reasoning put forward in the majority judgment. I have already pointed out that though there is no explicit provision in our Constitution prohibiting cruel and unusual punishment, this Court has in Francis Mullan's case (supra) held that immunity against torture or cruel and unusual punishment or treatment is implicit in Article 21 and therefore, if any punishment is cruel and unusual, it would be violative of basic human dignity which is guaranteed under Article 21. Moreover, in Maneka Gandhi's case (supra) this Court has by a process of judicial interpretation brought in the procedural due process clause of the American Constitution by reading in Article 21 the requirement that the procedure by which a person may be deprived of his life or personal liberty must be reasonable fair and just. Douglas, J. has also pointed out in Furman's case (supra) that "there is increasing recognition of the fact that the basic theme of equal protection is implicit in 'cruel and unusual' punishment A penalty...should be considered 'unusually' imposed, if it is administered arbitrarily or discriminatory" and thus brought in the equal protection clause for invalidating the death penalty. It is also significant to note that despite the absence of provisions like the American Due Process Clause and the Eighth Amendment, this Court speaking through Desai, J. said in Sunil Batra v. Delhi Administration MANU/SC/0184/1978: 1978CriLJ1741

Treatment of a human being which offends human dignity, imposes avoidable torture and reduces the man to the level of a beast would certainly be arbitrary and can be questioned under Article 14....
Krishna Iyer, J. was more emphatic and he observed in the same case

True, our Constitution has no 'due process' clause or the VIII Amendment; but, in this branch of law, after Cooper...and Maneka Gandhi...the consequence is the same. For what is punitively outrageous, scandalizing unusual or cruel or rehabilitatively counterproductive is unarguably unreasonable and arbitrary and is shot down by Article 15 and 19....
It should be clear from these observations in Sunil Batra's case to which Chandrachud, C.J. was also a party, that Sarkaria, J. speaking on behalf of the majority Judges, was in error in relying on the absence of the American due process clause and the Eighth Amendment for distinguishing the decision in Furman's case (supra) and upholding death penalty. The decision in Furman case cannot therefore be rejected as inapplicable in India. This decision clearly supports the view that where uncontrolled and unregulated discretion is conferred on the court without any standards or guidelines provided by the legislature, so as to permit arbitrary and uneven imposition of death penalty, it would be violative of both Articles 14 and 21.

75. It may be pointed out that subsequent to the decision in Furman's case (supra) and as a reaction to it the legislatures of several States in the United States passed statutes limiting or controlling the exercise of discretion by means of explicit standards to be followed in the sentencing process. These 'guided discretion' statutes provided standards typically in the form of specific aggravating and mitigating circumstances that must be taken into account before death sentence can be handed down. They also provided for separate phases of the trial to determine guilt and punishment and for automatic appellate review of death sentences. The constitutional validity of some of these 'guided discretion' statutes was challenged in Gregg v. Georgia (supra) and companion cases and the Supreme Court of the United States upheld these statutes on the ground that providing specific sentencing guidelines to be followed in a separate post conviction phase of the trial would free the sentencing decision of arbitrariness and discrimination. There is considerable doubt expressed by leading jurists in the United States in regard to the correctness of this decision, because in their view the guidelines provided by these statutes in the form of specific aggravating and/or mitigating circumstances are too broad and too vague to serve as an effective guide to discretion. In fact, while dealing with the challenge to the constitutional validity of a 'guided discretion' statute enacted by the Legislature of Massachusettes, the Supreme Court of Massachusettes by a majority held in District Attorney for the Suffolk District v. Watson Mass Adv. Sh. (1980) that the statute providing for imposition of death penalty was unconstitutional on the ground that it was violative of Article 26 of the Declaration of Rights of the Massachusettes Constitution which prohibits infliction of cruel or unusual punishment. Henneseey, C.J.

pointed out that in enacting 50 the impugned statute, the Legislature of Massachusettes had clearly attempted to follow the mandate of the Furman opinion and its progeny by promulgating a law of guided and channeled jury discretion, but even so it transgressed the prohibition of Article 26 of the Declaration of Rights of the State Constitution. The learned Chief Justice observed: "...it follows that we accept the wisdom of Furman that arbitrary and capricious infliction of death penalty is unconstitutional. However, we add that such arbitrariness and discrimination, which inevitably persists even under a statute which meets the demands of Furman, offends Article 26 of the Massachusettes Declaration of Rights." But we are not concerned here with the question as to whether the decision in Gregg's case represents the correct law or the decision of the Massachusettes Supreme Court in Watson's case. That controversy does not arise here because admittedly neither the Indian Penal Code nor any other provision of law sets out any aggravating or mitigating circumstance or any other considerations which must be taken into account in determining whether death sentence should be awarded or not. Here the sentencing discretion conferred upon the court is totally, uncontrolled and unregulated or if I may borrow an expression from Furman's decision, it is 'standard less' and 'unprincipled.'

76. It is true that there are certain safeguards provided in the CrPC, 1973 which are designed to obviate errors in the exercise of judicial discretion in the matter of imposition of death penalty. Section 235 Sub-section (2) bifurcates the trial by providing two hearings-one at the pre-conviction stage and another at pre sentence stage, so that at the second stage following upon conviction, the court can gather relevant information bearing on the question of punishment and decide, on the basis of such information, what would be the appropriate punishment to be imposed on the offender. Section 366 Sub-section (1) requires the court passing a sentence of death to submit the proceedings to the High Court and when such reference is made to the High Court for confirmation of the death sentence, the High Court may under Section 367 direct further inquiry to be made or additional evidence to be taken and under Section 368, confirm the sentence of death or pass any other sentence warranted by law or annul or alter the conviction or order a new trial or acquit the accused. Section 369 enjoins that in every reference so made, the confirmation of the sentence or any new sentence or order passed by the High Court, shall, when such court consists of two or more judges, be made, passed and signed by at least two of them. Then there is also a provision in Section 369 which says that when the High Court on appeal reverses an order of acquittal and convicts the accused and sentences him to death, the accused shall have a right to appeal to the Supreme Court. Lastly there is an over-riding power conferred on the Supreme Court under Article 136 to grant, in its discretion, special leave to appeal to an accused who has been sentenced to death. These are undoubtedly some safeguards provided by the legislature, but in the absence of any standards or principles provided by the legislature to guide the exercise of the sentencing discretion and in view of the fragmented bench structure of the High Courts and the Supreme Court, these safeguards cannot be of any help in eliminating arbitrariness and freakishness in imposition of death penalty. Judicial ad hocism or way worldliness would continue to characterise the exercise of sentencing discretion whether

the Bench be of two judges of the High Court or of two or three judges of the Supreme Court and arbitrary and uneven incidence of death penalty would continue to affect is the sentencing process despite these procedural safeguards. The reason is that these safeguards are merely peripheral and do not attack the main problem which stems from lack of standards or principles to guide the exercise of the sentencing discretion. Stewart, J. pointed out in Gregg's case (supra), "...the concerns expressed in Furman that the penalty of death not be imposed in an arbitrary or capricious manner can be met by a carefully drafted statute that ensures that the sentencing authority is given adequate information and guidance. As a general proposition these concerns are best met by a system that provides for a bifurcated proceeding at which the sentencing authority is apprised of the information relevant to the imposition of sentence and provided with standards to guide its use of the information." The first requirement that there should be a bifurcated proceeding at which the sentencing authority is apprised of the information relevant to the imposition of sentence is met by the enactment of Section 235 Sub-section (2), but the second requirement that the sentencing authority should be provided with standards to guide its use of the information is not satisfied and the imposition of death penalty under Section 302 of the Indian Penal Code read with Section 354 Sub-section (3) of the CrPC, 1973 must therefore be held to be arbitrary and capricious and hence violative of Articles 14 and 21.

77. There is also one other characteristic of death penalty that is revealed by a study of the decided cases and it is that death sentence has a certain class complexion or class bias inasmuch as it is largely the poor and the down trodden who are the victims of this extreme penalty. We would hardly find a rich or affluent person going to the gallows. Capital punishment, as pointed out by Warden Duffy is "a privilege of the poor." Justice Douglas also observed in a famous death penalty case "Former Attorney Ramsey Clark has said: 'it is the poor, the sick, the ignorant, the powerless and the hated who are executed'. "So also Governor Disalle of Ohio State speaking from his personal experience with the death penalty said:

During my experience as Governor of Ohio, I found the men in death row had one thing in common; they were penniless. There were other common denominators, low mental capacity, little or no education, few friends, broken homes-but the fact that they had no money was a principal factor in their being condemned to death....
The same point was stressed by Krishna Iyer, J. in Rajendra Prasad's case (supra) with his usual punch and vigour and in hard hitting language distinctive of his inimitable style:

Who, by and large, are the men whom the gallows swallow? The white-collar criminals and the corporate criminals whose wilful economic and environmental crimes inflict mass deaths or who hire assassins and murder by remote control? Rarely. With a few exceptions, they hardly fear the halter. The feuding villager, heady with country liquor, the striking workers desperate with defeat, the political dissenter and sacrificing liberator intent on changing the social order from satanic misrule, the waifs and strays whom

society has hardened by neglect into street toughs, or the poor householder husband or wife-driven by dire necessity or burst of tantrums it is this person who is the morning meal of the macabre executioner.

"Historically speaking, capital sentence perhaps has a class bias and colour bar, even as criminal law barks at both but bites the proletariat to defend the proprietary a reason which, incidentally, explains why corporate criminals including top executives whom by subtle processes, account for slow or sudden killing of large members by adulteration, smuggling, cornering, pollution and other invisible operations, are not on the wanted list and their offending operations which directly derive profit from mafia and white-collar crimes are not visited with death penalty, while relatively lesser delinquencies have, in statutory and forensic rhetoric, deserved 'the extreme penalty.

There can be no doubt that death penalty in its actual operation is discriminatory, for it strikes mostly against the poor and deprived sections of the community and the rich and the affluent usually escape from its clutches. This circumstance also adds to the arbitrary and capricious nature of the death penalty and renders it unconstitutional as being violative of Articles 14 and 21.

78. Before I part with this topic I may point out that the only way in which the vice of arbitrariness in the imposition of death penalty can be removed is by the law providing that in every case where the death sentence is confirmed by the High Court there shall be an automatic review of the death sentence by the Supreme Court sitting as a whole and the death sentence shall not be affirmed or imposed by the Supreme Court unless it is approved unanimously by the entire court sitting en bane and the only exceptional cases in which death sentence may be affirmed or imposed should be legislatively limited to those where the offender is found to be so depraved that it is not possible to reform him by any curative or rehabilitative therapy and even after his release he would be a serious menace to the society and therefore in interest of the society he is required to be eliminated. Of course, for reasons I have already discussed such exceptional cases would be practically nil because it is almost impossible to predicate of any person that he is beyond reformation or redemption and therefore, from a practical point of view death penalty would be almost non existent. But theoretically it may be possible to say that if the State is in a position to establish positively that the offender is such a social monster that even after suffering life imprisonment and undergoing reformative and rehabilitative therapy, he can never be reclaimed for the society, then he may be awarded death penalty. If this test is legislatively adopted and applied by following the procedure mentioned above, the imposition of death penalty may be rescued from the vice of arbitrariness and caprice. But that is not so under the law as it stands to-day.

79. This view taken by me in regard to the constitutional validity of the death penalty under Articles 14 and 21 renders it unnecessary for me to consider the challenge under Article 19 and I do not therefore propose to express any opinion on that question. But

since certain observations have been made in the majority judgment of Sarkaria, J. which seem to run counter to the decisions of this Court in R.C. Cooper v. Union of India MANU/SC/0011/1970: [1970]3SCR530 and Maneka Gandhi's case (supra), I am constrained to add a few words voicing my respectful dissent from those observations. Sarkaria, J. speaking on behalf of the majority judges has observed in the present case that the 'form and object test' or 'pith and substance rule' adopted by Kania, C.J. and Fazal Ali, J. in AK. Gopalan v. State of Madras (supra) is the same as the 'test of direct and inevitable effect' enunciated in R.C. Cooper's case and Maneka Gandhi's case and it has not been discarded or jettisoned by these two decisions. I cannot look with equipment on this attempt to resuscitate the obsolete 'form and object test' or 'pith and substance rule' which was evolved in A.K. Gopalan's case and which for a considerable number of years dwarfed the growth and development of fundamental rights and cut down their operational amplitude. This view proceeded on the assumption that certain articles in the Constitution exclusively deal with specific matters and where the requirement of an Article dealing with a particular matter in question is satisfied and there is no infringement of the fundamental right guaranteed by that Article, no recourse can be had to a fundamental right conferred by another Article and furthermore, in order to determine which is the fundamental right violated, the court must consider the pith and substance of the legislation and ask the question: what is the object of the legislature in enacting the legislation; what is the subject matter of the legislation and to which fundamental right does it relate. But this doctrine of exclusivity of fundamental rights was clearly and unequivocally over-ruled in R.C. Cooper's case by a majority of the Full Court, Ray, J. alone dissenting and so was the 'object and form test' or 'pith and substance rule' laid down in A.K. Gopalan's case. Shah, J. speaking on behalf of the majority Judges said in R.C. Cooper's case (supra)-

--it is not the object of the authority making the law impairing the right of a citizen, nor the form of action that determines the protection he can claim; it is the effect of the law and of the action upon the right which attract the jurisdiction of the court to grant relief. If this be the true view, and we think it is, in determining the impact of State action upon constitutional guarantees which are fundamental, it follows that the extent of protection against impairment of a fundamental right is determined not by the object of the Legislature nor by the form of the action, but by its direct operation upon the individual's rights.

We are of the view that the theory that the object and form of the State action determine the extent of protection which the aggrieved party may claim is not consistent with the constitutional scheme--.

In our judgment, the assumption in A.K. Gopalan's case that certain articles in the Constitution exclusively deal with specific matters and in determining whether there is infringement of the individual's guaranteed rights, the object and the form of the State

action alone need be considered and effect of the laws on fundamental rights of the individuals in general will be ignored cannot be accepted as correct.

This view taken in RC Cooper's case has since then been consistently followed in several decisions of which I may mention only a few, namely, Shambhu Nath Sarkar v. State of West Bengal MANU/SC/0537/1972: [1973]1SCR856 Haradan Saha v. State of West Bengal MANU/SC/0419/1974: 1974CriLJ1479 Khudham Das v. State of West Bengal MANU/SC/0423/1974: [1975]2SCR832 and Maneka Gandhi's case (supra). I cannot therefore assent to the proposition in the majority judgment that RC Cooper's case and Maneka Gandhi's case have not given a complete go by to the test of direct and indirect effect, some times described as 'form and object test' or 'pith and substance rule' evolved by Kania, CJ. and Fazal Ali, J. in A.K. Gopalan's case and that the 'pith and substance rule' still remains a valid rule for resolving the question of the constitutionality of a law assailed on the ground of its being violative of a fundamental right. Nor can I agree with the majority judgment when it says that it is Article 21 which deals with the right to life and not Article 19 and Section 302 of the Indian Penal Code is therefore not required to be tested on the touchstone of any one or more of the clauses of Article 19. This approach of the majority judgment not only runs counter to the decision in R.C. Cooper's case and other subsequent decisions of this Court including Maneka Gandhi's case but is also fraught with grave danger inasmuch as it seeks to put the clock back and reverse the direction in which the law is moving towards realisation of the full potential of fundamental rights as laid down in R.C. Cooper's case and Maneka Gandhi's case. It is significant to note that the doctrine of exclusivity enunciated in A.K. Gopalan's case led to the property rights under Article 19(1)(f) and 31 being treated as distinct and different rights traversing separate grounds, but this view was over-turned in Kochune's case MANU/SC/0019/1960: [1960]3SCR887 where this Court by a majority held that a law seeking to deprive a person of his property under Article 31 must be a valid law and it must therefore meet the challenge of other fundamental rights including Article 19(1)(f). this Court overruled the proposition laid down in State of Bombay v. Bhanji Munji MANU/SC/0034/1954: [1955]1SCR777 that Article 19(1)(f) read with Clause (5) postulates the existence of property which can be enjoyed and there fore if the owner is deprived of his property by a valid law under Article 31, there can be no question of exercising any rights' under Article 19(1)(f) in respect of such property. The court ruled that even if a law seeks to deprive a person of his property under Article 31, it must still, in order to be valid, satisfy the requirement of Article 19(1)(f) read with Clause (5). If this be the true position in regard to the inter-relation between Article 19(1)(f) and Article 31, it is difficult to see why a law authorising deprivation of the right to life under Article 21 should not have to meet the test of other fundamental rights including those set out in the different clauses of Article 19. But even if Section 302 in so far as it provides for imposition of death penalty as alternative punishment has to meet the challenge of Article 19, the question would still remain whether the 'direct and inevitable consequence' of that provision is to affect any of the rights guaranteed under that Article. That is a question on which I do not wish to express any definite opinion. It is sufficient for me to state that

the 'object and form test' or the 'pith and substance rule' has been completely discarded by (he decisions in RC Cooper's case and Maneka Gandhi's case and it is now settled law that in order to locate the fundamental right violated by a statute, the court must consider what is the direct and inevitable consequence of the statute. The impugned statute may in its direct and inevitable effect invade more than one fundamental right and merely because it satisfies the requirement of one fundamental right, it is not freed from the obligation to meet the challenge of another applicable Fundamental right.

80. These are the reasons for which I made my order dated May 9, 1980 declaring the death penalty provided under Section 302 of the Indian Penal Code read with Section 354 Sub-section (3) of the CrPC, 1973 as unconstitutional and void as being violative of Articles 14 and 21. I must express my profound regret at the long delay in delivering this judgment but the reason is that there was a considerable mass of material which had to collected from various sources and then examined and analysed and this took a large amount of time.

MANU/SC/0147/1961

Back to Section 304 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 195 of 1960

Decided On: 24.11.1961

K.M. Nanavati vs. State of Maharashtra

Hon'ble Judges/Coram:
K. Subba Rao, Raghubar Dayal and S.K. Das, JJ.

JUDGMENT
K. Subba Rao, J.

1. This appeal by special leave arises out of the judgment of the Bombay High Court sentencing Nanavati, the appellant, to life imprisonment for the murder of Prem Bhagwandas Ahuja, a businessman of Bombay.

2. This appeal presents the commonplace problem of an alleged murder by an enraged husband of a paramour of his wife: but it aroused considerable interest in the public mind by reason of the publication it received and the important constitutional point it had given rise to at the time of its admission.

3. The appellant was charged under s. 302 as well as under s. 304, Part I, of the Indian Penal Code and was tried by the Sessions Judge, Greater Bombay, with the aid of special jury. The jury brought in a verdict of "not guilty" by 8: 1 under both the sections; but the Sessions Judge did not agree with the verdict of the jury, as in his view the majority verdict of the jury was such that no reasonable body of men could, having regard to the evidence, bring in such a verdict. The learned Sessions Judge submitted the case under s. 307 of the Code of Criminal Procedure to the Bombay High Court after recording the grounds for his opinion. The said reference was heard by a division bench of the said High Court consisting of Shelat and Naik, JJ. The two learned Judges gave separate judgments, but agreed in holding that the accused was guilty of the offence of murder under s. 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life. Shelat, J., having held that there were misdirections to the jury, reviewed the entire evidence and came to the conclusion that the accused was clearly guilty of the offence of murder, alternatively, he expressed the view that the verdict of the jury was perverse, unreasonable and, in any event, contrary to the weight of evidence. Naik, J., preferred to base his conclusion on the alternative ground, namely, that no reasonable body of persons could have come to the conclusion arrived at by the jury. Both the learned Judges agreed that no case had been made out to reduce the offence from

murder to culpable homicide not amounting to murder. The present appeal has been preferred against the said conviction and sentence.

4. The case of the prosecution may be stated thus: This accused, at the time of the alleged murder, was second in command of the Indian Naval Ship "Mysore". He married Sylvia in 1949 in the registry office at Portsmouth, England. They have three children by the marriage, a boy aged 9 1/2 years a girl aged 5 1/2 years and another boy aged 3 years. Since the time of marriage, the couple were living at different places having regard to the exigencies of service of Nanavati. Finally, they shifted to Bombay. In the same city the deceased Ahuja was doing business in automobiles and was residing, along with his sister, in a building called "Shreyas" till 1957 and thereafter in another building called "Jivan Jyot" in Setalvad Road. In the year 1956, Agniks, who were common friends of Nanavatis and Ahujas, introduced Ahuja and his sister to Nanavatis. Ahuja was unmarried and was about 34 years of age at the time of his death, Nanavati, as a Naval Officer, was frequently going away from Bombay in his ship, leaving his wife and children in Bombay. Gradually, friendship developed between Ahuja and Sylvia, which culminated in illicit intimacy between them. On April 27, 1959, Sylvia confessed to Nanavati of her illicit intimacy with Ahuja. Enraged at the conduct of Ahuja, Nanavati went to his ship, took from the stores of the ship a semi-automatic revolver and six cartridges on a false pretext, loaded the same, went to the flat of Ahuja entered his bed-room and shot him dead. Thereafter, the accused surrendered himself to the police. He was put under arrest and in due course he was committed to the Sessions for facing a charge under s. 302 of the Indian Penal code.

5. The defence version, as disclosed in the statement made by the accused before the Sessions Court under s. 342 of the Code of Criminal Procedure and his deposition in the said Court, may be briefly stated: The accused was away with his ship from April 6, 1959, to April 18, 1959. Immediately after returning to Bombay, he and his wife went to Ahmednagar for about three days in the company of his younger brother and his wife. Thereafter, they returned to Bombay and after a few days his brother and his wife left them. After they had left, the accused noticed that his wife was behaving strangely and was not responsive or affectionate to him. When questioned, she used to evade the issue. At noon on April 27, 1959, when they were sitting in the sitting-room for the lunch to be served, the accused put his arm round his wife affectionately, when she seemed to go tense and unresponsive. After lunch, when he questioned her about her fidelity, she shook her head to indicate that she was unfaithful to him. He guessed that her paramour was Ahuja. As she did not even indicate clearly whether Ahuja would marry her and look after the children, he decided to settle the matter with him. Sylvia pleaded with him not go to Ahuja's house, as he might shoot him. Thereafter, he drove his wife, two of his children and a neighbour's child in his car to a cinema, dropped them there and promised to come and pick them up at 6 P.M. when the show ended. He then drove his car to his ship, as he wanted to get medicine for his sick dog, he represented to the authorities in the ship, that he wanted to draw a revolver and six rounds from the stores of the ship as

he was going to drive alone to Ahmednagar by night, though the real purpose was to shoot himself. On receiving the revolver and six cartridges, and put it inside a brown envelope. Then he drove his car to Ahuja's office, and not finding him there, he drove to Ahuja's flat, range the door bell, and, when it was opened by a servant, walked to Ahuja's bed-room, went into the bed-room and shut the door behind him. He also carried with him the envelope containing the revolver. The accused saw the deceased inside the bed-room, called him a filthy swine and asked him whether he would marry Sylvia and look after the children. The deceased retorted, "Am I to marry every woman I sleep with?" The accused became enraged, put the envelope containing the revolver on a cabnit nearby, and threatened to thrash the deceased. The deceased made a sudden move to grasp at the envelope, when the accused whipped out his revolver and told him to get back. A struggle ensued between the two and during that struggle two shots went off accidentally and hit Ahuja resulting in his death. After the shooting the accused went back to his car and drove it to the police station where he surrendered himself. This is broadly, omitting the details, the case of the defence.

6. It would be convenient to dispose of at the outset the questions of law raised in this case.

7. Mr. G. S. Pathak, learned counsel for the accused, raised before us the following points: (1) Under s. 307 of the Code of Criminal Procedure, the High Court should decide whether a reference made by a Sessions Judge was competent only on a perusal of the order of reference made to it and it had no jurisdiction to consider the evidence and come to a conclusion whether the reference was competent or not. (2) Under s. 307(3) of the said Code, the High Court had no power to set aside the verdict of a jury on the ground that there were misdirections in the charge made by the Sessions Judge. (3) There were no misdirections at all in the charge made by the Sessions Judge; and indeed his charge was fair to the prosecution as well to the accused. (4) The verdict of the jury was not perverse and it was such that a reasonable body of persons could arrive at it on the evidence placed before them. (5) In any view, the accused shot at the deceased under grave and sudden provocation, and therefore even if he had committed an offence, it would not be murder but only culpable homicide not amounting to murder.

8. Mr. Pathak elaborates his point under the first heading thus: Under s. 307 of the Code of Criminal Procedure, the High Court deals with the reference in two stages. In the first stage, the High Court has to consider, on the basis of the referring order, whether a reasonable body of persons could not have reached the conclusion arrived at by the jury; and, if it is of the view that such a body could have come to that opinion the reference shall be rejected as incompetent. At this stage, the High Court cannot travel beyond the order of reference, but shall confine itself only to the reasons given by the Sessions Judge. If, on a consideration of the said reasons, it is of the view that no reasonable body of persons could have come to that conclusion, it will then have to consider the entire evidence to ascertain whether the verdict of the jury is unreasonable. If the High Court

holds that the verdict of the jury is not unreasonable, in the case of a verdict of "not guilty", the High Court acquits the accused, and in the case where the verdict is one of "guilty" it convicts the accused. In case the High Court holds that the verdict of "not guilty", is unreasonable, it refers back the case to the Sessions Judge, who convicts the accused; thereafter the accused will have a right of appeal wherein he can attack the validity of his conviction on the ground that there were misdirections in the charge of the jury. So too, in the case of a verdict of "guilty" by the jury, the High Court, if it holds that the verdict is unreasonable, remits the matter to the Sessions Judge, who acquits the accused, and the State, in an appeal against that acquittal, may question the correctness of the said acquittal on the ground that the charge to the jury was vitiated by misdirections. In short, the argument may be put in three propositions, namely, (i) the High Court rejects the reference as incompetent, if on the face of the reference the verdict of the jury does not appear to be unreasonable, (ii) if the reference is competent, the High Court can consider the evidence to come to a definite conclusion whether the verdict is unreasonable or not, and (iii) the High Court has no power under s. 307 of the Code of Criminal Procedure to set aside the verdict of the jury on the ground that it is vitiated by misdirections in the charge to the jury.

9. The question raised turns upon the construction of the relevant provisions of the Code of Criminal Procedure. The said Code contains two fascicule of sections dealing with two different situations. Under s. 268 of the Code, "All trials before a Court of Session shall be either by jury, or by the Judge himself." Under s. 297 thereof:

"In cases tried by jury, when the case for the defence and the prosecutor's reply, if any, are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided....."
10. Section 298 among other imposes a duty on a judge to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to be proved, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties, and to decide upon all matters of fact which it is necessary to prove in order to enable evidence of particular matter to be given. It is the duty of the jury "to decide which view of the facts is true and then to return the verdict which under such view ought, according to the directions of the Judges, to be returned." After charge to the jury, the jury retire to consider their verdict and, after due consideration, the foreman of the jury informs the Judge what is their verdict or what is the verdict of the majority of the jurors.

11. Where the Judge does not think it necessary to disagree with the verdict of the jurors or of the majority of them, he gives judgment accordingly. If the accused is acquitted, the Judge shall record a verdict of acquittal; if the accused is convicted, the Judge shall pass sentence on him according to law. In the case of conviction, there is a right of appeal

under s. 410 of the Code, and in a case of acquittal, under s. 417 of the Code, to the High Court. But s. 418 of the Code provides:

"(1) An appeal may lie on a matter of fact as well as a matter of law except where the trial was by jury, in which case the appeal shall lie on a matter of law only."
12. Sub-section (2) thereof provides for a case of a person sentenced to death, with which we are not now concerned. Section 423 confers certain powers on an appellate Court in the matter of disposing of an appeal, such as calling for the record, hearing of the pleaders, and passing appropriate orders therein. But sub-s. (2) of s. 423 says:

"Nothing herein contained shall authorise the Court to alter or reverse the verdict of the jury, unless it is of opinion that such verdict is erroneous owning to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him."
13. It may be noticed at this stage, as it will be relevant in considering one of the arguments raised in this case, that sub-s. (2) does not confer any power on an appellate court, but only saves the limitation on the jurisdiction of an appellate court imposed under s. 418 of the Code. It is, therefore, clear that in an appeal against conviction or acquittal in a jury trial, the said appeal is confined only to a matter of law.

14. The Code of Criminal Procedure also provides for a different situation. The Sessions Judge may not agree with the verdict of the jurors or the majority of them; and in that event s. 307 provides for a machinery to meet that situation. As the argument mainly turns upon the interpretation of the provisions of this section, it will be convenient to read the relevant clauses thereof.

15. Section 307: (1) If in any such case the Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which any accused person has been tried, and is clearly of opinion that it is necessary for the ends of justice to submit the case in respect of such accused person to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed, and in such case, if the accused is further charged under the provisions of section 310, shall proceed to try him on such charge as if such verdict had been one of conviction.

16. (3) In dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal, and subject thereto it shall, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury, acquit or convict such accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

17. This section is a clear departure from the English law. There are good reasons for its enactment. Trial by jury outside the Presidency Towns was first introduced in the Code

of Criminal Procedure of 1861, and the verdict of the jury was, subject to re-trial on certain events, final and conclusive. This led to miscarriage of justice through jurors returning erroneous verdicts due to ignorance and inexperience. The working of the system was reviewed in 1872, by a Committee appointed for that purpose and on the basis of the report of the said Committee, s. 262 was introduced in the Code of 1872. Under that section, where there was difference of view between the jurors and the judge, the Judge was empowered to refer the case to the High Court in the ends of justice, and the High Court dealt with the matter as an appeal. But in 1882 the section was amended and under the amended section the condition for reference was that the High Court should differ from the jury completely; but in the Code of 1893 the section was amended practically in terms as it now appears in the Code. The history of the legislation shows that the section was intended as a safeguard against erroneous verdicts of inexperienced jurors and also indicates the clear intention of the Legislature to confer on a High Court a separate jurisdiction, which for convenience may be described as "reference jurisdiction". Section 307 of the Code of Criminal Procedure, while continuing the benefits of the jury system to persons tride by a Court of Session, also guards against any possible injustice, having regard to the conditions obtaining in India. It is, therefore clear that there is an essential difference between the scope of the jurisdiction of the High Court in disposing of an appeal against a conviction or acquittal, as the case may be, in a jury trial, and that in a case submitted by the Sessions Judge when he differs from the verdict of the jury: in the former the acceptance of the verdict of the jury by the Sessions Judge is considered to be sufficient guarantee against its perversity and therefore an appeal is provided only on questions of law, whereas in the latter the absence of such agreement necessitated the conferment of a larger power on the High Court in the matter of interfering with the verdict of the jury.

18. Under s. 307(1) of the Code, the obligation cast upon the Sessions Judge to submit the case to the High Court is made subject to two conditions, namely, (1) the Judge shall disagree with the verdict of the jurors, and (2) he is clearly of the opinion that it is necessary in the ends of justice to submit the case to the High Court. If the two conditions are complied with, he shall submit the case, recording the grounds of his opinion. The words "for the ends of justice" are comprehensive, and coupled with the words "is clearly of opinion", they give the Judge a discretion to enable him to exercise his power under different situations, the only criterion being his clear opinion that the reference is in the ends of justice. But the Judicial Committee, in Ramanugrah Singh v. King Emperor (1946) L.R. 173, IndAp 174, construed the words "necessary for the ends of justice" and laid down that the words mean that the Judge shall be of the opinion that the verdict of the jury is one which no reasonable body of men could have reached on the evidence. Having regard to that interpretation, it may be held that the second condition for reference is that the Judge shall be clearly of the opinion that the verdict is one which no reasonable body of men could have reached on the evidence. It follows that if a Judge differs from the jury and is clearly of such an opinion, he shall submit the case to the High Court recording the grounds of his opinion. In that event, the said reference is clearly competent. If on the

other hand, the case submitted to the High Court does not ex facie show that the said two conditions have been complied with by the Judge, it is incompetent. The question of competency of the reference does not depend upon the question whether the Judge is justified in differing from the jury or forming such an opinion on the verdict of the jury. The argument that though the Sessions Judge has complied with the conditions necessary for making a reference, the High Court shall reject the reference as incompetent without going into the evidence if the reasons given do not sustain the view expressed by the Sessions Judge, is not supported by the provisions of sub-s. (1) of s. 307 of the Code. But it is said that it is borne out of the decision of the Judicial Committee in Ramanugrah Singh's case [(1946) L.R. 73, I.A. 174, 182, 186]. In that case the Judicial Committee relied upon the words "ends of justice" and held that the verdict was one which no reasonable body of men could have reached on the evidence and further laid down that the requirements of the ends of justice must be the determining factor both for the Sessions Judge in making the reference and for the High Court in disposing of it. The Judicial Committee observed:

"In general, if the evidence is such that it can properly support a verdict either of guilty or not guilty, according to the view taken of it by the trial court, and if the jury take one view of the evidence and the judge thinks that they should have taken the other, the view of the jury must prevail, since they are the judges of fact. In such a case a reference is not justified, and it is only by accepting their view that the High Court can give due weight to the opinion of the jury. If, however, the High Court considers that on the evidence no reasonable body of men could have reached the conclusion arrived at by the jury, then the reference was justified and the ends of justice require that the verdict be disregarded."
19. The Judicial Committee proceeded to state:

"In their Lordships' opinion had the High Court approached the reference on the right lines and given due weight to the opinion of the jury they would have been bound to hold that the reference was not justified and that the ends of justice did not require any interference with the verdict of the jury."
20. Emphasis is laid on the word "justified", and it is argued that the High Court should reject the reference as incompetent if the reasons given by the Sessions Judge in the statement of case do not support his view that it is necessary in the ends of the justice to refer the case to the High Court. The Judicial Committee does not lay down any such proposition. There, the jury brought in a verdict of not "guilty" under s. 302, Indian Penal Code. The Sessions Judge differed from the jury and made a reference to the High Court. The High Court accepted the reference and convicted the accused and sentenced him to transportation for life. The Judicial Committee held, on the facts of that case, that the High Court was not justified in the ends of justice to interfere with the verdict of the jury. They were not dealing with the question of competency of a reference but only with that of the justification of the Sessions Judge in making the reference, and the High Court in accepting it. It was also not considering a case of any disposal of the reference by the High Court on the basis of the reasons given in the reference, but were dealing with a case

where the High Court on a consideration of the entire evidence accepted the reference and the Judicial Committee held on the evidence that there was no justification for the ends of justice to accept it. This decision, therefore, has no bearing on the competency of a reference under s. 307(1) of the Code of Criminal Procedure.

21. Now, coming to sub-s. (3) of s. 307 of the Code, it is in two parts. The first part says that the High Court may exercise any of the powers which it may exercise in an appeal. Under the second part, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury, the High Court shall acquit or convict the accused. These parts are combined by the expression "and subject thereto". The words "subject thereto" were added to the section by an amendment in 1896. This expression gave rise to conflict of opinion and it is conceded that it lacks clarity. That may be due to the fact that piecemeal amendments have been made to the section from time to time to meet certain difficulties. But we cannot ignore the expression, but we must give it a reasonable construction consistent with the intention of the Legislature in enacting the said section. Under the second part of the section, special jurisdiction to decide a case referred to it is conferred on the High Court. It also defines the scope of its jurisdiction and its limitations. The High Court can acquit or convict an accused of an offence of which the jury could have convicted him, and also pass such sentence as might have been passed by the Court of Session. But before doing so, it shall consider the entire evidence and give due weight to the opinions of the Sessions Judge and the jury. The second part does not confer on the High Court any incidental procedural powers necessary to exercise the said jurisdiction in a case submitted to it, for it is neither an appeal nor a revision. The procedural powers are conferred on the High Court under the first part. The first part enables the High Court to exercise any of the powers which it may exercise in appeal, for without such powers it cannot exercise its jurisdiction effectively. But the expression "subject to" indicates that in exercise of its jurisdiction in the manner indicated by the second part, it can call in aid only any of the powers of an appellate court, but cannot invoke a power other than that conferred on an appellate court. The limitation on the second part implied in the expression "subject thereto" must be confined to the area of the procedural powers conferred on a appellate court. If that be the construction, the question arises, how to reconcile the provisions of s. 423(2) with those of s. 307 of the Code? Under sub-s. (2) of s. 423:

"Nothing herein contained shall authorise the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him."
22. It may be argued that, as an appellate court cannot alter or reverse the verdict of a jury unless such a verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him, the High Court, in exercise of its jurisdiction under s. 307 of the Code, likewise could not do so except for the said reasons. Sub-section (2) of s. 423 of the Code does not confer any power of the High Court; it only restates the scope of the limited jurisdiction conferred on the court

under s. 418 of the Code, and that could not have any application to the special jurisdiction conferred on the High Court under s. 307. That apart, a perusal of the provisions of s. 423(1) indicates that there are powers conferred on an appellate court which cannot possibly be exercised by courts disposing of a reference under s. 307 of the Code, namely, the power to order commitment etc. Further s. 423(1)(a) and (b) speak of conviction, acquittal, finding and sentence, which are wholly inappropriate to verdict of a jury. Therefore, a reasonable construction will be that the High Court can exercise any of the powers conferred on an appellate court under s. 423 or under other sections of the Code which are appropriate to the disposal of a reference under s. 307. The object is to prevent miscarriage of the justice by the jurors returning erroneous or perverse verdict. The opposite construction defeats this purpose, for it equates the jurisdiction conferred under s. 307 with that of an appellate court in a jury trial. That construction would enable the High Court to correct an erroneous verdict of a jury only in a case of misdirection by the Judge but not in a case of fair and good charge. This result effaces the distinction between the two types of jurisdiction. Indeed, learned counsel for the appellant has taken a contrary position. He would say that the High Court under s. 307(3) could not interfere with the verdict of the jury on the ground that there were misdirections in the charge to the jury. This argument is built upon the hypothesis that under the Code of Criminal Procedure there is a clear demarcation of the functions of the jury and the Judge, the jury dealing with facts and the Judge with law, and therefore the High Court could set aside a verdict on the ground of misdirection only when an appeal comes to it under s. 418 and could only interfere with the verdict of the jury for the ends of justice, as interpreted by the Privy Council, when the matter comes to it under s. 307(3). If this interpretation be accepted, we would be attributing to the Legislature an intention to introduce a circuitous method and confusion in the disposal of criminal cases. The following illustration will demonstrate the illogical result of the argument. The jury brings in a verdict of "guilty" on the basis of a charge replete with misdirections; the Judge disagrees with that verdict and states the case to the High Court; the High Court holds that the said verdict is not erroneous on the basis of the charge, but is of the opinion that the verdict is erroneous because of the misdirections in the charge; even so, it shall hold that the verdict of the jury is good and reject the reference thereafter, the Judge has to accept the verdict and acquit the accused; the prosecution then will have to prefer an appeal under s. 417 of the Code on the ground that the verdict was induced by the misdirections in the charge. This could not have been the intention of the Legislature. Take the converse case. On similar facts, the jury brings in a verdict of "guilty"; the Judge disagrees with the jury and makes a reference to the High Court; even though it finds misdirections in the charge to the jury, the High Court cannot set aside the conviction but must reject the reference; and after the conviction, the accused may prefer an appeal to the High Court. This procedure will introduce confusion in jury trials, introduce multiplicity of proceedings, and attribute ineptitude to the Legislature. What is more, this construction is not supported by the express provisions of s. 307(3) of the Code. The said sub-section enables the High Court to consider the entire evidence, to give due weight to the opinions of the Sessions Judge and the jury, and to acquit or convict the accused. The key words in the sub-section are

"giving due weight to the opinions of the Sessions Judge and the jury". The High Court shall give weight to the verdict of the jury; but the weight to be given to a verdict depends upon many circumstances - it may be one that no reasonable body of persons could come to; it may be a perverse verdict; it may be a divided verdict and may not carry the same weight as the united one does; it may be vitiated by misdirections or non-directions. How can a Judge give any weight to a verdict if it is induced and vitiated by grave misdirections in the charge? That apart, the High Court has to give due weight to the opinion of the Sessions Judge. The reasons for the opinion of the Sessions Judge are disclosed in the case submitted by him to the High Court. If the case stated by the Sessions Judge discloses that there must have been misdirections in the charge, how can the High Court ignore them in giving due weight to his opinion? What is more, the jurisdiction of the High Court is couched in very wide terms in sub-s. (3) of s. 307 of the Code: it can acquit or convict an accused. It shall take into consideration the entire evidence in the case; it shall give due weight to the opinions of the Judge and the jury; it combines in itself the functions of the Judge and jury; and it is entitled to come to its independent opinion. Tee phraseology used does not admit of an expressed or implied limitation on the jurisdiction of the High Court.

23. It appears to us that the Legislature designedly conferred a larger power on the High Court under s. 307(3) of the Code than that conferred under s. 418 thereof, as in the former case the Sessions Judge differs from the jury while in the latter he agrees with the jury.

24. The decisions cited at the Bar do not in any way sustain in narrow construction sought to be placed by learned counsel on s. 307 of the Code. In Ramanugrah Singh's case [(1945-46) L.R. 73 I.A. 174, 182], which has been referred to earlier, the Judicial Committee described the wide amplitude of the power of the High Court in the following terms:

"The Court must consider the whole case and give due weight to the opinions of the Sessions Judge and jury, and then acquit or convict the accused."
25. The Judicial Committee took care to observe:

".....the test of reasonableness on the part of the jury may not be conclusive in every case. It is possible to suppose a case in which the verdict was justified on the evidence placed before the jury, but in the light of further evidence placed before the High Court the verdict is shown to be wrong. In such a case the ends of justice would require the verdict to be set aside though the jury had not acted unreasonably."
26. This passage indicates that the Judicial Committee did not purport to lay down exhaustively the circumstances under which the High Court could interfere under the said sub-section with the verdict of the jury. This Court in Akhlakali Hayatalli v. The State of Bombay MANU/SC/0137/1953: 1954CriLJ451 accepted the view of the Judicial Committee on the construction of s. 307 of the Code of Criminal Procedure, and applied it to the facts of that case. But the following passage of this Court indicates that it also

does not consider the test of reasonableness as the only guide in interfering with the verdict of the jury:

"The charge was not attacked before the High Court nor before us as containing any misdirections or non-directions to the jury such as to vitiate the verdict."

27. This passage recognizes the possibility of interference by the High Court with the verdict of the jury under the said sub-section if the verdict is vitiated by misdirections or non-directions. So too, the decision of this Court in Ratan Rai v. State of Bihar [1957] S.C.R. 273 assumes that such an interference is permissible if the verdict of the jury was vitiated by misdirections. In that case, the appellants were charged under Sections 435 and 436 of the Indian Penal Code and were tried by a jury, who returned a majority verdict of "guilty". The Assistant Sessions Judge disagreed with the said verdict and made a reference to the High Court. At the hearing of the reference the counsel for the appellants contended that the charge to the jury was defective, and did not place the entire evidence before the Judges. The learned Judges of the High Court considered the objections as such and nothing more, and found the appellants guilty and convicted them. This Court, observing that it was incumbent on the High Court to consider the entire evidence and the charge as framed and placed before the jury and to come to its own conclusion whether the evidence was such that could properly support the verdict of guilty against the appellants, allowed the appeal and remanded the matter to the High Court for disposal in accordance with the provisions of s. 307 of the Code of Criminal Procedure. This decision also assumes that a High Court could under s. 307(3) of the Code of Criminal Procedure interfere with the verdict of the jury, if there are misdirections in the charge and holds that in such a case it is incumbent on the court to consider the entire evidence and to come to its own conclusion, after giving due weight to the opinions of the Sessions Judge, and the verdict of the jury. This Court again in Sashi Mohan Debnath v. The State of West Bengal [1958] S.C.R. 960, held that where the Sessions Judge disagreed with the verdict of the jury and was of the opinion that the case should be submitted to the High Court, he should submit the whole case and not a part of it. There, the jury returned a verdict of "guilty" in respect of some charges and "not guilty" in respect of others. But the Sessions Judge recorded his judgment of acquittal in respect of the latter charges in agreement with the jury and referred the case to the High Court only in respect of the former. This Court held that the said procedure violated sub-s. (2) of s. 307 of the Code of Criminal Procedure and also had the effect of preventing the High Court from considering the entire evidence against the accused and exercising its jurisdiction under sub-s. (3) of s. 307 of the said Code. Imam, J., observed that the reference in that case was incompetent and that the High Court could not proceed to exercise any of the powers conferred upon it under sub-s. (3) of s. 307 of the Code, because the very foundation of the exercise of that power was lacking, the reference being incompetent. This Court held that the reference was incompetent because the Sessions Judge contravened the express provisions of sub-s. (2) of s. 307 of the Code, for under that sub-section whenever a Judge submits a case under that section, he shall not record judgment of acquittal or of conviction on any of the charges on which such accused has

been tried, but he may either remand such accused to custody or admit him to bail. As in that case the reference was made in contravention of the express provisions of sub-s. (2) of s. 307 of the Code and therefore the use of the word 'incompetent' may not be inappropriate. The decision of a division bench of the Patna High Court in Emperor v. Ramadhar Kurmi A.I.R. 1948 Pat. 79 may usefully be referred to as it throws some light on the question whether the High Court can interfere with the verdict of the jury when it is vitiated by serious misdirections and non-directions. Das, J., observed:

"Where, however, there is misdirection, the principle embodied in s. 537 would apply and if the verdict is erroneous owing to the misdirection, it can have no weight on a reference under s. 307 as on an appeal."

28. It is not necessary to multiply decisions. The foregoing discussion may be summarized in the form of the following propositions: (1) The competency of a reference made by a Sessions Judge depends upon the existence of two conditions, namely, (i) that he disagrees with the verdict of the jurors, and (ii) that he is clearly of the opinion that the verdict is one which no reasonable body of men could have reached on the evidence, after reaching that opinion, in the case submitted by him he shall record the grounds of his opinion. (2) If the case submitted shows that the conditions have not been complied with or that the reasons for the opinion are not recorded, the High Court may reject the reference as incompetent: the High Court can also reject it if the Sessions Judge has contravened sub-s. (2) of s. 307. (3) If the case submitted shows that the Sessions Judge has disagreed with the verdict of the jury and that he is clearly of the opinion that no reasonable body of men could have reached the conclusion arrived at by the jury, and he discloses his reasons for the opinion, sub-s. (3) of s. 307 of the Code comes into play, and thereafter the High Court has an obligation to discharge its duty imposed thereunder. (4) Under sub-s. (3) of s. 307 of the Code, the High Court has to consider the entire evidence and, after giving due weight to the opinions of the Sessions Judge and the jury, acquit or convict the accused. (5) The High Court may deal with the reference in two ways, namely, (i) if there are misdirections vitiating the verdict, it may, after going into the entire evidence, disregard the verdict of the jury and come to its own conclusion, and (ii) even if there are no misdirections, the High Court can interfere with the verdict of the jury if it finds the verdict "perverse in the sense of being unreasonable", "manifestly wrong", or "against the weight of evidence", or, in other words, if the verdict is such that no reasonable body of men could have reached on the evidence. (6) In the disposal of the said reference, the High Court can exercise any of the procedural powers appropriate to the occasion, such as, issuing of notice, calling for records, remanding the case, ordering a retrial, etc. We therefore, reject the first contention of learned counsel for the appellant.

29. The next question is whether the High Court was right in holding that there were misdirections in the charge to the jury. Misdirection is something which a judge in his charge tells the jury and is wrong or in a wrong manner tending to mislead them. Even an omission to mention matters which are essential to the prosecution or the defence case in order to help the jury to come to a correct verdict may also in certain circumstances

amount to a misdirection. But, in either case, every misdirection or non-direction is not in itself sufficient to set aside a verdict, but it must be such that it has occasioned a failure of justice.

30. In Mushtak Hussein v. The State of Bombay MANU/SC/0026/1953: [1953]4SCR809, this Court laid down:

"Unless therefore it is established in a case that there has been a serious misdirection by the judge in charging the jury which has occasioned a failure of justice and has misled the jury in giving its verdict, the verdict of the jury cannot be set aside."
31. This view has been restated by this Court in a recent decision, viz., Smt. Nagindra Bala Mitra v. Sunil Chandra Roy MANU/SC/0074/1960: 1960CriLJ1020.

32. The High Court in its judgment referred to as many as six misdirections in the charge to the jury which in its view vitiated the verdict, and it also stated that there were many others. Learned counsel for the appellant had taken each of the said alleged misdirections and attempted to demonstrate that they were either no misdirections at all, or even if they were, they did not in any way affect the correctness of the verdict.

33. We shall now take the first and the third misdirections pointed out by Shelat, J., as they are intimately connected with each other. They are really omissions. The first omission is that throughout the entire charge there is no reference to s. 105 of the Evidence Act or to the statutory presumption laid down in that section. The second omission is that the Sessions Judge failed to explain to the jury the legal ingredients of s. 80 of the Indian Penal code, and also failed to direct them that in law the said section was not applicable to the facts of the case. To appreciate the scope of the alleged omissions, it is necessary to read the relevant provisions.

34. Section 80 of the Indian Penal Code.

"Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution. "
35. Evidence Act.

36. Section 103: "The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. "

37. Section 105: "When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (XLV of 1860) or within any special exception or proviso contained in

any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances. "

38. Section 3: "In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:-

39. A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

40. Section 4:..... "Whenever it is directed by this Act that the court shall presume a fact, it shall regard such fact as proved unless and until it is disproved."

41. The legal impact of the said provisions on the question of burden of proof may be stated thus: In India, as it is in England, there is a presumption of innocence in favour of the accused as a general rule, and it is the duty of the prosecution to prove the guilt of the accused; to put it in other words, the accused is presumed to be innocent until his guilt is established by the prosecution. But when an accused relies upon the General Exceptions in the Indian Penal Code or on any special exception or proviso contained in any other part of the Penal Code, or in any law defining an offence, s. 105 of the Evidence Act raises a presumption against the accused and also throws a burden on him to rebut the said presumption. Under that section the Court shall presume the absence of circumstances bringing the case within any of the exceptions, that is, the Court shall regard the non-existence of such circumstances as proved till they are disproved.

An illustration based on the facts of the present case may bring out the meaning of the said provision. The prosecution alleges that the accused intentionally shot the deceased; but the accused pleads that, though the shots emanated from his revolver and hit the deceased, it was by accident, that is, the shots went off the revolver in the course of a struggle in the circumstances mentioned in s. 80 of the Indian Penal Code and hit the deceased resulting in his death. The Court then shall presume the absence of circumstances bringing the case within the provisions of s. 80 of the Indian Penal Code, that is, it shall presume that the shooting was not by accident, and that the other circumstances bringing the case within the exception did not exist; but this presumption may be rebutted by the accused by adducing evidence to support his plea of accident in the circumstances mentioned therein. This presumption may also be rebutted by admissions made or circumstances elicited by the evidence led by the prosecution or by the combined effect of such circumstances and the evidence adduced by the accused. But the section does not in any way affect the burden that lies on the prosecution to prove all the ingredients of the offence with which the accused is charged: that burden never shifts. The alleged conflict between the general burden which lies on the prosecution and the special burden imposed on the accused under s. 105 of the Evidence Act is more

imaginary than real. Indeed, there is no conflict at all. There may arise three different situations: (1) A statute may throw the burden of proof of all or some of the ingredients of an offence on the accused: (see Sections 4 and 5 of the Prevention of Corruption Act). (2) The special burden may not touch the ingredients of the offence, but only the protection given on the assumption of the proof of the said ingredients: (see Sections 77, 78, 79, 81 and 88 of the Indian Penal Code). (3) It may relate to an exception, some of the many circumstances required to attract the exception if proved affecting the proof of all or some of the ingredients of the offence: (see s. 80 of the Indian Penal Code). In the first case the burden of proving the ingredients or some of the ingredients of the offence, as the case may be, lies on the accused. In the second case, the burden of bringing the case under the exception lies on the accused. In the third case, though the burden lies on the accused to bring his case within the exception, the facts proved may not discharge the said burden, but may affect the proof of the ingredients of the offence. An illustration may bring out the meaning. The prosecution has to prove that the accused shot dead the deceased intentionally and thereby committed the offence of murder within the meaning of s. 300 of the Indian Penal Code; the prosecution has to prove the ingredients of murder, and one of the ingredients of that offence is that the accused intentionally shot the deceased; the accused pleads that he shot at the deceased by accident without any intention or knowledge in the doing of a lawful act in a lawful manner by lawful means with proper care and caution; the accused against whom a presumption is drawn under s. 105 of the Evidence Act that the shooting was not by accident in the circumstances mentioned in s. 80 of the Indian Penal Code, may adduce evidence to rebut that presumption. That evidence may not be sufficient to prove all the ingredients of s. 80 of the Indian Penal Code, but may prove that the shooting was by accident or inadvertence, i.e., it was done without any intention or requisite state of mind, which is the essence of the offence, within the meaning of s. 300, Indian Penal Code, or at any rate may throw a reasonable doubt on the essential ingredients of the offence of murder. In that event though the accused failed to bring his case within the terms of s. 80 of the Indian Penal Code, the Court may hold that the ingredients of the offence have not been established or that the prosecution has not made out the case against the accused. In this view it might be said that the general burden to prove the ingredients of the offence, unless there is a specific statute to the contrary, is always on the prosecution, but the burden to prove the circumstances coming under the exceptions lies upon the accused. The failure on the part of the accused to establish all the circumstances bringing his case under the exception does not absolve the prosecution to prove the ingredients of the offence; indeed, the evidence, though insufficient to establish the exception, may be sufficient to negative one or more of the ingredients of the offence.

42. The English decisions relied upon by Mr. Pathak, learned counsel for the accused, may not be of much help in construing the provisions of s. 105 of the Indian Evidence Act. We would, therefore, prefer not to refer to them, except to one of the leading decisions on the subject, namely, Woolmington v. The Director of Public Prosecutions L.R. (1935) A.C. 462. The headnote in that decision gives its gist, and it read:

"In a trial for murder the Crown must prove death as the result of a voluntary act of the prisoner and malice of the prisoner. When evidence of death and malice has been given, the prisoner is entitled to show by evidence or by examination of the circumstances adduced by the Crown that the act on his part which caused death was either unintentional or provoked. If the jury are either satisfied with his explanation or, upon a review of all the evidence, are left in reasonable doubt whether, even if his explanation be not accepted, the act was unintentional or provoked, the prisoner is entitled to be acquitted. "

43. In the course of the judgment Viscount Sankey, L.C., speaking for the House, made the following observations:

"But while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence..... Throughout the web of the English Criminal Law one golden thread is always to be seen that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner, as to whether the prisoner killed the deceased with a malicious intention, the prosecution has not made out the case and the prisoner is entitled to an acquittal."

44. These passages are not in conflict with the opinion expressed by us earlier. As in England so in India, the prosecution must prove the guilt of the accused, i.e., it must establish all the ingredients of the offence with which he is charged. As in England so also in India, the general burden of proof is upon the prosecution; and if, on the basis of the evidence adduced by the prosecution or by the accused, there is a reasonable doubt whether the accused committed the offence, he is entitled to the benefit of doubt. In India if an accused pleads an exception within the meaning of s. 80 of the Indian Penal Code, there is a presumption against him and the burden to rebut that presumption lies on him. In England there is no provision similar to s. 80 of the Indian Penal Code, but Viscount Sankey, L.C., makes it clear that such a burden lies upon the accused if his defence is one of insanity and in a case where there is a statutory exception to the general rule of burden of proof. Such an exception we find in s. 105 of the Indian Evidence Act. Reliance is placed by learned counsel for the accused on the decision of the Privy Council in Attygalle v. Emperor A.I.R. 1936 P.C. 169 in support of the contention that notwithstanding s. 105 of the Evidence Act, the burden of establishing the absence of accident within the meaning of s. 80 of the Indian Penal Code is on the prosecution. In that case, two persons were prosecuted, one for performing an illegal operation and the other for abetting him in that crime. Under s. 106 of the Ordinance 14 of 1895 in the Ceylon Code, which corresponds to s. 106 of the Indian Evidence Act, it was enacted that when any fact was especially within the knowledge of any person, the burden of proving that fact was upon him. Relying upon that section, the Judge in his charge to the jury said:

"Miss Maye - that is the person upon whom the operation was alleged to have been performed - was unconscious and what took place in that room that three-quarters of an hour that she was under chloroform is a fact specially within the knowledge of these two accused who were there. The burden of proving that fact, the law says, is upon him, namely that no criminal operation took place but what took place was this and this speculum examination."

45. The Judicial Committee pointed out:

"It is not the law of Ceylon that the burden is cast upon an accused person of proving that no crime has been committed. The jury might well have thought from the passage just quoted that that was in fact a burden which the accused person had to discharge. The summing-up goes on to explain the presumption of innocence in favour of accused persons, but it again reiterates that the burden of proving that no criminal operation took place is on the two accused who were there."

46. The said observations do not support the contention of learned counsel. Section 106 of Ordinance 14 of 1895 of the Ceylon Code did not cast upon the accused a burden to prove that he had not committed any crime; nor did it deal with any exception similar to that provided under s. 80 of the Indian Penal Code. It has no bearing on the construction of s. 105 of the Indian Evidence Act. The decisions of this Court in The State of Madras v. A. Vaidyanatha Iyer MANU/SC/0108/1957: 1958CriLJ232, which deals with s. 4 of the Prevention of Corruption Act, 1947, and C.S.D. Swami v. The State MANU/SC/0025/1959: 1960CriLJ131, which considers the scope of s. 5(3) of the said Act, are examples of a statute throwing the burden of proving and even of establishing the absence of some of the ingredients of the offence on the accused; and this Court held that notwithstanding the general burden on the prosecution to prove the offence, the burden of proving the absence of the ingredients of the offence under certain circumstances was on the accused. Further citations are unnecessary as, in our view, the terms of s. 105 of the Evidence Act are clear and unambiguous.

47. Mr. Pathak contends that the accused did not rely upon any exception within the meaning of s. 80 of the Indian Penal Code and that his plea all through has been only that the prosecution has failed to establish intentional killing on his part. Alternatively, he argues that as the entire evidence has been adduced both by the prosecution and by the accused, the burden of proof became only academic and the jury was in a position to come to one conclusion or other on the evidence irrespective of the burden of proof. Before the Sessions Judge the accused certainly relied upon s. 80 of the Indian Penal Code, and the Sessions Judge dealt with the defence case in his charge to the jury. In paragraph 6 of the charge, the learned Sessions Judge stated:

"Before I proceed further I have to point out another section which is section 80. You know by now that the defence of the accused is that the firing of the revolver was a matter of accident during a struggle for possession of the revolver. A struggle or a fight by itself does not exempt a person. It is the accident which exempts a person from criminal

liability because there may be a fight, there may be a struggle and in the fight and in the struggle the assailant may over-power the victim and kill the deceased so that a struggle or a fight by itself does not exempt an assailant. It is only an accident, whether it is in struggle or a fight or otherwise which can exempt an assailant. It is only an accident, whether it is in a struggle or a fight of otherwise which can exempt a prisoner from criminal liability. I shall draw your attention to section 80 which says:..... (section 80 read). You know that there are several provisions which are to be satisfied before the benefit of this exception can be claimed by an accused person and it should be that the act itself must be an accident or misfortune, there should be no criminal intention or knowledge in the doing of that act, that act itself must be done in a lawful manner and it must be done by lawful means and further in the doing of it, you must do it with proper care and caution. In this connection, therefore, even while considering the case of accident, you will have to consider all the factors, which might emerge from the evidence before you, whether it was proper care and caution to take a loaded revolver without a safety catch to the residence of the person with whom you were going to talk and if you do not get an honourable answer you were prepared to thrash him. You have also to consider this further circumstance whether it is an act with proper care and caution to keep that loaded revolver in the hand and thereafter put it aside, whether that is taking proper care and caution. This is again a question of fact and you have to determine as Judges of fact, whether the act of the accused in this case can be said to be an act which was lawfully done in a lawful manner and with proper care and caution. If it is so, then and only then can you call it accident or misfortune. This is a section which you will bear in mind when you consider the evidence in this case."

48. In this paragraph the learned Sessions Judge mixed up the ingredients of the offence with those of the exception. He did not place before the jury the distinction in the matter of burden of proof between the ingredients of the offence and those of the exception. He did not tell the jury that where the accused relied upon the exception embodied in s. 80 of the Indian Penal Code, there was a statutory presumption against him and the burden of proof was on him to rebut that presumption. What is more, he told the jury that it was for them to decide whether the act of the accused in the case could be said to be an act which was lawfully done in a lawful manner with proper care and caution. This was in effect abdicating his functions in favour of the jury. He should have explained to them the implications of the terms "lawful act", "lawful manner", "lawful means" and "with proper care and caution" and pointed out to them the application of the said legal terminology to the facts of the case. On such a charge as in the present case, it was not possible for the jury, who were laymen, to know the exact scope of the defence and also the circumstances under which the plea under s. 80 of the Indian Penal Code was made out. They would not have also known that if s. 80 of the Indian Penal Code applied, there was a presumption against the accused and the burden of proof to rebut the presumption was on him. In such circumstances, we cannot predicate that the jury understood the legal implications of s. 80 of the Indian Penal Code and the scope of the burden of proof under s. 105 of the Evidence Act, and gave their verdict correctly. Nor can we say that the jury understood the distinction between the ingredients of the offence and the circumstances

that attract s. 80 of the Indian Penal Code and the impact of the proof of some of the said circumstances on the proof of the ingredients of the offence. The said omissions therefore are very grave omissions which certainly vitiated the verdict of the jury.

49. The next misdirection relates to the question of grave and sudden provocation. On this question, Shelat, J., made the following remarks:

"Thus the question whether a confession of adultery by the wife of accused to him amounts to grave and sudden provocation or not was a question of law. In my view, the learned Session Judge was in error in telling the jury that the entire question was one of fact for them to decide. It was for the learned Judge to decide as a question of law whether the sudden confession by the wife of the accused amounted to grave and sudden provocation as against the deceased Ahuja which on the authorities referred to hereinabove it was not. He was therefore in error in placing this alternative case to the jury for their determination instead of deciding it himself."

50. The misdirection according to the learned Judge was that the Sessions Judge in his charge did not tell the jury that the sudden confession of the wife to the accused did not in law amount to sudden and grave provocation by the deceased, and instead he left the entire question to be decided by the jury. The learned judge relied upon certain English decisions and textbooks in support of his conclusion that the said question was one of law and that it was for the Judge to express his view thereon. Mr. Pathak contends that there is an essential difference between the law of England and that of India in the matter of the charge to the jury in respect of grave and sudden provocation. The House of Lords in Holmes v. Director of Public Prosecution L.R. (1946) A.C. 588 laid down the law in England thus:

"If there is no sufficient material, even on a view of the evidence most favourable to the accused, for a jury (which means a reasonable jury) to form the view that a reasonable person so provoked could be driven, through transport of passion and loss of self-control, to the degree and method and continuance of violence which produces the death it is the duty of the judge as matter of law to direct the jury that the evidence does not support a verdict of manslaughter. If, on the other hand, the case is one in which the view might fairly be taken (a) that a reasonable person, in consequence of the provocation received, might be so rendered subject to passion or loss of control as to be led to use the violence with fatal results, and (b) that the accused was in fact acting under the stress of such provocation, then it is for the jury to determine whether on its view of the facts manslaughter or murder is the appropriate verdict."

51. Viscount Simon brought out the distinction between the respective duties of the judge and the jury succinctly by formulating the following questions:

"The distinction, therefore, is between asking 'Could the evidence support the view that the provocation was sufficient to lead a reasonable person to do what the accused did?' (which is for the judge to rule), and, assuming that the judge's ruling is in affirmative,

asking the jury: 'Do you consider that, on the facts as you find them from the evidence, the provocation was in fact enough to lead a reasonable person to do what the accused did?' and, if so, 'Did the accused act under the stress of such provocation'?"
52. So far as England is concerned the judgment of the House of Lords is the last word on the subject till it is statutorily changed or modified by the House of Lords. It is not, therefore, necessary to consider the opinions of learned authors on the subject cited before us to show that the said observations did not receive their approval.

53. But Mr. Pathak contends that whatever might be the law in England, in India we are governed by the statutory provisions, and that under the explanation to Exception I to s. 300 of the Indian Penal Code, the question "whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is one of fact", and therefore, unlike in England, in India both the aforesaid questions fall entirely within the scope of the jury and they are for them to decide. To put it in other words, whether a reasonable person in the circumstances of a particular case committed the offence under provocation which was grave and sudden is a question of fact for the jury to decide. There is force in this argument, but it is not necessary to express our final opinion thereon, as the learned Attorney-General has conceded that there was no misdirection in regard to this matter.

54. The fourth misdirection found by the High Court is that the learned Sessions Judge told the jury that the prosecution relied on the circumstantial evidence and asked them to apply the stringent rule of burden of proof applicable to such cases, whereas in fact there was direct evidence of Puransingh in the shape of extra-judicial confession. In paragraph 8 of the charge the Sessions Judge said:

"In this case the prosecution relies on what is called circumstantial evidence that is to say there is no witness who can say that he saw the accused actually shooting and killing deceased. There are no direct witnesses, direct witnesses as they are called, of the event in question. Prosecution relies on certain circumstances from which they ask you to deduce an inference that it must be the accused and only the accused who must have committed this crime. That is called circumstantial evidence. It is not that prosecution cannot rely on circumstantial evidence because it is not always the case or generally the case that people who go out to commit crime will also take witnesses with them. So that it may be that in some cases the prosecution may have to rely on circumstantial evidence. Now when you are dealing with circumstantial evidence you will bear in mind certain principles, namely, that the facts on which the prosecution relies must be fully established. They must be fully and firmly established. These facts must lead to one conclusion and one only namely the guilt of the accused and lastly it must exclude all reasonable hypothesis consistent with the innocence of the accused, all reasonable hypothesis consistent with the innocence of the accused should be excluded. In other words you must come to the conclusion by all the human probability, it must be the

accused and the accused only who must have committed this crime. That is the standard of proof in a case resting on circumstantial evidence."

55. Again in paragraph 11 the learned Sessions Judge observed that the jury were dealing with circumstantial evidence and graphically stated:

"It is like this, take a word, split it up into letters, the letters, may individually mean nothing but when they are combined they will form a word pregnant with meaning. That is the way how you have to consider the circumstantial evidence. You have to take all the circumstances together and judge for yourself whether the prosecution have established their case."

56. In paragraph 18 of the charge, the learned Sessions Judge dealt with the evidence of Puransingh separately and told the jury that if his evidence was believed, it was one of the best forms of evidence against the man who made the admission and that if thy accepted that evidence, then the story of the defence that it was an accident would become untenable. Finally he summarized all the circumstances on which the prosecution relied in paragraph 34 and one of the circumstances mentioned was the extra-judicial confession made to Puransingh. In that paragraph the learned Sessions Judge observed as follows:

"I will now summarize the circumstances on which the prosecution relies in this case. Consider whether the circumstances are established beyond all reasonable doubt. In this case you are dealing with circumstantial evidence and therefore consider whether they are fully and firmly established and consider whether they lead to one conclusion and only one conclusion that it is the accused alone who must have shot the deceased and further consider that it leaves no room for any reasonable hypothesis consistent with the innocence of the accused regard being had to all the circumstances in the case and the conclusion that you have to come to should be of this nature and by all human probability it must be the accused and the accused alone who must have committed this crime."

57. Finally the learned Sessions Judge told them:

"If on the other hand you think that the circumstances on which the prosecution relies are fully and firmly established, that they lead to one and the only conclusion and one only, of the guilt of the accused and that they exclude all reasonable hypothesis of the innocence of the accused then and in that case it will be your duty which you are bound by the oath to bring verdict accordingly without any fear or any favour and without regard being had to any consequence that this verdict might lead to."

58. Mr. Pathak contends that the learned Sessions Judge dealt with the evidence in two parts, in one part he explained to the jury the well settled rule of approach to circumstantial evidence, whereas in another part he clearly and definitely pointed to the jury the great evidentiary value of the extra-judicial confession of guilt by the accused made to Puransingh, if that was believed by them. He therefore, argues that there was no scope for any confusion in the minds of the jurors in regard to their approach to the evidence or in regard to the evidentiary value of the extra-judicial confession. The

argument proceeds that even if there was a misdirection, it was not such as to vitiate the verdict of the jury. It is not possible to accept this argument. We have got to look at the question from the standpoint of the possible effect of the said misdirection in the charge on the jury, who are laymen. In more than one place the learned Sessions Judge pointed out that the case depended upon circumstantial evidence and that the jury should apply the rule of circumstantial evidence settled by decisions. Though at one place he emphasized upon evidentiary value of a confession he later on included that confession also as one of the circumstances and again directed the jury to apply the rule of circumstantial evidence. It is not disputed that the extra-judicial confession made to Puransingh is direct piece of evidence and that the stringent rule of approach to circumstantial evidence does not apply to it. If that confession was true, it cannot be disputed that the approach of the jury to the evidence would be different from that if that was excluded. It is not possible to predicate that the jury did not accept that confession and therefore applied the rule of circumstantial evidence. It may well have been that the jury accepted it and still were guided by the rule of circumstantial evidence as pointed out by the learned Sessions Judge. In these circumstances we must hold, agreeing with the High Court, that this is a grave misdirection affecting the correctness of the verdict.

59. The next misdirection relied upon by the High Court is the circumstance that the three letters written by Sylvia were not read to the jury by the learned Sessions Judge in his charge and that the jury were not told of their effect on the credibility of the evidence of Sylvia and Nanavati. Shelat, J., observed in regard to this circumstance thus:

"It cannot be gainsaid that these letters were important documents disclosing the state of mind of Mrs. Nanavati and the deceased to a certain extent. If these letters had been read in juxtaposition of Mrs. Nanavati's evidence they would have shown that her statement that she felt that Ahuja had asked her not to see him for a month for the purpose of backing out of the intended marriage was not correct and that they had agreed not to see each other for the purpose of giving her and also to him an opportunity to coolly think out the implications of such a marriage and then to make up her own mind on her own. The letters would also show that when the accused asked her, as he said in his evidence, whether Ahuja would marry her, it was not probable that she would fence that question. On the other hand, she would, in all probability, have told him that they had already decided to marry. In my view, the omission to refer even once to these letters in the charge especially in view of Mrs. Nanavati's evidence was a non-direction amounting to misdirection."

60. Mr. Pathak contends that these letters were read to the jury by counsel on both sides and a reference was also made to them in the evidence of Sylvia and, therefore the jury clearly knew the contents of the letters, and that in the circumstances the non-mention of the contents of the letters by the Sessions Judge was not a misdirection and even if it was it did not affect the verdict of the jury. In this context reliance is placed upon two English decisions, namely, R. v. Roberts [1942] 1 All. E.R. 187 and R. v. Attfield [1961] 3 All. E.R. 243. In the former case the appellant was prosecuted for the murder of a girl by shooting

her with a service rifle and he pleaded accident as his defence. The Judge in his summing-up, among other defects, omitted to refer to the evidence of certain witnesses; the jury returned a verdict of "guilty" not the charge of murder and it was accepted by the judge, it was contended that the omission to refer to the evidence of certain witnesses was a misdirection. Rejecting that plea, Humphreys, J., observed:

"The jury had the Dagduas before them. They had the whole of the evidence before them, and they had, just before the summing up, comments upon those matters from counsel for the defence, and from counsel for the prosecution. It is incredible that they could have forgotten them or that they could have misunderstood the matter in any way, or thought, by reason of the fact that the judge did not think it necessary to refer to them, that they were not to pay attention to them. We do not think there is anything in that point at all. A judge, in summing-up, is not obliged to refer to every witness in the case, unless he thinks it necessary to do so. In saying this, the court is by no means saying that it might not have been more satisfactory if the judge had referred to the evidence of the two witnesses, seeing that he did not think it necessary to refer to some of the Dagduas made by the accused after the occurrence. No doubt it would have been more satisfactory from the point of view of the accused. All we are saying is that we are satisfied that there was no misdirection in law on the part of judge in omitting those statements, and it was within his discretion."

61. This passage does not lay down as a proposition of law that however important certain documents or pieces of evidence may be from the standpoint of the accused or the prosecution, the judge need not refer to or explain them in his summing-up to the jury, and, if he did not, it would not amount to misdirection under any circumstances. In that case some Dagduas made by witnesses were not specifically brought to the notice of the jury and the Court held in the circumstances of that case that there was no misdirection. In the latter case the facts were simple and the evidence was short; the judge summed up the case directing the jury as to the law but did not deal with evidence except in regard to the appellant's character. The jury convicted the appellant. The court held that, "although in a complicated and lengthy case it was incumbent on the court to deal with the evidence in summing-up, yet where, as in the present case, the issues could be simply and clearly stated, it was not fatal defect for the evidence not to be reviewed in the summing-up." This is also a decision on the facts of that case. That apart, we are not concerned with a simple case here but with a complicated one. This decision does not help us in deciding the point raised. Whether a particular omission by a judge to place before the jury certain evidence amounts to a misdirection or not falls to be decided on the facts of each case.

62. These letters show the exact position of Sylvia in the context of her intended marriage with Ahuja, and help to test the truthfulness or otherwise of some of the assertions made by her to Nanavati. A perusal of these letters indicates that Sylvia and Ahuja were on intimate terms, that Ahuja was willing to marry her, that they had made up their minds to marry, but agreed to keep apart for a month to consider coolly whether they really

wanted to marry in view of the serious consequences involved in taking such a step. Both Nanavati and Sylvia gave evidence giving an impression that Ahuja was backing out of his promise to marry Sylvia and that was the main reason for Nanavati going to Ahuja's flat for an explanation. If the Judge had read these letters in his charge and explained the implication of the contents thereof in relation to the evidence given by Nanavati and Sylvia, it would not have been possible to predicate whether the jury would have believed the evidence of Nanavati and Sylvia. If the marriage between them was a settled affair and if the only obstruction in the way was Nanavati, and if Nanavati had expressed his willingness to be out of the way and even to help them to marry, their evidence that Sylvia did not answer the direct question about the intentions of Ahuja to marry her, and the evidence of Nanavati that it became necessary for him to go to Ahuja's flat to ascertain the latter's intentions might not have been believed by the jury. It is no answer to say that the letters were read to the jury at different stages of the trial or that they might have read the letters themselves for in a jury trial, especially where innumerable documents are filed, it is difficult for a lay jury, unless properly directed, to realise the relative importance of specified documents in the context of different aspects of a case. That is why the Code of Criminal Procedure, under s. 297 thereof, imposes a duty on the Sessions Judge to charge the jury after the entire evidence is given, and after counsel appearing for the accused and counsel appearing for the prosecution have addressed them. The object of the charge to the jury by the Judge is clearly to enable him to explain the law and also to place before them the facts and circumstances of the case both for and against the prosecution in order to help them in arriving at a right decision. The fact that the letters were read to the jury by prosecution or by the counsel for the defence is not of much relevance, for they would place the evidence before the jury from different angles to induce them to accept their respective versions. That fact in itself cannot absolve the Judge from his clear duty to put the contents of the letters before the jury from the correct perspective. We are in agreement with the High Court that this was a clear misdirection which might have affected the verdict of the jury.

63. The next defect pointed out by the High Court is that the Sessions Judge allowed the counsel for the accused to elicit from the police officer, Phansalkar, what Puransingh is alleged to have stated to him orally, in order to contradict the evidence of Puransingh in the court, and the Judge also dealt with the evidence so elicited in paragraph 18 of his charge to the jury. This contention cannot be fully appreciated unless some relevant facts are stated. Puransingh was examined for the prosecution as P.W. 12. He was a watchman of "Jivan Jyot". He deposed that when the accused was leaving the compound of the said building, he asked him why he had killed Ahuja, and the accused told him that he had a quarrel with Ahuja as the latter had "connections" with his wife and therefore he killed him. At about 5-5 P.M. on April 27, 1959, this witness reported this incident to Gamdevi Police Station. On that day Phansalkar (P.W. 13) was the Station House Duty Officer at that station from 2 to 8 P.M. On the basis of the statement of Puransingh, Phansalkar went in a jeep with Puransingh to the place of the alleged offence. Puransingh said in his evidence that he told Phansalkar in the jeep what the accused had told him when he was

leaving the compound of "Jivan Jyot". After reaching the place of the alleged offence, Phansalkar learnt from a doctor that Ahuja was dead and he also made enquiries from Miss Mammie, the sister of the deceased. He did not record the statement made by Puransingh. But latter on between 10 and 10-30 P.M. on the same day, Phansalkar made a statement to Inspector Mokashi what Puransingh had told him and that statement was recorded by Mokashi. In the statement taken by Mokashi it was not recorded that Puransingh told Phansalkar that the accused told him why he had killed Ahuja. When Phansalkar was in the witness-box to a question put to him in cross-examination he answered that Puransingh did not tell him that he had asked Nanavati whey he killed Ahuja and that the accused replied that he had a quarrel with the deceased as the latter had "connections" with his wife and that he had killed him. The learned Sessions Judge not only allowed the evidence to go in but also, in paragraph 18 of his charge to the jury, referred to that statement. After giving the summary of the evidence given by Puransingh, the learned Sessions Judge proceeded to state in his charge to the jury:

"Now the conversation between him and Phansalkar (Sub-Inspector) was brought on record in which what the chowkidar told Sub-Inspector Phansalkar was, the servants of the flat of Miss Ahuja had informed him that a Naval Officer was going away in the car. He and the servants had tried to stop him but the said officer drove away in the car saying that he was going to the Police Station and to Sub-Inspector Phansalkar he did not state about the admission made by Mr. Nanavati to him that he killed the deceased as the deceased had connections with his wife. The chowkidar said that he had told this also to sub-Inspector Phansalkar. Sub-Inspector Phansalkar said the Puransingh had not made this statement to him. You will remember that this chowkidar went to the police station at Gamdevi to give information about this crime and while coming back he was with Sub-Inspector Phansalkar and Sub-Inspector Phansalkar in his own statement to Mr. Mokashi has referred to the conversation which he had between him and this witness Puransingh and that had been brought on record as a contradiction."

64. The learned Sessions Judge then proceeded to state other circumstances and observed, "Consider whether you will accept the evidence of Puransingh or not." It is manifest from the summing-up that the learned Sessions Judge not only read to the jury the evidence of Phansalkar wherein he stated that Puransingh did not tell him that the accused told him why he killed Ahuja but also did not tell the jury that the evidence of Phansalkar was not admissible to contradict the evidence of Puransingh. It is not possible to predicate what was the effect of the alleged contradiction on the mind of the jury and whether they had not rejected the evidence of Puransingh because of that contradiction. If the said evidence was not admissible, the placing of that evidence before the jury was certainly a grave misdirection which must have affected their verdict. The question is whether such evidence is legally admissible. The alleged omission was brought on record in the cross-examination of Phansalkar, and, after having brought it in, it was sought to be used to contradict the evidence of Puransingh. Learned Attorney-General contends that the statement made by Phansalkar to Inspector Mokashi could be used only to contradict the evidence of Phansalkar and not that of Puransingh under s. 162 of the Code of Criminal

Procedure; and the statement made by Puransingh to Phansalkar, it not having been recorded, could not be used at all to contradict the evidence of Puransingh under the said section. He further argues that the alleged omission not being a contradiction, it could in no event be used to contradict Puransingh. Learned counsel for the accused, on the other hand, contends that the alleged statement was made to a police officer before the investigation commenced and, therefore, it was not hit by s. 162 of the Code of Criminal Procedure, and it could be used to contradict the evidence of Puransingh. Section 162 of the Code of Criminal Procedure reads:

(1) No statement made by any person to a Police officer in the course of an investigation under this Chapter shall, if reduced into writing be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872), and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

65. The preliminary condition for the application of s. 162 of the Code is that the statement should have been made to a police-officer in the course of an investigation under Chapter XIV of the Code. If it was not made in the course of such investigation, the admissibility of such statement would not be governed by s. 162 of the Code. The question, therefore, is whether Puransingh made the statement to Phansalkar in the course of investigation. Section 154 of the Code says that every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police-station shall be reduced to writing by him or under his direction; and section 156(1) is to the effect that any officer in charge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIV relating to the place of inquiry or trial. The evidence in the case clearly establishes that Phansalkar, being the Station House Duty Officer at Gamdevi Police-station on April 27, 1959, from 2 to 8 P.M., was an officer in charge of the Police-station within the meaning of the said sections. Puransingh in his evidence says that he went to Gamdevi Police-station and gave the information of the shooting incident to the Gamdevi Police. Phansalkar in his evidence says that on the basis of the information he went along with Puransingh to the place of the alleged offence. His evidence also discloses that he had questioned Puransingh, the doctor and also Miss Mammie in regard to the said incident. On this uncontradicted evidence there cannot be any doubt that the investigation of the

offence had commenced and Puransingh made the statement to the police officer in the course of the said investigation. But it is said that, as the information given by Puransingh was not recorded by Police Officer Phansalkar as he should do under s. 154 of the Code of Criminal Procedure, no investigation in law could have commenced with the meaning of s. 156 of the Code. The question whether investigation had commenced or not is a question of fact and it does not depend upon any irregularity committed in the matter of recording the first information report by the concerned police officer. If so, s. 162 of the Code is immediately attracted. Under s. 162(1) of the Code, no statement made by any person to a Police-officer in the course of an investigation can be used for any purpose at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. But the proviso lifts the ban and says that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing, any part of his statement, if duly proved, may be used by the accused to contradict such witness. The proviso cannot be invoked to bring in the statement made by Phansalkar to Inspector Mokashi in the cross-examination of Phansalkar, for the statement made by him was not used to contradict the evidence of Phansalkar. The proviso cannot obviously apply to the oral statement made by Puransingh to Phansalkar, for the said statement of Puransingh has not been reduced into writing. The faint argument of learned counsel for the accused that the statement of Phansalkar recorded by Inspector Mokashi can be treated as a recorded statement of Puransingh himself is to be stated only to be rejected, for it is impossible to treat the recorded statement of Phansalkar as the recorded statement of Puransingh by a police-officer. If so, the question whether the alleged omission of what the accused told Puransingh in Puransingh's oral statement to Phansalkar could be used to contradict Puransingh, in view of the decision of this Court in Tahsildar Singh's case MANU/SC/0053/1959: [[1959] Supp. (2) S.C.R. 875], does not arise for consideration. We are, therefore, clearly of the opinion that not only the learned Sessions Judge acted illegally in admitting the alleged omission in evidence to contradict the evidence of Puransingh, but also clearly misdirected himself in placing the said evidence before the jury for their consideration.

66. In addition to the misdirections pointed out by the High Court, the learned Attorney-General relied upon another alleged misdirection by the learned Sessions Judge in his charge. In paragraph 28 of the charge, the learned Sessions Judge stated thus:

"No one challenges the marksmanship of the accused but Commodore Nanda had come to tell you that he is a good shot and Mr. Kandalawala said that here was a man and good marksman, would have shot him, riddled him with bullets perpendicularly and not that way and he further said that as it is not done in this case it shows that the accused is a good marksman and a good shot and he would not have done this thing, this is the argument."

67. The learned Attorney-General points out that the learned Sessions Judge was wrong in saying that no one challenged the marksmanship of the accused, for Commodore Nanda was examined at length on the competency of the accused as a marksman. Though

this is a misdirection, we do not think that the said passage, having regard to the other circumstances of the case, could have in any way affected the verdict of the jury. It is, therefore, clear that there were grave misdirections in this case, affecting the verdict of the jury, and the High Court was certainly within its rights to consider the evidence and come to its own conclusion thereon.

68. The learned Attorney-General contends that if he was right in his contention that the High Court could consider the evidence afresh and come to its own conclusion, in view of the said misdirection, this Court should not, in exercise of its discretionary jurisdiction under Art. 136 of the Constitutions interfere with the findings of the High Court. There is force in this argument. But, as we have heard counsel at great length, we propose to discuss the evidence.

69. We shall now proceed to consider the evidence in the case. The evidence can be divided into three parts, namely, (i) evidence relating to the conduct of the accused before the shooting incident, (ii) evidence in regard to the conduct of the accused after the incident, and (iii) evidence in regard to the actual shooting in the bed-room of Ahuja.

70. We may start with the evidence of the accused wherein he gives the circumstances under which he came to know of the illicit intimacy of his wife Sylvia with the deceased Ahuja, and the reasons for which he went to the flat of Ahuja in the evening of April 27, 1959. After his brother and his brother's wife, who stayed with him for a few days, had left, he found his wife behaving strangely and without affection towards him. Though on that ground he was unhappy and worried, he did not suspect of her unfaithfulness to him. On the morning of April 27, 1959, he and his wife took out their sick dog to the Parel Animal Hospital. On their way back, they stopped at the Metro Cinema and his wife bought some tickets for the 3-30 show. After coming home, they were sitting in the room for the lunch to be served when he put his arm around his wife affectionately and she seemed to go tense and was very unresponsive. After lunch, when his wife was reading in the sitting room, he told her "Look, we must get these things straight" or something like that, and "Do you still love me?" As she did not answer, he asked her "Are you in love with some one else?", but she gave no answer. At that time he remembered that she had not been to a party given by his brother when he was away on the sea and when asked why she did not go, she told him that she had a previous dinner engagement with Miss Ahuja. On the basis of this incident, he asked her "Is it Ahuja?" and she said "Yes." When he asked her "Have you been faithful to me?", she shook her head to indicate "No." Sylvia in her evidence, as D.W. 10, broadly supported this version. It appears to us that this is clearly a made-up conversation and an unnatural one too. Is it likely that Nanavati, who says in his evidence that prior to April 27, 1959, he did not think that his wife was unfaithful to him, would have suddenly thought that she had a lover on the basis of a trivial circumstance of her being unresponsive when he put his arm around her affectionately? Her coldness towards him might have been due to many reasons. Unless he had a suspicion earlier or was informed by somebody that she was unfaithful to him,

this conduct of Nanavati in suspecting his wife on the basis of the said circumstance does not appear to be the natural reaction of a husband. The recollection of her preference to attend the dinner given by Miss Mammie to that of his brother, in the absence of an earlier suspicion or information, could not have flashed on his mind the image of Ahuja as a possible lover of his wife. There was nothing extraordinary in his wife keeping a previous engagement with Mis Mammie and particularly when she could rely upon her close relations not to misunderstand her. The circumstances under which the confession of unfaithfulness is alleged to have been made do not appear to be natural. This inference is also reinforced by the fact that soon after the confession, which is alleged to have upset him so much, he is said to have driven his wife and children to the cinema. If the confession of illicit intimacy between Sylvia and Ahuja was made so suddenly at lunch time, even if she had purchased the tickets, it is not likely that he would have taken her and the children to the cinema. Nanavati then proceeds to say in his evidence: on his wife admitting her illicit intimacy with Ahuja, he was absolutely stunned; he then got up and said that he must go and settle the matter with the swine; he asked her what were the intentions of Ahuja and whether Ahuja was prepared to marry her and look after the children; he wanted an explanation from Ahuja for his caddish conduct. In the cross-examination he further elaborated on his intentions thus: He thought of having the matters settled with Ahuja; he would find out from him whether he would take an honourable way out of the situation; and he would thrash him if he refused to do so. The honourable course which he expected of the deceased was to marry his wife and look after the children. He made it clear further that when he went to see Ahuja the main thing in his mind was to find out what Ahuja's intentions were towards his wife and children and to find out the explanation for his conduct. Sylvia in her evidence says that when she confessed her unfaithfulness to Nanavati, the latter suddenly got up rather excitedly and said that he wanted to go to Ahuja's flat and square up the things. Briefly stated, Nanavati, according to him, went to Ahuja's flat to ask for an explanation for seducing his wife and to find out whether he would marry Sylvia and take care of the children. Is it likely that a person, situated as Nanavati was, would have reacted in the manner stated by him? It is true that different persons react, under similar circumstances, differently. A husband to whom his wife confessed of infidelity may kill his wife, another may kill his wife as well as her paramour, the third, who is more sentimental, may commit suicide, and the more sophisticated one may give divorce to her and marry another. But it is most improbable, even impossible, that a husband who has been deceived by his wife would voluntarily go to the house of his wife's paramour to ascertain his intentions, and, what is more, to ask him to take charge of his children. What was the explanation Nanavati wanted to get from Ahuja? His wife confessed that she had illicit intimacy with Ahuja. She is not a young girl, but a woman with three children. There was no question of Ahuja seducing an innocent girl, but both Ahuja and Sylvia must have been willing parties to the illicit intimacy between them. That apart, it is clear from the evidence that Ahuja and Sylvia had decided to marry and, therefore, no further elucidation of the intention of Ahuja by Nanavati was necessary at all. It is true that Nanavati says in his evidence that when he asked her whether Ahuja was prepared to marry her and look after the children,

she did not give any proper rely; and Sylvia also in her evidence says that when her husband asked her whether Ahuja was willing to marry her and look after the children she avoided answering that question as she was too ashamed to admit that Ahuja was trying to back out from the promise to marry her. That this version is not true is amply borne out by the letters written by Sylvia to Ahuja. The first letter written by Sylvia is dated May 24, 1958, but that was sent to him only on March 19, 1959, along with another letter. In that letter dated May 24, 1958, she stated:

"Last night when you spoke about your need to marry and about the various girls you may marry, something inside me snapped and I know that I could not bear the thought of your loving or being close to someone else."

71. Reliance is placed upon these words by learned counsel for the accused in support of his contention that Ahuja intended to marry another girl. But this letter is of May 1958 and by that time it does not appear that there was any arrangement between Sylvia and Ahuja to marry. It may well have been that Ahuja was telling Sylvia about his intentions to marry another girl to make her jealous and to fall in for him. But as days passed by, the relationship between them had became very intimate and they began to love each other. In the letter dated March 19, 1959, she said: "Take a chance on our happiness, my love. I will do my best to make you happy; I love you, I want you so much that everything is bound to work out well." The last sentence indicates that they had planned to marry. Whatever ambiguity there may be in these words, the letter dated April 17, 1959, written ten days prior to the shooting incident, dispels it; therein she writes.

"In any case nothing is going to stop my coming to you. My decision is made and I do not change my mind. I am taking this month so that we may afterwards say we gave ourselves every chance and we know what we are doing. I am torturing myself in every possible way as you asked, so that, there will be no surprise afterwards."

72. This letter clearly demonstrates that she agreed not to see Ahuja for a month, not because that Ahuja refused to marry her, but because it was settled that they should marry, and that in view of the far-reaching effects of the separation from her husband on her future life and that of her children, the lovers wanted to live separately to judge for themselves whether they really loved each other so much as to marry. In the cross-examination she tried to wriggle out of these letters and sought to explain them away; but the clear phraseology of the last letter speaks for itself, and her oral evidence, contrary to the contents of the letters, must be rejected. We have no doubt that her evidence, not only in regard to the question of marriage but also in regard to other matters, indicates that having lost her lover, out of necessity or out of deep penitence for her past misbehavior, she is out to help her husband in his defence. This correspondence belies the entire story that Sylvia did not reply to Nanavati when the latter asked her whether Ahuja was willing to marry her and that that was the reason why Nanavati wanted to visit Ahuja to ask him about his intentions. We cannot visualize Nanavati as a romantic lover determined to immolate himself to give opportunity to his unfaithful wife to start a new life of happiness and love with her paramour after convincing him that the only

honourable course open to him was to marry her and take over his children. Nanavati was not ignorant of the ways of life or so gullible as to expect any chivalry or honour in a man like Ahuja. He is an experienced Naval Officer and not a sentimental hero of a novel. The reason therefore for Nanavati going to Ahuja's flat must be something other than asking him for an explanation and to ascertain his intention about marrying his wife and looking after the children.

73. Then, according to Nanavati, he drove his wife and children to cinema, and promising them to come and pick them up at the end of the show at about 6 P.M., he drove straight to his ship. He would say that he went to his ship to get medicine for his sick dog. Though ordinarily this statement would be insignificant, in the context of the conduct of Nanavati, it acquires significance. In the beginning of his evidence, he says that on the morning of the day of the incident he and his wife took out their sick dog to the Parel Animal Hospital. It is not his evidence that after going to the hospital he went to his ship before returning home. It is not even suggested that in the ship there was a dispensary catering medicine for animals. This statement, therefore, is not true and he did not go to the ship for getting medicine for his dog but for some other purpose, and that purpose is clear from his subsequent evidence. He met Captain Kolhi and asked for his permission to draw a revolver and six rounds because he was going to drive to Ahmednagar by night. Captain Kolhi gave him the revolver and six rounds, he immediately loaded the revolver with all the six rounds and put the revolver inside an envelope which was lying in his cabin. It is not the case of the accused that he really wanted to go to Ahmednagar and he wanted the revolver for his safety. Then why did he take the revolver? According to him, he wanted to shoot himself after driving far away from his children. But he did not shoot himself either before or after Ahuja was shot dead. The taking of the revolver on a false pretext and loading it with six cartridges indicate the intention on his part to shoot somebody with it.

74. Then the accused proceeded to state that he put the envelope containing the revolver in his car and found himself driving to Ahuja's office. At Ahuja's office he went in keeping the revolver in the car, and asked Talaja, the Sales Manager of Universal Motors of which Ahuja was the proprietor whether Ahuja was inside. He was told that Ahuja was not there. Before leaving Ahuja's office, the accused looked for Ahuja in the Show Room, but Ahuja was not there. In the cross-examination no question was put to Nanavati in regard to his statement that he kept the revolver in the car when he entered Ahuja's office. On the basis of this statement, it is contended that if Nanavati had intended to shoot Ahuja he would have taken the revolver inside Ahuja's office. From this circumstance it is not possible to say that Nanavati's intention was not to shoot Ahuja. Even if his statement were true, it might well have been that he would have gone to Ahuja's office not to shoot him there but to ascertain whether he had left the office for his flat. Whatever it may be, from Ahuja's office he straightway drove to the flat of Ahuja. His conduct at the flat is particularly significant. His version is that he parked his car in the house compound near the steps, went up the steps, but remembered that his wife had told him that Ahuja might

shoot him and so he went back to his car, took the envelope containing the revolver, and went up to the flat. He rang the doorbell; when a servant opened the door, he asked him whether Ahuja was in. Having ascertained that Ahuja was in the house, he walked to his bedroom, opened the door and went in shutting the door behind him. This conduct is only consistent with his intention to shoot Ahuja. A person, who wants to seek an interview with another in order to get an explanation for his conduct or to ascertain his intentions in regard to his wife and children, would go and sit in the drawing-room and ask the servant to inform his master that he had come to see him. He would not have gone straight into the bed-room of another with a loaded revolver in hand and closed the door behind. This was the conduct of an enraged man who had gone to wreak vengeance on a person who did him a grievous wrong. But it is said that he had taken the loaded revolver with him as his wife had told him that Ahuja might shoot him. Earlier in his cross-examination he said that when he told her that he must go and settle the matter with the "swine" she put her hand upon his arm and said, "No, No, you must not go there, don't go there, he may shoot you." Sylvia in her evidence corroborates his evidence in this respect: But Sylvia has been cross-examined and she said that she knew that Ahuja had a gun and she had seen it in Ashoka Hotel in New Delhi and that she had not seen any revolver at the residence of Ahuja at any time. It is also in evidence that Ahuja had not licence for a revolver and no revolver of his was found in his bed-room. In the circumstances, we must say that Sylvia was only attempting to help Nanavati in his defence. We think that the evidence of Nanavati supported by that of Sylvia was a collusive attempt on their part to explain away the otherwise serious implication of Nanavati carrying the loaded revolver into the bed-room of Ahuja. That part of the version of the accused in regard to the manner of his entry into the bed-room of Ahuja, was also supported by the evidence of Anjani (P.W. 8), the bearer, and Deepak, the Cook. Anjani opened the door of the flat to Nanavati at about 4-20 P.M. He served tea to his master at about 4-15 P.M. Ahuja then telephoned to ascertain the correct time and then went to his bed-room. About five minutes thereafter this witness went to the bed-room of his master to bring back the tea-tray from there, and at that time his master went into the bathroom for his bath. Thereafter, Anjani went to the kitchen and was preparing tea when he heard the door-bell. He then opened the door to Nanavati. This evidence shows that at about 4-20 P.M. Ahuja was taking his bath in the bathroom and immediately thereafter Nanavati entered the bed-room. Deepak, the cook of Ahuja, also heard the ringing of the door-bell. He saw the accused opening the door of the bed-room with a brown envelope in his hand and calling the accused by his name "Prem"; he also saw his master having a towel wrapped around his waist and combing his hair standing before the dressing-table, when the accused entered the room and closed the door behind him. These two witnesses are natural witnesses and they have been examined by the police on the same day and nothing has been elicited against them to discredit their evidence. The small discrepancies in their evidence do not in any way affect their credibility. A few seconds thereafter, Mammie, the sister of the deceased, heard the crack of the window pane. The time that elapsed between Nanavati entering the bed-room of Ahuja and her hearing the noise was about 15 to 20 seconds. She describes the time that elapsed between

the two events as the time taken by her to take up her saree from the door of her dressing-room and her coming to the bed-room door. Nanavati in his evidence says that he was in the bed-room of Ahuja for about 30 to 60 seconds. Whether it was 20 seconds, as Miss Mammie says, or 30 to 60 seconds, as Nanavati deposes, the entire incident of shooting took place in a few seconds.

75. Immediately after the sounds were heard, Anjani and Miss Mammie entered the bed-room and saw the accused.

76. The evidence discussed so far discloses clearly that Sylvia confessed to Nanavati of her illicit intimacy with Ahuja; that Nanavati went to his ship at about 3.30 P.M. and took a revolver and six rounds on a false pretext and loaded the revolver with six rounds; that thereafter he went to the office of Ahuja to ascertain his whereabouts, but was told that Ahuja had left for his house; that the accused then went to the flat of the deceased at about 4-20 P.M.; that he entered the flat and then the bed-room unceremoniously with the loaded revolver, closed the door behind him and a few seconds thereafter sounds were heard by Miss Mammie, the sister of the deceased, and Anjani, a servant; that when Miss Mammie and Anjani entered the bed-room, they saw the accused with the revolver in his hand, and found Ahuja lying on the floor of the bathroom. This conduct of the accused to say the least, is very damaging for the defence and indeed in itself ordinarily sufficient to implicate him in the murder of Ahuja.

77. Now we shall scrutinize the evidence to ascertain the conduct of the accused from the time he was found in the bed-room of Ahuja till he surrendered himself to the police. Immediately after the shooting, Anjani and Miss Mammie went into the bed-room of the deceased. Anjani says in his evidence that he saw the accused facing the direction of his master who was lying in the bathroom.; that at that time the accused was having a "pistol" in his hand; that when he opened the door, the accused turned his face towards this witness and saying that nobody should come in his way or else he would shoot at them, he brought his "pistol" near the chest of the witness; and that in the meantime Miss Mammie came there, and said that the accused had killed her brother.

78. Miss Mammie in her evidence says that on hearing the sounds, she went into the bed-room of her brother, and there she saw the accused nearer to the radiogram than to the door with a gun in his hand; that she asked the accused "what is this?" but she did not hear the accused saying anything.

79. It is pointed out that there are material contradictions between what was stated by Miss Mammie and what was stated by Anjani. We do not see any material contradictions. Miss Mammie might not have heard what the accused said either because she came there after the aforesaid words were uttered or because in her anxiety and worry she did not hear the words. The different versions given by the two witnesses in regard to what Miss Mammie said to the accused is not of any importance as the import of what both of them

said is practically the same. Anjani opened the door to admit Nanavati into the flat and when he heard the noise he must have entered the room. Nanavati himself admitted that he saw a servant in the room, though he did not know him by name; he also saw Miss Mammie in the room. These small discrepancies, therefore, do not really affect their credibility. In effect and substance both saw Nanavati with a fire-arm in his hand - though one said pistol and the other gun - going away from the room without explaining to Miss Mammie his conduct and even threatening Anjani. This could only be the conduct of a person who had committed a deliberate murder and not of one who had shot the deceased by accident. If the accused had shot the diseased by accident, he would have been in a depressed and apologetic mood and would have tried to explain his conduct to Miss Mammie or would have phoned for a doctor or asked her to send for one or at any rate he would not have been in a belligerent mood and threatened Anjani with his revolver. Learned counsel for the accused argues that in the circumstances in which the accused was placed soon after the accidental shooting he could not have convinced Miss Mammie with any amount of explanation and therefore there was no point in seeking to explain his conduct to her. But whether Miss Mammie would have been convinced by his explanation or not, if Nanavati had shot the deceased by accident, he would certainly have told her particularly when he knew her before and when she happened to be the sister of the man shot at. Assuming that the suddenness of the accidental shooting had so benumbed his senses that he failed to explain the circumstances of the shooting to her, the same cannot be said when he met others at the gate. After the accused had come out of the flat of Ahuja, he got into his car and took a turn in the compound. He was stopped near the gate by Puransingh, P.W. 12, the watchman of the building. As Anjani had told him that the accused had killed Ahuja the watchman asked him why he had killed his master. The accused told him that he had a quarrel with Ahuja as the latter had "connections" with his wife and therefore he killed him. The watchman told the accused that he should not go away from the place before the police arrived, but the accused told him that he was going to the police and that if he wanted he could also come with him in the car. At that time Anjani was standing in front of the car and Deepak was a few feet away. Nanavati says in his evidence that it was not true that he told Puransingh that he had killed the deceased as the latter had "connection" with his wife and that the whole idea was quite absurd. Puransingh is not shaken in his cross-examination. He is an independent witness; though he is a watchman of Jivan Jyot, he was not an employee of the deceased. After the accused left the place, this witness, at the instance of Miss Mammie, went to Gamdevi Police Station and reported the incident to the police officer Phansalkar, who was in charge of the police-station at that time, at about 5-5 P.M. and came along with the said police-officer in the jeep to Jivan Jyot at about 7 P.M. he went along with the police-officer to the police station where his statement was recorded by Inspector Mokashi late in the night. It is suggested that this witness had conspired with Deepak and Anjani and that he was giving false evidence. We do not see any force in this contention. His statement was regarded on the night of the incident itself. It is impossible to conceive that Miss Mammie, who must have had a shock, would have been in a position to coach him up to give a false statement. Indeed, her evidence discloses that she

was drugged to sleep that night. Can it be said that these two illiterate witnesses, Anjani and Deepak, would have persuaded him to make false statement that night. Though both of them were present when Puransingh questioned the accused, they deposed that they were at a distance and therefore they did not hear what the accused told Puransingh. If they had all colluded together and were prepared to speak to a false case, they could have easily supported Puransingh by stating that they also heard what the accused told Puransingh. We also do not think that these two witnesses are so intelligent as to visualize the possible defence and beforehand coached Puransingh to make a false statement on the very night of the incident. Nor do we find any inherent improbability in his evidence if really Nanavati had committed the murder. Having shot Ahuja he was going to surrender himself to the police; he knew that he had committed a crime; he was not a hardened criminal and must have had a moral conviction that he was justified in doing what he did. It was quite natural, therefore, for him to confess his guilt and justify his act to the watchman who stopped him and asked him to wait there till the police came. In the mood in which Nanavati was soon after the shooting, artificial standards of status or position would not have weighed in his mind if he was going to confess and surrender to the police. We have gone through the evidence of Puransingh and we do not see any justification to reject his evidence.

80. Leaving Jivan Jyot the accused drove his car and came to Raj Bhavan Gate. There he met a police constable and asked him for the location of the nearest police station. The direction given by the police constable were not clear and, therefore, the accused requested him to go along with him to the police station, but the constable told him that as he was on duty, he could not follow him. This is a small incident in itself, but it only shows that the accused was anxious to surrender himself to the police. This would not have been the conduct of the accused, if he had shot another by accident, for in that event he would have approached a lawyer or a friend for advice before reporting the incident to the police. As the police constable was not able to give him clear directions in regard to the location of the nearest police station, the accused went to the house of Commander Samuel, the Naval Provost Marshal. What happened between the accused and Samuel is stated by Samuel in his evidence as P.W. 10. According to his evidence, on April 27, 1959, at about 4.45 P.M., he was standing at the window of his study in his flat on the ground floor at New Queen's Road. His window opens out on the road near the band stand. The accused came up to the window and he was in a dazed condition. The witness asked him what had happened, and the accused told him, "I do not quite know what happened, but I think I have shot a man." The witness asked him how it happened, and the accused told him that the man had seduced his wife and he would not stand it. When the witness asked him to come inside and explain everything calmly, the accused said "No, thank you, I must go", "please tell me where I should go and report." Though he asked him again to come in, the accused did not go inside and, therefore, this witness instructed him to go to the C.I.D. Office and report to the Deputy Commissioner Lobo. The accused asked him to phone to Lobo and he telephoned to Lobo and told him that an officer by name Commander Nanavati was involved in an affair and that he was on the way to

report to him. Nanavati in his evidence practically corroborates the evidence of Samuel. Nanavati's version in regard to this incident is as follows:

"I told him that something terrible had happened, that I did not know quite what had happened but I thought I had shot a man. He asked me where this had happened. I told him at Nepean Sea Road. He asked me why I had been there. I told him I went there because a fellow there had seduced my wife and I would not stand for it. He asked me many times to go inside his room. But I was not willing to do so. I was anxious to go to the police station. I told Commander Samuel that there had been a fight over a revolver. Commander Samuel asked to report to Deputy Commissioner Lobo."

81. The difference between the two versions lies in the fact that while Nanavati said that he told Samuel that something terrible had happened, Samuel did not say that; while Nanavati said that he told Samuel that there had been a fight over a revolver, Samuel did not say that. But substantially both of them say that though Samuel asked Nanavati more than once to get inside the house and explain to him everything calmly, Nanavati did not do so; both of them also deposed that the accused told Samuel, "I do not quite know what happened but I think I have shot a man." It may be mentioned that Samuel is a Provost Marshal of the Indian navy, and he and the accused are of the same rank though the accused is senior to Samuel as Commander. As Provost Marshal, Samuel discharges police duties in the navy. It is probable that if the deceased was shot by accident, the accused would not have stated that fact to this witness? Is it likely that he would not have stepped into his house, particularly when he requested him more than once to come in and explain to him how the accident had taken place? Would he not have taken his advice as a colleague before he proceeded to the police station to surrender himself? The only explanation for this unusual conduct on the part of the accused is that, having committed the murder, he wanted to surrender himself to the police and to make a clean breast of everything. What is more, when he was asked directly what had happened he told him "I do not quite know what happened but I think I have shot a man". When he was further asked how it happened, that is, how he shot the man he said that the man had seduced his wife and that he would not stand for it. In the context his two answers read along with the questions put to him by Samuel only mean that, as the deceased had seduced his wife, the accused shot him as he would not stand for it. If really the accused shot the deceased by accident, why did he not say that fact to his colleague, particularly when it would not only be his defence, if prosecuted, but it would put a different complexion to his act in the eyes of his colleague. But strong reliance is placed on what this witness stated in the cross-examination viz., "I heard the word fight from the accused", "I heard some other words from the accused but I could not make out a sense out of these words". Learned counsel for the accused contends that this statement shows that the accused mentioned to Samuel that the shooting of the deceased was in a fight. It is not possible to build upon such slender foundation that the accused explained to Samuel that he shot the deceased by accident in a struggle. The statement in the cross-examination appears to us to be an attempt on the part of this witness to help his colleague by saying something which may fit in the scheme of his defence, though at the same time he is not willing to

lie deliberately in the witness-box, for he clearly says that he could not make out the sense of the words spoken along with the word "fight". This vague statement of this witness, without particulars, cannot detract from the clear evidence given by him in the examination-in-chief.

82. What Nanavati said to the question put by the Sessions Judge under s. 342 of the Code of Criminal Procedure supports Samuel's version. The following question was put to him by the learned Sessions Judge:

Q. - It is alleged against you that thereafter as aforesaid you went to Commander Samuel at about 4.45 P.M. and told him that something terrible had happened and that you did not quite know but you thought that you shot a man as he had seduced your wife which you could not stand and that on the advice of Commander Samuel you then went to Deputy Commissioner Lobo at the Head Crime Investigation Department Office. Do you wish to say anything about this?
83. A. - This is correct.

84. Here Nanavati admits that he told Commander Samuel that he shot the man as he had seduced his wife. Learned counsel for the accused contends that the question framed was rather involved and, therefore, Nanavati might not have understood its implication. But it appears from the statement that, after the questions were answered, Nanavati read his answers and admitted that they were correctly recorded. The answer is also consistent with what Samuel said in his evidence as to what Nanavati told him. This corroborates the evidence of Samuel that Nanavati told him that, as the man had seduced his wife, he thought that he had shot him. Anyhow, the accused did not tell the Court that he told Samuel that he shot the deceased in a fight.

85. Then the accused, leaving Samuel, went to the office of the Deputy Commissioner Lobo. There, he made a statement to Lobo. At that time, Superintendent Korde and Inspector Mokashi were also present. On the information given by him, Lobo directed Inspector Mokashi to take the accused into custody and to take charge of the articles and to investigate the case.

86. Lobo says in his evidence that he received a telephone call from Commander Samuel to the effect that he had directed Commander Nanavati to surrender himself to him as he had stated that he had shot a man. This evidence obviously cannot be used to corroborate what Nanavati told Samuel, but it would only be a corroboration of the evidence of Samuel that he telephoned to Lobo to that effect. It is not denied that the accused set up the defence of accident for the first time in the Sessions Court. This conduct of the accused from the time of the shooting of Ahuja to the moment he surrendered himself to the police is inconsistent with the defence that the deceased was shot by accident. Though the accused had many opportunities to explain himself, he did not do so; and he exhibited

the attitude of a man who wreaked out his vengeance in the manner planned by him and was only anxious to make a clean breast of everything to the police.

87. Now we will consider what had happened in the bed-room and bathroom of the deceased. But before considering the evidence on this question, we shall try to describe the scene of the incident and other relevant particulars regarding the things found therein.

88. The building "Jivan Jyot" is situate in Setalvad Road, Bombay. Ahuja was staying on the first floor of that building. As one goes up the stairs, there is a door leading into the hall; as one enters the hall and walks a few feet towards the north he reaches a door leading into the bed-room of Ahuja. In the bed-room, abutting the southern wall there is a radiogram; just after the radiogram there is a door on the southern wall leading to the bathroom, on the eastern side of the door abutting the wall there is a cupboard with a mirror thereon; in the bathroom, which is of the dimensions 9 feet x 6 feet, there is a commode in the front along the wall, above the commode there is a window with glass panes overlooking the chowk, on the east of the commode there is a bath-tub, on the western side of the bathroom there is a door leading into the hall; on the southern side of the said door there is a wash-basin adjacent to the wall.

89. After the incident the corpse of Ahuja was found in the bathroom; the head of the deceased was towards the bed-room and his legs were towards the commode. He was lying with his head on his right hand. This is the evidence of Miss Mammie, and she has not been cross-examined on it. It is also not contradicted by any witness. The top glass pane of the window in the bathroom was broken. Pieces of glass were found on the floor of the bathroom between the commode and the wash-basin. Between the bath-tub and the commode a pair of spectacles was lying on the floor and there were also two spent bullets. One chappal was found between the commode and the wash basin, and the other was found in the bedroom. A towel was found wrapped around the waist of the deceased. The floor of the bathroom was bloodstained. There was white handkerchief and bath-towel, which was bloodstained lying on the floor. The western wall was found to be bloodstained and drops of blood were trickling down. The handle of the door leading to the bathroom from the bed-room and a portion of the door adjacent to the handle were bloodstained from the inner side. The blood on the wall was little over three feet from the floor. On the floor of the bed-room there was an empty brown envelope with the words "Lt. Commander K.M. Nanavati" written on it. There was no mark showing that the bullets had hit any surface. (See the evidence of Rashmikant, P.W. 16)

90. On the dead-body the following injuries were found:

(1) A punctured would 1/4" x 1/4" x chest cavity deep just below and inside the inner end of the right collar bone with an abrasion collar on the right side of the wound.

(2) A lacerated punctured wound in the web between the ring finger and the little finger of the left hand 1/4" x 1/4" communicating with a punctured would 1/4" x 1/4" on the palmar aspect of the left hand at knuckle level between the left little and the ring finger. Both the wounds were communicating.

(3) A lacerated ellipsoid would oblique in the left parietal region with dimensions 1 1/8" x 1/4" x skull deep.

(4) A lacerated abrasion with carbonaceous tattooing 1/4" x 1/6" at the distal end of the proximal interphalangeal joint of the left index finger dorsal aspect. That means at the first joint of the crease of the index finger on its dorsal aspect, i.e., back aspect.

(5) A lacerated abrasion with carbonaceous tattooing 1/4" x 1/6" at the joint level of the left middle finger dorsal aspect.

(6) Vertical abrasion inside the right shoulder blade 3" x 1" just outside the spine.

91. On internal examination the following wounds were found by Dr. Jhala, who performed the autopsy on the dead-body. Under the first injury there was:

"A small ellipsoid wound oblique in the front of the piece of the breast bone (Sternum) upper portion right side center with dimensions 1/4" x 1/3" and at the back of the bone there was a lacerated wound accompanied by irregular chip fracture corresponding to external injury No. 1, i.e., the punctured wound chest cavity deep. Same wound continued in the contusion in area 3" x 1 1/4" in the right lung upper lobe front border middle portion front and back. Extensive clots were seen in the middle compartment upper and front part surrounding the laceration impregnated pieces of fractured bone. There was extensive echymosis and contusion around the root of the right lung in the diameter of 2 1/2" involving also the inner surface of the upper lobe. There were extensive clots of blood around the aorta. The left lung was markedly pale and showed a through and through wound in the lower lobe beginning at the inner surface just above the root opening out in the lacerated wound in the back region outer aspect at the level between 6th and 7th ribs left side not injuring the rib and injuring the space between the 6th and 7th rib left side 2" outside the junction of the spine obliquely downward and outward. Bullet was recovered from tissues behind the left shoulder blade. The wound was lacerated in the whole tract and was surrounded by contusion of softer tissues."

92. The doctor says that the bullet, after entering "the inner end, went backward, downward and then to the left" and therefore he describes the wound as "ellipsoid and oblique". He also points out that the abrasion collar was missing on the left side. Corresponding to the external injury No. 3, the doctor found on internal examination that the skull showed a haematoma under the scalp, i.e., on the left parietal region; the dimension was 2" x 2". The skull cap showed a gutter fracture of the outer table and a

fracture of the inner table. The brain showed sub-arachnoid haemorrhage over the left parieto-occipital region accompanying the fracture of the vault of the skull.

93. A description of the revolver with which Ahuja was shot and the manner of its working would be necessary to appreciate the relevant evidence in that regard. Bhanagay, the Government Criminologist, who was examined as P.W. 4, describes the revolver and the manner of its working. The revolver is a semi-automatic one and it is six-chambered. To load the revolver one has to release the chamber; when the chamber is released, it comes out on the left side. Six cartridges can be inserted in the holes of the chamber and then the chamber is pressed to the revolver. After the revolver is thus loaded, for the purpose of firing one has to pull the trigger of the revolver; when the trigger is pulled the cartridge gets cocked and the revolver being semi-automatic the hammer strikes the percussion cap of the cartridge and the cartridge explodes and the bullet goes off. For firing the second shot, the trigger has to be pulled again and the same process will have to be repeated each time it is fired. As it is not an automatic revolver, each time it is fired, the trigger has to be pulled and released. If the trigger is pulled but not released, the second round will not come in its position of firing. Pulling of the trigger has a double action - one is the rotating of the chamber and cocking, and the other, releasing of the hammer. Because of this double action, the pull must be fairly strong. A pressure of about 20 pounds is required for pulling the trigger. There is controversy on the question of pressure, and we shall deal with this at the appropriate place.

94. Of the three bullets fired from the said revolver, two bullets were found in the bathroom, and the third was extracted from the back of the left shoulder blade. Exs. F-2 and F-2a are the bullets found in the bathroom. These two bullets are flattened and the copper jacket of one of the bullets, Ex. F-2a, has been turn off. The third bullet is marked as Ex. F-3.

95. With this background let us now consider the evidence to ascertain whether the shooting was intentional, as the prosecution avers, or only accidental, as the defence suggests. Excepting Nanavati, the accused, and Ahuja, the deceased, no other person was present in the latter's bed-room when the shooting took place. Hence the only person who can speak to the said incident is the accused Nanavati. The version of Nanavati, as given in his evidence may be stated thus: He walked into Ahuja's bed-room, shutting the door behind him. Ahuja was standing in front of the dressing-table. The accused walked towards Ahuja and said, "You are a filthy swine", and asked him, "Are you going to marry Sylvia and look after the kids?" Ahuja became enraged and said in a nasty manner, "Do I have to marry every woman that I sleep with?" Then the deceased said, "Get the hell out of here, otherwise, I will have you thrown out." The accused became angry, put the packet containing the revolver down on a cabinet which was near him and told him, "By God I am going to thrash you for this." The accused had his hands up to fight the deceased, but the latter made a sudden grab towards the packet containing the revolver. The accused grappled the revolver himself and prevented the deceased from getting it. He then

whipped out the revolver and told the deceased to get back. The deceased was very close to him and suddenly caught with his right hand the right hand of the accused at the wrist and tried to twist it and take the revolver off it. The accused "banged" the deceased towards the door of the bathroom, but Ahuja would not let go of his grip and tried to kick the accused with his knee in the groin. The accused pushed Ahuja again into the bathroom, trying at the same time desperately to free his hand from the grip of the accused by jerking it around. The deceased had a very strong grip and he did not let go the grip. During the struggle, the accused thought that two shots went off: one went first and within a few seconds another. At the first shot the deceased just kept hanging on to the hand of the accused, but suddenly he let go his hand and slumped down. When the deceased slumped down, the accused immediately came out of the bathroom and walked down to report to the police.

96. By this description the accused seeks to raise the image that he and the deceased were face to face struggling for the possession of the revolver, the accused trying to keep it and the deceased trying to snatch it, the deceased catching hold of the wrist of the right hand of the accused and twisting it, and the accused desperately trying to free his hand from his grip; and in the struggle two shots went off accidentally - he does not know about the third shot - and hit the deceased and caused his death. But in the cross-examination he gave negative answers to most of the relevant questions put to him to test the truthfulness of his version. The following answers illustrate his unhelpful attitude in the court:

(1) I do not remember whether the deceased had the towel on him till I left the place.

(2) I had no idea where the shots went because we were shuffling during the struggle in the tiny bathroom.

(3) I have no impression from where and how the shots were fired.

(4) I do not know anything about the rebound of shots or how the shots went off.

(5) I do not even know whether the spectacles of the deceased fell off.

(6) I do not know whether I heard the third shot. My impression is that I heard two shots.

(7) I do not remember the details of the struggle.

(8) I do not give any thought whether the shooting was an accident or not, because I wished to go to the police and report to the police.

(9) I gave no thought to this matter. I thought that something serious had happened.

(10) I cannot say how close we were to each other, we might be very close and we might be at arm's length during the struggle.

(11) I cannot say how the deceased had his grip on my wrist.

(12) I do not remember feeling any blows from the deceased by his free hand during the struggle; but he may have hit me.

97. He gives only a vague outline of the alleged struggle between him and the deceased. Broadly looked at, the version given by the accused appears to be highly improbable. Admittedly he had entered the bed-room of the deceased unceremoniously with a fully loaded revolver; within half a minute he cannot out of the room leaving Ahuja dead with bullet wounds. The story of his keeping the revolver on the cabinet is very unnatural. Even if he had kept it there, how did Ahuja come to know that it was a revolver for admittedly it was put in an envelope. Assuming that Ahuja had suspected that it might be a revolver, how could he have caught the wrist of Nanavati who had by that time the revolver in his hand with his finger on the trigger? Even if he was able to do so, how did Nanavati accidentally pull the trigger three times and release it three times when already Ahuja was holding his wrist and when he was jerking his hand to release it from the grip of Ahuja? It also appears to be rather curious that both the combatants did not use their left hands in the struggle. If, as he has said, there was a struggle between them and he pushed Ahuja into the bathroom, how was it that the towel wrapped around the waist of Ahuja was intact? So too, if there was a struggle, why there was no bruise on the body of the accused? Though Nanavati says that there were some "roughings" on his wrist, he had not mentioned that fact till he gave his evidence in the court, nor is there any evidence to indicate such "roughings". It is not suggested that the clothes worn by the accused were torn or even soiled. Though there was blood up to three feet on the wall of the bathroom, there was not a drop of blood on the clothes of the accused. Another improbability in the version of the accused is, while he say that in the struggle two shots went off, we find three spent bullets - two of them were found in the bathroom and the other in the body of the deceased. What is more, how could Ahuja have continued to struggle after he had received either the chest injury or the head injury, for both of them were serious ones. After the deceased received either the first or the third injury there was no possibility of further struggling or pulling of the trigger by reflex action. Dr. Jhala says that the injury on the head of the victim was such that the victim could not have been able to keep standing and would have dropped unconscious immediately and that injury No. 1 was also so serious that he could not stand for more than one or two minutes. Even Dr. Baliga admits that the deceased would have slumped down after the infliction of injury No. 1 or injury No. 3 and that either of them individually would be sufficient to cause the victim to slump down. It is, therefore, impossible that after either of the said two injuries was inflicted, the deceased could have still kept on struggling with the accused. Indeed, Nanavati says in his evidence that at the first shot the deceased just kept on hanging to his hand, but suddenly he let go his grip and slumped down.

98. The only circumstance that could be relied upon to indicate a struggle is that one of the chappals of the deceased was found in the bed-room while the other was in the bathroom. But that is consistent with both intentional and accidental shooting, for in his anxiety to escape from the line of firing the deceased might have in hurry left his one chappal in the bed-room and fled with the other to the bathroom. The situation of the spectacles near the commode is more consistent with intentional shooting than with accidental shooting, for if there had been a struggle it was more likely that the spectacles would have fallen off and broken instead of their being intact by the side of the dead-body. The condition of the bed-room as well as of the bathroom, as described by Rashmikant, the police-officer who made the inquiry, does not show any indication of struggle or fight in that place. The version of the accused, therefore, is brimming with improbabilities and is not such that any court can reasonably accept it.

99. It is said that if the accused went to the bed-room of Ahuja to shoot him he would not have addressed him by his first name "Prem" as deposed by Deepak. But Nanavati says in his evidence that he would be the last person to address the deceased as Prem. This must have been as embellishment on the part of Deepak. Assuming he said it, it does not indicate any sentiment of affection or goodwill towards the deceased - admittedly he had none towards him - but only an involuntary and habitual expression.

100. It is argued that Nanavati is a good shot - Nanda, D.W. 6, a Commodore in the Indian Navy, certifies that he is a good shot in regard to both moving and stationary targets - and therefore if he had intended to shoot Ahuja, he would have shot him perpendicularly hitting the chest and not in a haphazard way as the injuries indicate. Assuming that accused is a good shot, this argument ignores that he was not shooting at an inanimate target for practice but was shooting to commit murder; and it also ignores the desperate attempts the deceased must have made to escape. The first shot might have been fired and aimed at the chest as soon as the accused entered the room, and the other two presumably when the deceased was trying to escape to or through the bathroom.

101. Now on the question whether three shots would have gone off the revolver accidentally, there is the evidence of Bhanagay, P.W. 4, who is a Government Criminologist. The Deputy Commissioner of Police, Bombay, through Inspector Rangnekar sent to him the revolver, three empty cartridge cases, three bullets and three live rounds for his inspection. He has examined the revolver and the bullets which are marked as Exs. F-2, F-2a and F-3. He is of the opinion that the said three empties were fired from the said revolver. He speaks to the fact that for pulling the trigger a pressure of 28 pounds is required and that for each shot the trigger has to be pulled and for another shot to be fired it must be released and pulled again. He also says that the charring around the wound could occur with the weapon of the type we are now concerned within about 2 to 3 inches of the muzzle of the weapon and the blackening around the would described as carbonaceous tattooing could be caused from such a revolver up to about 6 to 8 inches

from the muzzle. In the cross examination he says that the flattening of the two damaged bullets, Exs. F-2 and F-2a, could have been caused by their hitting a flat hard surface, and that the tearing of the copper jacket of one of the bullets could have been caused by a heavy impact, such as hitting against a hard surface; it may have also been caused, according to him, by a human bone of sufficient strength provided the bullet hits the bone tangently and passes of without obstruction. These answers, if accepted - we do not see any reason why we should not accept them - prove that the bullets, Exs. F-2 and F-2a, could have been damaged by their coming into contact with some hard substance such as a bone. He says in the cross-examination that one 'struggling' will not cause three automatic firings and that even if the struggle continues he would not expect three rounds to go off, but he qualifies his statement by adding that this may happen if the person holding the revolver "co-operates so far as the reflex of his finger is concerned", to pull the trigger. He further elaborates the same idea by saying that a certain kind of reflex co-operation is required for pulling the trigger and that this reflex pull could be either conscious or unconscious. This answer is strongly relied upon by learned counsel for the accused in support of his contention of accidental firing. He argues that by unconscious reflex pull of the trigger three times by the accused three shots could have gone off the revolver. But the possibility of three rounds going off by three separate reflexes of the finger of the person holding the trigger is only a theoretical possibility, and that too only on the assumption of a fairly long struggle. Such unconscious reflex pull of the finger by the accused three times within a space of a few seconds during the struggle as described by the accused is highly improbable, if not impossible. We shall consider the evidence of this witness on the question of ricocheting of bullets when we deal with individual injuries found on the body of the deceased.

102. This witness is not a doctor but has received training in Forensic Ballistics (Identification of Fire Arms) amongst other things in London and possesses certificates of competency from his tutors in London duly endorsed by the covering letter from the Education Department, High Commissioner's Office, and he is a Government Criminologist and has been doing this work for the last 22 years; he says that he has also gained experience by conducting experiments by firing on mutton legs. He stood the test of cross-examination exceedingly well and there is no reason to reject his evidence. He makes the following points: (1) Three used bullets, Exs. F-2, F-2a, and F-3, were shot from the revolver Ex. B. (2) The revolver can be fired only by pulling the trigger; and for shooting thrice, a person shooting will have to give a deep pull to the trigger thrice and release it thrice. (3) A pressure of 28 pounds is required to pull the trigger. (4) One "struggling" will not cause three automatic firings. (5) If the struggle continues and if the person who pulls the trigger co-operates by pulling the trigger three times, three shots may go off. (6) The bullet may be damaged by hitting a hard surface or a bone. As we have pointed out the fifth point is only a theoretical possibility based upon two hypothesis, namely, (i) the struggle continues for a considerable time, and (ii) the person holding the trigger co-operates by pulling it thrice by reflex action. This evidence, therefore, establishes that the bullets went off the revolver brought by the accused -

indeed this is not disputed - and that in the course of the struggle of a few seconds as described by the accused, it is not possible that the trigger could have been accidentally pulled three times in quick succession so as to discharge three bullets.

103. As regards the pressure required to pull the trigger of Ex. B, Triloksing, who is the Master Armourer in the Army, deposing as D.W. 11, does not accept the figure given by the Bhanagay and he would put it at 11 to 14 pounds. He does not know the science of ballistics and he is only a mechanic who repairs the arms. He had not examined the revolver in question. He admits that a double-action revolver requires more pressure on the trigger than single-action one. While Major Burrard in his book on Identification of Fire-arms and Forensic Ballistics says that the normal trigger pull in double-action revolvers is about 20 pounds, this witness reduces it to 11 to 14 pounds; while Major Burrard says in his book that in all competitions no test other than a dead weight is accepted, this witness does not agree with him. His opinion is based on the experiments performed with spring balance. We would prefer to accept the opinion of Bhanagay to that of this witness. But, on the basis of the opinion of Major Burrard, we shall assume for the purpose of this case that about 20 pounds of pressure would be required to pull the trigger of the revolver Ex. B.

104. Before considering the injuries in detail, it may be convenient to ascertain from the relevant text-books some of the indications that will be found in the case of injuries caused by shooting. The following passage from authoritative text-books may be consulted:

105. Snyder's Homicide Investigation, P. 117:

Beyond the distance of about 18 inches or 24 at the most evidence of smudging and tattooing are seldom present.
106. Merkeley on Investigation of Death, P. 82:

"At a distance of approximately over 18" the powder grains are no longer carried forward and therefore the only effect produced on the skin surface is that of the bullet."
107. Legal Medicine Pathology and Toxicology by Gonzales, 2nd Edn., 1956:

The powder grains may travel 18 to 24 inches or more depending on the length of barrel, calibre and type of weapon and the type of ammunition.
108. Smith and Glaister, 1939 Edn., P. 17

"In general with all types of smokeless powder some traces of blackening are to be seen but it is not always possible to recognize unburnt grains of powder even at ranges of one and a half feet."
109. Glaister in his book on Medical Jurisprudence and Toxicology, 1957 Edn., makes a statement that at a range of about 12 inches and over as a rule there will not be marks of

carbonaceous tattooing or powder marks. But the same author in an earlier book from which we have already quoted puts it at 18 inches. In the book "Recent Advances in Forensic Medicine" 2nd Edn., p. 11, it is stated:

At ranges beyond 2 to 3 feet little or no trace of the powder can be observed.
110. Dr. Taylor's book, Vol. 1, 11th edn., p. 373, contains the following statement:

In revolver and automatic pistol wounds nothing but the grace ring is likely to be found beyond about two feet.
111. Bhanagay, P.W. 4, says that charring around the would could occur with the weapon of the type Ex. B within about 2 to 3 inches from the muzzle of the weapon, and the blackening round about the wound could be caused from such a weapon up to about 6 to 8 inches from the muzzle. Dr. Jhala, P.W. 18, says that carbonaceous tattooing would not appear if the body was beyond 18 inches from the mouth of the muzzle.

112. Dr. Baliga, D.W. 2, accepts the correctness of the statement found in Glaister's book, namely, "when the range reaches about 6 inches there is usually an absence of burning although there will probably be some evidence of bruising and of powder mark, at a range of about 12 inches and over the skin around the wound does not as a rule show evidence of powder marks." In the cross-examination this witness says that he does not see any conflict in the authorities cited, and tries to reconcile the various authorities by stating that all the authorities show that there would not be powder marks beyond the range of 12 to 18 inches. He also says that in the matter of tattooing, there is no difference between that caused by smokeless powder used in the cartridge in question, and black powder used in other bullets, though in the case of the former there may be greater difficulty to find out whether the marks are present or not in a wound.

113. Having regard to the aforesaid impressive array of authorities on Medical Jurisprudence, we hold, agreeing with Dr. Jhala, that carbonaceous tattooing would not be found beyond range of 18 inches from the mouth of the muzzle of the weapon. We also hold that charring around the wound would occur when it is caused by a revolver like Ex. B within about 2 or 3 inches from the muzzle of the revolver.

114. The presence and nature of the abrasion collar around the injury indicates the direction and also the velocity of the bullet. Abrasion collar is formed by the gyration of the bullet caused by the rifling of the barrel. If a bullet hits the body perpendicularly, the wound would be circular and the abrasion collar would be all around. But if the hit is not perpendicular, the abrasion collar will not be around the entire wound (See the evidence of Dr. Jhala and Dr. Baliga).

115. As regards the injuries found on the dead-body, two doctors were examined, Dr. Jhala, P.W. 18, on the side of the prosecution, and Dr. Baliga, D.W. 2, on the side of the defence. Dr. Jhala is the Police Surgeon, Bombay, for the last three years. Prior to that he

was a Police Surgeon in Ahmedabad for six years. He is M.R.C.P. (Edin.), D.T.M. and H. (Lond.). He conducted the postmortem on the dead-body of Ahuja and examined both external and internal injuries on the body. He is, therefore, competent to speak with authority on the wounds found on the dead-body not only by his qualifications and experience but also by reason of having performed the autopsy on the dead-body. Dr. Baliga is an F.R.C.S. (England) and has been practising as a medical surgeon since 1933. His qualifications and antecedents show that he is not only an experienced surgeon but also has been taking interest in extra-surgical activities, social, political and educational. He says that he has studied medical literature regarding bullet injuries and that he is familiar with medico-legal aspect of wounds including bullet wounds. He was a Causality Medical Officer in the K.E.M. Hospital in 1928. He had seen bullet injuries both as Causality Medical Officer and later on as a surgeon. In the cross-examination he says:

I have never fired a revolver, nor any other fire-arm. I have not given evidence in a single case of bullet injuries prior to this occasion though I have treated and I am familiar with bullet injuries. The last that I gave evidence in Medico-legal case in a murder case was in 1949 or 1950 or thereabout. Prior to that I must have given evidence in a medico-legal case in about 1939. I cannot off hand tell how many cases of bullet injuries I have treated till now, must have been over a dozen. I have not treated any bullet injuries case for the last 7 or 8 years. It was over 8 or 9 years ago that I have treated bullet injuries on the chest and the head. Out of all these 12 bullet injuries cases which I have treated up to now there might be 4 or 5 which were bullet injuries on the head. Out of these 4 or 5 cases probably there were three cases in which there were injuries both on the chest as well as on the head..... I must have performed about half a dozen post-mortems in all my career.

116. He further says that he was consulted about a week before he gave evidence by Mr. Khandalawala and Mr. Rajani Patel on behalf of the accused and was shows the post-mortem report of the injuries; that he did not have before him either the bullets or the skull; that he gave his opinion in about 20 minutes on the basis of the post-mortem report of the injuries that the said injuries could have been caused in a struggle between the accused and the deceased. This witness has come to the Court to support his opinion based on scanty material. We are not required in this case to decide upon the comparative qualifications or merits of these two doctors of their relative competency as surgeons, but we must say that so far as the wounds on the dead-body of the deceased are concerned, Dr. Jhala, who has made the post-mortem examination, is in a better position to help us to ascertain whether shooting was by accident or by intention than Dr. Baliga, who gave his opinion on the basis of the post-mortem report.

117. Now we shall take injury No. 1. This injury is a punctured one of dimensions 1/4" x 1/4" x chest cavity deep just below and inside the inner end of the right collar bone with an abrasion collar on the right side of the wound. The internal examination showed that the bullet, after causing the punctured wound in the chest just below the inner end of the right collor bone, struck the sternum and after striking it, it slightly deflected in its course

and came behind the shoulder bone. In the course of its journey the bullet entered the chest, impacted the soft tissues of the lung, the aorta and the left lung, and ultimately damaged the left lung and got lodged behind the scapula. Dr. Jhala describes the wound as ellipsoid and oblique and says that the abrasion collar is missing on the left side. On the injury there is neither charring nor carbonaceous tattooing. The prosecution version is that this wound was caused by intentional shooting, while the defence suggestion is that it was caused when the accused and the deceased were struggling for the possession of the revolver. Dr. Jhala, after describing injury No. 1, says that it could not have been received by the victim during a struggle in which both the victim and the assailant were in each other's grip. He gives reasons for his opinion, namely, as there was no carbonaceous tattooing on the injury, it must have been caused by the revolver being fired from a distance of over 18 inches from the tip of the mouth of the muzzle. We have earlier noticed that, on the basis of the authoritative text-books and the evidence, there would not be carbonaceous tattooing if the target was beyond 18 inches from the mouth of the muzzle. It is suggested to him in the cross-examination that the absence of tattooing may be due to the fact that the bullet might have first hit the fingers of the left palm causing all or any of injuries Nos. 2, 4 and 5, presumably when the deceased placed his left palm against the line of the bullet causing carbonaceous tattooing on the said fingers and thereafter hitting the chest. Dr. Jhala does not admit the possibility of the suggestion. He rules out this possibility because if the bullet first had an impact on the fingers, it would get deflected, lose its direction and would not be able to cause later injury No. 1 with abrasion collar. He further explains that an impact with a solid substance like bones of fingers will make the bullet lose its gyratory movement and thereafter it could not cause any abrasion collar to the wound. He adds, "assuming that the bullet first hit and caused the injury to the web between the little finger and the ring finger, and further assuming that it had not lost its gyrating action, it would not have caused the injury No. 1, i.e., on the chest which is accompanied by internal damage and the depth to which it had gone."

118. Now let us see what Dr. Baliga, D.W. 2 says about injury No. 1. The opinion expressed by Dr. Jhala is put to this witness, namely, that injury No. 1 on the chest could not have been caused during the course of a struggle when the victim and the assailant were in each other's grip, and this witness does not agree with that opinion. He further says that it is possible that even if the bullet first caused injury in the web, that is, injury No. 2, and thereafter caused injury No. 1 in the chest, there would be an abrasion collar such as seen in injury No. 1. Excepting this of the suggestion possibility, he has not controverted the reasons given by Dr. Jhala why such an abrasion collar could not be caused if the bullet had hit the fingers before hitting the chest. We will presently show in considering injuries Nos. 2, 4 and 5 that the said injuries were due to the hit by one bullet. If that be so, a bullet, which had caused the said three injuries and then took a turn through the little and the ring finger, could not have retained sufficient velocity to cause the abrasion collar in the chest. Nor has Dr. Baliga controverted the reasons given by Dr. Jhala that even if after causing the injury in the web the bullet could cause injury No. 1,

it could not have caused the internal damage discovered in the post-mortem examination. We have no hesitation, therefore, to accept the well reasoned view of Dr. Jhala in preference to the possibility envisaged by Dr. Baliga and hold that injury No. 1 could not have been caused when the accused and the deceased were in close grip, but only by a shot fired from a distance beyond 18 inches from the mouth of the muzzle.

119. The third injury is a lacerated ellipsoid wound oblique in the left parietal region with dimensions 1 1/8" x 1/4" and skull deep. Dr. Jhala in his evidence says that the skull had a gutter fracture of the outer table and a fracture of the inner table and the brain showed subarachnoid haemorrhage over the left parieto-occipital region accompanying the fracture of the vault of the skull. The injury was effected in a "glancing way", that is, at a tangent, and the injury went upward and to the front. He is of the opinion that the said injury to the head must have been caused by firing of a bullet from a distance of over 18 inches from the mouth of the muzzle and must have been caused with the back of the head of the victim towards the assailant. When it was suggested to him that the said wound could have been caused by a ricocheted bullet, he answered that though a ricocheted bullet coming from the same line of direction could have caused the said injury, it could not have caused the intracranial haemorrhage and also could not have caused the fracture of the inner table of the skull. He is definite that injury No. 3 could not have been inflicted from "front to back" as the slope of the gutter fracture was from the back to the front in the direction of the "grazing" of the bullet. He gives a further reason that as a rule the fracture would be broader in the skull where the bullet has the first impact and narrower where it emerges out, which is the case in respect of injury No. 3. He also relies upon the depth of the fracture at the two points and its slope to indicate the direction in which the bullet grazed. He further says that it is common knowledge that the fracture of both the tables accompanied by haemorrhage in the skull requires great force and a ricocheted bullet cannot cause such an injury. He opines that, though a ricocheted bullet emanating from a powerful fire-arm from a close range can cause injury to a heavy bone, it cannot be caused by a revolver of the type Ex. B.

120. Another suggestion made to him is that the bullet might have hit the glass pane of the window in the bathroom first and then ricocheted causing the injury on the head. Dr. Jhala, in his evidence, says that if the bullet had hit the glass pane first, it would have caused a hole and fallen on the other side of the window, for ricocheting is not possible in the case of a bullet directly hitting the glass. But on the other hand, if the bullet first hit a hard substance and then the glass pane, it would act like a pebble and crack the glass and would not go to the other side. In the present case, the bullet must have hit the skull first and then the glass pane after having lost its velocity, and fallen down like a pebble inside the bathroom itself. If, as the defence suggests, the bullet had directly hit the glass pane, it would have passed through it to the other side, in which case four bullets must have been fired from the revolver Ex. B, which is nobody's case.

121. The evidence, of Dr. Jhala is corroborated by the evidence of the ballistics expert Bhanagay, P.W. 4, when he says that if a bullet hits a hard substance and gets flattened and damaged like the bullets Exs. F-2 and F-2a, it may not enter the body and that even if it enters the body, the penetration will be shallow and the injury caused thereby will be much less as compared to the injury caused by a direct hit of the bullet. Dr. Baliga, on the other hand, says that injury No. 3 could be caused both ways, that is, from "front backward" as well as from "back forward". He also contradicts Dr. Jhala and says "back that in the type of the gutter fracture caused in the present case the wound is likely to be narrower at the entry than at the exit. He further says that assuming that the gutter fracture wound was caused by a ricocheted bullet and assuming further that there was enough force left after rebound, a ricocheted bullet could cause a fracture of even the inner table and give rise to intra-cranial haemorrhage. He asserts that a bullet that can cause a gutter fracture of the outer table is capable of fracturing the inner table also. In short, he contradicts every statement of Dr. Jhala; to quote his own words, "I do not agree that injury No. 3, i.e., the gutter fracture, cannot be inflicted from front to back for the reason that the slope of the gutter fracture was behind forward direction of the grazing of the bullet; I also do not agree with the proposition that if it would have been from the front then the slope of the gutter wound would have been from the front backward; I have not heard of such a rule and that at the near end of the impact of a bullet the gutter fracture is deeper than where it files off; I do not agree that the depth of the fracture at two points is more important factor in arriving at the conclusion of the point of impact of the bullet." He also contradicts the opinion of Dr. Jhala that injury No. 3 could not be caused in a struggle between the victim and the assailant. Dr. Baliga has been cross-examined at great length. It is elicited from him that he is not a ballistics expert and that his experience in the matter of direction of bullet injuries is comparatively less than his experience in other fields. His opinion that the gutter fracture injury could be and was more likely to be caused from an injury glancing front backwards is based upon a comparison of the photograph of the skull shown to him with the figure 15 in the book "Recent Advances in Forensic Medicine" by Smith and Glaister, p. 21. The said figure is marked as Ex. Z in the case. The witness says that the figure shows that the narrower part of the gutter is on the rear and the wider part is in front. In the cross-examination he further says that the widest part of the gutter in figure Ex. Z is neither at the front and nor at the rear end, but the rear end is pointed and tailed. It is put to this witness that figure Ex. Z does not support his evidence and that he deliberately refused to see at it correctly, but he denies it. The learned Judges of the High Court, after seeing the photograph Ex. Z with a magnifying glass, expressed the view that what Dr. Baliga called the pointed and tailed part of the gutter was a crack in the skull and not a part of the gutter. This observation has not been shown to us to be wrong. When asked on what scientific principle he would support his opinion, Dr. Baliga could not give any such principle, but only said that it was likely - he puts emphasis on the word "likely" - that the striking end was likely to be narrower and little broader at the far end. He agrees that when a conical bullet hits a hard bone it means that the hard bone is protruding in the path of the projectile and also agrees that after the initial impact the bullet adjusts itself

in the new direction of flight and that the damage caused at the initial point of the impact would be more than at any subsequent point. Having agreed so far, he would not agree on the admitted hypothesis that at the initial point of contract the wound should be wider than at the exist. But he admits that he has no authority to support his submission. Finally, he admits that generally the breadth and the depth of the gutter wound would indicate the extensive nature of the damage. On this aspect of the case, therefore, the witness has broken down and his assertion is not based on any principle or on sufficient data.

122. The next statement he makes is that he does not agree that the fracture of the inner table shows that the initial impact was from behind; but he admits that the fracture of the inner table is exactly below the backside of the gutter, though he adds that there is a more extensive crack in front of the anterior end of the gutter. He admits that in the case of a gutter on the skull the bone material which dissociates from the rest of the skull is carried in the direction in which the bullet flies but says that he was not furnished with any information in that regard when he gave his opinion.

123. Coming to the question of the ricocheting, he says that a ricocheting bullet can produce depressed fracture of the skull. But when asked whether in his experience he has come across any bullet hitting a hard object like a wall and rebounding and causing a fracture of a hard bone or whether he has any text-book to support his statement, he says that he cannot quote any instance nor an authority. But he says that it is so mentioned in several books. Then he gives curious definitions of the expressions "likely to cause death", "necessarily fatal" etc. He would go to the extent of saying that in the case of injury No. 3, the chance of recovery is up to 80 per cent.; but finally he modifies that statement by saying that he made the statement on the assumption that the haemorrhage in the subarachnoid region is localised, but if the haemorrhage is extensive his answer does not hold good. Though he asserts that at a range of about 12 inches the wound does not show as a rule evidence of powder mark, he admits that he has no practical experience that beyond a distance of 12 inches no powder mark can be discovered as a rule. Though text-books and authorities are cited to the contrary, he still sticks to his opinion; but finally he admits that he is not a ballistics expert and has no experience in that line. When he is asked if after injury No. 3, the victim could have continued the struggle, he says that he could have, though he adds that it was unlikely after the victim had received both injuries Nos. 1 and 3. He admits that the said injury can be caused both ways, that is, by a bullet hitting either on the front of the head or at the back of the head. But his reasons for saying that the bullet might have hit the victim on the front of the head are neither supported by principle nor by the nature of the gutter wound found in the skull. Ex. Z relied upon by him does not support him. His theory of a ricocheted bullet hitting the skull is highly imaginary and cannot be sustained on the material available to us: firstly, there is no mark found in the bathroom wall or elsewhere indicating that the bullet struck a hard substance before ricocheting and hitting the skull, and secondly, it does not appear to be likely that such a ricocheted bullet ejected from Ex. B could have caused such an extensive injury to the head of the deceased as found in this case.

124. Mr. Pathak finally argues that the bullet Ex. F-2a has a "process", i.e., a projection which exactly fits in the denture found in the skull and, therefore, the projection could have been caused only by the bullet coming into contract with some hard substance before it hit the head of the deceased. This suggestion was not made to any of the experts. It is not possible for us to speculate as to the manner in which the said projection was caused.

125. We, therefore, accept, the evidence of the ballistics expert, P.W. 4, and that of Dr. Jhala, P.W. 18, in preference to that of Dr. Baliga.

126. Now coming to injuries Nos. 2, 4 and 5, injury No. 4 is found on the first joint of the crease of the index finger on the back side of the left palm and injury No. 5 at the joint level of the left middle finger dorsal aspect, and injury No. 2 is a punctured wound in the web between the ring finger and the little finger of the left hand communicating with a punctured wound on the palmer aspect of the left knukle level between the left little and the ring finger. Dr. Jhala says that all the said injuries are on the back of the left palm and all have corbonaceous tattooing and that the injuries should have been caused when his left hand was between 6 and 18 inches from the muzzle of the revolver. He further says that all the three injuries could have been caused by one bullet, for, as the postmortem discloses, the three injuries are in a straight line and therefore it can clearly be inferred that they were caused by one bullet which passed through the wound on the palmer aspect. His theory is that one bullet, after causing injuries Nos. 4 and 5 passed between the little and ring finger and caused the punctured wound on the palmar aspect of the left hand. He is also definitely of the view that these wounds could not have been received by the victim during a struggle in which both of them were in each other's grip. It is not disputed that injury No. 1 and injury No. 3 should have been caused by different bullets. If injuries Nos. 2, 4 and 5 were caused by different bullets, there should have been more than three bullets fired, which is not the case of either the prosecution or the defence. In the circumstances, the said wounds must have been caused only by one bullet, and there is nothing improbable in a bullet touching three fingers on the back of the palm and taking a turn and passing through the web between the little and ring finger. Dr. Baliga contradicts Dr. Jhala even in regard to these wounds. He says that these injuries, along with the others, indicate the probability of a struggle between the victim and the assailant over the weapon; but he does not give any reasons for his opinion. He asserts that one single bullet cannot cause injuries Nos. 2, 4 and 5 on the left hand fingers, as it is a circuitous course for a bullet to take and it cannot do so without meeting with some severe resistance. He suggests that a bullet which had grazed and caused injuries Nos. 4 and 5 could then have inflicted injury No. 3 without causing carbonaceous tattooing on the head injury. We have already pointed out that the head injury was caused from the back, and we do not see any scope for one bullet hitting the fingers and thereafter causing the head injury. If the two theories, namely, that either injury No. 1 or injury No. 3 could have been caused by the same bullets that might have caused injury No. 2 and injuries

Nos. 4 and 5 were to be rejected, for the aforesaid reasons, Dr. Baliga's view that injuries Nos. 2, 4 and 5 must have been caused by different bullets should also be rejected, for to accept it, we would require more than three bullets emanating from the revolver, whereas it is the common case that more than three bullets were not fired from the revolver. That apart in the cross-examination this witness accepts that the injury on the first phalangeal joint of the index finger and the injury in the knuckle of the middle finger and the injury in the web between the little and the ring finger, but not taking into account the injury on the palmar aspect would be in a straight line. The witness admits that there can be a deflection even against a soft tissue, but adds that the soft tissue being not of much thickness between the said two fingers, the amount of deflection is negligible. But he concludes by saying that he is not saying this as an expert in ballistics. If so, the bullet could have deflected after striking the web between the little and the ring finger. We, therefore, accept the evidence of Dr. Jhala that one bullet must have caused these three injuries.

127. Strong reliance is placed upon the nature of injury No. 6 found on the back of the deceased viz, a vertical abrasion in the right shoulder blade of dimensions 3" x 1" just outside the spine, and it is said that the injury must have been caused when the accused pushed the deceased towards the door of the bath room. Nanavati in his evidence says that he "banged" him towards the door of the bathroom, and after some struggle he again pushed the deceased into the bathroom. It is suggested that when the accused "banged" the deceased towards the door of the bathroom or when he pushed him again into the bathroom, this injury might have been caused by his back having come into contract with the frame of the door. It is suggested to Dr. Jhala that injury No. 6 could be caused by the man's back brushing against a hard substance like the edge of the door, and he admits that it could be so. But the suggestion of the prosecution case is that the injury must have been caused when Ahuja fell down in the bathroom in front of the commode and, when falling, his back may have caught the edge of the commode or the bath-tub or the edge of the door of the bathroom which opens inside the bathroom to the left of the bath-tub. Shelat, J., says in his judgment:

If the abrasion was caused when the deceased was said to have been banged against the bathroom door or its frame, it would seem that the injury would be more likely to be caused, as the deceased would be in a standing position, on the shoulder blade and not inside the right shoulder. It is thus more probable that the injury was caused when the deceased's back came into contact either with the edge of the door or the edge of the bath-tub or the commode when he slumped.
128. It is not possible to say definitely how this injury was caused, but it could have been caused when the deceased fell down in the bathroom.

129. The injuries found on the dead-body of Ahuja are certainly consistent with the accused intentionally shooting him after entering the bed-room of the deceased; but

injuries Nos. 1 and 3 are wholly inconsistent with the accused accidentally shooting him in the course of their struggle for the revolver.

130. From the consideration of the entire evidence the following facts emerge: The deceased seduced the wife of the accused. She had confessed to him of her illicit intimacy with the deceased. It was natural that the accused was enraged at the conduct of the deceased and had, therefore, sufficient motive to do away with the deceased. He deliberately secured the revolver on a false pretext from the ship, drove to the flat of Ahuja, entered his bed-room unceremoniously with a loaded revolver in hand and in about a few seconds thereafter came out with the revolver in his hand. The deceased was found dead in his bathroom with bullet injuries on his body. It is not disputed that the bullets that caused injuries to Ahuja emanated from the revolver that was in the hand of the accused. After the shooting, till his trial in the Sessions Court, he did not tell anybody that he shot the deceased by accident. Indeed, he confessed his guilt to the Chowkidar Puransingh and practically admitted the same to his colleague Samuel. His description of the struggle in the bathroom is highly artificial and is devoid of all necessary particulars. The injuries found on the body of the deceased are consistent with the intentional shooting and the main injuries are wholly inconsistent with accidental shooting when the victim and the assailant were in close grips. The other circumstances brought out in the evidence also establish that there could not have been any fight or struggle between the accused and the deceased.

131. We, therefore, unhesitatingly hold, agreeing with the High Court, that the prosecution has proved beyond any reasonable doubt that the accused has intentionally shot the deceased and killed him.

132. In this view it is not necessary to consider the question whether the accused had discharged the burden laid on him under s. 80 of the Indian Penal Code, especially as learned counsel appearing for the accused here and in the High Court did not rely upon the defence based upon that section.

133. That apart, we agree with the High Court that, on the evidence adduced in this case, no reasonable body of persons could have come to the conclusion which the jury reached in this case. For that reason also the verdict of the jury cannot stand.

134. Even so, it is contended by Mr. Pathak that the accused shot the deceased while deprived of the power of self-control by sudden and grave provocation and, therefore, the offence would fall under Exception 1 to s. 300 of the Indian Penal Code. The said Exception reads:

Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

135. Homicide is the killing of a human being by another. Under this exception, culpable homicide is not murder if the following conditions are complied with: (1) The deceased must have given provocation to the accused. (2) The provocation must be grave. (3) The provocation must be sudden. (4) The offender, by reason of the said provocation, shall have been deprived of his power of self-control. (5) He should have killed the deceased during the continuance of the deprivation of the power of self-control. (6) The offender must have caused the death of the person who gave the provocation or that of any other person by mistake or accident.

136. The first question raised is whether Ahuja gave provocation to Nanawati within the meaning of the exception and whether the provocation, if given by him, was grave and sudden.

137. Learned Attorney-General argues, that though a confession of adultery by a wife may in certain circumstances be provocation by the paramour himself, under different circumstances it has to be considered from the standpoint of the person who conveys it rather than from the standpoint of the person who gives it. He further contends that even if the provocation was deemed to have been given by Ahuja, and though the said provocation might have been grave, it could not be sudden, for the provocation given by Ahuja was only in the past.

138. On the other hand, Mr. Pathak contends that the act of Ahuja, namely, the seduction of Sylvia, gave provocation though the fact of seduction was communicated to the accused by Sylvia and that for the ascertainment of the suddenness of the provocation it is not the mind of the person who provokes that matters but that of the person provoked that is decisive. It is not necessary to express our opinion on the said question, for we are satisfied that, for other reasons, the case is not covered by Exception 1 to s. 300 of the Indian Penal Code.

139. The question that the Court has to consider is whether a reasonable person placed in the same position as the accused was, would have reacted to the confession of adultery by his wife in the manner in which the accused did. In Mancini v. Director of Public Prosecutions L.R. (1942) A.C. 1, Viscount Simon, L.C., states the scope of the doctrine of provocation thus:

It is not all provocation that will reduce the crime of murder to manslaughter. Provocation, to have that result, must be such as temporarily deprives the person provoked of the power of self-control, as the result of which he commits the unlawful act which causes death..... The test to be applied is that of the effect of the provocation on a reasonable man, as was laid down by the Court of Criminal Appeal in Rex v. Lesbini [1914] 3 K.B. 1116, so that an unusually excitable or pugnacious individual is not entitled to rely on provocation which would not have led an ordinary person to act as he did. In applying the test, it is of particular importance to (a) consider whether a sufficient interval

has elapsed since the provocation to allow a reasonable man time to cool, and (b) to take into account the instrument with which the homicide was effected, for to retort, in the heat of passion induced by provocation, by a simple blow, is a very different thing from making use of a deadly instrument like a concealed dagger. In short, the mode of resentment must bear a reasonable relationship to the provocation if the offence is to be reduced to manslaughter.

140. Viscount Simon again in Holmes v. Director of Public Prosecutions L.R. (1946) A.C. 588 elaborates further on this theme. There, the appellant had entertained some suspicious of his wife's conduct with regard to other men in the village. On a Saturday night there was a quarrel between them when she said, "Well, if it will ease your mind, I have been untrue to you", and she went on, "I know I have done wrong, but I have no proof that you haven't - at Mrs. X.'s". With this appellant lost his temper and picked up the hammerhead and struck her with the same on the side of the head. As he did not like to see her lie there and suffer, he just put both hands round her neck until she stopped breathing. The question arose in that case whether there was such provocation as to reduce the offence of murder to manslaughter. Viscount Simon, after referring to Mancini's case L.R. (1942) A.C. 1, proceeded to state thus:

The whole doctrine relating to provocation depends on the fact that it causes, or may cause, a sudden and temporary loss of self-control, whereby malice, which is the formation of an intention to kill or to inflict grievous bodily harm, is negatived. Consequently, where the provocation inspires an actual intention to kill (such as Holmes admitted in the present case), or to inflict grievous bodily harm, the doctrine that provocation may reduce murder to manslaughter seldom applies.

141. Goddard, C.J., Duffy's case [[1949] 1 All. E.R. 932] defines provocation thus:

Provocation is some act, or series of acts, done by the dead man to the accused which would cause in any reasonable person, and actually causes in the accused, a sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him or her for the moment not master of his mind..... What matters is whether this girl (the accused) had the time to say: 'Whatever I have suffered, whatever I have endured, I know that Thou shall not kill.' That is what matters. Similarly,.....circumstances which induce a desire for revenge, or a sudden passion of anger, are not enough. Indeed, circumstances which induce a desire for revenge are inconsistent with provocation, since the conscious formulation of a desire for revenge means that the person has had time to think, to reflect, and that would negative a sudden temporary loss of self-control which is of the essence of provocation. Provocation being,.....as I have defined it, there are two things, in considering it, to which the law attaches great importance. The first of them is, whether there was what is sometimes called time for cooling, that is, for passing to cool and for reason to regain dominion over the mind..... Secondly in considering whether provocation has or has not been made out, you must consider the retaliation in provocation - that is to say, whether the mode of resentment bears some proper and reasonable relationship to the sort of provocation that has been given.

142. A passage from the address of Baron Parke to the jury in R. v. Thomas (1837) 7 C. & P. 817 extracted in Russell on Crime, 11th ed., Vol. I at p. 593, may usefully be quoted:

But the law requires two things: first that there should be that provocation; and secondly, that the fatal blow should be clearly traced to the influence of passion arising from that provocation.

143. The passages extracted above lay down the following principles: (1) Except in circumstances of most extreme and exceptional character, a mere confession of adultery is not enough to reduce the offence of murder to manslaughter. (2) The act of provocation which reduced the offence of murder to manslaughter must be such as to cause a sudden and temporary loss of self-control; and it must be distinguished from a provocation which inspires an actual intention to kill. (3) The act should have been done during the continuance of that state of mind, that is, before there was time for passion to cool and for reason to regain dominion over the mind. (4) The fatal blow should be clearly traced to the influence of passion arising from the provocation.

144. On the other hand, in India, the first principle has never been followed. That principle has had its origin in the English doctrine that mere words and gestures would not be in point of law sufficient to reduce murder to manslaughter. But the authors of the Indian Penal Code did not accept the distinction. They observed:

It is an indisputable fact, that gross insults by word or gesture have as great tendency to move many persons to violem passion as dangerous or painful bodily in juries; nor does it appear to us that passio-excited by insult is entitled to less indulgence than passion excited by pain. On the contrary, the circumstance that a man resents an insult more than a wound is anything but a proof that he is a man of peculiarly bad heart.

145. Indian courts have not maintained the distinction between words and acts in the application of the doctrine of provocation in a given case. The Indian law on the subject may be considered from two aspects, namely, (1) whether words or gestures unaccompanied by acts can amount to provocation and (2) what is the effect of the time lag between the act of provocation and the commission of the offence. In Empress v. Khogayi I.L.R (1879). 2 Mad. 122, a division bench of the Madras High Court held, in the circumstances of that case, that abusive language used would be a provocation sufficient to deprive the accused of self-control. The learned Judges observed:

What is required is that it should be of a character to deprive the offender of his self-control. In determining whether it was so, it is admissible to take into account the condition of mind in which the offender was at the time of the provocation. In the present case the abusive language used was of the foulest kind and was addressed to man already enraged by the conduct of deceased's son.

146. It will be seen in this case that abusive language of the foulest kind was held to be sufficient in the case of man who was already enraged by the conduct of deceased's son. The same learned Judge in a later decision in Boya Munigadu v. The Queen I.L.R(1881).

3 Mad. 33 upheld plea of grave and sudden provocation in the following circumstances: The accused saw the deceased when she had cohabitation with his bitter enemy; that night he had no meals; next morning he went to the ryots to get his wages from them, and at that time he saw his wife eating food along with her paramour; he killed the paramour with a bill-hook. The learned Judges held that the accused had sufficient provocation to bring the case within the first exception to s. 300 of the Indian Penal Code. The learned Judges observed:

..... If having witnessed the act of adultery, he connected this subsequent conduct as he could not fail to connect it, with that act, it would be conduct of a character highly exasperating to him, implying as it must, that all concealment of their criminal relations and all regard for his feelings were abandoned and that they purposed continuing their course of misconduct in his house. This, we think, amounted to provocation, grave enough and sudden enough to deprive him of his self-control, and reduced the offence from murder to culpable homicide not amounting to murder.

147. The case illustrates that the state of mind of the accused, having regard to the earlier conduct of the deceased, may be taken into consideration in considering whether the subsequent act would be a sufficient provocation to bring the case within the exception. Another division bench of the Madras High Court in In re Murugian [I.L.R. [1957] Mad. 805] held that, where the deceased not only committed adultery but later on swore openly in the face of the husband that she would persist in such adultery and also abused the husband for remonstrating against such conduct, the case was covered by the first exception to s. 300 of the Indian Penal Code. The judgment of the Andhra Pradesh High Court in In re C. Narayan [A.I.R. 1958 A.P. 235] adopted the same reasoning in a case where the accused, a young man, who had a lurking suspicion of the conduct of his wife, who newly joined him, was confronted with the confession of illicit intimacy with, and consequent pregnancy by another, strangled his wife to death, and held that the case was covered by Exception 1 to s. 300 of the Indian Penal Code. These two decisions indicate that the mental state created by an earlier act may be taken into consideration in ascertaining whether a subsequent act was sufficient to make the assailant to lose his self-control.

148. Where the deceased led an immoral life and her husband, the accused, upbraided her and the deceased instead of being repentant said that she would again do such acts, and the accused, being enraged struck her and, when she struggled and beat him, killed her, the Court held the immediate provocation coming on top of all that had gone before was sufficient to bring the case within the first exception to s. 300 of the Indian Penal Code. So too, where a woman was leading a notoriously immoral life, and on the previous night mysteriously disappeared from the bedside of her husband and the husband protested against her conduct, she vulgarly abused him, whereupon the husband lost his self-control, picked up a rough stick, which happened to be close by and struck her resulting in her death, the Labour High Court, in Jan Muhammad v. Emperor I.L.R. [1929]

Lah 861, held that the case was governed by the said exception. The following observations of the court were relied upon in the present case:

In the present case my view is that, in judgment the conduct of the accused, one must not confine himself to the actual moment when the blow, which ultimately proved to be fatal was struck, that is to say, one must not take into consideration only the event which took place immediately before the fatal blow was struck. We must take into consideration the previous conduct of the woman..... As stated above, the whole unfortunate affair should be looked at as one prolonged agony on the part of the husband which must have been preying upon his mind and led to the assault upon the woman, resulting in her death.

149. A division bench of the Allahabad High Court in Emperor v. Balku I.L.R. [1938] All. 789 invoked the exception in a case where the accused and the deceased, who was his wife's sister's husband, were sleeping on the same cot, and in the night the accused saw the deceased getting up from the cot and going to another room and having sexual intercourse with his (accused's) wife, and the accused allowed the deceased to return to the cot, but after the deceased fell asleep, he stabbed him to death. The learned Judges held:

When Budhu (the deceased) came into intimate contact with the accused by lying beside him on the charpai this must have worked further on the mind of the accused and he must have reflected that 'this man now lying beside me had been dishonouring me a few minutes ago'. Under these circumstances we think that the provocation would be both grave and sudden.

150. The Allahabad High Court in a recent decision, viz., Babu Lal v. State MANU/UP/0047/1960: AIR1960All223 applied the exception to a case where the husband who saw his wife in a compromising position with the deceased killed the latter subsequently when the deceased came, in his absence, to his house in another village to which he had moved. The learned Judges observed:

The appellant when he came to reside in the Government House Orchard felt that he had removed his wife from the influence of the deceased and there was no more any contact between them. He had lulled himself into a false security. This belief was shattered when he found the deceased at his hut when he was absent. This could certainly give him a mental jolt and as this knowledge will come all of a sudden it should be deemed to have given him a grave and sudden provocation. The fact that he had suspected this illicit intimacy on an earlier occasion also will not alter the nature of the provocation and make it any the less sudden.

151. All the said four decisions dealt with a case of a husband killing his wife when his peace of mind had already been disturbed by an earlier discovery of the wife's infidelity and the subsequent act of her operated as a grave and sudden provocation on his disturbed mind.

152. Is there any standard of a reasonable man for the application of the doctrine of "grave and sudden" provocation? No abstract standard of reasonableness can be laid down. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, traditional values etc.; in short, the cultural, social and emotional background of the society to which an accused belongs. In our vast country there are social groups ranging from the lowest to the highest state of civilization. It is neither possible nor desirable to lay down any standard with precision: it is for the court to decide in each case, having regard to the relevant circumstances. It is not necessary in this case to ascertain whether a reasonable man placed in the position of the accused would have lost his self-control momentarily or even temporarily when his wife confessed to him of her illicit intimacy with another, for we are satisfied on the evidence that the accused regained his self-control and killed Ahuja deliberately.

153. The Indian law, relevant to the present enquiry, may be stated thus: (1) The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. (2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first Exception to s. 300 of the Indian Penal Code. (3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.

154. Bearing these principles in mind, let us look at the facts of this case. When Sylvia confessed to her husband that she had illicit intimacy with Ahuja, the latter was not present. We will assume that he had momentarily lost his self-control. But if his version is true - for the purpose of this argument we shall accept that what he has said is true - it shows that he was only thinking of the future of his wife and children and also of asking for an explanation from Ahuja for his conduct. This attitude of the accused clearly indicates that he had not only regained his self-control, but on the other hand, was planning for the future. Then he drove his wife and children to a cinema, left them there, went to his ship, took a revolver on a false pretext, loaded it with six rounds, did some official business there, and drove his car to the office of Ahuja and then to his flat, went straight to the bed-room of Ahuja and shot him dead. Between 1-30 P.M., when he left his house, and 4-20 P.M., when the murder took place, three hours had elapsed, and therefore there was sufficient time for him to regain his self-control, even if he had not regained it earlier. On the other hand, his conduct clearly shows that the murder was a deliberate and calculated one. Even if any conversation took place between the accused and the deceased in the manner described by the accused - though we do not believe that - it does not affect the question, for the accused entered the bed-room of the deceased to shoot him. The mere fact that before the shooting the accused abused the deceased and the abuse provoked an equally abusive reply could not conceivably be a provocation for

the murder. We, therefore, hold that the facts of the case do not attract the provisions of Exception 1 to s. 300 of the Indian Penal Code.

155. In the result, conviction of the accused under s. 302 of the Indian Penal Code and sentence of imprisonment for life passed on him by the High Court are correct, and there are absolutely no grounds for interference. The appeal stands dismissed.

156. Appeal dismissed.

MANU/SC/0080/1963

Back to Section 304A of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 3 of 1962

Decided On: 31.07.1963

Cherubin Gregory Vs. The State of Bihar

Hon'ble Judges/Coram:
B.P. Sinha, C.J., J.C. Shah and N. Rajagopala Ayyangar, JJ.

JUDGMENT
N. Rajagopala Ayyangar, J.

1. This is an appeal by special leave against the judgment of the High Court of Patna dismissing an appeal by the appellant against his conviction and the sentence passed on him by the Sessions Judge, Champaran.

2. The appellant was charged with an offence under section 304A of the Indian Penal Code for causing the death of one Mst. Madilen by contact with an electrically charged naked copper wire which he had fixed up at the back of his house with a view to prevent the entry of intruders into his latrine. The deceased Madilen was an inmate of a house near that of the accused. The wall of the latrine of the house of the deceased had fallen down about a week prior to the day of the occurrence - July 16, 1959, with the result that her latrine had become exposed to public view. Consequently the deceased, among others, started using the latrine of the accused. The accused resented this and made it clear to them that they did not have his permission to use it and protested against their coming there. The oral warnings, however, proved ineffective and it was for this reason that on the facts, as found by the courts below, the accused wanted to make entry into his latrine dangerous to the intruders.

3. Though some of the facts alleged by the prosecution were disputed by the accused, they are now concluded by the findings of the courts below and are no longer open to challenge and, indeed, learned Counsel for the appellant did not attempt to controvert them. The facts, as found, are that in order to prevent the ingress of persons like the deceased into his latrine by making such ingress dangerous (1) the accused fixed up a copper wire across the passage leading up to his latrine, (2) that this wire was naked and uninsulated and carried current from the electrical wiring of his house to which it was connected, (3) there was no warning that the wire was live, (4) the deceased managed to pass into the latrine without contacting the wire but that as she came out her hand happened to touch it and she got a shock as a result of which she died soon after. On

these facts the Courts below held that the accused was guilty of an offence under section 304A of the Indian Penal Code which enacts:

"304A. Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with both."
4. The accused made a suggestion that the deceased had been sufficiently warned and the facts relied on in this connection were two: (1) that at the time of the accident it was past day break and there was therefore enough light, and (2) that an electric light was burning some distance away. But it is manifest that neither of these could constitute warning as the conditions of the wire being charged with electric current could not obviously be detected merely by the place being properly lit.

5. The voltage of the current passing through the naked wire being high enough to be lethal, there could be no dispute that charging it with current of that voltage was a 'rash act' done in reckless disregard of the serious consequences to people coming in contact with it.

6. It might be mentioned that the accused was also charged before the learned Sessions Judge with an offence under section 304 of the Indian Penal Code but on the finding that the accused had no intention to cause the death of the deceased he was acquitted of that charge.

7. The principal point of law which appears to have been argued before the learned Judges of the High Court was that the accused had a right of private defence of property and that the death was caused in the course of the exercise of that right. The learned Judges repelled this defence and in our opinion, quite correctly. The right of private defence of property which is set out in section 97 of the Indian Penal Code is, as that section itself provides, subject to the provisions of section 99 of the Code. It is obvious that the type of injury caused by the trap laid by the accused cannot be brought within the scope of section 99, nor of course of section 103 of the Code. As this defence was not pressed before us with any seriousness it is not necessary to deal with this at more length.

8. Learned Counsel, however, tried to adopt a different approach. The contention was that the deceased was a trespasser and that there was no duty owed by an occupier like the accused towards the trespasser and therefore the latter would have had no cause of action for damages for the injury inflicted and that if the act of the accused was not a tort, it could not also be a crime. There is no substance in this line of argument. In the first place, where we have a Code like the Indian Penal Code which defines with particularity the ingredients of a crime and the defences open to an accused charged with any of the offences there set out we consider that it would not be proper or justifiable to permit the invocation of some Common Law principle outside that Code for the purpose of treating what on the words of the statute is a crime into a permissible or other than unlawful act.

But that apart, learned Counsel is also not right in his submission that the act of the accused as a result of which the deceased suffered injuries resulting in her death was not an actionable wrong. A trespasser is not an outlaw, a caput lupinum. The mere fact that the person entering a land is a trespasser does not entitle the owner or occupier to inflict on him personal injury by direct violence and the same principle would govern the infliction of injury by indirectly doing something on the land the effect of which he must know was likely to cause serious injury to the trespasser. Thus in England it has been held that one who sets spring-guns to shoot at trespassers is guilty of a tort and that the person injured is entitled to recover. The laying of such a trap, and there is little difference between the spring-gun which was the trap with which the English Courts had to deal and the naked live wire in the present case, is in truth "an arrangement to shoot a man without personally firing a shot". It is, no doubt true that the trespasser enters the property at his own risk and the occupier owes no duty to take any reasonable care for his protection, but at the same time the occupier is not entitled to do wilfully acts such as set a trap or set a naked live wire with the deliberate intention of causing harm to trespassers or in reckless disregard of the presence of the trespassers. As we pointed out earlier, the voltage of the current fed into the wire precludes any contention that it was merely a reasonable precaution for the protection of private property. The position as to the obligation of occupiers towards trespassers has been neatly summarised by the Law Reform Committee of the United Kingdom in the following words:
"The trespasser enters entirely at his own risk, but the occupier must not set traps designed to do him bodily harm or to do any act calculated to do bodily harm to the trespasser whom he knows to be or who to his knowledge is likely to be on his premises. For example, he must not set man-traps or spring guns. This is no more than ordinary civilised behaviour."

9. Judged in the light of these tests, it is clear that the point urged is wholly without merit.

10. The appeal fails and is dismissed.

11. Appeal dismissed.

MANU/SC/0125/1961

Back to Section 307 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 177 of 1959

Decided On: 24.04.1961

Om Parkash Vs. The State of Punjab

Hon'ble Judges/Coram:
K. Subba Rao and Raghubar Dayal, JJ.

JUDGMENT
Raghubar Dayal, J.

1. This appeal, by special leave, is against the order of the Punjab High Court dismissing the appellant's appeal against his conviction under s. 307, Indian Penal Code.

2. Bimla Devi, P.W. 7, was married to the appellant in October, 1951. Their relations got strained by 1953 and she went to her brother's place and stayed there for about a year, when she returned to her husband's place at the assurance of the appellant's maternal uncle that she would not be maltreated in future. She was, however, ill-treated and her health deteriorated due to alleged maltreatment and deliberate under-nourishment. In 1956, she was deliberately starved and was not allowed to leave the house and only sometimes a morsel or so used to be thrown to her as alms are given to beggars. She was denied food for days together and used to be given gram husk mixed in water after five or six days. She managed to go out of the house in April 1956, but Romesh Chander and Suresh Chander, brothers of the appellant, caught hold of her and forcibly dragged her inside the house where she was severely beaten. Thereafter, she was kept locked inside a room.

3. On June 5, 1956, she happened to find her room unlocked, her mother-in-law and husband away and availing of the opportunity, went out of the house and managed to reach the Civil Hospital, Ludhiana, where she met lady Doctor Mrs. Kumar, P.W. 2 and told her of her sufferings. The appellant and his mother went to the hospital and tried their best to take her back to the house, but were not allowed to do so by the lady Doctor. Social workers got interested in the matter and informed the brother of Bimla Devi, one Madan Mohan, who came down of Ludhiana and, after learning all facts, sent information to the Police Station by letter on June 16, 1956. In his letter he said:

"My sister Bimla Devi Sharma is lying in death bed. Her condition is very serious. I am told by her that deliberate attempt has been made by her husband, mother-in-law and

brother-in-law and sister-in-law. I was also told that she was kept locked in a room for a long time and was beaten by all the above and was starved.

I therefore request that a case may be registered and her statement be recorded, immediately."

4. The same day, at 9-15 p.m., Dr. Miss Dalbir Dhillon sent a note to the police saying 'My patient Bimla Devi is actually ill. She may collapse any moment'.

5. Shri Sehgal, Magistrate, P.W. 9, recorded her statement that night and stated in his note:

"Blood transfusion is taking place through the right forearm and consequently the right hand of the patient is not free. It is not possible to get the thumb impression of the right hand thumb of the patient. That is why I have got her left hand thumb-impression."
6. The impression formed by the learned Judge of the High Court on seeing the photographs taken of Bimla Devi a few days later, is stated thus in the judgment:

"The impression I formed on looking at the two photographs of Bimla was that at time she appeared to be suffering from extreme emaciation. Her cheeks appeared to be hollow. The projecting bones of her body with little flesh on them made her appearance skeletal. The countenance seemed to cadaverous."
7. After considering the evidence of Bimla Devi and the Doctors, the learned Judge came to the conclusion:

"So far as the basic allegations are concerned, which formed the gravamen of the offence, the veracity of her statement cannot be doubted. After a careful scrutiny of her statement, I find her allegations as to starvation, maltreatment, etc., true. The exaggerations and omissions to which my attention was drawn in her statement are inconsequential."
8. After considering the entire evidence on record, the learned Judge said:

"After having given anxious thought and careful consideration to the facts and circumstances as emerge from the lengthy evidence on the record, I cannot accept the argument of the learned counsel for the accused, that the condition of acute emaciation in which Bimla Devi was found on 5th of June, 1956, was not due to any calculated starvation but it was on account of prolonged illness, the nature of which was not known to the accused till Dr. Gulati had expressed his opinion that she was suffering from tuberculosis."
9. He further stated:

"The story of Bimla Devi as to how she was ill-treated, and how, her end was attempted to be brought about or precipitated, is convincing, despite the novelty of the method in which the object was sought to be achieved.... The conduct of the accused and of his

mother on 5th June, 1956, when soon after Bimla Devi's admission in the hospital they insisted on taking her back home, is significant and almost tell-tale. It was not for better treatment or for any treatment that they wanted to take her back home. Their real object in doing so could be no other than to accelerate her end."

10. The appellant was acquitted of the offence under s. 342, Indian Penal Code, by the Additional Sessions Judge, who gave him the benefit of doubt, though he had come to the conclusion that Bimla Devi's movements were restricted to a certain extent. The learned Judge of the High Court considered this question and came to a different conclusion. Having come to these findings, the learned Judge considered the question whether on these facts an offence under s. 307, Indian Penal Code, had been established or not. He held it proved.

11. Mr. Sethi, learned counsel for the appellant, has challenged the correctness of this view in law. He concedes that it is only when a person is helpless and is unable to look after himself that the person having control over him is legally bound to look after his requirements and to see that he is adequately fed. Such persons, according to him, are infants, old people and lunatics. He contends that it is no part of a husband's duty to spoon-feed his wife, his duty being simply to provide funds and food. In view of the finding of the Court below about Bimla Devi's being confined and being deprived of regular food in pursuance of a scheme of regularly starving her in order to accelerate her end, the responsibility of the appellant for the condition to which she was brought up to the 5th of June, 1956, is clear. The findings really go against any suggestion that the appellant had actually provided food and funds for his wife Bimla Devi.

12. The next contention for the appellant is that the ingredients of an offence under s. 307 are materially different from the ingredients of an offence under s. 511, Indian Penal Code. The difference is that for an act to amount to the commission of the offence of attempting to commit an offence, it need not be the last act and can be the first act towards the commission of the offence, while for an offence under s. 307, it is the last act which, if effective to cause death, would constitute the offence of an attempt to commit murder. The contention really is that even if Bimla Devi had been deprived of food for a certain period, the act of so depriving her does not come under s. 307, as that act could not, by itself, have caused her death, it being necessary for the period of starvation to continue for a longer period to cause death. We do not agree with this contention.

13. Section 307 of the Indian Penal Code reads:

"Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten year, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death."

14. Section 308 reads:

"Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

15. Both the sections are expressed in similar language. If s. 307 is to be interpreted as urged for the appellant, s. 308 too should be interpreted that way. Whatever may be said with respect to s. 307, being exhaustive or covering all the cases of attempts to commit murder and s. 511 not applying to any case of attempt to commit murder on account of its being applicable only to offences punishable with imprisonment for life or imprisonment, the same cannot be said with respect to the offence of attempt to commit culpable homicide punishable under s. 308. An attempt to commit culpable homicide is punishable with imprisonment for a certain period and therefore but for its being expressly made an offence under s. 308, it would have fallen under s. 511 which applies to all attempts to commit offences punishable with imprisonment where no express provisions are made by the Code for the punishment of that attempt. It should follow that the ingredients of an offence of attempt to commit culpable homicide not amounting to murder should be the same as the ingredients of an offence of attempt to commit that offence under s. 511. We have held this day in Abhayanand Mishra v. The State of Bihar MANU/SC/0124/1961: 1961CriLJ822 that a person commits the offence of attempting to commit a particular offence, when he intends to commit that particular offence and, having made preparations and with the intention to commit that offence does an act towards its commission and that such an act need not be the penultimate act towards the commission of that offence, but must be an act during the course of committing such offence. It follows therefore that a person commits an offence under s. 308 when he has an intention to commit culpable homicide not amounting to murder and in pursuance of that intention does an act towards the commission of that offence whether that act be the penultimate act or not. On a parity of reasoning, a person commits an offence under s. 307 when he has an intention to commit murder and, in pursuance of that intention, does an act towards its commission irrespective of the fact whether that act is the penultimate act or not. It is to be clearly understood, however, that the intention to commit the offence of murder means that the person concerned has the intention to do certain act with the necessary intention or knowledge mentioned in s. 300. The intention to commit an offence is different from the intention or knowledge requisite for constituting the act as that offence. The expression 'whoever attempts to commit an offence' in s. 511, can only mean 'whoever intends to do a certain act with the intent or knowledge necessary for the

commission of that offence'. The same is meant by the expression' whoever does an act with such intention or knowledge and under such circumstances that if he, by that act, caused death, he would be guilty of murder' in s. 307. This simply means that the act must be done with the intent or knowledge requisite for the commission of the offence or murder. The expression 'by that act' does not mean that the immediate effect of the act committed must be death. Such a result must be the result of the act whether immediately or after a lapse of time.

16. The word 'act' again, does not mean only any particular, specific, instantaneous act of a person, but denotes, according to s. 33 of the Code, as well, a series of acts. The course of conduct adopted by the appellant in regularly starving Bimla Devi comprised a series of acts and therefore acts falling short of completing the series, and would therefore come within the purview of s. 307 of the Code.

17. Learned counsel for the appellant has referred us to certain cases in this connection. We now discuss them.

18. The first is Queen Empress v. Niddhi MANU/UP/0057/1891: I.L.R(1892). 14 All. 38. Nidha, who had been absconding, noticing certain chowkidars arrive, brought up a sort of a blunderbuss he was carrying, to the hip and pulled the trigger. The cap exploded, but the charge did not go off. He was convicted by the Sessions Judge under Sections 299 and 300 read with s. 511, and not under s. 307, Indian Penal Code, as the learned Judge relied on a Bombay Case - Regina v. Francis Cassidy [(1867) Bom. H.C. Reps. 4(Crown Cases) - in which it was held that in order to constitute the offence of attempt to murder, under s. 307, the act committed by the person must be an act capable of causing, in the natural and ordinary course of events, death. Straight, J., both distinguished that case and did not agree with certain views expressed therein. He expressed his view thus, at p. 43:

"It seems to me that if a person who has an evil intent does an act which is the last possible act that he could do towards the accomplishment of a particular crime that he has in his mind, he is not entitled to pray in his aid an obstacle intervening not known to himself. If he did all that he could do and completed the only remaining proximate act in his power, I do not think he can escape criminal responsibility, and this because his own set volition and purpose having been given effect to their full extent, a fact unknown to him and at variance with his own belief, intervened to prevent the consequences of that act which he expected to ensue, ensuing."
Straight, J., gave an example earlier which itself does not seem to fit in with the view expressed by him later. He said:

"No one would suggest that if A intending to fire the stack of B, goes into a grocery shop and buys a box of matches, that he has committed the offence of attempting to fire the stack of B. But if he, having that intent, and having bought the box of matches, goes to

the stack of B and lights the match, but it is put out by a puff of wind, and he is so prevented and interfered with, that would establish in my opinion an attempt."
19. The last act, for the person to set fire to the stack, would have been his applying a lighted match to the stack. Without doing this act, he could not have set fire and, before he could do this act, the lighted match is supposed to have been put out by a puff of wind.

20. Illustration (d) to s. 307, itself shows the incorrectness of this view. The illustration is:

"A, intending to murder Z, by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's Table. A has committed the offence defined in this section."
21. A's last act, contemplated in this illustration, is not an act which must result in the murder of Z. The food is to be taken by Z. It is to be served to him. It may not have been possible for A to serve the food himself to Z, but the fact remains that A's act in merely delivering the food to the servant is fairly remote to the food being served and being taken by Z.

22. This expression of opinion by Straight, J., was not really with reference to the offence under s. 307, but was with reference to attempts to commit any particular offence and was stated, not to emphasize the necessity of committing the last act for the commission of the offence, but in connection with the culprit taking advantage of an involuntary act thwarting the completion of his design by making it impossible for the offence being committed. Straight, J., himself said earlier:

"For the purpose of constituting an attempt under s. 307, Indian Penal Code, there are two ingredients required, first, an evil intent or knowledge, and secondly, an act done."
23. In Emperor v. Vasudeo Balwant Gogte I.L.R(1932). 56 Bom. 434 a person fired several shots at another. No injury was in fact occasioned due to certain obstruction. The culprit was convicted of an offence under s. 307. Beaumont, C.J., said at p. 438:

"I think that what section 307 really means is that the accused must do an act with such a guilty intention and knowledge and in such circumstances that but for some intervening fact the act would have amounted to murder in the normal course of events".
24. This is correct. In the present case, the intervening fact which thwarted the attempt of the appellant to commit the murder of Bimla Devi was her happening to escape from the house and succeeding in reaching the hospital and thereafter securing good medical treatment.

25. It may, however, be mentioned that in cases of attempt to commit murder by fire arm, the act amounting to an attempt to commit murder is bound to be the only and the last act to be done by the culprit. Till he fires, he does not do any act towards the commission of the offence and once he fires, and something happens to prevent the shot taking effect,

the offence under s. 307 is made out. Expressions, in such cases, indicate that one commits an attempt to murder only when one has committed the last act necessary to commit murder. Such expressions, however, are not to be taken as precise exposition of the law, though the statements in the context of the cases are correct.

26. In Mi Pu v. Emperor (1909) 10 Cri. L.J. 363 a person who had put poison in the food was convicted of an offence under s. 328 read with s. 511, Indian Penal Code, because there was no evidence about the quantity of poison found and the probable effects of the quantity mixed in the food. It was therefore held that the accused cannot be said to have intended to cause more than hurt. The case is therefore of no bearing on the question under determination.

27. In Jeetmal v. State A.I.R. 1950 M B21 it was held that an act under s. 307, must be one which, by itself, must be ordinarily capable of causing death in the natural ordinary course of events. This is what was actually held in Cassidy's Case [(1867) Bom. H.C. Reps. Vol. IV, p. 17 (Crown Cases).] and was not approved in Nidha's Case I.L.R(1892). 14 All. 48 or in Gogte's Case I.L.R0(1932). 56 Bom. 434.

28. We may now refer to Rex v. White (1910) 2 K.B. 124. In that case the accused who was indicated for the murder of his mother, was convicted of attempt to murder her. It was held that the accused had put two grains of cyanide of potassium in the wine glass with the intent to murder her. It was, however, argued that there was no attempt at murder because 'the act of which he was guilty, namely, the putting the poison in the wine glass, was a completed act and could not be and was not intended by the appellant to have the effect of killing her at once; it could not kill unless it were followed by other acts which he might never have done'. This contention was repelled and it was said:

"There seems no doubt that the learned judge in effect did tell the jury that if this was a case of slow poisoning the appellant would be guilty of the attempt to murder. We are of opinion that this direction was right, and that the completion or attempted completion of one of a series of acts intended by a man to result in killing is an attempt to murder even although this completed act would not, unless followed by the other acts, result in killing. It might be the beginning of the attempt, but would nonetheless be an attempt".
29. This supports our view.

30. We therefore hold that the conviction of the appellant under s. 307, Indian Penal Code, is correct and accordingly dismiss this appeal.

31. Appeal dismissed.

MANU/WB/0154/1933

Back to Section 312 of Indian Penal Code, 1860

Back to Section 511 of Indian Penal Code, 1860

IN THE HIGH COURT OF CALCUTTA

Decided On: 21.07.1933

Asgarali Pradhania Vs. Emperor

Hon'ble Judges/Coram:
John Lort Williams and G.D. McNair, JJ.

JUDGMENT

Authored By: John Lort Williams, G.D. McNair

John Lort Williams, J.

1. The appellant was convicted under Section 312/511, I.P.C., of an attempt to cause a miscarriage. The complainant was 20 years of age, and had been married but divorced by consent. She was living in her father's house, where she used to sleep in the cookshed. The appellant was a neighbour who had lent money to her father, and was on good terms with him. He was a married man with children. According to the complainant he gave her presents, and promised to marry her. As a result sexual intercourse took place and she became pregnant. She asked him to fulfil his promise, but he demurred and suggested that she should take drugs to procure a miscarriage. One night he brought her a bottle half full of a red liquid, and a paper packet containing a powder. After he had gone she tasted the powder, but finding it salty and strong, spat it out. She did not try the liquid. The following night the appellant came again and finding that she had not taken either the powder or the liquid, he pressed her to take them, but she refused saying that she was afraid for her own life, and that the powder irritated her tongue. Thereupon he asked her to open her mouth, and approached her with the bottle, and took hold of her chin. But she snatched the bottle from him and cried out loudly, and her father and some neighbours came, and the appellant fled. The police were informed, and upon analysis, sulphate of copper was detected in the powder, but the amount was not ascertained. No poison was detected in the liquid. According to the medical evidence, copper sulphate has no direct action on the uterus, and is not harmful unless taken in sufficiently large quantities, when it may induce abortion. One to three grains may be used as an astringent, two to ten grains as an emetic, one ounce would be fatal. According to Taylor's Medical Jurisprudence (Edn. 5), p. 166,

there is no drug or combination of drugs which will, when taken by the mouth, cause a healthy uterus to empty itself, unless it be given in doses sufficiently large to seriously endanger, by poisoning, the life of the woman who takes it or them.

2. The defence was a denial of all the facts, some suggestion that the complainant was of loose character, and a statement that the prosecution was due to enmity. Two-points have been raised on behalf of the appellant, one being that the complainant was an accomplice and that her evidence was not corroborated, that she was willing to destroy the foetus but was afraid of the consequences to herself. On the facts stated I am satisfied that the complainant cannot be regarded as an accomplice, and in any case there is some corroboration of her evidence, in the discovery of the drugs and the appellant's flight, which was observed by several witnesses. The other is a point of some importance, namely, that the facts proved do not constitute an attempt to cause miscarriage. This depends upon what constitutes an attempt to commit an offence, within the meaning of Section 511, I.P.C., which provides as follows:

Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment, or to cause such an offence to be committed and in such attempt does any act towards the commission of the offence shall be punished etc.

Illustrations: (A) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section. (B) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

3. It is argued that as there was no evidence to show that either the liquid or the powder was capable of causing a miscarriage, the appellant cannot be convicted of an attempt to do so. This contention depends upon a correct definition of the word "attempt" within the meaning of the section. In R. v. McPherson (1857) D B 202, the prisoner was charged with breaking and entering the prosecutor's house and stealing therein certain specified chattels, and was convicted of attempting to steal those chattels. Unknown to him those chattels had been stolen-already. Cockburn, C.J., held that the conviction was wrong because

the word 'attempt' clearly conveys with it the idea that if the attempt had succeeded the offence charged would have been committed. An attempt must be to do that, which if successful, would amount to the felony charged, but here the attempt never could have succeeded.
4. In R. v. Cheeseman (1862) L C 140 Lord Blackburn said:

There is no doubt a difference between the preparation antecedent to an offence and the actual attempt. But if the actual transaction had commenced which would have ended in the crime if not interrupted, there is clearly an attempt to commit the crime.
5. In R. v. Collins (1864) 33 LJM 177 Cockburn, C.J., following McPherson's case (1857) D B 202 held that if a person puts his hand into the pocket of another, with intent to steal what he can find there, and the pocket is empty, he cannot be convicted of an attempt to

steal. Because an attempt to commit felony can only in point of law be made out where, if no interruption had taken place, the attempt could have been carried out successfully, so as to constitute the offence which the accused is charged with attempting to commit. It is clear however from the illustrations to Section 511, that Lord Macaulay and his colleagues who drafted the Indian Penal Code, which was enacted in 1880, did not intend to follow these decisions, and I agree with the remarks upon this point made in Mac Crea's case (1893) 15 All 173. The Calcutta High Court in Empress v. Riasat Ali (1881) 7 Cal 352 held that the definitions in McPherson's case (1857) D B 202 and Cheeseman's case (1862) L C 140 were sound. In England the decisions were reconsidered in R. v. Brown (1889) 24 QBD 357 and R. v. Ring (1892) 17 Cox 491. The Judges expressed dissatisfaction with the decisions in R. v. Collins (1864) 33 LJM 177 and with that in R. v. Dodd (1877) Unreported which proceeded 'upon the view that a person could not be convicted of an attempt to commit an offence which he could not actually commit, and expressly overruled them saying that they were no longer law. The judgment in Brown's case (1889) 24 QBD 357 however has been criticised as unsatisfactory, and it has been contended that R. v. Brown (1889) 24 QBD 357 and R. v. Ring (1892) 17 Cox 491 have not completely overruled R. v. Collins (1864) 33 LJM C 177: Pritchard's Quarter Sessions (Edn. 2). In Amrita Bazar Patrika Press, Ltd. AIR 1920 Cal 478 the decision in R. v. Collins (1864) 33 LJM C 177 was again quoted with approval, apparently in ignorance of the fact that it had been expressly overruled in the English Courts. Mookerjee, J., held that in the language of Stephen (Digest of Criminal Law; Article 50):

An attempt to commit a crime is an act done with intent to commit that crime and forming part of a series of acts which would constitute its actual commission if it were not interrupted. To put the matter differently, attempt is an act done in part execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and possessing except for failure to consummate, all the elements of a substantive crime; in other words an attempt consists in the intent to commit a crime, combined with the doing of some act adapted to but falling short of its actual commission; it may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted.

6. The decision in McPherson's (1) and Collins cases (1864) 33 LJM 177 are clearly incompatible with illustrations to Section 511, and in my opinion are not law either in India or in England. Nevertheless, the statements of law to which I have referred are correct, so far as they go, and were not intended to be exhaustive or comprehensive definitions applicable to every set of facts which might arise. So far as the law in England is concerned, in the draft Criminal Code prepared by Lord Blackburn, and Barry, Lush, and Stephen, JJ., the following definition appears (Art. 74):

An attempt to commit an offence is an act done or omitted with intent to commit that offence, forming part of a series of acts or omissions which would have constituted the offence if such series of acts or omissions had not been interrupted either by the voluntary determination of the offender not to complete the offence or by some other cause.

Everyone who believing that a certain state of facts exists does or omits an act the doing or omitting of which would, if that state of facts existed, be an attempt to commit an offence, attempts to commit that offence, although its commission in the manner proposed was by reason of the non-existence of that state of facts at the time of the act or omission impossible.

7. To this definition the Commissioners appended a note to the effect that the passage between the asterisks "declares the law differently from R. v. Collins (1864) 33 LJM 177" which at the date of the drafting of the Code had not been overruled. The first part of this definition was accepted in R. v. Laitwood (1910) 4 C A R 252, and purporting to be in accordance with the latter part, it was held by Darling, J., that if a pregnant woman, believing that she is taking a "noxious thing" within the meaning of the offences against the Poison Act, 1861, Section 58, does with intent to procure her own abortion take a thing in fact harmless, she is guilty of attempting to commit an offence against the first part of that section: R. v. Brown (1899) 63 JP 790. In Russell on Crimes (Edn. 8), Vol. 1 at p. 145, two American definitions are quoted from Bishop:

Where the non-consummation of the intended criminal result is caused by an obstruction in the way, or by the want of the thing to be operated upon, if such an impediment is of a nature to be unknown to the offender, who used what seemed appropriate means, the punishable attempt is committed. Whenever the laws make criminal one step towards the accomplishment of an unlawful object done with the intent or purpose of accomplishing it; a person taking that step with that intent or purpose and himself capable of doing every act on his part to accomplish that object, cannot protect himself from responsibility by showing that by reason of some fact unknown to him at the time of his criminal attempt it could be fully carried into effect in the particular instance.

8. So far as the law in India is concerned, it is beyond dispute that there are four stages in every crime, the intention to commit, the preparation to commit the attempt to commit, and if the third stage is successful, the commission itself. Intention alone, or intention followed by preparation are not sufficient to constitute an attempt. But intention followed by preparation, followed by any act done towards the commission of the offence "is sufficient." Act done towards the commission of the offence are the vital words in this connexion.

9. Thus, if a man thrusts his hand into the pocket of another with intent to steal, he does an act towards the commission of the offence of stealing, though unknown to him the pocket is empty. He tries to steal, but is frustrated by a fact, namely the emptiness of the pocket, which is not in any way due to any act or omission on his part. He does an act towards the commission of the offence of pocket picking, by thrusting his hand into the pocket of another with intent to steal. Similarly, he may fail to steal the watch of another because the latter is too strong for him, or because the watch is securely fastened by a guard. Nevertheless he may be convicted of an attempt to steal. Blackburn, and Mellor, JJ.: R. v. Hensle 11 Cox 573.

10. But if one who believes in witchcraft puts a spall on another, or burns him in effigy, or curses him with the intention of causing him hurt, and believing that his actions will have that result, he cannot in my opinion be convicted of an attempt to cause hurt. Because what he does is not an act towards the commission of that offence, but an act towards the commission of something which cannot, according to ordinary human experience result in hurt to another, within the meaning of the Penal Code. His failure to cause hurt is due to his own act or omission, that is to say, his act was intrinsically useless, or defective, or inappropriate for the purpose he had in mind, owing to the undeveloped state of his intelligence, or to ignorance of modern science. His failure was due, broadly speaking, to his own volition. Similarly, if a man with intent to hurt another by administering poison prepares and administers some harmless substance, believing it to be poisonous, he cannot in my opinion, be convicted of an attempt to do so. And this was decided in Empress v. Mt. Rupsir Panku (1895) 9 CPL R 14, with which I agree. The learned Judicial Commissioner says:

In each of the illustrations to Section 511, there is not merely an act done with the intention to commit an offence which is unsuccessful because it could not possibly result in the completion of the offence, but an act is done 'towards the commission of the offence,' that is to say the offence remains incomplete only because something yet remains to be done, which the person intending to commit the offence is unable to do, by reason of circumstances independent of his own volition. It cannot be said that in the present case the prisoner did an act 'towards the commission of the offence.' The offence which she intended to commit was the administration of position to her husband. The act which she committed was the 'administration of a harmless substance'.

11. This reasoning is applicable to the case now under consideration. The appellant intended to administer something capable of causing a miscarriage. As the evidence stands, he administered a harmless substance. This cannot amount to an act towards the commission of the offence'' of causing a miscarriage. But if A, with intent to hurt B by administering poison, prepares a glass for him and fills it with poison, but while A's back is turned, C who has observed A's act, pours away the poison and fills the glass with water, which A in ignorance of what C has done, administers to B, in my opinion A is guilty, and can be convicted of an attempt to cause hurt by administering poison. His failure was not due to any act or omission of his own, but to the intervention of a factor independent of his own volition. This important distinction is correctly stated by Turner, J., in Ramsaran's case (1872) 4 NWP 48 where he observes that

to constitute an attempt there must be an act done with the intention o£ committing an offence and in attempting the commission. In each of the illustrations to Section 511 we find an act done with the intention of committing an offence, and immediately enabling the commission of the offence, although it was not an act which constituted a part of the offence, and in each we find the intention of the person making the attempt was frustrated by circumstances independent of his own volition,

12. In Queen-Empress v. Luxman Narayan Joshi (1900) 2 Bom BLR 286 Sir Lawrence Jenkins, C.J., defined "attempt" as:

An intentional preparatory action which failed in object through circumstances independent of the person who seeks its accomplishment. 'And in Queen-Empress v, Vinayak Narayan (1900) 2 Bom BLR 304 the same learned Judge defined "attempt" as when a man does an intentional act with a view to attain a certain end, and fails in his object through some circumstance independent of his own will'.

13. These also are good definitions so far as they go, but they fail to make clear that there must be something more than intention coupled with mere preparation. As was said in Raman Chettiar v. Emperor AIR 1927 Mad 77, at p. 96(of 28 Cr. L.J.):

The actual transaction must have begun and an act to bear upon the mind of the victim must have been done before a preparation can be said to be an attempt." Here it is necessary to observe the distinction that 'an act to bear' is not the same thing as 'an act which has borne'.

14. In Empress v. Ganesh Balvant (1910) 34 Bom 378, it was said that:

some external act, something tangible and ostensible of which the law can take hold as an act showing progress towards the actual commission of the offence
is necessary to constitute an offence. "It does not matter that the progress was interrupted."

15. In Queen-Empress v. Gopala (1893) Rat Un Cri Cases 865, Parsons and Ranade, JJ., stated that, in their opinion, a person physically incapable of committing rape cannot be found guilty of an attempt to commit rape, because his acts would not be acts "towards the commission of the offence." In the American and English Encyclopedia of Law Vol. 3, p. 250, (Edn. 2) "attempt" is defined as

an act done in part execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and possessing, except for failure to consummate, all the elements of the substantive crime."

16. In Russell on Crimes, (Edn. 8), Vol. 1, pp. 145 and 148, the following definitions are given:

No act is indictable as an attempt to commit felony or misdemeanour, unless it is a step towards the execution of the criminal purpose, and is an act directly approximating to, or immediately connected with, the commission of the offence which the person doing it has in view. There must be an overt act intentionally done towards the commission of some offence, one or more of a series of acts which would constitute the crime if the accused were not prevented by interruption, or physical impossibility, or did not fail, for some other cause, in completing his criminal purpose.

The question in each case is whether the acts relied on constituting the attempt were done with intent to commit the complete offence, and as one or more of a series of acts or omissions directly forming some of the necessary steps towards completing that offence, but falling short of completion by the intervention of causes outside the volition of the accused, or because the offender of his own free will desisted from completion of his criminal purpose for some reason other than mere change of mind.

17. I do not propose to embark upon the dangerous course of trying to state any general proposition, or to add to the somewhat confusing number of definitions of what amounts to an "attempt," within the meaning of Section 511, Penal Code, I will content myself with saying that, on the facts stated in this case, and for the reasons already given, the appellant cannot in law, be convicted of an attempt to cause a miscarriage. What he did was not an "act done towards the commission of the offence" of causing a miscarriage. Neither the liquid nor the powder being harmful, they could not have caused a miscarriage. The appellant's failure was not due to a factor independent of himself. Consequently, the conviction and sentence must be set aside and the appellant acquitted.

G.D. McNair, J.

18. I agree.

MANU/BH/0085/1957

Back to Section 320 of Indian Penal Code, 1860

IN THE HIGH COURT OF PATNA

Criminal Revn. No. 1315 of 1953

Decided On: 18.08.1955

Rameshwar Mahton and Ors. Vs. The State

Hon'ble Judges/Coram:
Satish Chandra Misra and Kamla Sahai, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: B.C. Ghose and A.C. Mitra, Advs.
For Respondents/Defendant: Standing Counsel

JUDGMENT
Authored By: Satish Chandra Misra, Kamla Sahai
Satish Chandra Misra, J.

1. This application in revision is directed against the order of a first class Magistrate at Purulia, convicting the petitioners under Section 126(2) of the Representation of the People Act, 1951. They were sentenced to pay a fine of Rs. 100/-each, in default to undergo simple imprisonment for one month each. The petitioners preferred an appeal against the conviction and sentence before the Sessions Judge of Manbhum-Singhbhum but the conviction was upheld, although the sentence -was reduced to a fine of Rs. 30/- each, in default to undergo simple imprisonment for 13 days.

2. The petitioners were proceeded against on the allegation that on the 4th of January, 1952, a public meeting was held at 8 p. m., in front Of the house of petitioner Rameshwar Mahton, in his Kuli, which was attended by about 100 persons. Petitioner No. 2, Baul Chandra Mahton, addressed the meeting and exhorted the people to cast their votes in the Engine Box, the engine being the symbol of the candidate of the Lok Sewak Sangh party.

It was at village Bara Urma. The Chowkidar, Tikaram Manjhi (P.W. 3), objected to the meeting as illegal as it would be ft contravention of Clause (1) of Section 126 of the Representation of the People Act. The meeting, however, continued in epite of his protest. Kalipada Mahton (P. W. 1), also attended the meeting on the Invitation of petitioner Rameshwar Mahton

It appears that he belonged to the Congress party and he sent a report of the meeting to the president of the Thana Congress Committee. He went to the Sub-Inspector of Police, also, on the 5th January, 1952, with the report and the Sub-Inspector, after investigation, recommended prosecution of the petitioners under Clause (2) of Section 126.

It may be stated that the elections for the State Legislature as well as Parliament were going on in the constituency in which Bara Urma lies and, in fact, there was polling booth in that village. If, therefore, it could be established that there was a public meeting at Bara Urma on the 4th of January, 1952, the persons convening, holding and attending the public meeting would be liable to the penalty provided in Clause (2) of that section.

It is also admitted that polling did take place at the Bara Urma polling booth on the 4th January, 1952, from 10 A.M. to 4. P. M. and that it was due also to take place on the 5th January, 1952.

3. The petitioner denied that there was any meeting. It was pleaded on their behalf that some people residing in the Kuli in front of the house of petitioner No. 1 Rameshwar Mahton gathered in the evening of the 4th January, 1952, for their evening chat and no speech was delivered by anyone in connection with the elections.

The whole story of the prosecution was concocted by Kalipada Mahton as the petitioners were working for the candidates set up by the Lok Sewak Sangh, whereas Kalipada Mahton and his father were working for the Congress candidates. They were hostile to Rameshwar Mahton and accordingly made a false report to the President of the Thana Congress Committee and the police with regard to the public meeting having been held at the instance of Rameshwar Mahton, petitioner No. 1.

The Courts below, however, on a consideration of the evidence, negatived the plea of the defence and accepted the prosecution story as well-founded.

4. Mr. B. C. Ghosh appearing for the petitioners in this Court contended that it should be held that there was no public meeting at the house of Rameshwar Mahton, as alleged by the prosecution. The gathering at the house of Rameshwar Mahton, in fact, was only that of his friends and people who were residing in the Kuli, in front of Rameshwar's house.

The meeting was not even held at a, public place and as such the gathering cannot come within the mischief of Section 126 of the Representation of the People Act. It seems to me, however, that this argument is one of fact pure and simple and the Courts below have gone into the question and held that, in fact, it was a gathering to which members of the public in general were invited, including the opponents of Rameshwar Mahton, and a speech was delivered by petitioner Baul Chandra Mahton exhorting the people assembled to cast their votes in the Engine Box,

Chowkidar Tikaram Manjhi has stated that he was present at the meeting and objected to its continuance as being illegal. In the result, it must be held that there is no substance in this contention that there was no public meeting, although it was held in front of the house of Rameshwar Mahton in the evening.

5. The next point raised by learned counsel was that we should hold that Section 126 of the Representation of the People Act, 1951 is ultra vires the Parliament of India, as it had no jurisdiction to make provision to that effect barring public meeting in general during the time of elections. Section 126 of the Representation of the People Act reads as follows:

"126 (1). No person shall convene, hold or at, tend any public meeting within any constituency on the date or dates on which a poll Is taken for an election in that constituency.

(2) Any person who contravenes the provisions of Sub-section (1) shall be punishable with fine which may expend to two hundred and fifty rupees."

Learned counsel referred in this connection to Articles 13 and 19 of the Constitution of India, Article 13, Clause (2) provides,

"The State shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void."
Both Articles 13 and 19 fall in the chapter on Fundamental Rights in the Constitution. Article 19(1)(b), so far as it is relevant, is all citizens shall have the right to assemble peaceably and without arms". It was contended that the right of peaceable assembly having been conferred in specific terms on all citizens in Article 19(1)(b), Section 126 of the Representation of the People Act passed by the Parliament shall be void, because it takes away the right conferred under this clause to hold public meetings. This follows from Clause (2) of Article 13. Learned counsel urged that Clause (3) of Article 19 provides in clear terms that

"nothing in Sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of public order..... reasonable restrictions on the exercise of the right conferred by the said sub-clause."
The law relating to regulation of public meetings is a law passed in the interests of public order. It has been held by this Court as well as the Supreme Court of India that a law regulating the holding of public meetings must be deemed to be one in the interests of public order. The expression "public order", however, falls in 7th Schedule, List II, Item No. 1 which is

"Public order (but not including the use of naval, military or air forces or any other armed fources of the Union in aid of civil power)."
Item No. 72 of List I of the 7th Schedule, which enumerates the subjects which are within the exclusive jurisdiction of the Union Legislature, provides

"Elections to Parliament, to the Legislatures of States and to the offices of President and Vice-president; the Election Commission."
The Indian Parliament purported to legislate in regard to the elections in the shape of the Representation of the People Act in exercise of the powers conferred upon it under item No. 72 of List I of the 7th Schedule of the Constitution. Section 126 however, of the Act which prohibits the convening, holding or attending of public meetings within a constituency on the date or dates on which a poll is taken for election in that constituency must be held to be a provision in the interests of public order.

If that is so, it comes within item No. 1 of List II and not Item No. 72 of List I. Public order thus being a subject within the, exclusive jurisdiction of the State, it is only the State Legislature which should legislate on that subject, and not the Parliament of India. It must, therefore, be held that this section is beyond the competence of the Parliament.

Learned counsel conceded that there is no decision on this point of any High Court in India or their Lordships of the Supreme Court, but he contended that the position is clear in view of the two Articles 13 and 19 and the two relevant entries in the two Lists mentioned above. Learned Standing Counsel, who appeared to oppose the application, drew our attention to a single Judge decision of this Court in the case of Negendra. Mahto v. The State7 AIR 1954 Pat 356 (A),

In that case Sections 131(1)(b) and 136(1)(f) or the Representation of the People Act were challenged as ultra vires of the Constitution, as the subject-matter covered under ' those sections related to item No. 1 of the State List, namely, Public order, and the Parliament had no legislative competence in the matter. His Lordship; considered the matter with reference to Article 327 of the Constitution and items 72 and 93 of the Union List (List I) and held that the subject-matter of Sections 131(1)(b) and 136(1)(f) of the Representation of the People Act falls within Article 327 and Item 72 of List I and also under Item 93 of List I of the Constitution, and the Union Parliament had full competence to legislate in respect of election offences provided for under those sections.

It was contended on the footing of this judgment that it was decided that all election offences could be provided for 'by the Parliament by proper legislation and this would cover the subject-matter of Section 126 as well. Mr. B.C. Ghosh, however, urged in reply that this decision is no authority for the contention that the subject-matter of Section 126 also is covered by the decision of Ramaswami J., because it was confined only to specific offences under Section 131(1)(b) and 136(1)(f), and not Section 126 which covers offences of a different character.

It is true, no doubt, that it is so and also that Sections 126 to 138 deal with electoral offences and fall in Chapter III, Part VII, of the Act. It may be open to the petitioners to distinguish that case on the ground that the various offences provided for under that Chapter must be considered "independently of one another in so far as the question of competence of the Parliament to legislate is concerned.

Mr. Ghosh raised in that case also the identical question that the provisions of Sections 131(1)(b) and 136(1)(f) relate public order and hence Parliament could not legislate thereon. That contention no doubt, was negatived, but the present argument is that the subject-matter of Section 131(1)(b) refers to a person acting in a disorderly manner at any polling station and Section 136(1)(f) refers to destroying, taking, opening or otherwise interfering with any ballot-box, and both these have been made punishable under the above two sections, and the subject-matter of Section 126 although relating to an electoral offence is different from the matter covered in the decision of the above case.

But the fact remains that the question of public order was involved in that case also and it was contended that the above provisions also were in the interests of public order which was the subject covered in item 1 of List II of the 7th Schedule, and as such beyond the competence of the Parliament. The same argument is being urged in the present case as well in relation to the offences provided for in Section 126.

6. In the case of 'Debi Soren v. The State', MANU/BH/0091/1954: AIR 1954 Pat 254 (B), a Division Bench of this Court held that Sections 124A and 153A of the Indian Penal Code could not be held to be an infringement of the fundamental right of freedom of speech guaranteed to a citizen in Article 19(1)(a) of the Constitution of India. The restrictions contemplated under Sections 124A and 153A of the Indian Penal Code were of a reasonable character.

Mr. Ghosh, however, developed the point in this case in a slightly different manner. He stressed that an offence like the one provided for under Section 126 of the Representation of the People Act can be construed as having been made penal either in the interests of public order or in the interests of elections. If it is the former, it is bad on account of Parliament having encroached upon the field of the State Legislature,, and if it is the latter, it is bad because Clause (3) of Article 19 warrants reasonable restrictions on the right of peaceable assembly of the citizens of India only if the restrictions are placed in the interests of public order or morality.

If, therefore, the provision was made in the interests of elections, Clause (3) itself would not) warrant the imposition of a restriction on the right of peaceable assembly -and as such it will be void on that ground. Learned counsel urged that the pith and substance theory as explained in the judgment of the Federal Court, and which is now regarded as

a necessary canon in the interpretation of the constitutional statutes, cannot save the provisions of Section 126.

The pith and substance theory or what is called incidental encroachment by the State Legislature on the jurisdiction of, the Parliament, or encroachment by the latter upon the jurisdiction of the State Legislature, can be of no avail in upholding the validity of Section 128, because incidental encroachment should be confined to matters other than those which are provided for in the chapter on Fundamental Rights..

7. This contention of learned counsel, however, can be met with in this manner. Since it has been held by this Court that regulation of public meetings appertains to public order and is covered under that expression, and if the prohibition of convening, holding or attending a public meeting is a matter of public order, it must be held that such restrictions were imposed by the State in the interests of public order,

In that view the requirement' of Clause (3) of Article 19 of the Constitution are fulfilled inasmuch as that clause provides for enjoyment of the right guaranteed to a citizen under Article 19(1)(b) subject to reasonable restrictions being imposed by the State in the interests of public order or morality. "The State" has been defined in Article 12 as including the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India for the purpose of Part III of the Constitution.

The term "State" used in Clause (3) of Article 19 evidently refers to any of the authorities mentioned in Article 12, and the Representation of the People Act, 1951 was enacted by the Parliament of India and as such it comes within the meaning of the term "State" put in the above clause. There is no violation, therefore, of the fundamental rights guaranteed under Article 19(1)(b) in terms of Clause (3).

As a matter of fact, the guarantee relates to the right to assemble peaceably and without arms and the restrictions could be placed upon that right by the State which can enact the necessary legislation or the Government either of the Union or one of its units, the constituent States. No citizen can make a grievance that his fundamental right guaranteed in Article 19(1)(b) has been Infringed if, in fact, reasonable restrictions have been placed by any of the units mentioned therein

Mr. Ghosh, however, contended that the legislature must be a competent legislature for, if an, apparently reasonable restriction regulating public order is passed by the Legislature of a State in regard to the citizens of another State, it will evidently be bad law. But the crucial question is, whether there is any violation of the fundamental rights in terms of Clause (3) of Article 19 of the Constitution if, in fact, the terms of the clause have been fulfilled.

Mr. Ghosh, however, asked us to read Clause (3) together with the entries in the Lists in the 7th Schedule. I find it difficult to accede to this contention. The Lists in the 7th Schedule, no doubt, define the limits of the Union and the State Legislatures respectively and if, therefore, there is encroachment by the Parliament on a subject which is exclusively within the powers of the State Legislature to legislate upon, the law will be bad not because there is any violation of the fundamental rights, of a citizen but because it involves a question of competence of such Legislature as set out in Article 245 and the lists of the 7th Schedule.

Mr. Ghosh, however, invites us to read the schedules as part of the fundamental rights so that the term "State" in Clause (3) of Article 19 should be read along with Lists I, II and III. I find my self unable to accept this contention which would make the working of the Act impossible in many respects and the pith and substance theory of the interpretation of constitutional statutes would also fall to the ground.

The correct interpretation, therefore, as is now well-settled, is that whenever there is incidental encroachment by a State Legislature on the legislative field of the Parliament and by the latter on the legislative field of State Legislature, its validity must be judged in the light "of the pith and substance theory and the doctrine of incidental encroachment.

In my opinion, if the Parliament in the present case provided necessary safeguard for peaceful elections incorporating it in Section 126 of the Representation of the People Act, and if, in doing so, it touched upon that field of public order which is within the exclusive jurisdiction of the State Legislature, it must be taken only as incidental encroachment, and as such the provisions of Section 126 must be upheld as being within the competence of the Parliament. In the result, this contention fails and it must be held that Section 126 of the Representation of the People Act, 1951 was validly enacted by the Parliament for peacefully conducting the elections.

8. Mr. Ghosh urged further that assuming that the Parliament could incidentally encroach upon the field of the State Legislature so far as public order in the conduct of elections is concerned, still this provision must be held to be ultra vires because the restrictions are unreasonable and this Court is competent to pronounce upon the reasonableness or otherwise of the restrictions imposed upon the fundamental rights of" a citizen guaranteed in Article 19.

There is no doubt that the proper Court can scrutinize the restrictions imposed in a statute to see whether they are reasonable, but, in my opinion, there is nothing unreasonable herein. Mr. Ghosh contended that the restriction in Section 126 might be reasonable if it extended to the limit of prohibiting public meetings during the actual election hours which were 10 a. m. to 4 p. m., or in the neighbourhood of the polling booths; but under Section 126 public meetings are prohibited in the entire constituency, which in the present

case Includes the whole of South Manbhum and Dalthum, as also for all the days that the polling would go on, and public meetings of all kinds including religious and educational would, come within, the ambit of this section.

This Court should hold that restriction imposed in such wide terms must be unreasonable and in no way connected with the peaceful conduct of elections. The argument is without substance, because if the Legislature had allowed meetings in general to be held excepting those relating to elections, it might be difficult to distinguish meeting of one kind from another. In the garb of holding an educational or religious meeting, propaganda might be carried on in the interests of one candidate or another on the days that' the polling is afoot in a constituency.

It might likewise be difficult to confine the area of "prohibition to the polling booth and its neighbourhood, because meetings outside might be held to intimidate or cajole the voters on the day or days of the elections. Nor is there anything unreasonable in public meetings being prohibited on the day or days of the elections instead of confining the prohibition to the actual polling hours, 'because on the eve of election undue pressure might be brought, on the voters to vote for one candidate or another.

Taking all these circumstances into consideration, I am satisfied that the restrictions imposed on public meetings under Section 126 of the Representation of the People Act are reasonable and do not contravene the provisions of Clause (3) of Article 19 of the Constitution. The contentions thus raised having failed, the application must be dismissed.

Kamla Sahai, J.

9. I agree.

MANU/TN/0025/1919

Back to Section 325 of Indian Penal Code, 1860

IN THE HIGH COURT OF MADRAS
FULL BENCH

Decided On: 07.04.1919

In Re: Palani Goundan

JUDGMENT

1. The accused was convicted of murder by the Sessions Judge of Coimbatore. He appealed to this Court, which took a different view of the facts from that taken by the learned Sessions Judge and has referred to us the question whether on the facts as found by the learned Judges who composed it, the accused has in law committed the offence of murder. Napier, J., inclined to the view that he had: Sadasiva Aiyar, J., thought he had not. The facts as found are these; the accused struck his wife a blow on the head with a plough-share, which knocked her senseless. He believed her to be dead and in order to lay the foundation for a false defence of suicide by hanging, which he afterwards set up, proceeded to hang her on a beam by a rope. In fact the first blow was not a fatal one and the cause of death was asphyxiation by hanging which was the act of the accused.

2. When the case came before us, Mr. Osborne, the Public Prosecutor, at once intimated that he did not propose to contend that the facts as found by the learned referring Judges constitute the crime of murder or even culpable homicide. We think that he was right in doing so: but as doubts have been entertained on the subject, we think it proper to state shortly the grounds for our opinion. By English Law this would clearly not be murder but manslaughter, on the general principles of the Common Law. In India every offence is defined, both as to what must be done and with what intention it must be done, by the section of the Penal Code which creates it a crime. There are certain general exceptions laid down in Chapter IV, but none of them fits the present case. We must therefore turn to the defining Section 299. Section 299 defines culpable homicide as the act of causing death with one of three intentions:

(a) of causing death,

(b) of causing such bodily injury as is likely to cause death,

(c) of doing something which the accused knows to be likely to cause death,

3. It. is not necessary that any intention should exist with regard to the particular person whose death is caused, as in the familiar example of a shot aimed at one person killing another, or poison intended for one being taken by another. 'Causing death' may be

paraphrased as putting an end to human life: and thus all three intentions must be directed either deliberately to putting an end to a human life or to some act which to the knowledge of the accused is likely to eventuate in the putting an end to human life. The knowledge must have reference to the particular circumstances in which the accused is placed. No doubt if a man cuts the head off from a human body, he does an act which he knows will put an end to life, if it exists. But we think that the intention demanded by the section must stand in some relation to a person who either is alive, or who is believed by the accused to be alive. If a man kills another by shooting at what he believes to be a third person whom he intends to kill, but which is in fact the stump of a tree, it is clear that he would be guilty of culpable homicide. This is because though he had no criminal intention towards any human being actually in existence, he had such an intention towards what he believed to be a living human being. The conclusion is irresistible that the intention of the accused must be judged not in the light of the actual circumstances, but in the light of what he supposed to be the circumstances. It follows that a man is not guilty of culpable homicide, if his intention was directed only to what he believed be a lifeless body. Complications may arise when it is arguable that the two acts of the accused should be treated as being really one transaction, as in Queen Empress v. Khandu I.L.R. (1890) Bom. 194, or when the facts suggest a doubt whether there may not be imputed to the accused a reckless indifference and ignorance as to whether the body he handled was alive or dead, as in Gour Gobindo's case (1811) 6 W.R. CR 55 The facts as found here eliminate both these possibilities, and are practically the same as those found in The Emperor v. Dalu Sardar MANU/WB/0491/1914: 18 C.W.N. 1279. We agree with the decision ob the learned Judges in that case and with the clear intimation of opinion by Sergeant, C.J., in Queen Empress v. Kandu I.L.R. (1890) Bom. 194.

4. Though in our opinion, on the facts as found, the accused cannot be convicted either of murder or culpable homicide, he can of course be punished both for his original assault on his wife, and for his attempt to create false evidence by hanging her. These however are matters for the consideration and determination of the referring Bench.

MANU/SC/0428/2015

Neutral Citation: 2015/INSC/317

Back to Section 326 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Writ Petition (Civil) No. 129 of 2006 (Under Article 32 of the Constitution of India)

Decided On: 10.04.2015

Laxmi Vs. Union of India (UOI) and Ors.

Hon'ble Judges/Coram:
Madan B. Lokur and U.U. Lalit, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Colin Gonsalves, Sr. Adv., Aparna Bhat, Pukhrambam Ramesh Kumar, Tanima Kishore, Sumit Kumar, Shivangi Singh, Sumeeta Choudhary and Jyoti Mendiratta, Advs.

For Respondents/Defendant: S.P. Mishra, AG, A. Mariarputham, Vibha Datta Makhija, Sr. Advs., C.D. Singh, Arun Bhardwaj, Suryanarayana Singh, Shankar Chillarge, Jayant K. Sud, S.S. Shamshery, Rao Ranjit, AAGs, Jasleen Chahal, Asstt. AAG, S. Wasim A. Qadri, Gaurav Sharma, Meenakshi Grover, D.L. Chidananda, Sunita Sharma, Rashmi Malhotra, Shreekant N. Terdal, Ajay Sharma, Zaid Ali, Parthi K. Goswami, B.K. Prasad, Sudarshan Singh Rawat, D.S. Mahra, B.V. Balaram Das, Sushma Suri, Guntur Prabhakar, Anil Shrivastav, Rituraj Biswas, Riku Sarma, Vartika Sahay, Advs. for Corporate Law Group, Gopal Singh, Shubhra Rai, Rashmi Srivastava, Darpan Bhuyan, Charudatta Mahindrakar, A. Selvin Raja, Pratap Venugopal, Supriya Jain, Niharika, Advs. for K.J. John & Co., Bansuri Swaraj, Shreya Bhatnagar, Hemantika Wahi, Jesal Wahi, Puja Singh, Kiran Ahlawat, Ashwani K. Upadhyay, Kamal Mohan Gupta, Pragati Neekhra, Gopal Prasad, Jayesh Gaurav, Tapesh Kumar Singh, Waqas, Shilpa Dutta, Parikshit Angadi, V.N. Raghupathy, Sonia Shankar Chillarge, Aniruddha P. Mayee, Asha Gopalan Nair, Sapam Biswajit Meitei, Ashok Kumar Singh, Z.H. Isaac Haiding, K.N. Madhusoodhanan, M.J. George, Pragyan Sharma, Heshu Kayina, K. Enatoli Sema, Amit Kumar Singh, Balaji Srinivasan, S.S. Mishra, Naresh Bakshi, Amit Sharma, Sandeep Singh, Aruna Mathur, Yusuf Khan, K. Vijay Kumar, Advs. for Arputham Aruna & Co., M. Yogesh Kanna, J. Janani, Santha Kumaran, P. Venkat Reddy, Advs. for Venkat Palwai Law Associates, S. Udaya Kumar Sagar, Krishna Kumar Singh, Vikrant Yadav, Abhisth Kumar, Rani P. Mehrotra, Rajesh Kumar Maurya, Rajeev Dubey, Jatinder Kumar Bhatia, Mukesh Verma, Rachana Srivastava, Utkarsh Sharma, Anip Sachthey, Saakaar Sardana, Surabhi Sardana, Avijit Bhattacharjee, Upma Shrivastava, K.V. Jagdishvaran, G. Indira, Balasubramaniam, Vimla Singh, V.G. Pragasam, S. Joseph

Aristotle, Prabu Ramasubramanian, P. Parmeswaran, Sanjay R. Hegde, S. Thananjayan, Anil Katiyar, D. Mahesh Babu, Irshad Ahmad, Radha Shyam Jena, Gunnam Venkateswara Rao, Arun Kumar Sinha, Sunil Fernandes, Anuvrat Sharma, Ranjan Mukherjee, Sangram S. Saron, Shree Pal Singh, Ramesh Babu M.R. and Ruchi Kohli, Advs.

ORDER

1. Pursuant to our order dated 06.02.2015, the Ministry of Home Affairs has filed an affidavit dated 8th April, 2015.

2. We have heard learned Counsel for the parties in considerable detail.

3. A meeting was convened by the Secretary in the Ministry of Home Affairs, Government of India and the Secretary in the Ministry of Health and Family Welfare, Government of India with all the Chief Secretaries/their counterparts in the States/Union Territories on 14.03.2015.

4. From the affidavit, the provisional figures for 2014 indicate that there were 282 acid attacks in all the States. The majority of acid attacks were in the States of Uttar Pradesh (185), Madhya Pradesh (53) and Gujarat (11).

5. As far as the Union Territories are concerned, Delhi is the only Union Territory where acid attacks have taken place and the total number of such attacks in the year 2014 provisionally is 27.

6. In all, therefore, 309 acid attacks are said to have taken place provisionally in the year 2014.

7. As mentioned in our order dated 06.02.2015, with the amendment to the Indian Penal Code, nothing survives in the first prayer made by the Petitioner.

8. The second and third prayers relate to the cost of treatment of the acid attack victims and application of Section 357C of the Code of Criminal Procedure, 1973, which was inserted by an Amendment Act in 2013 with effect from 03.02.2013.

9. In the meeting convened by the Secretary in the Ministry of Home Affairs and the Secretary in the Ministry of Health and Family Welfare on 14.03.2015, it has been noted that a Victim Compensation Scheme has already been notified in almost all the States and Union Territories. However, we are told today that the Victim Compensation Scheme has been notified in all States and Union Territories.

10. We have gone through the chart annexed along with the affidavit filed by the Ministry of Home Affairs and we find that despite the directions given by this Court in Laxmi v. Union of India [MANU/SC/0756/2013: (2014) 4 SCC 427], the minimum compensation of Rs. 3,00,000/- (Rupees three lakhs only) per acid attack victim has not been fixed in some of the States/Union Territories. In our opinion, it will be appropriate if the Member Secretary of the State Legal Services Authority takes up the issue with the State Government so that the orders passed by this Court are complied with and a minimum of Rs. 3,00,000/- (Rupees three lakhs only) is made available to each victim of acid attack.

11. From the figures given above, we find that the amount will not be burdensome so far as the State Governments/Union Territories are concerned and, therefore, we do not see any reason why the directions given by this Court should not be accepted by the State Governments/Union Territories since they do not involve any serious financial implication.

12. We also direct the Member Secretary of the State Legal Services Authority to obtain a copy of the Victim Compensation Scheme from the concerned State/Union Territory and to give it wide and adequate publicity in the State/Union Territory so that each acid attack victim in the States/Union Territories can take the benefit of the Victim Compensation Scheme.

13. Insofar as the proper treatment, aftercare and rehabilitation of the victims of acid attack is concerned, the meeting convened on 14.03.2015 notes unanimously that full medical assistance should be provided to the victims of acid attack and that private hospitals should also provide free medical treatment to such victims. It is noted that there may perhaps be some reluctance on the part of some private hospitals to provide free medical treatment and, therefore, the concerned officers in the State Governments should take up the matter with the private hospitals so that they are also required to provide free medical treatment to the victims of acid attack.

14. The decisions taken in the meeting read as follows:

• The States/UTs will take a serious note of the directions of the Supreme Court with regard to treatment and payment of compensation to acid attack victims and to implement these directions through the issue of requisite orders/notifications.

• The private hospitals will also be brought on board for compliance and the States/UTs will use necessary means in this regard.

• No hospital/clinic should refuse treatment citing lack of specialized facilities.

• First-aid must be administered to the victim and after stabilization, the victim/patient could be shifted to a specialized facility for further treatment, wherever required.

• Action may be taken against hospital/clinic for refusal to treat victims of acid attacks and other crimes in contravention of the provisions of Section 357C of the Code of Criminal Procedure, 1973.

15. We expect the authorities to comply with these decisions.

16. Although it is not made clear in the meeting held on 14.03.2015, what we understand by free medical treatment is not only provision of physical treatment to the victim of acid attack but also availability of medicines, bed and food in the concerned hospital.

17. We, therefore, issue a direction that the State Governments/Union Territories should seriously discuss and take up the matter with all the private hospitals in their respective State/Union Territory to the effect that the private hospitals should not refuse treatment to victims of acid attack and that full treatment should be provided to such victims including medicines, food, bedding and reconstructive surgeries.

18. We also issue a direction that the hospital, where the victim of an acid attack is first treated, should give a certificate that the individual is a victim of an acid attack. This certificate may be utilized by the victim for treatment and reconstructive surgeries or any other scheme that the victim may be entitled to with the State Government or the Union Territory, as the case may be.

19. In the event of any specific complaint against any private hospital or government hospital, the acid attack victim will, of course, be at liberty to take further action.

20. With regard to the banning of sale of acid across the counter, we direct the Secretary in the Ministry of Home Affairs and Secretary in the Ministry of Health and Family Welfare to take up the matter with the State Governments/Union Territories to ensure that an appropriate notification to this effect is issued within a period of three months from today. It appears that some States/Union Territories have already issued such a notification, but, in our opinion, all States and Union Territories must issue such a notification at the earliest.

21. The final issue is with regard to the setting up of a Criminal Injuries Compensation Board. In the meeting held on 14.03.2015, the unanimous view was that since the District Legal Services Authority is already constituted in every district and is involved in providing appropriate assistance relating to acid attack victims, perhaps it may not be necessary to set up a separate Criminal Injuries Compensation Board. In other words, a multiplicity of authorities need not be created.

22. In our opinion, this view is quite reasonable. Therefore, in case of any compensation claim made by any acid attack victim, the matter will be taken up by the District Legal

Services Authority, which will include the District Judge and such other co-opted persons who the District Judge feels will be of assistance, particularly the District Magistrate, the Superintendent of Police and the Civil Surgeon or the Chief Medical Officer of that District or their nominee. This body will function as the Criminal Injuries Compensation Board for all purposes.

23. A copy of this order be sent to learned Counsel appearing for the Secretary in the Ministry of Home Affairs and the Secretary in the Ministry of Health and Family Welfare for onward transmission and compliance to the Chief Secretary or their counterparts in all the States and Union Territories.

24. The Chief Secretary will ensure that the order is sent to all the District Magistrates and due publicity is given to the order of this Court.

25. A copy of this order should also be sent to the Member Secretary of NALSA for onward transmission and compliance to the Member Secretary of the State Legal Services Authority in all the States and Union Territories. The Member Secretary of the State Legal Services Authority will ensure that it is forwarded to the Member Secretary of each District Legal Services Authority who will ensure that due publicity is given to the order of this Court.

26. The writ petition is disposed of in the above terms.

MANU/OR/0129/1977

Back to Section 341 of Indian Penal Code, 1860

IN THE HIGH COURT OF ORISSA

Decided On: 23.03.1977

Keso Sahu and Ors. Vs. Saligram Shah

Hon'ble Judges/Coram:
Sachidananda Acharya, J.

ORDER
Sachidananda Acharya, J.

1. The petitioners stand convicted Under Section 341, I. P. C., and each of them has been sentenced thereunder to pay a fine of Rs. 30/- ; in default to undergo R. I. for one month.

2. The complainant's case against the petitioners in short is that the complainant is a retail dealer of rice and he had two shops, one at Nuagan and another at Suajore, On 2-5-1973 he received 27 quintals of rice to be sold on control price from the F. C. I. godown at Nuagan. On 5-5-1973 very early in the morning, by about 4 A. M., the complainant was transporting 11 quintals of rice in 12 bags in two buffalo-carts through Baisakhu Bhokta (P. W. 3) from his Nuagan shop to his shop at Suajore. When the said bags of rice were being taken to Suajore from Nuagan, the petitioners armed with lathis surrounded the carts and the cart- men, did not allow them to proceed towards Suajore and wanted to take them forcibly to the Bihar boarder. P. W. 3 was accompanying the buffalo carts. As the petitioners behaved in the aforesaid manner, P. W. 3 came running to the complainant and informed him about the said illegal action of the petitioners. The complainant went to the place where the buffalo carts had been stopped by the petitioners, and when he accosted them he was threatened with dire consequences, The petitioners thereafter forcibly took away the buffalo carts to the Hatibari police out-post. The complainant explained the matter before the Police Officer at the said out-post and also lodged a complaint about the said incident before the local B. D. O. As no action was taken by any of them, the complainant filed this case against the petitioners.

3. The defence plea in short is that Dalapati Naik (D. W. 1), a constable of the Hatibari police out-post, who was on patrol duty in the Bihar and Orissa border line to check smuggling of rice out of Orissa, asked the petitioners to help him in performing his said job. Before dawn on the date of occurrence the petitioners along with the said constable and one choukidar were in the look out of persons smuggling rice out of Orissa, and at that time they found P. Ws. 1 and 4 carrying 12 bags of rice in two buffalo carts going towards Bihar border, So they with D. W. 1 halted the two carts, and D. W. 1 took them to the police outpost. The petitioners also went to the police out-post along with D. W. 1.

4. The court below has found that the petitioners restrained P. Ws. 1 and 4 from taking the rice to Suajore and voluntarily obstructed those persons in proceeding in their own directions and forcibly took them to the Hatibari police out-post. On the said finding the petitioners have been convicted of an offence Under Section 341, I. P. C. and have been sentenced thereunder as stated above.

As a non-appealable sentence has been passed against the petitioners, they have preferred this revision.

5. Mr. Mukherjee, the learned Counsel for the petitioners, contends that the judgment of conviction is illegal and incorrect in view of the fact that the court below has not considered the facts and circumstances of the case in the perspective of Sections 76 and 79, I. P. C., and the findings arrived at by the court below are against the weight of the evidence on record. He further contends that the court below on flimsy and unwarranted grounds discarded the evidence of D. W. 1 who in very clear and unequivocal terms has testified to the fact that the petitioners merely helped him in preventing smuggling of rice from Orissa to Bihar and that it was he who stopped the buffalo-carts carrying the rice bags in question and took the same to the outpost as he suspected that the said rice was being smuggled out of Orissa to Bihar.

6. P. Ws. 1, 3 and 4 were the three persons who were accompanying the buffalo carts with the rice bags thereon. Admittedly, the buffalo carts with the rice bags thereon were stopped at a short distance (about 400 yards according to P. W. 1) from Suajore at about 4 A. M, on the date of occurrence. The Bihar border, as it appears from the evidence of the prosecution witnesses themselves, is not very far from that place. P. W. 3 in cross-examination says that a bullock cart can be taken to the Bihar border through the paddy fields from the place of occurrence. The distance by road between Nuagan and Suajore is only 3 to 4 miles (P. W. 1). If the rice was intended to be sent to Suajore from Nuagan one would not generally take the trouble of transporting it at 3-4 A. M. Transport of rice at that hour might have aroused suspicion of smuggling in the minds of the people of that locality, especially because of the proximity of the Bihar border.

Rice undoubtedly is an essential commodity, and its movement by export and import was controlled Under Sections 3 and 4 of the Orissa Rice (Movement Control) Order, 1964 (hereinafter referred to as the 'Order'). The said order was passed Under Section 3 of the Essential Commodities Act (hereinafter referred to as the 'Act'). Under Section 4 of the Order, restrictions have been imposed for the transport or attempt to transport or abet the transport of rice to any place in the border area from any place in the State of Orissa outside that area, except under permits issued by the authorities mentioned therein or for transport of rice coming within the proviso to that Order. Contravention of the restrictions imposed by Sections 3 and 4 of the Order will come Under Section 3(2)(d) of the said Act and will be punishable Under Section 7(1)(a)(ii) of that Act. That offence is &

cognizable offence as shown in Sch. II of the Cr. P. C., as it is punishable with imprisonment extending up to 7 years as provided in Section 7(1)(a)(ii) of the Act. Accordingly, Under Section 54 of the Criminal P. C., D. W. 1, being a police officer, was legally authorised to arrest any person who was concerned with any such cognizable offence or against whom there was a reasonable suspicion that he was so concerned.

In the present case, the petitioners, while not denying the fact that they stopped the buffalo carts, state that they stopped the said two buffalo carts as desired by D. W. 1, the constable, who was in charge of patrol duty in that locality for checking smuggling of rice, and thereafter the said constable took the carts and the cartmen to the nearest police out-post and the petitioners also went with D. W. 1 to that out-post. The fact that D. W. 1 and the Choukidar of Nuagan were present with the petitioners at the place of occurrence was put to P. W. 3 in his cross-examination but he denied the same. The constable (D. W. 1) has been examined as a defence witness in this case, and he in unequivocal terms has stated that at the relevant time he was attached to the Hatibari outpost and he had been deputed to check smuggling of rice and other materials from Orissa to Bihar. He further states that on the date of occurrence while he was on patrol duty on command certificate, he found two buffalo carts carrying the rice bags in question proceeding towards village Odagan in Bihar, and so he stopped those carts. In that act the petitioners and the Choukidar of Nuagan helped him as he had called them for that purpose. From there, he took the carts and the cartmen to the out-post. Random suggestions of his complicity with the petitioners to share the sale proceeds of rice passing through that route were thrown at him which he stoutly denied. Nothing has been elicited from or could be placed on record to show that this public servant was in any way interested with the petitioners or was inimical to the complainant and his witnesses in this case. He has rather categorically stated that he bears no grudge or hostility against P. Ws. 1 to 4.

D. W. 1 was summoned as a defence witness and he has testified to as stated above. Except some uncorroborated, casual and haphazard suggestions, there is nothing on record to show as to why this police constable would come and depose in favour of the petitioners. One of the reasons on which the court below has discarded his evidence is that the defence took no steps to call for the personal diary of the said constable and the command certificate issued to him for that date. The courts below was not justified to entertain doubt on the evidence of D. W. 1 on the failure of the defence to call for the said documents. The defence is not expected to prove its case beyond all reasonable doubt. It is sufficient if the defence brings on record materials on which the defence case may appear to be reasonably probable or reasonable doubt can be entertained about the prosecution case. The testimony of D. W. 1 has not been successfully assailed. Nothing could be placed on record to discredit the unerring and straight forward evidence of this police man. The court below also incorrectly entertained doubt on the evidence of D.W. 1 on the wrong premises that the petitioners in their statements before the court did not state that D.W. 1 took the buffalo carts to the out-post. As stated above, most of the petitioners stated in court that with their help the constable (D.W. 1) stopped the buffalo

carts and he took the same to the out-post. I do not see any material contradiction between their statements and the testimony of D.W. 1. Further, his evidence gets ample strength and support from the complainant's admission that the rice in question was seized by the police at the out-post and a criminal case in that connection was started against him, and he was on bail in that case. He has further admitted that he went to the police out-post and the local B. D. O. and complained about the aforesaid affair, but nobody took any action in the matter.

On the unassailed evidence of D.W. I and on the above admitted facts, one reasonably feels inclined to accept the defence version of the case as true. That being so, if the petitioners merely helped D.W. 1 in stopping the buffalo carts and the cartmen at the place of occurrence as desired by D.W. 1, it cannot be said that they committed an offence of wrongful restraint punishable Under Section 341, I. P. C., as D. W. 1 was legally competent to stop those carts and their cartmen, and for that purpose was entitled to the assistance of the petitioners for that work.

7. Apart from that consideration, the buffalo carts as stated by D. W. 1, were stopped as it was suspected that the rice bags on the said carts were going to be smuggled out of Orissa to Bihar. So, for stopping the buffalo carts and the cartmen on the asking of D. W. 1 and on the suspicion that the said rice was being smuggled out of Orissa, the petitioners' case will also come within Section 79, I. P. C., which provides that nothing is an offence which is done by any person who is justified by law or who by reason of a mistake of fact, and not by reason of a mistake of law, in good faith, believes himself to be justified by law in doing it. To bring one's case Under Section 79, I. P. C., it is not necessary to prove that the rice in question was actually being smuggled out of Orissa. To get the protection of that section it is sufficient if the accused persons can show to a reasonable extent that they in good faith believed that an offence of smuggling of rice was going to be committed by the cartmen, and with that suspicion they stopped the carts from proceeding further and also took part in taking the carts and the cartmen to the police out-post. Their said suspicion may ultimately prove to be incorrect, but that will amount to a mistake of fact, and if that act is committed in good faith, then the petitioners will get the protection of the said section.

8. On the above considerations I find that in the facts and circumstances disclosed by the evidence on record the court below was not justified in convicting the petitioners for an offence Under Section 341, I. P. C. Accordingly, the conviction of the petitioners and the sentence passed against them thereunder cannot be maintained, and are hereby set aside, and the petitioners are acquitted of the same.

The revision accordingly is allowed.

MANU/SC/0523/2004

Back to Section 354 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Writ Petition (Criminal) No. 33 of 1997 with SLP (Crl.) Nos. 1672-1673/2000

Decided On: 26.05.2004

Back to Section 375 of Indian Penal Code, 1860

Sakshi and Ors. Vs. Union of India (UOI) and Ors.

Hon'ble Judges/Coram:
S. Rajendra Babu, C.J. and G.P. Mathur, J.

Counsels:
R.N. Trivedi, Additional Solicitor General, Fali Sam Nariman, Sr. Adv. (A.C.) (N.P.), Naina Kapur, Meenakshi Arora, Homa Chettri, Tara Chandra Sharma, P. Parmeswaran, Sujit Kumar Bhattacharya, Goodwill Indeevar, Shashi Kiran, Anil Katiyar, D.N. Goburdhan, Pinky Anand, Geeta Luthra, Syed Ali Ahmad, Syed Tanweer Ahmad, Girdhar G. Upadhyay and R.D. Upadhyay, Advs. for the appearing parties

JUDGMENT
Authored By: G.P. Mathur, G.P. Mathur
G.P. Mathur, J.

1. This writ petition under Article 32 of the Constitution has been filed by way of public interest litigation, by Sakshi, which is an organisation to provide legal, medical, residential, psychological or any other help, assistance or charitable support for women, in particular those who are victims of any kind of sexual abuse and/or harassment, violence or any kind of atrocity or violation and is a violence intervention center. The respondents arrayed in the writ petition are (1) Union of India; (2) Ministry of Law and Justice; and (3) Commissioner of Police, New Delhi. The main reliefs claimed in the writ petition are as under:

A) Issue a writ in the nature of a declaration or any other appropriate writ or direction declaring inter alia that "sexual intercourse" as contained in Section 375 of the Indian Penal Code shall include all forms of penetration such as penile/vaginal penetration, penile/oral penetration, penile/anal penetration, finger/vaginal and finger/anal penetration and object/vaginal penetration;

B) Consequently, issue a writ, order or direction in the nature of a direction to the respondents and its servants and agents to register all such cases found to be truly on investigation, offences falling within the broadened interpretation of "sexual intercourse"

set out in prayer (A) aforesaid as offences under Section 375, 376 and 376A to 376D of the Indian Penal Code, 1860;

C) Issue such other writ order or direction as this Hon'ble Court may deem appropriate in the present facts and circumstances.

The petition is thus restricted to a declaratory relief and consequential directions.

2. It is set out in the writ petition that the petitioner has noticed with growing concern the dramatic increase of violence, in particular sexual violence against women and children as well as the implementation of the provisions of Indian Penal Code namely Sections 377, 375/376 and 354 by the respondent authorities. The existing trend of the respondent authorities has been to treat sexual violence, other than penile/vaginal penetration, as lesser offences falling under either Section 377 or 354 of the IPC and not as a sexual offence under Section 375/376 IPC. It has been found that offences such as sexual abuse of minor children and women by penetration other than penile/vaginal penetration, which would take any other form and could also be through use of objects whose impact on the victims is in no manner less than the trauma of penile/vaginal penetration as traditionally understood under Section 375/376, have been treated as offences tailing under Section 354 of the IPC as outraging the modesty of a women or under Section 377 IPC as unnatural offenses.

3. The petitioner through the present petition contends that the narrow understanding and application of rape under Section 375/376 IPC only to the cases of penile/vaginal penetration runs contrary to the existing contemporary understanding of rape as an intent to humiliate, violate and degrade a woman or child sexually and, therefore, adversely affects the sexual integrity and autonomy of women and children in violation of Article 21 of the Constitution.

4. The petitioner submits that a plain reading of Section 375 would make it apparent that the term "sexual intercourse" has not been defined and is, therefore, subject to and is capable of judicial interpretation. Further the explanation to Section 375 IPC does not in any way limit the term penetration to mean penile/vaginal penetration. The definition of the term rape as contained in the Code is extremely wide and takes within its sweep various forms of sexual offenses. Limiting the understanding of "rape" to abuse by penile/vaginal penetration only, runs contrary to the contemporary understanding of sexual abuse law and denies majority of women and children access to adequate redress in violation of Article 14 and 21 of the Constitution. Statistics and figures indicate that sexual abuse of children, particularly minor girl, children by means and manner other than penile/vaginal penetration is common and may take the form of penile/anal penetration, penile/oral penetration, finger/vaginal penetration or object/ vaginal penetration. It is submitted that by treating such forms of abuse as offenses falling under Section 354 IPC or 377 IPC, the very intent of the amendment of Section 376 IPC by

incorporating Sub-section 2(f) therein is defeated. The said interpretation is also contrary to the contemporary understanding of sexual abuse and violence all over the world.

5. The petitioner submits that mere has for some time now been a growing body of feminist legal theory and jurisprudence which has clearly established rape as an experience of humiliation, degradation and violation rather than an outdated notion of penile/vaginal penetration. Restricting an understanding of rape in terms sought to be done by the respondent authorities and its agents reaffirms the view that rapists treat rape as sex and not violence and thereby condone such behavior especially when it comes to sexual abuse of children.

6. In this regard, reference is invited to the observations of a renowned expert on the issue of sexual abuse:

"..... in rape.... the intent is not merely to "take", but to humiliate and degrade..... Sexual assault in our day and age is hardly restricted to forced genital copulation, nor is it exclusively a male-on-female offence. Tradition and biologic opportunity have rendered vaginal rape a particular political crime with a particular political history, but the invasion may occur through the mouth or the rectum as well. And while the penis may remain the rapist's favourite weapon, his prime instrument of vengeance..... it is not in fact his only tool. Sticks, bottles and even fingers are often substituted for the "natural" thing. And as men may invade women through other offices, so too, do they invade other men. Who is to say that the sexual humiliation suffered through forced oral or rectal penetration is a lesser violation of the personal, private inner space, a lesser injury to mind, spirit and sense of self?" (Susan Brownmiller, Against Our Will 1986).

7. The petitioner further submits that the respondent authorities and their agents have failed to take into consideration the legislative purpose of Section 377 IPC. Reference has also been made to The Law Commission of India Report (No. 42) of 1971 pp. 281. While considering whether or not to retain Section 377 IPC, the Commission found as under:

"There are, however, a few sound reasons for retaining the existing law in India. First it cannot be disputed that homosexual acts and tendencies on the pan of one spouse may affect the married life and happiness of the other spouse, and from this point of view, making the acts punishable by law has social justification. Secondly, even assuming that acts done in private with consent do not in themselves constitute a serious evil, there is a risk involved in repealing legislation which has been in force for a long time..... Ultimately, the answer to the question whether homosexual acts ought to be punished depends on the view one takes of the relationship of criminal law to morals..... We are inclined to think that Indian society, by and large, disapproves of homosexuality and this disapproval is strong enough to justify it being treated as a criminal offence even where adults indulge in it in private."

In view of the Commission's conclusions regarding the purview of Section 377 IPC, the said section was clearly intended to punish certain forms of private sexual relations perceived as immoral. Despite the same, the petitioner submits, the respondent authorities have, without any justification, registered those cases of sexual violence which would otherwise fall within the scope and ambit of Section 375/376 IPC, as cases of moral turpitude under Section 377 IPC. It is submitted that the respondent authorities and their agents have wrongly strained the language of Section 377 IPC intended to punish "homosexual" behavior to punish more serious cases of sexual violence against women and children when the same ought to be dealt with as sexual offences within the meaning of Section 375/376 IPC in violation of Articles 14 and 21 of the Constitution of India.

8. It is submitted that Article 15(3) of the Constitution of India allows for the State to make special provision for women and children. It follows that "special provision" necessarily implies "adequate" provision. Further, that the arbitrary and narrow interpretation sought to be placed by the respondent authorities and their agents on Section 375/376 renders the effectiveness of redress under the said Sections and in particular under Section 376(2)(f) meaningless in violation of Article 15(3) of the Constitution of India. The petitioner has also referred to the U.N. Right of Child Convention ratified by the respondent No. 1 on 11th December, 1993 as well as the U.N. Convention on the Elimination of Discrimination Against Women which was ratified in August 1993. In view of the ratification, the respondent No. 1 has created a legitimate expectation that it shall adhere to its International commitments as set out under the respective Conventions. In the present case, however, the existing interpretation of rape sought to be imposed by the respondent authorities and their agents is in complete violation of such International commitments as have been upheld by this Court.

9. By an order passed on 3.11.2000 the parties were directed to formulate issues which arise for consideration. Accordingly, the petitioner has submitted the following issues and legal propositions which require consideration by the Court:

(a) Given that modem feminist legal theory and jurisprudence look at rape as an experience of humiliation, degradation and violation rather than an outdated notion of penile/vaginal penetration, whether the term "rape" should today be understood to include not only forcible penile/vaginal penetration but all forms of forcible penetration including penile/oral penetration, penile/anal penetration, object or finger/vaginal and object or finger/anal penetration.

(b) Whether all forms of non-consensual penetration should not be subsumed under Section 373 of the Indian Penal code and the same should not be limited to penile, vaginal penetration only.

(c) In particular, given the widespread prevalence of child sexual abuse and bearing in mind the provisions of the Criminal Law (Amendment) Act, 1983 which specifically

inserted Section 376(2)(f) envisaging the offence of "rape" of a girl child howsoever young below 12 years of age, whether the expression "sexual intercourse" as contained in Section 375 of the Indian Penal Code should correspondingly include all forms of penetration such as penile/vaginal penetration, penile/oral penetration, penile/anal penetration, finger/vagina and finger/anal penetration and object/vaginal penetration; and whether the expression "penetration" should not be so clarified in the Explanation to Section 375 of the Indian Penal Code.

(d) Whether a restrictive interpretation of "penetration" in the Explanation to Section 375 (rape) defeats the very purpose and intent of the provision for punishment for rape under Section 376(2)(f) "Whosoever commits rape on a woman when she is under twelve years of age."

(e) Whether, penetration abuse of a child below the age of 12 should no longer be arbitrarily classified according to the 'type' of penetration (ignoring the 'impact' on such child) either as an "unnatural offence" under Section 377 IPC for penile/oral penetration and penile/anal penetration or otherwise as "outraging the modesty of a woman" under Section 354 for finger penetration or penetration with an inanimate object.

(f) Whether non-consensual penetration of a child under the age of 12 should continue to be considered as offences under Section 377 ("Unnatural Offences") on par with certain forms of consensual penetration (such as consensual homosexual sex) where a consenting party can be held liable as an abettor or otherwise.

(g) Whether a purposive/teleological interpretation of "rape" under Section 375/376 requires taking into account the historical disadvantage faced by a particular group (in the present case, women and children) to show that the existing restrictive interpretation worsens that disadvantage and for that reason fails the test of equality within the meaning of Article 14 of the Constitution of India.

(h) Whether the present narrow interpretation treating only cases of penile/vaginal penetration as rape, adversely affects the sexual integrity and autonomy of women and children in violation of Article 21 of Constitution of India.

10. Counter affidavit on behalf of respondents No. 1 and 2 has been filed by Mrs. G. Mukerjee. Director in the Ministry of Home Affairs. It is stated therein that Sections 375 and 376 have been substantially changed by the Criminal Law (Amendment) Act, 1983. The same Act has also introduced several new Sections viz. 376A, 376B, 376C and 376D IPC. These sections have bean inserted with a view to provide special/adequate provisions for women and children. The term "rape" has been clearly defined under Section 375 IPC. Penetration other than penile/vaginal penetration are unnatural sexual offences. Stringent punishments are provided for such unnatural offences under Section 377. The punishment provided under Section 377 is imprisonment for life or

imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine. Section 377 deals with unnatural offences and provides for a punishment as severe as that provided for rape in Section 376. Section 354 and 506 have been framed with a view to punish lesser offence of criminal assault in the form of outraging the modesty of a woman, whereas Sections 376 and 377 provide stringent punishment for sexual offences. The types of several offences as mentioned by the petitioner i.e. penile/anus penetration, penile/oral penetration, finger/anile penetration, finger/vaginal penetration or object/vaginal penetration are serious sexual offences of unnatural nature and are to be covered under Section 377 which provides stringent punishment. therefore, the plea of petitioner that offences under Section 377 are treated as lesser offences is incorrect. It is also submitted in the counter affidavit that penetration of the vagina, anus or urethra of any person with any part of the body of another person other than penile penetration is considered to be unnatural and has to be dealt with under Section 377 IPC. Section 376(2)(f) provides stringent punishment for committing rape on a woman when she is under the age of 12 years. Child sexual abuse of any nature, other than penile penetration, is obviously unnatural and are to be dealt with under Section 377 IPC. It is further submitted that Section 354 IPC provides for punishment for assault or criminal force to woman to outrage her modesty. Unnatural sexual offences can not be brought under the ambit of this Section. Rape defined under Section 375 is penile/vaginal penetration and all other sorts of penetration are considered to be unnatural sexual offences. Section 377 provides stringent punishment for such offences. It is denied that provisions of Sections 375, 376 and 377 are violative of fundamental rights, under Articles 14, 15(3) and 21 of the Constitution of India. Sexual penetration as penile/anal penetration, finger/vaginal and finger/anal penetration and object and vaginal penetration are most unnatural forms of perverted sexual behavior for which Section 377 provides stringent punishment.

11. Ms. Meenakshi Arora, learned counsel for the petitioner has submitted that Indian Penal Code has to be interpreted in the light of the problems of present day and a purposive interpretation has to be given. She has submitted that Section 375 IPC should be interpreted in the current scenario, especially in regard to the fact that child abuse has assumed alarming proportion in recent times. Learned counsel has stressed that the words "sexual intercourse" in Section 375 IPC should be interpreted to mean all kinds of sexual penetration of any type of any orifice of the body and not the intercourse understood in the traditional sense. The words "sexual intercourse" having not been defined in the Penal Code, there is no impediment in the way of the Court to give it a wider meaning so that the various types of child abuse may come within its ambit and the conviction of an offender may be possible under Section 376 IPC, In this connection, she has referred to United Nations Convention On The Elimination Of All Forms Of Discrimination Against Women, 1979 and also Convention On The Rights Of The Child adopted by the General Assembly of the United Nations on 20th February, 1989 and especially to Articles 17(e) and 19 thereof, which read as under:

Article 17

States Parties recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall --

(a)..... (Omitted as not relevant)

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of Articles 13 and 18.

ARTICLE 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other persons who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

12. In support of her submission, learned counsel has referred to following passage of statutory interpretation by F.A.R. Bennion (Butterworths -- 1984) at page 355-357:

"While it remains law, an Act is to be treated as always speaking. In its application on any date, the language of the Act, though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as current law.

It is presumed that Parliament intends the Court to apply to an ongoing Act a construction that continuously updates its wording to allow for changes since the Act was initially framed.

In particular where, owing to developments occurring since the original passing of an enactment, a counter-mischief comes into existence or increases, it is presumed that Parliament intends the Court so to construe the enactment as to minimise the adverse effects of the counter-mischief.

The ongoing Act. In construing an ongoing Act, the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way as to give effect to the true original intention. Accordingly, the interpreter is to make allowances for any relevant changes that have occurred, since the Act's passing, in law, social conditions, technology, the meaning of words, and other matters.

An enactment of former days is thus to be read today, in the light of dynamic processing received over the years, with such modification of the current meaning of its language as will now give effect to the original legislative intention. The reality and effect of dynamic processing provides the gradual adjustment. It is constituted by judicial interpretation, year in and year out. It also comprises processing by executive officials."

In this connection, she has also referred to S. Gopal Reddy v. State of A.P. MANU/SC/0550/1996: 1996CriLJ3237 where the Court referred to the following words of Lord Denning in Seaford Court Estates Ltd. v. Asher (1949) 2 All ER 153:

"..... It would certainly save the Judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a detect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature.....
A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."
And held that it is a well known rule of interpretation of Statutes that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a Statute and that the Courts must look to the object which the Statute seeks to achieve while interpreting any of the provisions of the Act and a purposive approach is necessary. Accordingly, the words "at or before or after the marriage as consideration for the marriage" occurring in Section 2 of the Dowry Prohibition Act were interpreted to mean demand of dowry at the "negotiation stage" as a consideration for proposed marriage and "marriage" was held to include the "proposed marriage" that may not have taken place. Reference is also made to Directorate of Enforcement v. Deepak Mahajan and Anr. MANU/SC/0422/1994: 1994CriLJ2269, wherein it was held that a mere mechanical interpretation of the words devoid of concept or purpose will reduce most of legislation to futility and that it is a salutary rule, well established, that the intention of the legislature must be found by reading the Statute as a whole. Accordingly, certain provisions of FERA and Customs Act were interpreted keeping in mind that the said enactments were

enacted for the economic development of the country and augmentation of revenue. The Court did not accept the literal interpretation suggested by the respondent therein and held that Sub-section (1) and (2) of Section 167 Cr.P.C. are squarely applicable with regard to the production and detention of a person arrested under the provisions of Section 35 of FERA and Section 104 of Customs Act and that a Magistrate has jurisdiction under Section 167(2) Cr.P.C. to authorize detention of a person arrested by an authorised officer of the Enforcement Directorate under FERA and taken to the Magistrate in compliance of Section 35(2) of FERA.

13. Ms. Meenakshi Arora has submitted that this purposive approach is being adopted in some of other countries so that the criminals do not go unscathed on mere technicality of law. She has placed strong reliance on some decisions of House of Lords to substantiate her contentions and the most notable being R v. R (1991) 4 All ER 481 where it was held as under:

"The rule that a husband cannot be criminally liable for raping his wife if he has sexual intercourse with her without her consent no longer forms part of the law of England since a husband and wife are now to be regarded as equal partners in marriage and it is unacceptable that by marriage the wife submits herself irrevocably to sexual intercourse in all circumstances or that it is an incident of modern marriage that the wife consents to intercourse in all circumstances, including sexual intercourse obtained only by force. In Section 1(1) of the Sexual Offences (Amendment) Act, 1976, which defines rape as having 'unlawful' intercourse with a woman without her consent, the word 'unlawful' is to be treated as mere surplusage and not as meaning 'outside marriage', since it is clearly unlawful to have sexual intercourse with any woman without her consent."
The other decision cited by learned counsel is Regina v. Burstow and Regina v. Ireland 1997 (4) All ER 74 where a person accused of repeated silent telephone calls accompanied on occasions by heavy breathing to women was held guilty of causing psychiatric injury amounting to bodily harm under Section 42 of Offences against the Person Act, 1861. In the course of the discussion, Lord Steyn observed that the criminal law has moved on in the light of a developing understanding of the link between the body and psychiatric injury and as a matter of current usage, the contextual interpretation of "inflict" can embrace the idea of one person inflicting psychiatric injury on another. It was further observed that the interpretation and approach should, so far as possible, be adopted which treats the ladder of offences as a coherent body of law. Learned counsel has laid emphasis on the following passage in the judgment:

"The proposition that the Victorian, legislator when enacting Sections 18, 20 and 47 of the Act 1861, would not have had in mind psychiatric illness is no doubt correct. Psychiatry was in its infancy in 1861. But the subjective intention of the draftsman is immaterial. The only relevant enquiry is as to the sense of the words in the context in which they are used. Moreover the Act of 1861 is a statute of the "always speaking" type: the statute must be

interpreted in the light of the best current scientific appreciation of the link between the body and psychiatric injury."
It has thus been contended that the words "sexual intercourse" occurring in Section 375 IPC must be given a larger meaning than as traditionally understood having regard to the monstrous proportion in which the cases of child abuse have increased in recent times. She has also referred to a decision of Constitutional Court of South Africa in the National Coalition for Gay and Lesbian Equality and Ors. v. The Minister of Home Affairs and Ors. -- Case CCT 10/99 wherein it was held that Section 25(5) of the Aliens Control Act 96 of 1991, by omitting to confer on persons, who are partners in permanent same sex life partnerships, the benefits it extends to spouses, unfairly discriminates, on the grounds of their sexual orientation and marital status, against partners in such same-sex partnerships who are permanently and lawfully resident in the Republic. Such unfair discrimination limits the equality rights of such partners guaranteed to them by Section 9 of the Constitution and their right to dignity under Section 10. It was further held that it would not be an appropriate remedy to declare the whole of Section 25(5) invalid. Instead, it would be appropriate to read in, after the word "spouse" in the section, the words "or partner, in a permanent same-sex life partnership".

14. Ms. Meenakshi Arora has also placed before the Court the judgments rendered on 10th December, 1998 and 22nd February, 2001 by the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991. Under Article 5 of the Statute of the International Tribunal, rape is a crime against humanity. Rape may also amount to a grave breach of the Geneva Conventions, a violation of the laws or customs of the war or an act of genocide, if the requisite elements are met and may be prosecuted accordingly. The Trial Chamber after taking note of the fact that no definition of rape can be found in international law, proceeded on the following basis:

"Thus, the Trial Chamber finds that the following may be accepted as the objective elements of rape:

(i) the sexual penetration, however slight:

(a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or

(b) of a mouth of the victim by the penis of the perpetrator;

(ii) by coercion or force or threat of force against the victim or a third person."

In the second judgment of the Trial Chamber dated 22nd February, 2001, the interpretation which focussed on serious violations of a sexual autonomy was accepted.

15. Shri R.N. Trivedi, learned Additional Solicitor General appearing for the respondents, has submitted that International Treaties ratified by India can be taken into account for framing guidelines in respect of enforcement of fundamental rights but only in absence of municipal laws as held in Vishaka v. State of Rajasthan MANU/SC/0786/1997: AIR1997SC3011 and Lakshmi Kant Pandey v. Union of India MANU/SC/0054/1984: [1984]2SCR795. When laws are already existing, subsequent ratification of International Treaties would not render existing municipal laws ultra vires of Treaties in case of inconsistency. In such an event the State through its legislative wing can modify the law to bring it in accord with Treaty obligations. Such matters are in the realm of State policy and are, therefore, not enforceable in a Court of law. He has further submitted that in International law, ratified Treaties can be deemed interpreted in customary law unless the former are inconsistent with the domestic laws or decisions of its judicial Tribunals. The decision of the International Tribunal for the Crimes committed in the Territory of the Former Yugoslavia cannot be used for interpretation of Section 354 and 375 IPC and other provisions. Even decisions of International Court of Justice are binding only on the parties to a dispute or interveners in view of Articles 92, 93 and 94 of the UN Charter and Articles 59 and 63 of the IJC Statutes. Learned counsel has also submitted that no writ of mandamus can be issued to the Parliament to amend any law or to bring it in accord with Treaty obligations. He has also submitted that Sections 354 and 375 IPC have been interpreted in innumerable decisions of various High Courts and also of the Supreme Court and the consistent view is that to hold a person guilty of rape, penile penetration is essential. The law on the point is similar both in England and USA. In State of Punjab v. Major Singh MANU/SC/0295/1966: 1967CriLJ1 it was held that if the hymen is ruptured by inserting a finger, it would not amount to rape. Lastly, it has been submitted that a writ petition under Article 32 of the Constitution would not lie for reversing earlier decisions of the Court on the supposed ground that a restrictive interpretation has been given to certain provisions of a Statute.

16. In support of his submission Shri Trivedi has placed reliance on Volume 11(1) of Halsbury's Laws of England para 514 (Butterworths --1990) wherein unlawful sexual intercourse with woman without her consent has been held to be an essential ingredient of rape. Reference has also been made to Volume 75 Corpus Juris Secundum para 10, wherein it is stated that sexual penetration of a female is a necessary element of the crime of rape, but the slightest penetration of the body of the female by the sexual organ of the male is sufficient. Learned counsel has also referred to Principles Of Public International Law by Ian Brownlie, where the learned author, after referring to some decisions of English Courts has expressed an opinion that the clear words of a Statute bind the Court even if the provisions are contrary to international law and that there is no such thing as a standard of international law extraneous to the domestic law by a Kingdom and that international law as such can confer no rights cognizable in the municipal courts. Learned counsel has also referred to Dicey and Morris on The Conflict of Laws wherein in the Chapter on the enforcement of foreign law, following Rule has been stated:

"English Courts will not enforce or recognise a right, power, capacity, disability or legal relationship arising under the law of a foreign country, if the enforcement or recognition of such right, power, capacity, disability or legal relationship would be inconsistent with the fundamental public policy of English law."
With regard to penal law, it has been stated as under:

"The common law considers crimes as altogether local, and cognizable and punishable exclusively in the country where they are committed.... Chief Justice Marshall, in delivering the opinion of the Supreme Court, said: 'The Courts of no country execute the penal laws of another'."
17. This Court on 13.1.1998 referred the matter to the Law Commission of India for its opinion on the main issue raised by the petitioner, namely, whether all forms of penetration would come within the ambit of Section 375 IPC or whether any change in statutory provisions need to be made, and if so, in what respect? The Law Commission had considered some of the matters in its 156th Report and the relevant extracts of the recommendation made by it in the said Report, concerning the issue involved, were placed before the Court. Para 9.59 of the Report reads as under:

"9.59 Sexual-child abuse may be committed in various forms such as sexual intercourse, carnal intercourse and sexual assaults. The cases involving penile penetration into vagina are covered under Section 375 of the IPC. If there is any case of penile oral penetration and penile penetration into anus, Section 377 IPC dealing with unnatural offences, i.e., carnal intercourse against the order of nature with any man, woman or animal, adequately takes care of them. If acts such as penetration of finger or any inanimate object into vagina or anus are committed against a woman or a female child, the provisions of the proposed Section 354 IPC whereunder a more severe punishment is also prescribed can be invoked and as regards the male child, the penal provisions of the IPC concerning 'hurt', 'criminal force' or 'assault' as the case may be, would be attracted. A distinction has to be naturally maintained between sexual assault/use of criminal force falling under Section 354, sexual offences falling under Section 375 and unnatural offences falling under Section 377 of the Indian Penal Code. It may not be appropriate to bring unnatural offences punishable under Section 377 IPC or mere sexual assault or mere sexual use of criminal force which may attract Section 354 IPC within the ambit of 'rape' which is a distinct and graver offence with a definite connotation. It is needless to mention that any attempt to commit any of these offences is also punishable by virtue of Section 511 IPC. therefore, any other or more changes regarding this law may not be necessary."
Regarding Section 377 IPC, the Law Commission recommended that in view of the ongoing instances of sexual abuse in the country where unnatural offences is committed on a person under age of eighteen years, there should be a minimum mandatory sentence of imprisonment for a term not less than two years but may extend to seven years and fine, with a proviso that for adequate and special reasons to be recorded in the judgment, a sentence of less than two years may be imposed. The petitioner submitted the response on the recommendations of the Law Commission. On 10/18.2.2000, this Court again

requested the Law Commission to consider the comments of representative organisations (viz. SAKSHI, IFSHA and AIDWA).

18. The main question which requires consideration is whether by a process of judicial interpretation the provisions of Section 375 IPC can be so altered so as to include all forms of penetration such as penile/vaginal penetration, penile/oral penetration, penile/anal penetration, finger/vagina and finger/anal penetration and object/vaginal penetration within its ambit. Section 375 uses the expression "sexual intercourse" but the said expression has not been defined. The dictionary meaning of the word "sexual intercourse" is heterosexual intercourse involving penetration of the vagina by the penis. The Indian Penal Code was drafted by the First Indian Law Commission of which Lord Mecaulay was the President. It was presented to the Legislative Council in 1856 and was passed on October 6, 1860. The Penal Code has undergone very few changes in the last more than 140 years. Except for clause sixthly of Section 375 regarding the age of the woman (which in view of Section 10 denotes a female human being of any age) no major amendment has been made in the said provision. Sub-section (2) of Section 376 and Sections 376A to 376D were inserted by Criminal Law (Amendment) Act, 1983 but Sub-section (2) of Section 376 merely deals with special types of situations and provides for a minimum sentence of 10 years. It does not in any manner alter the definition of 'rape' as given in Section 375 IPC. Similarly, Section 354 which deals with assault or criminal force to woman with intent to outrage her modesty and Section 377 which deals with unnatural offences have not undergone any major amendment.

19. It is well settled principle that the intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. Similarly it is wrong and dangerous to proceed by substituting some other words for words of the statute. It is equally well settled that a statute enacting an offence or imposing a penalty is strictly construed. The fact that an enactment is a penal provision is in itself a reason for hesitating before ascribing to phrases used in it a meaning broader than that they would ordinarily bear. (Principles of Statutory Interpretation by Justice G.P. Singh p.58 and 751 Ninth Edition).

20. Sections 354, 375 and 377 IPC have come up for consideration before the superior courts of the country on innumerable occasions in a period of almost one and a half century. Only sexual intercourse, namely, heterosexual intercourse involving penetration of the vagina by the penis coupled with the explanation that penetration is sufficient to constitute the sexual intercourse necessary for the offence of rape has been held to come within the purview of Section 375 IPC. The wide definition which the petitioner wants to be given to "rape" as defined in Section 375 IPC so that the same may become an offence

punishable under Section 376 IPC has neither been considered nor accepted by any Court in India so far. Prosecution of an accused for an offence under Section 376 IPC on radically enlarged meaning of Section 375 IPC as suggested by the petitioner may violate the guarantee enshrined in Article 20(1) of the Constitution which says that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

21. The decision of Constitutional Court of South Africa cited by learned counsel for the petitioner does not commend to us as the Court there treated "Gays and Lesbian in permanent same sex life partnerships" at par with "spouses" and took upon itself the task of Parliament in holding that in Section 25(5) of the Aliens Control Act, after the word "spouse", the words "or partner in a permanent same sex life partnership" should be read. The decision of House of Lords in R. v. R. was given on its own facts which deserve notice. Here the wife had left her matrimonial home with her son on 21st October, 1989 and went to live with her parents. She had consulted solicitors about matrimonial problems and had left a letter for the husband informing him that she intended to petition for divorce. On 23rd October, 1989 the husband spoke to his wife on telephone indicating that it was his intention also to seek divorce. In the night of 12th November, 1989 the husband forced his way into the house of his wife's parents, who were out at that time and attempted to have sexual intercourse with her against her will. In the course of doing so he assaulted her by squeezing her neck with both hands. On the facts of the case the conviction of the husband may not be illegal. It is very doubtful whether the principle laid down can be of universal application. In Regina v. Burstow psychiatric injury was held to be bodily harm under Section 20, having regard to the meaning of the word in the usage of the present day. In our opinion the judgment of the International Tribunal can have no application here as Tribunal itself noted that no definition of rape can be found in International law and it was dealing with prosecution of persons responsible for serious violations of International Humanitarian Law committed in the Territory of former Yugoslavia. The judgment is not at all concerned with interpretation of any provision of domestic law in peace time conditions. The decisions cited by the learned counsel for the petitioner, therefore, do not persuade us to enlarge the definition of rape as given in Section 375 IPC which has been consistently so understood for over a century through out the country.

22. It may be noted that ours is a vast and big country of over 100 crore people. Normally, the first reaction of a victim of crime is to report the incident at the police station and it is the police personnel who register a case under the appropriate Sections of the Penal Code. Such police personnel are invariably not highly educated people but they have studied the basic provisions of the Indian Penal Code and after registering the case under the appropriate sections, further action is taken by them as provided in Code of Criminal Procedure. Indian Penal Code is a part of the curriculum in the law degree and it is the existing definition of "rape" as contained in Section 375 IPC which is taught to every

student of law. A criminal case is initially handled by a Magistrate and thereafter such cases as are exclusively triable by Court of Session are committed the Court of Session. The entire legal fraternity of India, lawyers or Judges, have the definition as contained in Section 375 IPC engrained in their mind and the cases are decided on the said basis. The first and foremost requirement in criminal law is that it should be absolutely certain and clear. An exercise to alter the definition of rape, as contained in Section 375 IPC, by a process of judicial interpretation, and that too when there is no ambiguity in the provisions of the enactment is bound to result in good deal of chaos and confusion, and will not be in the interest of society at large.

23. Stare decisis is a well known doctrine in legal jurisprudence. The doctrine of stare decisis, meaning to stand by decided cases, rests upon the principle that law by which men are governed should be fixed, definite and known, and that, when the law is declared by court of competent jurisdiction authorised to construe if, such declaration, in absence of palpable mistake or error, is itself evidence of the law until changed by competent authority. It requires that rules of law when clearly announced and established by a Court of last resort should not be lightly disregarded and set aside but should be adhered to and followed. What it precludes is that where a principle of law has become established by a series of decisions, it is binding on the Courts and should be followed in similar cases. It is a wholesome doctrine which gives certainty to law and guides the people to mould their affairs in future.

24. In Mishri Lal v. Dhierendra Nath MANU/SC/0241/1999: [1999]2SCR453 importance of this doctrine was emphasised for the purpose of avoiding uncertainty and confusion and paras 14, 15, 16 and 21 of the Reports read as under:

"14. This Court in Muktul v. Manbhari MANU/SC/0146/1958: [1959]1SCR1099 explained the scope of the doctrine of stare decisis with reference to Haralsbury's Laws of England and Corpus Juris Secundum in the following manner:

"The principle of stare decisis is thus stated in Halsbury's Laws of England, 2nd Edn.:

'Apart from any question as to the courts being of coordinate jurisdiction, a decision which has been followed for a long period of time, and has been acted upon by persons in the formation of contracts or in the disposition of their property, or in the general conduct of affairs, or in legal procedure or in other ways, will generally be followed by courts of higher authority than the court establishing the rule, even though the court before whom the matter arises afterwards might not have given the same decision had the question come before it originally. But the Supreme Appellate Court will not shrink from overruling a decision, or series of decisions, which establish a doctrine plainly outside the statute and outside the common law, when no title and no contract will be shaken, no persons can complain, and no general course of dealing be altered by the remedy of a mistake."

The same doctrine is thus explained in Corpus Juris Secundum -

'Under the stare decisis rule, a principle of law which has become settled by a series of decisions generally is binding on the courts and should be followed in similar cases. This rule is based on expediency and public policy, and, although generally it should be strictly adhered to by the courts, it is not universally applicable.'"
15. Be it noted however that Corpus Juris Secundum adds a rider that

"previous decisions should not be followed to the extent that grievous wrong may result; and, accordingly, the courts ordinarily will not adhere to a rule of principle established by previous decisions which they are convinced is erroneous. The rule of stare decisis is not so imperative or inflexible as to preclude a departure therefrom in any case, but its application must be determined in each case by the discretion of the court, and previous decisions should not be followed to the extent that error may be perpetuated and grievous wrong may result."
16. The statement though deserves serious consideration in the event of a definite finding as to the perpetration of a grave wrong but that by itself does not denude me time-tested doctrine of stare decisis of its efficacy. Taking recourse to the doctrine would be an imperative necessity to avoid uncertainty and contusion. The basic feature of law is its certainty and in the event of there being uncertainty as regards the state of law - the society would be in utter confusion the resultant effect of which would bring about a situation of chaos - a situation which ought always to be avoided.

21. In this context reference may also be made to two English decisions:

(a) in Admiralty Commrs. v. Valverda (Owners) 1938 AC 173 (AC at p. 194) wherein the House of Lords observed that even long established conveyancing practice, although not as authoritative as a judicial decision, will cause the House of Lords to hesitate before declaring it wrong, and

(b) in Button v. Director of Public Prosecution 1966 AC 591 the House of Lords observed:

"In Corpus Juris Secundum, a contemporary statement of American Law, the stare decisis rule has been stated to be a principle of law which has become settled by a series of decisions generally, is binding on the courts and should be followed in similar cases. It has been stated that this rule is based on expediency and public policy and should be strictly adhered to by the courts. Under this rule courts are bound to follow the common law as it has been judicially declared in previously adjudicated cases and rules of substantive law should be reasonably interpreted and administered. This rule has to preserve the harmony and stability of the law and to make as steadfast as possible judicially declared principles affecting the rights of property, it being indispensable to the due administration of justice, especially by a court of last resort, that a question once deliberately examined and declared should be considered as settled and closed to further

argument. It is a salutary rule, entitled to great weight and ordinarily should be strictly adhered to by the courts. The courts are slow to interfere with the principle announced by the decision, and it may be upheld even though they would decide otherwise were the question a new one, or equitable considerations might suggest, a different result and although it has been erroneously applied in a particular case. The rule represents an element of continuity in law and is rooted in the psychological need to satisfy reasonable expectations, but it is a principle of policy and not a mechanical formula of adherence to the latest decision however recent and questionable when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder and verified by experience."

25. It may be noticed that on July 26, 1966, the House of Lords made a departure from its past practice when a statement was made to the following effect:

"Their lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules.

Their lordships nevertheless recognise that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law. They propose therefore to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so.

In this connection they will boar in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the especial need for certainty as to the criminal law.

This announcement is not intended to affect the use of precedent elsewhere than in this House."

26. While making the above statement a rule of caution was sounded that while departing from a previous decision when it appears right to do so, the especial need for certainty as to criminal law shall be borne in mind. There is absolutely no doubt or confusion regarding the interpretation of provisions of Section 375 IPC and the law is very well settled. The inquiry before the Courts relate only to the factual aspect of the matter which depends upon the evidence available on the record and not on the legal aspect. Accepting the contention of the writ petitioner and giving a wider meaning to Section 375 IPC will lead to a serious confusion in the minds of prosecuting agency and the Courts which instead of achieving the object of expeditiously bringing a criminal to book may unnecessarily prolong the legal proceedings and would have an adverse impact on the society as a whole. We are, therefore, of the opinion that it will not be in the larger interest of the State or the people to alter the definition of "rape" as contained in Section 375 IPC

by a process of judicial interpretation as is sought to be done by means of the present writ petition.

27. The other aspect which has been highlighted and needs consideration relates to providing protection to a victim of sexual abuse at the time of recording his statement in court. The main suggestions made by the petitioner are for incorporating special provisions in child sexual abuse cases to the following effect:

(i) permitting use of a videotaped interview of the child's statement by the judge (in the presence of a child support person),

(ii) allow a child to testify via closed circuit television or from behind a screen to obtain a full and candid account of the acts complained of.

(iii) The cross examination of a minor should only be carried out by the judge based on written questions submitted by the defense upon perusal of the testimony of the minor

(iv) Whenever a child is required to give testimony, sufficient breaks should be given as and when required by the child.

28. The Law Commission, in its response, did not accept the said request in view of Section 273 Cr.P.C. as in its opinion the principle of the said Section which is founded upon natural justice, cannot be done away in trials and inquiries concerning sexual offences. The Commission, however, observed that in an appropriate case it may be open to the prosecution to request the Court to provide a screen in such a manner that the victim does not see the accused while at the same time provide an opportunity to the accused to listen to the testimony of the victim and give appropriate instructions to his counsel for an effective cross-examination. The Law Commission suggested that with a view to allay any apprehensions on this score, a proviso can be placed above the Explanation to Section 273 of the Criminal Procedure Code to the following effect: "Provided that where the evidence of a person below sixteen years who is alleged to have been subjected to sexual assault or any other sexual offence, is to be recorded, the Court may, take appropriate measures to ensure that such person is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.".

29. Ms. Meenakshi Arora has referred to a decision of the Canadian Supreme Court in Her Majesty The Queen, Appellant v. D.O.L., Respondent and the Attorney General of Canada, etc. (1993) 4 SCR 419, wherein the constitutional validity of Section 715. 1 of the Criminal Code was examined. This section provides that in any proceeding relating to certain sexual offences in which the complainant was under age of eighteen years at the time the offence is alleged to have been committed, a videotape made within a reasonable time after the alleged offence in which the complainant describes the act complained of, is admissible in evidence, if the complainant while testifying adopts the contents of the

videotape. The Court of Appeal had declared Section 715. 1 unconstitutional on the ground that the same contravened Sections 7 and 11(d) of the Canadian Charter of Rights and Freedoms and could not be sustained under Section 1. The Supreme Court took note of some glaring features in such type of cases viz. the innate power imbalance which exists between abuser and the abused child; a failure to recognise that the occurrence of child sexual abuse is one intertwined with the sexual abuse of all women, regardless of age; and that the Court cannot disregard the propensity of victims of sexual abuse to fail to report the abuse in order to conceal their plight from institutions without the criminal justice system which hold stereotypical and biased views about the victimisation of women. The Court accordingly held that the procedures set out in Section 715. 1 are designed to diminish the stress and trauma suffered by child complainants as a by product of their role in the criminal justice system. The "system induced trauma" often ultimately serves to re-victimize the young complainant. The Section was intended to preserve the evidence of the child and to remove the need for them to repeat their story many times. It is often repetition of the story that results in the infliction of trauma and stress upon a child who is made to believe that she is not being believed and that her experiences are not validated. The benefits such a provision would have in limiting the strain imposed on child witness who are required to provide detailed testimony about confusing, embarrassing and frightful incidents of abuse in an intimidating, confrontational and often hostile court room atmosphere. Another advantage afforded by the Section is the opportunity for the child to answer delicate questions about the abuse in a more controlled, less stressful and less hostile environment, a factor which according to social science research, may drastically increase the likelihood of eliciting the truth about the events at hand. The videotape testimony enables the Court to hear a more accurate account of what the child was saying about the incident at the time it first came to light and the videotape of an early interview if used in evidence can supplement the evidence of a child who is inarticulate or forgetful at the trial. The Section also acts to remove the pressure placed on a child victim of sexual assault when the attainment of "truth" depends entirely on her ability to control her fear, her shame and the horror of being face to face with the accused when she must describe her abuse in a compelling and coherent manner. The Court also observed that the rules of evidence have not been constitutionalised into unaltered principles of fundamental justice. Neither should they be interpreted in a restrictive manner which may essentially defeat their purpose of seeking truth and justice. Rules of evidence, as much as the law itself, are not cast in stone and will evolve with time. The Court accordingly reversed the judgment of Court of Appeal and upheld the constitutionality of Section 715. 1.

30. We will briefly refer to the statutory provisions governing the situation. Section 273 Cr.P.C. lays down that except as otherwise expressly provided, all evidence taken in the course of the trial or other proceedings shall be taken in the presence of the accused, or when his personal attendance is dispensed with, in the presence of his pleader. Sub-section (1) of Section 327 Cr.P.C. lays down that any Criminal Court enquiring into or trying any offence shall be deemed to be open Court to which the public generally may

have access, so, far as the same can conveniently contain them. Sub-section (2) of the same Sections says that notwithstanding anything contained in Sub-section (1) the inquiry into the trial of rape or an offence under Section 376, Section 376A, Section 376B, Section 376C or Section 376D of the Indian Penal Code shall be conducted in camera. Under the proviso to this sub-section the Presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the court. It is rather surprising that the legislature while incorporating Sub-section (2) to Section 327 by amending Act 43 of 1983 failed to take note of offences under Section 354 and 377 IPC and omitted to mention the aforesaid provisions. Deposition of the victims of offences under Section 354 and 377 IPC can at times be very embarrassing to them.

31. The whole inquiry before a Court being to elicit the truth, it is absolutely necessary that the victim or the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment. Section 273 Cr.P.C. merely requires the evidence to be taken in the presence of the accused. The Section, however, does not say that the evidence should be recorded in such a manner that the accused should have full view of the victim or the witnesses. Recording of evidence by way of video conferencing vis-a-vis Section 273 Cr.P.C. has been held to be permissible in a recent decision of this Court in State of Maharashtra v. Dr. Praful B Desai MANU/SC/0268/2003: 2003CriLJ2033. There is major difference between substantive provisions defining crimes and providing punishment for the same and procedural enactment laying down the procedure of trial of such offences. Rules of procedure are hand-maiden of justice and are meant to advance and not to obstruct the cause of justice. It is, therefore, permissible for the Court to expand or enlarge the meanings of such provisions in order to elicit the truth and do justice with the parties.

32. The mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses or can put them in a state of shock. In such a situation he or she may not be able to give full details of the incident which may result in miscarriage of justice. therefore, a screen or some such arrangement can be made where the victim or witnesses do not have to undergo the trauma of seeing the body or the face of the accused. Often the questions put in cross-examination are purposely designed to embarrass or confuse the victims of rape and child abuse. The object is that out of the feeling of shame or embarrassment, the victim may not speak out or give details of certain acts committed by the accused. It will, therefore, be better if the questions to be put by the accused in cross-examination are given in writing to the Presiding Officer of the Court, who may put the same to the victim or witnesses in a language which is not embarrassing. There can hardly be any objection to the other suggestion given by the petitioner that whenever a child or victim of rape is required to give testimony, sufficient breaks should be given as and when required. The provisions of Sub-section (2) of Section 327 Cr.P.C. should also apply in inquiry or trial of offences under Section 354 and 377 IPC.

33. In State of Punjab v. Gurmit Singh MANU/SC/0366/1996: 1996CriLJ1728 this Court had highlighted the importance of provisions of Section 327(2) and (3) Cr.P.C. and a direction was issued not to ignore the mandate of the aforesaid provisions and to hold the trial of rape cases in camera. It was also pointed out that such a trial in camera would enable the victim of crime to be a little comfortable and answer the questions with greater ease and thereby improve the quality of evidence of a prosecutrix because there she would not be so hesitant or bashful to depose frankly as she may be in an open court, under the gaze of the public. It was further directed that as far as possible trial of such cases may be conducted by lady Judges wherever available so that the prosecutrix can make a statement with greater ease and assist the court to properly discharge their duties, without allowing the truth to be sacrificed at the altar of rigid technicalities.

34. The writ petition is accordingly disposed of with the following directions:

(1) The provisions of Sub-section (2) of Section 327 Cr.P.C. shall, in addition to the offences mentioned in the sub-section, would also apply in inquiry or trial of offences under Sections 354 and 377 IPC.

(2) In holding trial of child sex abuse or rape:

(i) a screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;

(ii) the questions put in cross-examination on behalf of the accused, in so far as they relate directly to the incident should be given in writing to the Presiding Officer of the Court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;

(iii) the victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.

These directions are in addition to those given in State of Punjab v. Gurmit Singh.

35. The suggestions made by the petitioners will advance the cause of justice and are in the larger interest of society. The cases of child abuse and rape are increasing at alarming speed and appropriate legislation in this regard is, therefore, urgently required. We hope and trust that the Parliament will give serious attention to the points highlighted by the petitioner and make appropriate legislation with all the promptness which it deserves.

36. Before parting with the case, we must place it on record that Ms. Meenakshi Arora put in lot of efforts and hard labour in placing the relevant material before the Court and argued the matter with commendable ability.

G.P. Mathur, J.

37. For the reasons given in WP(Crl.) No. 33 of 1997 decided today, Special Leave Petitions are dismissed.

MANU/SC/1298/2017

Neutral Citation: 2017/INSC/1030

Back to Section Section 375 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Writ Petition (Civil) No. 382 of 2013 (Under Article 32 of the Constitution of India)

Decided On: 11.10.2017

Independent Thought Vs. Union of India (UOI) and Ors.

Hon'ble Judges/Coram:

Madan B. Lokur and Deepak Gupta, JJ.

Counsels:

For Appearing Parties: Rana Mukherjee, Sr. Adv., Gaurav Agrawal, Abhikalp Pratap Singh, Abhay Anturkar, Vikram Srivastava, Binu Tamta, Shailender Saini, Sadhana Sandhu, B.V. Balaram Das, Gurmeet Singh Makker, Daisy Hannah, Kasturika Kaumudi, B. Krishna Prasad, Jayna Kothari, Disha Chaudhari, Anindita Pujari and Kavita Bharadwaj, Advs.

JUDGMENT

Authored By: Madan B. Lokur, Deepak Gupta

Madan B. Lokur, J.

1. The issue before us is limited but one of considerable public importance - whether sexual intercourse between a man and his wife being a girl between 15 and 18 years of age is rape? Exception 2 to Section 375 of the Indian Penal Code, 1860 (the Indian Penal Code) answers this in the negative, but in our opinion sexual intercourse with a girl below 18 years of age is rape regardless of whether she is married or not. The exception carved out in the Indian Penal Code creates an unnecessary and artificial distinction between a married girl child and an unmarried girl child and has no rational nexus with any unclear objective sought to be achieved. The artificial distinction is arbitrary and discriminatory and is definitely not in the best interest of the girl child. The artificial distinction is contrary to the philosophy and ethos of Article 15(3) of the Constitution as well as contrary to Article 21 of the Constitution and our commitments in international conventions. It is also contrary to the philosophy behind some statutes, the bodily integrity of the girl child and her reproductive choice. What is equally dreadful, the

artificial distinction turns a blind eye to trafficking of the girl child and surely each one of us must discourage trafficking which is such a horrible social evil.

2. We make it clear that we have refrained from making any observation with regard to the marital rape of a woman who is 18 years of age and above since that issue is not before us at all. Therefore we should not be understood to advert to that issue even collaterally.

The writ petition

3. The Petitioner is a society registered on 6th August, 2009 and has since been working in the area of child rights. The society provides technical and hand-holding support to non-governmental organizations as also to government and multilateral bodies in several States in India. It has also been involved in legal intervention, research and training on issues concerning children and their rights. The society has filed a petition Under Article 32 of the Constitution in public interest with a view to draw attention to the violation of the rights of girls who are married between the ages of 15 and 18 years.

4. According to the Petitioner, Section 375 of the Indian Penal Code prescribes the age of consent for sexual intercourse as 18 years meaning thereby that any person having sexual intercourse with a girl child below 18 years of age would be statutorily guilty of rape even if the sexual activity was with her consent. Almost every statute in India recognizes that a girl below 18 years of age is a child and it is for this reason that the law penalizes sexual intercourse with a girl who is below 18 years of age. Unfortunately, by virtue of Exception 2 to Section 375 of the Indian Penal Code, if a girl child between 15 and 18 years of age is married, her husband can have non-consensual sexual intercourse with her, without being penalized under the Indian Penal Code, only because she is married to him and for no other reason. The right of such a girl child to bodily integrity and to decline to have sexual intercourse with her husband has been statutorily taken away and non-consensual sexual intercourse with her husband is not an offence under the Indian Penal Code.

5. Learned Counsel for the Petitioner submitted that absolutely nothing is achieved by entitling the husband of a girl child between 15 and 18 years of age to have non-consensual sexual intercourse with her. It was also submitted that whatever be the (unclear) objective sought to be achieved by this, the marital status of the girl child between 15 and 18 years of age has no rational nexus with that unclear object. Moreover, merely because a girl child between 15 and 18 years of age is married does not result in her ceasing to be a child or being mentally or physically capable of having sexual

intercourse or indulging in any other sexual activity and conjugal relations. It was submitted that to this extent Exception 2 to Section 375 of the Indian Penal Code is not only arbitrary but is also discriminatory and contrary to the beneficial intent of Article 15(3) of the Constitution which enables Parliament to make special provision for women and children. In fact, by enacting Exception 2 to Section 375 of the Indian Penal Code in the statute book, the girl child is placed at a great disadvantage, contrary to the visionary and beneficent philosophy propounded by Article 15(3) of the Constitution.

Law Commission of India - 84th Report

6. Learned Counsel for the Petitioner drew our attention to the 84th report of the Law Commission of India (LCI) presented on 25th April, 1980 dealing with the rape of a girl child below the prescribed minimum age. The report considered the anomalies in the law relating to rape, particularly in the context of the age of consent for sexual intercourse with a girl child. The view expressed by the LCI is quite explicit and is to be found in paragraph 2.18, 2.19 and 2.20 of the report. The view is that since the Child Marriage Restraint Act, 1929 prohibits the marriage of a girl below 18 years of age, sexual intercourse with a girl child below 18 years of age should also be prohibited and the Indian Penal Code should reflect that position thereby making sexual intercourse with a girl child below 18 years of age an offence. These paragraphs read as follows:

2.18. Section 375, fifth clause. - The discussion in the few preceding paragraphs was concerned with rape constituted by sexual intercourse without consent. The fifth Clause of Section 375 may now be considered. It is concerned with sexual intercourse with a woman under 16 years of age. Such sexual intercourse is an offence irrespective of the consent of the woman.

2.19. History. - The age of consent has been subjected to increase more than once in India. The historical development may, for convenience, be indicated in the form of a chart as follows:

Year	Age of consent Under Section 375, 5th clause, I.P.C.	Age mentioned in the Exception to Section 375, I.P.C.	Minimum age of marriage under the Child Marriage Restraint Act, 1929
1860.....	10 years	10 years	
1891 (Act 10 of 1891) (after the amendment of I.P.C.	12 years	12 years	__
1925 (after the amendment of I.P.C.)	14 years	13 years	__
1929 (after the passing of the Child Marriage Act)	14 years	13 years	14 years
1940 (after the amendment of the Penal Code and the Child Marriage Act)	16 years	15 years	15 years
1978.....	16 years	15 years	18 years
[as of 2017]* *The bracketed portion	[Age of consent under	[15 years]	[Minimum age of marriage under the
in this row has been inserted by us.	Sec. 375, Sixthly of the IPC - 18 years]		PCMA, 2006 - 18(F)/21(M) years]

2.20. Increase in minimum age. - The question to be considered is whether the age should be increased to 18 years. The minimum age of marriage now laid down by law (after 1978) is 18 years in the case of females and the relevant Clause of Section 375 should reflect this changed attitude. Since marriage with a girl below 18 years is prohibited (though it is not void as a matter of personal law), sexual intercourse with a girl below 18 years should also be prohibited.

Law Commission of India - 172nd Report

7. The issue was re-considered by the LCI in its 172nd report presented on 25th March, 2000. In that report, it is recommended that an exception be added to Section 375 of the Indian Penal Code to the effect that sexual intercourse by a man with his own wife, the wife not being under 16 years of age, is not sexual assault. In other words, the earlier recommendation made by the LCI was not approved.

8. Apparently at the stage of discussions, the recommendation of the LCI (still at the stage of proposal) did not find favour with an NGO called Sakshi who suggested deletion of the exception. According to the NGO, "where a husband causes some physical injury to his wife, he is punishable under the appropriate offence and the fact that he is the husband of the victim is not an extenuating circumstance recognized by law." Therefore, there is no reason why a concession should be made in the matter of an offence of rape/sexual assault only because the wife happens to be above 15/16 years of age. The LCI did not agree with the NGO and the reason given is that if the exception that is recommended is deleted, it "may amount to excessive interference with the marital relationship." In other words, according to the LCI the husband of a girl child who is not below 16 years of age can sexually assault and even rape his wife and the assault or rape would not be punishable-and if it is made punishable, then it would amount to excessive interference with the marital relationship. (It may be mentioned that Exception 2 to Section 375 of the Indian Penal Code has not increased the age to 16 years from 15 years as recommended by the LCI but has retained it at 15 years. According to the counter affidavit filed on behalf of the Union of India, the age of 15 years has been kept to give protection to the husband and the wife against criminalizing the sexual activity between them).

Counter affidavit of the Union of India

9. Since we have adverted to the counter affidavit filed by the Union of India opposing the writ petition, we propose to make a very brief reference to it. A somewhat more detailed reference is made to the counter affidavit of the Union of India at a later stage.

10. For the present, the counter affidavit of the Union of India refers to the National Family Health Survey - 3 (of 2005) in which it is stated that 46% of women in India between the ages of 18 and 29 years were married before the age of 18 years. It is also estimated, interestingly but disturbingly, that there are about 23 million child brides in the country. As far as any remedy available to a child bride is concerned, the counter affidavit draws attention to Section 3 of the Prohibition of Child Marriage Act, 2006 (the PCMA). Under Section 3(1) of the PCMA a child marriage is voidable at the option of any contracting party who was a child at the time of the marriage. The marriage can be declared a nullity in terms of the proviso to Section 3(1) of the PCMA through an appropriate petition filed by the child within two years of attaining majority and by approaching an appropriate court of law. It is also stated that in terms of Section 13(2)(iv) of the Hindu Marriage Act, 1955 a child bride can petition for a divorce on the ground that her marriage (whether consummated or not) was solemnized before she attained the age of 15 years and she has repudiated the marriage after attaining that age but before attaining 18 years of age. In other words a child marriage is sought to be somehow

'legitimized' by the Union of India and the onus for having it declared voidable or a nullity is placed on the child bride or the child groom.

Documentary material

11. Apart from but in addition to the legal issue, learned Counsel for the Petitioner and learned Counsel for the intervener (The Child Rights Trust) relied on a large amount of documentary material to highlight several adverse challenges that a girl child might face on her physical and mental health and some of them could even have an inter-generational impact if a girl child is married below 18 years of age. The girl child could also face adverse social consequences that might impact her for the rest of her life.

(a) Reference was made to a report "Delaying Marriage for Girls in India: A Formative Research to Design Interventions for Changing Norms". This report was prepared in March 2011 under the supervision of UNICEF India.

(b) Reference was also made to a report "Reducing Child Marriage in India: A Model to Scale up Results". This report was prepared in January 2016 and also under the supervision and guidance of UNICEF India. The report contains statistics of widowed, separated and divorced girls who were married between 10 and 18 years of age based on Census 2011.

(c) Reference was also made to a useful study "Economic Impacts of Child Marriage: Global Synthesis Report" released in June 2017. This report is a collaborative effort by the International Centre for Research on Women and the World Bank and it deals with the impact of child marriages on (i) fertility and population growth; (ii) health, nutrition, and intimate partner violence; (iii) educational attainment; (iv) labour force participation, earnings and welfare, and (v) women's decision-making and other impacts. The economic cost of child marriages and implications has also been discussed in detail in the report. A child marriage is defined as a marriage or union taking place before the age of 18 years and this definition has been arrived at by relying on a number of conventions, treaties and international agreements as well as resolutions of the UN Human Rights Council and the UN General Assembly.

(d) Another extremely useful report referred to is "A Statistical Analysis of Child Marriage in India based on Census 2011". This report is prepared by a collaborative

organization called Young Lives and the National Commission for the Protection of Child Rights and was released quite recently in June 2017.

12. This refers to the consequences of child marriage in Chapter 5. Broadly, it is stated:

Child marriage is not only a violation of human rights, but is also recognized as an obstacle to the development of young people. The practice of child marriage cut shorts a critical stage of self-discovery and exploring one's identity. Child marriage is an imposition of a marriage partner on children or adolescents who are in no way ready and matured, and thus, are at a loss to understand the significance of marriage. Their development gets comprised due to being deprived of freedom, opportunity for personal development, and other rights including health and well-being, education, and participation in civic life and nullifies their basic rights as envisaged in the United Nation's Convention on the Right of the Child ratified by India in 1989. Marriage at a young age prevents both girls and boys from exercising agency in making important life decisions and securing basic freedoms, including pursuing opportunities for education, earning a sustainable livelihood and accessing sexual health and rights." .....

The key consequences of child marriage of girls may include early pregnancy; maternal and neonatal mortality; child health problems; educational setbacks; lower employment/livelihood prospects; exposure to violence and abuse, including a range of controlling and inequitable behaviours, leading to inevitable negative physical and psychological consequences; and limited agency of girls to influence decisions about their lives.

Census data have demonstrated an upswing of female deaths in the age group of 15-19 years. This high mortality rate could be attributed to the deaths of teenage mothers. Child marriage virtually works like a double-edged sword; lower age at marriage is significantly associated with worse outcomes for the child and worse pregnancy outcomes for the mother. All these factors push girls and their families into perpetuation of intergenerational poverty and marginalization. The impact of early marriage on girls-and to a lesser extent on boys-is wide-ranging, opines the Innocenti Digest on child marriage. Child brides often experience overlapping vulnerabilities-they are young, often poor and undereducated. This affects the resources and assets they can bring into their marital household, thus reducing their decision-making ability. Child marriage places a girl under the control of her husband and often in-laws, limiting her ability to voice her opinions and form and pursue her own plans and aspirations. While child marriage is bound to have a detrimental effect on boys who would need to shoulder the responsibility of a wife and in most cases, have to also discontinue their education, there

is very little research evidence to capture the long term economic and psychological effect on boys who are married early. The Lancet 2015 acknowledges that adolescent boys are not important and neglected part of the equation. The assumption that girls need more attention than boys is now being challenged.

Looking at the impact of early marriage from rights perspective, it can be said that the key concerns are denial of childhood and adolescence, curtailment of personal freedom, deprivation of opportunities to develop a full sense of selfhood and denial of psychosocial and emotional well-being reproductive health and educational opportunity along with consequences described earlier.

13. There is a specific discussion in the Statistical Analysis on the impact of early child birth on health in which it is stated that "girls aged 15 to 19 [years] are twice more likely than older women to die from childbirth and pregnancy, making pregnancy the leading cause of death in poor countries for these age groups. Girls from the Scheduled Castes and Scheduled Tribes were on an average 10 per cent more likely (after accounting for other variables) to give birth earlier than girls from the other castes." It has been found that girls most likely to have had a child by 19 years (as compared with all other married and unmarried girls) were from the poorest groups; were more likely to live in rural areas; had the least educated mothers; had earlier experiences of menarche; had lower education aspirations; and were less likely to be enrolled in school between the age of 12 and 15 years. Being young and immature mothers, they have little say in decision-making about the number of children they want, nutrition, health-care etc. Lack of self-esteem or of a sense of ownership of her own body exposes a woman to repeated unwanted pregnancies.

14. There is also a useful discussion on violence, neglect and abandonment; psychosocial disadvantage; low self-esteem; low education and limited employability; human trafficking and under-nutrition, all of which are of considerable importance for the well-being of a girl child.

We are not dealing with these reports in any detail but draw attention to them since they support the view canvassed by learned Counsel. All that we need say is that a reading of these reports gives a good idea of the variety and magnitude of problems that a girl child who is married between 15 and 18 years of age could ordinarily encounter, including those caused by having sexual intercourse and child-bearing at an early age.

In-depth Study on all forms of violence against women

15. On 6th July, 2006 the Secretary-General of the United Nations submitted a report to the General Assembly called the "In-depth Study on all forms of violence against women". In the chapter relating to violence against women within the family and harmful traditional practices, early marriage was one of the commonly identified forms of violence.1 Similarly, early marriage was considered a harmful traditional practice2 - a thought echoed a year later in the Study on Child Abuse: India 2007 (referred to later) by the Government of India.

16. An early marriage is explained as involving the marriage of a child, that is, a person below the age of 18 years. It is stated that "Minor girls have not achieved full maturity and capacity to act and lack ability to control their sexuality. When they marry and have children, their health can be adversely affected, their education impeded and economic autonomy restricted. Early marriage also increases the risk of HIV infection." Among the under-documented forms of violence against women are included traditional harmful practices, prenatal sex selection, early marriage, acid throwing and dowry or "honour" related violence etc.3

17. On the concern of appropriate legislation to deal with issues of violence against women, the right of a woman to bodily integrity and legislations that allow early marriages, the Secretary General had this to say:

The treaty bodies have expressed concerns about the scope and coverage of existing legislation, in particular in regard to: definitions of rape that require use of force and violence rather than lack of consent; definitions of domestic violence that are limited to physical violence; treatment of sexual violence against women as crimes against the honour of the family or crimes against decency rather than violations of women's right to bodily integrity; use of the defence of "honour" in cases of violence against women and the related mitigation of sentences; provisions allowing mitigation of sentences in rape cases where the perpetrator marries the victim; inadequacy of protective measures for trafficked women, as well as their treatment as criminals rather than victims; termination of criminal proceedings upon withdrawal of a case by the victim; penalization of abortion in rape cases; laws that allow early or forced marriage; inadequate penalties for acts of violence against women; and discriminatory penal laws."4

National Policy and National Plan

18. What has been the response of the Government of India to studies carried out from time to time and views expressed? The National Charter for Children, 2003 was notified on 9th February, 2004. While it failed to define a child, we assume that it was framed keeping in mind the generally accepted definition of a child as being someone below 18 years of age. Proceeding on this basis, for the present purposes, Clause 11 of the National Charter is of relevance in the context of child marriages. It recognized that child marriage is a crime and an atrocity committed against the girl child. It also provided for taking "serious measures" to speedily abolish the practice of child marriage. Clause 11 reads:

11. a. The State and community shall ensure that crimes and atrocities committed against the girl child, including child marriage, discriminatory practices, forcing girls into prostitution and trafficking are speedily eradicated.

b. The State shall in partnership with the community undertake measures, including social, educational and legal, to ensure that there is greater respect for the girl child in the family and society.

c. The State shall take serious measures to ensure that the practice of child marriage is speedily abolished."

19. As a first step in this direction, child marriages were criminalized by enacting the PCMA in 2006 but no corresponding amendment was made in Section 375 of the Indian Penal Code, as it existed in 2006, to decriminalize marital rape of a girl child.

20. The National Charter was followed by the National Policy for Children notified on 26th April, 2013. The National Policy explicitly recognized in Clause 2.1 that every person below the age of 18 years is a child. Among the Guiding Principles for the National Policy was the recognition that every child has universal, inalienable and indivisible human rights; every child has the right to life, survival, development, education, protection and participation; the best interest of a child is the primary concern in all decisions and actions affecting the child, whether taken by legislative bodies, courts of law, administrative authorities, public, private, social, religious or cultural institutions.

21. The large 'to do list' in the National Policy led to the National Plan of Action for Children, 2016: Safe Children - Happy Childhood. The National Plan appears to have been made available on 24th January, 2017. While dealing with child marriage, it is stated as follows:

In India, between NFHS-3 (2005-06) to RSOC (2013-14), there has been a considerable decline in the percentage of women, between the ages 20-24, who were married before the age of 18 (from 47.4% to 30.3%). The incidence is higher among SC (34.9%) and ST (31%) and in families with lowest wealth index (44.1%). Child marriage violates children's basic rights to health, education, development, and protection and is also used as a means of trafficking of young girls.

Child marriage leads to pregnancy during adolescence, posing life-threatening risks to both mother and child. It is indicated by the Age-specific Marital Fertility Rate (ASMFR) which is measured as a number of births per year in a given age group to the total number of married women in that age group. SRS 2013 reveals that in the age group of 15-19 years; there has been an upward trend during the period 2001-2013. ASMFR is higher in the age group 15-19 years in comparison to 25-29 years.

22. The National Plan of Action for Children recognizes that the early marriage of girls is one of the factors for neo-natal deaths; early marriage poses various risks for the survival, health and development of young girls and to children born to them and most unfortunately it is also used as a means of trafficking.

23. A reading of the National Policy and the National Plan of Action for Children reveals, quite astonishingly, that even though the Government of India realizes the dangers of early marriages, it is merely dishing out platitudes and has not taken any concrete steps to protect the girl child from marital rape, except enacting the Protection of Children from Sexual Offences Act, 2012.

Human Rights Council

24. The Report of the Working Group on the Universal Periodic Review for India (issued on 17th July, 2017 without formal editing) for the 36th Session of the Human Rights Council refers to recommendations made by several countries to remove the exception relating to marital rape from the definition of rape in Section 375 of the Indian Penal Code In other words, the issue raised by the Petitioner has attracted considerable international attention and discussion and ought to be taken very seriously by the Union of India.

25. In our opinion, it is not necessary to detail the contents of every report or study placed before us except to say that there is a strong established link between early marriage and sexual intercourse with a married girl child between 15 and 18 years of age. There is a plethora of material to clearly indicate that sexual intercourse with a girl child below the age of 18 years (even within marriage) is not at all advisable for her for a variety of reasons, including her physical and mental well-being and her social standing - all of which should ordinarily be of paramount importance to everybody, particularly the State.

26. The social cost of a child marriage (and therefore of sexual intercourse with a girl child) is itself quite enormous and in the long run might not even be worth it. This is in addition to the economic cost to the country which would be obliged to take care of infants who might be malnourished and sickly; the young mother of the infant might also require medical assistance in most cases. All these costs eventually add up and apparently only for supporting a pernicious practice.

27. We can only express the hope that the Government of India and the State Governments intensively study and analyze these and other reports and take an informed decision on the effective implementation of the PCMA and actively prohibit child marriages which 'encourages' sexual intercourse with a girl child. Welfare schemes and catchy slogans are excellent for awareness campaigns but they must be backed up by focused implementation programmes, other positive and remedial action so that the pendulum swings in favour of the girl child who can then look forward to a better future.

Provisions of the Indian Penal Code (Indian Penal Code)

28. Section 375 of the Indian Penal Code defines 'rape'. This Section was inserted in the Indian Penal Code in its present form by an amendment carried out on 3rd February, 2013 and it provides that a man is said to commit rape if, broadly speaking, he has sexual intercourse with a woman under circumstances falling under any of the seven descriptions mentioned in the section. (A woman is defined Under Section 10 of the Indian Penal Code as a female human being of any age). Among the seven descriptions is sexual intercourse against the will or without the consent of the woman; Clause 'Sixthly' of Section 375 makes it clear that if the woman is under 18 years of age, then sexual intercourse with her-with or without her consent-is rape. This is commonly referred to as 'statutory rape' in which the willingness or consent of a woman below the age of 18 years for having sexual intercourse is rendered irrelevant and inconsequential.

29. However, Exception 2 to Section 375 of the Indian Penal Code provides that it is not rape if a man has sexual intercourse with a girl above 15 years of age and if that girl is his wife. In other words, a husband can have sexual intercourse with his wife provided she is not below 15 years of age and this is not rape under the Indian Penal Code regardless of her willingness or her consent.

30. However, sexual intercourse with a girl under 15 years of age is rape, whether it is with or without her consent, against her will or not, whether it is by her husband or anybody else. This is clear from a reading of Section 375 of the Indian Penal Code including Exception 2.

31. Therefore, Section 375 of the Indian Penal Code provides for three circumstances relating to 'rape'. Firstly sexual intercourse with a girl below 18 years of age is rape (statutory rape). Secondly and by way of an exception, if a woman is between 15 and 18 years of age then sexual intercourse with her is not rape if the person having sexual intercourse with her is her husband. Her willingness or consent is irrelevant under this circumstance. Thirdly sexual intercourse with a woman above 18 years of age is rape if it is under any of the seven descriptions given in Section 375 of the Indian Penal Code (non-consensual sexual intercourse).

32. The result of the above three situations is that the husband of a girl child between 15 and 18 years of age has blanket liberty and freedom to have non-consensual sexual intercourse with his wife and he would not be punishable for rape under the Indian Penal Code since such non-consensual sexual intercourse is not rape for the purposes of Section 375 of the Indian Penal Code. Very strangely, and as pointed out by Sakshi before the LCI, the husband of a girl child does not have the liberty and freedom under the Indian Penal Code to commit a lesser 'sexual' act with his wife, as for example, if the husband of a girl child assaults her with the intention of outraging her modesty, he would be punishable under the provisions of Section 354 of the Indian Penal Code. In other words, the Indian Penal Code permits a man to have non-consensual sexual intercourse with his wife if she is between 15 and 18 years of age but not to molest her. This view is surprisingly endorsed by the LCI in its 172nd report adverted to above.

Protection of Human Rights Act, 1993

33. The Protection of Human Rights Act, 1993 defines "human rights" in Section 2(d) as meaning the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in international covenants and enforceable

by courts in India. There can be no doubt that if a girl child is forced by her husband into sexual intercourse against her will or without her consent, it would amount to a violation of her human right to liberty or her dignity guaranteed by the Constitution or at least embodied in international conventions accepted by India such as the Convention on the Rights of the Child (the CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (the CEDAW).

Protection of Women from Domestic Violence Act, 2005 (DV Act)

34. Section 3 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the DV Act') provides that if the husband of a girl child harms or injures or endangers the health, safety, life, limb or well being, whether mental or physical, of his wife including by causing physical abuse and sexual abuse, he would be liable to have a protection order issued against him and pay compensation to his wife. Explanation I (ii) of Section 3 defines 'sexual abuse' as including any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of a woman.

Prohibition of Child Marriage Act, 2006 (PCMA)

35. One of the more important legislations on the subject of protective rights of children is the Prohibition of Child Marriage Act, 2006 (for short 'the PCMA'). For the purposes of the PCMA, a 'child' is a male who has not completed 21 years of age and a female who has not completed 18 years of age and a 'child marriage' means a marriage to which either contracting party is a child.

36. Section 3 of the PCMA provides that a child marriage is voidable at the option of any one of the parties to the child marriage - a child marriage is not void, but only voidable. Interestingly, and notwithstanding the fact that a child marriage is only voidable, Parliament has made a child marriage an offence and has provided punishments for contracting a child marriage. For instance, Section 9 of the PCMA provides that any male adult above 18 years of age marrying a child shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both. Therefore regardless of his age, a male is penalized under this Section if he marries a girl child. Section 10 of the PCMA provides that whoever performs, conducts, directs or abets any child marriage shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to one lakh rupees; Section 11 of the PCMA provides punishment for promoting or permitting solemnization of a child marriage; and finally Section 13 of the PCMA

provides that the jurisdictional judicial officer may injunct the performance of a child marriage while Section 14 of the PCMA provides that any child marriage solemnized in violation of an injunction Under Section 13 shall be void.

37. It is quite clear from the above that Parliament is not in favour of child marriages per se but is somewhat ambivalent about it. However, Parliament recognizes that although a child marriage is a criminal activity, the reality of life in India is that traditional child marriages do take place and as the studies (referred to above) reveal, it is a harmful practice. Strangely, while prohibiting a child marriage and criminalizing it, a child marriage has not been declared void and what is worse, sexual intercourse within a child marriage is not rape under the Indian Penal Code even though it is a punishable offence under the Protection of Children from Sexual Offences Act, 2012.

Protection of Children from Sexual Offences Act, 2012 (POCSO)

38. The Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act') is an important statute for the purposes of our discussion. The Statement of Objects and Reasons necessitating the enactment of the POCSO Act makes a reference to data collected by the National Crime Records Bureau (NCRB) which indicated an increase in sexual offences against children. The data collected by the NCRB was corroborated by the Study on Child Abuse: India 2007 conducted by the Ministry of Women and Child Development of the Government of India.

39. While the above Study focuses on child abuse, it does refer to the harmful traditional practice of child marriage and in this context adverts to child marriage as being a subtle form of violence against children. The Study notes that there is a realization that if issues of child marriage are not addressed, it would affect the overall progress of the country.

40. The above Study draws attention to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to which India is a signatory. Article 16.2 thereof provides "The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory."5

41. The above Study also makes a reference to gender equity to the effect that discrimination against girls results in child marriages and such an imbalance needs to be

addressed by bringing about attitudinal changes in people regarding the value of the girl child.

42. The Preamble to the POCSO Act states that it was enacted with reference to Article 15(3) of the Constitution. The Preamble recognizes that the best interest of a child should be secured, a child being defined Under Section 2(d) as any person below the age of 18 years. In fact, securing the best interest of the child is an obligation cast upon the Government of India having acceded to the Convention on the Rights of the Child (the CRC). The Preamble to the POCSO Act also recognizes that it is imperative that the law should operate "in a manner that the best interest and well being of the child are regarded as being of paramount importance at every stage, to ensure the healthy, physical, emotional, intellectual and social development of the child". Finally, the Preamble also provides that "sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed". This is directly in conflict with Exception 2 to Section 375 of the Indian Penal Code which effectively provides that the sexual exploitation or sexual abuse of a girl child is not even a crime, let alone a heinous crime - on the contrary, it is a perfectly legitimate activity if the sexual exploitation or sexual abuse of the girl child is by her husband.

43. Under Article 34 of the CRC, the Government of India is bound to "undertake all appropriate national, bilateral and multi-lateral measures to prevent the coercion of a child to engage in any unlawful sexual activity". The key words are 'unlawful sexual activity' but the Indian Penal Code declares that a girl child having sexual intercourse with her husband is not 'unlawful sexual activity' within the provisions of the Indian Penal Code, regardless of any coercion. However, for the purposes of the POCSO Act, any sexual activity engaged in by any person (husband or otherwise) with a girl child is unlawful and a punishable offence. This dichotomy is certainly not in the spirit of Article 34 of the CRC.

44. Further, in terms of our international obligations Under Article 1 and Article 34 of the CRC, the Government of India must undertake all appropriate measures to prevent the sexual exploitation or sexual abuse of any person below 18 years of age since such sexual exploitation or sexual abuse is a heinous crime. What has the Government of India done? It has persuaded Parliament to convert what is otherwise universally accepted as a heinous crime into a legitimate activity for the purposes of Section 375 of the Indian Penal Code if the exploiter or abuser is the husband of the girl child. But, contrarily the rape of a married girl child (called 'aggravated penetrative sexual assault' in the POCSO Act) is made an offence for the purposes of the POCSO Act.

45. Section 3 of the POCSO Act defines "penetrative sexual assault". Clause (n) of Section 5 provides that if a person commits penetrative sexual assault with a child, then that person actually commits aggravated penetrative sexual assault if that person is related to the child, inter alia, through marriage. Therefore, if the husband of a girl child commits penetrative sexual assault on his wife, he actually commits aggravated penetrative sexual assault as defined in Section 5(n) of the POCSO Act which is punishable Under Section 6 of the POCSO Act by a term of rigorous imprisonment of not less than ten years and which may extend to imprisonment for life and fine.

46. The duality therefore is that having sexual intercourse with a girl child between 15 and 18 years of age, the husband of the girl child is said to have not committed rape as defined in Section 375 of the Indian Penal Code but is said to have committed aggravated penetrative sexual assault in terms of Section 5(n) of the POCSO Act.

47. There is no real or material difference between the definition of rape in the terms of Section 375 of the Indian Penal Code and penetrative sexual assault in the terms of Section 3 of the POCSO Act.6 The only difference is that the definition of rape is somewhat more elaborate and has two exceptions but the sum and substance of the two definitions is more or less the same and the punishment (Under Section 376(1) of the Indian Penal Code) for being found guilty of committing the offence of rape is the same as for penetrative sexual assault (Under Section 4 of the POCSO Act). Similarly, the punishment for 'aggravated' rape Under Section 376(2) of the Indian Penal Code is the same as for aggravated penetrative sexual assault Under Section 6 of the POCSO Act. Consequently, it is immaterial if a person is guilty of the same sexual activity under the provisions of the POCSO Act or the provisions of the Indian Penal Code - the end result is the same and only the forum of trial changes. In a violation of the provisions of the POCSO Act, a Special Court constituted Under Section 28 of the said Act would be the Trial Court but the ordinary criminal court would be the Trial Court for an offence under the Indian Penal Code.

48. At this stage it is necessary to refer to Section 42-A inserted in the POCSO Act by an amendment made on 3rd February, 2013. This Section reads:

42-A. Act not in derogation of any other law.-The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.

The consequence of this amendment is that the provisions of the POCSO Act will override the provisions of any other law (including the Indian Penal Code) to the extent of any inconsistency.

49. One of the questions that arises for our consideration is whether there is any incongruity between Exception 2 to Section 375 of the Indian Penal Code and Section 5(n) of the POCSO Act and which provision overrides the other. To decide this, it would be necessary to keep Section 42-A of the POCSO Act in mind as well as Sections 5 and 41 of the Indian Penal Code which read:

5. Certain laws not to be affected by this Act.-Nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India or the provisions of any special or local law.

41. "Special law".-A "special law" is a law applicable to a particular subject.

50. These two provisions are of considerable importance in resolving the controversy and conflict presented before us.

Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act)

51. The Juvenile Justice (Care and Protection of Children) Act, 2015 (the JJ Act) is also relatable to Article 15(3) of the Constitution. Section 2(12) of the JJ Act defines a child as a person who has not completed 18 years of age. A child in need of care and protection is defined in Section 2(14) of the JJ Act, inter alia, as a child "who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnization of such marriage". Clearly a girl child below 18 years of age and who is sought to be married is a child in need of care and protection. She is therefore, required to be produced before a Child Welfare Committee constituted Under Section 27 of the JJ Act so that she could be cared for, protected and appropriately rehabilitated or restored to society.

Brief summary of the existing legislations

52. It is obvious from a brief survey of the various statutes referred to above that a child is a person below 18 years of age who is entitled to the protection of her human rights including the right to live with dignity; if she is unfortunately married while a child, she is protected from domestic violence, both physical and mental, as well as from physical and sexual abuse; if she is unfortunately married while a child, her marriage is in violation of the law and therefore an offence and such a marriage is voidable at her instance and the person marrying her is committing a punishable offence; the husband of the girl child would be committing aggravated penetrative sexual assault when he has sexual intercourse with her and is thereby committing a punishable offence under the POCSO Act. The only jarring note in this scheme of the pro-child legislations is to be found in Exception 2 to Section 375 of the Indian Penal Code which provides that sexual intercourse with a girl child between 15 and 18 years of age is not rape if the sexual intercourse is between the girl child and her husband. Therefore, the question of punishing the husband simply does not arise. A girl child placed in such circumstances is a child in need of care and protection and needs to be cared for, protected and appropriately rehabilitated or restored to society. All these 'child-friendly statutes' are essential for the well-being of the girl child (whether married or not) and are protected by Article 15(3) of the Constitution. These child-friendly statutes also link child marriages and sexual intercourse with a girl child and draw attention to the adverse consequences of both.

Article 15(3) of the Constitution

53. Article 15(3) of the Constitution enables and empowers the State to make special provision for the benefit of women and children. The Constituent Assembly debated this provision [then Article 9(2) of the draft Constitution] on 29th November, 1948. Prof. K.T. Shah suggested an amendment to the said Article ("Nothing in this Article shall prevent the State from making any special provision for women and children") so that it would read: "Nothing in this Article shall prevent the State from making any special provision for women and children or for Scheduled Castes or backward tribes, for their advantage, safeguard or betterment." The view expressed was:

Sir, it must be distinguished from the preceding article. I read it, at any rate, that this is a provision for discrimination in favour of women and children, to which I have added the Scheduled Castes or backward tribes. This discrimination is in favour of particular classes of our society which, owing to an unfortunate legacy of the past, suffer from disabilities or handicaps. Those, I think, may require special treatment; and if they do require it, they should be permitted special facilities for some time so that real equality of citizens be established.

The rage for equality which has led to provide equal citizenship and equal rights for women has sometimes found exception in regard to special provisions that, in the long range, in the interest of the country or of the race, exclude women from certain dangerous occupations, certain types of work. That, I take it, is not intended in any way to diminish their civic equality or status as citizens. It is only intended to safeguard, protect or lead to their betterment in general; so that the long-range interests of the country may not suffer.

The amendment was negatived by Dr. Ambedkar in the following manner:

With regard to amendment No. 323 moved by Professor K.T. Shah, the object of which is to add "Scheduled Castes" and "Scheduled Tribes" along with women and children, I am afraid it may have just the opposite effect.

The object which all of us have in mind is that the Scheduled Castes and Scheduled Tribes should not be segregated from the general public.

For instance, none of us, I think, would like that a separate school should be established for the Scheduled Castes when there is a general school in the village open to the children of the entire community. If these words are added, it will probably give a handle for a State to say, 'Well, we are making special provision for the Scheduled Castes'. To my mind they can safely say so by taking shelter under the Article if it is amended in the manner the Professor wants it. I therefore think that it is not a desirable amendment.

The response given by Dr. Ambedkar suggests that he certainly favoured special provisions for women and children with a view to integrate them into society and to take them out of patriarchal control.

But a similar integration could not be achieved by making special provisions for Scheduled Castes and Scheduled Tribes - it would have the opposite effect and further segregate them from the general public.

54. What clearly emerges from this discussion is that Article 9(2) of the draft Constitution [now Article 15(3)] was intended to discriminate in favour of women and children - a form of affirmative action to their advantage.

This intention has been recognized by decisions of this Court and of some High Courts. The earliest such decision is of the Calcutta High Court in Sri Mahadeb Jiew v. Dr. B.B. Sen MANU/WB/0113/1951 : AIR 1951 Cal 563 in which it was said that: "The special provision for women in Article 15(3) cannot be construed as authorizing a discrimination against women, and the word "for" in the context means "in favour of"."

55. In Government of A.P. v. P.B. Vijayakumar MANU/SC/0317/1995 : (1995) 4 SCC 520 affirmative action for women (and children) was recognized in paragraphs 7 and 8 of the Report in the following words:

The insertion of Clause (3) of Article 15 in relation to women is a recognition of the fact that for centuries, women of this country have been socially and economically handicapped. As a result, they are unable to participate in the socio-economic activities of the nation on a footing of equality. It is in order to eliminate this socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women that Article 15(3) is placed in Article 15. Its object is to strengthen and improve the status of women.....

What then is meant by "any special provision for women" in Article 15(3)? This "special provision", which the State may make to improve women's participation in all activities under the supervision and control of the State can be in the form of either affirmative action or reservation."....

56. Yusuf Abdul Aziz v. State of Bombay MANU/SC/0124/1954 : 1954 SCR 930 is a Constitution Bench decision of this Court in which the constitutional validity of Section 497 of the Indian Penal Code was challenged on the ground that it unreasonably 'exempts' a wife from being punishable for an offence of adultery and therefore should be interpreted restrictively. Rejecting the contention that Article 15(3) of the Constitution places any restriction on the legislative power of Parliament, it was said:

It was argued that Clause (3) [of Article 15 of the Constitution] should be confined to provisions which are beneficial to women and cannot be used to give them a licence to commit and abet crimes. We are unable to read any such restriction into the clause; nor are we able to agree that a provision which prohibits punishment is tantamount to a licence to commit the offence of which punishment has been prohibited.

57. The view that Article 15(3) is intended to benefit women has also been accepted in Cyril Britto v. Union of India MANU/KE/0233/2003 : AIR 2003 Ker 259 wherein it was held that prohibition from arrest or detention of women in execution of a money decree Under Section 56 of the Code of Civil Procedure is a special provision calculated to ensure that a woman judgment-debtor is not put to the ignominy or arrest and detention in civil prison in execution of a money decree and that this provision is referable to Article 15(3) of the Constitution. A similar view was taken in respect of the same provision in the Code of Civil Procedure in Shrikrishna Eknath Godbole v. Union of India7.

58. It is quite clear therefore that Article 15(3) of the Constitution cannot and ought not to be interpreted restrictively but must be given its full play. Viewed from this perspective, it seems to us that legislation intended for affirmative action in respect of a girl child must not only be liberally construed and interpreted but must override any other legislation that seeks to restrict the benefit made available to a girl child. This would only emphasize the spirit of Article 15(3) of the Constitution.

Right to bodily integrity and reproductive choice

59. The right to bodily integrity and the reproductive choice of any woman has been the subject of discussion in quite a few decisions of this Court. The discussion has been wide-ranging and several facets of these concepts have been considered from time to time. The right to bodily integrity was initially recognized in the context of privacy in State of Maharashtra v. Madhukar Narayan Mardikar MANU/SC/0032/1991 : (1991) 1 SCC 57 wherein it was observed that no one has any right to violate the person of anyone else, including of an 'unchaste' woman. It was said:

The High Court observes that since Banubi is an unchaste woman it would be extremely unsafe to allow the fortune and career of a government official to be put in jeopardy upon the uncorroborated version of such a woman who makes no secret of her illicit intimacy with another person. She was honest enough to admit the dark side of her life. Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. So also it is not open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to the protection of law.

60. In Suchita Srivastava v. Chandigarh Administration MANU/SC/1580/2009 : (2009) 9 SCC 1 the right to make a reproductive choice was equated with personal liberty Under

Article 21 of the Constitution, privacy, dignity and bodily integrity. It includes the right to abstain from procreating. In paragraph 22 of the Report it was held:

There is no doubt that a woman's right to make reproductive choices is also a dimension of "personal liberty" as understood Under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children. However, in the case of pregnant women there is also a "compelling State interest" in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the provisions of the MTP Act, 1971 can also be viewed as reasonable restrictions that have been placed on the exercise of reproductive choices.

61. In issues of criminal law, investigations and recording of statements, the bodily integrity of a witness has been accepted by this Court in Selvi v. State of Karnataka MANU/SC/0325/2010 : (2010) 7 SCC 263 wherein it was held in paragraph 103 of the Report:

The concerns about the "voluntariness" of statements allow a more comprehensive account of this right. If involuntary statements were readily given weightage during trial, the investigators would have a strong incentive to compel such statements-often through methods involving coercion, threats, inducement or deception. Even if such involuntary statements are proved to be true, the law should not incentivise the use of interrogation tactics that violate the dignity and bodily integrity of the person being examined.

62. Ritesh Sinha v. State of Uttar Pradesh MANU/SC/1072/2012 : (2013) 2 SCC 357 was a case relating to the collection of a voice sample during the course of investigation by the police. Relying of Selvi it was held that: "In a country governed by the Rule of law, police actions which are likely to affect the bodily integrity of a person or likely to affect his personal dignity must have legal sanction."

63. Finally, in Devika Biswas v. Union of India MANU/SC/0999/2016 : (2016) 10 SCC 726 it was observed that "Over time, there has been recognition of the need to respect and protect the reproductive rights and reproductive health of a person." This is all the more so in the case of a girl child who has little or no say in reproduction after an early marriage. As observed in Suchita Srivastava ".... the "best interests" test requires the Court to ascertain the course of action which would serve the best interests of the person in question."

64. The discussion on the bodily integrity of a girl child and the reproductive choices available to her is important only to highlight that she cannot be treated as a commodity having no say over her body or someone who has no right to deny sexual intercourse to her husband. The human rights of a girl child are very much alive and kicking whether she is married or not and deserve recognition and acceptance.

Rape or penetrative sexual assault

65. Whether sexual intercourse that a husband has with his wife who is between 15 and 18 years of age is described as rape (not an offence under Exception 2 to Section 375 of the Indian Penal Code) or aggravated penetrative sexual assault (an offence Under Section 5(n) of the POCSO Act and punishable Under Section 6 of the POCSO Act) the fact is that it is rape as conventionally understood, though Parliament in its wisdom has chosen to not recognize it as rape for the purposes of the Indian Penal Code. That it is a heinous crime which also violates the bodily integrity of a girl child, causes trauma and sometimes destroys her freedom of reproductive choice is a composite issue that needs serious consideration and deliberation.

66. There have been several decisions rendered by this Court highlighting the horrors of rape. In State of Karnataka v. Krishnappa MANU/SC/0210/2000 : (2000) 4 SCC 75 an 8 year girl was raped and it was held in paragraph 15 of the Report:

Sexual violence apart from being a dehumanising act is an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity-it degrades and humiliates the victim and where the victim is a helpless innocent child, it leaves behind a traumatic experience.

67. In Bodhisattwa Gautam v. Subhra Chakraborty MANU/SC/0245/1996 : (1996) 1 SCC 490 it was observed by this Court that rape is a crime not only against a woman but against society. It was held in paragraph 10 of the Report that:

Rape is thus not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is only by her sheer will-power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21. To many feminists and psychiatrists, rape is less a sexual offence than an act of aggression aimed at degrading and humiliating women. The rape laws do not, unfortunately, take care of the social aspect of the matter and are inept in many respects.

68. About a month later, it was pithily stated in State of Punjab v. Gurmit Singh MANU/SC/0366/1996 : (1996) 2 SCC 384.

We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female.

69. There are several decisions in which similar observations have been made by this Court and it is not necessary to multiply the cases. However, reference may be made to a fairly recent decision in State of Haryana v. Janak Singh MANU/SC/0570/2013 : (2013) 9 SCC 431 wherein reference was made to Bodhisattwa Gautam and it was observed in paragraph 7 of the Report:

Rape is one of the most heinous crimes committed against a woman. It insults womanhood. It violates the dignity of a woman and erodes her honour. It dwarfs her personality and reduces her confidence level. It violates her right to life guaranteed Under Article 21 of the Constitution of India.

70. If such is the traumatic impact that rape could and does have on an adult victim, we can only guess what impact it could have on a girl child - and yet it is not a criminal

offence in the terms of Exception 2 to Section 375 of the Indian Penal Code but is an offence under the POCSO Act only. An anomalous state of affairs exists on a combined reading of the Indian Penal Code and the POCSO Act. An unmarried girl below 18 years of age could be a victim of rape under the Indian Penal Code and a victim of penetrative sexual assault under the POCSO Act. Such a victim might have the solace (if we may say so) of prosecuting the rapist. A married girl between 15 and 18 years of age could be a victim of aggravated penetrative sexual assault under the POCSO Act, but she cannot be a victim of rape under the Indian Penal Code if the rapist is her husband since the Indian Penal Code does not recognize such penetrative sexual assault as rape. Therefore such a girl child has no recourse to law under the provisions of the Indian Penal Code notwithstanding that the marital rape could degrade and humiliate her, destroy her entire psychology pushing her into a deep emotional crisis and dwarf and destroy her whole personality and degrade her very soul. However, such a victim could prosecute the rapist under the POCSO Act. We see no rationale for such an artificial distinction.

71. While we are not concerned with the general question of marital rape of an adult woman but only with marital rape of a girl child between 15 and 18 years of age in the context of Exception 2 to Section 375 of the Indian Penal Code, it is worth noting the view expressed by the Committee on Amendments to Criminal Law chaired by Justice J.S. Verma (Retired). In paragraphs 72, 73 and 74 of the Report it was stated that the out-dated notion that a wife is no more than a subservient chattel of her husband has since been given up in the United Kingdom. Reference was also made to a decision of the European Commission of Human Rights which endorsed the conclusion that "a rapist remains a rapist regardless of his relationship with the victim." The relevant paragraphs of the Report read as follows:

72. The exemption for marital rape stems from a long out-dated notion of marriage which regarded wives as no more than the property of their husbands. According to the common law of coverture, a wife was deemed to have consented at the time of the marriage to have intercourse with her husband at his whim. Moreover, this consent could not be revoked. As far back as 1736, Sir Matthew Hale declared: 'The husband cannot be guilty of rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given herself up in this kind unto her husband which she cannot retract'.

73. This immunity has now been withdrawn in most major jurisdictions. In England and Wales, the House of Lords held in 1991 that the status of married women had changed beyond all recognition since Hale set out his proposition. Most importantly, Lord Keith, speaking for the Court, declared, 'marriage is in modern times regarded as a partnership

of equals, and no longer one in which the wife must be the subservient chattel of the husband.'

74. Our view is supported by the judgment of the European Commission of Human Rights in C.R. v. UK [C.R. v. UK Publ. ECHR, Ser. A, No. 335-C] which endorsed the conclusion that a rapist remains a rapist regardless of his relationship with the victim. Importantly, it acknowledged that this change in the common law was in accordance with the fundamental objectives of the Convention on Human Rights, the very essence of which is respect for human rights, dignity and freedom. This was given statutory recognition in the Criminal Justice and Public Order Act 1994.

72. In Eisenstadt v. Baird MANU/USSC/0240/1972 : 405 US 438, 31 L Ed 2d 349, 92 S Ct 1092 the US Supreme Court observed that a "marital couple is not an independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional makeup."

73. On a combined reading of C.R. v. UK and Eisenstadt v. Baird it is quite clear that a rapist remains a rapist and marriage with the victim does not convert him into a non-rapist. Similarly, a rape is a rape whether it is described as such or is described as penetrative sexual assault or aggravated penetrative sexual assault. A rape that actually occurs cannot legislatively be simply wished away or legislatively denied as non-existent.

Harmonizing the Indian Penal Code, the POCSO Act, the JJ Act and the PCMA

74. There is an apparent conflict or incongruity between the provisions of the Indian Penal Code and the POCSO Act. The rape of a married girl child (a girl child between 15 and 18 years of age) is not rape under the Indian Penal Code and therefore not an offence in view of Exception 2 to Section 375 thereof but it is an offence of aggravated penetrative sexual assault Under Section 5(n) of the POCSO Act and punishable Under Section 6 of that Act. This conflict or incongruity needs to be resolved in the best interest of the girl child and the provisions of various complementary statutes need to be harmonized and read purposively to present an articulate whole.

75. The most obvious and appropriate resolution of the conflict has been provided by the State of Karnataka - the State Legislature has inserted Sub-section (1A) in Section 3 of the PCMA (on obtaining the assent of the President on 20th April, 2017) declaring that henceforth every child marriage that is solemnized is void ab initio. Therefore, the

husband of a girl child would be liable for punishment for a child marriage under the PCMA, for penetrative sexual assault or aggravated penetrative sexual assault under the POCSO Act and if the husband and the girl child are living together in the same or shared household for rape under the Indian Penal Code. The relevant extract of the Karnataka amendment reads as follows:

(1A) Notwithstanding anything contained in Sub-section (1) [of Section of the PCMA] every child marriage solemnized on or after the date of coming into force of the Prohibition of Child Marriage (Karnataka Amendment) Act, 2016 shall be void ab initio.

76. It would be wise for all the State Legislatures to adopt the route taken by Karnataka to void child marriages and thereby ensure that sexual intercourse between a girl child and her husband is a punishable offence under the POCSO Act and the Indian Penal Code. Assuming all other State Legislatures do not take the Karnataka route, what is the correct position in law?

77. There is no doubt that pro-child statutes are intended to and do consider the best interest of the child. These statutes have been enacted in the recent past though not effectively implemented. Given this situation, we are of opinion that a few facts need to be acknowledged and accepted. Firstly, a child is and remains a child regardless of the description or nomenclature given to the child. It is universally accepted in almost all relevant statutes in our country that a child is a person below 18 years of age. Therefore, a child remains a child whether she is described as a street child or a surrendered child or an abandoned child or an adopted child. Similarly, a child remains a child whether she is a married child or an unmarried child or a divorced child or a separated child or a widowed child. At this stage we are reminded of Shakespeare's eternal view that a rose by any other name would smell as sweet-so also with the status of a child, despite any prefix. Secondly, the age of consent for sexual intercourse is definitively 18 years and there is no dispute about this. Therefore, under no circumstance can a child below 18 years of age give consent, express or implied, for sexual intercourse. The age of consent has not been specifically reduced by any statute and unless there is such a specific reduction, we must proceed on the basis that the age of consent and willingness to sexual intercourse remains at 18 years of age. Thirdly, Exception 2 to Section 375 of the Indian Penal Code creates an artificial distinction between a married girl child and an unmarried girl child with no real rationale and thereby does away with consent for sexual intercourse by a husband with his wife who is a girl child between 15 and 18 years of age. Such an unnecessary and artificial distinction if accepted can again be introduced for other occasions for divorced children or separated children or widowed children.

78. What is sought to be achieved by this artificial distinction is not at all clear except perhaps to acknowledge that child marriages are taking place in the country. Such child marriages certainly cannot be in the best interest of the girl child. That the solemnization of a child marriage violates the provisions of the PCMA is well-known. Therefore, it is for the State to effectively implement and enforce the law rather than dilute it by creating artificial distinctions. Can it not be said, in a sense, that through the artificial distinction, Exception 2 to Section 375 of the Indian Penal Code encourages violation of the PCMA? Perhaps 'yes' and looked at from another point of view, perhaps 'no' for it cannot reasonably be argued that one statute (the Indian Penal Code) condones an offence under another statute (the PCMA). Therefore the basic question remains-what exactly is the artificial distinction intended to achieve?

Justification given by the Union of India

79. The only justification for this artificial distinction has been culled out by learned Counsel for the Petitioner from the counter affidavit filed by Union of India. This is given in the written submissions filed by learned Counsel for the Petitioner and the justification (not verbatim) reads as follows:

i) Economic and educational development in the country is still uneven and child marriages are still taking place. It has been, therefore, decided to retain the age of 15 years under Exception 2 of Section 375 of Indian Penal Code so as to give protection to husband and wife against criminalizing the sexual activity between them.

ii) As per National Family Health Survey-III, 46% of women between the ages 18-29 years in India were married before the age of 18. It is also estimated that there are 23 million child brides in the country. Hence, criminalizing the consummation of a marriage union with a serious offence such as rape would not be appropriate and practical.

iii) Providing punishment for child marriage with consent does not appear to be appropriate in view of socio-economic conditions of the country. Thus, the age prescribed in Exception 2 of Section 375 of Indian Penal Code has been retained considering the basic facts of the still evolving social norms and issues.

iv) The Law Commission also recommended for raising the age from 15 years to 16 years and it was incorporated in the Criminal Law (Amendment) Ordinance, 2013. However,

after wide ranging consultations with various stakeholders it was further decided to retain the age at 15 years.

v) Exception 2 of Section 375 of Indian Penal Code envisages that if the marriage is solemnized at the age of 15 years due to traditions, it should not be a reason to book the husband in the case of offence of rape under the Indian Penal Code.

vi) It is also necessary that the provisions of law should be in such a manner that it cannot affect a particular class of society. Retaining the age of 15 years in Exception 2 of Section 375 of Indian Penal Code has been provided considering the social realities of the nation.

80. The above justifications given by the Union of India are really explanations for inserting Exception 2 in Section 375 of the Indian Penal Code. Besides, they completely side track the issue and overlook the provisions of the PCMA, the provisions of the JJ Act as well as the provisions of the POCSO Act. Surely, the Union of India cannot be oblivious to the existence of the trauma faced by a girl child who is married between 15 and 18 years of age or to the three pro-child statutes and other human rights obligations. That these facts and statutes have been overlooked confirms that the distinction is artificial and makes Exception 2 to Section 375 of the Indian Penal Code all the more arbitrary and discriminatory.

81. During the course of oral submissions, three further but more substantive justifications were given by learned Counsel for the Union of India for making this distinction. The first justification is that by virtue of getting married, the girl child has consented to sexual intercourse with her husband either expressly or by necessary implication. The second justification is that traditionally child marriages have been performed in different parts of the country and therefore such traditions must be respected and not destroyed. The third justification is that paragraph 5.9.1 of the 167th report of the Parliamentary Standing Committee of the Rajya Sabha (presented in March 2013) records that several Members felt that marital rape has the potential of destroying the institution of marriage.

82. In law, it is difficult to accept any one of these justifications. There is no question of a girl child giving express or implied consent for sexual intercourse. The age of consent is statutorily and definitively fixed at 18 years and there is no law that provides for any specific deviation from this. Therefore unless Parliament gives any specific indication (and it has not given any such indication) that the age of consent could be deviated from for any rational reason, we cannot assume that a girl child who is otherwise incapable of

giving consent for sexual intercourse has nevertheless given such consent by implication, necessary or otherwise only by virtue of being married. It would be reading too much into the mind of the girl child and assuming a state of affairs for which there is neither any specific indication nor any warrant. It must be remembered that those days are long gone when a married woman or a married girl child could be treated as subordinate to her husband or at his beck and call or as his property. Constitutionally a female has equal rights as a male and no statute should be interpreted or understood to derogate from this position. If there is some theory that propounds such an unconstitutional myth, then that theory deserves to be completely demolished.

83. Merely because child marriages have been performed in different parts of the country as a part of a tradition or custom does not necessarily mean that the tradition is an acceptable one nor should it be sanctified as such. Times change and what was acceptable the few decades ago may not necessarily be acceptable today. This was noted by a Constitution Bench of this Court (though in a different context) in State of Madhya Pradesh v. Bhopal Sugar Industries Ltd. MANU/SC/0099/1964 : [1964] 6 SCR 846 that:

But, by the passage of time, considerations of necessity and expediency would be obliterated, and the grounds which justified classification of geographical regions for historical reasons may cease to be valid.

84. Similarly, in Rattan Arya v. State of Tamil Nadu MANU/SC/0550/1986 : (1986) 3 SCC 385 it was observed that judicial notice could be taken of a change in circumstances. It was held:

It certainly cannot be pretended that the provision is intended to benefit the weaker Sections of the people only. We must also observe here that whatever justification there may have been in 1973 when Section 30(ii) [of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960] was amended by imposing a ceiling of Rs. 400 on rent payable by tenants of residential buildings to entitle them to seek the protection of the Act, the passage of time has made the ceiling utterly unreal. We are entitled to take judicial notice of the enormous multifold increase of rents throughout the country, particularly in urban areas. It is common knowledge today that the accommodation which one could have possibly got for Rs. 400 per month in 1973 will today cost at least five times more. In these days of universal, day to day escalation of rentals any ceiling such as that imposed by Section 30(ii) in 1973 can only be considered to be totally artificial and irrelevant today. As held by this Court in Motor General Traders v. State of A.P. MANU/SC/0293/1983 : (1984) 1 SCC 222 a provision which was perfectly valid at the commencement of the Act could be challenged later on the ground of unconstitutionality and struck down on that

basis. What was once a perfectly valid legislation, may in course of time, become discriminatory and liable to challenge on the ground of its being violative of Article 14.

85. In Anuj Garg v. Hotel Association of India MANU/SC/8173/2007 : (2008) 3 SCC 1 this Court was concerned with the constitutional validity of Section 30 of the Punjab Excise Act, 1914 which prohibited employment of "any man under the age of 25 years" or "any woman" in any part of such premises in which liquor or an intoxicating drug is consumed by the public. While upholding the view of the Delhi High Court striking down the provision as unconstitutional, this Court held in paragraphs 46 and 47 of the Report:

It is to be borne in mind that legislations with pronounced "protective discrimination" aims, such as this one, potentially serve as double-edged swords. Strict scrutiny test should be employed while assessing the implications of this variety of legislations. Legislation should not be only assessed on its proposed aims but rather on the implications and the effects. The impugned legislation suffers from incurable fixations of stereotype morality and conception of sexual role. The perspective thus arrived at is outmoded in content and stifling in means.

No law in its ultimate effect should end up perpetuating the oppression of women. Personal freedom is a fundamental tenet which cannot be compromised in the name of expediency until and unless there is a compelling State purpose. Heightened level of scrutiny is the normative threshold for judicial review in such cases.

86. Similarly, it was observed by this Court in Satyawati Sharma v. Union of India MANU/SC/1870/2008 : (2008) 5 SCC 287 in paragraph 32 of the Report that legislation which might be reasonable at the time of its enactment could become unreasonable with the passage of time. It was observed as follows:

It is trite to say that legislation which may be quite reasonable and rational at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equality and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent.

There is therefore no doubt that the impact and effect of Exception 2 to Section 375 of the Indian Penal Code has to be considered not with the blinkered vision of the days gone by but with the social realities of today. Traditions that might have been acceptable at some historical point of time are not cast in stone. If times and situations change, so must views, traditions and conventions.

87. We have adverted to the wealth of documentary material which goes to show that an early marriage and sexual intercourse at an early age could have detrimental effects on the girl child not only in terms of her physical and mental health but also in terms of her nutrition, her education, her employability and her general well-being. To make matters worse, the detrimental impact could pass on to the children of the girl child who may be malnourished and may be required to live in an impoverished state due to a variety of factors. An early marriage therefore could have an inter-generational adverse impact. In effect therefore the practice of early marriage or child marriage even if sanctified by tradition and custom may yet be an undesirable practice today with increasing awareness and knowledge of its detrimental effects and the detrimental effects of an early pregnancy. Should this traditional practice still continue? We do not think so and the sooner it is given up, it would be in the best interest of the girl child and for society as a whole.

88. We must not and cannot forget the existence of Article 21 of the Constitution which gives a fundamental right to a girl child to live a life of dignity. The documentary material placed before us clearly suggests that an early marriage takes away the self esteem and confidence of a girl child and subjects her, in a sense, to sexual abuse. Under no circumstances can it be said that such a girl child lives a life of dignity. The right of a girl child to maintain her bodily integrity is effectively destroyed by a traditional practice sanctified by the Indian Penal Code. Her husband, for the purposes of Section 375 of the Indian Penal Code, effectively has full control over her body and can subject her to sexual intercourse without her consent or without her willingness since such an activity would not be rape. Anomalously, although her husband can rape her but he cannot molest her for if he does so he could be punished under the provisions of the Indian Penal Code. This was recognized by the LCI in its 172nd report but was not commented upon. It appears therefore that different and irrational standards have been laid down for the treatment of the girl child by her husband and it is necessary to harmonize the provisions of various statutes and also harmonize different provisions of the Indian Penal Code inter-se.

89. We have also adverted to the issue of reproductive choices that are severely curtailed as far as a married girl child is concerned. There is every possibility that being subjected to sexual intercourse, the girl child might become pregnant and would have to deliver a

baby even though her body is not quite ready for procreation. The documentary material shown to us indicates that there are greater chances of a girl child dying during childbirth and there are greater chances of neonatal deaths. The results adverted to in the material also suggest that children born out of early marriages are more likely to be malnourished. In the face of this material, would it be wise to continue with a practice, traditional though it might be, that puts the life of a girl child in danger and also puts the life of the baby of a girl child born from an early marriage at stake? Apart from constitutional and statutory provisions, constitutional morality forbids us from giving an interpretation to Exception 2 to Section 375 of the Indian Penal Code that sanctifies a tradition or custom that is no longer sustainable.

90. The view that marital rape of a girl child has the potential of destroying the institution of marriage cannot be accepted. Marriage is not institutional but personal-nothing can destroy the 'institution' of marriage except a statute that makes marriage illegal and punishable. A divorce may destroy a marriage but does it have the potential of destroying the 'institution' of marriage? A judicial separation may dent a marital relationship but does it have the potential of destroying the 'institution' of marriage or even the marriage? Can it be said that no divorce should be permitted or that judicial separation should be prohibited? The answer is quite obvious.

91. Looked at from another perspective, the PCMA actually makes child marriages voidable and makes the parties to a child marriage (other than the girl child) punishable for an offence under the said Act. For someone who supports the institution of marriage, nothing could be more destructive of the institution of marriage than the PCMA which makes a child marriage voidable and punishable on the one hand and on the other, it otherwise collaterally legitimizes the pernicious practice of child marriages. It is doubtful if the Parliamentary Standing Committee intended such a situation along with its attendant adverse and detrimental impacts and so we leave it at that.

92. Assuming some objective is sought to be achieved by the artificial distinction, the further question is: what is the rational nexus between decriminalizing sexual intercourse under the Indian Penal Code with a married girl child and an unclear and uncertain statutory objective? There is no intelligible answer to this question particularly since sexual intercourse with a married girl child is a criminal offence of aggravated penetrative sexual assault under the POCSO Act. Therefore, while the husband of a married girl child might not have committed rape for the purposes of the Indian Penal Code but he would nevertheless have committed aggravated penetrative sexual assault for the purposes of the POCSO Act. The punishment for rape (assuming it is committed) and the punishment for penetrative sexual assault is the same, namely imprisonment for a minimum period of 7 years which may extend to imprisonment for life. Similarly, for

an 'aggravated' form of rape the punishment is for a minimum period of 10 years imprisonment which may extend to imprisonment for life (under the Indian Penal Code) and the punishment for aggravated penetrative sexual assault (which is what is applicable in the case of a married girl child) is the same (under the POCSO Act). In other words, the artificial distinction merely takes the husband of the girl child out of the clutches of the Indian Penal Code while retaining him within the clutches of the POCSO Act. We are unable to understand why this is so and no valid justification or explanation is forthcoming from the Union of India.

Application of special laws

93. Whatever be the explanation, given the context and purpose of their enactment, primacy must be given to pro-child statutes over the Indian Penal Code as provided for in Sections 5 and 41 of the Indian Penal Code. There are several reasons for this including the absence of any rationale in creating an artificial distinction, in relation to sexual offences, between a married girl child and an unmarried girl child. Statutes concerning the rights of children are special laws concerning a special subject of legislation and therefore the provisions of such subject-specific legislations must prevail and take precedence over the provisions of a general law such as the Indian Penal Code. It must also be remembered that the provisions of the JJ Act as well as the provisions of the POCSO Act are traceable to Article 15(3) of the Constitution which enables Parliament to make special provisions for the benefit of children. We have already adverted to some decisions relating to the interpretation of Article 15(3) of the Constitution in a manner that is affirmative, in favour of children and for children and we have also adverted to the discussion in the Constituent Assembly in this regard. There can therefore be no other opinion regarding the pro-child slant of the JJ Act as well as the POCSO Act.

94. A rather lengthy but useful discussion on this subject of special laws is to be found in Life Insurance Corporation of India v. D.J. Bahadur MANU/SC/0305/1980 : (1981) 1 SCC 315 in paragraphs 52 and 53 of the Report. Briefly, it was held that the subject-matter and the perspective of the statute are determinative of the question whether a statute is a general law or a special law. Therefore, for certain purposes a statute might be a special law but for other purposes, as compared to another statute, it might be a general law. In respect of a dispute between the Life Insurance Corporation and its workmen qua workmen, the Industrial Disputes Act, 1947 would be a special law vis-a-vis the Life Insurance Corporation Act, 1956; but, "when compensation on nationalisation is the question, the LIC Act is the special statute". It was held as follows:

In determining whether a statute is a special or a general one, the focus must be on the principal subject-matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. In law, we have a cosmos of relativity, not absolutes--so too in life. The ID Act is a special statute devoted wholly to investigation and settlement of industrial disputes which provides definitionally for the nature of industrial disputes coming within its ambit. It creates an infrastructure for investigation into, solution of and adjudication upon industrial disputes. It also provides the necessary machinery for enforcement of awards and settlements. From alpha to omega the ID Act has one special mission--the resolution of industrial disputes through specialised agencies according to specialised procedures and with special reference to the weaker categories of employees coming within the definition of workmen. Therefore, with reference to industrial disputes between employers and workmen, the ID Act is a special statute, and the LIC Act does not speak at all with specific reference to workmen. On the other hand, its powers relate to the general aspects of nationalisation, of management when private businesses are nationalised and a plurality of problems which, incidentally, involve transfer of service of existing employees of insurers. The workmen qua workmen and industrial disputes between workmen and the employer as such, are beyond the orbit of and have no specific or special place in the scheme of the LIC Act. And whenever there was a dispute between workmen and management the ID Act mechanism was resorted to.

What are we confronted with in the present case, so that I may determine as between the two enactments which is the special? The only subject which has led to this litigation and which is the bone of contention between the parties is an industrial dispute between the Corporation and its workmen qua workmen. If we refuse to be obfuscated by legal abracadabra and see plainly what is so obvious, the conclusion that flows, in the wake of the study I have made, is that vis-a-vis "industrial disputes" at the termination of the settlement as between the workmen and the Corporation, the ID Act is a special legislation and the LIC Act a general legislation. Likewise, when compensation on nationalisation is the question, the LIC Act is the special statute. An application of the generalia maxim as expounded by English textbooks and decisions leaves us in no doubt that the ID Act being special law, prevails over the LIC Act which is but general law.

The scope and amplitude of the two significant pro-child statutes may now be examined in light of the law laid down by this Court including Sections 5 and 41 of the Indian Penal Code.

(i) The JJ Act

95. A cursory reading of the JJ Act gives a clear indication that a girl child who is in imminent risk of marriage before attaining the age of 18 years of age is a child in need of care and protection (Section 2 (14) (xii) of the JJ Act). In our opinion, it cannot be said with any degree of rationality that such a girl child loses her status as a child in need of care and protection soon after she gets married. The JJ Act provides that efforts must be made to ensure the care, protection, appropriate rehabilitation or restoration of a girl child who is at imminent risk of marriage and therefore a child in need of care and protection. If this provision is ignored or given a go by, it would put the girl child in a worse off situation because after marriage she could be subjected to aggravated penetrative sexual assault for which she might not be physically, mentally or psychologically ready. The intention of the JJ Act is to benefit a child rather than place her in difficult circumstances. A contrary view would not only destroy the purpose and spirit of the JJ Act but would also take away the importance of Article 15(3) of the Constitution. Surely, such an interpretation and understanding cannot be given to the provisions of the JJ Act.

(ii) The POCSO Act

96. Similarly, the provisions of the POCSO Act make it quite explicit that the dignity and rights of a child below 18 years of age must be recognized and respected. For this purpose, special provisions have been made in the POCSO Act as for example Section 28 thereof which provides for the establishment of a Special Court to try offences under the Act. Section 29 of the POCSO Act provides that where a person is prosecuted for committing or abetting or attempting to commit an offence Under Section 3 (penetrative sexual assault) or Under Section 5 (aggravated penetrative sexual assault) then the Special Court shall presume that such a person has committed or abetted or attempted to commit the offence unless the contrary is proved. Similarly, the procedure and powers of a Special Court have been delineated in Section 33 of the POCSO Act and this Section provides for not only a child friendly atmosphere in the Special Court but also child friendly procedures, some of which are given in subsequent Sections of the statute. Once again the legislative slant is in favour of a child thereby giving substantive meaning to Article 15(3) of the Constitution.

97. However, of much greater importance and significance is Section 42-A of the POCSO Act. This Section provides that the provisions of the POCSO Act are in addition to and not in derogation of the provisions of any other law in force which includes the Indian Penal Code. Moreover, the Section provides that in the event of any inconsistency between the provisions of the POCSO Act and any other law, the provisions of the POCSO Act shall have overriding effect. It follows from this that even though the Indian

Penal Code decriminalizes the marital rape of a girl child, the husband of the girl child would nevertheless be liable for punishment under the provisions of the POCSO Act for aggravated penetrative sexual assault.

98. Prima facie it might appear that since rape is an offence under the Indian Penal Code (subject to Exception 2 to Section 375) while penetrative sexual assault or aggravated penetrative sexual assault is an offence under the POCSO Act and both are distinct and separate statutes, therefore there is no inconsistency between the provisions of the Indian Penal Code and the provisions of the POCSO Act. However the fact is that there is no real distinction between the definition of rape under the Indian Penal Code and the definition of penetrative sexual assault under the POCSO Act. There is also no real distinction between the rape of a married girl child and aggravated penetrative sexual assault punishable Under Section 6 of the POCSO Act. Additionally, the punishment for the respective offences is the same, except that the marital rape of a girl child between 15 and 18 years of age is not rape in view of Exception 2 to Section 375 of the Indian Penal Code. In sum, marital rape of a girl child is effectively nothing but aggravated penetrative sexual assault and there is no reason why it should not be punishable under the provisions of the Indian Penal Code. Therefore, it does appear that only a notional or linguistic distinction is sought to be made between rape and penetrative sexual assault and rape of a married girl child and aggravated penetrative sexual assault. There is no rationale for this distinction and it is nothing but a completely arbitrary and discriminatory distinction.

Harmonious and purposive interpretation

99. The entire issue of the interpretation of the JJ Act, the POCSO Act, the PCMA and Exception 2 to Section 375 of the Indian Penal Code can be looked at from yet another perspective, the perspective of purposive and harmonious construction of statutes relating to the same subject matter. Long ago, it was said by Lord Denning that when a defect appears, a judge cannot fold his hands and blame the draftsman but must also consider the social conditions and give force and life to the intention of the Legislature. It was said in Seaford Court Estates Ltd. v. Asher [1949] 2 K.B. 481 affirmed in [1950] A.C. 508 that:

A judge, believing himself to be fettered by the supposed Rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the

draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature.

100. Similarly, in Collector of Customs v. Digvijaya Singhji Spinning & Weaving Mills MANU/SC/0365/1961 : AIR 1961 SC 1549 it was said that where an alternative construction is open, that alternative should be chosen which is consistent with the smooth working of the system which the statute purports to regulate. It was said that:

It is one of the well-established Rules of construction that "if the words of a statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature". It is equally well-settled principle of construction that "Where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system".

101. That a constructive attitude should be adopted in interpreting statutes was endorsed in Jugal Kishore v. State of Maharashtra MANU/SC/0213/1988 : 1989 Supp (1) SCC 589 when it was said that:

...Unless the Acts [Maharashtra Agricultural Land (Ceiling on Holdings) Act, 1961 and the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958], with the intention of implementing various socio-economic plans, are read in such complementary manner, the operation of the different Acts in the same field would create contradiction and would become impossible. It is, therefore, necessary to take a constructive attitude in interpreting provisions of these types and determine the main aim of the particular Act in question for adjudication before the court.

102. Finally, from the purposive and harmonious construction point of view as well as the social context point of view, we may only draw attention to the opinion expressed by the Constitution Bench in Abhiram Singh v. C.D. Commachen MANU/SC/0010/2017 : (2017) 2 SCC 629 by one of us (Lokur, J) to supplement our view. It is not necessary to repeat the observations made and conclusions given therein.

103. Viewed from any perspective, there seems to be no reason to arbitrarily discriminate against a girl child who is married between 15 and 18 years of age. On the contrary, there is every reason to give a harmonious and purposive construction to the pro-child statutes to preserve and protect the human rights of the married girl child.

Implementation of laws

104. The Preamble to our Constitution brings out our commitment to social justice, but unfortunately, this petition clearly brings out that social justice laws are not implemented in the spirit in which they are enacted by Parliament. Young girls are married in thousands in the country, and as Section 13 of the PCMA indicates, there is an auspicious day-Akshaya Trutiya-when mass child marriages are performed. Such young girls are subjected to sexual intercourse regardless of their health, their ability to bear children and other adverse social, economic and psychological consequences. Civil society can do just so much for preventing such child marriages but eventually it is for the Government of India and the State Governments to take proactive steps to prevent child marriages so that young girls in our country can aspire to a better and healthier life. We hope the State realizes and appreciates this.

Conclusion

105. On a complete assessment of the law and the documentary material, it appears that there are really five options before us: (i) To let the incongruity remain as it is-this does not seem a viable option to us, given that the lives of thousands of young girls are at stake; (ii) To strike down as unconstitutional Exception 2 to Section 375 of the Indian Penal Code-in the present case this is also not a viable option since this relief was given up and no such issue was raised; (iii) To reduce the age of consent from 18 years to 15 years-this too is not a viable option and would ultimately be for Parliament to decide; (iv) To bring the POCSO Act in consonance with Exception 2 to Section 375 of the Indian Penal Code-this is also not a viable option since it would require not only a retrograde amendment to the POCSO Act but also to several other pro-child statutes; (v) To read Exception 2 to Section 375 of the Indian Penal Code in a purposive manner to make it in consonance with the POCSO Act, the spirit of other pro-child legislations and the human rights of a married girl child. Being purposive and harmonious constructionists, we are of opinion that this is the only pragmatic option available. Therefore, we are left with absolutely no other option but to harmonize the system of laws relating to children and require Exception 2 to Section 375 of the Indian Penal Code to now be meaningfully read

as: "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape." It is only through this reading that the intent of social justice to the married girl child and the constitutional vision of the framers of our Constitution can be preserved and protected and perhaps given impetus.

106. We make it clear that we have not at all dealt with the larger issue of marital rape of adult women since that issue was not raised before us by the Petitioner or the intervener.

107. We express our gratitude to Mr. Gaurav Agrawal, Advocate and Ms. Jayna Kothari, Advocate for the effort that they have put in and the able assistance that they have given us for the purpose of deciding this case.

Deepak Gupta, J.

108. I have gone through the extremely erudite and well written judgment of my learned brother Lokur, J.. I fully agree with both the reasoning given by him and the conclusions arrived at. However, I am expressing my own views in this separate concurring judgment wherein I have given some other reasons while reaching the same conclusion.

109. "Whether Exception 2 to Section 375 of the Indian Penal Code, in so far as it relates to girls aged 15 to 18 years, is unconstitutional and liable to be struck down" is the question for consideration in this writ petition.

110. At the outset, it may be mentioned that in the main petition the challenge is laid to the entire Exception 2. However, during the course of arguments Mr. Gaurav Agarwal, learned Counsel for the Petitioner, Independent Thought, a registered Society and Ms. Jayna Kothari, learned Counsel for the intervener, the Child Rights Group, submitted that they are limiting their challenge to Exception 2 only in so far as it deals with the girl child aged 15 to 18 years.

111. Section 375 of the Indian Penal Indian Penal Code (for short 'Indian Penal Code') defines rape and reads as follows:

375. Rape.-A man is said to commit "rape" if he---

a. penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

b. inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

c. manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

d. applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:

First.--Against her will.

Secondly.--Without her consent.

Thirdly.--With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.--With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.--With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.--With or without her consent, when she is under eighteen years of age.

Seventhly.--When she is unable to communicate consent.

Explanation 1.--For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.--Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.--A medical procedure or intervention shall not constitute rape.

Exception 2.--Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

112. A husband who commits rape on his wife, as defined Under Section 375 of the Indian Penal Code, cannot be charged with the said offence as long as the wife is over 15 years of age. It may be made clear that this Court is not going into the issue of "marital rape" of women aged 18 years and above and the discussion is limited only to "wives" aged 15 to 18 years. A man is guilty of rape if he commits any act mentioned in Section 375 Indian Penal Code, without the consent of the women if she is above 18 years of age. If a man commits any of the acts mentioned in Section 375 Indian Penal Code, with a girl aged less than 18 years, then the act will amount to rape even if done with the consent of the victim. However, as per Exception 2 of Section 375 Indian Penal Code, if the man is married to the woman and if the "wife" is aged more than 15 years then the man cannot be held guilty of commission of the offence defined Under Section 375, whether the wife consented to the sexual act or not.

113. Section 375 of the Indian Penal Code creates three classes of victims:

(i) The first class of victims are girls aged less than 18 years. In those cases, if the acts contemplated Under Section 375 Indian Penal Code are committed with or without consent of the victim, the man committing such an act is guilty of rape.

(ii) The second class of victims are women aged 18 years or above. Such women can consent to having consensual sex. If the sexual act is done with the consent of the woman, unless the consent is obtained in circumstances falling under clauses thirdly, fourthly and fifthly of Section 375 Indian Penal Code no offence is committed. The man can be held guilty of rape, only if the sexual act is done in absence of legal and valid consent.

(iii) The third category of victims is married women. The exception exempts a man from being charged and convicted Under Section 375 Indian Penal Code for any of the acts contemplated under this Section if the victim is his "wife" aged 15 years and above.

To put it differently, Under Section 375 Indian Penal Code a man cannot even have consensual sex with a girl if she is below the age of 18 years and the girl is by law deemed unable to give her consent. However, if the girl child is married and she is aged above 15 years, then such consent is presumed and there is no offence if the husband has sex with his "wife", who is above 15 years of age. If the "wife" is below 15 then the husband would be guilty of such an offence.

114. The issue is whether a girl below 18 years who is otherwise unable to give consent can be presumed to have consented to have sex with her husband for all times to come and whether such presumption in the case of a girl child is unconscionable and violative of Articles 14, 16 and 21 of the Constitution of India.

THE LEGISLATIVE BACKGROUND

115. The Indian Penal Code was enacted in the year 1860 and the age given in Exception 2 of Section 375 has been changed from time to time. Till 1929, no minimum age of marriage was legally fixed. It was only after passing of the Child Marriage Restraint Act, 1929 (for short 'the Restraint Act') that the minimum age for marriage was fixed. The Restraint Act was repealed by the Prohibition of Child Marriage Act, 2006 (for short 'the PCMA'). A chart showing the ages of consent, from time to time, under Clause Sixthly of

Section 375 Indian Penal Code, in Exception 2 to Section 375 Indian Penal Code and the Restraint Act/PCMA is as follows:

Year	IPC	Age of Consent Under Section 375, 6th Clause I.P.C.	Age under Exception 2 to Section 375 I.P.C.	Minimum Age of Marriage under the Restraint Act/PCMA
1860	-	10 Years	10 Years	-
1891	Act 10 of 1891 (After the Amendment of IPC)	12 Years	12 Years	-
1925	(After the Amendment of IPC)	14 Years	13 Years	-
1929	(After Passing of Child Marriage Restraint Act)	14 Years	13 Years	14 Years
1940	After the Amendment of the I.P.C. and Child Marriage Act	16 Years	15 Years	15 Years
1978	-	16 Years	15 Years	18 Years
2013	-	18 Years	15 Years	18 Years

116. A perusal of the aforementioned chart clearly shows that when the Indian Penal Code was originally enacted in the year 1860, the age of consent under Clause Sixthly of Section 375 Indian Penal Code and under Exception 2 of Section 375 Indian Penal Code was 10 years. In this regard, the Indian Penal Code was amended in 1891 and the age under both the provisions was raised to 12 years. In 1925, the age of consent was raised under Clause Sixthly to 14 years but under the Exception 2 the age was retained at 13 years. In 1929, the Child Marriage Restraint Act was enacted. Section 3 of this Act provided that the minimum age of the girl child, to be eligible for marriage, was 14 years. In 1940, the Indian Penal Code was again amended and the age of consent under Clause Sixthly was raised to 16 years, but under Exception 2 to Section 375 Indian Penal Code, the age was raised to 15 years and the minimum age of marriage under the Restraint Act was also 15 years. In 1978, the Indian Penal Code was again amended and the age of consent was raised to 16 years but under Exception 2 to Section 375 Indian Penal Code, no change was made. In 1978, the minimum age for marriage of the girl child was raised to 18 years but no consequential amendment was made in the Indian Penal Code. In 2013,

after the unfortunate "Nirbhaya" incident took place, the Parliament raised the age of consent under Clause Sixthly to 18 years. The minimum age for marriage of a girl child remained at 18 years, but no change was made in Exception 2 to Section 375 Indian Penal Code and a girl child who was married before the minimum age of marriage, could be subjected to sexual intercourse (forcible or otherwise) by her husband and if she was over 15 years of age, the husband could not be charged with any offence.

117. At this stage, reference may be made to the Hindu Marriage Act. In the Hindu Marriage Act, as originally enacted in 1955, the minimum age for marriage of a bride was 15 years and of a groom 18 years. The Hindu Marriage Act was amended in 1978 and the minimum age of marriage for a bride was enhanced to 18 years and for a groom to 21 years. Identical amendment was made in the Restraint Act.

118. The Child Marriage Restraint Act, 1929 was repealed by the Prohibition of Child Marriage Act, 2006 and this Act defines a child as follows:

2. Definitions.--In this Act, unless the context otherwise requires,--

(e) "child" means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.

119. Section 3 of the PCMA makes child marriages voidable at the option of the contracting party who is a child and reads as follows:

3. Child marriages to be voidable at the option of contracting party being a child.--(1) Every child marriage, whether solemnised before or after the commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of the marriage:

Provided that a petition for annulling a child marriage by a decree of nullity may be filed in the district court only by a contracting party to the marriage who was a child at the time of the marriage.

(2) If at the time of filing a petition, the Petitioner is a minor, the petition may be filed through his or her guardian or next friend alongwith the Child Marriage Prohibition Officer.

(3) The petition under this Section may be filed at any time but before the child filing the petition completes two years of attaining majority.

(4) While granting a decree of nullity under this section, the district court shall make an order directing both the parties to the marriage and their parents or their guardians to return to the other party, his or her parents or guardian, as the case may be, the money, valuables, ornaments and other gifts received on the occasion of the marriage by them from the other side, or an amount equal to the value of such valuables, ornaments, other gifts and money:

Provided that no order under this Section shall be passed unless the concerned parties have been given notices to appear before the district court and show cause why such order should not be passed.

120. It would be pertinent to note that under the Restraint Act the punishment Under Section 3 for a male aged 18 years to 21 years, contracting a child marriage was simple imprisonment, which could extend up to 15 days or with fine up to Rs. 1000/- or both and Under Section 4, if a male over 21 years contracted a marriage with a female child, the punishment was simple imprisonment which could extend up to 3 months. Section 5 provided punishment of simple imprisonment up to 3 months and fine with regard to those who performed, conducted or directed any child marriage. Similar provisions existed in Section 6 with regard to the punishment of parents or guardians, who acted to promote child marriage or permitted it to be solemnized or negligently failed to prevent the child marriage to be solemnized. Surprisingly, the proviso to Section 6 provided that no women could be punished with imprisonment. The punishments provided under the Restraint Act were virtually illusory and no minimum punishment was prescribed.

121. The Restraint Act was repealed and replaced by the PCMA. The provisions of the PCMA are slightly more stringent. Under Section 9 of the PCMA, if a male adult above 18 years of age contracts a child marriage, he can be sentenced to rigorous imprisonment up to 2 years or fine which may extend up to one lakh rupees or both. However, no minimum sentence is provided even under this Act. Section 10 of the PCMA provides punishment for those persons who perform, conduct, direct or abet a child marriage and the same sentence is provided. As far as the guardians and parents are concerned, the

punishment for them is provided Under Section 11 and it is the same. Again, the proviso lays down that no woman shall be punishable with imprisonment. Though this Court is not dealing with this question directly in the present petition, it is obvious that a woman would be placed in the forefront by any person who gets a child marriage conducted. Such a woman cannot be sentenced to undergo imprisonment and at the most, a fine can be levied. The punishments provided are neither sufficiently punitive nor deterrent. Therefore, the PCMA has been breached with impunity. I think the time has come when this Act needs serious reconsideration, especially in view of the harsh reality that a lot of child trafficking is taking place under the garb of marriage including child marriage. More stringent punishments should be provided and some minimum punishment should definitely be provided especially to those mature adults who promote such marriages and who perform, conduct, direct or abet any such marriage. Otherwise, this legislation will never act as a sufficient deterrent to prevent or even reduce child marriages.

122. Under Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000, a "juvenile" or "child" was defined to mean a person, who had not completed 18 years of age. The Juvenile Justice (Care and Protection of Children) Act, 2015 defines a child Under Section 2(12) to mean a person who has not completed 18 years of age.

123. Under the Protection of Women from Domestic Violence Act, 2005, a child has been defined Under Section 2(b) to mean any person below the age of 18 years.

124. Section 2(vii) of the Dissolution of Muslim Marriages Act, 1939 entitles a women married under Muslim law to obtain a decree of dissolution of marriage if she is given in marriage by her father or other guardian before she attained the age of 15 years and she repudiates the marriage before attaining the age of 18 years provided that the marriage has not been consummated. This provision deals with girls below the age of 15 years who are got married. Such a girl is required to repudiate her marriage before she attains majority and she can only repudiate the marriage if the marriage has not been consummated. This virtually makes mockery of the PCMA. Therefore, even in a marriage which is void under PCMA, the girl will have to obtain a decree for dissolution of her marriage, that too before she attains the age of majority and only if the marriage has not been consummated. Another anomalous situation is that if the husband has forcible sex with such a girl, the marriage is consummated and the girl child is deprived of her right to get the marriage annulled.

125. Similarly Under Section 13(2)(iv) of the Hindu Marriage Act, 1955, a Hindu girl can file a petition for divorce on the ground that her marriage, whether consummated or not,

was solemnized before she attained the age of 15 years and she has repudiated her marriage after attaining the age of 15 years but before attaining the age of 18 years. This is also not in consonance with the provisions of PCMA, according to which marriage of a child bride below the age of 15 years is void and there is no question of seeking a divorce. A void marriage is no marriage. Another anomaly is that whereas a child bride, who is above 15 years under PCMA, can apply for annulment of marriage up to the age of 20 years, Under Section 13(2)(iv) of the Hindu Marriage Act, a child bride under the age of 15 years must repudiate the marriage after attaining the age of 15 years but before she attains the age of 18 years, i.e. even before she attains majority. The question that remains unanswered is who will represent or help this child, who has been forced to marry to approach the Courts.

126. It is obvious that while making amendments to various laws, some laws are forgotten and consequential amendments are not made in those laws. After the PCMA was enacted both the Hindu Marriage Act, 1955 and the Dissolution of Muslim Marriages and Divorce Act, 1939 also should have been suitably amended, but this has not been done. In my opinion, the PCMA is a secular Act applicable to all. It being a special Act dealing with children, the provisions of this Act will prevail over the provisions of both the Hindu Marriage Act and the Muslim Marriages and Divorce Act, in so far as children are concerned.

127. Section 3 of the Majority Act, 1875 provides that a person shall attain the age of majority on completing the age of 18 years and not before. It would, however, be pertinent to mention that Section 2 of the Indian Majority Act contains a non-obstante Clause excluding laws relating to marriage, divorce, dower and adoption from the provisions of that Act. Under Section 4(i) of the Guardians and Wards Act, 1890 a minor has been defined to mean a person, who has not attained majority under the Majority Act. Under Section 4(a) of the Hindu Minority and Guardianship Act, 1956 a minor has been defined to mean a person who has not completed the age of 18 years. Under the Representation of the People Act, 1951 a person is entitled to vote only after he attains the age of 18 years.

128. Under the provisions of the aforesaid Acts a person, who is a minor and not a major, is not entitled to deal with his property. The property of such a minor can be sold or transferred only if such sale or transfer is for the benefit of the minor and after the permission of the court. Section 11 of the Indian Contract Act, 1872 provides that only a person who has attained the age of majority and is of a sound mind is competent to enter into a contract. A contract entered into by a minor is treated to be a void contract.

129. Keeping in view the mounting crimes against children, regardless of the sex of the victim, Parliament enacted the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO'), which came into force on 14.11.2012. The Statement of Objects and Reasons of this Act reads as follows:

STATEMENT OF OBJECTS AND REASONS 1. Article 15 of the Constitution, inter alia, confers upon the State powers to make special provision for children. Further, Article 39, inter alia, provides that the State shall in particular direct its policy towards securing that the tender age of children are not abused and their childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity.

2. The United Nations Convention on the Rights of Children, ratified by India on 11th December, 1992, requires the State Parties to undertake all appropriate national, bilateral and multilateral measures to prevent (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; and (c) the exploitative use of children in pornographic performances and materials.

3. The data collected by the National Crime Records Bureau shows that there has been increase in cases of sexual offences against children. This is corroborated by the 'Study on Child Abuse: India 2007' conducted by the Ministry of Women and Child Development. Moreover, sexual offences against children are not adequately addressed by the existing laws. A large number of such offences are neither specifically provided for nor are they adequately penalised. The interests of the child, both as a victim as well as a witness, need to be protected. It is felt that offences against children need to be defined explicitly and countered through commensurate penalties as an effective deterrence.

4. It is, therefore, proposed to enact a self contained comprehensive legislation inter alia to provide for protection of children from the offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well being of the child at every stage of the judicial process, incorporating child-friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for establishment of Special Courts for speedy trial of such offences.

5. The Bill would contribute to enforcement of the right of all children to safety, security and protection from sexual abuse and exploitation.

130. POCSO is a landmark legislation for protection of child rights and to prevent the sexual abuse and exploitation of children. This Act deals with sexual offences committed against a child and a child has been defined to be a person below the age of 18 years Under Section 2(d). POCSO does not define rape, but it defines penetrative sexual assault Under Section 3 and aggravated penetrative sexual assault Under Section 5 and the punishments are provided for them Under Section 4 and 6 respectively. Section 7 of the POCSO defines sexual assault, Section 9 defines aggravated sexual assault and punishments for those offences are provided Under Section 8 and 10 respectively. Section 11 defines sexual harassment and Section 12 provides the punishment for sexual harassment. Chapter III of the POCSO deals with use of children for pornographic purposes with which we are not concerned in the instant case. This Act creates Special Courts to deal with offences against children. Section 42 of the POCSO is very important for our purpose and it provides that where an offence is punishable both under POCSO and under Indian Penal Code, then the offender found guilty would be liable for that punishment, which is more severe.

131. Section 42 and Section 42A of the POCSO read as follows:

42. Alternate punishment.-Where an act or omission constitutes an offence punishable under this Act and also Under Sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376C, 376D, 376E or Section 509 of the Indian Penal Code (45 of 1860), then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.

42A. Act not in derogation of any other law.-The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.

132. Section 42A provides that the provisions of POCSO shall be in addition to and not in derogation of the provisions of any other Act. Therefore, the legislature, in its wisdom, thought that POCSO would supplant and would be in addition to the other criminal provisions and where there was any inconsistency, the provisions of POCSO would override any other law to the extent of inconsistency.

133. Another important provision to which reference may be made is Section 198(6) of the Code of Criminal Procedure (for short 'the Code'). The same reads as follows:

198. Prosecution for offences against marriage:

xxx xxx xxx

(6) No Court shall take cognizance of an offence Under Section 376 of the Indian Penal Code (45 of 1860), where such offence consists of sexual inter-course by a man with his own wife, the wife being under eighteen years of age, if more than one year has elapsed from the date of the commission of the offence.

The age "eighteen" was substituted for "fifteen" by Act 5 of 2009 w.e.f. 31.12.2009. A perusal of the aforesaid provision also makes it clear that a complaint with regard to commission of offence Under Section 375 Indian Penal Code punishable Under Section 376 Indian Penal Code can be taken cognizance of by a court within one year of the commission of the offence even where "the wife" is below 18 years of age. It is, therefore, apparent that while amending Section 198 of the Code, the legislature was visualising that there can be marital rape with a "wife" aged less than 18 years but was prescribing a limitation of one year, for taking cognizance of such an offence. However, no consequential amendment was made to Exception 2 of Section 375 Indian Penal Code.

WHO IS A CHILD?

134. If one analyses the provisions of all the laws which have been referred to above, it is apparent that the legislature, in its wisdom, has universally enacted that a person below the age of 18 years is deemed to be a child unable to look after his or her own interests. It would be very important to note that, in 2013 the Indian Penal Code was amended, post the unfortunate "Nirbhaya" incident and the age of consent under Clause Sixthly of Section 375 Indian Penal Code was increased to 18 years. The position as on date is that under the Protection of Children from Sexual Offences Act, 2012, Juvenile Justice (Care and Protection of Children) Act, Child Marriage Restraint Act, 1929, Protection of Women from Domestic Violence Act, 2005, The Majority Act, 1875, The Guardians and Wards Act, 1890, The Indian Contract Act, 1872 and many other legislations, a person below the age of 18 years is considered to be a child unable to look after his or her own interests.

135. As far as marriage laws are concerned, as far back as 1978, the minimum age of marriage of a girl child was increased to 18 years. The Restraint Act, was replaced by the PCMA wherein also marriage of a girl child aged below 18 years is prohibited. However, Section 3 of the PCMA makes a child marriage voidable at the option of that party, who was a child at the time of marriage. The petition for annulling the child marriage must be filed within 2 years of the child attaining majority. Therefore, a girl who was married before she attained the age of 18 years, can get her marriage annulled before she attains the age of 20 years. Similarly, a male child can get the marriage annulled before attaining the age of 23 years. Even when the child is minor, a petition for annulment can be filed by the guardian or next friend of the child along with the Child Marriage Prohibition Officer. Unfortunately, both the number of prosecutions and the number of cases for annulment of marriage filed under PCMA are abysmally low.

THE ILL EFFECTS OF A CHILD MARRIAGE

136. A lot of material has been placed before us both by Mr. Gaurav Agarwal, learned Counsel appearing for the Petitioner and Ms. Jayna Kothari, learned Counsel appearing for the Intervener, to indicate that child marriage is not in the interest of the girl child. In my opinion, it is not necessary to refer to all the material cited by learned Counsel. The fact that child marriage is a reprehensible practice; that it is an abhorrent practice; that it violates the human rights of a child, cannot be seriously disputed. I am not oblivious to the harsh reality that most of the child brides are even below the age of 15 years. There is a practice in many parts of the country where children, both girls and boys, are married off, even before they attain puberty. They are innocent children, who do not even understand what marriage is. The practice which is widely prevalent is that a girl who is married pre-puberty is normally kept at her parents' home and is sent to her matrimonial home after she attains puberty in a ceremony which is commonly referred to as 'gauna'. Can the marriage of a child aged 3-4 years, by any stretch of imagination, be called a legal and valid marriage?

137. A Child marriage will invariably lead to early child birth and this will adversely affect the health of the girl child. In a report by the UNICEF8, there is an Article on ending child marriage and the ill effects of child marriage have been set out thus:

Married girls are among the world's most vulnerable people. When their education is cut short, girls lose the chance to gain the skills and knowledge to secure a good job and provide for themselves and their families. They are socially isolated. As I observed among my former schoolmates who were forced to get married, the consciousness of their isolation is in itself painful.

Subordinate to their husbands and families, married girls are more vulnerable to domestic violence, and not in a position to make decisions about safe sex and family planning-which puts them at high risk of sexually transmitted infections, including HIV, and of pregnancy and childbearing before their bodies are fully mature. Already risky pregnancies become even riskier, as married girls are less likely to get adequate medical care. During delivery, mothers who are still children are at higher risk of potentially disabling complications, like obstetric fistula, and both they and their babies are more likely to die.

138. In a study conducted on child marriages in India, based on the census of 20119, it was found that 3% girls in the age group of 10 to 14 years were got married and about 20% girls were married before attaining the age of 19 years. Unfortunately, this report deals with girls below the age of 19 years and not 18 years, but the report does indicate that more than 20% girls in this country are married before attaining the age of 18 years. Therefore, more than one out of every 5 marriages violates the provisions of the PCMA and the Hindu Marriage Act, 1955.

139. The World Health Organisation, in a Report10 dealing with the issue of child brides found that though 11% of the births worldwide are amongst adolescents, they account for 23% of the overall burden of diseases. Therefore, a child bride is more than doubly prone to health problems than a grown up woman.

140. In the Report of the Convention on the Rights of the Child11, certain recommendations have been made and the relevant portion of the Report is as follows:

Harmful Practices

51. The Committee is deeply concerned at the high prevalence of child marriages in the State party, despite the enactment of the Prohibition of Child Marriage Act (PCMA, 2006). It is further concerned at barriers impeding the full implementation of the PCMA, such as the prevalence of social norms and traditions over the legal framework, the existence of different Personal Status Laws establishing their own minimum age of marriage applicable to their respective religious community as well as the lack of awareness about the PCMA by enforcement officers. It is also concerned about the prevalence of other harmful practices against girls such as dowry and devadasi.

52. The Committee urges the State party to ensure the effective implementation of the Prohibition of Child Marriage Act (PCMA, 2006), including by clarifying that the PCMA supersede the different religious-based Personal Status Laws. It also recommends that the State party take the necessary measures to combat dowry, child marriage and devadasi including by conducting awareness-raising programmes and campaigns with a view to changing attitudes, as well as counselling and reproductive education, to prevent and combat child marriages, which are harmful to the health and well-being of girls.

141. The General Assembly of United Nations adopted a Resolution12, relevant portion of which, reads as follows:

Expressing concern about the continued prevalence of child, early and forced marriage worldwide, including the fact that there are still approximately 15 million girls married every year before they reach 18 years of age and that more than 720 million women and girls alive today were married before their eighteenth birthday.

Recognizing that child, early and forced marriage is a harmful practice that violates, abuses or impairs human rights and is linked to and perpetuates other harmful practices and human rights violations and that such violations have a disproportionately negative impact on women and girls, and underscoring the human rights obligations and commitments of States to promote and protect the human rights and fundamental freedoms of women and girls and to prevent and eliminate the practice of child, early and forced marriage."

142. In the National Family Health Survey-4, 2015-201613 some startling figures are revealed. It was found that at the time of carrying out the survey in 2014, amongst women in the age group of 20-24 years, almost 26.8% women were married before they attained the age of 18 years, i.e. more than one out of 4 marriages was of a girl child. In the urban areas the percentage is 17.5% and it rises to 31.5% in the rural areas.

143. In the National Plan of Action for Children, 201614, the Government of India itself has recognised the high rate of child marriages prevalent in the country and the fact that a child marriage violates the basic rights of health, development and protection of the child. Relevant portion of the report reads as follows:

A large number of children, especially girls are married before the legal age in India. According to NFHS 3 (2005-06), 47.4 percent of women in the age 20-24 were married

before 18, the percentage being higher for rural areas. The situation has improved in 2013-14 as the RSOC data shows that 30.3 percent women in the age 20-24 were married before their legal age. Early marriage poses various risks for the survival, health and development of young girls and to children born to them. It is also used as a means of trafficking.

144. In a Report15 based on the Census, 2011, the consequences of child marriages have been dealt with in the following terms:

5.1 Consequences

Child marriage is not only a violation of human rights, but is also recognized as an obstacle to the development of young people. The practice of child marriage cut shorts a critical stage of self-discovery and exploring one's identity. Child marriage is an imposition of a marriage partner on children or adolescents who are in no way ready and matured, and thus, are at a loss to understand the significance of marriage. Their development gets comprised due to being deprived of freedom, opportunity for personal development, and other rights including health and well-being, education; and participation in civic life and nullifies their basic rights as envisaged in the United Nation's Convention on the Right of the Child ratified by India in 1989. Marriage at a young age prevents both girls and boys from exercising agency in making important life decisions and securing basic freedoms, including pursuing opportunities for education, earning a sustainable livelihood and accessing sexual health and rights.

The prevalent practice of child marriage has detrimental consequences for both boys and girls, but has more grave and far-reaching adverse effects on girls. Within a patriarchal family structure, girls have relatively little power, but young and newly married women are particularly powerless, secluded and voiceless. Adolescent girls have little choice about whom and when to marry, whether or not to have sexual relations, and when to bear children. This is well elaborated in a study of girls in the age group 10-16 years. It was found that they were oppressed in several ways such as:

- They had to submit unquestioningly to the parents' decision regarding their marriage.

- They were over-burdened with household chores.

• They had limited knowledge of their body and its functioning.

• They were unaware of sexual changes, contraception, child bearing and rearing.

• They dropped out of school on attaining puberty.

• They had no time for leisure and social interaction.

• They were discriminated in matters of food intake and expressing their views within the family.

Imagine the fate of a young girl with the above profile if she is to face marital life and its challenges during adolescence. The adolescent married girl is more at risk. She is less likely to be allowed out of the house, to have access to services and usually, not be given space or freedom to exert agency. Within the marital home, which in majority of the cases is a joint family, she will probably not have much communication with her husband, and will end up socially isolated, with very little contact with her parental home.

145. This Report16 also notices upswing of female deaths during pregnancy in the age groups of 15-19 years and attributes these deaths to the death of teenage mothers. The relevant portion of the report reads as follows:

Census data have demonstrated an upswing of female deaths in the age group of 15-19 years. This high mortality rate could be attributed to the deaths of teenage mothers. Child marriage virtually works like a double-edged sword; lower age at marriage is significantly associated with worse outcomes for the child and worse pregnancy outcomes for the mother. All these factors push girls and their families into perpetuation of intergenerational poverty and marginalization....

146. This Report17 deals with various other aspects and some apposite observations are as follows:

A young girl who is still struggling to understand her own anatomy, when forced to make conjugal relations, often shows signs of post-traumatic stress and depression owing to sexual abuse by her older partner. Neither the bodies of these young brides nor their innocent little minds are prepared, therefore, forced sexual encounters can lead to irreversible physical and psychological damage. A study conducted in 2013 showed that young girls are three times more likely to experience marital rape.

This report reveals a shocking aspect that girls below the age of 18 years are subjected to three times more marital rape as compared to the grown up women.

147. A perusal of the various reports and data placed before us clearly shows that marriage of the child not only violates the human rights of a child but also affects the health of the child.

148. Reference may be made to certain decisions cited before us. The Delhi High Court in Association for Social Justice & Research v. Union of India and Ors. MANU/DE/4335/2010 : 2010 (118) DRJ 324 (DB), was dealing with a case where a girl aged between 16 to 18 years was married off to a man stated to be over 40 years of age. The Court noted the ill effects of child marriage and gave a direction that the child will remain with her parents and her marriage will not be consummated till she attains the age of 18 years. Thereafter, a Full Bench of the Delhi High Court in Court on its own motion (Lajja Devi) and Ors. v. State and Ors.18, while dealing with the provisions of PCMA and also referring to the provisions of Sections 375 and 376 Indian Penal Code and after noticing the judgment passed in the case of Association For Social Justice & Research (supra), again reiterated that child marriage is a social evil, which endangers the life and health of the child. The ill effects of child marriage have been summarised in the following manner:

(i) Girls who get married at an early age are often more susceptible to the health risks associated with early sexual initiation and childbearing, including HIV and obstetric fistula.

(ii) Young girls who lack status, power and maturity are often subjected to domestic violence, sexual abuse and social isolation.

(iii) Early marriage almost always deprives girls of their education or meaningful work, which contributes to persistent poverty.

(iv) Child Marriage perpetuates an unrelenting cycle of gender inequality, sickness and poverty.

(v) Getting the girls married at an early age when they are not physically mature, leads to highest rates of maternal and child mortality.

149. The Full Bench, with regard to Section 375 Indian Penal Code before its amendment in 2013, made the following observations:

32. It is distressing to note that the Indian Penal Code, 1860 acquiesces child marriage. The exception to Section 375 specifically lays down that sexual intercourse of man with his own wife, the wife not being under fifteen years of age is not rape, thus ruling out the possibility of marital rape when the age of wife is above fifteen years. On the other hand, if the girl is not the wife of the man, but is below sixteen, then the sexual intercourse even with the consent of the girl amounts to rape? It is rather shocking to note the specific relaxation is given to a husband who rapes his wife, when she happens to be between 15-16 years. This provision in the Indian Penal Code, 1860 is a specific illustration of legislative endorsement and sanction to child marriages.

150. A Full Bench of Madras High Court in T. Sivakumar v. Inspector of Police19, dealt with the provisions of the PCMA. It held that a marriage contracted with a female less than 18 years and more than 15 years is not a void marriage but is only a voidable marriage. However, the Court went on to hold that stricto sensu the marriage could not be called a valid marriage since the child bride had the option of getting the marriage annulled till she attains the age of 20 years. It held as follows:

The marriage contracted by a person with a female of less than 18 years is voidable and the same shall be subsisting until it is annulled by a competent Court Under Section 3 of the Prohibition of Child Marriage Act. The said marriage is not a "valid marriage" stricto sensu as per the classification but it is "not invalid". The male contracting party shall not enjoin all the rights which would otherwise emanate from a valid marriage stricto sensu, instead he will enjoin only limited rights.

Reference to these judgments has been made only for the purpose of highlighting the concern shown by the Courts with regard to child marriage and the manner in which the Courts have consistently held that the child marriage is an evil which should be avoided.

THE KARNATAKA EXPERIENCE

151. A writ petition20 was filed in the Karnataka High Court, raising the issue of validity of child marriages. In its order dated 10th November, 2010 the Karnataka High Court noted as follows:

The narration of facts in the present writ petition is heart rendering. The photographs appended to the writ petition have been a cause of deep distress to us. The photographs reveal, the marriage of minor girls, not yet in their teens, to fully grown men. In one of the photographs, the girl has been made to stand on a chair, so that she could garland her tall and fully grown groom. Forced marriage of the girl child, one realises, is one of the manifestations of cruelty, possibly without any equivalent comparison. It seems that the practice is common place in this part of the world. It may have remained unchecked for a variety of reasons including, poverty, lack of education, culture and ignorance. We are of the view that allowing the evil to continue without redressing it, would make us a party to the disgraceful activity.

152. After making the aforesaid observations, the Karnataka High Court constituted a four Member committee, headed by Dr. Justice Shivraj V. Patil, former Judge of this Court, to expose the extent of practice of child marriage. The Committee was also requested to suggest ways and means to root out the evil of child marriage from society and to prevent it to the maximum extent possible. The Core Committee submitted its report and made various recommendations. One of its recommendations was that marriage of a girl child below the age of 18 years should be declared void ab initio. Pursuant to the report of the Core Committee, in the State of Karnataka an amendment was made in the PCMA and Section 1(A) has been inserted after Sub-Section 2 Section 3, which reads as under:

(1A) Notwithstanding anything contained in Sub-section (1) every child marriage solemnized on or after the date of coming into force of the Prohibition of Child Marriage (Karnataka Amendment) Act, 2016 shall be void ab initio.

153. Therefore, any marriage of a child, i.e. a female aged below 18 years and a male below 21 years is void ab initio in the State of Karnataka. This is how the law should have been throughout the country. Where the marriage is void, there cannot be a husband or a wife and I have no doubt that protection of Exception 2 to Section 375 Indian Penal Code cannot be availed of by those persons, who claim to be "husband" of "child brides" pursuant to a marriage which is illegal and void.

154. This leads to an anomalous situation. In Karnataka, if a husband has sexual intercourse with his "wife" aged below 18 years, since such marriage would be void ab initio, the wife cannot be treated to be a legal wife and, therefore, the husband cannot get the benefit of Exception 2 to Section 375 Indian Penal Code whereas in rest of the country he would be entitled to the benefit of such exception and be immune from prosecution.

THE DEFENCE OF SOCIAL REALITY

155. The main defence raised on behalf of the Union of India is that though the practice of child marriage may be reprehensible, though it may have been made illegal, the harsh reality is that 20% to 30% of female children below the age of 18 years are got married in total violation of the PCMA. According to the Union of India, keeping in view this stark reality and also keeping in view the sanctity which is attached to a union like marriage, the Parliament, in its wisdom, thought it fit to retain the age of fifteen in Exception 2 to Section 375 Indian Penal Code. It has also been urged that when Parliament enacts any law which falls within its jurisdiction, then this Court should not normally interfere with that Act. When any law is passed, the Court must presume that the Parliament has gone into all aspects of the matter. Though it was faintly urged before us by learned Counsel for the Petitioner that the Parliament did not go into certain aspects, this Court is clearly of the view that such ignorance cannot be imputed to Parliament. In our constitutional framework, where there is division of powers, each repository of power must respect the other and this Court must extend to the Parliament the respect it deserves. One cannot and should not impute ignorance to the legislature.

156. The stand of the Union of India may be summarised as follows:

(i) "Economic and educational development in the country is still uneven and child marriages are still taking place. It has been, therefore, decided to retain the age of 15 years under Exception 2 of Section 375 of Indian Penal Code so as to give protection to husband and wife against criminalizing the sexual activity between them.

(ii) As per National Family Health Survey-III, 46% of women between the ages 18-29 years in India were married before the age of 18. It is also estimated that there are 23 million child brides in the country. Hence, criminalizing the consummation of a marriage union with a serious offence such as rape would not be appropriate and practical.

(iii) Providing punishment for child marriage with consent does not appear to be appropriate in view of socio-economic conditions of the country. Thus, the age prescribed in Exception 2 of Section 375 of Indian Penal Code has been retained considering the basic facts of the still evolving social norms and issues.

(iv) The Law Commission also recommended for raising the age from 15 years to 16 years and it was incorporated in the Criminal Law (Amendment) Ordinance, 2013. However, after wide ranging consultations with various stakeholders it was further decided to retain the age at 15 years.

(v) Exception 2 of Section 375 of Indian Penal Code envisages that if the marriage is solemnized at the age of 15 years due to traditions, it should not be a reason to book the husband in the case of offence of rape under the Indian Penal Code.

(vi) It is also necessary that the provisions of law should be in such a manner that it cannot affect a particular class of society. Retaining the age of 15 years in Exception 2 of Section 375 of Indian Penal Code has been provided considering the social realities of the nation.

157. Certain other facts may be noted which, though not strictly necessary for deciding the legal issues, are necessary to decide the background in which amendment to Section 375 Indian Penal Code and other criminal laws were carried out. These facts clearly show that Parliament knowingly took a decision not to criminalize sexual activity between husband and wife. In the 84th Report of the Law Commission, it was recommended that the age of consent under Clause Sixthly of Section 375 Indian Penal Code, should be increased to 18 years and Exception 2 should be deleted. In the 172nd Report of the Law Commission, it was recommended that the age of consent under Clause Sixthly should be retained at 16 years, but the Law Commission specifically opined that there should be no distinction on account of marriage of the girl child and the age in Exception 2 be raised from 15 to 16 years. The Justice Verma Committee did not make any recommendation to change the age of consent under Clause Sixthly. However Parliament, while amending the Indian Penal Code in the year 2014, in the wake of the "Nirbhaya" incident, decided

to increase the age of consent to 18 years under Clause Sixthly, but did not make any change in Exception 2 of Section 375 Indian Penal Code.

158. Interestingly, though the Verma Committee did not recommend that the age of consent should be increased under Clause Sixthly from 16 to 18 years, but it did recommend that Exception 2 should be completely deleted. The Parliament took note of the Verma Committee report. It also took note of the recommendations of the Law Commission and a Standing Committee was constituted and Parliament enacted this law pursuant to the recommendations of the Standing Committee. It would also be pertinent to mention that one Member of Parliament, Mr. Saugata Roy moved a Private Member's Bill to fix the age at 18 years in Exception 2 of Section 375 Indian Penal Code, but that amendment was not carried. Interestingly, the amendment to Section 375 Indian Penal Code and other Sections relating to offences against women and the POCSO were incorporated by one Amending Act i.e., The Criminal Law (Amendment) Act, 2013. After the "Nirbhaya" case, the Juvenile Justice (Care and Protection of Children) Act, 2015 was also amended in 2016 and a child in conflict with law over the age of 16 years, if charged with a heinous offence, can be tried in a court of law if the Juvenile Justice Board feels that he was mature enough to commit a crime.

POWER OF THE COURT TO INTERFERE

159. It is a well settled principle of law that when the constitutional validity of the law enacted by the legislature is under challenge and there is no challenge to the legislative competence, the Court will always raise a presumption of the constitutionality of the legislation. The courts are reluctant to strike down laws as unconstitutional unless it is shown that the law clearly violates the constitutional provisions or the fundamental rights of the citizens. The Courts must show due deference to the legislative process.

160. There can be no dispute with the proposition that Courts must draw a presumption of constitutionality in favour of laws enacted by the legislature. In Sub-Divisional Magistrate v. Ram Kali MANU/SC/0079/1967 : (1968) 1 SCR 205, this Court observed as follows:

...The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, and its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds.

161. Thereafter, in Pathumma and Ors. v. State of Kerala and Ors. MANU/SC/0315/1978 : (1978) 2 SCC 1, this Court held that the Court would interfere only when the statute clearly violates the rights of the citizens provided under Part III of the Constitution or where the Act is beyond the legislative competence or such similar grounds. The relevant observations are as follows:

6. It is obvious that the Legislature is in the best position to understand and appreciate the needs of the people as enjoined by the Constitution to bring about social reforms for the upliftment of the backward and the weaker Sections of the society and for the improvement of the lot of poor people. The Court will, therefore, interfere in this process only when the statute is clearly violative of the right conferred on the citizen under Part III of the Constitution or when the Act is beyond the legislative competence of the legislature or such other grounds. It is for this reason that the Courts have recognised that there is always a presumption in favour of the constitutionality of a statute and the onus to prove its invalidity lies on the party which assails the same....

162. In Government of A.P. v. P. Laxmi Devi MANU/SC/1017/2008 : (2008) 4 SCC 720, this Court held thus:

66. As observed by the Privy Council in Shell Co. of Australia v. Federal Commr. of Taxation 1931 AC 275 : 1930 All ER Rep 671 (PC)] (All ER p. 680 G-H)

...unless it becomes clear beyond reasonable doubt that the legislation in question transgresses the limits laid down by the organic law of the Constitution, it must be allowed to stand as the true expression of the national will....

67. Hence if two views are possible, one making the provision in the statute constitutional, and the other making it unconstitutional, the former should be preferred vide Kedar Nath Singh v. State of Bihar MANU/SC/0074/1962 : AIR 1962 SC 955. Also, if it is necessary to uphold the constitutionality of a statute to construe its general words narrowly or widely, the court should do so vide G.P. Singh's Principles of Statutory Interpretation, 9th Edn., 2004, p. 497....

163. In Subramanian Swamy v. Director, CBI MANU/SC/0417/2014 : (2014) 8 SCC 682, a Constitution Bench of this Court laid down the following principle:

Court's approach

49. Where there is challenge to the constitutional validity of a law enacted by the legislature, the Court must keep in view that there is always a presumption of constitutionality of an enactment, and a clear transgression of constitutional principles must be shown. The fundamental nature and importance of the legislative process needs to be recognised by the Court and due regard and deference must be accorded to the legislative process. Where the legislation is sought to be challenged as being unconstitutional and violative of Article 14 of the Constitution, the Court must remind itself to the principles relating to the applicability of Article 14 in relation to invalidation of legislation. The two dimensions of Article 14 in its application to legislation and rendering legislation invalid are now well recognised and these are: (i) discrimination, based on an impermissible or invalid classification, and (ii) excessive delegation of powers; conferment of uncanalised and unguided powers on the executive, whether in the form of delegated legislation or by way of conferment of authority to pass administrative orders-if such conferment is without any guidance, control or checks, it is violative of Article 14 of the Constitution. The Court also needs to be mindful that a legislation does not become unconstitutional merely because there is another view or because another method may be considered to be as good or even more effective, like any issue of social, or even economic policy. It is well settled that the courts do not substitute their views on what the policy is.

164. I am conscious of the self imposed limitations laid down by this Court while deciding the issue whether a law is constitutional or not. However, if the law is discriminatory, arbitrary or violative of the fundamental rights or is beyond the legislative competence of the legislature then the Court is duty bound to invalidate such a law.

165. Justice H.R. Khanna in the case of State of Punjab v. Khan Chand MANU/SC/0353/1973 : (1974) 1 SCC 549 held that when Courts strike down laws they are only doing their duty and no element of judicial arrogance should be attributed to the Courts when they do their duty under the Constitution and determine whether the law made by the legislature is in conformity with the provisions of the Constitution or not. The relevant observations are as follows:

12. It would be wrong to assume that there is an element of judicial arrogance in the act of the Courts in striking down an enactment. The Constitution has assigned to the Courts the function of determining as to whether the laws made by the Legislature are in

conformity with the provisions of the Constitution. In adjudicating the constitutional validity of statutes, the Courts discharge an obligation which has been imposed upon them by the Constitution. The Courts would be shirking their responsibility if they hesitate to declare the provisions of a statute to be unconstitutional, even though those provisions are found to be violative of the Articles of the Constitution. Articles 32 and 226 are an integral part of the Constitution and provide remedies for enforcement of fundamental rights and other rights conferred by the Constitution. Hesitation or refusal on the part of the Courts to declare the provisions of an enactment to be unconstitutional, even though they are found to infringe the Constitution because of any notion of judicial humility would in a large number of cases have the effect of taking away or in any case eroding the remedy provided to the aggrieved parties by the Constitution. Abnegation in matters affecting one's own interest may sometimes be commendable but abnegation in a matter where power is conferred to protect the interest of others against measures which are violative of the Constitution is fraught with serious consequences. It is as much the duty of the Courts to declare a provision of an enactment to be unconstitutional if it contravenes any Article of the Constitution as it is theirs to uphold its validity in case it is found to suffer from no such infirmity.

166. Therefore, the principle is that normally the Courts should raise a presumption in favour of the impugned law; however, if the law under challenge violates the fundamental rights of the citizens, the law is arbitrary, or is discriminatory, the Courts can either hold the law to be totally unconstitutional and strike down the law or the Court may read down the law in such a manner that the law when read down does not violate the Constitution. While the Courts must show restraint while dealing with such issues, the Court cannot shut its eyes to the violations of the fundamental rights of the citizens. Therefore, if the legislature enacts a law which is violative of the fundamental rights of the citizens, is arbitrary and discriminatory, then the Court would be failing in its duty if it does not either strike down the law or read down the law in such a manner that it falls within the four corners of the Constitution.

167. It is not the job of the Court to decide whether a law is good or bad. Policy matters fall within the realm of legislature and not of the Courts. The Court, however, is empowered and has the jurisdiction to decide whether a law is unconstitutional or not.

168. "The law is an ass" said Mr. Bumble21. That may be so. The law, however, cannot be arbitrary or discriminatory. Merely because a law is asinine, it cannot be set aside. However, if the law is arbitrary, discriminatory and violates the fundamental rights guaranteed to the citizens of the country, then the law can either be struck down or can be read down to make it in consonance with the Constitution of India.

WHETHER EXCEPTION 2 TO SECTION 375 Indian Penal Code IS ARBITRARY?

169. Before dealing with this issue, it would be necessary to point out that earlier there was divergence of opinion as to whether a law could be struck down only on the ground that it was arbitrary. In Indira Nehru Gandhi v. Raj Narain MANU/SC/0304/1975 : 1975 (Supp.) SCC 1 the Court struck down clauses 4 and 5 of Article 329A of the Constitution on the ground of arbitrariness. Reliance was placed on the celebrated judgment of this Court passed in the case of Keshavananda Bharati v. State of Kerala MANU/SC/0445/1973 : (1973) 4 SCC 225. In Para 681 of Raj Narain (supra), Chandrachud J., held as follows:

681. It follows that Clauses (4) and (5) of Article 329A are arbitrary and are calculated to damage or destroy the Rule of law. Imperfections of language hinder a precise definition of the Rule of law as of the definition of 'law' itself. And the Constitutional Law of 1975 has undergone many changes since A.V. Dicey, the great expounder of the Rule of law, delivered his lectures as Vinerian Professor of English Law at Oxford, which were published in 1885 under the title, "Introduction to the Study of the Law of the Constitution". But so much, I suppose, can be said with reasonable certainty that the Rule of law means that the exercise of powers of government shall be conditioned by law and that subject to the exceptions to the doctrine of equality, no one shall be exposed to the arbitrary will of the Government. Dicey gave three meanings to Rule of law: Absence of arbitrary power, equality before the law or the equal subjection of all classes to the ordinary law of the land administered by ordinary law courts and that the Constitution is not the source but the consequence of the rights of individuals, as defined and enforced by the courts....

170. The aforesaid case was one of the first cases in which a law was set aside on the ground of being arbitrary. In E.P. Royappa v. State of Tamil Nadu MANU/SC/0380/1973 : (1974) 4 SCC 3 the doctrine of arbitrariness was further expanded. Bhagwati, J., eruditely explained the principle in the following terms.

85. ...From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the Rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike

at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16.

171. The doctrine developed in Royappa's case (supra) was further advanced in the case of Maneka Gandhi v. Union of India MANU/SC/0133/1978 : (1978) 1 SCC 248. In this case, the test of reasonableness was introduced and it was held that a law which is not "right, just and fair" is arbitrary. The following observations are apposite:

7. ...The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.

172. This principle was followed in the cases of A.L. Kalra v. Project and Equipment Corpn. MANU/SC/0259/1984 : (1984) 3 SCC 316, Babita Prasad v. State of Bihar MANU/SC/0723/1993 : 1993 Supp (3) SCC 268, Ajay Hasia v. Khalid Mujib Sehravardi MANU/SC/0498/1980 : (1981) 1 SCC 722 and Dr. K.R. Lakshmanan v. State of Tamil Nadu MANU/SC/0309/1996 : (1996) 2 SCC 226. In the case of Ajay Hasia (supra), a Constitution Bench of this Court held as follows:

16. ...Wherever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of an 'authority' Under Article 12, Article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution.

173. In State of A.P. v. McDowell & Co. MANU/SC/0427/1996 : (1996) 3 SCC 709, a three-Judge Bench of this Court struck a discordant note and rejected the plea of the Amending

Act being arbitrary. The Court held that an enactment could be struck down if it is being challenged as violative of Article 14 only if it is found that it is violative of equality clause, equal protection Clause or violative of fundamental rights. The Court went on to hold that an enactment cannot be stuck down only on the ground that the Court thinks that it is unjustified. This judgment need not detain us for long because in Shayara Bano v. Union of India and Ors.22 popularly known as the "Triple Talaq case", this Court held that this judgment did not take note of binding judgments of this Court passed by a Constitution Bench, in the case of Ajay Hasia (supra) and a three-Judge Bench in the case of Dr. K.R. Lakshmanan (supra). After discussing the entire law on the subject, Nariman, J., in his judgment held as follows:

It is, therefore, clear from a reading of even the aforesaid two Constitution Bench judgments that Article 14 has been referred to in the context of the constitutional invalidity of statutory law to show that such statutory law will be struck down if it is found to be "arbitrary".

xxx xxx xxx

xxx xxx xxx

55. ...The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation Under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well Under Article 14.

Therefore, there can be no dispute that a law can be struck down if the Court find it is arbitrary and falls foul of Article 14 and other fundamental rights.

174. In this case, we are concerned mainly with Article 14 and 21 of the Constitution of India. The legislative history given above clearly indicates that a child has universally been defined as a person below 18 years of age in all the enactments. This has been done for the reason that it is perceived that a person below the age of 18 years is not fully developed and does not know the consequences of his/her actions. Not only is a person

below the age of 18 years treated to be a child, but is also not even entitled to deal with his property, enter into a contract or even vote.

175. The fact that child marriage is an abhorrent practice and is violative of human rights of the child is not seriously disputed by the Union of India. The only justification given is that since a large number of child marriages are taking place, it would not be proper to criminalize the consummation of such child marriages. It is urged that, keeping in view age old traditions and evolving social norms, the practice of child marriage cannot be wished away and, therefore, legislature in its wisdom has thought it fit not to criminalize the consummation of such child marriages.

176. I am not impressed with the arguments raised by the Union of India. Merely because something is going on for a long time is no ground to legitimise and legalise an activity which is per se illegal and a criminal offence. No doubt, it is totally within the realm of Parliament to decide what should be the age of consent under Clause Sixthly of Section 375 Indian Penal Code. It is also within the domain of the Parliament to decide what should be the minimum age of marriage. The Parliament has decided in both the enactments that a girl below 18 years is not capable of giving consent to have sex and legally she cannot marry. Parliament has also, in no uncertain terms, prohibited child marriage and come to the conclusion that child marriage is an activity which must come to an end. If that be so, can the practice of child marriage which is admittedly "an evil", and is also a criminal offence be set up as an exception in a case of a girl child, who is subjected to sexual intercourse by her so called husband. Shockingly, even if this sexual intercourse is forcible and without the consent of the girl child, then also the husband is not liable for any offence. This law is definitely not right, just and fair and is, therefore, arbitrary.

177. There can be no dispute that every citizen of this country has the right to get good healthcare. Every citizen can expect that the State shall make best endeavours for ensuring that the health of the citizen is not adversely affected. By now it is well settled by a catena of judgments of this Court that the "right to life" envisaged in Article 21 of the Constitution of India is not merely a right to live an animal existence. This Court has repeatedly held that right to life means a right to live with human dignity. Life should be meaningful and worth living. Life has many shades. Good health is the raison d'etre of a good life. Without good health there cannot be a good life. In the case of a minor girl child good health would mean her right to develop as a healthy woman. This not only requires good physical health but also good mental health. The girl child must be encouraged to bloom into a healthy woman. The girl child must not be deprived of her right of choice. The girl child must not be deprived of her right to study further. When the girl child is deprived of her right to study further, she is actually deprived of her right to develop

into a mature woman, who can earn independently and live as a self sufficient independent woman. In the modern age, when we talk of gender equality, the girl child must be given equal opportunity to develop like a male child. In fact, in my view, because of the patriarchal nature of our society, some extra benefit must be showered upon the girl child to ensure that she is not deprived of her right to life, which would include her right to grow and develop physically, mentally and economically as an independent self sufficient female adult.

178. It is true that at times the State, because of paucity of funds, or other reasons beyond its control, cannot live up to the expectations of the people. At the same time, it is not expected that the State should frame a law, which adversely affects the health of a citizen, that too a minor girl child. The State, Under Article 15 of the Constitution, is in fact, empowered to make laws favouring women. Reservation for women is envisaged Under Article 15 of the Constitution. In Vishakha v. State of Rajasthan MANU/SC/0786/1997 : (1997) 6 SCC 241, this Court held that sexual harassment of working women amounts to violation of the rights guaranteed by Articles 14, 15 and 23 of the Constitution.

179. When a girl is compelled to marry before she attains the age of 18 years, her health is put in serious jeopardy. As is evident from various reports referred to above, girls who were married before the age of 19 years are likely to suffer medical and psychological problems. A 15 or 16 year old girl, when forcibly subjected to sexual intercourse by her "husband", undergoes a trauma, which her body and mind is not ready to face. The girl child is also twice as more likely to die in child birth than a grown up woman. The least, that one would expect in such a situation, is that the State would not take the defence of tradition and sanctity of marriage in respect of girl child, which would be totally violative of Article 14, 15 and 21 of the Constitution. Therefore, this Court is of the view that Exception 2 to Section 375 Indian Penal Code is arbitrary since it is violative of the principles enshrined in Article 14, 15 and 21 of the Constitution of India.

180. Approaching this aspect from another angle. As is evident from various reports filed in this case, child marriages are not restricted to girls aged above 15 years. Even as per the National Plan of Action for Children, 2016 prepared by the Ministry of Women and Child Development, Government of India, 30.3% marriages i.e. almost 1 in every 3 marriage takes place in violation of the PCMA. Many of these relate to child brides aged less than 15 years. A girl may be married when she is 3-4 years or may be 10-11 years old. She may be sent to her matrimonial home on attaining the age of puberty, which may be well before she attains the age of 15 years. In such an eventuality, what is the reason for fixing the magic figure of 15 years. This figure had relevance when under the criminal law and the marriage laws the age was similar. In the year 1940, the age of consent was 16 years, the age of marriage was 15 years and the age under the exception was also 15

years; in 1975, the age of consent was 16 years, the age of marriage was 18 years, but the age under the exception remained 15 years. That may have been there because there was no change in the age of consent under Clause Sixthly. Now when the age of consent is changed to 18 years, the minimum age of marriage is also 18 years and, therefore, fixing a lower age under Exception 2 is totally irrational. It strikes against the concept of equality. It violates the right of fair treatment of the girl child, who is unable to look after herself. The magic figure of 15 years is not based on any scientific evaluation, but is based on the mere fact that it has been existing for a long time. The age of 15 years in Exception 2 was fixed in the year 1940 when the minimum age for marriage was also 15 and the age of consent under Clause Sixthly was 16. In the present context when the age for marriage has been fixed at 18 years and when the age of consent is also fixed at 18 years, keeping the age under Exception 2 at 15 years, cannot be said to be right, just and fair. In fact, it is arbitrary and oppressive to the girl child.

181. Law cannot be hidebound and static. It has to evolve and change with the needs of the society. Recognising these factors, the Parliament increased the minimum age for marriage. The Parliament also increased the minimum age of consent but the inaction in raising the age in Exception 2 is by itself an arbitrary non-exercise of power. When the age was being raised in all other laws, the age under Exception 2 should also have been raised to bring it in line with the evolving laws especially the laws to protect women and the girl child aged below 18 years. Therefore, I have no hesitation in holding that the Exception 2, in so far as it relates to the girl child below eighteen years, is unreasonable, unjust, unfair and violative of the rights of the girl child. To that extent the same is arbitrary and liable to be set aside.

WHETHER EXCEPTION 2 TO SECTION 375 Indian Penal Code IS DISCRIMINATORY?

182. There can be no dispute that a law can be set aside if it is discriminatory. Some elements of discrimination have already been dealt with while dealing with the issue of arbitrariness. However, there are certain other aspects which make Exception 2 to Section 375 Indian Penal Code in so far as it deals with the girl child totally discriminatory. The law discriminates between a girl child aged less than 18 years, who may be educated and has sexual intercourse with her consent and a girl child who may be married even before the age of 15 years, but her marriage has been consummated after 15 years even against her consent. This is invidious discrimination which is writ large. The discrimination is between a consenting girl child, who is almost an adult and non-consenting child bride. To give an example, if a girl aged 15 years is married off by her parents without her consent and the marriage is consummated against her consent, then also this girl child cannot file a criminal case against her husband. The State is talking of the reality of the child marriages. What about the reality of the rights of the girl child? Can this helpless,

underprivileged girl be deprived of her rights to say 'yes' or 'no' to marriage? Can she be deprived of her right to say 'yes' or 'no' to having sex with her husband, even if she has consented for the marriage? In my view, there is only one answer to this and the answer must be a resounding "NO". While interpreting such a law the interpretation which must be preferred is the one which protects the human rights of the child, which protects the fundamental rights of the child, the one which ensures the good health of the child and not the one which tries to say that though the practice is "evil" but since it is going on for a long time, such "criminal" acts should be decriminalised.

183. The State is entitled and empowered to fix the age of consent. The State can make reasonable classification but while making any classification it must show that the classification has been made with the object of achieving a certain end. The classification must have a reasonable nexus with the object sought to be achieved. In this case the justification given by the State is only that it does not want to punish those who consummate their marriage. The stand of the State is that keeping in view the sanctity attached to the institution of marriage, it has decided to make a provision in the nature of Exception 2 to Section 375 Indian Penal Code. This begs the question as to why in this exception the age has been fixed as 15 years and not 18 years. As pointed out earlier, a girl can legally consent to have sex only after she attains the age of 18 years. She can legally enter into marriage only after attaining the age of 18 years. When a girl gets married below the age of 18 years, the persons who contract such a marriage or abet in contracting such child marriage, commit a criminal offence and are liable for punishment under the PCMA. In view of this position there is no rationale for fixing the age at 15 years. This age has no nexus with the object sought to be achieved viz., maintaining the sanctity of marriage because by law such a marriage is not legal. It may be true that this marriage is voidable and not void ab initio (except in the State of Karnataka) but the fact remains that if the girl has got married before the age of 18 years, she has right to get her marriage annulled. Irrespective of the fact that the right of the girl child to get her marriage annulled, it is indisputable that a criminal offence has been committed and other than the girl child, all other persons including her husband, and those persons who were involved in getting her married are guilty of having committed a criminal act. In my opinion, when the State on the one hand, has, by legislation, laid down that abetting child marriage is a criminal offence, it cannot, on the other hand defend this classification of girls below 18 years on the ground of sanctity of marriage because such classification has no nexus with the object sought to be achieved. Therefore, also Exception 2 in so far as it relates to girls below 18 years is discriminatory and violative of Article 14 of the Constitution.

184. One more ground for holding that Exception 2 to Section 375 Indian Penal Code is discriminatory is that this is the only provision in various penal laws which gives immunity to the husband. The husband is not immune from prosecution as far as other

offences are concerned. Therefore, if the husband beats a girl child and has forcible sexual intercourse with her, he may be charged for offences Under Sections 323, 324, 325 Indian Penal Code etc. but he cannot be charged with rape. This leads to an anomalous and astounding situation where the husband can be charged with lesser offences, but not with the more serious offence of rape. As far as sexual crimes against women are concerned, these are covered by Sections 354, 354A, 354B, 354C, 354D of the Indian Penal Code. These relate to assault or use of criminal force against a woman with intent to outrage her modesty; sexual harassment and punishment for sexual harassment; assault or use of criminal force to woman with intent to disrobe; voyeurism; and stalking respectively. There is no exception Clause giving immunity to the husband for such offences. The Domestic Violence Act will also apply in such cases and the husband does not get immunity. There are many other offences where the husband is either specifically liable or may be one of the accused. The husband is not given the immunity in any other penal provision except in Exception 2 to Section 375 Indian Penal Code. It does not stand to reason that only for the offence of rape the husband should be granted such an immunity especially where the "victim wife" is aged below 18 years i.e. below the legal age of marriage and is also not legally capable of giving consent to have sexual intercourse. Exception 2 to Section 375 Indian Penal Code is, therefore, discriminatory and violative of Article 14 of the Constitution of India, on this count also.

185. The discrimination is absolutely patent and, therefore, in my view, Exception 2, in so far as it relates to the girl child between 15 to 18 years is not only arbitrary but also discriminatory, against the girl child.

LAW IN CONFLICT WITH POCSO

186. Another aspect of the matter is that the POSCO was enacted by Parliament in the year 2012 and it came into force on 14th November, 2012. Certain amendments were made by Criminal Law Amendment Act of 2013, whereby Section 42 and Section 42A, which have been enumerated above, were added. It would be pertinent to note that these amendments in POCSO were brought by the same Amendment Act by which Section 375, Section 376 and other Sections of Indian Penal Code relating to crimes against women were amended. The definition of rape was enlarged and the punishment Under Section 375 Indian Penal Code was made much more severe. Section 42 of POCSO, as mentioned above, makes it clear that where an offence is punishable, both under POCSO and also under Indian Penal Code, then the offender, if found guilty of such offence, is liable to be punished under that Act, which provides for more severe punishment. This is against the traditional concept of criminal jurisprudence that if two punishments are provided, then the benefit of the lower punishment should be given to the offender. The legislature knowingly introduced Section 42 of POCSO to protect the interests of the

child. As the objects and reasons of the POCSO show, this Act was enacted as a special provision for protection of children, with a view to ensure that children of tender age are not abused during their childhood and youth. These children were to be protected from exploitation and given facilities to develop in a healthy manner. When a girl is married at the age of 15 years, it is not only her human right of choice, which is violated. She is also deprived of having an education; she is deprived of leading a youthful life. Early marriage and consummation of child marriage affects the health of the girl child. All these ill effects of early marriage have been recognised by the Government of India in its own documents, referred to hereinabove.

187. Section 42A of POCSO has two parts. The first part of the Section provides that the Act is in addition to and not in derogation of any other law. Therefore, the provisions of POCSO are in addition to and not above any other law. However, the second part of Section 42A provides that in case of any inconsistency between the provisions of POCSO and any other law, then it is the provisions of POCSO, which will have an overriding effect to the extent of inconsistency. POCSO defines a child to be a person below the age of 18 years. Penetrative sexual assault and aggravated penetrative sexual assault have been defined in Section 3 and Section 5 of POCSO. Provisions of Section 3 and 5 are by and large similar to Section 375 and Section 376 of Indian Penal Code. Section 3 of the POCSO is identical to the opening portion of Section 375 of Indian Penal Code whereas Section 5 of POCSO is similar to Section 376(2) of the Indian Penal Code. Exception 2 to Section 375 of Indian Penal Code, which makes sexual intercourse or acts of consensual sex of a man with his own "wife" not being under 15 years of age, not an offence, is not found in any provision of POCSO. Therefore, this is a major inconsistency between POCSO and Indian Penal Code. As provided in Section 42A, in case of such an inconsistency, POCSO will prevail. Moreover, POCSO is a special Act, dealing with the children whereas Indian Penal Code is the general criminal law. Therefore, POCSO will prevail over Indian Penal Code and Exception 2 in so far as it relates to children, is inconsistent with POCSO.

IS THE COURT CREATING A NEW OFFENCE?

188. One of the doubts raised was if this Court strikes down, partially or fully, Exception 2 to Section 375 Indian Penal Code, is the Court creating a new offence. There can be no cavil of doubt that the Courts cannot create an offence. However, there can be no manner of doubt that by partly striking down Section 375 Indian Penal Code, no new offence is being created. The offence already exists in the main part of Section 375 Indian Penal Code as well as in Section 3 and 5 of POCSO. What has been done is only to read down Exception 2 to Section 375 Indian Penal Code to bring it in consonance with the Constitution and POCSO.

189. In this behalf, reference may be made to some English decisions. In England, there was never any such statutory exception granting immunity to the husband from the offence of marital rape. However, Sir Mathew Hale, who was Chief Justice of England for five years prior to his death in 1676, was credited with having laid down the following principle:

But the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband which she cannot retract.

190. The aforesaid principle, commonly known as Hale's principle, was recorded in the History of the Pleas of the Crown (1736), Vol. 1, Ch. 58, P. 629 and was followed in England for many years. Under Hale's principle a husband could not be held guilty of raping his wife. This principle was based on the proposition that the wife gives up her body to her husband at the time of marriage. Women, at that time, were considered to be chattel. It was also presumed that on marriage, a woman had given her irrevocable consent to have sexual intercourse with her husband.

191. The aforesaid principle was followed in England for more than two centuries. For the first time in Reg v. Clarence (1888) 22 Q.B.D. 23, some doubts were raised by Justice Wills with regard to this proposition. In Rex v. Clarke (1949) 2 All E.R. 448, Hale's principle was given the burial it deserved and it was held that the husband's immunity as expounded by Hale, no longer exists. Dealing with the creation of new offence, the House of Lords held as follows:

The remaining and no less difficult question is whether, despite that view, this is an area where the court should step aside to leave the matter to the Parliamentary process. This is not the creation of a new offence, it is the removal of a common law fiction which has become anachronistic and offensive and we consider that it is our duty having reached that conclusion to act upon it.

192. In my view, as far as this case is concerned, this Court is not creating any new offence but only removing what was unconstitutional and offensive.

THE PRIVACY DEBATE

193. Ms. Jayna Kothari, learned Counsel for the Intervener, had raised the issue of privacy and made reference to the judgment of this Court in the case of Justice K.S. Puttaswamy (Retd.) and Anr. v. Union of India and Ors. MANU/SC/1044/2017 : (2017) 10 SCALE 1 to urge that the right of privacy of the girl child is also violated by Exception 2 to Section 375 Indian Penal Code. I have purposely not gone into this aspect of the matter because anything said or urged in this behalf would affect any case being argued on "marital rape" even in relation to "women over 18 years of age". In this case, the issue raised is only with regard to the girl child and, therefore, I do not think it proper to deal with this issue which may have wider ramifications especially when the case of girl child can be decided without dealing with the issue of privacy.

RELIEF

194. Since this Court has not dealt with the wider issue of "marital rape", Exception 2 to Section 375 Indian Penal Code should be read down to bring it within the four corners of law and make it consistent with the Constitution of India.

195. In view of the above discussion, I am clearly of the opinion that Exception 2 to Section 375 Indian Penal Code in so far as it relates to a girl child below 18 years is liable to be struck down on the following grounds:

(i) it is arbitrary, capricious, whimsical and violative of the rights of the girl child and not fair, just and reasonable and, therefore, violative of Article 14, 15 and 21 of the Constitution of India;

(ii) it is discriminatory and violative of Article 14 of the Constitution of India and;

(iii) it is inconsistent with the provisions of POCSO, which must prevail.

Therefore, Exception 2 to Section 375 Indian Penal Code is read down as follows:

Sexual intercourse or sexual acts by a man with his own wife, the wife not being 18 years, is not rape.

It is, however, made clear that this judgment will have prospective effect.

196. It is also clarified that Section 198(6) of the Code will apply to cases of rape of "wives" below 18 years, and cognizance can be taken only in accordance with the provisions of Section 198(6) of the Code.

197. At the cost of repetition, it is reiterated that nothing said in this judgment shall be taken to be an observation one way or the other with regard to the issue of "marital rape".

198. Extremely valuable assistance was rendered to this Court by Mr. Gaurav Agarwal, learned Counsel appearing for the Petitioner and Ms. Jayna Kothari, learned Counsel appearing for the intervener and I place on record my appreciation and gratitude for the same.

1 Paragraph 111

2 Paragraph 118

3 Paragraph 222

4 Paragraph 277

5India became a signatory to the CEDAW Convention on 30th July, 1980 (ratified on 9th July, 1993) but with a reservation to the extent of making registration of marriage compulsory stating that it is not practical in a vast country like India with its variety of customs, religions and level of literacy. Nevertheless, the Supreme Court in the case of Seema (Smt.) v. Ashwani Kumar MANU/SC/0996/2006 : (2006) 2 SCC 578 directed the States and Central Government to notify Rules making registration of marriages compulsory. However, the same has not been implemented in full.

6 3. Penetrative sexual assault.-A person is said to commit "penetrative sexual assault" if-

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.....

375. Rape.-A man is said to commit "rape" if he-

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

7 PIL No. 166/2016 decided on 21st October, 2016

8 Report of UNICEF "ON THE STATE OF THE WORLD'S CHILDREN 2016". A fair chance for girls-End Child Marriage by Angelique Kidjo

9 A Statistical analysis of CHILD MARRIAGE IN INDIA, Based on Census 2011 published by Young Lives and National Commission for Protection of Child Rights (NCPCR)

10 World Health Organisation Report on "Early Marriages, Adolescent and Young Pregnancies", Sixty-Fifth World Health Assembly dated 16th March, 2012

11 Report of the United Nations Committee on the Rights of the Child (CRC) on the Convention of the Rights of the Child, dated 13th June, 2014, dealing with India

12 Resolution adopted by the United Nations General Assembly on 19th December, 2016 on "Child, early and forced marriage", Seventy-first session, Agenda Item 64(a)

13 India Fact Sheet-Issued by Government of India, Ministry of Health and Family Welfare

14 Drawn up by the Ministry of Women and Child Development, Government of India, (Published on 14th January, 2017)

15 A Statistical Analysis of Child Marriage in India, Based on Census, 2011 (Published by Young Lives and National Commission for Protection of Child Rights(NCPCR) June 2017, New Delhi

16 A Statistical Analysis of Child Marriage in India, Based on Census, 2011 (Published by Young Lives and National Commission for Protection of Child Rights(NCPCR), June 2017, New Delhi

17 A Statistical Analysis of Child Marriage in India, Based on Census, 2011 (Published by Young Lives and National Commission for Protection of Child Rights(NCPCR) June 2017, New Delhi

18 W.P.(Crl.) No. 338 of 2008

19 H.C.P. No. 907 of 2011, vide its judgment dated 3rd November, 2011

20 Writ Petition No. 11154/2006 (GM-RES-PIL), Muthamma Devaya and Anr. v. Union of India and Ors.

21 Oliver Twist: Author Charles Dickens

22 WP (C) No. 118/2016 and connected matters (2017) Vol. 8 SCALE 178

MANU/SC/0786/1997

Back to Section 354A of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Writ Petition (Criminal) Nos. 666-70 of 1992

Decided On: 13.08.1997

Vishaka and Ors. Vs. State of Rajasthan and Ors.

Hon'ble Judges/Coram:
J.S. Verma, C.J.I., S.V. Manohar and B.N. Kirpal, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Fali Sam Nariman, Meenakshi Arora and Niti Dixit, Advs
For Respondents/Defendant: T.R. Andhyarujina, Solicitor General, Mukul Mudgal, Suvira Lal, C.V. Subba Rao, K.S. Bhati and M.K. Singh, Advs.

ORDER
J.S. Verma, C.J.I.

1. This writ petition has been filed for the enforcement of the fundamental rights of working women under Articles 14 19 and 21 of the Constitution of India in view of the prevailing climate in which the violation of these rights is not uncommon. With the increasing awareness and emphasis on gender justice, there is increase in the effort to guard against such violations; and the resentment towards incidents of sexual harassment is also increasing. The present petition has been brought as a class action by certain social activists and NGOs with the aim of focusing attention towards this societal aberration, and assisting in finding suitable methods for realisation of the true concept of 'gender equality'; and to prevent sexual harassment of working women in all work places through judicial process, to fill the vacuum in existing legislation.

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

3. Each such incident results in violation of" the fundamental rights of 'Gender Equality' and the 'Right to Life and Liberty'. It is a clear violation of the rights under Articles 14 15 and 21 of the Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 19(1)(g) 'to practice any profession or to carry out any occupation, trade or business'. Such violations, therefore, attract the remedy under Article 32 for the enforcement of these fundamental rights of women. This class action under Article 32 of the Constitution is for this reason. A writ of mandamus in such a situation, if it is to be effective, needs to be accompanied by directions for prevention; as the violation of fundamental rights of this kind is a recurring phenomenon. The fundamental right to carry on any occupation, trade or profession depends on the availability of a "safe" working environment. Right to life means life with dignity. The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement, is of the legislature and the executive. When, however, instances of sexual harassment resulting in violation of fundamental rights of women workers under Articles 14 19 and 21 are brought before us for redress under Article 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum.

4. The notice of the petition was given to the State of Rajasthan and the Union of India. The learned Solicitor General appeared for the Union of India and rendered valuable assistance in the true spirit of a Law Officer to help us find a proper solution to this social problem of considerable magnitude. In addition to Ms. Meenakshi Arora and Ms. Naina Kapur who assisted the Court with full commitment. Shri Fali S. Nariman appeared as Amicus Curiae and rendered great assistance. We place on record our great appreciation for every counsel who appeared in the case and rendered the needed assistance to the Court which has enabled us to deal with this unusual matter in the manner considered appropriate for a cause of this nature.

5. Apart from Article 32 of the Constitution of India, we may refer to some other provisions which envisage judicial intervention for eradication of this social evil. Some provisions in the Constitution in addition to Articles 14 19(1)(g) and 21, which have relevance are:

Article 15:

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.-

(1) The State shall not discriminate against any citizen on only of religion, race, caste, sex, place of birth or any of them.

(2) xxx xxx xxx

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) xxx xxx xxx Article 42:

42. Provision for just and humane conditions of work and maternity relief - The State shall make provision for securing just and humane conditions of work and for maternity relief.

Article 51A:

51 A. Fundamental duties.- It shall be the duty of every citizen of India;-

(a) to abide by the Constitution and respect its ideals and institutions....

xxx xxx xxx

(c) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

xxx xxx xxx

6. Before we refer to the international conventions and norms having relevance in this field and the manner in which they assume significance in application and judicial interpretation, we may advert to some other provisions in the Constitution which permit such use. These provisions are:

Article 51:

51. Promotion of international peace and security.- The State shall endeavour to-

xxx xxx xxx

(c) foster respect for international law and treaty obligations in the dealings of organised people with one another; and

xxx xxx xxx

Article 253:

253. Legislation for giving effect to international agreements.- Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for

the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.
Seventh Schedule:

List I - Union List:

xxx xxx xxx

14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

xxx xxx xxx

7. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14 15 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51(c) and the enabling power of the Parliament to enact laws for implementing the International Conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution. Article 73 also is relevant. It provides that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. The executive power of the Union is, therefore, available till the Parliament enacts legislation to expressly provide measures needed to curb the evil.

8. Thus, the power of this Court under Article 32 for enforcement of the fundamental rights and the executive power of the Union have to meet the challenge to protect the working women from sexual harassment and to make their fundamental rights meaningful. Governance of the society by the rule of law mandates this requirement as a logical concomitant of the constitutional scheme. The exercise performed by the Court in this matter is with this common perception shared with the learned Solicitor General and other members of the Bar who rendered valuable assistance in the performance of this difficult task in public interest.

9. The progress made at each hearing culminated in the formulation of guidelines to which the Union of India gave its consent through the learned Solicitor General, indicating that these should be the guidelines and norms declared by this Court to govern the behavior of the employers and all others at the work places to curb this social evil.

10. Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right. The common minimum requirement of this right has received global acceptance. The International Conventions and norms are, therefore, of great significance in the formulation of the guidelines to achieve this purpose.

11. The obligation of this Court under Article 32 of the Constitution for the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA region. These principles were accepted by the Chief Justices of the Asia and the Pacific at Beijing in 1995 as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are:

Objectives of the Judiciary:

10. The objectives and functions of the judiciary include the following:

(a) to ensure that all persons are able to live securely under the Rule of Law;

(b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and

(c) to administer the law impartially among persons and between persons and the State.

12. Some provisions in the 'Convention on the Elimination of All Forms of Discrimination against Women', of significance in the present context are:

Article 11:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

xxx xxx xxx

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction

xxx xxx xxx

Article 24:

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognised in the present Convention.
13. The general recommendations of CEDAW in this context in respect of Article 11 are:

Violence and equality in employment:

22. Equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the work place.

23. Sexual harassment includes such unwelcome sexually determined behavior as physical contacts and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment. Effective complaints procedures and remedies, including compensation, should be provided.

24. States should include in their reports information about sexual harassment, and on measures to protect women from sexual harassment and other forms of violence of coercion in the work place.

The Government of India has ratified the above resolution on June 25, 1993 with some reservations which are not material in the present context. At the Fourth World Conference on Women in Beijing, the Government of India has also made an official commitment, inter alia, to formulate and operationalize a national policy on women which will continuously guide and inform action at every level and in every sector; to set up a Commission for Women's to act as a public defender of women's human rights; to institutionalise a national level mechanism to monitor the implementation of the Platform for Action. We have, therefore, no hesitation in placing reliance on the above for the purpose of construing the nature and ambit of constitutional guarantee of gender equality in our Constitution.

14. The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse. Independence of judiciary forms a part of our constitutional scheme.

The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them
and there is a void in the domestic law. The High Court of Australia in Minister for Immigration and Ethnic Affairs v. Tech 128 ALR 353, has recognised the concept of legitimate expectation of its observance in the absence of a contrary legislative provision, even in the absence of a Bill of Rights in the Constitution of Australia.
15. In Nilabati Behera v. State of Orissa MANU/SC/0307/1993: 1993CriLJ2899, a provision in the ICCPR was referred to support the view taken that 'an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right', as a public law remedy under Article 32, distinct from the private law remedy in torts. There is no reason why these international conventions and norms cannot, therefore, be used for construing the fundamental rights expressly guaranteed in the Constitution of India which embody the basic concept of gender equality in all spheres of human activity.

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

The guidelines and norms pre-scribed herein are as under:

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

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

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

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

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

2. Definition:

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

a) physical contact and advances;

b) a demand or request for sexual favours;

c) sexually coloured remarks;

d) showing pornography;

e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

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

3. Preventive Steps:

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

(a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.

(b) The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

(c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. Criminal Proceedings:

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

5. Disciplinary Action:

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

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

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

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

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

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

8. Workers' Initiative:

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

9. Awareness:

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

10. Third Party Harassment:

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

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

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

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

MANU/SC/0081/1964

Back to Section 361 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 46 of 1963

Decided On: 09.09.1964

S. Varadarajan Vs. State of Madras

Hon'ble Judges/Coram:
J.R. Mudholkar, K. Subba Rao and M. Hidayatullah, JJ.

JUDGMENT
J.R. Mudholkar, J.

1. This is an appeal by special leave from the judgment of the High Court of Madras affirming the conviction of the appellant under s. 363 of the Indian Penal Code and sentence of rigorous imprisonment for one year awarded by the Fifth Presidency Magistrate, Egmore, Madras.

2. Savitri, P.W. 4, is the third daughter of S. Natarajan, P.W. 1, who is an Assistant Secretary to the Government of Madras in the Department of Industries and Co-operation. At the relevant time, he was living on 6th Street, Lake Area, Nungumbakkam, along with his wife and two daughters, Rama, P.W. 2 and Savitri, P.W. 4. The former is older than the latter and was studying the Madras Medical College while the latter was a student of the second year B.Sc. class in Ethiraj College.

3. A few months before September 30, 1960 Savitri became friendly with the appellant Varadarajan who was residing in a house next door to that of S. Natarajan. The appellant and Savitri used to carry on conversation with each other from their respective houses. On September 30, 1960 Rama found them talking to each other in this manner at about 9.00 A.M. and also been her talking like this on some previous occasions. That day she asked Savitri why she was talking with the appellant. Savitri replied saying that the she wanted to marry the appellant. Savitri's intention was communicated by Rama to their father when he returned home at about 11.00 A.M. on that day. Thereupon Natarajan questioned her. Upon being questioned Savitri started weeping but did not utter word. The same day Natarajan took Savitri to Kodambakkam and left her at the house of a relative of his K. Natarajan, P.W. 6, the idea being that she should be kept as far away from the appellant as possible for some time.

4. On the next day, i.e., on October 1, 1960 Savitri left the house of K. Natarajan at about 10.00 A.M. and telephoned to the appellant asking him to meet her on a certain road in

that area and then went to that road herself. By the time she got there the appellant had arrived there in his car. She got into it and both of them then went to the house of one P. T. Sami at Mylapore with a view to take that person along with them to the Registrar's office to witness their marriage. After picking up Sami they went to the shop Govindarajulu Naidu in Netaji Subhas Chandra Bose Road and appellant purchased two gundus and Tirumangalyam which were selected by Savitri and then proceeded to the Registrar's office. Thereafter the agreement to marry entered into between the appellant and Savitri, which was apparently written there, was got registered. Thereafter the appellant asked her to wear the articles of jewellery purchased at Naidu's shop and she accordingly did so. The agreement which these two persons had entered into was attested by Sami as well as by one P. K. Mar, who was a co-accused before the Presidency Magistrate but was acquitted by him. After the document was registered the appellant and Savitri went to Ajanta Hotel and stayed there for a day. The appellant purchased a couple of sarees and blouses for Savitri the next day and then they went by train to Sattur. After a stay of a couple of days there, they proceeded to Sirukulam on October 4, and stayed there for 10 or 12 days. Thereafter they went to Coimbatore and then on to Tanjore where by they were found by the police who were investigating into a complaint of kidnapping made by S. Natarajan and were then brought to Madras on November 3rd.

5. It may be mentioned that as Savitri did not return to his house after she went out on the morning of October 1st, K. Natarajan went to the house of S. Natarajan in the evening and enquired whether she had returned home. On finding that case she had not, both these persons went to the railway station and various other places in search of Savitri. The search having proved fruitless S. Natarajan went to the Nungumbakkam Police Station and lodged a complaint stain there that Savitri was a minor on that day and could not be found. Thereupon the police took up investigation and ultimately apprehended, as already stated, the appellant and Savitri at Tanjore.

6. It is not disputed that Savitri was born on November 13, 1942 and that she was a minor on October 1st. The other facts which have already been stated are also not disputed. A two-fold contention was, however, raised and that was that in the first place Savitri had abandoned the guardianship of her father and in the second place that appellant in doing what he did, did not in fact take away Savitri out of the keeping of her lawful guardian.

7. The question whether a minor can abandon the guardianship of his or her own guardian and if so the further question whether Savitri could, in acting as she did, be said to have abandoned her father's guardianship may perhaps not be very easy to answer. Fortunately, however, it is not necessary for us to answer either of them upon the view which we take on the other question raised before us and that is that "taking" of Savitri out of the keeping of her father has not been established. The offence of "kidnapping from lawful guardianship" is defined thus in the first paragraph of s. 361 of the Indian Penal code:

"Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship."

8. It will thus be seen that taking or enticing away a minor out of the keeping of a lawful guardian is an essential ingredient of the offence of kidnapping. Here, we are not concerned with enticement but what, we have to find out is whether the part plays by the appellant amounts to "taking", out of the keeping of the lawful guardian, of Savitri. We have no doubt that though Savitri had been left by S. Natarajan at the house of his relative K. Natarajan she still continued to be in the lawful keeping of the former but then the question remains as to what is it which the appellant did that constitutes in law "taking". There is not a word in the deposition of Savitri from which an inference could be drawn that she left the house of K. Natarajan at the instance or even a suggestion of the appellant. In fact she candidly admits that on the morning of October 1st, she herself telephoned to the appellant to meet her in his car at a certain place, went up to that place and finding him waiting in the car got into that car of her own accord. No doubt, she says that she did not tell the appellant where to go and that it was the appellant himself who drove the car to Guindy and then to Mylapore and other places. Further, Savitri has stated that she had decided to marry the appellant. There is no suggestion that the appellant took her to the Sub-Registrar's office and got the agreement of marriage registered there (thinking that this was sufficient in law to make them man and wife) by force or blandishment or anything like that. On the other hand the evidence of the girl leaves no doubt that the insistence of marriage came from her own side. The appellant, by complying with her wishes can by no stretch of imagination be said to have taken her out of the keeping of her lawful guardian. After the registration of the agreement both the appellant and Savitri lived as man and wife and visited different places. There is no suggestion in Savitri's evidence, who, it may be mentioned had attained the age of discretion and was on the verge of attaining majority that she was made by the appellant to accompany him by administering any threat to her or by any blandishments. The fact of her accompanying the appellant all along is quite consistent with Savitri's own desire to be the wife of the appellant in which the desire of accompanying him wherever he went was of course implicit. In these circumstances we find nothing from which an inference could be drawn that the appellant had been guilty of taking away Savitri out of the keeping of her father. She willingly accompanied him and the law did not cast upon him the duty of taking her back to her father's house or even of telling her not to accompany him. She was not a child of tender years who was unable to think for herself but, as already stated, was on the verge if attaining majority and was capable of knowing what was bad for her. She was no uneducated or unsophisticated village girl but a senior college student who had probably all her life lived in a modern city and was thus far more capable of thinking for herself and acting on her own than perhaps an unlettered girl hailing form a rural area. The learned Judge of the High Court has referred to the decision In re: Abdul Sathar 54 M.L.J. 456 in which it was held that where the evidence disclosed that, but for something which the accused consented to do and ultimately did, a minor girl would not have left

her husband's house, or would not have been able to leave her husband's house, there was sufficient taking in law for the purpose of s. 363 and expressing agreement with this statement of the law observed: "In this case the minor, P.W. 4, would not have left the house but for the promise of the appellant that he would marry her." Quite apart from the question whether this amounts to blandishment we may point out that this is not based upon any evidence direct or otherwise. In Abdul Sathar's case 54 M.L.J. 456 Srinivasa Aiyangar J., found that the girl whom the accused was charged with having kidnapped was desperately anxious to leave her husband's house and even threatened to commit suicide if she was not taken away from there and observed:

"If a girl should have been wound up to such a pitch of hatred of her husband and of his house or household and she is found afterwards to have gone out of the keeping of her husband, her guardian, there must undoubtedly be clear and cogent evidence to show that she did not leave her husband's house herself and that her leaving was in some manner caused or brought about by something that the accused did."

9. In the light of this observation the learned Judge considered the evidence and came to the conclusion that there was some legal evidence upon which a court of fact could find against the accused. This decision, therefore, is of little assistance in this case because, as already stated, every essential step was taken by Savitri herself: it was she who telephoned to the appellant and fixed the rendezvous; she walked up to that place herself and found the appellant waiting in the car; she got into the car of her own accord without the appellant asking her to step in and permitted the appellant to take her wherever he liked. Apparently, her one and only intention was to become the appellant's wife and thus be in a position to be always with him.

10. The learned Judge also referred to a decision in R. V. Kumarasami 2 M.H C.R. 331 which was a case under s. 498 of the Indian Penal Code. It was held there that if whilst the wife was living with her husband, a man knowingly went away with her in such a way as to deprive the husband of his control over her with the intent stated in the section, it would be a taking from the husband within the meaning of the section.

11. It must, however, be borne in mind that there is a distinction between "taking: and allowing a minor to accompany a person. The two expression are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstance can the two be regarded as meaning the same thing for the purposes of s. 361 of the Indian Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.

12. It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. In our opinion if evidence to establish one of those things is lacking it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfillment of the intention of the girl. That part, in our opinion, falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to "taking".

13. The case before us is not of a kind considered by Srinivasa Aiyangar J., in that the facts established do not show that Savitri would not have left K. Natarajan's house in which her father had left her without the active help of the appellant.

14. In the next decision, that is, that in Kumarasami's case 2 M.H.C.R 331 upon which the High Court has relied, it was observed that the fact that a married woman whom the accused was alleged to have taken or enticed away for certain purposes was a temptress, would make no difference and the accused who yielded to her solicitations would be guilty on an offence under s. 498(b) of the Penal Code. This decision was approved of in In re: Sundara Dass Tevan 4 M. H.C.R. 20, a case to which also the High Court has referred. The basis of both these decisions appears to be that depriving the husband of his proper control over his wife, for the purpose of illicit intercourse is the gist of the offence of taking away a wife under the same section and that detention occasioning such deprivation may be brought about simply by the influence of allurement and blandishment. It must be borne in mind that while Sections 497 498, I.P.C. are meant essentially for the protection of the rights of the husband, s. 361 and other cognate sections of the Indian Penal Code are intended more for the protection of the minors and persons of unsound mind themselves than of the rights of the guardians of such persons. In this connection we may refer to the decision in State v. Harbansing Kisansing MANU/MH/0098/1954: AIR1954Bom339. In that case Gajendragadkar J., (as he then was) has, after pointing out what we have said above, observed:

"It may be that the mischief intended to be punished party consists in the violation or the infringement of the guardians' right to keep their wards under their care and custody; but the more important object of these provisions undoubtedly is to afford security and protection to the wards themselves".
15. While, therefore, it may perhaps be argued on the basis of the two Madras decisions that the word "taking" occurring in ss. 497 and 498 of the Indian Penal Code should be given a wide interpretation so as to effectuate the object underlying these provisions there

is not reason for giving to that word a wide meaning in the context of the provisions of s. 361 and cognate sections.

16. The last case relied upon by the High Court is Ramaswami Udayar v. Raju Udayar (1952) M.W.N. which is also a case under s. 498, I.P.C. In that case the High Court has followed the two earlier decisions of that Court to which we have made reference but in the course of the judgment the learned judge has observed that it is not open to a minor in law to abandon her guardian, and that, therefore, when the minor leaves the guardian of her own accord and when she comes into the custody of the accused person, it is not necessary that the latter should be shown to have committed an overt act before he could be convicted under s. 498. The learned Judge has further observed:

"A woman's free will, or her being a free agent, or walking out of her house of her own accord are absolutely irrelevant and immaterial for the offence under s. 498."
17. Whatever may be the position with respect to an offence under that section and even assuming that a minor cannot in law abandon the guardianship of her lawful guardian, for the reason which we have already stated, the accused person in whose company she is later found cannot be held guilty of having taken her out of the keeping of her guardian unless something more is established.

18. The view which we have taken accords with that expressed in two decisions reported in Cox's Criminal Cases. The first of them is Reg. v. Christian Olifier (X Cox's Criminal Cases, 402). In that case Baron Bramwell stated the law of the case to the jury thus:

"I am of opinion that if a young woman leaves her father's house without any persuasion, inducement, or blandishment held out to her by a man, so that she has got fairly away from home, and then goes to him, although it may be his moral duty to return her to her parent's custody, yet his not doing so is no infringement of this Act of Parliament (24 & 25 Vict. c. 100, s. 55) for the Act does not say he shall restore her, but only that he shall not take her away."
19. The jury returned a verdict of guilty in this case because the girl's evidence showed that the initial formation of her intention to leave her father's house was influenced by the solicitation of the accused and by his promise to marry her.

20. The other case is Rex v. James Jarvis (XX Cox's Criminal Cases, 249). There Jelf J., has stated the law thus to the jury:

"Although there must be a taking, yet it is quite clear that an actual physical taking away of the girl is not necessary to render the prisoner liable to conviction; it is sufficient if he persuaded her to leave her home or go away with him by persuasion or blandishments. The question for you is whether the active part in the going away together was the act of the prisoner or of the girl; unless it was that of the prisoner, he is entitled to your verdict. And, even if you do not believe that he did what he was morally bound to do-namely,

tell her to return home-that fact is not by itself sufficient to warrant a conviction: for if she was determined to leave her home, and showed prisoner that that was her determination, and insisted on leaving with him- or even if she was so forward as to write and suggest to the prisoner that he should go away with her, and he yielded to her suggestion, taking no active part in the matter, you must acquit him. If, however, prisoner's conduct was such as to persuade the girl, by blandishments or otherwise, to leave her home either then or some future time, he ought to be found guilty of the offence of abduction."

21. In this case there was no evidence of any solicitation by the accused at any time and the jury returned a verdict of 'not guilty. Further, there was no suggestion that the girl was incapable of thinking for herself and making up her own mind.

22. The relevant provisions of the Penal Code are similar to the provisions of the Act of Parliament referred to in that case.

23. Relying upon both these decisions and two other decisions, the law in England is stated thus in Halsbury's Laws of England, 3rd edition, Vol. 10. at p. 758:

"The defendant may be convicted, although he took no part in the actual removal of the girl, if he previously solicited her to leave her father, and afterwards received and harboured her when she did so. If a girl leaves her father of her own accord, the defendant taking no active part in the matter and not persuading or advising her to leave, he cannot be convicted of this offence, even though he failed to advise her not to come, or to return, and afterwards harboured her."

24. On behalf of the appellant reliance was placed before us upon the decision in Rajappan v. State of Kerala I.L.R. [1960] Ker 481 and Chathu v. Govindan Kutty I.L.R. [1957] Ker 591. In both the cases the learned Judges have held that the expression "taking out of the keeping of the lawful guardian" must signify some act done by the accused which may be regarded as the proximate cause of the person going out of the keeping of the guardian; or, in other words an act but for which the person would not have gone out of the keeping of the guardian as he or she did. In taking this view the learned Judge followed, amongst other decisions, the two English decisions to which we Have adverted. More or less to the same effect is the decision in Nura v. Rex MANU/UP/0002/1949: AIR1949All710. We do not agree with everything that has been said in these decisions and would make it clear that the mere circumstance that the act of the accused was not the immediate cause of the girl leaving her father's protection would not absolve him if he had at an earlier stage solicited her or induced her in any manner to take this step.

25. As against this Mr. Ranganadham Chetty appearing for the State has relied upon the decisions in Bisweswar Misra v. The King I.L.R. [1949] Cutt. 194 and In re: Khalandar Saheb I.L.R. [1955] Andh 290. The first decision is distinguishable on the ground that it was found that the accused had induced the girl to leave the house of her lawful guardian. Further the learned Judges have made it clear that mere passive consent on the part of a

person in giving shelter to the minor does not amount to taking or enticing of the minor but the active bringing about of the stay of the minor in the house of a person by playing upon the weak and hesitating mind of the minor would amount to "taking" within the meaning of s. 361. In the next case, the act of the accused, upon the facts of the case was held by the Court to fall under s. 366, I.P.C. and the decision in Nura v. Rex MANU/UP/0002/1949: AIR1949All710 on which reliance has been placed on behalf of the appellant is distinguished. Referring to that case it was observed by the Court:

"Reliance is placed upon the decision of Mustaq Ahmed J. in Nura v. Rex wherein the learned Judge observed that where a minor girl voluntarily leaves the roof of her guardian and when out of his house, comes across another who treats her with kindness, he cannot be held guilty under section 361, Indian Penal Code. This decision cannot help the accused for, on the facts of that case, it was found that the girl went out of the protection of her parents of her own accord and thereafter went with the accused..... In the present case it is not possible to hold that she is not under the guardianship of her father. In either contingency, namely, whether she went out to answer calls of nature, or whether she went to the house of the accused pursuant to a previous arrangement, she continued to be under the guardianship of her father. On the evidence, it is not possible to hold that she abandoned the guardianship of her father and, thereafter, the accused took her with him."

26. After pointing out that there is an essential distinction between the words "taking" and "enticing" it was no doubt observed that the mental attitude of the minor is not of relevance in the case of taking and that the word "take" means to cause to go, to escort or to get into possession. But these observations have to be understood in the context of the facts found in that case. For, it had been found that the minor girl whom the accused was charged with having kidnapped had been persuaded by the accused when she had gone our of her house for answering the call of nature, to go along with him and was taken by him to another village and kept in his uncle's house until she was restored back to her father by the uncle later. Thus, here there was an element of persuasion by the accused person which brought about the willingness of the girl and this makes all the difference. In our opinion, therefore, neither of these decisions is of assistance to the State.

27. We are satisfied, upon the material on record, that no offence under s. 363 has been established against the appellant and that he is, therefore, entitled to acquittal. Accordingly we allow the appeal and set aside the conviction and sentence passed upon him.

28. Appeal allowed.

MANU/SC/0191/1973

Back to Section 363 of Indian Penal Code, 1860

Back to Section 366 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 18 of 1970

Decided On: 02.05.1973

Thakorlal D. Vadgama Vs. The State of Gujarat

Hon'ble Judges/Coram:
I.D. Dua and K.K. Mathew, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: R.H. Dhebar and S.K. Dholakia, Advs
For Respondents/Defendant: R.L. Kohli and S.P. Nayar, Advs.

JUDGMENT
I.D. Dua, J.

1. This appeal by special leave is directed against the judgment and order of the Gujarat High Court allowing in part the appellant's appeal from his conviction by the Court of the Sessions Judge, Jamnagar under Sections 366 and 376, I.P.C. The High Court acquitted him of the offence under Section 375, I.P.C. but maintained his conviction and sentence under Section 366, I.P.C.

2. According to the prosecution case, the offence under Section 366, I.P.C., took place on January 16, 1967 and the offence of rape with which he was charged was committed on the night between the 16th and 17th January, 1967. As observed by the High Court, the background which led to the culmination resulting in the commission of the offences leading to the appellant's trial has been traced by Mohin, the victim of the offences, in the prosecution version, to the latter part of the year 1965. The appellant, an industrialist, had a factory at Bunder Road for manufacturing oil engines and adjoining the factory was his residential bungalow. During the bombardment of Jamnagar by Pakistan in 1965, Mohini's parents came to reside temporarily at Dhrol near Jamnagar. The appellant came to be introduced to that family and on December 18, 1965, which was Mohini's birth-day, the appellant presented her with a parker pen. It may be pointed out that Mohini was at that time a school going girl below 15 years of age. She kept the pen for about 2 to 3 days, but at the instance of her mother, returned it to the appellant. Thereafter, the appellant went to Baroda in his car and he took with him, Mohini, her father Liladhar Jivraj, his manager Tribhovandas, Malti, daughter of Tribhovandas, who was about 12 years old, and Harish, a younger brother of Malati. At Baroda, the appellant negotiated some transaction with regard to the purchase of some land for the purpose of installing a

factory there. It appears that there was some kind of impression created in the mind of Mohini's father that he would be employed by the appellant as a manager of the factory to be installed at Baroda. The party spent a night at Baroda and next morning started on their return journey to Jamnagar. During Christmas of 1965 the appellant had a trip to Bombay and during this trip also he took with him the same party, viz. Mohini, her father, Tribhovandas and Tribhovandas' daughter and son. In Bombay they stayed in Metropolitan Hotel for 2 nights. According to the prosecution story it was during these two nights that Mohini, Malati and the appellant slept in one room, whereas Mohini's father, Malati's father and Harish slept in another room. On these two nights the appellant is stated to have had sexual inter-course with Mohini. During this trip to Bombay the appellant is also said to have purchased two skirts and waste bands for Mohini and Malati. After their return to Jamnagar, according to the prosecution story, the appellant had sexual inter-course with Mohini once in the month of March, 1965 when she had gone to the appellant's residential bungalow at about 7.00 P.M. Indeed, Mohini used to visit the appellant's place off and on. During the summer vacation in 1966 the appellant had a trip to Mahabaleshwar in his car. On this occasion, along with Mohini he took her two parents as well as also his own daughter Rekha. On their way to Mahabaleshwar, they stopped at Bombay for two days. After staying at Mahabaleshwar for two days, on their return journey they again halted at Bombay for a night, and then proceeded to Mount Abu. At Mount Abu they stayed for one day and all of them slept in one room. At about 3.00 a.m. when Mohini's mother got up for going to bathroom and switched on the light, she noticed that the appellant was sleeping by Mohini's side with his hand on her head. Mohini's mother restrained herself and did not speak about what she had seen because the appellant had requested her not to do so. Next morning, the party went to Ambaji from where they returned to Jamnagar. At Jamnagar Mohini's mother informed her husband about what she had seen during the night at Mount Abu. Mohini's father got annoyed and rebuked Mohini. Her mother also warned her against repetition of such conduct. Mohini apologised. The appellant, on coming to know of the feelings of Mohini's parents, told her father that Mohini was just like his own daughter Rekha to him and that he would even go to Dattatraya temple and swear by God to that effect. The appellant is stated to have actually taken Mohini's father, Mohini and Rekha to Dattatraya temple in Jamnagar and placing his hands on the heads of Mohini and Rekha swore that they were his daughters. Even after this incident in Dattatraya temple, the appellant once met Mohini when she was returning from her school and took her to his own bungalow in his car. There, he had sexual intercourse with her. It seems that Mohini's parents came to know about this incident and they rebuked her. Mohini's parents also started taking precaution of not sending her alone to the school. From July, 1966 onwards either the maid-servant or Mohini's mother herself would accompany her to the school. The appellant is stated to have made an effort to contact Mohini during this period. He called her at his house on Saturday, September 24, 1966. Mohini's mother having come to know of this behavior on the part of the appellant, wrote to him a letter dated September 26, 1966 requesting him to desist from his activities of trying to contact Mohini. Apparently, after this letter there was no contact between Mohini and the

appellant in Jamnagar. In October, 1966, however, Mohini had gone to Ahmedabad in school camp and there the appellant contacted her and took her out for a joy ride in company with two of her girl friends. Thereafter, in the months of November and December, 1966 nothing particular seems to have happened. According to the appellant, however, during those two months, Mohini had written letters to him complaining of ill-treatment by her parents and expressing her desire to leave her parent's house. We would refer to those letters a little later. Early in January, 1967, the appellant is alleged to have told Mohini to come to his Bungalow. On January 16, 1967, Mohini started for her school with a school book and two exercise books, in the company of her mother Narmada who had to go to Court for some work. Upto the Court premises, they both went together where Smt. Narmada stayed on and Mohini proceeded to her school. Instead of going to her school, she apparently went to the appellant's factory according to a previous arrangement. There the appellant met her and took her inside his motor garage. From there she was taken to the attached room and made to write two or three letters on his dictation. She did so while sitting on two tyres. These letters were stated to have been addressed to her father, to the District Superintendent of Police of Jamnagar, and to the appellant himself. These letters contained complaints of ill-treatment of Mohini by her father and mother and information about the fact that she was leaving for Bombay after taking Rs. 250/- from the appellant. According to the postal stamps, these letters appeared to have been cleared from the post office at 2.30 p.m. on January 16, 1967. Thereafter, according to the prosecution version, Mohini was made by the appellant to sit in the dicky of his car which was taken to some place, Mohini remaining in the dicky for some hours. She was then taken to the office of his factory at mid-night and there he had sexual inter-course with her against her will. After the sexual inter-course, there was some sound of motor car entering the compound whereupon the appellant took her inside the celler in the office and asked her to sit there. After about an hour the appellant came and took her from the celler to his garage where she was again made to remain in the dicky. It appears that the following morning the appellant told Mohini that he was called to the police station. He went there in his car with Mohini in the dicky and then he and the police man came back to his Bungalow. The police man went inside the bungalow and the appellant parked the car in his garage. He took Mohini out of the dicky and told her to go to the inner room of the garage. This inner room had four doors. One of them opened on the main road and another in the garage. Feeling thirsty, Mohini went out in the garden and saw a Mali working there whom she asked for water. It appears that at about 6.30 p.m. the appellant came to the inner room and promised to bring some food, water and clothes for Mohini, telling her to wait for him in that room. After some time, he returned with food, water and clothes. Mohini changed her clothes washed her face and started taking her meal. While doing so, she felt that some motor car had come into the compound. The appellant told her that police had come and, therefore, she must leave through the back door and go to the road-side directing her to go towards Gandhinagar and wait there for him. Leaving her food unfinished, Mohini went out and waited near Gandhinagar at a distance of about one furlong from the appellant's garage. It was here that she was traced by the Police Sub-Inspector Chaudhary who came there with the

appellant in the latter's car at about 9.00 p.m. From the dicky of the appellant's motor car, one bedding and some clothes belonging to Mohini, viz., skirt, blouse, nicker and petticoat were found. These clothes were wet. Her school books and two exercise books were also found there. In the inner room of the garage was found unfinished food and utensils which bore the name of the appellant. Mohini was sent for medical examination by the Lady Medical Officer, but the Medical Officer did not find any symptoms of forcible sexual inter-course.

3. Turning now to the scene at the house of Mohini's parents, after her mother Smt. Narmada finished with the court work, she returned to her house. They had a visitor Dinkerrai from Rajkot. While they were all at home some school girls informed Mohini's mother that Mohini had not gone to the school that day. Smt. Narmada at once suspected the appellant and therefore went to his house along with Dinkerrai. On enquiry from the appellant, he expressed his ignorance about Mohini's whereabouts. He, however, admitted that she had come to him for money but had gone away after taking Rs. 250/- from him. This according to him had happened between 4 and 5.30 p.m. on that day viz. January 16, 1967. Mohini's father then lodged complaint with the police at about 7.20 p.m. on that very day. The Police Sub-Inspector visited the appellant's bungalow in the night between 16th and 17th of January and searched the bungalow but did not find Mohini there. Thereafter, the Sub-Inspector again went to the appellant's bungalow on the morning of the 17th January and attached some letters and other papers produced by the appellant. He also went to the appellant's office and inspected the books of account for the purpose of verifying whether there was any entry about the payment of Rs. 250/- to Mohini. Meanwhile, Mohini's father Liladhar received a letter bearing post mark dated 16-1-1967 which was produced by him before the Police Sub-Inspector. On the night of 17th January, Police Sub-Inspector Chaudhary went to the appellant's bungalow and it was this time that Mohini heard the sound of a motor car and left the garage at the instance of the appellant leaving unfinished the food she was eating. In the inner room, next to the garage, were found Mohini's clothes, a lady's purse, one comb, 2 plastic buckets full of water, one lantern and some other articles. From the dicky of the appellant's car on search were also found skirt, one blouse, a petticoat and one book and two exercise books as already noticed. All these articles belonged to Mohini. This in brief is the prosecution story.

4. The appellant admitted that he had developed intimate relations with the family of Mohini, but denied haying presented to her a parker pen in December, 1965. He also admitted his trips to Baroda and Bombay in December, 1965 when he took with him Mohini, her father Malati, her mother and Malati's brother. He admitted having stayed in Metropolitan Hotel at Bombay but denied that he, Mohini and Malati had slept in one room and that he had sexual inter-course with Mohini during their stay in this hotel. He also denied having sexual inter-course with Mohini in the month of March, 1966. He further denied having purchased skirts and waste bands for Mohini and Malati in Bombay in December, 1965. The trip to Mahabaleshwar during summer vacation and also

the trip to Mount Abu were admitted by the appellant but he denied having been found sleeping with Mohini by Mohini's mother at Mount Abu. He admitted the incident of Dattatraya temple in Jamnagar but this he explained was due to the fact that Mohini's parents had heard some false rumours about his relations with Mohini, and that he wanted to remove their suspicion. He further admitted that in the evening of 16th January, Narmada and Dinkerrai had approached him to inquire about Mohini's whereabouts but according to him Mohini had merely taken Rs. 250/from him without telling him as to where she was going. He denied having told Dinkerrai that Mohini had gone to Bombay. According to his version, Mohini approached him on January 16, 1967 and requested him to keep her at his house for about 15 days because she was tired of harassment at the hands of her parents. She added that she would make her own arrangements after 15 days. The appellant expressed his inability to keep her in his house and suggested that he would take her to her parents' house and persuade them not to harass her. She, however, was firm and adamant in not going back to her parents' house at any cost. According to the appellant, the reason for falsely involving him in this case was that Mohini's father wanted the appellant to appoint him as a manager at Baroda where the appellant was planning to start a new factory. The appellant having declined to do so because he had many senior persons working in his office, Mohini's father felt displeased and concocted the false story to involve him.

5. The trial court in an exhaustive judgment after considering the case from all relevant aspects came to the conclusion that Mohini was born on September 18, 1951 and that the medical evidence led in the case also showed that she was above 14 and below 17 years of age during the relevant period. She was according held to be a minor on the day of the incident. If, therefore, the appellant had sexual intercourse with her even with her consent, he would be guilty of rape. Mohini was believed by the trial court when she stated that the appellant had sexual inter-course with her at the earliest possible opportunity as this was corroborated by the medical evidence. The trial court found no reason for her to stake her whole life by making false statement about her chastity, nor for her parents to encourage or induce her to come out with a false story, there being no enmity between the appellant and the family of Mohini with respect to any matter, which would induce them to charge him falsely. The appellant's explanation that as a result of his refusal to appoint Mohini's father as a Manager of his factory at Baroda, she had, in collusion with the parents, concocted this story was considered by the trial court to be too far-fetched to be worthy of belief. In fact, according to the trial court it was the appellant who had made a suggestion about appointing Mohini's father as his manager at Baroda and this explained why Mohini's father was taken by the appellant to Baroda when he paid a visit to that place for purchasing land. The court found no other cogent reason for taking Mohini's father to Baroda. The trial court in express terms disbelieved the appellant's explanation. That court also came to the conclusion, on consideration of the evidence and bearing in mind the common course of human conduct, that it was the appellant who had induced Mohini to leave her parents' house on the day in question and to have sexual inter-course with her. The trial court also considered that part of

Mohini's statement that when she went to the appellant's place, he told her to return to her school, suggesting that he would take her to her parents and persuade them not to harass her and, it expressed its undoubted opinion that the appellant had used those words to make a show of being her well-wisher, so that, if some proceedings were started against him, he could put forth the defence that he had kept Mohini at his house only at her own request and not with the object of keeping her out of her parents' custody for having sexual inter-course with her. The trial court got support for this view from the letters got written by the appellant in Mohini's handwriting. This is what that court said in this connection:

There is therefore, no doubt in my mind that the accused had prepared all this material so that in case criminal proceedings were taken against him by Mohini's parents, he may be able to lead plausible defence of his innocence. Nothing prevented the accused from returning Mohini to her parents. In any case, even if it were held that it was not the duty of the accused to return Mohini to her parents, it can equally he said that it was not legal on the part of the accused to secretly confine Mohini at his place and have sexual intercourse with her.

The trial court then quoted the following passage from the case of Christian Olivier, reported in 10 Cox. 420:-

Although she may not leave at the appointed time and although he may not wish that she should have left at that particular time, yet if, finding she has left, he avails himself of that to induce her to continue away from her father's custody, in my judgment he is also guilty, if his persuasion operated on her mind so as to induce her to leave.

On the basis of this observation, the trial court held that in the present case, the inducement given by the appellant operated on Mohini's mind to stay in his house and do as he told her to do. The trial court on a consideration of the circumstances of the case and of the subsequent conduct of the appellant came to the definite conclusion that Mohini had gone to the appellant's place at his instance and subsequently taking advantage of that position she was persuaded by the appellant to stay there. The appellant was accordingly held guilty under Sections 366 and 376, I.P.C. Under Section 366, I.P.C., he Was sentenced to rigorous imprisonment for 18 months and under Section 376, I.P.C. to rigorous imprisonment for two years and also to fine of Rs. 500/- and in default, to further rigorous imprisonment for six months. The substantive sentences of imprisonment were to run concurrently.

6. On appeal by the appellant, the High Court also considered the matter at great length and in a very exhaustive judgment, the appellant's conviction under Section 376 was set aside and he was acquitted of that offence. This acquittal was ordered because the charge being only for sexual inter-course on the night of January 16, 1967, the evidence of Mohini in support of that offence was not accepted as safe and free from all reasonable doubt, in the absence of independent corroboration. In adopting this approach the High Court seems to us to have been somewhat over indulgent and unduly favourable to the

appellant with respect to the offence under Section 376, I.P.C. But there being no appeal against acquittal, we need say nothing more about it. The appellant's conviction for the offence punishable under Section 366, I.P.C. and the sentence for that offence were, however, upheld. The High Court felt that the story of Mohini with regard to the appellant's call about 3 or 4 days before the incident in question was so natural and so highly probable that it felt no hesitation in accepting it. The circumstances preceding the incident were considered by the High Court to be sufficiently telling to lend assurance that it was quite safe to act upon her testimony. Her account was considered to be quite truthful and, therefore, acceptable. Mohini's version that the appellant had told her about 3 or 4 days before the incident of January 16, 1967 that he would keep her permanently at his place provided sufficient temptation to the school-going girl like Mohini to go to the appellant leaving her parental home. This was all the more so because in the past year or so, the appellant had treated Mohini very fondly by taking her out on trips to different places in his own car and had also lavishly given her gifts of articles like costly pens and silver band. The High Court also took into consideration the attitude adopted by Mohini's mother in this connection. She had very discretely warned the appellant in a dignified and respectful language to leave Mohini alone and also expressed her disappointment and unhappiness at the manner in which the appellant used to behave towards Mohini. The High Court considered a part of Mohini's version, as to how she was kept in the dicky of the appellant's car on the 16th and 17th January, 1967, to be improbable and to have been exaggerated by her, but this was considered to be due to the fact that, like a school-girl that she was, she introduced an element of sensation in her story. Her complaint about inter-course on this occasion was not accepted for want of independent corroboration. The medical evidence also suggested that there was no presence of spermatozoa when vaginal swab was examined. It was on this reasoning that the offence under Section 376, I.P.C as charged was held not to have been proved beyond doubt. The presence of Mohini in the appellant's house and also in his garage on the 16th and 17th January was held by the High Court to be fully established on the record. The version given by Mohini was held to be fully corroborated by the surrounding circumstances of the case and by the recoveries of various articles belonging to her. The High Court also came to the positive conclusion that there was no unreasonable delay on the part of the investigating authorities to record Mohini's statement. The suggestion on behalf of the appellant that various articles belonging to Mohini and the utensils found in the inner room of the appellant's premises were planted, was rejected outright. The High Court in a very well reasoned judgment with respect to the offence under Section 366, I.P.C. came to the conclusion that the appellant had taken Mohini out of the keeping of her parents (her lawful guardian) with an intention that she may be seduced to illicit inter-course. This is what the High Court observed:-

Having come in contact with the family of Mohini in about November 1965 the appellant cultivated relationship with them to such an extent that he took Mohini, and her parents out on trips in his car spending lavishly by staying in hotels in Ahmedabad, Bombay, Mahabaleshwar and Mount Abu. He also presented Mohini with a parker pen on 18th

December, 1965. Within a few days thereafter he purchased by way of gift to Mohini skirt, silver waist-band which as per unchallenged testimony of Mohini was worth about Rs. 12/-. He was actually found by the side of Mohini in Mohini's bed by Mohini's mother at Mount Abu. His connection with Mohini was suspected and in spite of that as the letters of Mohini show he was in correspondence with her without the knowledge of her parents. Mohini was a school girl of immature understanding having entered her 16th year less than a month before the incident. Out of emotion she wrote letters to the appellant exaggerating incidents of rebuking by her mother and beating. She however was quite normal from 1st January, 1967. The appellant having come to know about the frame of her mind disclosed from the letters of November and December, 1966, took chance to take away this girl from her parents. With that view he told Mohini about 4 days before 16th January, 1967 to come to his house and added that he will keep her with him permanently. This possibly caught the imagination of the girl and the result was that on 16th January she left her father's house with bare clothes on her body and with school books and went straight to the appellant. The appellant in order to see that her view to his factory during day time may not arouse suspicion of other invented the story of giving Rs. 250/- to Mohini and also got written 3 letters by Mohini addressed to himself, the District Superintendent of Police Jamnagar and Mohini's father. He kept her in the garage of his bungalow for 2 days, tried to secret her from police and her parents and had already made attempt on 16th to put police and parents of Mohini on wrong track. There is no scope for an inference other than the inference that Mohini was kidnapped from lawful guardianship, with an intention to seduce her to illicit inter-course. The intention contemplated by Section 366 of the Indian Penal Code is amply borne out by these circumstances. Therefore, the conviction of the appellant under that section is correct and has to be maintained.
As already observed, the appellant was acquitted of the offence under Section 376, I.P.C., but his conviction and sentence under Section 366, I.P.C. was upheld.

7. In this Court, Shri Dhebar addressed very elaborate arguments and took us through considerable part of the evidence led in the case with the object of showing that the conclusions of the two courts below accepting the evidence led by the prosecution with respect to the charge under Section 366, I.P.C. is wholly untrustworthy and no judicial mind could ever have accepted it. After going through the evidence to which our attention was drawn, we are unable to agree with the appellant's learned Counsel. Both the courts below devoted very anxious care to the evidence led in the case and the circumstances and the probabilities inherent in such a situation. They gave to the appellant all possible benefit of the circumstances which could have any reasonable hearing in his favour, but felt constrained to conclude that the appellant was proved beyond reasonable doubt guilty of the offence under Section 366, I.P.C.

8. The appellant's main argument was that it was Mohini who feeling unhappy and perhaps harassed in her parent's house, left it on her own accord and came to the appellant's house for help which he gave out of compassion and sympathy for the

helpless girl in distress. Mohini's parents were, according to the counsel, unreasonably harsh on her on account of some erroneous or imaginary suspicion which they happened to entertain about the appellant's attitude towards their daughter or about the relationship between the two, and that it was primarily her parent's insulting and stern behavior towards her which induced her to leave her parental home. It was contended on this reasoning that the charge under Section 366, I.P.C. was in the circumstances unsustainable.

9. The legal position with respect to an offence under Section 366, I.P.C. is not in doubt. In State of Haryana v. Raja Ram MANU/SC/0262/1972: 1973CriLJ651., this Court considered the meaning and scope of Section 361, I.P.C. It was said there:-

The object of this section seems as much to protect the minor children from being seduced for improper purposes as to protect the rights and privileges of guardians having the lawful charge or custody of their minor wards. The gravamen of this offence lies in the taking or enticing of a minor under the ages specified in this section, out of the keeping of the lawful guardian without the consent of such guardian. The words "takes or entices any minor... out of the keeping of the lawful guardian of such minor" in Section 361, are significant. The use of the word "keeping" in the context connotes the idea of charge, protection, maintenance and control: further the guardian's charge and control appears to be compatible with the independence of action and movement in the minor, the guardian's protection and control of the minor being available, whenever necessity arises. On plain reading of this section the consent of the minor who is taken or enticed is wholly immaterial; it is only the guardian's consent which takes the case out of its purview. Nor is it necessary that the taking or enticing must be shown to have been by means of force or fraud. Persuasion by the accused person which creates willingness on the part of the minor to be taken out of the keeping of the lawful guardian would be sufficient to attract the section.
In the case cited reference has been made to some English decisions in which it has been stated that forwardness on the part of the girl would not avail the person taking her away from being guilty of the offence in question and that if by moral force a willingness is created in the girl to go away with the former, the offence would be committed unless her going away is entirely voluntary. Inducement by previous promise or persuasion was held in some English decision to be sufficient to bring the case within the mischief of the statute. Broadly, the same seems to us to be the position under our law. The expression used in Section 361, I.P.C. is "whoever takes or entices any minor". The word "takes" does not necessarily connote taking by force and it is not confined only to use of force, actual or constructive. This word merely means, "to cause to go", "to escort" or "to get into possession". No doubt it does mean physical taking, but not necessarily by use of force or fraud. The word "entice" seems to involve the idea of inducement or allurement by giving rise to hope or desire in the other. This can take many forms, difficult to visualise and describe exhaustively; some of them may be quite subtle} depending for their success on the mental state of the person at the time when the inducement is intended to operate.

This may work immediately or it may create continuous and gradual but imperceptible impression culminating after some time, in achieving its ultimate purposes of successful inducement. The two words "takes" and "entices", as used in Section 361, I.P.C. are, in our opinion, intended to be read together so that each takes to some extent its colour and content from the other. The statutory language suggests that if the minor leaves her parental home completely uninfluenced by any promise, offer or inducement emanating from the guilty party, then the latter cannot be considered to have committed the offence as defined in Section 361, I.P.C. But if the guilty party has laid a foundation by inducement, allurement or threat, etc. and if this can be considered to have influenced the minor or weighed with her in leaving her guardian's custody or keeping and going to the guilty party, then prima facie it would be difficult for him to plead innocence on the ground that the minor had voluntarily come to him. If he had at an earlier stage solicited or induced her in any manner to leave her father's protection, by conveying or indicating an encouraging suggestion that he would give her shelter, then the mere circumstance that his act was not the immediate cause of her leaving her parental home or guardian's custody would constitute no valid defence and would not absolve him. The question truly falls for determination on the facts and circumstances of each case. In the case before us, we cannot ignore the circumstances ill which the appellant and Mohini came close to each other and the manner in which he is stated to have given her presents and tried to be intimate with her. The letters written by her to the appellant mainly in November, 1966 (Exhibit p. 20) and in December, 1966 (Exhibit p. 16) and also the letter written by Mohini's mother to the appellant in September, 1966 (Exhibit p. 27) furnish very important and essential background in which the culminating incident of January 16th and 17th, 1967 has to be examined. These letters were taken into consideration by the High Court and in our opinion rightly. The suspicion entertained by Mohini's mother is also, in our opinion, relevant in considering the truth of the story as narrated by the prosecutrix. In fact, this letter indicates how the mother of the girl belonging to a comparatively poorer family felt when confronted with a rich man's dishonourable behavior towards her young, impressionable, immature daughter; a man who also suggested to render financial help to her husband in time of need. These circumstances, among others, show that the main substratum of the story as revealed by Mohini in her evidence, is probable and trustworthy and it admits of no reasonable doubt as to its truthfulness. We have, therefore, no hesitation in holding that the conclusions of the two courts below with respect to the offence under Section 366, I.P.C. are unexceptionable. There is absolutely no ground for interference under Article 136 of the Constitution.

10. On the view that we have taken about the conclusions of the two courts below on the evidence, it is unnecessary to refer to all the decisions cited by Shri Dhebar. They have all proceeded on their own facts. We have enunciated the legal position and it is unnecessary to discuss the decisions cited. We may however briefly advert to the decision in 5. Varadarajan v. State of Madras MANU/SC/0081/1964: 1965CriLJ33., on which Shri Dhebar placed principal reliance, Shri Dhebar relied on the following passage at page 245 of the report:-

It will thus be seen that taking or enticing away a minor out of the keeping of a lawful guardian is an essential ingredient of the offence of kidnapping. Here, we are not concerned with enticement but what, we have to find out is whether the part played by the appellant amounts to "taking", out of the keeping of the lawful guardian of Savitri. We have no doubt that though Savitri had been left by S. Natarajan at the house of his relative K. Natarajan, she still continued to be in the lawful keeping of the former but then the question remains as to what is it which the appellant did that constitutes in law "taking". There is not a word in the deposition of Savitri from which an inference could be drawn that she left the house of K. Natarajan at the instance or even a suggestion of the appellant. In fact she candidly admits that on the morning of October 1st, she herself telephoned to the appellant to meet her in his car at a certain place, went up to that place and finding him waiting in the car got into that car of her own accord. No doubt, she says that she did not tell the appellant where to go and that it was the appellant himself who drove the car to Guindy and then to Mylapore and other places. Further, Savitri has stated that she had decided to marry the appellant.
From this passage, Shri Dhebar tried to infer that the case before us is similar to that case and, therefore, Mohini herself went to the appellant and the appellant had absolutely no involvement in Mohini's leaving her parents' home. Now the relevant test laid down in the case cited is to be found at page 248:-

It must, however, be borne in mind that there is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstance can the two be regarded as meaning the same thing for the purposes of Section 361 of the Indian Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what, she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.
11. It would however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. In our opinion if evidence to establish one of those things is lacking it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfilment of the intention of the girl. That part, in our opinion, falls short of an inducement to the

minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to 'taking'".

It is obvious that the facts and the charge with which we are concerned in the present case are not identical with those in Varadarajan's case (supra). The evidence of the constant behavior of the appellant towards Mohini for several months preceding the incident on the 16th and 17th January 1967 completely brings the case within the passage at Section 248 of the decision cited. We have before us ample material showing earlier allurements and even of the appellant's participation in the formation of Mohini's intention and resolve to leave her father's house. The appellant's conviction must, therefore, be upheld.

12. In so far as the question of sentence is concerned, we are wholly unable to find any cogent ground for interference. The conduct and behavior of the appellant in going to the temple and representing that Mohini was like his daughter merely serves to add to the depravity of the appellant's conduct, when once we believe the evidence of Mohini with respect to the offence under Section 366, I.P.C Though the appellant has been acquitted of the offence of rape, for which he was also charged, we cannot shut our eyes to his previous improper intimacy with Mohini on various occasions as deposed by her. They were not taken into account as substantive evidence of rape on earlier occasions for reasons best known to the prosecution and the charge under Section 376, I.P.C. was not framed with respect to the earlier occurrences. But the previous conduct of the appellant does clearly constitute aggravating factors. The sentence is in our view, already very lenient.

13. This appeal must, therefore, fail and is dismissed.

MANU/SC/0825/2003

Back to Section 376D of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 1265 of 2002

Decided On: 16.10.2003

Bhupinder Sharma Vs. State of Himachal Pradesh

Hon'ble Judges/Coram:
Doraiswamy Raju and Dr. Arijit Pasayat, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Rachna Gupta, Adv
For Respondents/Defendant: J.S. Attri and Pramod Kumar Yadav, Advs.

JUDGMENT
Arijit Pasayat, J.

1. Enhancement of sentence from four years RI as awarded by the trial Court, to 10 years as done by the Himachal Pradesh High Court for an offence of rape punishable under Section 376 of the Indian Penal Code 1860, (in short 'the IPC') is the subject matter of challenge in this appeal.
2. We do not propose to mention name of the victim. Section 228-A of the Indian Penal Code, 1860 (in short the "IPC") makes disclosure of identity of victim of certain offences punishable. Printing or publishing name of any matter which may make known the identity of any person against whom an offence under Sections 376, 376-A, 376-B, 376-C or 376-D is alleged or found to have been committed can be punished. True it is the restriction does not relate to printing or publication of judgment by High Court or Supreme Court. But keeping in view the social object of preventing social victimization or ostracisms of the victim of a sexual offence for which Section 228-A has been enacted, it would be appropriate that in the judgments, be it of High Court or lower Court, the name of the victim should not be indicated. We have chosen to describe her as ' victim' in the judgment.
3. While issuing notice by order dated 8.1.2002 it was clearly indicated by this Court that examination of the case would be restricted to the question of sentence only. Appellant was found guilty of offence punishable under Section 376 read with Section 34 IPC and Section 342 read with Section 34 thereof. The enhancement of sentence was done in respect of offence punishable under Section 376 IPC.
4. Prosecution version as unfolded during trial is that the victim aged about 16 years had gone to Solan in 1998 to purchase medicines for her ailing grandfather. She had gone to Solan for the first times and reached the bus stand at about 2.00 p.m. After having alighted

from the bus, she enquired from a lady as to where a particular medicine shop was located. The lady stated ignorance. At this juncture, two persons came there and asked her to accompany them in a three-wheeler as they were both going to the concerned shop. The victim was taken by two boys namely, accused Ashish Kanwar and Suresh to an isolated place in a jungle. The three-wheeler was sent back with a direction to come in the evening. After gagging her mouth, she was taken to a house which was below the road. There were four more boys. Three out of those were Identified by the victim during trial. The fourth one namely Shanker was not tried as adequate evidence was not available against him. The victim was sexually abused firstly by accused-Ashish followed by accused-Sunil, Suresh and Ruby. The appellant Bhupinder and Shanker (not tried) were in the process of taking off their clothes with a view to perpetuate sexual abuse when the victim managed to escape with only a shirt and ran away bare footed. When she reached near the road, she saw Chaman Lal, ASI who was accompanied by police officers. Meanwhile, two other persons also came there. They were Charanjit (PW-2) and Balvinder (PW-3). When the victim described the ghastly incident to them, she was taken to the room where she had been raped; but, it was found that all six of them had fled away. Police took into possession certain articles. Statement of the victim was recorded and investigation was undertaken. She was sent for medical examination where she was examined by Dr. Radha Chopra (PW-8). All the convicts were arrested during investigation. Forensic Laboratory tests were conducted and charge sheet was placed under Section 376 read with Section 34 IP C and Section 342 read with Section 34 IPC. The accused persons pleaded not guilty. After conclusion of trial all of them were found guilty and convicted to undergo different sentences. The present appellant Bhupinder was sentenced to undergo RI for four years for the offence relatable to Section 376 read with Section 34 IPC and two years for the offence punishable under Section 342 read with Section IPC. All the other accused persons were convicted to RI for 7 years for the offence punishable under Section 376 and 342 IPC.

5. In case of present appellant, a departure was made so far as sentence is concerned because trial Court was of the view that he had not actually committed rape and the victim had escaped before he could do so. The High Court issued suo motu notice of enhancement of sentence in respect of appeals filed by the present appellant Bhupinder and accused Ashish.

6. Before the High Court the evidence of victim was stated to be tainted and it was also submitted that the consent was writ large and, therefore, offence under Section 376 was not made out. It was urged that there was no corroboration to the evidence of the victim and, therefore, the prosecution version should not have been accepted.

7. The High Court found that the evidence was cogent and confirmed the conviction. It took note of Explanation I to Sub-section (2) of Section 376 IPC as the case was one of gang rape. It was observed that not only said Explanation I but also provisions of Section 114-A of the Indian Evidence Act, 1872 (in short the 'Evidence Act') applied. Accordingly it was held that involvement of accused appellant Bhupinder cannot be ruled out though he may not have actually raped the victim. In view of the specific provision relating to sentence and in the absence of any adequate and special reason having been indicated by

the trial Judge, the minimum sentence was to be imposed. With these findings the sentence was enhanced as aforesaid.

8. We have heard learned counsel for the respondent-State. He pointed out that the minimum sentences are prescribed for the offence of rape under Sub-sections (1) and (2). Sub-section 2(1)(g) of Section 376 refers to gang rape, Explanation (1) by a deeming provision makes every one in a group of persons acting in furtherance of their common intention guilty of offence of rape and each is deemed to have committed gang rape, even though one or more of them may not have actually committed rape. Unfortunately, there was no appearance on behalf of the accused-appellant and ultimately after the hearing was over and the judgment was reserved and after considerable time thereof appearance was made by learned counsel for the accused appellant. In view of the continued absence without any justifiable reason, and since the matter was closed after hearing learned counsel for the respondent at length, the learned counsel for the accused-appellant though made a request to grant an opportunity of being heard, was only granted permission to file written notes of argument keeping in view, that the quantum of sentence alone was to be subject matter of consideration.

9. The stand as appears from the memorandum of appeal and the written submissions made is that at the most the appellant can be held guilty of an attempt to commit the offence and not commission of the offence itself. The evidence is also claimed to be unreliable in the absence of corroboration and the telltale symptoms of consent. Regarding quantum of sentence personal and family difficulties are urged, as extenuating circumstances.

10. The offence of rape occurs in Chapter XVI of IPC. It is an offence affecting the human body. In that Chapter, there is a separate heading for 'Sexual offence', which encompasses Sections 375, 376, 376-A, 376-B, 376-C, and 376-D. 'Rape' is defined in Section 375. Sections 375 and 376 have been substantially changed by Criminal Law (Amendment) Act, 1983, and several new sections were introduced by the new Act, i.e.. 376-A, 376-B, 376-C, and 376-D. The fact that sweeping changes were introduced reflects the legislative intent to curb with iron hand, the offence of rape which affects the dignity of a woman. The offence of rape in its simplest term is "the ravishment of a woman, without her consents by force, fear or fraud', or as 'the carnal knowledge of a woman by force against her will'. 'Rape' or 'Raptus' is when a man hath carnal knowledge of a woman by force and against her will (Co, Litt. 123-b); or as expressed more fully,' rape is the carnal knowledge of any woman, above the age of particular years, against her will; or of a woman child, under that age, with or against her will' (Hale PC 628). The essential words in an indictment for rape are rapist and carnalities cognovit; but carnalities cognovit, nor any other circumlocution without the word rapist, are not sufficient in a legal sense to express rape; 1 Hon. 6, 1a, 9 Edw. 4, 26 a (Hale PC 628). In the crime of rape, 'carnal knowledge' means the penetration to any the slightest degree of the organ alleged to have been carnally known by the male organ of generation (Stephen's "Criminal Law" 9th Ed. p. 262), In 'Encyclopedia of Crime and Justice' (Volume 4, page 1356) it is stated ".....even slight penetration is sufficient and emission is unnecessary". In Halsbury's Statutes of England and Wales (Fourth Edition) Volume 12, it is stated that even the slightest degree of penetration is sufficient to prove

sexual intercourse. It is violation with violence of the private person of a woman-an-outrage by all means. By the very nature of the offence it is an obnoxious act of the highest order.

11. The physical scar may heal up, but the mental scar will always remain. When a woman is ravished, what is inflicted is not merely physical injury but the deep sense of some deathless shame. An accused cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable. Judicial response to human rights cannot be blunted by legal jugglery. A similar view was expressed by this Court in Rafiq v. State of U.P. MANU/SC/0196/1980: 1980CriLJ1344 with some anguish. The same was echoed again in Bharwada Bhogiabhai and Hirjibhai v. State of Gujarat MANU/SC/0090/1983: 1983CriLJ1096. It was observed in the said case that in the Indian Setting refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight, absence of corroboration notwithstanding. A woman or a girl who is raped is not an accomplice. Corroboration is not the sine qua non for conviction in a rape case. The observations of Vivian Bose, J. in Rameshwar v. The State of Rajasthan MANU/SC/0036/1951: 1952CriLJ547 were. "The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge...".

12. To insist on corroboration except in the rarest of rare cases is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her chain of rape will not be believed unless it is corroborated in material particulars as in" the case of an accomplice to a crime. (See State of Maharashtra v. Chandra Prakash Kewalchand Jain MANU/SC/0122/1990: 1990CriLJ889). Why should be the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance.

13. It is unfortunate that respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. Decency and morality in public and social life cart be protected only if Courts deal strictly with those who violate the social norms. Two alternative custodial punishments are provided; one is imprisonment for life or with imprisonment of either description for a term which may extend to ten years. The

latter is the minimum, subject of course to the proviso which authorizes lesser sentence for adequate and special reasons.

14. In cases of gang rape the proof of completed act of rape by each accused on the victim is not required. The statutory intention in introducing Explanation (1) in relation to Section 376(2)(9) appears to have been done with a view to effectively deal with the growing menace of gang rape. In such circumstances, it is not necessary that the prosecution should adduce clinching proof of a completed act of rape by each one of the accused on the victim or on each one of the victims where there are more than one in order to find the accused guilty of gang rap and convict them under Section 371 IPC - (See Promod Mahto and Ors. v. The State of Bihar MANU/SC/0416/1989: 1989CriLJ1479)

15. Both in cases of Sub-sections (1) and (2) the Court has the discretion to impose a sentence of imprisonment less than the prescribed minimum for 'adequate and special reasons'. If the Court: does not mention such reasons in the judgment there is no scope for awarding a sentence lesser than the prescribed minimum.

16. In order to exercise the discretion of reducing the sentence the statutory requirement is that the Court has to record 'adequate and special reasons' in the judgment and not fanciful reasons which would permit the Court to impose a sentence less than the prescribed minimum. The reason has not only to be adequate but special. What is adequate and special would depend upon several factors and no strait-jacket formula, can be imposed. In the case at hand, only reason which seems to have weighed with the trial Court is that the present accused appellant had not actually committed the rape. That cannot be a ground to warrant lesser sentence; more so in view of Explanation (1) to Sub-section (2) of Section 376. By operation of a deeming provision a member of a group of persons who have acted in furtherance of their common intention per se attract the minimum sentence. Section 34 has been applied by both the trial Court, and the High Court, to conclude that rape was committed in furtherance of common intention. Not only was the accused-appellant present, but also he was waiting for his turn, as evident from the fact that he was in the process of undressing. The evidence in this regard is cogent, credible and trustworthy- Since no other just or special reason was given by the trial Court nor could any such be shown as to what were the reasons to warrant a lesser sentence, the High Court was justified in awarding the mini mum prescribed sentence. That being the position, this appeal is dismissed.

MANU/SC/0030/1957

Back to Section 378 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 51 of 1955

Decided On: 11.02.1957

K.N. Mehra Vs. The State of Rajasthan

Hon'ble Judges/Coram:
B. Jagannadhadas, Parakulangara Govinda Menon and Syed Jaffer Imam, JJ.

JUDGMENT
B. Jagannadhadas, J.

1. The appellant, K. N. Mehra, and one M. Z. Phillips were both convicted under s. 379 of the Indian Penal Code and sentenced to simple imprisonment by the trial Magistrate for eighteen months and a fine of Rs. 750 with imprisonment in default of payment of fine for a further term of four months. The conviction and sentence against them have been confirmed on appeal by the Sessions Judge and on revision by the High Court. The appeal before us is by special leave obtained on behalf of the appellant Mehra alone.

2. Both Mehra and Phillips were cadets on training in the Indian Air Force Academy, Jodhpur. The prosecution is with reference to an incident which is rather extraordinary being for alleged theft of an aircraft, which, according to the evidence of the Commanding Officer, P.W. 1, has never so far occurred. The alleged theft was on May 14, 1952. Phillips was discharged from the Academy just the previous day, i.e., May 13, 1952, on grounds of misconduct. Mehra was a cadet receiving training as a Navigator. The duty of a Navigator is only to guide a pilot with the help of instruments and maps. It is not clear from the evidence whether Phillips also had been receiving training as a Navigator. It is in evidence, however, that he knew flying. On May 14, 1952, Phillips was due to leave Jodhpur by train in view of his discharge. Mehra was due for flight in a Dakota as part of his training along with one Om Prakash, a flying cadet. It is in evidence that he had information about it. The authorised time to take off for the flight was between 6 a.m. to 6.30 a.m. The cadets under training have generally either local fights which mean flying area of about 20 miles from the aerodrome or they may have cross-country exercises and have flight in the country through the route for which they are specifically authorised. On that morning admittedly Mehra and Phillips took off, not a Dakaota, but a Harvard H.T. 822. This was done before the prescribed time, i.e., at about 5 a.m. without authorisation and without observing any of the formalities, which are prerequisites for an aircraft-flight. It is also admitted that some time in the forenoon the same day they landed at a place in Pakistan about 100 miles away from the Indo-Pakistan border. It is in

the evidence of one J. C. Kapoor who was the Military Adviser to the Indian High Commissioner in Pakistan at Karachi, that Mehra and Phillips contacted him in person on the morning of May 16, 1962, at about 7 a.m. and informed him that they had lost their way and force-landed in a field, and that they left the plane there. They requested for his help to go back to Delhi. Thereupon Kapoor arranged for both of them being sent back to Delhi in an Indian National Airways plane and also arranged for the Harvard aircraft being sent away to Jodhpur. While they were thus on their return to Delhi on May 17, 1952, the plane was stopped at Jodhpur and they were both arrested.

3. The case for the prosecution, as appears from the questioning of the trial Magistrate under s. 342 of the code of Criminal Procedure, was that Mehera along with his co-accused Phillips stole away the aircraft Harvard H. T. 822 and few with it to Pakistan with a Harvard intention. The defence, as appears from the answers thereto, was as follows. Mehra went to the aerodrome on the morning of May 14, at the usual time and took off the aircraft along with Phillips and they flew for some time. After a short while the weather became bad and visibility became poor and hence they turned the aircraft back towards Jodhpur-side by guess. They continued what they thought to be the return journey for some time; but finding the petrol nearing exhaustion they force-landed in a field which, on enquiry, they came to know was in Pakistan territory. This defence has not been accepted and the Courts below have held the prosecution case to have been proved.

4. Learned counsel for the appellant, Shri Sethi, attempted to minimise the gravity of the incident by characterising it as a thoughtless prank on the part of a young student aged about 22 years who was receiving training as a flying cadet and that there can be no question of any offence under the Penal Code having been committed, whatever may have been the breach of rules and regulations involved thereby. None of the three courts below who have death with this case were prepared to accept any such suggestion. Indeed in view of the fact that the appellant himself has not put forward any such defence it is impossible to accede to it. The next contention of the learned for the appellant - and that appears also to be the defence of the appellant - is that as a cadet under training he was entitled to take an aircraft on flight, no doubt subject to certain rules and regulations and that what at best happened was nothing more than unauthorised flight by a trainee as part of his training which was due and in which he lost his way. He had to get force-landed in an unknown place and this turned out to be Pakistan territory. The prosecution case, however, is that the flight to Pakistan was intentional and that such flight in the circumstances constituted theft of the aircraft. The main question of fact to be determined, therefore, is whether this was intentional flight into Pakistan territory. It has been strenuously pressed upon us that the trial court was not prepared to accept the story that the flight was an intentional one to Pakistan and hence there was no justification for the appellate court and the High Court to find the contrary. It is also pointed out that Kapoor, the Military Adviser to the Indian High Commissioner in Pakistan, gave evidence that when the appellant and Phillips met him at Karchi on the morning of May 16, 1952, they

told him that they wanted to fly to Delhi with a view to contact the higher authorities there. It was also pointed out that neither the appellant nor Phillips took with them in the flight any of their belongings. Now it is clear from the judgments of the courts below that both High Court on revision, as well as the Sessions Judge on appeal, came to a clear finding on his matter against the appellant. It is true that the trial court said that the suggestion that the appellant and Phillips wanted to go to Delhi was not beyond the realm of possibility. But it gave effect to this possibility only for determining the sentence. The trial Court also seems to have been of the view that the flight was intended for Pakistan as appears from the following passage in its judgment.

"Although the facts on the record point almost conclusively that they were heading towards Pakistan, it is impossible to dismiss the other theory beyond the realm of possibility that they were going to Delhi to contact the higher authorities there."
5. In contemplating this possibility the trial Court seems to have lost sight of the fact that the Delhi theory was not the defence of the appellant in his answers to the questioning under s. 342 of the Code of Criminal Procedure. It was obviously an excuse given to Kapoor in order to impress him that their flight was innocent and to persuade him to sent them back to Delhi instead of to Jodhpur. The significance of this plea, however, is that the suggestion that the flight was by way of a prank or as part of the flying lessons though unauthorised in the particular instance, is clearly untenable.

6. In view however of the somewhat halting finding of the trial Court on this matter, we have been taken through the evidence. It would be enough to mention broadly the facts from which, in our opinion, the conclusion arrived at by the Courts below that the flight was intends for Pakistan is not without sufficient reason and justification. As already stated, the aircraft in which the appellant was scheduled to fly on the morning of May 14, was a Dakota but he took off in a Harvard plane. It is in evidence that this was done between 5 a.m. and 5-30 a.m. i.e., before the prescribed time. The plane had just then been brought out from the hangar in order to be utilised for some other flight in the regular course. Appellant started the engine himself by misrepresenting to P.W. 12, the mechanic on duty at the hangar, that he had the permission of the Section Officer in charge. He was scheduled to have the flight along with another person, a flight-cadet by name Om Prakash. But he did not fly with Om Prakash, but managed to take with him a discharge cadet, Phillips, whom knew flying. Before any aircraft can be taken off, the flight has to be authorised by the Flight Commander. A flight authorisation book and form No. 700 have to be signed by the person who is to take off the aircraft for the flight. Admittedly these have not been done in this case and no authorisation was given. The explanation of the appellant is that this is not uncommon. These, however, are not merely empty formalities but are required for the safety of the aircraft as well as of the persons flying in it. It is impossible to accept the suggestion of the appellant that it is usual to allow trainees to take off the aircraft without complying with these essential preliminaries. No such suggestion has been made in cross-examination to any of the officers, and witnesses, who have been examined for the prosecution. It is in evidence that as soon as the taking off of

the aircraft was discovered, it inevitably attracted the attention of officers and other persons in the aerodrome and that radio signals were immediately sent out to the occupants in the aircraft to bring the same back to once to the aerodrome. But these signals were not heeded. The explanation of the appellant is that the full apparatus of the radio-telephone was not with them in the aircraft and that he did not receive the message. The appellant goes so far as to say that there were also no maps or compass or watch in the aircraft. It is proved, however, on the evidence of the responsible officers connected with the aerodrome and by production of Ex. P-6, that this particular aircraft, before it was brought out from the hangar, had been tested and was airworthy. It is difficult to believe that the flight would have been undertaken without all the equipment being in order. Even according to the evidence of Kapoor, the Military Adviser to the Indian High Commissioner in Pakistan, the appellant and Phillips had told him that the plane was airworthy. The suggestion of the appellant, therefore, in this behalf cannot obviously be accepted. It has been pointed out to us that there is some support in the evidence for the suggestion of force-landing on account of the weather being bad and the visibility being poor. This may be so, but would not explain why the aircraft got force-landed after going beyond the Indo-Pakistan border. There is evidence to show that the appellant Mehra was feeling some kind of dissatisfaction with his course and was contemplating a change. Seeking employment in Pakistan was, according to the evidence, one of the ideas in his mind, though in a very indefinite sort of way. Having regard to all these circumstances and the fact that must be assumed against the appellant that an airworthy aircraft was taken off for flight and that a person like Phillips who knew flying sufficiently well and who was discharged the previous day, was deliberately taken into the aircraft, we are satisfied that the finding of the Courts below, viz., that the flight to Pakistan was intentional and not accidental, was justified. It is, therefore, not possible to treat the facts of this case as being a mere prank or as an unauthorised cross-country flight in the course of which the border was accidentally crossed and force-landing became inevitable.

7. It has been strenuously urged that if the flight was intended to be Pakistan the appellant and Phillips would not have contacted Kapoor and requested him to send them back to Delhi. But this does not necessarily negative their intention at the time of taking off. It may be that after reaching Pakistan the impracticability of their venture dawned upon them and they gave it up. It may be noticed that they were in fact in Pakistan territory for three days and we have nothing but their own word as to how they spent the time on the 14th and 15th. However this may be, if the circumstances are such from which a Court of fact is in a position to infer the purpose and intention and the story of having lost the way cannot be accepted having regard to the aircraft being airworthy, with the necessary equipment, the finding that it was a deliberate flight to Pakistan cannot be said to be unreasonable. It may be true that they did not take with them any of their belongings but this was probably part of the plan in order to take off by surprise and does not exclude the idea of an exploratory flight to Pakistan. We must, therefore, accept the findings of the Courts below. In that view, the only point for consideration is whether the facts held to be proved constitute theft under s. 378 of the Indian Penal Code.

8. Theft is defined in s. 378 of the Indian Penal Code as follows:

"Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit left."

9. Commission of theft, therefore, consists in (1) moving a movable property of a person out of his possession without his consent, (2) the moving being in order to the taking of the property with a dishonest intention. Thus (1) the absence of the person's consent at the time of moving, and (2) the presence of dishonest intention in so taking and at the time, are the essential ingredients of the offence of theft. In the Courts below a contention was raised, which has also been pressed here, that in the circumstances of this case there was implied consent to the moving of the aircraft inasmuch as the appellant was a cadet who, in the normal course, would be allowed to fly in an aircraft for purposes of training. It is quite clear, however, that the taking out of the aircraft in the present case had no relation to any such training. It was in an aircraft different from that which was intended for the appellant's training course for the day. It was taken out without the authority of the Flight Commander and, before the appointed time, in the company of a person like Phillips who, having been discharged, could not be allowed to fly in the aircraft. The flight was persisted in, in spite of signals to return back when the unauthorised nature of the flight was discovered. It is impossible to imply consent in such a situation.

10. The main contention of the learned counsel for the appellant, however, is that there is no proof in this case of any dishonest intention, much less of such an intention at the time when the flight was started. It is rightly pointed out that since the definition of theft requires that the moving of the property is to be in order to such taking. "such" meaning "intending to take dishonestly", the very moving out must be with the dishonest intention. It is accordingly necessary to consider what "dishonest" intention consists of under the Indian Penal Code. Section 24 of the Code says that "whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing dishonestly". Section 23 of the Code says as follows:

"'Wrongful gain' is gain by unlawful means of property to which the person gaining is not legally entitled.

'Wrongful loss' is the loss by unlawful means of property to which the person losing it is legally entitled.

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property."

11. Taking these two definitions together, a person can be said to have dishonest intention, if in taking the property it is his intention to cause gain, by unlawful means, of the property to which the person so gaining is not legally entitled or to cause loss, by wrongful means, of the property to which a person so losing is legally entitled. It is further clear from the definition that the gain or loss contemplated need not be a total acquisition or total deprivation but it is enough if it is a temporary retention of property by the person wrongfully gaining or a temporary "keeping out" of property from the person legally entitled. This is clearly brought out in illustration (1) to s. 378 of the Indian Penal Code and is uniformly recognised by various decisions of the High Courts which point out that in this respect "theft" under the Indian Penal Code differs from "larceny" in English law which contemplated permanent gain or loss. (See Queen-Empress v. Sri Churn Chungo I.L.R. [1895] Cal. 1017, and Queen-Empress v. Nagappa I.L.R. [1890] Bom. 344. In the present case there can be no reasonable doubt that the taking out of the Harvard aircraft by the appellant for the unauthorised flight has in fact given the appellant the temporary use of the aircraft for his own purpose and has temporarily deprived the owner of the aircraft, viz., the Government, of its legitimate use for its purposes, i.e., the use of this Harvard aircraft for the Indian Air Force Squadron that day. Such use being unauthorised and against all the regulations of aircraft-flying was clearly a gain or loss by unlawful means. Further, the unlawful aspect is emphasised by the fact that it was for flight to a place in Pakistan. Learned counsel for the appellant has urged that the courts below have treated absence of consent as making out dishonestly and have not clearly appreciated that the two are distinct and essential constituents of the offence of theft. The true position, however, is that all the circumstances of the unauthorised flight justify the conclusion both as to the absence of consent and as to the unlawfulness of the means by which there has been a temporary gain or loss by the use of the aircraft. We are, therefore, satisfied that there has been both wrongful gain to the appellant and wrongful loss to the Government.

12. The only further questions that remain for consideration, therefore, are whether the causing of such wrongful gain or loss, was intentional and if so whether such intention was entertained at the time when the aircraft was taken. If, as already found, the purpose for which the flight was undertaken was to go to Pakistan, and if in order to achieve that purpose, breach of various regulations relating to the initial taking out of such aircraft for flight was committed at the very outset, there is no difficulty in coming to the conclusion, as the courts below have done, that the dishonest intention, if any, was at the very outset. This is not a case where a person in the position of the appellant started on an authorised flight and exploited it for a dishonesty purpose in the course thereof. In such a case, inference of initial dishonest intention may be difficult. The question, however, is whether the wrongful gain and the wrongful loss were intentional. It is urged that the well-known distinction which Penal Code makes, in various places, between intention to cause a particular result and the knowledge of likelihood of causing as particular result has not been appreciated. It is also suggested that the decided cases have pointed out that

the maxim that every person must be taken to taken to intend the natural consequence of his acts, is a legal fiction which is not recognised for penal consequences in the Indian Penal Code. (See Vullappa v. Bheema Row A.I.R. 1918 Mad. 136. Now whatever may be said about these distinctions in an appropriate case, there is no scope for any doubt in this case, that though the ultimate purpose of the flight was to go to Pakistan, the use of the aircraft for that purpose and the unauthorised and hence unlawful gain of that use to the appellant and the consequent loss to the Government of its legitimate use, can only be considered intentional. This is not by virtue of any presumption but as a legitimate inference from the facts and circumstances of the case. We are, therefore, satisfied that the facts proved constitute theft. The conviction of the appellant under s. 379 of the Indian Penal Code is, in our opinion, right and there is no reason to interfere with the same.

13. Learned counsel for the appellant has very strenuously urged that the circumstances of the case do not warrant the imposition of a substantial sentence of (simple) imprisonment for eighteen months. He also urges that the appellant, who is now on bail, has undergone his sentence for nearly an year and presses upon us that the interests of the justice in the case, do not require that, after the lapse of over four years from the date of the commission of the offence, a young man in the appellant's situation should be sent back to all to serve out the rest of the sentence. We have ascertained from the Advocate appearing for the Government that the appellant has already served a sentence of 11 months and 27 days. Learned counsel for the appellant has also informed us that the appellant was in judicial custody for about eleven months as an under-trial prisoner. In view of all the circumstances of the case, we agree that the interests of justice do not call for being sent back to jail.

14. While therefore, maintaining the conviction of the appellant, K. N. Mehra, we reduce the sentence of imprisonment against him to the period already undergone. The sentence of fine and the sentence of imprisonment in default thereof shall stand. With this medication, in sentence, the appeal is dismissed.

15. Appeal dismissed, and sentence modified.

MANU/BH/0133/1940

Back to Section 383 of Indian Penal Code, 1860

IN THE HIGH COURT OF PATNA

Decided On: 18.09.1940

Jadunandan Singh and Ors. Vs. Emperor

ORDER
Dhavle, J.

1. Narain Dusadh and Sheonandan Singh, the gorait and gomasta respectively of a landlord, were returning after the inspection of some fields when the two petitioners and others came out of an ahar and assaulted them.

2. The petitioner Alakh gave a bhala blow to Narain on the right leg, and then other people assaulted him with lathis. The petitioner Jadunandan and others then assaulted Sheonandan. Jadunandan after this forcibly took the thumb impressions of Narain on one piece of blank paper, and of Sheonandan on three blank papers. On these findings the two petitioners and two others were convicted by the trying Magistrate, Jadunandan being sentenced under Section 384, Penal Code, to six months rigorous imprisonment and Alak to four months rigorous imprisonment under Section 324. Jadunandan was also found guilty under Section 323, but the Magistrate did not consider it necessary to pass any separate sentence on him under that section.

3. Two other men were also convicted by the Magistrate under Section 323 and fined. An appeal which was heard by the Additional Sessions Judge of Gay a failed. When the matter came to this Court, Varma J., rejected the revisional application of the last two men, Baghu Kahar and Chander Singh, but admitted the application of Jadunandan Singh and also, so far as the question of sentence was concerned, that of Alakh.

4. It has been contended on behalf of Jadunandan Singh that no offence under Section 384 has been brought home to him. This contention is rested on the definition of 'extortion' in Section 383 which reads:

Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits 'extortion'.
5. It is clear that this definition makes it necessary for the prosecution to prove that the victims Narain and Sheonandan were put in fear of injury to themselves or to others, and further, were thereby dishonestly induced to deliver papers containing their thumb impressions. The prosecution story in the present case goes no further than that thumb

impressions were "forcibly taken" from them. The details of the forcible taking were apparently not put in evidence. The trial Court speaks of the wrists of the victims being caught and of their thumb impressions being then 'taken.' Cases frequently occur which turn on the difference between the giving and the taking of thumb impressions.

6. In Ramyad Singh v. Emperor Criminal Revn. No. 125 of 1931 heard by Sir Courtney-Terrell C.J., and myself on 15th April 1931, the victim was tied up on refusing to give his thumb impression on a piece of paper. He then consented to put his thumb impression on that piece of paper, and it was by that fear that he was found to have been induced to put his thumb impression on the paper. The conviction under Section 384 was therefore upheld.

7. This was contrasted with the case which had come before me sitting singly in 1930, Kapildeo Singh v. Emperor Criminal Revn. No. 420 of 1930, decided on 15th August 1930, where the finding of fact was that, helped by two others, the petitioner took by force the thumb impressions of the victim--the man was thrown on the ground, his mouth and eyes tied with a gamcha, his left hand pulled out and the thumb put into a kajrauta and then impressions of that thumb taken on certain papers.

8. I had held that in the circumstances there was no inducing the victim to deliver the pieces of paper with his thumb impressions. As to this, the late Chief Justice observed:

If the facts had been that the complainant's thumb had been forcibly seized by one of the petitioners and had been applied to the piece of paper notwithstanding his struggles and protests, then I would agree that there is good ground for saying that the offence committed, whatever it may be, was not the offence of extortion because the complainant would not have been induced by the fear of injury but would have simply been the subject of actual physical compulsion, and I venture to agree with the reasoning of my learned brother Dhavle in Kapildeo Singh v. Emperor Criminal Revn. No. 420 of 1930.
9. The Assistant Government Advocate has drawn attention to Batisa Singh v. Emperor MANU/BH/0023/1932: A.I.R. 1932 Pat. 335 where the petitioners were convicted under Section 347. It is said in one part of the report that the victim was laid down on the floor and gagged and only allowed to go after his thumb impressions were taken on several pieces of paper. Macpherson J. upheld the conviction, after pointing out however that it had been found as a fact that the petitioners intentionally put the victim in fear of injury to himself and thereby dishonestly induced him to place his thumb impression upon certain pieces of paper. There is no such finding in the present case. The lower Courts only speak of the forcible taking of the victim's thumb impressions and as this does not necessarily involve inducing the victim to deliver papers with his thumb impressions, (papers which could no doubt be converted into valuable securities), I must hold that the offence of extortion is not established.

10. The learned advocate suggested that in that event this may be a case of robbery, tot it has not been asserted or found that the papers were taken from the victim's possession. It seems to me that on the findings the offence is no more than the use of criminal force or an assault punishable under Section 352, Penal Code.

11. Jadunandan Singh was also convicted under Section 323, but no separate sentence was passed upon him under that section. I do not propose to interfere with that part of the order of the lower Court, and as regards his conviction under Section 384, Penal Code, which must be replaced by a conviction under Section 352, Penal Code, I sentence him to rigorous imprisonment for three months and a fine of Rs. 100 with two months rigorous imprisonment in default. As regards the petitioner Alakh it has been urged that he is a student.

12. From the record it appears that his age is 22, and though the record does not show that he is a student, an attempt has been made before me quite recently by means of an affidavit and a certificate to show that he is a student. I am not sure that this is any mitigation of the offence of causing hurt with a bhala, but having regard to the nature of the injury that he caused, it seems to me that the ends of justice will be served if the sentence passed upon him under Section 824, Penal Code, is reduced to rigorous imprisonment for three months. Ordered accordingly.

Back to Section 384 of Indian Penal Code, 1860

MANU/SC/0002/1988

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 468 of 1986

Decided On: 29.04.1988

A.R. Antulay Vs. R.S. Nayak and Ors.

Hon'ble Judges/Coram:
B.C. Ray, G.L. Oza, M.N. Venkatachaliah, Ranganath Misra, S. Natarajan, S. Ranganathan and Sabyasachi Mukherjee, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: P.P. Rao, R.D. Ovalekar, M.N. Dwevedi, Salman Khurshid and N.V. Pradhan, Advs
For Respondents/Defendant: Ram Jethmalani, Rani Jethmalani, Ashok Sharma, A.M. Khanwilkar and Ajit S. Bhasme, Advs.

JUDGMENT

1. The main question involved in this appeal, is whether the directions given by this Court on 16th February, 1984. as reported in R.S. Nayak v. A.R. Antulay MANU/SC/0102/1984: 1984CriLJ613 were legally proper. The next question is, whether the action and the trial proceedings pursuant to those directions, are legal and valid. Lastly, the third consequential question is, can those directions be recalled or set aside or annulled in those proceedings in the manner sought for by the appellant. In order to answer these questions certain facts have to be borne in mind.

2. The appellant became the Chief Minister of Maharashtra on or about 9th of June, 1980. On 1st of September, 1981, respondent No. 1 who is a member of the Bharatiya Janta Party applied to the Governor of the State under Section 197 of the Criminal Procedure Code, 1973 (hereinafter referred to as the Code) and Section 6 of the Prevention of Corruption Act, 1947 (hereinafter referred to as the Act) for sanction to prosecute the appellant. On nth of September, 1981, respondent No. 1 filed a complaint before the Additional Metropolitan Magistrate, Bombay against the appellant and other known and unknown persons for alleged offence under Sections 161 and 165 of the Indian Penal Code and Section 5 of the Act as also under Sections 384 and 420 read with Sections 109 and 120B of the Indian Penal Code. The learned Magistrate refused to take cognizance of the offences under the Act without the sanction for prosecution. Thereafter a criminal revision application being C.R.A. No. 1742 of 1981 was filed in the High Court of Bombay, by respondent No. 1.

3. The appellant thereafter on 12th of January, 1982 resigned from the position of Chief Minister in deference to the judgment of the Bombay High Court in a writ petition filed against him. In CRA No. 1742 of 1981 filed by respondent No. 1 the Division Bench of the High Court held that sanction was necessary for the, prosecution of the appellant and the High Court rejected the request of respondent No. 1 to transfer the case from the Court of the Additional Chief Metropolitan Magistrate to itself.

4. On 28th of July, 1982, the Governor of Maharashtra granted sanction under Section 197 of the Code and Section 6 of the Act in respect of five items relating to three subjects only and refused sanction in respect of all other items.

5. Respondent No. 1 on 9th of August, 1982 filed a fresh complaint against the appellant before the learned Special Judge bringing in many more allegations including those for which sanction was refused by the Governor. It was registered as a Special Case No. 24 of 1982. It was submitted by respondent No. 1 that there was no necessity of any sanction since the appellant had ceased to be a public servant after his resignation as Chief Minister.

6. The Special Judge, Shri P.S. Bhutta issued process to the appellant without relying on the sanction order dated 28th of July, 1982. On 20th of October, 1982, Shri P.S. Bhutta overruled the appellant's objection to his jurisdiction to take cognizance of the complaint and to issue process in the absence of a notification under Section 7(2) of the Criminal Law Amendment Act, 1952 (hereinafter referred to as 1952 Act) specifying which of the three Special Judges of the area should try such cases.

7. The State Government on 15th of January, 1983 notified the appointment of Shri R.B. Sule as the Special Judge to try the offences specified under Section 6(1) of the 1952 Act. On or about 25th of July 1983, it appears that Shri R.B. Sule, Special Judge discharged the appellant holding that a member of the Legislative Assembly is a public servant and there was no valid sanction for prosecuting the appellant.

8. On 16th of February, 1984, in an appeal filed by respondent No. 1 directly under Article 136, a Constitution Bench of this Court held that a member of the Legislative Assembly is not a public servant and set aside the order of Special Judge Sule. Instead of remanding the case to the Special Judge for disposal in accordance with law, this Court suo motu withdrew the Special Cases No. 24/82 and 3/83 (arising out of a complaint filed by one P.B. Samant) pending in the Court of Special Judge, Greater Bombay, Shri R.B. Sule and transferred the same to the Bombay High Court with a request to the learned Chief Justice to assign these two cases to a sitting Judge of the High Court for holding the trial from day to day. These directions were given, according to the appellant, without any pleadings, without any arguments, without any such prayer from either side and without giving any opportunity to the appellant to make his submissions before issuing the same.

It was submitted that the appellant's right to be tried by a competent court according to the procedure established by law enacted by Parliament and his rights of appeal and revision to the High Court under Section 9 of the 1952 Act had been taken away.

9. The directions of this Court mentioned hereinbefore are contained in the decision of this Court in R.S. Nayak v. A.R. Antulay MANU/SC/0102/1984: 1984CriLJ613. There the Court was mainly concerned with whether sanction to prosecute was necessary. It was held that no such sanction was necessary in the facts and circumstances of the case. this Court further gave the following directions:

The accused was the Chief Minister of a premier State-the State of Maharashtra. By a prosecution launched as early 'as on September 11, 1981, his character and integrity came under a cloud. Nearly two and a half years have rolled by and the case has not moved an inch further. An expeditious trial is primarily in the interest of the accused and a mandate of Article 21. Expeditious disposal of a criminal case is in the interest of both the prosecution and the accused. Therefore, Special Case No. 24 of 1982 and Special Case No. 3/83 pending in the Court of Special Judge, Greater Bombay Shri R.B. Sule are withdrawn and transferred to the High Court of Bombay with a request to the learned Chief Justice to assign these two cases to a sitting Judge of the High Court. On being so assigned, the learned Judge may proceed to expeditiously dispose of the cases preferably by holding the trial from day to day.

10. The appellant as mentioned hereinbefore had appeared before the Special Judge and objected to the jurisdiction of the learned Judge on the ground that the case had not been properly allocated to him by the State Government. The Special Judge Bhutta after hearing the parties had decided the case was validly filed before him and he had properly taken cognizance. He based his order on the construction of the notification of allocation which was in force at that time. Against the order of the learned Special Judge rejecting the appellant's contention, the appellant filed a revision application in the High Court of Bombay. During the pendency of the said revision application, the Government of Maharashtra issued a notification appointing Special Judge R.B. Sule, as the Judge of the special case. It is the contention of the respondents before us that the appellant thereafter did not raise any further objection in the High Court against cognizance being taken by Shri Bhutta. It is important to take note of this contention because one of the points urged by Shri Rao on behalf of the appellant was that not only we should set aside the trial before the High Court as being without jurisdiction but we should direct that no further trial should take place before the Special Judge because the appellant has suffered a lot of which we shall mention later but also because cognizance of the offences had not been taken properly. In order to meet the submission that cognizance of the offences had not been taken properly, it was urged by Shri Jethmalani that after the Government Notification appointing Judge Sule as the Special Judge, the objection that cognizance of the offences could not be taken by Shri Bhutta was not agitated any further. The other objections that the appellant raised against the order passed by Judge Bhutta were

dismissed by the High Court of Bombay. Against the order of the Bombay High Court the appellant filed a petition under Article 136 of the constitution. The appeal after grant of leave was dismissed by a judgment delivered on 16th February, 1984 by this Court in A.R. Antulay v. Ramdas Sriniwas Nayak and Anr. MANU/SC/0082/1984: 1984CriLJ647. There at page 954 of the report, this Court categorically observed that a private complaint filed by the complainant was clearly maintainable and that the cognizance was properly taken. This was the point at issue in that appeal. This was decided against the appellant. On this aspect therefore, the other point is open to the appellant. We are of the opinion that this observation of this Court cannot by any stretch of imagination be considered to be without jurisdiction. Therefore, this decision of this Court precludes any scope for argument about the validity of the cognizance taken by Special Judge Bhutta. Furthermore, the case had proceeded further before the Special Judge, Shri Sule and the learned Judge passed an order of discharge on 25th July, 1983. This order was set aside by the Constitution Bench of this Court on 16th February, 1984, in the connected judgment (vide MANU/SC/0102/1984: 1984CriLJ613. The order of taking cognizance had therefore become final and cannot be reagitated. Moreover Section 460(e) of the Code expressly provides that if any Magistrate not empowered by law to take cognizance of an offence on a complaint under Section 190 of the Code erroneously in good faith does so his proceedings shall not be set aside merely on the ground that he was not so empowered.

11. Pursuant to the directions of this Court dated 16th February, 1984, on 1st of March, 1984, the Chief Justice of the Bombay High Court assigned the cases to S.N. Khatri, J. The appellant, it is contended before us, appeared before Khatri, J. and had raised an objection that the case could be tried by a Special Judge only appointed by the Government under the 1952 Act. Khatri, J. on 13th of March, 1984, refused to entertain the appellant's objection to jurisdiction holding that he was bound by the order of this Court. There was another order passed on 16th of March, 1984 whereby Khatri, J. dealt with the other contentions raised as to his jurisdiction and rejected the objections of the appellant.

12. Being aggrieved the appellant came up before this Court by filing special leave petitions as well as writ petition. this Court on 17th April, 1984, in Abdul Rehman Antulay v. Union of India and Ors. etc. [1984] 3 S.C.R. 482 held that the learned Judge was perfectly justified and indeed it was the duty of the learned Judge to follow the decision of this Court which was binding on him. this Court in dismissing the writ petition observed, inter alia, as follows:

In my view, the writ petition challenging the validity of the order and judgment passed by this Court as nullity or otherwise incorrect cannot be entertained. I wish to make it clear that the dismissal of this writ petition will not prejudice the right of the petitioner, to approach the Court with an appropriate review petition or to file any other application which he may be entitled in law to file.

13. D.N. Mehta, J. to whom the cases were transferred from Khatri, J. framed charges under 21 heads and declined to frame charges under 22 other heads proposed by respondent No. 1. this Court allowed the appeal by special leave preferred by respondent No. 1 except in regard to three draft charges under Section 384, I.P.C. (extortion) and directed the Court below to frame charges with regard to all other offences alleged. this Court requested the Chief Justice of the Bombay High Court to nominate another Judge in place of D.N. Mehta, J. to take up the trial and proceed expeditiously to dispose of the case finally. See in this connection R.S. Nayak v. A.R. Antulay and Anr. MANU/SC/0198/1986: 1986CriLJ1922.

14. P.S. Shah, J. to whom the cases were referred to from D.N. Mehta, J. on 24th of July, 1986 proceeded to frame as many as 79 charges against the appellant and decided not to proceed against the other named co-conspirators. This is the order impugned before us. Being aggrieved by the aforesaid order the appellant filed the present Special leave Petition (Crl.) No. 2519 of 1986 questioning the jurisdiction to try the case in violation of the appellant's fundamental rights conferred by Articles 14 and 21 and the provisions of the Act of 1952. The appellant also filed Special leave Petition (Crl.) No. 2518 of 1986 against the judgment and order dated 21st of August, 1986 of P.S. Shah, J. holding that none of the 79 charges framed against the accused required sanction under Section 197(1) of the Code. The appellant also filed a Writ Petition No. 542 of 1986 challenging a portion of Section 197(1) of Code as ultra vires Articles 14 and 21 of the Constitution.

15. this Court granted leave in Special Leave Petition (Crl.) No. 2519 of 1986 after hearing respondent No. 1 and stayed further proceedings in the High Court. this Court issued notice in Special Leave Petition (Crl.) No. 2518 and Writ Petition (Crl.) No. 542 of 1986 and directed these to be tagged on with the appeal arising out of Special Leave Petition (Crl.) No. 2519 of 1986.

16. On 11th of October, 1986 the appellant filed a Criminal Miscellaneous Petition for permission to urge certain additional grounds in support of the plea that the origination of the proceedings before the Court of Shri P.S. Bhutta, Special Judge and the process issued to the appellant were illegal and void an initio.

17. this Court on 29th October, 1986 dismissed the application for revocation of special leave petition filed by respondent No. 1 and referred the appeal to a Bench of 7 Judges of this Court and indicated the points in the note appended to the order for consideration of this Bench.

18. So far as SLP (Crl.) No. 2518/86 against the judgment and order dated 21st August, 1986 of P.S. Shah, J. of the Bombay High Court about the absence of sanction under Section 197 of the Code is concerned, we have by an order dated 3rd February, 1988 delinked that special leave petition inasmuch as the same involved consideration of an independent question and directed that the special leave petition should be heard by any

appropriate Bench after disposal of this appeal, Similarly, Writ Petition (Crl.) No. 542 of 1986 challenging a portion of Section 197(1) of the Criminal Procedure Code as ultra vires Articles 14 and 21 of the Constitution had also to be delinked by our order dated 3rd February, 1988 to be heard along with special leave petition no 2518 of 1986. This judgment therefore, does not cover these two matters.

19. In this appeal two questions arise, namely, (1) whether the directions given by this Court on 16th of February, 1984 in R.S. Nayak v. A.R. Antulay MANU/SC/0102/1984: 1984CriLJ613 withdrawing the Special Case No. 24/82 and Special Case No. 3/83 arising out of the complaint filed by one shri P.B. Samant pending in the Court of Special Judge, Greater Bombay, Shri R.B. Sule, and transferring the same to the High Court of Bombay with a request to the Chief Justice to assign these two cases to a sitting Judge of the High Court, in breach of Section 7(1) of the Act of 1952 which mandates that offences as in this case shall be tried by a Special Judge only thereby denying at least one right of appeal to the appellant was violative of Articles 14 and 21 of the Constitution and whether such directions were at all valid or legal and (2) if such directions were not at all valid or legal in view of the order dated 17th of April, 1984 referred to hereinbefore, is this appeal sustainable or the grounds therein justiciable in these proceedings. In other words, are the said directions in a proceedings inter-parties binding even if bad in law or violative of Articles 14 and 21 of the Constitution and as such are immune from correction by this Court even though they cause prejudice and do injury? These are the basic questions which this Court must answer in this appeal.

20. The contention that has been canvassed before us was that save as provided in Sub-section (1) of Section 9 of the Code the provisions thereof (corresponding to Section 9(1) of the Criminal Procedure Code, 1898) shall so far as they are not inconsistent with the Act apply to the proceedings before the Special Judge and for purposes of the said provisions the Court of the Special Judge shall be deemed to be a Court of Session trying cases without a jury or without the aid of assessors and the person conducting the prosecution before a Special Judge shall be deemed to be a public prosecutor. It was submitted 'before us that it was a private complaint and the prosecutor was not the public prosecutor. This was another infirmity which this trial suffered, it was pointed out. In the background of the main issues involved in this appeal we do not propose to deal with this subsidiary point which is of not any significance.

21. The only question with which we are concerned in this appeal is, whether the case which is triable under the 1952 Act only by a Special Judge appointed under Section 6 of the said Act could be transferred to the High Court for trial by itself or by this Court to the High Court for trial by it. Section 406 of the Code deals with transfer of criminal cases and provides power to this Court to transfer cases and appeals whenever it is made to appear to this Court that an order under this section is expedient for the ends of justice. The law provides that this Court may direct that any particular case or appeal be transferred from one High Court to another High Court or from a Criminal Court

subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court. Equally Section 407 deals with the power of High Court to transfer cases and appeals. Under Section 6 of the 1952 Act, the State Government is authorised to appoint as many Special Judges as may be necessary for such area or areas for specified offences including offences under the Act. Section 7 of the 1952 Act deals with cases triable by Special Judges. The question, therefore, is whether this Court under Section 406 of the Code could have transferred a case which was triable only by a Special Judge to be tried by the High Court or even if an application had been made to this Court under Section 406 of the Code to transfer the case triable by a Special Judge to another Special Judge could that be transferred to a High Court, for trial by it. It was contended by Shri Rao that the jurisdiction to entertain and try cases is conferred either by the Constitution or by the laws made by Parliament. He referred us to the powers of this Court under Articles 32, 131, 137, 138, 140, 142 and 145(1) of the Constitution. He also referred to Entry 77 of List I of the Constitution which deals with the Constitution of the courts. He further submitted that the appellant has a right to be tried in accordance with law and no procedure which will deny the equal protection of law can be invented and any order passed by this Court which will deny equal protection of laws would be an order which is void by virtue of Article 13(2) of the Constitution. He referred us to the previous order of this Court directing the transfer of cases to the High Court and submitted that it was a nullity because of the consequences of the wrong directions of this Court, The enormity of the consequences warranted this Court's order being treated as a nullity. The directions denied the appellant the remedy by way of appeal as of right. Such erroneous or mistaken directions should be corrected at the earliest opportunity, Shri Rao submitted.

22. Shri Rao also submitted that the directions given by the Court were without jurisdiction and as such void. There was no jurisdiction, according to Shri Rao, or power to transfer a case from the Court of the Special Judge to any High Court. Section 406 of the Code only permitted transfer of cases from one High Court to another High Court or from a Criminal Court subordinate to one High Court to a Criminal Court subordinate to another High Court. It is apparent that the impugned directions could not have been given under Section 406 of the Code as the Court has no such power to order the transfer from the Court of the Special Judge to the High Court of Bombay.

23. Section 7(1) of the 1952 Act creates a condition which is sine qua non for the trial of offences under Section 6(1) of the said Act. The condition is that notwithstanding anything contained in the CrPC or any other law, the said offences shall be triable by Special Judges only. (Emphasis supplied). Indeed conferment of the exclusive jurisdiction of the Special Judge is recognised by the judgment delivered by this Court in A.R. Antulay v. Ramdas Sriniwas Nayak and Anr. MANU/SC/0082/1984: 1984CriLJ647 where this Court had adverted to Section 7(1) of the 1952 Act and at page 931 observed that Section 7 of the 1952 Act conferred exclusive jurisdiction on the Special Judge appointed under Section 6 to try cases set out in Section 6(1)(a) and 6(1)(b) of the said Act.

The Court emphasised that the Special Judge had exclusive jurisdiction to try offences enumerated in Section 6(1)(a) and (b). In spite of this while giving directions in the other matter, that is, R.S. Nayak v. A.R. Antulay MANU/SC/0102/1984: 1984CriLJ613, this Court directed transfer to the High Court of Bombay the cases pending before the Special Judge. It is true that Section 7(1) and Section 6 of the 1952 Act were referred to while dealing with the other matters but while dealing with the matter of directions and giving the impugned directions, it does not appear that the Court kept in mind the exclusiveness of the jurisdiction of the Special Court to try the offences enumerated in Section 6.

24. Shri Rao made a point that the directions of the Court were given per incuriam, that is to say without awareness of or advertence to the exclusive nature of the jurisdiction of the Special Court and without reference to the possibility of the violation of the fundamental rights in a case of this nature as observed by a seven Judges Bench decision in The State of West Bengal v. Anwar Ali Sarkar MANU/SC/0033/1952: 1952CriLJ510.

25. Shri Ram Jethmalani on behalf of the respondents submitted that the judgment of the Constitution Bench of this Court was delivered on 16th of February, 1984 and counsel for both sides were present and it was neither objected to nor stated by the appellant that he wanted to be heard in regard to the transfer of the trial forum. He submitted that the order of discharge was not only challenged by a special leave petition before this Court but also that a revision application before the High Court being Criminal Revision Application No. 354/83 was filed but the Criminal Revision Application by an order of this Court was withdrawn and heard along with the special leave petition. That application contained a prayer to the effect that the order of discharge be set aside and the case be transferred to the High Court for trial. Therefore, it was submitted that the order of transfer was manifestly just. There was no review against this order. It was submitted that the order of transfer to a superior court cannot in law or in fact ever cause any harm or prejudice to any accused. It is an order made for the benefit of the accused and in the interests of justice. Reliance was placed on Romesh Chandra Arora v. The State MANU/SC/0034/1959: 1960CriLJ177. It was further submitted by Shri Jethmalani that a decision which has become final cannot be challenged. Therefore, the present proceedings are an abuse of the process of the Court, according to him. It was further submitted that all the attributes of a trial court were present in a Court of Appeal, an appeal being a continuation of trial before competent Court of Appeal and, therefore, all the qualifications of the trial court were there. The High Court is authorised to hear an appeal from the judgment of the Special Judge under the Act of 1952. It was submitted that a Special Judge except in so far as a specific provision to the contrary is made is governed by all the provisions of the Code and he is a Court subordinate to the High Court. See A.R. Antulay v. R.S. Nayak and Anr. MANU/SC/0082/1984: 1984CriLJ647.

26. It was submitted that power under Section 526 of the old Code corresponding to Section 407 of the new Code can be exercised qua a Special Judge. This power, according to Shri Jethmalani, is exercise-able by the High Court in respect of any case under Section

407(1)(iv) irrespective of the Court in which it is pending. This part of the section is not repealed wholly or pro tanto, according to the learned Counsel, by anything in the 1952 Act. The Constitution Bench, it was submitted, consciously exercised this power. It decided that the High Court had the power to transfer a case to itself even from a Special Judge. That decision is binding at least in this case and cannot be reopened, it was urged. In this case what was actually decided cannot be undone, we were told repeatedly. It will produce an intolerable state of affairs. this Court sought to recognise the distinction between finality of judicial orders qua the parties and the reviewability for application to other cases. Between the parties even a wrong decision can operate as res judicata. The doctrine of res judicata is applicable even to criminal trials, it was urged. Reliance was placed on Bhagat Ram v. State of Rajasthan MANU/SC/0090/1972: 1972CriLJ909. A judgment of a High Court is binding in all subsequent proceedings in the same case; more so, a judgment which was unsuccessfully challenged before this Court.

27. It is obvious that if a case could be transferred under Section 406 of the Code from a Special Judge it could only be transferred to another Special Judge or a court of superior jurisdiction but subordinate to the High Court. No such court exists. Therefore, under this section the power of transfer can only be from one Special Judge to another Special Judge. Under Section 407 however, corresponding to Section 526 of the old Code, it was submitted the High Court has power to transfer any case to itself for being tried by it, it was submitted (sic).

28. It appears to us that in Gurcharan Das Chadha v. State of Rajasthan [1966] 2 S.C.R. 678 an identical question arose. The petitioner in that case was a member of an All India Service serving in the State of Rajasthan. The State Government ordered his trial before the Special Judge of Bharatpur for offences under Section 120B/161 of the Indian Penal Code and under Sections 5(1)(a) and (d) and 5(2) of the Act. He moved this Court under Section 527 of the old Code praying for transfer of his case to another State on various grounds. Section 7(1) of the Act required the offences involved in that case to be tried by a Special Judge only, and Section 7(2) of the Act required the offences to be tried by a Special Judge for the area within which these were committed which condition could never be satisfied if there was a transfer. this Court held that the condition in Sub-section (1) of Section 7 of the Act that the case must be tried by a Special Judge, is a sine qua non for the trial of offences under Section 6. This condition can be satisfied by transferring the case from one Special Judge to another Special Judge. Sub-section (2) of Section 7 merely distributes, it was noted, work between Special Judges appointed in a State with reference to territory. This provision is at par with the section of the Code which confers territorial jurisdiction on Sessions Judges and magistrates. An order of transfer by the very nature of things must sometimes result in taking the case out of the territory. The third sub-section of Section 8 of the Act preserves the application of any provision of the Code if it is not inconsistent with the Act save as provided by the first two sub-sections of that Section. It was held by this Court that Section 527 of the old Code, hence, remains applicable if it is not inconsistent with Section 7(2) of the Act. It was held that there was

no inconsistency between Section 527 of the Code and Section 7(2) of the Act as the territorial jurisdiction created by the latter operates in a different sphere and under different circumstances. Inconsistency can only be found if two provisions of law apply in identical circumstances, and create contradictions. Such a situation does not arise when either this Court or the High Court exercises the power of transfer. Therefore, this Court in exercise of its jurisdiction and power under Section 527 of the Code can transfer a case from a Special Judge subordinate to one High Court to another Special Judge subordinate to another High Court. It has to be emphasised that that decision was confined to the power under Section 527 of the previous Code and to transfer from one Special Judge to another Special Judge though of another State. It was urged by Shri Jethmalani that Chadha's case (supra) being one of transfer from one Special Judge to another the judgment is not an authority for the proposition that it cannot be transferred to a court other than that of a Special Judge or to the High Court. But whatever be the position, this is no longer open at this juncture.

29. The jurisdiction, it was submitted, created by Section 7 of the Act of 1952 is of exclusiveness qua the Courts subordinate to the High Court. It is not exclusive qua a Court of superior jurisdiction including a Court which can hear an appeal against its decision. The non-obstante clause does not prevail over other provisions of the Code such as those which recognise the powers of the superior Courts to exercise jurisdiction on transfer. It was submitted that the power of transfer vested in the High Court is exercisable qua Special Judges and is recognised not merely by Chadha's case but in earlier cases also, Shri Jethmalani submitted.

30. It was next submitted that apart from the power under Sections 406 and 407 of the Code the power of transfer is also exercisable by the High Court under Article 228 of the Constitution. There is no doubt that under this Article the case can be withdrawn from the Court of a Special Judge. It is open to the High Court to finally dispose it of. A chartered High Court can make orders of transfer under Clause 29 of the Letters Patent. Article 134(1)(b) of the Constitution expressly recognises the existence of such power in every High Court.

31. It was further submitted that any case transferred for trial to the High Court in which it exercises jurisdiction only by reason of the order of transfer is a case tried not in ordinary original criminal jurisdiction but in extraordinary original criminal jurisdiction. Some High Courts had both ordinary criminal jurisdiction as well as extraordinary criminal original jurisdiction. The former was possessed by the High Courts of Bombay, Madras and Calcutta. The first two High Courts abolished it in the 40's and the Calcutta High Court continued it for quite some time and after the 50's in a truncated form until it was finally done away with by the Code. After the Code the only original criminal jurisdiction possessed by all the High Courts is extraordinary. It can arise by transfer under the Code or the Constitution or under Clause 29 of the Letters Patent. It was submitted that it was not right that extraordinary original criminal jurisdiction is

contained only in Clause 24 of the Letters Patent of the Bombay High Court. This is contrary to Section 374 of the Code itself. That refers to all High Courts and not merely all or any one of the three Chartered High Courts. In P.P. Front, New Delhi v. K.K. Birla and Ors. MANU/DE/0037/1983: 23(1983)DLT499, the Delhi High Court recognised its extraordinary original criminal jurisdiction as the only one that it possessed. The nature of this jurisdiction is clearly explained in Madura, Tirupparankundram etc. v. Alikhan Sahib and Ors. MANU/WB/0033/1931: 35 C W N 1088 and Sunil Chandra Roy and Anr. v. The State, MANU/WB/0110/1954: AIR1954Cal305. Reference may also be made to the Law Commissioner's 41st Report, paragraphs 3.1 to 3.6 at page 29 and paragraph 31.10 at page 259.

32. The 1952 Act was passed to provide for speedier trial but the procedure evolved should not be so directed, it was submitted, that it would violate Article 14 as was held in Anwar Ali Sarkar's case (supra).

33. Section 7 of the 1952 Act provides that notwithstanding anything contained in the CrPC, or in any other law the offences specified in Sub-section (1) of Section 6 shall be triable by Special Judges only. So the law provides for a trial by Special Judge only and this is notwithstanding anything contained in Sections 406 and 407 of the CrPC, 1973. Could it, therefore, be accepted that this Court exercised a power not given to it by Parliament or the Constitution and acted under a power not exercisable by it? The question that has to be asked and answered is if a case is tried by a Special Judge or a court subordinate to the High Court against whose order an appeal or a revision would lie to the High Court, is transferred by this Court to the High Court and such right of appeal or revision is taken away would not an accused be in a worse position than others? this Court in R.S. Nayak v. A.R. Antulay MANU/SC/0102/1984: 1984CriLJ613 did not refer either to Section 406 or Section 407 of the Code. It is only made clear that if the application had been made to the High Court under Section 407 of the Code, the High Court might have transferred the case to itself.

34. The second question that arises here is if such a wrong direction has been given by this Court can such a direction inter-parties be challenged subsequently. This is really a value perspective judgment.

35. In Kiran Singh and Ors. v. Chaman Paswan and Ors. MANU/SC/0116/1954: [1955]1SCR117 Venkatarama Ayyar, J. observed that the fundamental principle is well established that a decree passed by a Court without jurisdiction is a nullity, and that its validity could be set up whenever and wherever it is sought to be enforced or relied upon-even at the stage of execution and even in collateral proceedings. A defect of jurisdiction whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties.

36. This question has been well put, if we may say so, in the decision of this Court in M.L. Sethi v. R.P. Kapur MANU/SC/0245/1972: [1973]1SCR697 where Mathew, J. observed that the jurisdiction was a verbal coat of many colours and referred to the decision in Anisminic Ltd. v.Foreign Compensation Commission [1969] 2 A.C. 147 where the majority of the House of Lords dealt with the assimilation of the concepts of 'lack' and 'excess' of jurisdiction or, in other words, the extent to which we have moved away from the traditional concept of jurisdiction. The effect of the dicta was to reduce the difference between jurisdictional error and error of law within jurisdiction almost to a vanishing point. What is a wrong decision on a question of limitation, he posed referring to an article of Professor H.W.R. Wade, "Constitutional and Administrative Aspects of the Anismanic case" and concluded; "it is a bit difficult to understand how an erroneous decision on a question of limitation or res judicata would oust the jurisdiction of the Court in the primitive sense of the term and render the decision or decree embodying the decision a nullity liable to collateral attack.... And there is no yardstick to determine the magnitude of the error other than the opinion of the Court."

(Emphasis supplied)

37. While applying the ratio to the facts of the present controversy, it has to be borne in mind that Section 7(1) of the 1952 Act creates a condition which is sine qua non for the trial of offenders under Section 6(1) of-that Act. In this connection, the offences specified under Section 6(1) of the 1952 Act are those punishable under Sections 161, 162, 163, 164 and 165A of the Indian Penal Code and Section 5 of the 1947 Act. Therefore, the order of this Court transferring the cases to the High Court on 16th February, 1984, was not authorised by law. this Court, by its directions could not confer jurisdiction on the High Court of Bombay to try any case which it did not possess such jurisdiction under the scheme of the 1952 Act. It is true that in the first judgment in A.R. Antulay v. Ramdas Sriniwas Nayak and Anr. MANU/SC/0082/1984: 1984CriLJ647 when this Court was analysing the scheme of the 1952 Act, it referred to Sections 6 and 7 at page 931 of the Reports. The arguments, however, were not advanced and it does not appear that this aspect with its ramifications was present in the mind of the Court while giving the impugned directions.

38. Shri Jethmalani sought to urge before us that the order made by the Court was not without jurisdiction or irregular. We are unable to agree. It appears to us that the order was quite clearly per incuriam. this Court was not called upon and did not decide the express limitation on the power conferred by Section 407 of the Code which includes offences by public servants mentioned in the 1952 Act to be overridden in the manner sought to be followed as the consequential direction of this Court. this Court, to be plain, did not have jurisdiction to transfer the case to itself. That will be evident from an analysis of the different provisions of the Code as well as the 1952 Act. The power to create or enlarge jurisdiction is legislative in character, so also the power to confer a right of appeal or to take away a right of appeal. Parliament alone can do it by law and no Court, whether

superior or inferior or both combined can enlarge the jurisdiction of a Court or divest a person of his rights of revision and appeal.

See in this connection the observations in M.L. Sethi v. R.P. Kapur (supra) in which Justice Mathew considered Anisminic [1969] 2 AC 147 and also see Halsbury's Laws of England, 4th Edn. Vol. 10 page 327 at para 720 onwards and also Amnon Rubinstein 'Jurisdiction and Illegality' 1965 Edn. 16. Reference may also be made to Raja Soap Factory v. S.P. Shantaraj MANU/SC/0231/1965: [1965]2SCR800.
39. The question of validity, however, is important in that the want of jurisdiction can be established solely by a superior Court and that, in practice, no decision can be impeached collaterally by any inferior Court. But the superior Court can always correct its own error brought to its notice either by way of petition or ex debito justitiae. See Rubinstein's Jurisdiction and Illegality' (supra).

40. In the aforesaid view of the matter and the principle reiterated, it is manifest that the appellant has not been ordered to be tried by a procedure mandated by law, but by a procedure which was violative of Article 21 of the Constitution. That is violative of Articles 14 and 19 of the Constitution also, as is evident from the observations of the 7 Judges Bench judgment in Anwar Ali Sarkar's case (supra) where this Court found that even for a criminal who was alleged to have committed an offence, a special trial would be per se illegal because it will deprive the accused of his substantial and valuable privileges of defences which, others similarly charged, were able to claim. As Justice Vivian Bose observed in the said decision at page 366 of the report, it matters not whether it was done in good faith, whether it was done for the convenience of Government, whether the process could be scientifically classified and labelled, or whether it was an experiment for speedier trial made for the good of society at large. Justice Bose emphasised that it matters not how lofty and laudable the motives were. The question which must be examined is, can fair minded, reasonable, unbiased and resolute men regard that with equanimity and call it reasonable, just and fair, regard it as equal treatment and protection in the defence of liberties which is expected of a sovereign democratic republic in the conditions which are obtained in India today. Judged by that view the singling out of the appellant in this case for a speedier trial by the High Court for an offence of which the High Court had no jurisdiction to try under the Act of 1952 was, in our opinion, unwarranted, unprecedented and the directions given by this Court for the said purpose, were not warranted. If that is the position, when that fact is brought to our notice we must remedy the situation. In rectifying the error, no procedural inhibitions should debar this Court because no person should suffer by reason of any mistake of the Court. The Court, as is manifest, gave its directions on 16th February, 1984. Here no rule of res judicata would apply to prevent this Court from entertaining the grievance and giving appropriate directions. In this connection, reference may be made to the decision of the Gujarat High Court in Soni Vrajlal Jethalal v. Soni Jadavji Govindji and Ors. MANU/GJ/0033/1972: AIR1972Guj148. Where D.A. Desai, J. speaking for the Gujarat High Court observed that no act of the court or irregularity can come in the way

of justice being done and one of the highest and the first duty of all Courts is to take care that the act of the Court does no injury to the suitors.

41. It appears that when this Court gave the aforesaid directions on 16th February, 1984, for the disposal of the case against the appellant by the High Court, the directions were given oblivious of the relevant provisions of law and the decision in Anwar Ali Sarkar's case (supra). See Halsbury's Laws of England, 4th End, Vol. 26, page 297, para 578 and page 300, the relevant notes 8, 11 and 15; Dias on Jurisprudence, 5th Edn., pages 128 and 130; Young v. Bristol Aeroplane Co. Ltd. [1944] 2 AER 293. Also see the observations of Lord Goddard in Moore v. Hewitt [1947] 2 A.E.R. 270-A and Penny v. Nicholas [1950] 2 A.E.R. 89. "per incuriam" are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the Court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong. See Morelle v. Wakeling [1955] 1 All E.R. 708. Also see State of Orissa v. The Titaghur Paper Mills Co. Ltd. MANU/SC/0325/1985: [1985]3SCR26. We are of the opinion that in view of the clear provisions of Section 7(2) of the Criminal Law Amendment Act, 1952 and Articles 14 and 21 of the Constitution, these directions were legally wrong.

42. The principle that the size of the Bench-whether it is comprised of two or three or more Judges-does not matter, was enunciated in Young v. Bristol Aeroplane Co. Ltd. (supra) and followed by Justice Chinnappa Reddy in Javed Ahmed Abdul Hamid Pawala v. State of Maharashtra MANU/SC/0090/1984: 1984CriLJ1909 where it has been held that a Division Bench of three Judges should not overrule a Division Bench of two Judges, has not been followed by our Courts. According to well-settled law and various decisions of this Court, it is also well-settled that a Full Bench or a Constitution Bench decision as in Anwar Ali Sarkar's case (supra) was binding on the Constitution Bench because it was a Bench of 7 Judges.

43. The principle in England that the size of the Bench does not matter, is clearly brought out in the decision of Evershed M.R. in the case of Morelle v. Wakeling (supra). The law laid down by this Court is somewhat different. There is a hierarchy within the Court itself here, where larger Benches overrule smaller Benches. See the observations of this Court in Mattulal v. Radhe Lal MANU/SC/0010/1974: [1975]1SCR127, Union of India and Anr. v. K.S. Subramanian MANU/SC/0468/1976: (1977)ILLJ5SC at page 92 and State of U.P. v. Ram Chandra Trivedi MANU/SC/0465/1976: (1977)ILLJ200SC. This is the practice followed by this Court and now it is a crystallised rule of law. See in this connection, as mentioned hereinbefore, the observations of the State of Orissa v. Titagarh Paper Mills (supra) and also Union of India and Ors. v. Godfrey Philips India Ltd. [1985] Su. 3 SCR 123.

44. In support of the contention that a direction to delete wholly the impugned direction of this Court be given, reliance was placed on Satyadhvan Ghoshal v. Deorajini Devi

MANU/SC/0295/1960: [1960]3SCR590. The ratio of the decision as it appears from pages 601 to 603 is that the judgment which does not terminate the proceedings, can be challenged in an appeal from final proceedings. It may be otherwise if subsequent proceedings were independent ones.

45. The appellant should not suffer on account of the direction of this Court based upon an error leading to conferment of jurisdiction.

46. In our opinion, we are not debarred from re-opening this question and giving proper directions and correcting the error in the present appeal, when the said directions on 16th February, 1984, were violative of the limits of jurisdiction and the directions have resulted in deprivation of the fundamental rights of the appellant, guaranteed by Articles 14 and 21 of the Constitution. The appellant has been treated differently from other offenders, accused of a similar offence in view of the provisions of the Act of 1952 and the High Court was not a Court competent to try the offence. It was directed to try the appellant under the directions of this Court, which was in derogation of Article 21 of the Constitution. The directions have been issued without observing the principle of audi alteram partem. It is true that Shri Jethmalani has shown us the prayers made before the High Court which are at page 121 of the paper-book. He argued that since the transfers have been made under Section 407, the procedure would be that given in Section 407(8) of the Code. These directions, Shri Jethmalani sought to urge before us, have been given in the presence of the parties and the clarificatory order of April 5, 1985 which was made in the presence of the appellant and his Counsel as well as the Counsel of the State Government of Maharashtra, expressly recorded that no such submission was made in connection with the prayer for grant of clarification. We are of the opinion that Shri Jethmalani is not right when he said that the decision was not made per incuriam as submitted by the appellant. It is a settled rule that if a decision has been given per incuriam the Court can ignore it. It is also true that the decision of this Court in the case of The Bengal Immunity Co. Ltd. v. The State of Bihar and Ors. MANU/SC/0083/1955: [1955]2SCR603 was not regarding an order which had become conclusive inter-parties. The Court was examining in that case only the doctrine of precedents and determining the extent to which it could take a different view from one previously taken in a different case between different parties.

47. According to Shri Jethmalani, the doctrine of per incuriam has no application in the same proceedings. We are unable to accept this contention. We are of the opinion that this Court is not powerless to correct its error which has the effect of depriving a citizen of his fundamental rights and more so, the right to life and liberty. It can do so in exercise of its inherent jurisdiction in any proceeding pending before it without insisting on the formalities of a review application. Powers of review can be exercised in a petition filed under Article 136 or Article 32 or under any other provision of the Constitution if the Court is satisfied that its directions have resulted in the deprivation of the fundamental

rights of a citizen or any legal right of the petitioner. See the observations in Prem Chand Garg v. Excise Commissioner, U.P. Allahabad [1963] Su.1 S.C.R. 885.

48. In support of the contention that an order of this Court be it administrative or judicial which is violative of fundamental right can always be corrected by this Court when attention of the Court is drawn to this infirmity, it is instructive to refer to the decision of this Court in Prem Chand Garg v. Excise Commissioner, U.P., Allahabad (supra). This is a decision by a Bench of five learned Judges. Gajendragadkar, J. spoke for four learned Judges including himself and Shah, J. expressed a dissenting opinion. The question was whether Rule 12 of Order XXXV of the Supreme Court Rules empowered the Supreme Court in writ petitions under Article 32 to require the petitioner to furnish security for the costs of the respondent. Article 145 of the Constitution provides for the rules to be made subject to any law made by Parliament and Rule 12 was framed thereunder. The petitioner contended that the rule was invalid as it placed obstructions on the fundamental right guaranteed under Article 32 to move the Supreme Court for the enforcement of fundamental rights. This rule as well as the judicial order dismissing the petition under Article 32 of the Constitution for non-compliance with Rule 12 of Order XXXV of the Supreme Court Rules were held invalid. In order to appreciate the significance of this point and the actual ratio of that decision so far as it is relevant for our present purpose it is necessary to refer to a few facts of that decision. The petitioner and 8 others who were partners of M/s. Industrial Chemical Corporation, Ghaziabad, had filed under Article 32 of the Constitution a petition impeaching the validity of the order passed by the Excise Commissioner refusing permission to the Distillery to supply power alcohol to the said petitioners. The petition was admitted on 12th December, 1961 and a rule was ordered to be issued to the respondents, the Excise Commissioner of U.P., Allahabad, and the State of U.P. At the time when the rule was issued, this Court directed under the impugned rule that the petitioners should deposit a security of Rs. 2,500 in cash within six weeks. According to the practice of this Court prevailing since 1959, this order was treated as a condition precedent for issuing rule nisi to the impleaded respondents. The petitioners found it difficult to raise the amount and so on January 24, 1962, they moved this Court for modification of the said order as to security. This application was dismissed, but the petitioners were given further time to deposit the said amount by March 26, 1962. This order was passed on March 15, 1962. The petitioners then tried to collect the requisite fund, but failed in their efforts and that led to the said petition filed on March 24, 1962 by the said petitioners. The petitioners contended that the impugned rule, in so far as it related to the giving of security, was ultra vires, because it contravened the fundamental right guaranteed to the petitioners under Article 32 of the Constitution. There were two orders, namely, one for security of costs and another for the dismissal of the previous application under Article 32 of the Constitution.

49. this Court by majority held that Rule 12 of Order XXXV of the Supreme Court Rules was invalid in so far as it related to the furnishing of security. The right to move the Supreme Court, it was emphasised, under Article 32 was an absolute right and the

content of this right could not be circumscribed or impaired on any ground and an order for furnishing security for the respondent's costs retarded the assertion or vindication of the fundamental right under Article 32 and contravened the said right. The fact that the rule was discretionary did not alter the position. Though Article 142(1) empowers the Supreme Court to pass any order to do complete justice between the parties, the Court cannot make an order inconsistent with the fundamental rights guaranteed by Part III of the Constitution. No question of inconsistency between Article 142(1) and Article 32 arose. Gajendragadkar, J. speaking for the majority of the Judges of this Court said that Article 142(1) did not confer any power on this Court to contravene the provisions of Article 32 of the Constitution. Nor did Article 145 confer power upon this Court to make rules, empowering it to contravene the provisions of the fundamental right. At page 899 of the Reports, Gajendragadkar, J. reiterated that the powers of this Court are no doubt very wide and they are intended and "will always be exercised in the interests of justice." But that is not to say that an order can be made by this Court which is inconsistent with the fundamental rights guaranteed by Part III of the Constitution. It was emphasised that an order which this Court could make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws (Emphasis supplied). The Court therefore, held that it was not possible to hold that Article 142(1) conferred upon this Court powers which could contravene the provisions of Article 32. It follows, therefore, that the directions given by this Court on 16th February, 1984, on the ground of expeditious trial by transferring Special Case No. 24 of 1982 and Special Case No. 3 of 1983 pending in the Court of Special Judge, Greater Bombay, Shri S.B. Sule, to the High Court of Bombay with a request to the learned Chief Justice to assign these two cases to a sitting Judge of the High Court was contrary to the relevant statutory provision, namely, Section 7(2) of the Criminal law Amendment Act, 1952 and as such violative of Article 21 of the Constitution. Furthermore, it violates Article 14 of the Constitution as being made applicable to a very special case among the special cases, without any guideline as to which cases required speedier justice. It that was so as in Prem Chand Garg's case, that was a mistake of so great a magnitude that it deprives a man by being treated differently of his fundamental right for defending himself in a criminal trial in accordance with law. If that was so then when the attention of the Court is drawn the Court has always the power and the obligation to correct it ex debito justitiae and treat the second application by its inherent power as a power of review to correct the original mistake. No suitor should suffer for the wrong of the Court. this Court in Prem Chand Garg's case struck down not only the administrative order enjoined by Rule 12 for deposit of security in a petition under Article 32 of the Constitution but also struck down the judicial order passed by the Court for non-deposit of such security in the subsequent stage of the same proceeding when attention of the Court to the infirmity of the rule was drawn. It may be mentioned that Shah, J. was of the opinion that Rule 12 was not violative. For the present controversy it is not necessary to deal with this aspect of the matter.

50. The power of the Court to correct an error subsequently has been reiterated by a decision of a bench of nine Judges of this Court in Naresh Shridhar Mirajkar and Ors. v. State of Maharashtra and Anr. MANU/SC/0044/1966: [1966]3SCR744. The facts were different and not quite relevant for our present purposes but in order to appreciate the contentions urged, it will be appropriate to refer to certain portions of the same. There was a suit for defamation against the editor of a weekly newspaper, which was filed in the original side of the High Court. One of the witnesses prayed that the Court may order that publicity should not be given to his evidence in the press as his business would be affected. After hearing arguments, the trial Judge passed an oral order prohibiting the publication of the evidence of the witness. A reporter of the weekly along with other journalists moved this Court under Article 32 of the Constitution challenging the validity of the order. It was contended that: (1) the High Court did not have inherent power to pass the order; (2) the impugned order violated the fundamental rights of the petitioners under Article 19(1)(a); and (3) the order was amenable to the writ jurisdiction of this Court under Article 32 of the Constitution.

51. It was held by Gajendragadkar, C.J. for himself and five other learned Judges that the order was within the inherent power of the High Court. Sarkar, J. was of the view that the High Court had power to prevent publication of proceedings and it was a facet of the power to hold a trial in camera and stems from it. Shah, J. was, however, of the view that the CPC contained no express provision authorising the Court to hold its proceedings in camera, but if excessive publicity itself operates as an instrument of injustice, the Court has inherent jurisdiction to pass an order excluding the public when the nature of the case necessitates such a course to be adopted. Hidayatullah, J. was, however, of the view that a Court which was holding a public trial from which the public was not excluded, could not suppress the publication of the deposition of a witness, heard not in camera but in open Court, on the request of the witness that his business would suffer. Sarker, J. further reiterated that if a judicial tribunal makes an order which it has jurisdiction to make by applying a law which is valid in all respects, that order cannot offend a fundamental right. An order which is within the jurisdiction of the tribunal which made it, if the tribunal had jurisdiction to decide the matters that were litigated before it and if the law which it applied in making the order was a valid law, could not be interfered with. It was reiterated that the tribunal having this jurisdiction does not act without jurisdiction if it makes an error in the application of the law.

52. Hidayatullah, J. observed at page 790 of the report that in Prem Chand Garg's case the rule required the furnishing of security in petition under Article 32 and it was held to abridge the fundamental rights. But it was said that the rule was struck down and not the judicial decision which was only revised. That may be so. But a judicial decision based on such a rule is not any better and offends the fundamental rights just the same and not less so because it happens to be a judicial order. If there be no appropriate remedy to get such an order removed because the Court has no superior, it does not mean that the order is made good. When judged under the Constitution it is still a void order although it may

bind parties unless set aside. Hidayatullah, J. reiterated that procedural safeguards are as important as other safeguards. Hidayatullah, J. reiterated that the order committed a breach of the fundamental right of freedom of speech and expression. We are, therefore, of the opinion that the appropriate order would be to recall the directions contained in the order dated 16th February, 1984.

53. In considering the question whether in a subsequent proceeding we can go to the validity or otherwise of a previous decision on a question of law inter-parties, it may be instructive to refer to the decision of this Court in Smt. Ujjam Bai v. State of Uttar Pradesh MANU/SC/0101/1961: [1963]1SCR778. There, the petitioner was a partner in a firm which carried on the business of manufacture and sale of hand-made bidis. On December 14, 1957, the State Government issued a notification under Section 4(1)(b) of the U.P. Sales Tax Act, 1948. By a subsequent notification dated 25th November, 1958, hand-made and machine-made bidis were unconditionally exempted from payment of sales tax. The Sales Tax Officer had sent a notice to the firm for the assessment of tax on sale of bidis during the assessment period 1st of April, 1958 to June 30, 1958. The firm claimed that the notification dated 14th December, 1957 had exempted bidis from payment of sales tax and that, therefore, it was not liable to pay sales tax on the sale of bidis. This position was not accepted by the Sales Tax Officer who passed certain orders. The firm appealed under Section 9 of the Act to the Judge (Appeals) Sales Tax, but that was dismissed. The firm moved the High Court under Article 226 of the Constitution. The High Court took the view that the firm had another remedy under the Act and the Sales Tax Officer had not committed any apparent error in interpreting the notification of December 14, 1957. The appeal against the order of the High Court on a certificate under Article 133(1)(a) of the Constitution was dismissed by this Court for non-prosecution and the firm filed an application for a restoration of the appeal and condonation of delay. During the pendency of that appeal another petition was filed under Article 32 of the Constitution for the enforcement of the fundamental right under Articles 19(1)(g) and 31 of the Constitution. Before the Constitution Bench which heard the matter a preliminary objection was raised against the maintainability of the petition and the correctness of the decision of this Court in Kailash Nath v. State of U.P., MANU/SC/0136/1957: AIR1957SC790 relied upon by the petitioner was challenged. The learned Judges referred the case to a larger Bench. It was held by this Court by a majority of five learned Judges that the answer to the questions must be in the negative. The case of Kailash Nath was not correctly decided and the decision was not sustainable on the authorities on which it was based. Das, J. speaking for himself observed that the right to move this Court by appropriate proceedings for the enforcement of fundamental rights conferred by Part III of the Constitution was itself a guaranteed fundamental right and this Court was not trammelled by procedural technicalities in making an order or issuing a writ for the enforcement of such rights. The question, however, was whether, a quasi-judicial authority which made an order in the undoubted exercise of its jurisdiction in pursuance of a provision of law which was intra vires, an error of law or fact committed by that authority could not be impeached otherwise than on appeal, unless the erroneous

determination related to a matter on which the jurisdiction of that body depended. It was held that a tribunal might lack jurisdiction if it was improperly constituted. In such a case, the characteristic attribute of a judicial act or decision was that it binds, whether right or wrong, and no question of the enforcement of a fundamental right could arise on an application under Article 32. Subba Rao, J. was, however, unable to agree.

54. Shri Jethmalani urged that the directions given on 16th February, 1984, were not per incuriam. We are unable to accept this submission. It was manifest to the Bench that exclusive jurisdiction created under Section 7(1) of the 1952 Act read with Section 6 of the said Act, when brought to the notice of this Court, precluded the exercise of the power under Section 407 of the Code. There was no argument, no submission and no decision on this aspect at all. There was no prayer in the appeal which was pending before this Court for such directions. Furthermore, in giving such directions, this Court did not advert to or consider the effect of Anwar Ali Sarkar's case (supra) which was a binding precedent. A mistake on the part of the Court shall not cause prejudice to any one. He further added that the primary duty of every Court is to adjudicate the cases arising between the parties. According to him, it is certainly open to a larger Bench to take a view different from that taken by the earlier Bench, if it was manifestly erroneous and he urged that the trial of a corrupt Chief Minister before a High Court, instead of a Judge designated by the State Government was not so injurious to public interest that it should be overruled or set aside. He invited us to consider two questions: (1) does the impugned order promote justice? and (2) is it technically valid? After considering these two questions, we are clearly of the opinion that the answer to both these questions is in the negative. No prejudice need be proved for enforcing the fundamental rights. Violation of a fundamental right itself renders the impugned action void. So also the violation of the principles of natural justice renders the act a nullity. Four valuable rights, it appears to us, of the appellant have been taken away by the impugned directions.

(i) The right to be tried by a Special Judge in accordance with the procedure established by law and enacted by Parliament.

(ii) The right of revision to the High Court under Section 9 of the Criminal Law Amendment Act.

(iii) The right of first appeal to the High Court under the same section.

(iv) The right to move the Supreme Court under Article 136 thereafter by way of a second appeal, if necessary.

55. In this connection Shri Rao rightly submitted that it is no necessary to consider whether Section 374 of the Criminal Procedure Code confers the right of appeal to this Court from the judgment of a learned Judge of the High Court to whom the case had been assigned inasmuch as the transfer itself was illegal. One has to consider that Section 407

of the Criminal Procedure Code was subject to the overriding mandate of Section 7(1) of the 1952 Act, and hence, it does not permit the High Court to withdraw a case for trial to itself from the; Court of Special Judge. It was submitted by Shri Rao that even in cases where a case is withdrawn by the High Court to itself from a criminal court other than the Court of Special Judge, the High Court exercised transferred jurisdiction which is different from original jurisdiction arising out of initiation of the proceedings in the High Court. In any event Section 374 of Criminal Procedure Code limits the right to appeals arising out of Clause 24 of the Letters Patent.

56. In aid of the submission that procedure for trial evolved in derogation of the right guaranteed under Article 21 of the Constitution would be bad, reliance was placed on Attorney General of India v. Lachma Devi and Ors. [1985] 2 Scale 144. In aid of the submission on the question of validity our attention was drawn to 'Jurisdiction and Illegality' by Amnon Rubinstein (1965 Edn.). The Parliament did not grant to the Court the jurisdiction to transfer a case to the High Court of Bombay. However, as the superior Court is deemed to have a general jurisdiction, the law presumes that the Court acted within jurisdiction. In the instant case that presumption cannot be taken,firstly because the question of jurisdiction was not agitated before the Court, secondly these directions were given per incuriam as mentioned hereinbefore and thirdly the superior Court alone can set aside an error in its directions when attention is drawn to that error. This view is warranted only because of peculiar facts and circumstances of the present case. Here the trial of a citizen in a Special Court under special jurisdiction is involved, hence, the liberty of the subject is involved. In this connection, it is instructive to refer to page 126 of Rubinstein's aforesaid book. It has to be borne in mind that as in Kuchenmeister v. Home Office [1958] 1 Q.B. 496 here form becomes substance. No doubt, that being so it must be by decisions and authorities, it appears to us patently clear that the directions given by this Court on 16th February, 1984 were clearly unwarranted by constitutional provisions and in derogation of the law enacted by the Parliament. See the observations of Attorney General v. Herman James Sillem [1864] 10 H.L.C. 703, where it was reiterated that the creation of a right to an appeal is an act which requires legislative authority, neither an inferior Court nor the superior Court or both combined can create such a right, it being one of limitation and extension of jurisdiction. See also the observations of Isaacs v. Roberston [1984] 3 A.E.R. 140 where it was reiterated by Privy Council that if an order is regular it can be set aside by an appellate Court; if the order is irregular it can be set aside by the Court that made it on the application being made to that Court either under the rules of that Court dealing expressly with setting aside orders for irregularity or ex debito justitiae if the circumstances warranted, namely, violation of the rules of natural justice or fundamental rights. In Ledgard v. Bull, 13 I.A. 134, it was held that under the old Civil Procedure Code under Section 25 the superior Court could not make an order of transfer of a case unless the Court from which the transfer was sought to be made, had jurisdiction to try. In the facts of the instant case, the criminal revision application which was pending before the High Court even if it was deemed to be transferred to this Court under Article 139A of the Constitution it would not have vested this Court with power larger than what

is contained in Section 407 of Criminal Procedure Code. Under Section 407 of the Criminal Procedure Code read with the Criminal law Amendment Act, the High Court could not transfer to itself proceedings under Sections 6 and 7 of the said Act. this Court by transferring the proceedings to itself, could not have acquired larger jurisdiction. The fact that the objection was not raised before this Court giving directions on 16th February, 1984 cannot amount to any waiver. In Meenakshi Naidoo v. Subramaniya Sastri, 14 I.A. 160 it was held that if there was inherent incompetence in a High Court to deal with all questions before it then consent could not confer on the High Court any jurisdiction which it never possessed.

57. We are clearly of the opinion that the right of the appellant under Article 14 regarding equality before the law and equal protection of law in this case has been violated. The appellant has also a right not to be singled out for special treatment by a Special Court created for him alone. This right is implicit in the right to equality. See Anwar Ali Sarkar's case (supra).

58. Here the appellant has a further right under Article 21 of the Constitution a right to trial by a Special Judge under Section 7(1) of the 1952 Act which is the procedure established by law made by the Parliament, and a further right to move the High Court by way of revision or first appeal under Section 9 of the said Act. He has also a right not to suffer any order passed behind his back by a Court in violation of the basic principles of natural justice. Directions having been given in this case as we have seen without hearing the appellant though it appears from the circumstances that the order was passed in the presence of the counsel for the appellant, these were bad.

59. In Nawabkhan Abbaskhan v. The State of Gujarat MANU/SC/0068/1974: 1974CriLJ1054, it was held that an order passed without hearing a party which affects his fundamental rights, is void and as soon as the order is declared void by a Court, the decision operates from its nativity. It is proper for this Court to act ex debito justitiae, to act in favour of the fundamental rights of the appellant.

60. In so far as Mirajkar's case (supra) which is a decision of a Bench of 9 Judges and to the extent it affirms Prem Chand Garg's case (supra), the Court has power to review either under Section 137 or suo motu the directions given by this Court. See in this connection P.S.R. Sadhananatham v. Arunachalam MANU/SC/0083/1980: [1980]2SCR873 and Suk Das v. Union of Territory of Arunachal Pradesh MANU/SC/0140/1986: 1986CriLJ1084. See also the observations in Asrumati Debi v. Kumar Rupendra Deb Raikot and Ors. MANU/SC/0088/1953: [1953]4SCR1159, Satyadhyan Ghosal and Ors. v. Smt. Deorajin Debi and Anr. MANU/SC/0295/1960: [1960]3SCR590, Sukhrani (dead) by L.Ls. and Ors. v. Hari Shanker and Ors. MANU/SC/0538/1979: [1979]3SCR671 and Bejoy Gopal Mukherji v. Pratul Chandra Ghose MANU/SC/0077/1953: [1953]4SCR930.

61. We are further of the view that in the earlier judgment the points for setting aside the decision, did not include the question of withdrawal of the case from the Court of Special Judge to Supreme Court and transfer it to the High Court. Unless a plea in question is taken it cannot operate as res judicata. See Shivshankar Prasad Shah and Ors. v. Baikunth Nath Singh and Ors. MANU/SC/0022/1969: [1969]3SCR908, Bikan Mahuri and Ors. v. Mst. Bibi Walian and Ors. MANU/BH/0174/1939: AIR1939Pat633. See also S.L. kapoor v. Jagmohan and Ors. MANU/SC/0036/1980: [1981]1SCR746 on the question of violation of the principles of natural justice. Also see Maneka Gandhi v. Union of India MANU/SC/0133/1978: [1978]2SCR621 at pages 674-681. Though what is mentioned hereinbefore in the Bengal Immunity Co. Ltd. v. The State of Bihar and Ors. (supra), the Court was not concerned with the earlier decision between the same parties. At page 623 it was reiterated that the Court was not bound to follow a decision of its own if it was satisfied that the decision was given per incuriam or the attention of the Court was not drawn. It is also well-settled that an elementary rule of justice is that no party should suffer by mistake of the Court. See Sastri Yagnapurushadji and Ors. v. Muldas Bhudardas Vaishya and Anr. MANU/SC/0040/1966: [1966]3SCR242, Jang Singh v. Brijlal MANU/SC/0006/1963: [1964]2SCR145, Bhajahari Mondal v: The State of West Bengal MANU/SC/0052/1958: 1959CriLJ98 and Asgarali N. Singaporawalla v. The State of Bombay MANU/SC/0100/1957: 1957CriLJ605.

62. Shri Rao further submitted that we should not only ignore the directions or set aside the directions contained in the order dated 16th February, 1984, but also direct that the appellant should not suffer any further trial. It was urged that the appellant has been deprived of his fundamental right guaranteed under Articles 14 and 21 as a result of the directions given by this Court. Our attention was drawn to the observations of this Court in Suk Das's case (supra) for this purpose. He further addressed us to the fact that six and half years have elapsed since the first complaint was lodged against the appellant and during this long period the appellant has suffered a great deal. We are further invited to go into the allegations and to held that there was nothing which could induce us to prolong the agony of the appellant. We are, however, not inclined to go into this question.

63. The right of appeal under Section 374 is limited to Clause 24 of Letters Patent. It was further submitted that the expression 'Extraordinary original criminal jurisdiction' under Section 374 has to be understood having regard to the language used in the Code and other relevant statutory provisions and not with reference to decisions wherein Courts described jurisdiction acquired by transfer as extraordinary original jurisdiction. In that view the decisions referred to by Shri Jethmalani being Kavasji Pestonji Dalai v. Rustomji Sorabji jamadar and Anr, MANU/MH/0034/1948: AIR 1949 Bom. 42, Sunil Chandra Roy and Anr. v. The State, MANU/WB/0110/1954: AIR1954Cal305, Sasadhar Acharjya and Anr. v. Sir Charles Tegart and Ors. [1935] CWN 1088, Peoples' Insurance Co. Ltd. v. Sardul Singh Caveeshgar and Ors. AIR 1961 Punj. 87 and P.P. Front, New Delhi v. K.K. Birla MANU/DE/0037/1983: 23(1983)DLT499 are not relevant.

64. It appears to us that there is good deal of force in the argument that Section 411A of the old Code which corresponds to Section 374 of the new Code contained the expression 'original jurisdiction'. The new Code abolished the original jurisdiction of High Courts but retained the extraordinary original criminal jurisdiction conferred by Clause 24 of the Letters Patent which some of the High Courts had.

65. The right of appeal is, therefore, confined only to cases decided by the High Court in its Letter Patent jurisdiction which in terms is 'extraordinary original criminal jurisdiction'.

66. By the time the new CrPC 1973 was framed, Article 21 had not been interpreted so as to include one right of appeal both on facts and law.

67. Shri Ram Jethmalani made elaborate submissions before us regarding the purpose of the Criminal Law Amendment Act and the Constitution of the Special Court. In our opinion, these submissions have no relevance and do not authorise this Court to confer a special jurisdiction on a High Court not warranted by the statute. The observations of this Court in Re The Special Courts Bill, MANU/SC/0039/1978: [1979]2SCR476 are not relevant for this purpose. Similarly, the observations on right of appeal in V.C. Shukla v. Delhi Administration [1980] 3 SCR 500, Shri Jethmalani brought to our notice certain facts to say that the powers given in the Criminal Law Amendment Act were sought to be misused by the State Government under the influence of the appellant. In our opinion, these submissions are not relevant for the present purpose. Mr. Jethmalani submitted that the argument that in so far as Section 407 purports to authorise such a transfer it stands repealed by Section 7(1) of the Criminal Law Amendment Act is wrong. He said it can be done in its extraordinary criminal jurisdiction. We are unable to accept this submission. We are also unable to accept the submission that the order of transfer was made with full knowledge of Section 7(1) of the Criminal Law Amendment Act and the so-called exclusive jurisdiction was taken away from Special Judges and the directions were not given per incuriam. That is not right. He drew our attention to the principles of interpretation of statutes and drew our attention to the purpose of Section 7(1) of the Act. He submitted that when the Amending Act changes the law, the change must be confined to the mischief present and intended to be dealt with. He drew us to the Tek Chand Committee Report and submitted that he did not wish that an occasional case withdrawn and tried in a High Court was because of delay in disposal of corruption cases. He further submitted that interference with existing jurisdiction and powers of superior Courts can only be by express and clear language. It cannot be brought about by aside wind.

68. Thirdly, the Act of 1952 and the Code have to be read and construed together, he urged. The Court is never anxious to discover a repugnancy and in ft. apro tanto repeal. Resort to the non obstante clause is permissible only when it is impossible to harmonise the two provisions.

69. Shri Jethmalani highlighted before us that it was for the first time a Chief Minister had been found guilty of receiving quid pro quo for orders of allotment of cement to various builders by a Single Judge of the High Court confirmed by a Division Bench of the High Court. He also urged before us that it was for the first time such a Chief Minister did not have the courage to prosecute his special leave petition before this Court against the findings of three Judges of the High Court. Shri Jethmalani also urged that it was for the first time this Court found that a case instituted in 1982 made no progress till 1984. Shri Jethmalani also sought to contend that Section 7(1) of the 1952 Act states "shall be triable by Special Judges only", but does not say that under no circumstances the case will be transferred to be tried by the High Court even in its Extraordinary Original Criminal Jurisdiction. He submitted that Section 407(1)(iv) is very much in the statute and and it is not repealed in respect of the cases pending before the Special Judge. There is no question of repealing Section 407(1)(iv). Section 407 deals with the power of the High Court to transfer cases and appeals. Section 7 is entirely different and one has to understand the scheme of the Act of 1952, he urged. It was an Act which provided for a more speedy trial of certain offences. For this it gave power to appoint Special Judges and stipulated for appointment of Special Judges under the Act. Section 7 states that notwithstanding anything contained in the Code, the offences mentioned in Sub-section (1) of Section 6 shall be triable by Special Judges only. By express terms therefore, it takes away the right to transfer cases contained in the Code to any other Court which is not a Special Court. Shri Jethmalani sought to urge that the Constitution Bench had considered this position. That is not so. He submitted that the directions of this Court on 16th February, 1984 were not given per incuriam or void for any reason. He referred us to Dias on jurisprudence, 5th Edition, page 128 and relied on the decision of Milianges v. George Frank (Textiles) Ltd. [1975] 3 All E.R. 801. He submitted that the per incuriam rule does not apply where the previous authority is alluded to. It is true that previous statute is referred to in the other judgment delivered on the same date in connection with different contentions. Section 7(1) was not referred to in respect of the directions given on 16th February, 1984 in the case of R.S. Nayak v. A.R. Antulay (supra). Therefore, as mentioned hereinbefore the observations indubitably were per incuriam. In this case in view of the specific language used in Section 7, it is not necessary to consider the other submissions of Shri Jethmalani, whether the procedure for trial by Special Judges under the Code has stood repealed or not. The concept of repeal may have no application in this case. It is clear that words should normally be given their ordinary meaning bearing in mind the context. It is only where the literal meaning is not clear that one resorts to the golden rule of interpretation or the mischief rule of interpretation. This is well illustrated from the observations of Tindal, C.J. in Sussex Peerage Claim [1844] 11 C & F 85. He observed:

The only rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in that natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver. But if any doubt arises from

the terms employed by the legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the statute, and to have recourse to the preamble, which, according to Chief Justice Pyer, Stewell v. Lord Zouch [1569] 1 Plowd 353 is a key to open the minds of the makers of the Act, and the mischiefs which they intend to redress.

70. This passage states the commonly accepted view concerning the relationship between the literal and mischief rules of interpretation of statutes. Here there is no question as to what was the previous law and what was intended to be placed or replaced as observed by Lord Wilberforce in 274 House of Lords Debate, Col. 1294 on 16th November, 1966, see Cross; Statutory Interpretation, second edition, page 36. He observed that the interpretation of legislation is just a part of the process of being a good lawyer; a multi-faceted thing, calling for many varied talents; not a subject which can be confined in rules. When the words are clear nothing remains to be seen. If words are as such ambiguous or doubtful other aids come in. In this context, the submission of controversy was whether the Code repealed the Act of 1952 or whether it was repugnant or not is futile exercise to undertake. Shri Jethmalani distinguished the decision in Chadha's case, which has already been discussed. It is not necessary to discuss the controversy whether the Chartered High Courts contained the Extraordinary Original Criminal Jurisdiction by the Letters Patent.

71. Article 134(1)(b) does not recognise in every High Court power to withdraw for trial cases from any Court subordinate to its authority. At least this Article cannot be construed to mean where power to withdraw is restricted, it can be widened by virtue of Article 134(1)(b) of the Constitution. Section 374 of the Code undoubtedly gives a right of appeal. Where by a specific clause of a specific statute the power is given for trial by the Special Judge only and transfer can be from one such Judge to another Special Judge, there is no warrant to suggest that the High Court has power to transfer such a case from a Judge under Section 6 of the Act of 1952 to itself. It is not a case of exclusion of the superior Courts. So the submissions made on this aspect by Shri Jethmalani are not relevant.

72. Dealing with the submission that the order of the Constitution Bench was void or non-est and it violated the principles of natural justice, it was submitted by Shri Jethmalani that it was factually incorrect. Inspite of the submissions the appellant did not make any submission as to directions for transfer as asked for by Shri Tarkunde. It was submitted that the case should be transferred to the High Court. The Court merely observed there that they had given ample direction. No question of submission arose after the judgment was delivered. In any case, if this was bad the fact that no objection had been raised would not make it good. No question of technical rules or res judicata apply, Shri Jethmalani submitted that it would amount to an abuse of the process of the Court. He referred us to Re Tarling [1979] 1 All E.R. 981; Ali v. Secretary of State for the Home Department [1984] 1 All E.R. 1009 and Seervai's Constitutional Law, Vol. 1, pages 260 to 265. We are

of the opinion that these submissions are not relevant. There is no abuse of the process of the Court. Shri Jethmalani submitted that there was no prejudice to the accused. There was prejudice to the accused in being singled out as a special class of accused for a special dispensation without room for any appeal as of right and without power of the revision to the High Court. There is prejudice in that. Reliance placed on the decision of this Court in Ramesh Chandra Arora v. The State MANU/SC/0034/1959: 1960CriLJ177 was not proper in the facts of this case.

73. If a discrimination is brought about by judicial perception and not by executive whim, if it is unauthorised by law, it will be in derogation of the right of the appellant as the special procedure in Anwar Ali Sarkar's case (supra) curtailed the rights and privileges of the accused. Similarly, in this case by judicial direction the rights and privileges of the accused have been curtailed without any justification in law. Reliance was placed on the observations of the seven Judges Bench in Re: Special Courts Bill, 1978 (supra). Shri Jethmalani relied on the said observations therein and emphasised that purity in public life is a desired goal at all times and in all situations and ordinary Criminal Courts due to congestion of work cannot reasonably be expected to bring the prosecutions to speedy termination. He further submitted that it is imperative that persons holding high public or political office must be speedily tried in the interests of justice. Longer these trials last, justice will tarry, assuming the charges to be justified, greater will be the impediments in fostering democracy, which is not a plant of easy growth. All this is true but the trial even of person holding public office though to be made speedily must be done in accordance with the procedure established by law. The provisions of Section 6 read with Section 7 of the Act of 1952 in the facts and circumstances of this case is the procedure established by law; any deviation even by a judicial direction will be negation of the rule of law.

74. Our attention was drawn to Article 145(e) and it was submitted that review can be made only where power is expressly conferred and the review is subject to the rules made under Article 145(e) by the Supreme Court. The principle of finality on which the Article proceeds applies to both judgments and orders made by the Supreme Court. But directions given per incuriam and in violation of certain constitutional limitations and in derogation of the principles of natural justice can always be remedied by the court ex debite justitiae. Shri Jethmalani's submission was that ex debite justitiae, these directions could not be recalled. We are unable to agree with this submission.

75. The Privy Council in Isaacs v. Robertson [1984] 3 A.E.R. 140 held that orders made by a Court of unlimited jurisdiction in the course of contentious litigation are either regular or irregular. If an order is regular it can only be set aside by an appellate Court; if it is irregular it can be set aside by the Court that made it on application being made to that Court either under rules of Court dealing expressly with setting aside orders for irregularity or ex debite justitiae if the circumstances warranted, namely, where there was a breach of the rules of natural justice etc. Shri Jethmalani urged before us that Lord Diplock had in express terms rejected the argument that any orders of a superior Court

of unlimited jurisdiction can over be void in the sense that they can be ignored with impunity. We are not concerned with that. Lord Diplock delivered the judgment. Another Judge who sat in the Privy Council with him was Lord Keith of Kinkel. Both these Law Lords were parties to the House of Lords judgment in Re Racal Communications Ltd. case [1980] 2 A.E.R. 634 and their Lordships did not extend this principle any further. Shri Jethmalani submitted that there was no question of reviewing an order passed on the construction of law. Lord Scarman refused to extend the Anisminic principle to superior Courts by the felicitous statement that this amounted to comparison of incomparables. We are not concerned with this controversy. We are not comparing incomparables. We are correcting an irregularity committed by Court not on construction or misconstruction of a statute but on non-perception of certain provisions and certain authorities which would amount to derogation of the constitutional rights of the citizen.

76. The directions given by the order of 16th February, 1984 at page 557 were certainly without hearing though in the presence of the parties. Again consequential upon directions these were challenged ultimately in this Court and finally this Court reserved the right to challenge these by an appropriate application.

77. The directions were in deprival of Constitutional rights and contrary to the express provisions of the Act of 1952. The directions were given in violation of the principles of natural justice. The directions were without precedent in the background of the Act of 1952. The directions definitely deprived the appellant of certain rights of appeal and revision and his rights under the Constitution.

78. We do not labour ourselves on the question of discretion to disobey a judicial order on the ground of invalid judicial order. See discretion to Disobey by Mertimer R. Kadish and Sanford H. Kadish pages 111 and 112. These directions were void because the power was not there for this Court to transfer a proceeding under the Act of 1952 from one Special Judge to the High Court. This is not a case of collateral attack on judicial proceeding; it is a case where the Court having no Court superior to it rectifies its own order. We recognise that the distinction between an error which entails absence of jurisdiction and an error made within the jurisdiction is very fine. So fine indeed that it is rapidly being eroded as observed by Lord Wilberforce in Anisminic Ltd. v. Foreign Compensation Commissioner [1969] 1 All E.R. 208. Having regard to the enormity of the consequences of the error to the appellant and by reason of the fact that the directions were given suo motu, we do not find there is anything in the observations of Ittavira Mathai v. Varkey Varkey and Anr. MANU/SC/0260/1963: [1964]1SCR495 which detract the power of the Court to review its judgment ex debite justitiae in case injustice has been caused. No court, however, high has jurisdiction to give an order unwarranted by the Constitution and, therefore, the principles of Bhatia Co-operative Housing Society Ltd. v. D.C. Patel MANU/SC/0064/1952: [1953]4SCR185 would not apply.

79. In giving the directions this Court infringed the Constitutional safeguards granted to a citizen or to an accused and injustice results therefrom. It is just and proper for the Court to rectify and recall that injustice, in the peculiar facts and circumstances of this case.

80. This case has caused us considerable anxiety. The appellant-accused has held an important position in this country, being the Chief Minister of a premier State of the country. He has been charged with serious criminal offences. His trial in accordance with law and the procedure established by law would have to be in accordance with the 1952 Act. That could not possibly be done because of the directions of this Court dated 16th February, 1984, as indicated above. It has not yet been found whether the appellant is guilty or innocent. It is unfortunate, unfortunate for the people of the State, unfortunate for the country as a whole, unfortunate for the future working of democracy in this country which, though is not a plant of an easy growth yet is with deep root in the Indian polity that delay has occurred due to procedural wrangles. The appellant may be guilty of grave offences alleged against him or he may be completely or if not completely to a large extent, innocent. Values in public life and perspective of these values in public life, have undergone serious changes and erosion during the last few decades. What was unheard of before is common place today. A new value orientation is being undergone in our life and in our culture. We are at the threshold of the cross-roads of values. It is, for the sovereign people of the country to settle those conflicts yet the Courts have vital roles to play in such matters. With the avowed object of speedier trial the case of the appellant had been transferred to the High Court but on grounds of expediency of trial he cannot be subjected to a procedure unwarranted by law, and contrary to the constitutional provisions. The appellant may or may not be an ideal politician. It is a fact, however, that the allegations have been brought against him by a person belonging to a political party opposed to his but that is not the decisive factor. If the appellant Shri Abdul Rehman Antulay has infringed law, he must be dealt with in accordance with the law. We proclaim and pronounce that no man is above the law; but at the same time reiterate and declare that no man can be denied his rights under the Constitution and the laws. He has a right to be dealt with in accordance with the law and not in derogation of it. this Court, in its anxiety to facilitate the parties to have a speedy trial gave directions on 16th February, 1984 as mentioned hereinbefore without conscious awareness of the exclusive jurisdiction of the Special Courts under the 1952 Act and that being the only procedure established by law, there can be no deviation from the terms of Article 21 of the Constitution of India. That is the only procedure under which it should have been guided. By reason of giving the directions on 16th February, 1984 this Court had also unintentionally caused the appellant the denial of rights under Article 14 of the Constitution by denying him the equal protection of law by being singled out for a special procedure not provided for by law. When these factors are brought to the notice of this Court, even if there are any technicalities this Court should not feel shackled and decline to rectify that injustice or otherwise the injustice noticed will remain forever a blot on justice. It has been said long time ago that "Actus Curiae Neminem Gravabit"- an act of

the Court shall prejudice no man. This maxim is founded upon justice and good sense and affords a safe and certain guide for the administration of the law.

81. Lord Cairns in Alexander Rodger v. The Comptoir D'escompte De Paris, (Law Reports Vol. III 1869-71 page 465 at page 475) observed thus:

Now, their Lordships are of opinion, that one of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the Suitors. and when the expression 'the act of the Court' is used, it does not mean merely the act of the Primary Court, or of any intermediate Court of appeal, but the act of the Court as a whole, from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case. It is the duty of the aggregate of those Tribunals, if I may use the expression, to take care that no act of the Court in the course of the whole of the proceedings does an injury to the suitors in the Court.

82. This passage was quoted in the Gujarat High Court by D.A. Desai, J. speaking for the Gujarat High Court in Vrajlal v. Jadavji (supra) as mentioned before. It appears that in giving directions on 16th February, 1984, this Court acted per incuriam inasmuch it did not bear in mind consciously the consequences and the provisions of Sections 6 and 7 of the 1952 Act and the binding nature of the larger Bench decision in Anwar Ali Sarkar's case (supra) which was not adverted to by this Court. The basic fundamentals of the administration of justice are simple. No man should suffer because of the mistake of the Court. No man should suffer a wrong by technical procedure of irregularities. Rules or procedures are the hand-maids of justice and not the mistress of the justice. Ex debite justitiae, we must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied. This is a peculiar fact of this case which requires emphasis.

83. Shri Rao, learned Counsel for the appellant has vehemently canvassed before us that the appellant has suffered a great wrong for over six and a half years. He has undergone trials and proceedings because of the mistakes of the Court. Shri Rao submitted that the appellant should be made not to suffer more. Counsel urged that political battles must be fought in the political arena. Yet a charge of infraction of law cannot remain uninvestigated against an erstwhile Chief Minister of a premier State of the country.

84. Shri Rao has canvassed before us on the authority of Hussainara Khatoon v. Home Secretary, State of Bihar, Patna MANU/SC/0119/1979: 1979CriLJ1036 ; Kadra Pahadiyal (1) v. State of Bihar MANU/SC/0140/1980: AIR1981SC939 ; Kadra Pahadiya (II) v. State of Bihar, A.I.R. 1982 S.C. 1167 and Sheela Barse v. Union of India MANU/SC/0115/1986: [1986]3SCR562. He has, however, very strongly relied upon the observations of this Court in Suk Das v. Union Territory of Arunachal Pradesh (supra). In that case the appellant a government servant was tried and convicted to suffer imprisonment for two years for offences under Section 506 read with Section 34, I.P.C. He was not represented at the trial

by any lawyer by reason of his inability to afford legal representation. On appeal the High Court held that the trial was not vitiated since no application for legal aid was made by him. On appeal this Court quashed the conviction and considered the question whether the appellant would have to be tried in accordance with law after providing legal assistance to him. this Court felt that in the interests of justice the appellant should be reinstated in service without back wages and accordingly directed that no trial should take place. Shri Rao submitted that we should in the facts of this case in the interests of justice direct that the appellant should not be tried again. Shri Rao submitted to let the appellant go only on this long delay and personal inconveniences suffered by the appellant, no more injury be caused to him. We have considered the submission. Yet we must remind ourselves that purity of public life is one of the cardinal principal which must be upheld as a matter of public policy. Allegations of legal infractions and criminal infractions must be investigated in accordance with law and procedure established under the Constitution. Even if he has been wronged, if he is allowed to be left in doubt that would cause more serious damage to the appellant. Public confidence in public administration should not be eroded any further. One wrong cannot be remedied by another wrong.

85. In the aforesaid view of the matter and having regard to the facts and circumstances of the case, we are of the opinion that the legal wrong that has been caused to the appellant should be remedied. Let that wrong be therefore remedied. Let right be done and in doing so let no more further injury be caused to public purpose.

86. In the aforesaid view of the matter the appeal is allowed; all proceedings in this matter subsequent to the directions of this Court on 16th February, 1984 as indicated before are set aside and quashed. The trial shall proceed in accordance with law, that is to say under the Act of 1952 as mentioned hereinbefore.

Authored By: Ranganath Misra, G.L. Oza, B.C. Ray, M.N. Venkatachaliah, S. Ranganathan

Ranganath Misra, J.

87. I have had the advantage of perusing the judgment proposed by my learned Brother Mukharji, J. While I agree with the conclusion proposed by my esteemed Brother, keeping the importance of the matter, particularly the consequences the decision may generate as also the fact that I was a party to the two-Judge Bench decision of this Court reported in MANU/SC/0198/1986: 1986CriLJ1922 in view, I propose to express my opinion separately.

88. Abdul Rehman Antulay, the appellant, was the Chief Minister of the State of Maharashtra from 1980 till January 20, 1982, when he resigned his office but continued to be a member of the Maharashtra Legislative Assembly. Ramdas Shrinivas Nayak,

Respondent No. 1 herein, lodged a complaint in the Court of Chief Metropolitan Magistrate, 28th Esplanade, Bombay, on September 11, 1981, against Antulay alleging commission of several offences under the Indian Penal Code as also Section 5(2) of the Prevention of Corruption Act, 1947 ('1947 Act' for short). The learned Magistrate was of the view that prosecution under Sections 161 and 165 of the Penal Code and Section 5 of the 1947 Act required sanction as a condition precedent and in its absence the complaint was not maintainable. The Governor of Bombay later accorded sanction and the Respondent No. 1 filed a fresh complaint, this time in the Court of the Special Judge of Bombay, alleging the commission of those offences which had formed the subject-matter of the complaint before the Magistrate. On receiving summons from the Court of the particular Special Judge, Antulay took the stand that the said Special Judge had no jurisdiction to entertain the complaint in view of the provisions of Section 7 of the Criminal Law Amendment Act, 1952 (hereinafter referred to as the 1952 Act) to take cognizance and such cognizance could not be taken on a private complaint. These objections were overruled by the Special Judge by order dated October 20, 1982, and the case was set down for recording evidence of the prosecution. The Criminal Revision Petition of the accused against the order of the Special Judge was rejected by the Bombay High Court and it held that a private complaint was maintainable and in view of the notification specifying a particular Special Judge for the offences in question there was no basis for the objections. this Court granted special leave to the accused against the decision of the High Court that a private complaint was maintainable. Criminal Appeal No. 347 of 1983 thus came to be instituted. In the meantime, objection raised before the Special Judge that without sanction the accused who still continued to be a member of Legislative Assembly, could not be prosecuted came to be accepted by the Special Judge. The complainant filed a criminal revision application before the High Court questioning that order. this Court granted special leave against the decision that sanction was necessary, whereupon Criminal Appeal No. 356 of 1983 was registered and the pending criminal revision application before the High Court was transferred to this Court. Both the criminal appeals and the transferred criminal revision were heard together by a five-Judge Bench of this Court but the two appeals were disposed of by two separate judgments delivered on February 16, 1984. The judgment in Criminal Appeal No. 347 of 1983 is reported in MANU/SC/0082/1984: 1984CriLJ647. In the present appeal we are not very much concerned with that judgment. The judgment of Criminal Appeal No. 356 of 1983 is reported in MANU/SC/0102/1984: 1984CriLJ613. As already noticed the main theme of the criminal appeal was as to whether a member of the Legislative Assembly was a public servant for whose prosecution for the offences involved in the complaint sanction was necessary as a condition precedent. this Court at page 557 of the Reports came to hold:

To sum up, the learned Special Judge was clearly in error in holding that M.L.A. is a public servant within the meaning of the expression in Section 12(a) and further erred in holding that a sanction of the Legislative Assembly of Maharashtra or majority of the members was a condition precedent to taking cognizance of offences committed by the

accused. For the reasons herein stated both the conclusions are wholly unsustainable and must be quashed and set aside.

Consequently this Court directed:

This appeal accordingly succeeds and is allowed. The order and decision of the learned Special Judge Shri R.B. Sule dated July 25, 1983 discharging the accused in Special Case No. 24 of 1982 and Special Case No. 3/1983 is hereby set aside and the trial shall proceed further from the stage where the accused was discharged.

this Court gave a further direction to the following effect:

The accused was the Chief Minister of a premier State-the State of Maharashtra. By a prosecution launched as early as on September 11, 1981, his character and integrity came under a cloud. Nearly 2½ years have rolled by and the case has not moved an inch further. An expeditious trial is primarily in the interest of the accused and a mandate of Article 21. Expeditious disposal of a criminal case is in the interest of both, the prosecution and the accused. Therefore, Special Case No. 24 of 1982 and Special Case No. 3/83 pending in the Court of Special Judge, Greater Bombay Shri R.B. Sule are withdrawn and transferred to the High Court of Bombay with a request to the learned Chief Justice to assign these two cases to a sitting Judge of the High Court. On being so assigned, the learned Judge may proceed to expeditiously dispose of the cases preferably by holding the trial from day to day.

89. Pursuant to this direction, the two cases came to be posted for trial before Khatri J. of the Bombay High Court and trial opened on April 9, 1984. The appellant challenged Khatri J.'s jurisdiction on 12th March, 1984 when the matter was first placed before him but by two separate orders dated 13th March, 1984 and 16th March, 1984, the learned Judge rejected the objection by saying that he was bound by this Court's direction of the 16th February, 1984. Antulay then moved this Court by filing an application under Article 32 of the Constitution. A two-Judge Bench consisting of Desai and A.N. Sen. JJ. by order dated 17th April, 1984 dismissed the applications by saying:

A.N. Sen, J.:

There is no merit in this writ petition. The writ petition is accordingly dismissed.

In my view, the writ petition challenging the validity of the order and judgment passed by this Court as nullity or otherwise incorrect cannot be entertained. I wish to make it clear that the dismissal of this writ petition will not prejudice the right of the petitioner to approach the Court with an appropriate review petition or to file any other application which he may be entitled in law to file.

D.A. Desai, J.:

I broadly agree with the conclusion recorded by my brother. The learned Judge in deciding the SLP (Crl.) Nos. 1949-50 of 1984 has followed the decision of this Court. The learned Judge was perfectly justified and indeed it was the duty of the learned Judge to follow the decision of this Court which is binding on him. Special leave petitions are dismissed. 1984 (3) SCR 482.

16 witnesses were examined by Khatri J. by July 27, 1984. Khatri J. was relieved of trying the case on his request, whereupon the learned Chief Justice nominated Mehta J. to continue the trial. 41 more witnesses were examined before him and at the stage when 57 witnesses in all had been examined for the prosecution, the Trial Judge invited the parties to consider the framing of charges. 43 draft charges were placed for his consideration on behalf of the prosecution and the learned Trial Judge framed 21 charges and recorded an order of discharge in respect of the remaining 22. At the instance of the complainant, Respondent No. 1, the matter came before this Court in appeal on special leave and a two-Judge Bench of which I happened to be one, by judgment dated April 17, 1986, in Criminal Appeal No. 658 of 1985 (1962) 2 SCC 716 set aside the order of discharge in regard to the several offences excepting extortion and directed the learned Trial Judge to frame charges for the same. this Court requested the learned Chief Justice of the Bombay High Court to nominate another Judge to take up the matter from the stage at which Mehta J. had made the order of discharge. Shah J. came to be nominated by the learned Chief Justice to continue the trial. By order dated July 24, 1986, Shah J. rejected the application of the accused for proceeding against the alleged co-conspirators by holding that there had been a long delay, most of the prosecution witnesses had already been examined and that if the co-conspirators were then brought on record, a de novo trial would be necessitated. The appellant challenged the order of Shah J. by filing a special leave petition before this Court wherein he further alleged that the High Court had no jurisdiction to try the case. A two-Judge Bench, of which Mukherji J., my learned brother, was a member, granted special leave, whereupon this Criminal Appeal (No. 468 of 1986) came to be registered. The Respondent No. 1 asked for revocation of special leave in Criminal Miscellaneous Petition No. 4248 of 1986. While rejecting the said revocation application, by order dated October 29, 1986, the two-Judge Bench formulated several questions that arose for consideration and referred the matter for hearing by a Bench of seven Judges of the Court. That is how this seven-Judge Bench has come to be constituted to hear the appeal.

90. It is the settled position in law that jurisdiction of courts comes solely from the law of the land and cannot be exercised otherwise. So far as the position in this country is concerned conferment of jurisdiction is possible either by the provisions of the Constitution or by specific laws enacted by the Legislature. For instance, Article 129 confers all the powers of a court of record on the Supreme Court including the power to punish for contempt of itself. Articles 131, 132, 133, 134, 135, 137, 138 and 139 confer

different jurisdictions on the Supreme Court while Articles 225, 226, 227, 228 and 230 deal with conferment of jurisdiction on the High Courts. Instances of conferment of jurisdiction by specific law are very common. The laws of procedure both criminal and civil confer jurisdiction on different courts. Special jurisdiction is conferred by special statute. It is thus clear that jurisdiction can be exercised only when provided for either in the Constitution or in the laws made by the Legislature. Jurisdiction is thus the authority or power of the court to deal with a matter and make an order carrying binding force in the facts. In support of judicial opinion for this view reference may be made to the permanent edition of 'Words and Phrases Vol. 23A' at page 164. It would be appropriate to refer to two small passages occurring at pages 174 and 175 of the Volume at page 174, referring to the decision in Carlile v. National Oil and Development Co. it has been stated:

Jurisdiction is the authority to hear and determine, and in order that it may exist the following are essential: (1) A court created by law, organized and sitting; (2) authority given it by law to hear and determine causes of the kind in question; (3) power given it by law to render a judgment such as it assumes to render; (4) authority over the parties to the case if the judgment is to bind them personally as a judgment in personam, which is acquired over the plaintiff by his appearance and submission of the matter to the court, and is acquired over the defendant by his voluntary appearance, or by service of process on him; (5) authority over the thing adjudicated upon its being located within the court's territory, and by actually seizing it if liable to be carried away; (6) authority to decide the question involved, which is acquired by the question being submitted to it by the parties for decision.

91. Article 139A of the Constitution authorises this Court to transfer cases from a High Court to itself or from one High Court to another and is, therefore, not relevant for our purpose. Section 406 of the Code empowers this Court to transfer cases and appeals by providing:

(1) Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case of appeal be transferred from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court.

(2)The Supreme Court may act under this section only on the application of the Attorney-General of India or of a party interested, and every such application shall be made by motion, which shall, except when the applicant is the Attorney-General of India or the Advocate-General of the State, be supported by affidavit or affirmation.

(3)....

The offences alleged to have been committed by the accused here are either punishable under the Penal Code or under Act 2 of 1947, both of which could have been tried in an appropriate court under the Criminal Procedure Code; but Parliament by the Criminal Law Amendment Act 46 of 1952 (1952 Act for short) amended both the Penal Code as also the Criminal Procedure Code with a view to providing for a more speedy trial of certain offences. The relevant sections of the 1952 Act are Sections 6, 7, 8, 9 and 10. For convenience, they are extracted below:

6. Power to appoint special Judges (1) The State Government may, by notification in the official Gazette, appoint as many special Judges as may be necessary for such area or areas as may be specified in the notification to try the following offences, namely,

(a) an offence punishable under Section 161, Section 162, Section 163, Section 164, Section 165 or Section 165A of the Indian Penal Code (45 of 1860) or Section 5 of the Prevention of Corruption Act, 1947 (2 of 1947);

(b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in Clause (a).

(2) A person shall not be qualified for appointment as a special Judge under this Act unless he is, or has been, a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the CrPC, 1898 (5 of 1898).

7. Cases triable by Special Judges (1) Notwithstanding anything contained in the CrPC, 1898 (5 of 1898), or in any other law the offences specified in Sub-section (1) of Section 6 shall be triable by Special Judges only;

(2) Every offence specified in Sub-section (1) of Section 6 shall be tried by the Special Judge for the area within which it was committed, or where there are more Special Judges than one for such area, by such one of them as may be specified in this behalf by the State Government.

(3) When trying any case, a Special Judge may also try any offence other than an offence specified in Section 6 with which the accused may, under the CrPC, 1898 (5 of 1898), be charged at the same trial

8. Procedure and powers of Special Judges (1) A Special Judge may take cognizance of offences without the accused being committed to him for trial, and in trying the accused persons, shall follow the procedure prescribed by the CrPC, 1898 (5 of 1898), for the trial of warrant cases by Magistrates.

(2) A special Judge, may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon

to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof; and any pardon so tendered shall, for the purposes of Sections 339 and 339-A of the CrPC, 1898 (5 of 1898), be deemed to have been tendered under Section 338 of that Code.

(3) Save as provided in Sub-section (1) or Sub-section (2), the provisions of the CrPC, 1898 (5 of 1898), shall, so far as they are not inconsistent with this Act, apply to the proceedings before a Special Judge; and for the purposes of the said provisions, the Court of the Special Judge shall be deemed to be a Court of Session trying cases without a jury or without the aid of assessors and the person conducting a prosecution before a Special Judge shall be deemed to be a public prosecutor.

(3-A) In particular, and without prejudice to the generality of the provisions contained in Sub-section (3), the provisions of Sections 350 and 549 of the CrPC, 1898 (5 of 1898), shall, so far as may be, apply to the proceedings before a Special Judge, and for the purposes of the said provisions a special Judge shall be deemed to be a Magistrate.

(4) A special Judge may pass upon any person convicted by him any sentence authorized by law for punishment of the offence of which such person is convicted.

9. Appeal and revision-The High Court may exercise, so far as they may be applicable, all the powers conferred by Chapters XXXI and XXXII of the CrPC, 1898 (5 of 1898) on a High Court as if the Court of the special Judge were a Court of Session trying cases without a jury within the local limits of the jurisdiction of the High Court.

10. Transfer of certain pending cases-All cases triable by a special Judge under Section 7 which, immediately before the commencement of this Act, were pending before any Magistrate shall, on such commencement, be forwarded for trial to the special Judge having jurisdiction over such cases.

On the ratio of the seven-Judge Bench decision of this Court in the State of West Bengal v. Anwar Ali Sarkar MANU/SC/0033/1952: 1952CriLJ510 the vires of this Act are not open to challenge. The majority of the learned Judges in Anwar Ali Sarkar's case expressed the view that it was open to the Legislature to set up a special forum for expedient trial of particular class of cases. Section 7(1) has clearly provided that offences specified in Sub-section (1) of Section 6 shall be triable by the Special Judge only and has taken away the power of the courts established under the CrPC to try those offences. Section 10 of the Act required all pending cases on the date of commencement of the Act to stand transferred to the respective Special Judge. Unless there be challenge to the provision creating exclusive jurisdiction of the Special Judge, the procedural law in the Amending Act is binding on courts as also the parties and no court is entitled to make orders contrary to the law which are binding. As long as Section 7 of the Amending Act

of 1952 hold the field it was not open to any court including the apex Court to act contrary to Section 7(1) of the Amending Act.

92. The power to transfer a case conferred by the Constitution or by Section 406 of the CrPC does not specifically relate to the special Court. Section 406 of the Code could perhaps be applied on the principle that the Special Judge was a subordinate court for transferring a case from one special Judge to another special Judge. That would be so because such a transfer would not contravene the mandate of Section 7(1) of the Amending Act of 1952. While that may be so, the provisions for transfer, already referred to, do not authorize transfer of a case pending in the court of a special Judge first to the Supreme Court and then to the High Court for trial. A four Judge Bench in Raja Soap Factory v. S.P. Santharaj MANU/SC/0231/1965: [1965]2SCR800 was considering the jurisdiction of the High Court to deal with a matter Shah J., as he then was, spoke for the court thus:

But if the learned Judge, as reported in the summary of the judgment, was of the opinion that the High Court is competent to assume to itself jurisdiction which it does not otherwise possess, merely because an 'extra-ordinary situation' has arisen, with respect to the learned Judge, we are unable to approve of that view. By 'jurisdiction' is meant the extent of the power which is conferred upon the court by its Constitution to try a proceeding; its exercise cannot be enlarged because what the learned Judge calls an extraordinary situation 'requires' the Court to exercise it.

93. Brother Mukharji in his elaborate judgment has come to the conclusion that the question of transferring the case from the court of the special Judge to the High Court was not in issue before the five-Judge Bench. Mr. Jethmalani in course of the argument has almost accepted the position that this was not asked for on behalf of the complainant at the hearing of the matter before the Constitution Bench. From a reading of the judgment of the Constitution Bench it appears that the transfer was a suo motu direction of the court. Since this particular aspect of the matter had not been argued and counsel did not have an opportunity of pointing out the legal bar against transfer, the learned Judges of this Court obviously did not take note of the special provisions in Section 7(1) of the 1952 Act. I am inclined to agree with Mr. Rao for Antulay that if this position had been appropriately placed, the direction for transfer from the court or exclusive jurisdiction to the High Court would not have been made by the Constitution Bench. It is appropriate to presume that this Court never' intends to act contrary to law.

94. There is no doubt that after the Division Bench of Desai and Sen, JJ. dismissed the writ petition and the special leave petitions on 17th April, 1984, by indicating that the petitioner could file an appropriate review petition or any other application which he may be entitled in law to file, no further action was taken until charges were framed on the basis of evidence of 57 witnesses and a mass of documents. After a gap of more than three years, want of jurisdiction of the High Court was sought to be reagitated before the

two-Judge Bench in the present proceedings. During this intervening period of three years or so a lot of evidence was collected by examining the prosecution witnesses and exhibiting documents. A learned Judge of the High Court devoted his full time to the case. Mr. Jethmalani pointed out to us in course of his argument that the evidence that has already been collected is actually almost three-fourths of what the prosecution had to put in. Court's time has been consumed, evidence has been collected and parties have been put to huge expenses. To entertain the claim of the appellant that the transfer of the case from the Special Judge to the High Court was without authority of law at this point of time would necessarily wipe out the evidence and set the clock back by about four years. It may be that some of the witnesses may no longer be available when the de novo trial takes place. Apart from these features, according to Mr. Jethmalani to say at this stage that the direction given by a five-Judge Bench is not binding and, therefore, not operative will shake the confidence of the litigant public in the judicial process and in the interest of the system it should not be done. Long arguments were advanced on either side in support of their respective stands-the appellant pleading that the direction for transfer of the proceedings from the Special Judge to the High Court was a nullity and Mr. Jethmalani contending that the apex Court had exercised its powers for expediting the trial and the action was not contrary to law. Brother Mukharji has dealt with these submissions at length and I do not find any necessity to dwell upon this aspect in full measure. In the ultimate analysis I am satisfied that this Court did not possess the power to transfer the proceedings from the Special Judge to the High Court. Antulay has raised objection at this stage before the matter has been concluded. In case after a full dressed trial, he is convicted, there can be no doubt that the wise men in law will raise on his behalf, inter alia, the same contention as has been advanced now by way of challenge to the conviction. If the accused is really guilty of the offences as alleged by the prosecution there can be no two opinions that he should be suitably punished and the social mechanism of punishing the guilty must come heavily upon him. No known loopholes should be permitted to creep in and subsist so as to give a handle to the accused to get out of the net by pleading legal infirmity when on facts the offences are made out. The importance of this consideration should not be overlooked in assessing the situation as to whether the direction of this Court as contained in the five-Judge Bench decision should be permitted to be questioned at this stage or not.

95. Mr. Rao for Antulay argued at length and Brother Mukharji has noticed all those contentions that by the change of the forum of the trial the accused has been prejudiced. Undoubtedly, by this process he misses a forum of appeal because if the trial was handled by a Special Judge, the first appeal would lie to the High Court and a further appeal by special leave could come before this Court. If the matter is tried by the High Court there would be only one forum of appeal being this Court, whether as of right or by way of special leave. The appellant has also contended that the direction violates Article 14 of the Constitution because he alone has been singled out and picked up for being treated differently from similarly placed accused persons. Some of these aspects cannot be overlooked with ease. I must, however, indicate here that the argument based upon the

extended meaning given to the contents of Article 21 of the Constitution, though attractive have not appealed to me.

96. One of the well-known principles of law is that decision made by a competent court should be taken as final subject to further proceedings contemplated by the law of procedure. In the absence of any further proceeding, the direction of the Constitution Bench of 16th of February, 1984 became final and it is the obligation of everyone to implement the direction of the apex Court. Such an order of this Court should by all canons of judicial discipline be binding on this Court as well and cannot be interfered with after attaining finality. Brother Mukharji has referred to several authorities in support of his conclusion that an order made without jurisdiction is not a valid one and can be ignored, overlooked or brushed aside depending upon the situation. I do not propose to delve into that aspect in my separate judgment.

97. It is a well-settled position in law that an act of the court should not injure any of the suitors. The Privy Council in the well-known decision of Alexander Rodger v. The Comptori D' Escompte De Paris [1871] 3 P.C. 465 observed:

One of the first and highest duties of all courts is to take care that the act of the court does no injury to any of the suitors and when the expression act of the court is used, it does not mean merely the act of the primary court, or of any intermediate court of appeal, but the act of the court as a whole, from the lowest court which entertains jurisdiction over the matter upto the highest court which finally disposes of the case. It is the duty of the aggregate of those Tribunals, if I may use the expression, to take care that no act of the court in the course of the whole of the proceedings does an injury to the suitors in courts.

Brother Mukharji has also referred to several other authorities which support this view.

98. Once it is found that the order of transfer by this Court dated 16th of February, 1984, was not within jurisdiction by the direction of the transfer of the proceedings made by this Court, the appellant should not suffer.

99. What remains to be decided is the procedure by which the direction of the 16th of February, 1984, could be recalled or altered. There can be no doubt that certiorari shall not lie to quash a judicial order of this Court. That is so on account of the fact that the Benches of this Court are not subordinate to larger Benches thereof and certiorari is, therefore, not admissible for quashing of the orders made on the judicial side of the court. Mr. Rao had relied upon the ratio in the case of Prem Chand Garg v. Excise Commissioner, U.P., Allahabad MANU/SC/0082/1962: [1963] 1 SCR 885. Brother Mukharji has dealt with this case at considerable length. this Court was then dealing with an Article 32 petition which had been filed to challenge the vires of Rule 12 of Order 35 of this Court's Rules. Gajendragadkar, J., as the learned Judge then was, spoke for himself and three of his learned brethren including the learned Chief Justice. The facts of the case

as appearing from the judgment show that there was a judicial order directing furnishing of security of Rs. 2,500 towards the respondent's costs and the majority judgment directed:

In the result, the petition is allowed and the order passed against the petitioners on December 12, 1961, calling upon them to furnish security of Rs. 2,500 is set aside.

Shah, J. who wrote a separate judgment upheld the vires of the rule and directed dismissal of the petition. The fact that a judicial order was being made the subject matter of a petition under Article 32 of the Constitution was not noticed and whether such a proceeding was tenable was not considered. A nine-Judge Bench of this Court in Naresh Shridhar Mirajkar and Ors. v. State of Maharashtra and Anr. MANU/SC/0044/1966: [1966]3SCR744 referred to the judgment in Prem Chand Garg's case (supra). Gajendragadkar, CJ., who delivered the leading and majority judgment stated at page 765 of the Reports:

In support of his argument that a judicial decision can be corrected by this Court in exercise of its writ jurisdiction under Article 32(2), Mr. Setalvad has relied upon another decision of this Court in Prem Chand Garg v. Excise Commissioner, U.P. Allahabad (supra). In that case, the petitioner had been required to furnish security for the costs of the respondent under Rule 12 of order 35 of the Supreme Court Rules. By his petition filed under Article 32, he contended that the rule was invalid as it placed' obstructions on the fundamental right guaranteed under Article 32 to move the Supreme Court for the enforcement of fundamental rights. This plea was upheld by the majority decision with the result that the order requiring him to furnish security was vacated. In appreciating the effect of this decision, it is necessary to bear in mind the nature of the contentions raised before the Court in that case. The rule itself, in terms, conferred discretion on the court, while dealing with applications made under Article 32, to impose such terms as to costs as to the giving of security as it thinks fit. The learned Solicitor General who supported the validity of the rule, urged that though the order requiring security to be deposited may be said to retard or obstruct the fundamental right of the citizen guaranteed by Article 32(1), the rule itself could not be effectively challenged as invalid, because it was merely discretionary; it did not impose an obligation on the court to demand any security; and he supplemented his argument by contending that under Article 142 of the Constitution, the powers of this Court were wide enough to impose any term or condition subject to which proceedings before this Court could be permitted to be conducted. He suggested that the powers of this Court under Article 142 were not subject to any of the provisions contained in Part III including Article 32(1). On the other hand, Mr. Pathak who challenged the validity of the rule, urged that though the rule was in form and in substance discretionary, he disputed the validity of the power which the rule conferred on this Court to demand security.... It would thus be seen that the main controversy in the case of Prem Chand Garg centered round the question as to whether Article 145 conferred powers on this Court to make rules, though they may be

inconsistent with the constitutional provisions prescribed by Part III. Once it was held that the powers under Article 142 had to be read subject not only to the fundamental rights, but to other binding statutory provisions, it became clear that the rule which authorised the making of the impugned order was invalid. It was in that context that the validity of the order had to be incidentally examined. The petition was made not to challenge the order as such, but to challenge the validity of the rule under which the order was made. Once a rule was struck down as being invalid, the order passed under the said rule had to be vacated. It is difficult to see how this decision can be pressed into service by Mr. Setalvad in support of the argument that a judicial order passed by this Court was held to be subject to the writ jurisdiction of this Court itself....

In view of this decision in Mirajkar's case (supra) it must be taken as concluded that judicial proceedings in this Court are not subject to the writ jurisdiction thereof.

100. On behalf of the appellant, at one stage, it was contended that the appeal may be taken as a review. Apart from the fact that the petition of review had to be filed within 30 days-and here there has been inordinate delay-the petition for review had to be placed before the same Bench and now that two of the learned Judges of that Constitution Bench are still available, it must have gone only before a Bench of five with those two learned Judges. Again under the Rules of the Court a review petition was not to be heard in Court and was liable to be disposed of by circulation. In these circumstances, the petition of appeal could not be taken as a review petition. The question, therefore, to be considered now is what is the modality to be followed for vacating the impugned direction.

101. This being the apex Court, no litigant has any opportunity of approaching any higher forum to question its decisions. Lord Buck-master in 1917 A.C. 170 stated:

All rules of court are nothing but provisions intended to secure proper administration of justice. It is, therefore, essential that they should be made to serve and be subordinate to that purpose.

this Court in Gujarat v. Ram Prakash MANU/SC/0157/1969: [1970]2SCR875 reiterated the position by saying:

Procedure is the handmaid and not a mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it, like all rules of procedure, this rule demands a construction which would promote this cause.

Once judicial satisfaction is reached that the direction was not open to be made and it is accepted as a mistake of the court, it is not only appropriate but also the duty of the Court to rectify the mistake by exercising inherent powers. Judicial opinion heavily leans in favour of this view that a mistake of the Court can be corrected by the Court itself without any fetters. This is on the principle as indicated in Alexander Rodger's case (supra). I am

of the view that in the present situation, the Court's inherent powers can be exercised to remedy the mistake. Mahajan, J. speaking for a four-Judge Bench in Kishan Deo v. Radha Kissen MANU/SC/0006/1952: [1953]4SCR136 stated:

The Judge had jurisdiction to correct his own error without entering into a discussion of the grounds taken by the decree-holder or the objections raised by the judgment-debtOrs.

102. The Privy Council in Debi v. Habib, ILR 35 All. 331, pointed out that an abuse of the process of the Court may be committed by the court or by a party. Where a court employed a procedure in doing something which it never intended to do and there is an abuse of the process of the court it can be corrected. Lord Shaw spoke for the Law lords thus:

Quite apart from Section 151, any court might have rightly considered itself to possess an inherent power to rectify the mistake which had been inadvertently made.

It was pointed out by the Privy Council in Murtaza v. Yasin, AIR 1916 PC 85 that:

Where substantial injustice would otherwise result, the court has, in their Lordships' opinion, an inherent power to set aside its own judgments of condemnation so as to let in bona fide claims by parties....

Indian authorities are in abundance to support the view that injustice done should be corrected by applying the principle actus curiae neminem gravabit an act of the court shall prejudice no one.

103. To err is human, is the off-quoted saying. Courts including the apex one are no exception. To own up the mistake when judicial satisfaction is reached does not militate against its status or authority. Perhaps it would enhance both.

104. It is time to sound a note of caution this Court under its Rules of Business ordinarily sits in divisions and not as a whole one. Each Bench, whether small or large, exercises the powers vested in the Court and decisions rendered by the Benches irrespective of their size are considered as decisions of the Court. The practice has developed that a larger Bench is entitled to overrule the decision of a smaller Bench notwithstanding the fact that each of the decisions is that of the Court. That principle, however, would not apply in the present situation and since we are sitting as a Bench of Seven we are not entitled to reverse the decision of the Constitution Bench. Overruling when made by a larger Bench of an earlier decision of a smaller one is intended to take away the precedent value of the decision without affecting the binding effect of the decision in the particular case. Antulay, therefore, is not entitled to take advantage of the matter being before a larger Bench. In fact, if it is a case of exercise of inherent powers to rectify a mistake it was open

even to a five-Judge Bench to do that and it did not require a Bench larger than the Constitution Bench for that purpose.

105. Mr. Jethmalani had told us during arguments that if there was interference in this case there was possibility of litigants thinking that the Court had made a direction by going out of its way because an influential person like Antulay was involved. We are sorry that such a suggestion was made before us by a senior counsel. If a mistake is detected and the apex Court is not able to correct it with a view to doing justice for fear of being misunderstood, the cause of justice is bound to suffer and for the apex Court the apprehension would not be a valid consideration. Today it is Abdul Rehman Antulay with a political background and perhaps some status and wealth but tomorrow it can be any ill-placed citizen. this Court while administering justice does not take into consideration as to who is before it. Every litigant is entitled to the same consideration and if an order is warranted in the interest of justice, the contention of Mr. Jethmalani cannot stand in the way as a bar to the making of that order.

106. There is still another aspect which should be taken note of. Finality of the orders is the rule. By our directing recall of an order the well-settled propositions of law would not be set at naught. Such a situation may not recur in the ordinary course of judicial functioning and if there be one certainly the Bench before which it comes would appropriately deal with it. No strait jacket formula can be laid down for judicial functioning particularly for the apex Court. The apprehension that the present decision may be used as a precedent to challenge judicial orders of this Court is perhaps misplaced because those who are familiar with the judicial functioning are aware of the limits and they would not seek support from this case as a precedent. We are sure that if precedent value is sought to be derived out of this decision, the Court which is asked to use this as an instrument would be alive to the peculiar facts and circumstances of the case in which this order is being made.

107. I agree with the ultimate conclusion proposed by my learned brother Mukharji.

G.L. Oza, J.

108. I had the opportunity to go through opinion prepared by learned brother Justice Mukharji and I agree with his opinion. I have gone through these additional reasons prepared by learned brother Justice R.N. Misra. It appears that the learned brother had tried to emphasise that even if an error is apparent in a judgment or an order passed by this Court it will not be open to a writ of certiorari and I have no hesitation in agreeing with this view expressed. At the same time I have no hesitation in observing that there should be no hesitation in correcting an error in exercise of inherent jurisdiction if it comes to our notice.

109. It is clear from the opinions of learned brothers Justice Mukharji and Justice Misra that the jurisdiction to try a case could only be conferred by law enacted by the legislature and this Court could not confer jurisdiction if it does not exist in law and it is this error which is sought to be corrected. Although it is unfortunate that it is being' corrected after long lapse of time. I agree with the opinion prepared by Justice Mukharji and also the additional opinion prepared by Justice Misra.

B.C. Ray, J.

110. I have the privilege of going through the judgment prepared by learned brother Mukharji, J and I agreed with the same. Recently, I have received a separate judgment from brother R.N. Misra, J and I have decipherred the same.

111. In both the judgments it has been clearly observed that judicial order of this Court is not amenable to a writ of certiorari for correcting any error in the judgment. It has also been observed that the jurisdiction or power to try and decide a cause is conferred on the courts by the Law of the Lands enacted by the Legislature or by the provisions of the Constitution. It has also been highlighted that the court cannot confer a jurisdiction on itself which is not provided in the law. It has also been observed that the act of the court does not injure any of the suitors. It is for this reason that the error in question is sought to be corrected after a lapse of more than three years. I agree with the opinion expressed by Justice Mukharji in the judgment as well as the additional opinion given by Justice Misra in his separate judgment.

M.N. Venkatachaliah, J.

112. Appellant, a former Chief Minister of Maharashtra, is on trial for certain offences under Sections 161, 165, Indian Penal Code and under the Prevention of Corruption Act, 1947. The questions raised in this appeal are extra-ordinary in many respects touching, as they do, certain matters fundamental to the finality of judicial proceedings. It also raises a question-of far-reaching consequences-whether, independently of the review jurisdiction under Article 137 of the Constitution, a different bench of this Court, could undo the finality of earlier pronouncements of different benches which have, otherwise, reached finality.

If the appeal is accepted, it will have effect of blowing-off, by a side-wind as it were, a number of earlier decisions of different benches of this Court, binding inter-parties, rendered at various stages of the said criminal prosecution including three judgments of 5 judge benches of this Court. What imparts an added and grim poignance to the case is that the appeal, if allowed, would set to naught all the proceedings taken over the years before three successive Judges of the High Court of Bombay and in which already 57 witnesses have been examined for the prosecution-all these done pursuant to the direction dated 16.12.1984 issued by a five judge Bench of this Court. This by itself should

be no deterrent for this Court to afford relief if there has been a gross miscarriage of justice and if appropriate proceedings recognised by law are taken. Lord Atkin said "Finality is a good thing, but justice is a better". [See 60 Indian Appeals 354 PC]. Considerations of finality are subject to the paramount considerations of justice; but the remedial action must be appropriate and known to law. The question is whether there is any such gross miscarriage of justice in this case, if so whether relief can be granted in the manner now sought.

The words of caution of the judicial committee in Venkata Narasimha Appa Row v. The Court of Wards and Ors. [1886] 1 ILR 660 are worth recalling:

There is a salutary maxim which ought to be observed by all courts of last resort-interest reipublicae ut sit finis litium. Its strict observance may occasionally entail hardship upon individual litigants, but the mischief arising from that source must be small in comparison with the great mischief which would necessarily result from doubt being thrown upon the finality of the decisions of such a tribunal as this.

(emphasis supplied).

113. I have had the opportunity, and the benefit, of reading in draft the learned and instructive opinions of my learned Brothers Sabyasachi Mukharji J., and Ranganath Misra J. They have, though for slightly differing reasons, proposed to accept the appeal. This will have the effect of setting-aside five successive earlier orders of different benches of the Court made at different stages of the criminal prosecution, including the three judgments of Benches of five Judges of this Court in R.S. Nayak v. A.R. Antulay MANU/SC/0102/1984: 1984CriLJ613 and A.R. Antulay R.S. Nayak MANU/SC/0082/1984: 1984CriLJ647 and R.S. Nayak v. A.R. Antulay MANU/SC/0102/1984: 1984CriLJ613.

I have bestowed a respectful and anxious consideration to the weighty opinion of my brothers with utmost respect, I regret to have to deny myself the honour of agreeing with them in the view they take both of the problem and the solution that has commended itself to them. Apart from other things, how can the effect and finality of this Court's Order dated 17.4.1984 in Writ Petition No. 708 of 1984 be unsettled in these proceedings? Admittedly, this order was made after hearing and does not share the alleged vitiating factors attributed to the order dated 16.2.1984. That order concludes everything necessarily inconsistent with it. In all humility, I venture to say that the proposed remedy and the procedure for its grant are fraught with far greater dangers than the supposed injustice they seek to relieve: and would throw open an unprecedented procedural flood-gate which might, quite ironically, enable a repetitive challenge to the present decision itself on the very grounds on which the relief is held permissible in the appeal. To seek to be wiser than the law, it is said, is the very thing by good laws forbidden. Well trodden path is the best path.

Ranganath Misra J. if I may say so with respect, has rightly recognised these imperatives:

It is time to sound a note of caution this Court under its rules of business ordinarily sits in divisions and not as a whole one. Each Bench, whether small or large, exercises the powers vested in the Court and decisions rendered by the Benches irrespective of their size are considered as decisions of the Court. The practice has developed that a larger bench is entitled to over-rule the decision of a small bench notwithstanding the fact that each of the decisions is that of the Court. That principle, however, would not apply in the present situation and since we are sitting as a Bench of Seven we are not entitled to reverse the decision of the Constitution Bench.

Learned brother, however, hopes this case to be more an exception than the Rule:

Finality of the orders is the rule. By our directing recall of an order the well-settled propositions of law would not be set at naught. Such a situation may not recur in the ordinary course of judicial functioning and if there be one, certainly the bench before which it comes would appropriately deal with it.

114. A brief advertence to certain antecedent events which constitute the back-drop for the proper perception of the core-issue arising in this appeal may not be out of place:

Appellant was the Chief Minister of Maharashtra between 9.6.1980 and 12.1.1982 on which latter date he resigned as a result of certain adverse findings made against him in a Court proceeding. On 9.8.1982, Ramdas Srinivas Nayak, respondent No. 1, with the sanction of the Governor of Maharashtra, accorded on 28.7.1982, filed in the Court of Special-Judge, Bombay, a criminal Case No. 24 of 1982 alleging against the appellant certain offences under Section 161 and 165 of Indian Penal Code and Section 6 of the Prevention of Corruption Act, 1947, of which the Special-Judge took cognisance.

Appellant questioned the jurisdiction of Special Judge to take cognisance of those offences on a private complaint. On 20.10.1982, the Special Judge over-ruled the objection. On 7.3.1983, the High Court dismissed appellant's revision petition in which the order of the Special Judge was assailed. The criminal case thereafter stood transferred to another Special Judge, Shri R.B. Sule. Appellant did not accept the order of the High Court dated 7.3.1983 against which he came up in appeal to this Court, by Special-leave, in Criminal appeal No. 347 of 1983. During the pendency of this appeal, however, another important event occurred. The Special Judge, Shri R.B. Sule, by his order dated 25.7.1983, discharged the appellant, holding that the prosecution was not maintainable without the sanction of the Maharashtra Legislative Assembly, of which the appellant continued to be a member, notwithstanding his ceasing to be Chief Minister. Respondent No. 1 challenged this order of discharge in a Criminal Revision Petition No. 354 of 1982 before the High Court of Bombay. Respondent No. 1 also sought, and was granted, special-leave to appeal against

Judge Sule's order directly to this Court in Criminal appeal No. 356 of 1983. this Court also withdrew to itself the said criminal revision application No. 354 of 1982 pending before the High Court. All the three matters-the two appeals (Crl. A. 347 of 1983 and 356 of 1983) and Criminal Revision Petition so withdrawn to this Court-were heard by a five Judge bench and disposed of by two separate Judgments dated 16.2.1984.

By Judgment in Crl. appeal No. 356 of 1983 R.S. Nayak v. A.R. Antulay MANU/SC/0102/1984: 1984CriLJ613 this Court, while setting aside the view of the Special Judge that sanction of the Legislative Assembly was necessary, further directed the trial of the case by a Judge of the Bombay High Court. this Court observed that despite lapse of several years after commencement of the prosecution the case had "not moved an inch further", that "expeditious trial is primarily necessary in the interest of the accused and mandate of Article 21", and that "therefore Special case No. 24 of 1982 and Special Case No. 3 of 1983 pending in the Court of Special Judge, Greater Bombay, Shri R.B. Sule" be withdrawn and transferred to the High Court of Bombay, with a request to the learned Chief Justice to assign these two cases to a sitting Judge of the High Court. The Judge so designated was also directed to dispose of the case expeditiously, preferably "by holding the trial from day-to-day.

Appellant, in these proceedings, does not assail the correctness of the view taken by the 5 Judge Bench on the question of the sanction. Appellant has confined his challenge to what he calls the constitutional infirmity-and the consequent nullity-of the directions given as to the transfer of the case to a Judge of the High Court.

In effectuation of the directions dated 16.2.1984 of this Court the trial went on before three successive learned Judges of the High Court. It is not necessary here to advert to the reasons for the change of Judges. It is, however, relevant to mention that when the matter was before Khatri J. who was the first learned Judge to be designated by the Chief Justice on the High Court, the appellant challenged his jurisdiction, on grounds which amounted to a challenge to the validity of directions of this Court for the transfer of the case. Khatri J. quite obviously, felt bound to repel the challenge to his jurisdiction. Learned Judge said appellant's remedy, if any was to seek a review of the directions dated 16.2.1984 at the hands of this Court.

Learned Judge also pointed out in his order dated 14.3.1984 what, according to him, was the true legal position permitting the transfer of the case from the Special-Judge to be tried by the High Court in exercise of its extra-ordinary original criminal jurisdiction. In his order dated 16.3.1984, Khatri J. observed:

...Normally it is the exclusive jurisdiction of a Special Judge alone to try corruption charges. This position flows from Section 7 of the 1952 Act. However, this does not mean that under no circumstances whatever, can trial of such offences be not tried by a Court

of superior jurisdiction than the Special Judge. I have no hesitation in contemplating at three situations in which a Court of Superior jurisdiction could try such offence....

115. The third situation can be contemplated under the CrPC itself where a Court of superior jurisdiction may have to try the special cases. Admittedly, there are no special provisions in the 1952 Act or 1947 Act relating to the transfer of special cases from one Court to the other. So by virtue of the combined operation of Section 8(3) of the 1952 Act and Section 4(2) of the CrPC, the High Court will have jurisdiction under Section 407 of the Code in relation to the special cases also. An examination of the provisions of Section 407 leaves no doubt that where the requisite conditions are fulfilled, the High Court will be within its legitimate powers to direct that a special case be transferred to and tried before itself.

Appellant did not seek any review of the directions at the hands of the Bench which had issued them, but moved in this Court a Writ Petition No. 708 of 1984 under Article 32 of the Constitution assailing the view taken by Khatri J. as to jurisdiction which in substance meant a challenge to the original order dated 16.2.1984 made by this Court. A division Bench consisting of D.A. Desai and A.N. Sen, JJ. dismissed the writ petition on 17.4.1984. Sen, J. speaking for the bench said:

In my view, the writ petition challenging the validity of the order and judgment passed by this Court as nullity or otherwise is incorrect, cannot be entertained. I wish to make it clear that the dismissal of this writ petition will not prejudice the right of the petitioner to approach the Court with an appropriate review petition or to file any other application which he may be entitled in law to file.

(emphasis supplied)

[A.R. Antulay v. Union [1984] 3 SCR 482

This order has become final. Even then no review was sought.

It is also relevant to refer here to another pronouncement of a five Judge bench of this Court dated 5.4.1984 in R.S. Nayak v. A.R. Antulay MANU/SC/0102/1984: 1984CriLJ613 in Criminal misc. petition No. 1740 of 1984 disposing of a prayer for issue of certain directions as to the procedure to be followed before the designated Judge of the High Court. The bench referred to the provisions of law, which according to it, enabled the transfer of the trial of the criminal case to the High Court. The view taken by my two learned Brothers, it is needless to emphasise, has the effect of setting at naught this pronouncement of the five Judge Bench as well. The five Judge bench considered the legal foundations of the power to transfer and said:

...To be precise, the learned Judge has to try the case according to the procedure prescribed for cases instituted otherwise than on police report by Magistrate. This position is clearly an unambiguous in view of the fact that this Court while allowing the appeal was hearing amongst others Transferred case No. 347 of 1983 being the Criminal Revision Application No. 354 of 1983 on the file of the High Court of the Judicature at Bombay against the order of the learned Special Judge, Shri R.B. Sule discharging the accused. if the criminal revision application was not withdrawn to this Court, the High Court while hearing criminal revision application could have under Section 407(8), CrPC, 1973, would have to follow the same procedure which the Court of Special Judge would have followed if the case would not have been so transferred....

(emphasis supplied)

According to the Bench, the High Court's power under Section 407, Criminal Procedure Code for withdrawing to itself the case from a Special Judge, who was, for this purpose, a Sessions Judge, was preserved notwithstanding the exclusivity of the jurisdiction of the Special Judge and that the Supreme Court was entitled to and did exercise that power as the Criminal Review application pending in the High Court had been withdrawn to the Supreme Court. The main basis of appellant's case is that all this is per-incurriam, without jurisdiction and a nullity.

In the meanwhile Mehta J. was nominated by the Chief Justice of the High Court in place of Khatri. J. In addition to the 17 witnesses already examined by Khatri J. 41 more witnesses were examined for the prosecution before Mehta J. of the 43 charges which the prosecution required to be framed in the case, Mehta J. declined to frame charges in respect of 22 and discharged the appellant of those alleged offences. Again respondent No. 1 came up to this Court which by its order dated 17.4.1986 in Criminal Appeal No. 658 of 1985 [reported in (1985) 2 SCC 716] set aside the order of discharge in regard to 22 offences and directed that charges be drawn in respect of them. this Court also suggested that another Judge be nominated to take up the case. It is, thus, that Shah J came to conduct the further trial.

116. I may now turn to the occasion for the present appeal. In the further proceedings before Shah J. the appellant contended that some of the alleged co-conspirators. Some of whom had already been examined as prosecution witnesses, and some others proposed to be so examined should also be included in the array of accused persons. This prayer, Shah J had no hesitation to reject. It is against this order dated 24.7.1986 that the present appeal has come up. With this appeal as an opening, appellant has raised directions of the five Judges Bench, on 16.2.1984; of the serious violations of his constitutional-rights; of a hostile discrimination of having to face a trial before a Judge of the High Court instead of the Special-Judge, etc. A Division Bench consisting of E.S. Venkataramiah and Sabyasachi Mukharji JJ. in view of the seriousness of the grievances aired in the appeal, referred it to be heard by a bench of seven Judges.

117. The actual decision of Shah J in the appeal declining to proceed against the alleged co-conspirators is in a short compass. But the appeal itself, has assumed a dimension far beyond the scope of the order it seeks to be an appeal against. The appeal has become significant not for its pale determined by the order under appeal; but more for the collateral questions for which it has served as a spring board in this Court.

118. Before going into these challenges, it is necessary to say something on the merits of the order under appeal itself. An accused person cannot assert any right to a joint trial with his co-accused. Normally it is the right of the prosecution to decide whom it prosecutes. It can decline to array a person as a co-accused and, instead, examine him as a witness for the prosecution. What weight is to be attached to that evidence, as it may smack of the testimony of a guilty partner, in crime, is a different matter. Prosecution can enter Nolle proseque against any accused-person. It can seek to withdraw a charge against an accused person. These propositions are too well settled to require any further elaboration. Suffice it to say that the matter is concluded by the pronouncement of this Court in Choraria v. Maharashtra MANU/SC/0065/1967: 1968CriLJ1124 where Hidayathullah J referred to the argument that the accomplice, a certain Ethyl Wong in that case, had also to be arrayed as an accused and repelled it, observing:

... Mr. Jethmalani's argument that the Magistrate should have promptly put her in the dock because of her incriminating answers overlooks Section 132 (proviso).

...The prosecution was not bound to prosecute her, if they thought that her evidence was necessary to break a smugglers' ring. Ethyl Wong was prosecuted by Section 132 (proviso) of the Indian Evidence Act even if she gave evidence incriminating herself. She was a competent witness although her evidence could only be received with the caution necessary in all accomplice evidence....

On this point, really, appellant cannot be heard to complain. Of the so called co-conspirators some have been examined already as prosecution witnesses; some others proposed to be so examined; and two others, it would appear, had died in {he interregnum. The appeal on the point has no substance and would require to be dismissed. We must now turn to the larger issue raised in the appeal.

119. While Shri P.P. Rao, learned Senior Counsel for the appellant, handling an otherwise delicate and sensitive issue, deployed all the legal tools that a first rate legal-smithy could design, Shri Ram Jethmalani, learned Senior Counsel, however, pointed out the impermissibility both as a matter of law and propriety of a different bench embarking upon the present exercise which, in effect, meant the exertion of an appellate and superior jurisdiction over the earlier five Judge Bench and the precedential problems and anomalies such a course would create for the future.

120. The contentions raised and urged by Shri P.P. Rao admit of being summarised and formulated thus:

(a) That Supreme Court has, and can, exercise only such jurisdiction as is invested in it by the Constitution and the laws; that even the power under Article 142(1) is not unfettered, but is confined within the ambit of the jurisdiction otherwise available to it; that the Supreme Court, like any other court, cannot make any order that violates the law; that Section 7(1) of the Criminal Law (Amendment) Act, 1952, (1952 Act) envisages and sets-up a special and exclusive forum for trial of certain offences; that the direction for trial of those offences by a Judge of the High Court is wholly without jurisdiction and void; and that 'Nullity' of the order could be set up and raised whenever and wherever the order is sought to be enforced or effectuated;

(b) That in directing a Judge of the High Court to try the case the Supreme Court virtually sought to create a new jurisdiction and a new forum not existent in and recognised by law and has, accordingly, usurped Legislative powers, violating the basic tenets of the doctrine of separation of powers;

(c) That by being singled out for trial by the High Court, appellant is exposed to a hostile discrimination, violative of his fundamental rights under Articles 14 and 21 and if the principles in State of West Bengal v. Anwar Ali Sarkar MANU/SC/0033/1952: 1952CriLJ510. The law applicable to Anwar Ali Sarkar should equally apply to Abdul Rahman Antulay.

(d) That the directions for transfer were issued without affording an opportunity to the appellant of being hear and therefore void as violative of Rules of Natural Justice.

(e) That the transfer of the case to the High Court deprived appellant of an appeal, as of right, to the High Court. At least one appeal, as of right is the minimal constitutional safeguard.

(f) That any order including a judicial order, even if it be of the highest Court, which violates the fundamental rights of a person is a nullity and can be assailed by a petition under Article 32 of the Constitution on the principles laid down in Prem Chand Garg v. Excise Commissioner, UP. MANU/SC/0082/1962: [1963] 1 SCR 885.

(g) That, at all events, the order dated 16.2.1984 in so far as the impugned direction is concerned, is per incuriam passed ignoring the express statutory provisions of Section 7(1) of Criminal Law (Amendment) Act, 1952, and the earlier decision of this Court in Gurucharan Das Chadhaw. State of Rajasthan [1966] 2 SCR 678.

(h) That the direction for transfer of the case is a clear and manifest case of mistake committed by the Court and that when a person is prejudiced by a mistake of Court it is the duty of the Court to correct its own mistake: Actus Curiae Neminem Gravabit.

121. Courts are as much human institutions as any other and share all human susceptibilities to error. Justice Jackson said:

...Whenever decisions of one Court are reviewed by another, a percentage of them are reversed. That reflects a difference in outlook normally found between personnel comprising different courts. However, reversal by a higher court is not proof that justice is thereby better done. There is no doubt that if there were a super-Supreme Court a substantial proportion of our reversals of state Courts would also be reversed. We are not final because we are infallible, but we are infallible only because we are final.

(See Brown v. Allen [1944] US 443.

In Broom v. Cassel [1972] AC 1027 Lord Diplock said:

...It is inevitable in a hierarchical system of courts that there are decisions of the supreme appellate tribunal which do not attract the unanimous approval of all members of the judiciary. When I sat in Court of Appeal I sometimes thought the House of Lords was wrong in over ruling me. Even since that time there have been occasions, of which the instant appeal itself is one, when, alone or in company, I have dissented from a decision of the majority of this House. But the judicial system only works if someone is allowed to have the last word and if that last word, once spoken, is loyally accepted.

Judge Learned Hand, referred to as one of the most profound legal minds in the jurisprudence of the English speaking world, commended the Cromwellian intellectual humility and desired that these words of Cromwell be written over the portals of every church, over court house and at every cross road in the nation: "I beseech ye...think that ye may be mistaken.

As a learned author said, while infallibility is an unrealisable ideal, "correctness", is often a matter of opinion. An erroneous decision must be as binding as a correct one. It would be an unattainable ideal to require the binding effect of a judgment to defend on its being correct in the absolute, for the test of correctness would be resort to another Court the infallibility of which is, again subject to a similar further investigation. No self-respecting Judge would wish to act if he did so at the risk of being called a usurper whenever he failed to anticipate and predict what another Judge thought of his conclusions. Even infallibility would not protect him he would need the gift of prophecy-ability to anticipate the fallibilities of others as well. A proper perception of means and ends of the judicial process, that in the interest of finality it is inevitable to make some compromise between its ambitions of ideal justice in absolute terms and its limitations.

122. Re: Contentions (a) and (b): In the course of arguments we were treated to a wide ranging, and no less interesting, submissions on the concept of "jurisdiction" and "nullity" in relation to judicial orders. Appellant contends that the earlier bench had no jurisdiction to issue the impugned directions which were without any visible legal support, that they are 'void' as violative of the constitutional-rights of the appellant, and, also as violating the Rules of natural justice. Notwithstanding these appeal to high-sounding and emotive appellate; I have serious reservations about both the permissibility-in these proceedings-of an examination of the merits of these challenges. Shri Rao's appeal to the principle of "nullity" and reliance on a collateral challenge in aid thereof suffers from a basic fallacy as to the very concept of the jurisdiction of superior courts. In relation to the powers of superior courts, the familiar distinction between jurisdictional issues and adjudicatory issues-appropriate to Tribunals of limited jurisdiction,-has no place. Before a superior court there is no distinction in the quality of the decision-making-process respecting jurisdictional questions on the one hand and adjudicatory issues or issues pertaining to the merits, on the other.

123. The expression "jurisdiction" or the power to determine is, it is said, a verbal cast of many colours. In the case of a Tribunal, an error of law might become not merely an error in jurisdiction but might partake of the character of an error of jurisdiction. But, otherwise, jurisdiction is a 'legal shelter'-a power to bind despite a possible error in the decision. The existence of jurisdiction does not depend on the correctness of its exercise. The authority to decide embodies a privilege to bind despite error, a privilege which is inherent in and indispensable to every judicial function. The characteristic attribute of a judicial act is that it binds whether it be right or it be wrong. In Malkarjun v. Narahari [1900] 27 I.A. 216 the executing Court had quite wrongly, held that a particular person represented the estate of the deceased Judgment-debtor and put the property for sale in execution. The judicial committee said:

In doing so, the Court was exercising its jurisdiction. It made a sad mistake, it is true; but a court has jurisdiction to decide wrong as well as right. If it decides wrong, the wronged party can only take the course prescribed by law for setting matters right and if that course is not taken the decision, however wrong, cannot be disturbed.

In the course of the arguments there were references to the Anisminic case. In my view, reliance on the Anisminic principle is wholly misplaced in this case. That case related to the powers of Tribunals of limited jurisdiction. It would be a mistake of first magnitude to import these inhibitions as to jurisdiction into the concept of the jurisdiction of superior courts. A finding of a superior court even on a question of its own jurisdiction, however grossly erroneous it may, otherwise be, is not a nullity; nor one which could at all be said to have been reached without jurisdiction, susceptible to be ignored or to admit of any collateral-attack. Otherwise, the adjudications of superior courts would be held-up to ridicule and the remedies generally arising from and considered concomitants of such

classification of judicial-errors would be so seriously abused and expanded as to make a mockery of those foundational principles essential to the stability of administration of justice.

The superior court has jurisdiction to determine its own jurisdiction and an error in that determination does not make it an error of jurisdiction. Holdsworth (History of English Law vol. 6 page 239) refers to the theoretical possibility of a judgment of a superior court being a nullity if it had acted coram-non-judice. But who will decide that question if the infirmity stems from an act of the Highest Court in the land? It was observed:

...It follows that a superior court has jurisdiction to determine its own jurisdiction; and that therefore an erroneous conclusion as to the ambit of its jurisdiction is merely an abuse of its jurisdiction, and not an act outside its jurisdiction....

...In the second place, it is grounded upon the fact that, while the judges of the superior courts are answerable only to God and the king, the judges of the inferior courts are answerable to the superior courts for any excess of jurisdiction....

Theoritically the judge of a superior court might be liable if he acted coram non judice; but there is no legal tribunal to enforce that liability. Thus both lines of reasoning led to the same conclusion-the total immunity of the judges of the superior courts.

Rubinstein in his "Jurisdiction and Illegality" says:

...In practice, every act made by a superior court is always deemed valid (though, possibly, voidable) wherever it is relied upon. This exclusion from the rules of validity is indispensable. Superior courts knew the final arbiters of the validity of acts done by other bodies; their own decisions must be immune from collateral attack unless confusion is to reign. The superior courts decisions lay down the rules of validity but are not governed by these rules.

(See P. 12)

A clear reference to inappositeness and limitations of the Anisminic Rule in relation to Superior Court so to be found in the opinion of Lord Diplock in Re Racal Communications Ltd. [1980 2 All E.R. 634], thus:

There is in my view, however, also an obvious distinction between jurisdiction conferred by a statute on a court of law of limited jurisdiction to decide a defined question finally and conclusively or unappealably, and a similar jurisdiction conferred on the High Court or a judge of the High Court acting in his judicial capacity. The High Court is not a court of limited jurisdiction and its constitutional role includes the interpretation of written laws. There is thus no room for the inference that Parliament did not intend the High

Court or the judge of the High Court acting in his judicial capacity to be entitled and, indeed, required to construe the words of the statute by which the question submitted to his decision was defined. There is simply no room for error going to his jurisdiction, or as is conceded by counsel for the respondent, is there any room for judicial review. Judicial review is available as a remedy for mistakes of law made by inferior courts and tribunals only. Mistakes of law made by judges of the High Court acting in their judicial capacity as such can be corrected only by means of appeal to an appellate court and if, as in the instant case, the statute provides that the judge's decision shall not be appealable, they cannot be corrected at all.

[See page 639 & 640].

In the same case, Lord Salmon, said:

The Court of Appeal, however, relied strongly on the decision of your Lordship's House in Anisminic Ltd. v. Foreign Compensation Commission [1969] 1 All ER 209. That decision however was not, in my respectful view in any way relevant to the present appeal. It has no application to any decision or order made at first instance in the High Court of Justice. It is confined to decisions made by commissioners, tribunals or inferior courts which can now be reviewed by the High Court of Justice, just as the decision of inferior courts used to be reviewed by the old Court of King's Bench under the prerogative writs. If and when any such review is made by the High Court, it can be appealed to the Court of Appeal and hence, by leave, to your Lordship's House. [See page 641].

Again in Issac v. Robertson [1984] 3 All E.R. 140 the Privy Council reiterated the fallacy of speaking in the language of Nullity, void, etc, in relation to Judgments of superior courts. It was pointed out that it could only be called 'irregular'. Lord Diplock observed:

Their Lordships would, however, take this opportunity to point out that in relation to orders of a court of unlimited jurisdiction it is misleading to seek to draw distinctions between orders that are 'void' in the sense that they can be ignored with impunity by those persons to whom they are addressed, and orders that are 'voidable' and may be enforced unless and until they are set aside. Dicta that refers to the possibility of these being such a distinction between orders to which the description 'void' and void able' respectively have been applied can be found in the opinion given by the judicial committee of the Privy Council in Marsh v. Marsh, [1945] AC 271 and Maxfoy United Africa Co. Ltd. [1961] All EWR 1169 AC 152, but in neither of those appeals nor in any other case to which counsel has been able to refer their Lordships has any order of a court of unlimited jurisdiction been held to fall in a category of court orders that can simply be ignored because they are void ipso facto without there being any need for proceeding to have them set aside. The cases that are referred to in these dicta do not support the

proposition that there is any category of orders of a court of unlimited jurisdiction of this kind....

The contrasting legal concepts of voidness and void ability form part of the English Law of contract. They art inapplicable to orders made by a court of unlimited jurisdiction in the course of contentious litigation. Such an order is either irregular or regular. If it is irregular it can be set aside by the court that made it on application to that court if it is regular it can only be set aside by an appellate court on appeal if there is one to which an appeal lies. [See page 143]

Superior courts apart, even the ordinary civil courts of the land have jurisdiction to decide questions of their own jurisdiction. this Court, in the context of the question whether the provisions of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, was not attracted to the premises in question and whether, consequently, the exclusion under Section 28 of that Act, of the jurisdiction of all courts other than the Court of Small Causes in Greater Bombay did not operate, observed:

...The crucial point, therefore, in order to determine the question of the jurisdiction of the City Civil Court to entertain the suit, is to ascertain whether, in view of Section 4 of the Act, the Act applies to the premises at all. If it does, the City Civil Court has no jurisdiction but if it does not then it has such jurisdiction, The question at once arises as to who is to decide this point in controversy. It is well settled that a Civil Court has inherent power to decide the question of its own jurisdiction, although, as a result of its enquiry, it may turn out that it has no jurisdiction over the suit. Accordingly, we think, in agreement with High Court that this preliminary objection is not well founded in principle or on authority and should be rejected. MANU/SC/0064/1952: [1953]4SCR185. Bhatia Co-operative Housing Society Ltd. v. D.C. Patel]

It would, in my opinion, be wholly erroneous to characterise the directions issued by the five Judge bench as a nullity, amenable to be ignored or so declared in a collateral attack.

124. A judgment, inter-parties, is final and concludes the parties. In Re Hastings (No. 3) [1959] 1 All ER 698, the question arose whether despite the refusal of a writ of Habeas Corpus by a Divisional Court of the Queen's bench, the petitioner had, yet, a right to apply for the writ in the Chancery Division. Harman J. called the supposed right an illusion:

Counsel for the applicant, for whose argument I for one am much indebted, said that the clou of his case as this, that there still was this right to go from Judge to Judge, and that if that were not so the whole structure would come to the ground....

I think that the Judgment of the Queen's bench Divisional Court did make it clear that this supposed right was an illusion. If that be right, the rest follows. No body doubts that

there was a right to go from court to court, as my Lord has already explained. There are no different courts now to go to. The courts that used to sit in bane have been swept away and their places taken by Divisional Courts, which are entirely the creatures of statute and rule. Applications for a writ of habeas corpus are assigned by the rule to Divisional Courts of the Queen's Bench Division, and that is the only place to which a applicant may go.... [See page 701]

In Daryao v. State of U.P. MANU/SC/0012/1961: [1962]1SCR574 it was held:

It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. If these two principles form the foundation of the general rule of res-judicata they cannot be treated as irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under Article 32. [See page 583].

In Trilok Chand v. H.B. Munshi MANU/SC/0127/1968: [1969]2SCR824 Bachawat J. recognised the same limitations even in matter pertaining to the conferment of fundamental rights.

...The right to move this Court for enforcement of fundamental rights is guaranteed by Article 32. The writ under Article 32 issues as a matter of course if a breach of a fundamental right is established. But this does not mean that in giving relief under Article 32 the Court must ignore and trample under foot all laws of procedure, evidence, limitation, res-judicata and the like....

...the object of the statutes of limitation was to give effect to the maxim 'interest reipublicae ut sit finis litium' (Cop Litt 303)-the interest of the State requires that there should be a limit to litigation. The rule of res-judicata is founded upon the same rule of public policy.... [See page 842 and 843]

It is to be recalled that an earlier petition, W.P. No. 708 of 1984 under Article 32 moved before this Court had been dismissed, reserving leave to the appellant to seek review.

The words of Venkataramiah J in Sheonandan Paswan v. State of Bihar MANU/SC/0206/1986: 1987CriLJ793 are apt and are attracted to the present case:

The reversal of the earlier judgment of this Court by this process strikes at the finality of judgments of this Court and would amount to the abuse of the power of review vested in this Court, particularly in a criminal case. It may be noted that no other court in the country has been given the power of review in criminal cases. I am of the view that the majority judgment of Baharul Islam and R.B. Misra, JJ. should remain undisturbed. This case cannot be converted into an appeal against the earlier decision of this Court.

(Emphasis supplied)

125. The exclusiveness of jurisdiction of the special judge under Section 7(1) of 1952 Act, in turn, depends on the construction to be placed on the relevant statutory-provision. If on such a construction, however erroneous it may be, the court holds that the operation of Section 407, Cr.P.C. is not excluded, that interpretation will denude the plenitude of the exclusivity claimed for the forum. To say that the court usurped legislative powers and created a new jurisdiction and a new forum ignores the basic concept of functioning of courts. The power to interpret laws is the domain and function of courts. Even in regard to the country's fundamental-law as a Chief Justice of the Supreme Court of the United States said: "but the Constitution is what the judges say it is". In Thomas v. Collins,(1945) US 516 it was said:

at page 943-4
The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always is, delicate....

I am afraid appellant does himself no service by resting his case on these high conceptual fundamentals.

126. The pronouncements of every Division-Bench of this Court are pronouncements of the Court itself. A larger bench, merely on the strength of its numbers, cannot un-do the finality of the decisions of other division benches. If the decision suffers from an error the only way to correct it, is to go in Review under Article 137 read with Order 40 Rule I framed under Article 145 before "as far as is practicable" the same judges. This is not a matter merely of some dispensable procedural 'form' but the requirement of substance. The reported decisions on the review power under the Civil Procedure Code when it had a similar provision for the same judges hearing the matter demonstrate the high purpose sought to be served thereby.

127. In regard to the concept of Collateral Attack on Judicial Proceedings it is instructive to recall some observations of Van Fleet on the limitations-and their desirability-on such actions.

One who does not understand the theory of a science, who has no clear conception of its principles, cannot apply it with certainty to the problems; it is adapted to solve. In order to understand the principles which govern in determining the validity of RIGHTS AND TITLES depending upon the proceedings of judicial tribunals, generally called the doctrine of COLLATERAL ATTACK ON JUDGMENTS, it is necessary to have a clear conception of the THEORY OF JUDICIAL PROCEEDINGS....

...And as no one would think of holding a judgment of the court of last resort void if its jurisdiction were debatable or even colorable, the same rule must be applied to the judgments of all judicial tribunals. This is the true theory of judicial action when viewed collaterally. If any jurisdictional question is debatable or colorable, the tribunal must decide it; and an erroneous conclusion can ony be corrected by some proceeding provided by law for so doing, commonly called a Direct Attack. It is only where it can be shown lawfully, that some matter or thing essential to jurisdiction is wanting, that the proceeding is void, collaterally.

It is the duty of the courts to set their faces against all collateral assaults on judicial proceedings for two reasons, namely: First. Not one case in a hundred has any merits in it....

...Second. The second reason why the courts should reduce the chances for a successful collateral attack to the lowest minimum is, that they bring the courts themselves into disrepute. Many people look upon the courts as placed where jugglery and smartness are substituted for justice....

...Such things tend to weaken law and order and to cause men to settle their rights by violence. For these reasons, when the judgment rendered did not exceed the possible power of the court, and the notice was sufficient to put the defendant upon inquiry, a court should hesitate long before holding the proceedings void collaterally....

(emphasis supplied)

128. But in certain cases, motions to set aside Judgments are permitted where, for instance a judgment was rendered in ignorance of the fact that a necessary party had not been served at all, and was wrongly shown as served or in ignorance of the fact that a necessary-party had died and the estate was not represented. Again, a judgment obtained by fraud could be subject to an action for setting it aside. Where such a judgment obtained by fraud tended to prejudice a non-party, as in the case of judgments in-rem such as for divorce, or justification or probate etc. even a person, not eo-nomine a party to the proceedings, could seek a setting-aside of the judgment.

Where a party has had no notice and a decree is made against him, he can approach the court for setting-aside the decision. In such a case the party is said to become entitled to relief ex-debito justitiae, on proof of the fact that there was no service. This is a class of cases where there is no trial at all and the judgment is for default. D.N. Gordan, in his "Actions to set aside judgments." 1961 77 L Q R 356 says:

The more familiar applications to set aside judgments are those made on motion and otherwise summarily. But these are judgments obtained by default, which do not represent a judicial determination. In general, Judgments rendered after a trial are

conclusive between the parties unless and until reversed on appeal. Certainly in general judgments of superior Courts cannot be overturned or questioned between the parties in collateral actions. Yet there is a type of collateral action known as an action of review, by which even a superior court's judgment can be questioned, even between the parties, and set aside....

Cases of such frank failure of natural justice are obvious cases where Relief is granted as of right. Where a person is not actually served but is held erroneously, to have been served, he can agitate that grievance only in that forum or in any further proceeding therefrom. In Issac's case [1984] 3 All ER 140 privy council referred to:

...a category of orders of such a court which a person affected by the order is entitled to apply to have set aside ex-debito justitiae in exercise of the inherent jurisdiction of the court without needing to have recourse to the Rules that deal expressly with proceedings to set-aside orders for irregularity and give to the judge a discretion as to the order he will make.

In the present case by the order dated 5.4.1984 a five judge bench set-out, what according to it, was, the legal basis and source of jurisdiction to order transfer. On 17.4.1984 appellant's writ petition challenging that transfer as a nullity was dismissed. These orders are not which appellant is entitled to have set-aside ex-debito justitiae by another bench. Reliance on the observations in Issac's case is wholly misplaced.

The decision of the Privy Council in Rajunder Narain Rae v. Bijai Govind Singh 2 NI Act 181 illustrates the point. Referring to the law on the matter, Lord Brougham said:

It is unquestionably the strict rule, and ought to be distinctly understood as such, that no cause in this Court can be re-heard, and that an Order once made, that is, a report submitted to His Majesty and adopted, by being made an Order in Council, is final, and cannot be altered. The same is the case of the judgments of the House of Lords, that is, of the Court of Parliament, or of the King in Parliament as it is sometimes expressed, the only other supreme tribunal in this country. Whatever, therefore, has been really determined in these Courts must stand, there being no power of re-hearing for purpose of changing the judgment pronounced; nevertheless, if by misprision in embodying the judgments, errors have been introduced, these Courts possess, by common law, the same power which the Courts of Record and Statute have of rectifying the mistakes which have crept in. The Courts of Equity may correct the Decrees made while they are in minutes; when they are complete they can only vary them by re-hearing; and when they are signed and enrolled they can no longer be reheard, but they must be altered, if at all, by Appeal. The Courts of Law, after the term in which the judgments are given can only alter them so as to correct misprisions, a power given by the Statutes of Amendment. The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have, however,

gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects, in order to enable the Decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies. But with the exception of one case in 1669, of doubtful authority, here, and another in Parliament of still less weight in 1642 (which was an Appeal from the Privy Council to Parliament, and at a time when the Government was in an unsettled state), no instance, it is believed, can be produced of a rehearing upon the whole cause, and an entire alteration of the judgment once pronounced....

129. The second class of cases where a judgment is assailed for fraud, is illustrated by the Duchess of Kingston's case (1776 2 Sm. L.C. 644 13th Ed.). In that case, the Duchess was prosecuted for bigamy on the allegation that she entered into marriage while her marriage to another person, a certain Hervey, was still subsisting. In her defence, the Duchess relied upon a decree of jactitation from an ecclesiastical court which purported to show that she had never been married to Hervey. The prosecution sought to get over this on the allegation the decree was obtained in a sham and collusive proceeding. The House of Lords held the facts established before Court rendered the decree nugatory and was incapable of supplying that particular defence. De Grey CJ said that the collusive decree was not be impeached from within; yet like all other acts of the highest authority, it is impeachable from without, although it is not permitted to show that the court was mistaken, it may be shown that they were misled. Fraud which affected the judgment was described by the learned Chief Justice as an "extrinsic collateral act, which vitiates the most solemn proceedings of courts of justice."

130. The argument of nullity is too tall and has no place in this case. The earlier direction proceeded on a construction of Section 7(1) of the Act and Section 407 Cr.P.C. We do not sit here in appeal over what the five Judge bench said and proclaim how wrong they were. We are, simply, not entitled to embark, at a later stage, upon an investigation of the correctness of the very same decision. The same bench can, of course, reconsider the matter under Article 137.

However, even to the extent the argument goes that the High Court under Section 407 Cr.P.C. could not withdraw to itself a trial from Special-Judge under the 1952 Act, the view of the earlier bench is a possible view. The submissions of Shri Ram Jethmalani that the exclusivity of the jurisdiction claimed for the special forum under the 1952 Act is in relation to Courts which would, otherwise, be Courts of competing or co-ordinate jurisdictions and that such exclusivity does not effect the superior jurisdiction of the High Court to withdraw, in appropriate situations, the case to itself in exercise of its extraordinary original criminal jurisdiction; that canons of Statutory-construction, appropriate to the situation, require that the exclusion of jurisdiction implied in the 1952 amending Act should not be pushed beyond the purpose sought to be served by the amending law; and that the law while creating the special jurisdiction did not seek to exclude the extra-ordinary jurisdiction of the High Court are not without force; The

argument, relying upon Kavasji Pestonji Dalal v. Rustomji Sorabji Jamadar and Anr, AIR 1949 Bombay 42 that while the ordinary competing jurisdictions of other Courts were excluded, the extraordinary jurisdiction of the High Court was neither intended to be, nor, in fact, affected, is a matter which would also bear serious examination. In Sir Francis Bennion's Statutory Interpretation, there are passages at page 433 which referring to presumption against implied repeal, suggest that in view of the difficulties in determining whether an implication of repeal was intended in a particular situation it would be a reasonable presumption that where the legislature desired a repeal, it would have made it plain by express words. In Sutherland Statutory construction the following passages occur:

Prior statutes relating to the same subject matter are to be compared with the new provisions; and if possible by reasonable construction, both are to be so construed that effect is given to every provision of each. Statutes in pari materia although in apparent conflict, are so far as reasonably possible constructed to be in harmony with each other.

(Emphasis supplied)

When the legislature enacts a provision, it has before it a 11 the other provisions relating to the same subject matter which it enacts at that time, whether in the same statute or in a separate Act. It is evident that it has in mind the provisions of a prior Act to which it refers, whether it phrases the later Act as amendment or an independent Act. Experience indicates that a legislature does not deliberately enact inconsistent provisions when it is rec ogzant of them both, without expressly recognizing the inconsistency.

(emphasis supplied)

Reliance by Shri Ram Jethmalani on these principles to support his submission that the power under Section 407 was unaffected and that the decision in State of Rajasthan v. Gurucharan Das Chadda (supra), can not also be taken to have concluded the matter, is not un-arguable. I would, therefore, hold contentions (a) and (b) against appellant.

131. Re: contention (c):

The fundamental right under Article 14, by all reckoning, has a very high place in constitutional scale of values. Before a person is deprived of his personal liberty, not only that the Procedure established by law must strictly be complied with and not departed from to the disadvantage or detriment of the person but also that the procedure for such deprivation of personal liberty must be reasonable, fair and just. Article 21 imposes limitations upon the procedure and requires it to conform to such standards of reasonableness, fairness and justness as the Court acting as sentinel of fundamental rights would in the context, consider necessary and requisite. The court will be the arbiter of the question whether the procedure is reasonable, fair and just.

If the operation of Section 407, Cr.P.C. is not impliedly excluded and therefore, enables the withdrawal of a case by the High Court to itself for trial as, indeed, has been held by the earlier bench, the argument based on Article 14 would really amount to a challenge to the very vires of Section 407. All accused persons cannot claim to be tried by the same Judge. The discriminations-inherent in the choice of one of the concurrent jurisdictions-are not brought about by an inanimate statutory-rule or by executive fiat. The withdrawal of a case under Section 407 is made by a conscious judicial act and is the result of judicial discernment. If the law permits the withdrawal of the trial to the High Court from a Special Judge, such a law enabling withdrawal would not, prima facie, be bad as violation of Article 14. The five Judge bench in the earlier case has held that such a transfer is permissible under law. The appeal to the principle in Anwar Ali Sarkar's case (supra), in such a context would be somewhat out of place.

If the law did not permit such a transfer then the trial before a forum which is not according to law violates the rights of the accused person. In the earlier decision the transfer has been held to be permissible. That decision has assumed finality.

If appellant says that he is singled out for a hostile treatment on the ground alone that he is exposed to a trial before a Judge of the High Court then the submission has a touch of irony. Indeed that a trial by a Judge of the High Court makes for added re-assurance of justice, has been recognised in a number of judicial pronouncement. The argument that a Judge of the High Court may not necessarily possess the statutory-qualifications requisite for being appointed as a Special Judge appears to be specious. A judge of the High Court hears appeals arising from the decisions of the Special Judge, and exercises a jurisdiction which includes powers co-extensive with that of the trial court. There is, thus, no substance in contention (c).

132. Re: Contention (d):

This grievance is not substantiated on facts; nor, having regard to the subsequent course of events permissible to be raised at this stage. These directions, it is not disputed, were issued on 16.2.1984 in the open Court in the presence of appellant's learned Counsel at the time of pronouncement of the judgment. Learned Counsel had the right and the opportunity of making an appropriate submission to the court as to the permissibility or otherwise of the transfer. Even if the submissions of Shri Ram Jethmalani that in a revision application Section 403 of the Criminal Procedure Code does not envisage a right of being heard and that transfer of a case to be tried by the Judge of the High Court cannot, in the estimate of any right thinking person, be said to be detrimental to the accused person is not accepted, however, applicant, by his own conduct, has disentitled himself to make grievance of it in these proceedings. It cannot be said that after the directions were pronounced and before the order was signed there was no opportunity for the appellant's learned Counsel to make any submissions in regard to the alleged illegality or

impropriety of the directions. Appellant did not utilise the opportunity. That apart, even after being told by two judicial orders that appellant, if aggrieved, may seek a review, he did not do so. Even the grounds urged in the many subsequent proceedings appellant took to get rid of the effect of the direction do not appear to include the grievance that he had no opportunity of being heard. Where, as here, a party having had an opportunity to raise a grievance in the earlier proceedings does not do so and makes it a technicality later he cannot be heard to complain. Even in respect of so important jurisdiction as Habeas Corpus, the observation of Gibson J in Re. Tarling [1979] 1 All E.R. 981 at 987 are significant:

Firstly, it is clear to the Court that an applicant for habeas corpus is required to put forward on his initial application then whole of the case which is then fairly available to him he is not free to advance an application on one ground, and to keep back a separate ground of application as a basis for a second or renewed application to the Court.

The true doctrine of estoppel known as res judicata does not apply to the decision of this Court on an application for habeas corpus we refer to the words of Lord Parket CJ delivering the Judgment of the Court in Re. Hastings (No. 2). There is, however, a wider sense in which the doctrine of res judicata may be applicable, whereby it becomes an abuse of process to raise in subsequent proceedings matters which could, and therefore, should have been litigated in earlier proceedings....

This statement of the law by Gibson J was approved by Sir John Donaldson MR in the Court of appeal in Ali v. Secretary of State for the Home Department [1984] 1 All E.R. 1009 at 1019.

Rules of natural justice embodies fairness in-action. By all standards, they are great assurances of Justice and fairness. But they should not be pushed to a breaking point. It is not inappropriate to recall what Lord Denning said in R. v. Secretary of State for the Home Department ex-parte Mughal [1973] 3 All ER 796:

...The rules of natural justice must not be stretched too far. Only too often the people who have done wrong seek to invoke the rules of natural justice so as to avoid the consequences.

Contention (d) is insubstantial.

133. Re. Contention (e):

The contention that the transfer of the case to the High Court involves the elimination of the appellant's right of appeal to the High Court which he would otherwise have and that the appeal under Article 136 of the Constitution is not as of right may not be substantial

in view of Section 374, Cr.P.C. which provides such an appeal as of right, when the trial is held by the High Court. There is no substance in contention (e) either.

134. Re. Contention (f):

The argument is that the earlier order of the five Judge bench in so far as it violates the fundamental rights of the appellant under Article 14 and 21 must be held to be void and amenable to challenge under Article 32 in this very Court and that the decision of this Court in Premchand Garg's case (supra) supports such a position. As rightly pointed out by Ranganath Misra, J. Premchand Garg's case needs to be understood in the light of the observations made in Naresh Sridhar Mirajkar and Ors. v. State of Maharashtra and Anr. [1966] 3 SCC 744. In Mirajkar's case, Gajendragadkar, CJ., who had himself delivered the opinion in Garg's case, noticed the contention based on Garg's case thus:

In support of his argument that a judicial decision can be corrected by this Court in exercise of its writ jurisdiction under Article 32(2), Mr. Setalvad has relied upon another decision of this Court in Prem Chand Garg v. Excise Commissioner, UP, Allahabad (supra)....

Learned Chief Justice referring to the scope of the matter that fell for consideration in Garg's case stated:

...It would thus be seen that the main controversy in the case of Prem Chand Garg centered round the question as to whether Article 145 conferred powers on this Court to make rules, though they may be inconsistent with the constitutional provisions prescribed by part III. Once it as held that the powers under Article 142 had to be read subject not only to the fundamental rights, but to other binding statutory provisions, it became clear that the ruler which authorised the making of the impugned order was invalid. It was in that context that the validity of the order had to be incidentally examined. The petition was made not to challenge the order as such, but to challenge the validity of the rule under which the order was made....

Repelling the contention, learned Chief Justice said:

...It is difficult to see now this decision can be pressed into service by Mr. Setalvad in support of the argument that a judicial order passed by this Court was held to be subject to the writ jurisdiction of this Court itself....

A passage from Kadish & Kadish "Discretion to Disobey", 1973 Edn. may usefully by recalled:

On one view, it would appear that the right of a citizen to defy illegitimate judicial authority should be the same as his right to defy illegitimate legislative authority. After

all, if a rule that transgresses the Constitution or is otherwise invalid is no law at all and never was one, it should hardly matter whether a court or a legislature made the rule. Yet the prevailing approach of the courts has been to treat invalid court orders quite differently from invalid statutes. The long established principle of the old equity courts was that an erroneously issued injunction must be obeyed until the error was judicially determined. Only where the issuing court could be said to have lacked jurisdiction in the sense of authority to adjudicate the cause and to reach the parties through its mandate were disobedient contemnors permitted to raise the invalidity of the order as a full defence. By and large, American courts have declined to treat the unconstitutionality of a court order as a jurisdictional defect within this traditional equity principle, and in notable instances they have qualified that principle even where the defect was jurisdiction in the accepted sense. (See 111).

Indeed Ranganath Misra, J. in his opinion rejected the contention of the appellant in these terms:

In view of this decision in Mirajkar's case, supra, it must be taken as concluded that judicial proceedings in this Court are not subject to the writ jurisdiction thereof.

There is no substance in contention (f) either.

135. Contention (g):

It is asserted that the impugned directions issued by the five Judge Bench was per-incuriam as it ignored the Statute and the earlier Chaada's case.

But the point is that the circumstance that a decision is reached per-incuriam, merely serves to denude the decision of its precedent-value. Such a decision would not be binding as a judicial precedent. A co-ordinate bench can disagree with it and decline to follow it. A larger bench can over rule such decision. When a previous decision is so overruled it does not happen-nor has the overruling bench any jurisdiction so to do-that the finality of the operative order, inter-parties, in the previous decision is overturned. In this context the word 'decision' means only the reason for the previous order and not the operative-order in the previous decision, binding inter-parties. Even if a previous decision is overruled by a larger-bench, the efficacy and binding nature, of the adjudication expressed in the operative order remains undisturbed inter-parties. Even if the earlier decision of the five Judge bench is per-incuriam the operative part of the order cannot be interfered within the manner now sought to be done. That apart the five Judge bench gave its reason. The reason, in our opinion, may or may not be sufficient. There is advertence to Section 7(1) of the 1952 Act and to the exclusive jurisdiction created thereunder. There is also reference to Section 407 of the Criminal Procedure Code. Can such a decision be characterised as one reached per-incurium? Indeed, Ranganath Misra, J. says this on the point:

Overruling when made by a larger bench of an earlier decision of a smaller one is intended to take away the precedent value of the decision without affecting the binding effect of the decision in the particular case. Antulay, therefore, is not entitled to take advantage of the matter being before a larger bench....

I respectfully agree. Point (g) is bereft of substance and merits.

136. Re: Contention (h):

The argument is that the appellant has been prejudiced by a mistake of the Court and it is not only within power but a duty as well, of the Court to correct its own mistake, so that no party is prejudiced by the Court's mistake: Actus Curiae Neminem Gravabit.

I am afraid this maxim has no application to conscious conclusions reached in a judicial decision. The maxim is not a source of a general power to reopen and rehear adjudication which have otherwise assumed finality. The maxim operates in a different and narrow area. The best illustration of the operation of the maxim is provided by the application of the rule of nunc-pro-tunc. For instance, if owing to the delay in what the court should, otherwise, have done earlier but did later, a party suffers owing to events occurring in the interrugnum, the Court has the power to remedy it. The area of operation of the maxim is, generally, procedural. Errors in judicial findings, either of facts or law or operative decisions consciously arrived at as a part of the judicial-exercise cannot be interfered with by resort to his maxim. There is no substance in contention (h).

137. It is true that the highest court in the land should not, by technicalities of procedure forge fetters on its own feet and disable itself in cases of serious miscarriages of justice. It is said that "Life of law is not logic; it has been experience." But it is equally true as Cordozo said: But Holmes did not tell us that logic is to be ignored when experience is silent. Those who do not put the teachings of experience and the lessons of logic out of consideration would tell what inspires confidence in the judiciary and what does not. Judicial vacillations fall in the latter category and undermine respect of the judiciary and judicial institutions, denuding thereby respect for law and the confidence in the even-handedness in the administration of justice by Courts. It would be gross injustice, says an author, (Miller-'data of jurisprudence') to decide alternate cases on opposite principles. The power to alter a decision by review must be expressly conferred or necessarily inferred. The power of review-and the limitations on the power-under Article 137 are implicit recognitions of what would, otherwise, be final and irrevocable. No appeal could be made to the doctrine of inherent powers of the Court either. Inherent powers do not confer, or constitute a source of, jurisdiction. They are to be exercised in aid of a jurisdiction that is already invested. The remedy of the appellant, if any, is recourse to Article 137; no where else. This appears to me both good sense and good law.

The appeal is dismissed.

S. Ranganathan, J.

138. I have had the benefit of perusing the drafts of the judgments proposed by my learned brothers Sabyasachi Mukharji, Ranganath Misra and Venkatachaliah, JJ. On the question whether the direction given by this Court in its judgment dated 16.2.1984 should be recalled, I find myself in agreement with the conclusion of Venkatachaliah, J. (though for slightly different reasons) in preference to the conclusion reached by Sabyasachi Mukharji, J. and Ranganath Misra, J. I would, therefore, like to set out my views separately on this issue.

THE ISSUES

139. This is an appeal by special leave from a judgment of Shah J., of the Bombay High Court. The appellant is being tried for offences under Sections 120B, 420, 161 and 165 of the Indian Penal Code (I.P.C.) read with Section 5(1)(d) and 5(2) of the Prevention of Corruption Act, 1947. The proceedings against the appellant were started in the Court of Sri Bhutta, a Special Judge, appointed under Section 6(1) of the Criminal Law (Amendment) Act, 1952 (hereinafter referred to as 'the 1952 Act'). The proceedings have had a chequered career as narrated in the judgment of my learned brother Sabyasachi Mukharji, J. Various issues have come up for consideration of this Court at the earlier stages of the proceedings and the judgments of this Court have been reported in MANU/SC/0117/1982: 1982CriLJ1581 and MANU/SC/0198/1986: 1986CriLJ1922. At present the appellant is being tried by a learned Judge of the Bombay High Court nominated by the Chief Justice of the Bombay High Court in pursuance of the direction given by this Court in its order dated 16.2.1984 (reported in MANU/SC/0102/1984: 1984CriLJ613. By the order presently under appeal, the learned Judge (s) framed as many as 79 charges against the appellant and (b) rejected the prayer of the appellant that certain persons, named as co-conspirators of the appellant in the complaint on the basis of which the prosecution has been launched should be arrayed as co-accused along with him. But the principal contention urged on behalf of the appellant before us centers not round the merits of the order under appeal on the above two issues but round what the counsel for the appellant has described as a fundamental and far-reaching objection to the very validity of his trial before the learned Judge. As already stated, the trial is being conducted by the learned Judge pursuant to the direction of this Court dated 16.2.1984. The contention of the learned Counsel is that the said direction is per incuriam, illegal, invalid, contrary to the principles of natural justice and violative of the fundamental rights of the petitioner. This naturally raises two important issues for our consideration:

A. Whether the said direction is inoperative, invalid or illegal, as alleged; and

B. Whether, if it is, this Court can and should recall, withdraw, revoke or set aside the same in the present proceedings.

Since the issues involve a review or reconsideration of a direction given by a Bench of five judges of this Court, this seven-judge Bench has been constituted to hear the appeal.

140. It is not easy to say which of the two issues raised should be touched upon first as, whichever one is taken up first, the second will not arise for consideration unless the first is answered in the affirmative. However, as the correctness of the direction issued is impugned by the petitioner, as there is no detailed discussion in the earlier order on the points raised by the petitioner, and as Sabyasachi Mukharji, J. has expressed an opinion on these contentions with parts of which I am unable to agree, it will be perhaps more convenient to have a look at the first issue as if it were coming up for consideration for the first time before us and then, depending upon the answer to it, consider the second issue as to whether this Court has any jurisdiction to recall or revoke the earlier order. The issues will, therefore, be discussed in this order.

A. ARE THE DIRECTIONS ON 16.2.1984 PROPER, VALID AND LEGAL?

141. For the appellant, it is contended that the direction given in the last para of the order of the Bench of five Judges dated 16.2.1984 (extracted in the judgment of Sabyasachi Mukharji, J.) is vitiated by illegality, irregularity and lack of jurisdiction on the following grounds:

(i) Conferment of jurisdiction on courts is the function of the legislature. It was not competent for this Court to confer jurisdiction on a learned Judge of the High Court to try the appellant, as, under the 1952 Act, an offence of the type in question can be tried only by a special Judge appointed thereunder. This has been overlooked while issuing the direction which is, therefore, per incuriam.

(ii) The direction above-mentioned (a) relates to an issue which was not before the Court (b) on which no arguments were addressed and (c) in regard to which the appellant had no opportunity to make his submissions. It was nobody's case before the above Bench that the trial of the accused should no longer be conducted by a Special Judge but should be before a High Court Judge.

(iii) In issuing the impugned direction, the Bench violated the principles of natural justice, as mentioned above. It also overlooked that, as a result thereof, the petitioner (a) was discriminated against by being put to trial before a different forum as compared to other public servants accused of similar offences and (b) lost valuable rights of revision and first appeal to the High Court which he would have had, if tried in the normal course.

The direction was thus also violative of natural justice as well as the fundamental rights of the petitioner under Article 14 and 21 of the Constitution.

Primary Jurisdiction

142. There can be-and, indeed, counsel for the respondent had-no quarrel with the initial premise of the learned Counsel for the appellant that the conferment of jurisdiction on courts is a matter for the legislature. Entry 77 of List I, entry 3 of List II and entries 1, 2, 11A and 46 of List III of the Seventh Schedule of the Constitution set out the respective powers of parliament and the State Legislatures in that regard. It is common ground that the jurisdiction to try offences of the type with which are concerned here is vested by the 1952 Act in Special Judges appointed by the respective State Governments. The first question that has been agitated before us is whether this Court was right in transferring the case for trial from the Court of a Special Judge, to a Judge nominated by the Chief Justice of Bombay.

High Court's Power of Transfer

143. The power of the Supreme Court to transfer cases can be traced, in criminal matters, either to Article 139A of the Constitution or Section 406 of the CrPC ("Cr. P.C.), 1973. Here, again, it is common ground that neither of these provisions cover the present case. Sri Jethmalani, learned Counsel for the respondent, seeks to support the order of transfer by reference to Section 407 (not Section 406) of the Code and Clause 29 of the Letters Patent of the Bombay High Court. Section 407 reads thus:

(1) Whenever it is made to appear to the High Court-

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice,

it may order-

(i) that any offence be inquired into or tried by any Court not qualified under Section 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offences;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2)the High Court may act either on the report of the lower court or on the application of a party interested or on its own initiative:

XXX XXX XXX XXX XXX XXX XXX XXX XXX

(9) Nothing in this section shall be deemed to affect any order of Government under Section 197.

And Clause 29 of the Letters Patent of the Bombay High Court runs thus:

And we do further ordain that the said High Court shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of appeal or superior jurisdiction, and also to direct the preliminary investigation of trial of any criminal case by any officer of Court otherwise competent to investigate or try it though such case belongs, in ordinary course, to the jurisdiction of some other officer, of Court.

The argument is that this power of transfer vested in the High Court can well be exercised by the Supreme Court while dealing with an appeal from the High Court in the case.

144. For the appellant, it is contended that the power of transfer under Section 407 cannot be invoked to transfer a case from a Special Judge appointed under the 1952 Act to the High Court. Learned Counsel for the appellant contends that the language of Section 7(1) of the Act is mandatory; it directs that offences specified in the Act can be tried only by persons appointed, under Section 6(2) of the Act, by the State Government, to be special judges, No other Judge, it is said, has jurisdiction to try such a case, even if he is a Judge of the High Court. In this context, it is pointed out that a person, to be appointed as a special Judge, under Section 6(2) of the 1952 Act, should be one who is, or has been, a Sessions Judge (which expression in this context includes an Additional Sessions Judge and/or an Assistant Sessions Judge) All High Court Judges may not have been Sessions Judges earlier and, it is common ground, Shah, J. who has been nominated by the Chef Justice for trying this case does not fulfill the qualifications prescribed for appointment as a Special Judge. But, that consideration apart, the argument is that, while a High Court can transfer a case from one special judge to another, and the Supreme Court, from a special judge in one State to a special judge in another State, a High Court cannot

withdraw a case from a Special Judge to itself and the Supreme Court cannot transfer a case from a Special Judge to the High Court.

145. On the other hand, it is contended for the respondent that the only purpose of the 1952 Act is to ensure that cases of corruption and bribery do not get bogged up in the ordinary criminal courts which are over-burdened with all sorts of cases. Its object is not to create special courts n the sense of courts manned by specially qualified personnel or courts following any special type of procedure. All that is done is to earmark some of the existing sessions judges for trying these offences exclusively. The idea is just to segregate corruption and bribery cases to a few of the sessions judges so that they could deal with them effectively and expeditiously. It is a classification in which the emphasis is on the types of offences and nature of offenders rather than on the qualifications of judges. That being so, the requirement in Section 7(1) that these cases should be tried by special judges only is intended just to exclude their trial by the other normal criminal courts of coordinate jurisdiction and not to exclude the High Court.

146. Before dealing with these contentions, it may be useful to touch upon the question whether a judge of a High Court can be appointed by the State Government as a special judge to try offences of the type specified in Section 6 of the 1952 Act. It will be seen at once that not all the judges of the High Court (but only those elevated from the State subordinate judiciary) would fulfill the qualifications prescribed under Section 6(2) of the 1952 Act. Though there is nothing in Sections 6 and 7 read together to preclude altogether the appointment of a judge of the High Court fulfilling the above qualifications as a special judge, it would appear that such is not the (atleast not the normal) contemplation of the Act. Perhaps it is possible to argue that, under the Act, it is permissible for the State Government to appoint one of the High Court Judges (who has been a Sessions Judge) to be a Special Judge under the Act. If that had been done, that Judge would have been a Special Judge and would have been exercising his original jurisdiction in conducting the trial. But that is not the case here. In response to a specific question put by us as to whether a High Court Judge can be appointed as a Special Judge under the 1952 Act, Shri Jethmalani submitted that a High Court Judge cannot be so appointed. I am inclined to agree. The scheme of the Act, in particular the provisions contained in Sections 8(3A) and 9, militate against this concept. Hence, apart from the fact that in this case no appointment of a High Court Judge, as a Special Judge, has in fact been made, it is not possible to take the view that the statutory provisions permit the conferment of a jurisdiction to try this case on a High Court Judge as a Special Judge.

147. Turning now to the powers of transfer under Section 407, one may first deal with the decision of this Court in Gurucharan Das Chadha v. State of Rajasthan [1966] 2 S.C.R. 678 on which both counsel strongly relied. That was a decision by three judges of this Court on a petition under Section 527 of the 1898 Cr.P.C. (corresponding to Section 406 of the 1973 Cr.P.C.). The petitioner had prayed for the transfer of a case pending in the court of a Special Judge in Bharatpur, Rajasthan to another criminal court of equal or superior

jurisdiction subordinate to a High Court other than the High Court of Rajasthan. The petition was eventually dismissed on merits. But the Supreme Court dealt with the provisions of Section 527 of the 1898 Cr.P.C. in the context of an objection taken by the respondent State that the Supreme Court did not have the jurisdiction to transfer a case pending before the Special Judge, Bharatpur. The contention was that a case assigned by the State Government under the 1952 Act to a Special Judge cannot be transferred at all because, under the terms of that Act, which is a self-contained special law, such a case must be tried only by the designated Special Judge. The Court observed that the argument was extremely plausible but not capable of bearing close scrutiny. After referring to the provisions of Section 6, 7 and 8 of the 1952 Act, the Court set out the arguments for the State thus:

The Advocate-General, Rajasthan, in opposing the petition relies principally on the provisions of Section 7(1) and 7(2) and contends that the two sub-sections create two restrictions which must be read together. The first is that offences specified in Section 6(1) can be tried by Special Judges only. The second is that every such offence shall be tried by the Special Judge for the area within which it is committed and if there are more special judges in that area by the Special Judge chosen by the Government. These two conditions, being statutory, it is submitted that no order can be made under Section 527 because, on transfer, even if a special judge is entrusted with the case, the second condition is bound to be broken.

Dealing with this contention the Court observed:

This condition, if literally understood, would lead to the conclusion that a case once made over to a special Judge in an area where there is no other special Judge, cannot be transferred at all. This could hardly have been intended. If this were so, the power to transfer a case intra-state under Section 526 of the CrPC, on a parity of reasoning, must also be lacking. But this Court in Ramachandra Parsad v. State of Bihar MANU/SC/0120/1961: 1961CriLJ811 unheld the transfer of a case by the High Court which took it to a special judge who had no jurisdiction in the area where the offence was committed. In holding that the transfer was valid this Court relied upon the third sub-section of Section 8 of the Act. That sub-section preserves the application of any provision of the CrPC if it is not inconsistent with the Act, save as provided in the first two sub-sections of that section. The question, therefore, resolves itself to this: Is there an inconsistency between Section 527 of the Code and the second sub-section of Section 7? The answer is that there is none. Apparently this Court in the earlier case found no inconsistency and the reasons appear to be there: The condition that an offence specified in Section 6(2) shall be tried by a special Judge for the area within which it is committed merely specifies which of several special Judges appointed in the State by the State Government shall try it. The provision is analogous to others under which the jurisdiction of Magistrates and Sessions Judges is determined on a territorial basis. Enactments in the CrPC intended to confer territorial jurisdiction upon courts and Presiding Officers have

never been held to stand in the way of transfer of criminal cases outside those areas of territorial jurisdiction. The order of transfer when it is made under the powers given by the Code invests another officer with jurisdiction although ordinarily he would lack territorial jurisdiction to try the case. The order of this Court, therefore, which transfer(s) a case from one special Judge subordinate to one High Court to another special Judge subordinate to another High Court creates jurisdiction in the latter in much the same way as the transfer by the High Court from one Sessions Judge in a Session Division to another Sessions Judge in another Sessions Division.

There is no comparison between the first sub-section and the second sub-section of Section 7. The condition in the second sub-section of Section 7 is not of the same character as the condition in the first sub-section. The first sub-section creates a condition which is a sine qua non for the trial of certain offences. That condition is that the trial must be before a special Judge. The second sub-section distributes the work between special Judges and lays emphasis on the fact that trial must be before a special Judge appointed for the area in which the offence is committed. This second condition is on a par with the distribution of work territorially between different Sessions Judges and Magistrates. An order of transfer, by the very nature of things must, some times, result in taking the case out of the territory and the provisions of the Code which are preserved by the third sub-section of Section 8 must supervene to enable this to be done and the second sub-section of Section 7 must yield. We do not consider that this creates any inconsistency because the territorial jurisdiction created by the second sub-section of Section 7 operates in a different sphere and under different circumstances. Inconsistency can only be found if two provisions of law apply in identical circumstances and create contradictions. Such a situation does not arise when either this Court or the High Court exercises its powers of transfer. We are accordingly of the opinion that the Supreme Court in exercise of its jurisdiction and power under Section 527 of the CrPC can transfer a case from a Special Judge subordinate to the High Court to another special Judge subordinate to another High Court.

(emphasis added)

148. The attempt of Sri Jethmalani is to bring the present case within he scope of the observations contained in the latter part of the extract set out above. He submits that a special judge, except insofar as a specific provision to the contrary is made, is a court subordinate to the High Court, as explained in MANU/SC/0082/1984: 1984CriLJ647 and proceedings before him are subject to the provisions of the 1973 Cr.P.C.; the field of operation of the first sub-section of Section 7 is merely to earmark certain Sessions Judges for purposes of trying cases of corruption by public servants and this provision is, in principle, not different from the earmarking of cases on the basis of territorial jurisdiction dealt with by Sub-Section 2 of Section 7. The argument is no doubt a plausible one. It does look somewhat odd to say that a Sessions Judge can, but a High Court Judge cannot, try an offence under the Act. The object of the Act, as rightly pointed out by counsel, is only

to segregate certain cases to special courts which will concentrate on such cases so as to expedite their disposal and not to oust the superior jurisdiction of the High Court or its powers of superintendence over subordinate courts under Article 227 of the Constitution, an aspect only of which is reflected in Section 407 of the Cr.P.C. However, were the matter to be considered as res integra, I would be inclined to accept the contention urged on behalf of the appellant, for the following reasons. In the first place, the argument of the counsel for the respondent runs counter to the observations made by the Supreme Court in the earlier part of the extract set out above that the first sub-section of Section 7 and the second sub-section are totally different in character. The first sub-section deals with a sine qua non for the trial of certain offences, whereas the second sub-section is only of a procedural nature earmarking territorial jurisdiction among persons competent to try the offence. They are, therefore, vitally different in nature. The Supreme Court has clearly held in the passage extracted above that the case can be transferred only from one special judge to another. In other words, while the requirement of territorial jurisdiction is subordinate to Section 406 or 407, the requirement that the trial should be by a special judge is not. It is true that those observations are not binding on this larger Bench and moreover the Supreme Court there was dealing only with an objection based on Sub-section (2) of Section 7. It is, however, clear that the Bench, even if it had accepted the transfer petition of Gurcharan Das Chadha, would have rejected a prayer to transfer the case to a court other than that of a Special Judge appointed by the transferee State. I am in respectful agreement with the view taken in that case that there is a vital qualitative difference between the two sub-sections and that while a case can be transferred to a special judge who may not have the ordinary territorial jurisdiction over it, a transfer cannot be made to an ordinary magistrate or a court of session even if it has territorial jurisdiction. If the contention of the learned Counsel for the respondent that Section 7(1) and Section 407 operate in different fields and are not inconsistent with each other were right, it should be logically possible to say that the High Court can, under Section 407, transfer a case from a special judge to any other Court of Session. But such a conclusion would be clearly repugnant to the scheme of the 1952 Act and plainly incorrect. It is, therefore, difficult to accept the argument of Sri Jethmalani that we should place the restriction contained in the first sub-section of Section 7 also as being on the same footing as that in the second sub-section and hold that the power of transfer contained in the Criminal Procedure Code can be availed of to transfer a case from a Special Judge to any other criminal court or even the High Court. The case can be transferred only from one special judge to another special judge; it cannot be transferred even to a High Court Judge except where a High Court Judge is appointed as a Special Judge. A power of transfer postulates that the court to which transfer or withdrawal is sought is competent to exercise jurisdiction over the case, (vide, Raja Soap Factory v. Shantaraj MANU/SC/0231/1965: [1965]2SCR800).

149. This view also derives support from two provisions of Section 407 itself. The first is this. Even when a case is transferred from one criminal court to another, the restriction as to territorial jurisdiction may be infringed. To obviate a contention based on lack of

territorial jurisdiction in the transferee court in such a case, Clause (ii) of Section 407 provides that the order of transfer will prevail, lack of jurisdiction under Sections 177 to 185 of the Code notwithstanding. The second difficulty arises, even under the Cr.P.C. itself, by virtue of Section 197 which not only places restriction on the institution of certain prosecutions against public servants without Government sanction but also empowers the Government, inter alia, to determine the court before which such trial is to be conducted. When the forum of such a trial is transferred under Section 407 an objection may be taken to the continuance of the trial by the transferee court based on the order passed under Section 197. This eventuality is provided against by Section 407(9) of the Act which provides that nothing in Section 407 shall be deemed to affect an order passed under Section 407. Although specifically providing for these contingencies, the section is silent in so far as a transfer from the court of a Special Judge under the 1952 Act is concerned though it is a much later enactment.

150. On the contrary, the language of Section 7(1) of the 1952 Act places a definite hurdle in the way of construing Section 407 of the Cr.P.C. as overriding its provisions. For, it opens with the words:

Notwithstanding anything contained in the CrPC, 1898 or in any other law.

In view of this non-obstante clause also, it becomes difficult to hold that the provisions of Section 407 of the 1973 Cr.P.C. will override, or even operate consistently with, the provisions of the 1952 Act. For the same reason it is not possible to hold that the power of transfer contained in Clause 29 of the Letters Patent of the Bombay High Court can be exercised in a manner not contemplated by Section 7(1) of the 1952 Act.

151. Thirdly, whatever may be the position where a case is transferred from one special judge to another or from one ordinary subordinate criminal Court to another of equal or superior jurisdiction, the withdrawal of a case by the High Court from such a Court to itself for trial places certain handicaps on the accused. It is true that the court to which the case has been transferred is a superior court and in fact, the High Court. Unfortunately, however, the high Court judge is not a person to whom the trial of the case can be assigned under Section 7(1) of the 1952 Act. As pointed out by the Supreme Court in Surajmal Mohta v. Viswanatha Sastry MANU/SC/0026/1954: [1954]26ITR1(SC) at pp. 464 in a slightly different context, the circumstance that a much superior forum is assigned to try a case than the one normally available cannot by itself be treated as a "sufficient safeguard and a good substitute" for the normal forum and the rights available under the normal procedure. The accused here loses his right of coming up in revision or appeal to the High Court from the interlocutory and final orders of the trial court. He loses the right of having two courts-a subordinate court and the High Court-adjudicate upon his contentions before bringing the matter up in the Supreme Court. Though, as is pointed out later, these are not such handicaps as violate the fundamental rights of such

an accused, they are circumstances which create prejudice to the accused and may not be overlooked in adopting one construction of the statute in preference to the other.

152. Sri Jethmalani vehemently contended that the construction of Section 407 sought for by the appellant is totally opposed to well settled canons of statutory construction. He urged that the provisions of the 1952 Act should be interpreted in the light of the objects it sought to achieve and its amplitude should not be extended beyond its limited objective. He said that a construction of the Act which leads to repugnancy with, or entails pro tanto repeal of, the basic criminal procedural law and seeks to divest jurisdiction vested in a superior court should be avoided. These aspects have been considered earlier. The 1952 Act sought to expedite the trial of cases involving public servants by the creation of courts presided over by experienced special judges to be appointed by the State Government. There is however nothing implausible in saying that the Act having already earmarked these cases for trial by experienced Sessions Judges made this provision immune against the applicability of the provisions of other laws in general and the Cr.P.C. in particular. Effect is only being given to these express and specific words used in Section 7(1) and no question arises of any construction being encouraged that is repugnant to the Cr.P.C. or involves an implied repeal, pro tanto, of its provisions. As has already been pointed out, if the requirement in Section 7(1) were held to be subordinate to the provisions contained in Section 406 or 407, then in principle, even a case falling under the 1952 Act can be transferred to any other Sessions Judge and that would defeat the whole purpose of the Act and is clearly not envisaged by it.

Supreme Court's power of transfer

153. It will have been noticed that the power of transfer under Section 407 or Clause 29 of the Letters Patent which has been discussed above is a power vested in the High Court. So the question will arise whether, even assuming that the High Court could have exercised such power, the Supreme Court could have done so. On behalf of the respondent, it was contended that, as the power of the High Court under Section 407 can be exercised on application of a party or even suo motu and can be exercised by it at any stage irrespective of whether any application or matter in connection with the case is pending before it or not, the Supreme Court, as an appellate Court, has a co-equal jurisdiction to exercise the power of transfer in the same manner as the High Court could. In any event, the Supreme Court could exercise the power as one incidental or ancillary to the power of disposing of a revision or appeal before it. The appellants, however, contend that, as the power of the Supreme Court to order transfer of cases has been specifically provided for in Section 406 and would normally exclude cases of intra-state transfer covered by Section 407 of the Code, the statute should not be so construed as to imply a power of the Supreme Court, in appeal or revision, to transfer a case from a subordinate court to the High Court. The argument also is that what the Supreme Court, as an appellate or revisional Court, could have done was either (a) to direct the High Court to consider whether this was a fit case for it to exercise its power under Section

407(1)(iv) to withdraw the case to itself and try the same with a view to expeditiously dispose it of or (b) to have withdrawn the case to itself for trial. But, it is contended, no power which the Supreme Court could exercise as an appellate or revisional Court could have enabled the Supreme Court to transfer the case from the Special Judge to the High Court.

154. Here also, the contentions of both parties are nicely balanced but I am inclined to think that had the matter been res integra and directions for transfer were being sought before us for the first time, this Court would have hesitated to issue such a direction and may at best have left it to the High Court to consider the matter and exercise its own discretion. As already pointed out, the powers of the Supreme Court to transfer cases from one court to another are to be found in Article 139-A of the Constitution and Section 406 of the Cr.P.C The provisions envisaged either inter-state transfers of cases i.e. from a court in one State to a court in another State or the withdrawal of a case by the Supreme Court to itself. Intra-State transfer among courts subordinate to a High Court inter-se or from a court subordinate to a High Court to the High Court is within the jurisdiction of the appropriate High Court. The attempt of counsel for the respondent is to justify the transfer by attributing the powers of the High Court under Section 407 to the Supreme Court in its capacity as an appellate or revisional Court. This argument overlooks that the powers of the Supreme Court, in disposing of an appeal or revision, are circumscribed by the scope of the proceedings before it. In this case, it is common ground that the question of transfer was not put in issue before the Supreme Court.

155. The reliance placed in this context on the provisions contained in Articles 140 and 142 of the Constitution and Section 401 read with Section 386 of the Cr.P.C. does not also help. Article 140 is only a provisions enabling Parliament to confer supplementary powers on the Supreme Court to enable it to deal more effectively to exercise the jurisdiction conferred on it by or under the Constitution. Article 142 is also not of much assistance. In the first place, the operative words in that article, again are "in the exercise of its jurisdiction." The Supreme Court was hearing an appeal from the order of discharge and connected matters. There was no issue or controversy or discussion before it as to the comparative merits of a trial before a special judge vis-a-vis one before the High Court. There was only an oral request said to have been made, admittedly, after the judgment was announced. Wide as the powers under Article 141 are, they do not in my view, envisage an order of the type presently in question. The Nanavati case (1961 SCR 497, to which reference was made by Sri Jethmalani, involved a totally different type of situation. Secondly, it is one of the contentions of the appellant that an order of this type, far from being necessary for doing complete justice in the cause or matter pending before the Court, has actually resulted in injustice, an aspect discussed a little later. Thirdly, however wide and plenary the language of the article, the directions given by the Court should not be inconsistent with, repugnant to or in violation of the specific provisions of any statute. If the provisions of the 1952 Act read with Article 139-A and Sections 406-407 of the Cr.P.C. do not permit the transfer of the case from a special judge to the High Court,

that effect cannot be achieved indirectly, it is, therefore, difficult to say, in the circumstances of the case, that the Supreme Court can issue the impugned direction in exercise of the powers under Article 142 or under Section 407 available to it as an appellate court.

156. Learned Counsel for the complainant also sought to support the order of transfer by reference to Section 386 and 401 of the 1973 Cr.P.C. He suggested that the Court, having set aside the order of discharge, had necessarily to think about consequential orders and that such directions as were issued are fully justified by the above provisions. He relied in this context on the decision of the Privy Council in Hari v. Emperor, MANU/PR/0036/1935. It is difficult to accept this argument. Section 401 provides that, in the revision pending before it, the High Court can exercise any of the powers conferred on a court of appeal under Section 386. Section 386, dealing with the powers of the appellate court enables the court, in a case such as this: (i) under Clause (a), to alter or reverse the order under appeal/revision; or (ii) under Clause (e), to make any amendment or any consequential or incidental order that may be just or proper. The decision relied on by counsel, Hari v. Emperor, MANU/PR/0036/1935, is of no assistance to him. In that case, the Additional Judicial Commissioner, who heard an appeal on a difference of opinion between two other judicial commissioner had come to the conclusion that the conviction had to be set aside. Then he had the duty to determine what should be done aid Section 426 of the 1898 Cr.P.C. (corresponding to Section 386 of the 1973 Cr.P.C.) exactly provided for the situation and empowered him:

to reverse the finding and sentence and acquit or discharge the accused or order him to be retried by a court of competent jurisdiction subordinate to such appellate Court.

In the present case, the Special Judge, Sri Sule, had discharged the accused because of his conclusion that the prosecution lacked the necessary sanction. The conclusion of the Supreme Court that this conclusion was wrong meant, automatically, that the prosecution had been properly initiated and that the proceedings before the Special Judge should go on. The direction that the trial should be shifted to the High Court can hardly be described as a consequential or incidental order. Such a direction did not flow, as a necessary consequence of the conclusion of the court on the issues and points debated before it. I am, therefore, inclined to agree with counsel for the appellant that this Court was in error when it directed that the trial of the case should be before a High Court Judge.

157. It follows from the above discussion that the appellant, in consequence of the impugned direction, is being tried by a Court which has no jurisdiction-and which cannot be empowered by the Supreme Court-to try him. The continued trial before the High Court, therefore, infringes Article 21 of the Constitution.

Denial of equality and violation of Article 21.

158. It was vehemently contended for the appellant that, by giving the impugned direction, this Court has deprived the appellant of his fundamental rights. He has been denied a right to equality, inasmuch as his case has been singled out for trial by a different, though higher, forum as compared to other public servants. His fundamental right under Article 21, it is said, has been violated, inasmuch as the direction has deprived him of a right of revision and first appeal to the High Court which he would have had from an order or sentence had he been tried by a Special Judge and it is doubtful whether he would have a right to appeal to this Court at all. It is pointed out that a right of first appeal against a conviction in a criminal case has been held, by this Court, to be a part of the fundamental right guaranteed under Article 21 of the Constitution. It is not necessary for me to consider these arguments in view of my conclusion that the High Court could not have been directed to try the petitioner's case. I would, however, like to say that, in my opinion, the arguments based on Articles 14 and 21 cannot be accepted, in case it is to be held for any reason that the transfer of the appellant's case to the High Court was valid and within the competence of this Court. I say this for the following reason: If the argument is to be accepted, it will be appreciated, it cannot be confined to cases of transfer to the High Court of cases under the 1952 Act but would also be equally valid to impugn the withdrawal of a criminal case tried in the normal course under the Cr.P.C. from a subordinate court trying it to the High Court by invoking the powers under Section 407. To put it in other words, the argument, in substance, assails the validity of Section 407 of the 1973 Cr.P.C. In my opinion, this attack has to be repelled. The section cannot be challenged under Article 14 as it is based on a reasonable classification having relation to the objects sought to be achieved. Though, in general, the trial of cases will be by courts having the normal jurisdiction over them, the exigencies of the situation may require that they be dealt with by some other court for various reasons. Likewise, the nature of a case, the nature of issues involved and other circumstances may render it more expedient, effective, expeditious or desirable that the case should be tried by a superior court or the High Court itself. The power of transfer and withdrawal contained in Section 407 of the Cr.P.C. is one dictated by the requirements of justice and is, indeed, but an aspect of the supervisory powers of a superior court over courts subordinate to it: (see also Sections 408 to 411 of the Cr.P.C.). A judicial discretion to transfer or withdraw is vested in the highest court of the State and is made exercisable only in the circumstances set out in the section. Such a power is not only necessary and desirable but indispensable in the cause of the administration of justice. The accused will continue to be tried by a court of equal or superior jurisdiction. Section 407(8) read with Section 474 of the Cr.P.C. and Section 8(3) of the 1952 Act makes it clear that he will be tried in accordance with the procedure followed by the original Court or ordinarily by a Court of Session. The accused will, therefore, suffer no prejudice by reason of the application of Section 407. Even if there is a differential treatment which causes prejudice, it is based on logical and acceptable considerations with a view to promote the interest of justice. The transfer or withdrawal of a case to another court or the High Court, in such circumstances, can hardly be said to result in hostile discrimination against the accused in such a case.

159. Considerable reliance was placed on behalf of the appellant on State v. Anwar Ali Sarkar MANU/SC/0033/1952: 1952CriLJ510. This decision seems to have influenced the learned judges before whom this appeal first came up for hearing in referring the matter to this larger Bench and has also been applied to the facts and situation here by my learned brother, Sabyasachi Mukharji, J. But it seems to me that the said decision has no relevance here. There, the category of cases which were to be allocated to a Special Judge were not well defined; the selection of cases was to be made by the executive; and the procedure to be fallowed by the special courts was different from the normal criminal procedure. As already pointed out, the position here is entirety different. The 1952 legislation has been enacted to give effect to the Tek Chand Committee and to remedy a state of affairs prevalent in respect of a well defined class of offences and its provisions constituting special judges to try offences of corruption is not under challenge. Only a power of transfer is being exercised by the Supreme Court which is sought to be traced back to the power of the High Court under Section 407. The vires of that provision also is not being challenged. What is perhaps being said is that the Supreme Court ought not to have considered this case a fit one for withdrawal for trial to the High Court. That plea should be and is being considered here on merits but the plea that Article 14 has been violated by the exercise of a power under Section 407 on the strength of Anwar Ali Sarkar's case wholly appears to be untenable. Reference may be made in this context to Kathi Raning Rawat v. The State of Saurashtra [1952] 3 S.C.R. 435 and Re: Special Courts Bill, 1978 MANU/SC/0039/1978: [1979]2SCR476 and Shukla v. Delhi Administration [1980] 3 S.C.R. 500, which have upheld the creation of special judges to try certain classes of offences.

160. It may be convenient at this place to refer to certain observations by the Bench of this Court, while referring this matter to the larger Bench, in a note appended to their order on this aspect. The learned Judges have posed the following questions in paragraphs 4 and 6 of their note:

4. The Criminal Law Amendment Act, 1952 as its preamble says is passed to provide for speedier trial? Does not further speeding up of the case by transferring the case to the High Court for speedy disposal violate the principle laid down by seven learned Judges of this Court in Anwar Ali Sarkar's case (1952) S.C.R. 284 and result in violation of Article 14 of the Constitution? The following observations of Vivian Bose, J. in Anwar Ali Sarkar's case at pages 366-387 of the Report are relevant:

Tested in the light of these considerations, I am of opinion that the whole of the West Bengal Special Courts Act of 1950 offends the provisions of Article 14 and is therefore bad. When the froth and the foam of discussion is cleared away and learned dialectics placed on one side, we reach at last the human element which to my mind is the most important of all. We find men accused of heinous crimes called upon to answer for their lives and liberties. We find them picked out from their fellows, and however much the

new procedure may give them a few crumbs of advantage, in the bulk they are deprived of substantial and valuable privileges of defence which others, similarly charged, are able to claim. It matters not to me, nor indeed to them and their families and their friends, whether this be done in good faith, whether it be done for the convenience of government, whether the process can be scientifically classified and labelled, or whether it is an experiment in speedier trials made for the good of society at large. It matters now how lofty and laudable the motives are. The question with which I charge myself is, can fair-minded, reasonable, unbiassed and resolute men, who are not swayed by emotion or prejudice, regard this with equanimity and call it reasonable, just and fair, regard it as that equal treatment and protection in the defence of liberties which is expected of a sovereign democratic republic in the conditions which obtain in India today? I have but one answer to that. On that short and simple ground I would decide this case and hold the Act bad.'

(Underlining by us)

Do not the above observations apply to judicial orders also?

6. Does the degree of heinousness of the crime with which an accused is charged or his status or the influence that he commands in society have any bearing on the applicability or the constriction of Article 14 or Article 21.?

161. In my opinion, the answers to the questions posed will, again, depend on whether the impugned direction can be brought within the scope of Section 407 of the 1973 Cr.P.C. or not. If I am right in my conclusion that it cannot, the direction will clearly be contrary to the provisions of the Cr.P.C. and hence violative of Article 21. It could also perhaps be said to be discriminatory on the ground that, in the absence of not only a statutory provision but even any well defined policy or criteria, the only two reasons given in the order-namely, the status of the petitioner and delay in the progress of the trial-are inadequate to justify the special treatment meted out to the appellant. On the other hand, if the provisions of Section 407 Cr.P.C. are applicable, the direction will be in consonance with a procedure prescribed by law and hence safe from attack as violative of Article 21. The reasons given, in the context of the developments in the case, can also be sought to be justified in terms of Clauses (a), (b) or (c) of Section 407(1). In such an event, the direction will not amount to an arbitrary discrimination but can be justified as the exercise of a choice of courses permitted under a valid statutory classification intended to serve a public purpose.

162. The argument of infringement of Article 21 is based essentially on the premise that the accused will be deprived, in cases where the trial is withdrawn to the High Court of a right of first appeal. This fear is entirely unfounded. I think Sri Jethmalani is right in contending that where a case is thus withdrawn and tried by the Court, the High Court will be conducting the trial in the exercise of its extraordinary original criminal

jurisdiction. As pointed out by Sabyasachi Mukharji, J., the old Presidency-town High Courts once exercised original jurisdiction in criminal matters but this has since been abolished. One possible view is that now all original criminal jurisdiction exercised by High Court is only extraordinary original criminal jurisdiction. Another possible view is that still High Courts do exercise ordinary original criminal jurisdiction in habeas corpus and contempt of court matters and also under some specific enactments (e.g. Companies' Act Sections 454 and 633). They can be properly described as exercising extraordinary original criminal jurisdiction, where though the ordinary original criminal jurisdiction is vested in a subordinate criminal Court or special Judge, a case is withdrawn by the High Court to itself for trial. The decision in Madura Tirupparankundram etc. v. Nikhan Sahib, MANU/WB/0033/1931: 35 C.W.N. 1088, Kavasji Pestonji v. Rustomji Sorabji, MANU/MH/0034/1948: AIR 1949 Bom 42, Sunil Chandra Roy and Anr. v. The State, MANU/WB/0110/1954: AIR1954Cal305, People's Insurance Co. Ltd. v. Sardul Singh Caveeshar and Ors. MANU/PH/0028/1961 and People's Patriotic Front v. K.K. Birla and Ors. MANU/DE/0037/1983: 23(1983)DLT499 cited by him amply support this contention. If this be so, then Sri Jethmalani is also right in saying that a right of first appeal to the Supreme Court against the order passed by the High Court will be available to the accused under Section 374 of the 1973 Cr.P.C. In other words, in the ordinary run of criminal cases tried by a Court of Sessions, the accused will be tried in the first instance by a court subordinate to the High Court; he will then have a right of first appeal to the High Court and then can seek leave of the Supreme Court to appeal to it under Article 136. In the case of a withdrawn case, the accused has the privilege of being tried in the first instance by the High Court itself with a right to approach the apex Court by way of appeal. The apprehension that the judgment in the trial by the High Court, in the latter case, will be final, with only a chance of obtaining special leave under Article 136 is totally unfounded. There is also some force in the submission of Sri Jethmalani that, if that really be the position and the appellant had no right of appeal against the High Court's judgment, the Supreme Court will consider any petition presented under Article 136 in the light of the inbuilt requirements of Article 21 and dispose of it as if it were itself a petition of appeal from the judgment, (see, in this context, the observations of this Court in Sadananthan v. Arunachalam [1980] 2 S.C.R. 673. That, apart it may be pointed out, this is also an argument that would be valid in respect even of ordinary criminal trials withdrawn to the High Court under Section 407 of the Cr.P.C. and thus, like the previous argument regarding Article 14, indirectly challenges the validity of Section 407 itself as infringing Article 21. For the reasons discussed, I have come to the conclusion that an accused, tried directly by the High Court by withdrawal of his case from a subordinate court, has a right of appeal to the Supreme Court under Section 374 of the Cr.P.C. The allegation of an infringement of Article 21 in such cases is, therefore, unfounded. Natural Justice

163. The appellant's contention that the impugned direction issued by this Court on 16.2.1984 was in violation of the principles of natural justice appears to be well founded. It is really not in dispute before us that there was no whisper or suggestion in the

proceedings before this Court that the venue of the trial should be shifted to the High Court. This direction was issued suo motu by the learned Judges without putting it to the counsel for the parties that this was what they proposed to do. The difficulties created by observations or directions on issue's not debated before the Court have been highlighted by Lord Diplock) in Hadmor Productions Ltd. v. Hamilton [1983] A.C. 191. In that case, Lord Denning, in the Court of Appeal, had in his judgment, relied on a certain passage from the speech of Lord Wedderburn in Parliament as reported in Hansard (Parliamentary Reports) in support of the view taken by him. The counsel for the parties had had no inkling or information that recourse was likely to be had by the Judge to this source, as it had been authoritatively held by the House of Lords in Davis v. Johns [1979] A.C. 264 that these reports should not be referred to by counsel or relied upon by the court for any purpose. Commenting on this aspect, Lord Diplock observed:

Under our adversary system of procedure, for a judge to disregard the rule by which counsel are bound has the effect of depriving the parties to the action of the benefit of one of the most fundamental rules of natural justice: the right of each to be informed of any point adverse to him that is going to be relied upon by the judge and to be given an opportunity of stating what his answer to it is. In the instant case, counsel for Hamilton and Bould complained that Lord Denning M.R. had selected one speech alone to rely upon out of many that had been made...and that, if he has counsel had known that (Lord Denning) was going to do that, not only would he have wished to criticise what Lord Wedderburn had said in his speech...but he would also have wished to rely on other speeches disagreeing with Lord Wedderburn if he, as counsel, had been entitled to refer to Hansard....

The position is somewhat worse in the present case. Unlike the Hamilton case (supra) where the Judge had only used Hansard to deal with an issue that arose in the appeal, the direction in the present case was something totally alien to the scope of the appeal, on an issue that was neither raised nor debated in the course of the hearing and completely unexpected.

164. Shri Jethmalani submitted that, when the judgment was announced, counsel for the complainant (present respondent) had made an oral request that the trial be transferred to the High Court and that the Judges replied that they had already done that. He submitted that, at that time and subsequently, the appellant could have protested and put forward his objections but did not and had thus acquiesced in a direction which was, in truth, beneficial to him as this Court had only directed that he should be tried by a High Court Judge, a direction against which no one can reasonably complain. This aspect of the respondent's arguments will be dealt with later but, for the present, all that is necessary is to say that the direction must have come as a surprise to the appellant and had been issued without hearing him on the course proposed to be adopted.

Conclusion

165. To sum up, my conclusion on issue A is that the direction issued by the Court was not warranted in law, being contrary to the special provisions of the 1952 Act, was also not in conformity with the principles of natural justice and that, unless the direction can be justified with reference to Section 407 of the Cr.P.C., the petitioner's fundamental rights under Articles 14 and 21 can be said to have been infringed by reason of this direction. This takes me on to the question whether it follows as a consequence that the direction issued can be, or should be, recalled, annulled, revoked or set aside by us now.

B. CAN AND SHOULD THE DIRECTION OF 16.2.84 BE RECALLED?

166. It will be appreciated that, whatever may be the ultimate conclusion on the correctness, propriety or otherwise of the Court's direction dated 16.2.1984, that was a direction given by this Court in a proceeding between the same parties and the important and far-reaching question that falls for consideration is whether it is at all open to the appellant to seek to challenge the correctness of that direction at a later stage of the same trial.

Is a review possible?

167. The first thought that would occur to any one who seeks a modification of an order of this Court, particularly on the ground that it contained a direction regarding which he had not been heard, would be to seek a review of that order under Article 137 of the Constitution read with the relevant rules. Realising that this would be a direct and straight forward remedy, it was contended for the appellant that the present appeal may be treated as an application for such review.

168. The power of review is conferred on this Court by Article 137 of the Constitution which reads thus:

Subject to the provisions of any law made by Parliament or any rules made under Article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

It is subject not only to the provisions of any law made by Parliament (and there is no such law so far framed) but also to any rules made by this Court under Article 145. this Court has made rules in pursuance of Article 145 which are contained in Order XL in Part VIII of the Supreme Court Rules. Three of these rules are relevant for our present purposes. They read as follows:

(1) The Court may review its judgment or order, but no application for review will be entertained in a civil proceeding except on the ground mentioned in Order XLVII, Rule 1

of the Code, and in a criminal proceeding except on the ground of an error apparent on the face of the record.

(2) An application for review shall be by a petition, and shall be filed within thirty days from the date of the judgment or order sought to be reviewed. It shall set out clearly its grounds for review.

(3) Unless otherwise ordered by the Court an application for review shall be disposed of by circulation without any oral arguments, but the petitioner may supplement his petition by additional written arguments. The court may either dismiss the petition or direct notice to the opposite party. An application for review shall as far as practicable be circulated to the same Judge or Bench of Judges that delivered the judgment or order sought to be reviewed.

169. It is contended on behalf of the respondent that the present pleas of the appellant cannot be treated as an application for review, firstly, because they do not seek to rectify any error apparent on the face of the record; secondly, because the prayer is being made after the expiry of the period of thirty days mentioned in Rule 2 and there is no sufficient cause for condoning the delay in the making of the application and thirdly, for the reason that a review petition has to be listed as far as practicable before the same Judge or Bench of Judges that delivered the order sought to be reviewed and in this case at least two of the learned Judges, who passed the order on 16.2.1984, are still available to consider the application for review. These grounds may now be considered.

170. For reasons which I shall later discuss, I am of opinion that the order dated 16.2.1984 does not suffer from any error apparent on the face of the record which can be rectified on a review application. So far as the second point is concerned, it is common ground that the prayer for review has been made beyond the period mentioned in Rule 2 of Order XL of the Supreme Court Rules. No doubt this Court has power to extend the time within which a review petition may be filed but learned Counsel for the respondent vehemently contended that this is not a fit case for exercising the power of condo nation of delay. It is urged that, far from this being a fit case for the entertainment of the application for review beyond the time prescribed, the history of the case will show that the petitioner has deliberately avoided filing a review petition within the time prescribed for reasons best known to himself.

171. In support of his contention, learned Counsel for the respondent invited our attention to the following sequence of events and made the following points:

(a) The order of this Court was passed on 16.2.1984. At the time of the pronouncement of the said order, counsel for the present respondent had made a request that the trial of the case may be shifted to the High Court and the Court had observed that a direction to this effect had been included in the judgment. Even assuming that there had been no issues

raised and no arguments advanced on the question of transfer at the time of the hearing of the appeals, there was nothing to preclude the counsel for the appellant, when the counsel for the complainant made the above request, from contending that it should not be done, or, at least, that it should not be done without further hearing him and pointing out this was not a matter which had been debated at the hearing of the appeal. But no, the counsel for the accused chose to remain quiet and did not raise any objection at that point of time. He could have filed a review application soon thereafter but he did not do so. Perhaps he considered, at that stage, that the order which after all enabled him to be tried by a High Court Judge in preference to a Special Judge was favourable to him and, therefore, he did not choose to object.

(b) The matter came up before the trial judge on 13th March, 1984. The accused, who appeared in person, stated that he did not want to engage any counsel "at least for the present'. He would not put down his arguments in writing and when he argued the gravemen of his attack was that this Court's order transferring the trial from the Special Judge to the High Court was wrong on merits. Naturally, the learned Judge found it difficult to accept the contention that he should go behind the order of the Supreme Court. He rightly pointed out that if the accused had any grievance to make, his proper remedy was to move the Supreme Court for review of its judgment or for such further directions or clarifications as may be expedient. Thus, as early as 13th March, 1984, Khatri, J., had given a specific opportunity to the accused to come to this Court and seek a review of the direction. It can perhaps be said that on 16.2.1984, when this Court passed the impugned direction, the appellant was not fully conscious of the impact of the said direction and that, therefore, he did not object to it immediately. But, by the 13th March, 1984, he had ample time to think about the matter and to consult his counsel. The appellant himself was a barrister. He chose not to engage counsel but to argue himself and, even after the trial court specifically pointed out to him that it was bound by the direction of this Court under Articles 141 and 144 of the Constitution and that, if at all, his remedy was to go to the Supreme Court by way of review or by way of an application for clarification, he chose to take no action thereon.

(c) On 16th March, 1984, Khatri, J. disposed of the preliminary objections raised by the accused challenging the jurisdiction and competence of this Court to try the accused. Counsel for the respondent points out that, at the time of the hearing, the appellant had urged before Khatri, J. all the objections to the trial, which he is now putting forth. These objections have been summarised in paragraph 3 of the order passed by the learned Judge and each one of them has been dealt with elaborately by the learned Judge. It has been pointed out by him that the Supreme Court was considering not only the appeals preferred by the accused and the complainant, namely, Crl. Appeal Nos. 246, 247 and 356 of 1983 but also two revision petitions being C.R. Nos. 354 'and 359 of 1983 which had been withdrawn by the Supreme Court to itself for disposal along with Crl. Appeal No. 356 of 1983. A little later in the order the learned Judge pointed out that, even assuming that in the first instance the trial can be conducted only by a Special Judge, the

proceedings could be withdrawn by the high Court to itself under powers vested in it under Article 228(a) of the Constitution as well as Section 407 of the Cr.P.C. When the criminal revisions stood transferred to the Supreme Court (this was obviously done under Article 139-A though that article is not specifically mentioned in the judgment of the Supreme Court), the Supreme Court could pass the order under Article 139-A read with Article 142. The learned Judge also disposed of the objections based on Article 21. He pointed out that as against an ordinary accused person tried by a special judge, who gets a right of appeal to the High Court, a court of superior jurisdiction, with a further right of appeal to the Supreme Court under Section 374 of the Cr.P.C. and that an order of transfer passed in the interest of expeditious disposal of a trial was primarily in the interests of the accused and could hardly be said to be prejudicial to the accused. Despite the very careful and fully detailed reasons passed by the High Court, the appellant did not choose to seek a review of the earlier direction.

(d) Against the order of the learned Judge dated 16.3.1984 the complainant came to the Court because he was dissatisfied with certain observations made by the trial Judge in regard to the procedure to be followed by the High Court in proceeding with the trial. This matter was heard in open court by same five learned Judges who had disposed of the matter earlier on 16.2.1984. The accused was represented by a senior counsel and the Government of Maharashtra had also engaged a senior counsel to represent its case. Even at this hearing the counsel for the appellant did not choose to raise any objection against the direction given in the order dated 16.2.1984. The appeal before the Supreme Court was for getting a clarification of the very order dated 16.2.1984. This was a golden opportunity for the appellant also to seek a review or clarification of the impugned direction, if really he had a grievance that he had not been heard by the Court before it issued the direction and that it was also contrary to the provisions of the 1952 Act as well as violative of the rights of the accused under Article 21 of the Constitution.

(e) The petitioner instead filed two special leave petitions and a writ petition against the orders of Khatri, J. dated 13.3.1984 and 16.3.1984. In the writ petition, the petitioner had mentioned that the impugned direction had been issued without hearing him. In these matters counsel for the accused made both oral and written submissions and all contentions and arguments, which have now been put forward, had been raised in the written arguments. The appeals and writ petition were disposed of by this Court. this Court naturally dismissed the special leave petitions pointing out that the High Court was quite correct in considering itself bound by the directions of the Court. The Court also dismissed the writ petition as without merit. But once again it observed that the proper remedy of the petitioner was elsewhere and not by way of a writ petition. These two orders, according to the learned Counsel for the respondent, conclude the matter against the appellant. The dismissal of the writ petition reminded the petitioner of his right to move the Court by other means and, though this advice was tendered as early as 17.4.1984, the petitioner did nothing. So far as the special leave petition was concerned, its dismissal meant the affirmation in full of the decision given by Justice Khatri

dismissing and disposing of all the objections raised by the petitioner before him. Whatever may have been the position on 16.2.1984 or 16.3.1984, there was absolutely no explanation or justification for the conduct of the petitioner in failing to file an application for review between 17.4.1984 and October, 1986.

172. Recounting the above history, which according to him fully explained the attitude of the accused, learned Counsel for the respondent submitted that in his view the appellant was obviously trying to avoid a review petition perhaps because it was likely to go before the same learned Judges and he did not think that he would get any relief and perhaps also because he might have felt that a review was not an adequate remedy for him as, under the rules, it would be disposed of in chamber without hearing him once again. But, whatever may be the reason, it is submitted, the delay between April 1984 and October, 1986 stood totally unexplained and even now there was no proper review petition before this Court. In the circumstances, it is urged that this present belated prayer for review.

173. There is substance in these contentions. The prayer for review is being made very belatedly, and having regard to the circumstances outlined above there is hardly any reason to condone the delay in the prayer for review. The appellant was alive to all his present contentions as is seen from the papers in the writ petition. At least when the writ petition was dismissed as an inappropriate remedy, he should have at once moved this Court for review. The delay from April 1984 to October 1986 is totally inexplicable. That apart, there is also validity in the respondent's contention that, even if we are inclined to condone the delay, the application will have to be heard as far as possible by the same learned Judges who disposed of the earlier matter. In other words, that application will have to be heard by a Bench which includes the two learned Judges who disposed of the appeal on 16.2.1984 and who are still available in this Court to deal with any proper review application, that may be filed. However, since in my view, the delay has not been satisfactorily explained, I am of opinion that the prayer of the appellant that the present pleas may be treated as one in the nature of a review application and the appellant given relief on that basis has to be rejected.

Is a writ maintainable?

174. This takes one to a consideration of the second line of attack by the appellant's counsel. His proposition was that a judicial order of a court-even the High Court or this Court may breach the principles of natural justice or the fundamental rights and that, if it does so, it can be quashed by this Court in the exercise of its jurisdiction under Article 32. In other words, the plea would seem to be that the present proceedings may be treated as in the nature of a writ petition to quash the impugned order on the above ground. The earliest of the cases relied upon to support this contention is the decision in Prem Chand Garg v. Excise Commissioner [1963] Su. 1 S.C.R. 885, which may perhaps be described as the sheet-anchor of the appellant's contentions on this point. The facts of that case have been set out in the judgment of Sabyasachi Mukharji, J. and need not be repeated. The

case was heard by a Bench of five judges. Four of them, speaking through Gajendragadkar, J. held that Rule 12 of Order XXXV of the Supreme Court Rules violated Article 32 and declared it invalid. This also set aside an earlier order dated 12.12.1961 passed by the Court in pursuance of the rule calling upon the petitioner to deposit cash security. Sri Rao contended that this case involved two separate issues for consideration by the Court: (a) the validity of the rule and (b) the validity of the order dated 12.12.1961; and that the decision is authority not only for the proposition that a writ petition under Article 32 could be filed to impugn the constitutional validity of a rule but also for the proposition that the Court could entertain a writ petition to set aside a judicial order passed by the Court earlier on discovering that it is inconsistent with the fundamental rights of the petitioner. Counsel submitted that an impression in the minds of some persons that the decision in Prem Chand Garg is not good law after the decision of the nine-Judge Bench in Naresh Sridhar Mirajkar v. State MANU/SC/0044/1966: [1966]3SCR744 is incorrect. He submitted that, far from Garg's case being overruled, it has been confirmed in the later case.

175. Mirajkar was a case in which the validity of an interlocutory order passed by a judge of the Bombay High Court pertaining to the publication of reports of the proceedings in a suit pending before him was challenged by a journalist as violating his fundamental rights under Article 19 of the Constitution. The matter came to the Supreme Court by way of a writ petition under Article 32. The validity of the order was upheld by the majority of the Judges while Hidayatullah J. dissented. In this connection it is necessary to refer to a passage at p. 767 in the judgment of Gajendragadkar, C.J.

Mr. Setalvad has conceded that if a court of competent jurisdiction makes an order in a proceeding before it, and the order is inter-partes, its validity cannot be challenged by invoking the jurisdiction of this Court under Article 32, though the said order may affect the aggrieved party's fundamental rights. His whole argument before us has been that the impugned order affects the fundamental rights of a stranger to the proceeding before the Court; and that, he contends, justifies the petitioners in moving this Court under Article 32. It is necessary to examine the validity of this argument.

The question before the Supreme Court was thus as to whether, even at the instance of a stranger to the earlier proceedings, the earlier order could be challenged by means of a writ petition under Article 32. One of the questions that had to be considered by the Court was whether the judicial order passed by the learned judge of the High Court was amenable to be writ jurisdiction of the Court under Article 32. On this question, the judges reacted differently:

(i) Gajendragadkar, CJ and Wanchoo, Mudholkar, Sikri and Ramaswamy, JJ. had this to say:

The High Court is a superior Court of Record and it is for it to consider whether any matter falls within its jurisdiction or not. The order is a judicial order and if it is erroneous, a person aggrieved by it, though a stranger, could move this Court under Article 136 and the order can be corrected in appeal but the question about the existence of the said jurisdiction as well as the validity or the propriety of the order cannot be raised in writ proceedings under Article 32.

(ii) Sarkar J. also concurred in the view that this Court had no power to issue a certiorari to the High Court. He observed:

I confess the question is of some haziness. That haziness arises because the courts in our country which have been given the power to issue the writ are not fully analogous to the English courts having that power. We have to seek a way out for ourselves. Having given the matter my best consideration, I venture to think that it was not contemplated that a High Court is an inferior court even though it is a court of limited jurisdiction. The Constitution gave power to the High Court to issue the writ. In England, an inferior court could never issue the writ. I think it would be abhorrent to the principle of certiorari if a Court which can itself issue the writ is to be made subject to be corrected by a writ issued by another court. When a court has the power to issue the writ, it is not according to the fundamental principles of certiorari, an inferior court or a court of limited jurisdiction. It does not cease to be so because another Court to which appeals from it lie has also the power to issue the writ. That should furnish strong justification for saying that the Constitution did not contemplate the High Courts to be inferior courts so that their decisions would be liable to be quashed by writs issued by the Supreme Court which also had been given power to issue the writs. Nor do I think that the cause of justice will in any manner be affected if a High Court is not made amenable to correct by this Court by the issue of the writ. In my opinion, therefore, this Court has not power to issue a certiorari to a High Court.

(iii) Bachawat J. held:

The High Court has jurisdiction to decide if it could restrain the publication of a. document or information relating to the trial of a pending suit or concerning which the suit is brought, if it erroneously assume a jurisdiction not vested in it, its decision may be set aside in appropriate proceedings but the decision is not open to attack under Article 32 on the ground that it infringes the fundamental right under Article 19(1)(a). If a stranger is prejudiced by an order forbidding the publication of the report of any proceeding, his proper course is only to apply to the Court to lift the ban.

(iv) Justice Shah thought that, in principle, a writ petition could perhaps be filed to challenge an order of a High Court on the ground that it violated the fundamental rights of the petitioner under Articles 20, 21 and 22 but he left the question open. He, however,

concluded that an order of the nature in issue before the Court could not be said to infringe Article 19.

176. Hidayatullah J., as His Lordship then was, however, dissented. He observed:

Even assuming the impugned order means a temporary suppression of the evidence of the witness, the trial Judge had no jurisdiction to pass the order. As he passed no recorded order, the appropriate remedy (in fact the only effective remedy) is to seek to quash the order by a writ under Article 32.

There may be action by a Judge which may offend the fundamental rights under Articles 14, 15, 19, 20, 21 and 22 and an appeal to this Court will not only be practicable but will also be an ineffective remedy and this Court can issue a writ to the High Court to quash its order under Article 32 of the Constitution. Since there is no exception in Article 32 in respect of the High Courts there is a presumption that the High Courts are not excluded. Even with the enactment of Article 226, the power which is conferred on the High Court is not in every sense a coordinate power and the implication of reading Articles 32, 136 and 226 together is that there is no sharing of the powers to issue the prerogative writs possessed by this Court. Under the total scheme of the Constitution, the subordination of the High Courts to the Supreme Court is not only evident but is logical.

His Lordship proceeded to meet an objection that such a course might cast a slur on the High Courts or open the floodgates of litigation. He observed:

Article 32 is concerned with Fundamental Rights and Fundamental Rights only. It is not concerned with breaches of law which do not involve fundamental rights directly. The ordinary writs of certiorari, mandamus and prohibition can only issue by enforcement of Fundamental Rights. A clear cut case of breach of Fundamental Right alone can be the basis for the exercise of this power. I have already given examples of actions of courts and judges which are not instances of wrong judicial orders capable of being brought before this Court only by appeal but breaches of Fundamental Rights clear and simple. Denial of equality as for example by excluding members of a particular party or of a particular community from the public Court room in a public hearing without any fault, when others are allowed to stay on would be a case of breach of fundamental right of equal protection given by this Constitution. Must an affected person in such a case ask the Judge to write down his order, so that he may appeal against it? Or is he expected to ask for special leave from this Court? If a High Court judge in England acted improperly, there may be no remedy because of the limitations on the rights of the subject against the Crown. But in such circumstances in England the hearing is considered vitiated and the decision voidable. This need not arise here. The High Court in our country in similar circumstances is not immune because there is a remedy to move this Court for a writ against discriminatory treatment and this Court should not in a suitable case shirk to issue a writ to a High Court Judge, who ignores the fundamental rights and his

obligations under the Constitution. Other cases can easily be imagined under Article 14, 15, 19, 20, 21 and 22 of the Constitution, in which there may be action by a Judge which may offend the fundamental rights and in which an appeal to this Court will not only be not practicable but also quite an ineffective remedy.

We need not be dismayed that the view I take means a slur on the High Courts or that this Court will be flooded with petitions under Article 32 of the Constitution. Although the High Courts possess a power to interfere by way of high prerogative writs of certiorari, mandamus and prohibition, such powers have not been invoked against the normal and routine work of subordinate courts and tribunals. The reason is that people understand the difference between an approach to the High Court by way of appeals etc. and approach for the purpose of asking for writs under Article 226. Nor have the High Courts spread a Procrustean bed for high prerogative writs for all actions to lie. Decisions of the courts have been subjected to statutory appeals and revisions but the losing side has not charged the Judge with a breach of fundamental rights because he ordered attachment of property belonging to a stranger to the litigation or by his order affected rights of the parties or even strangers. This is because the people understand the difference between normal proceedings of a civil nature and proceedings in which there is a breach of fundamental rights. The courts acts, between parties and even between parties and strangers, done impersonally and objectively are challengeable under the ordinary law only. But acts which involve the court with a fundamental right are quite different.

One more passage from the judgment needs to be quoted. Observed the learned Judge:

I may dispose of a few results which it was suggested, might flow from my view that this Court can issue a high prerogative writ to the High Court for enforcement of fundamental rights. It was suggested that the High Courts might issue writs to this Court and to other High Courts and one Judge or Bench in the High Court and the Supreme Court might issue a writ to another judge or Bench in the same Court. This is an erroneous assumption. To begin with High Courts cannot issue a writ to the Supreme Court because the writ goes down and not up. Similarly, a High Court cannot issue a writ to another High Court. The writ does not go to a court placed on an equal footing in the matter of jurisdiction

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I must hold that this English practice of not issuing writs in the same court is in the very nature of things. One High Court will thus not be able to issue a writ to another High Court nor even to a court exercising the powers of the High Court. In so far as this Court is concerned, the argument that one Bench or one Judge might issue a writ to another Bench or Judge, need hardly be considered. My opinion gives no support to such a view and I hope I have said nothing to give countenance to it. These are imaginary fears which have no reality either in law or in fact.

177. I have set out at length portions from the judgment of Hidayatullah, J. as Shri Rao placed considerable reliance on it. From the above extracts, it will be seen that the majority of the Court was clearly of opinion that an order of a High Court cannot be challenged by way of a writ petition under Article 32 of the Constitution on the ground that it violates the fundamental rights, not even at the instance of a person who was not at all a party to the proceedings in which the earlier order was passed. Even Hidayatullah, J. has clearly expressed the view that, though a writ of certiorari might issue to quash the order of a High Court in appropriate case, it cannot lie from a Bench of one court to another Bench of the same High Court. Subba Rao, C.J. has also made an observation to like effect in regard to High Court Benches inter se in Ghulam Sarwar v. Union MANU/SC/0062/1966: 1967CriLJ1204. The decision in Prem Chand Garg, seems to indicate to the contrary. But it is clearly distinguishable and has been distinguished by the nine judge Bench in Mirajkar. The observations of Gujendragadkar, C.J. (at p. 766), and Sarkar, J. (at p. 780), be seen in this context. In that case, it is true that the order passed by the Court directing the appellant to deposit security was also quashed but that was a purely consequential order which followed on the well-founded challenge to the validity of the rule. Hidayatullah, J. also agreed that this was so and explained that the judicial decision which was based on the rule was only revised. (p. 790).

178. Sri Rao also referred to Sadhanatham v. Arunachalam MANU/SC/0083/1980: [1980]2SCR873. In that case, the petitioner was acquitted by the High Court, in appeal, of charges under Section 302 and 148 of the Indian Penal Code. The brother of the deceased, not the State or the informant, petitioned this Court under Article 136 of the Constitution for special leave to appeal against the acquittal. Leave was granted and his appeal was eventually allowed by the High Court. The judgment of the High Court was set aside and the conviction and sentence imposed by the trial court under Section 302 was upheld by the Supreme Court in his earlier decision reported in MANU/SC/0073/1979: 1979CriLJ875. Thereupon, the petitioner filed a writ petition under Article 32 of the Constitution, challenging the validity of the earlier order of this Court. Eventually, the petition was dismissed on the merits of the case. However, learned Counsel for the appellant strongly relied on the fact that in this case a Bench of five judges of this Court entertained a petition under Article 32 to reconsider a decision passed by it in an appeal before the Court. He submitted that it was inconceivable that it did not occur to the learned judges who decided the case that, after Mirajkar, a writ petition under Article 32 was not at all entertain able. He, therefore, relied upon this judgment as supporting his proposition that in an appropriate case this Court can entertain a petition under Article 32 and review an earlier decision of this Court passed on an appeal or on a writ petition or otherwise. This decision, one is constrained to remark, is of no direct assistance to the appellant. It is no authority for the proposition that an earlier order of the court could be quashed on the ground that it offends the Fundamental Right. As the petition was eventually dismissed on the merits, it was not necessary for the court to consider whether,

if they had come to the conclusion that the earlier order was incorrect or invalid, they would have interfered therewith on the writ petition filed by the petitioner.

179. Two more decisions referred to on behalf of the appellant may be touched upon here. The first was the decision of this Court in Attorney-General v. Lachma Devi,: 1986CriLJ364. In that case the High Court had passed an order that certain persons found guilty of murder should be hanged in public. This order was challenged by a writ petition filed under Article 32 by the Attorney-General of India, on the ground that it violated Article 21 of the Constitution. This petition was allowed by this Court. The second decision on which reliance was placed is that in Sukhdas v. Union Territory MANU/SC/0140/1986: 1986CriLJ1084. In that case the petitioner, accused of a criminal offence had not been provided with legal assistance by the court. The Supreme Court pointed out that this was a constitutional lapse on the part of the court and that the conviction on the face of the record suffered from a fatal infirmity. These decisions do not carry the petitioner any further. Sukhdas was a decision on an appeal and Lachma Devi does not go beyond the views expressed by Hidayatullah, J. and Shah, J. in Mirajkar.

180. On a survey of these decisions, it appears to me that Prem Chand Garg cannot be treated as an authority for the proposition that an earlier order of this Court could be quashed by the issue of a writ on the ground that it violated the fundamental rights. Mirajkar clearly precludes such a course. It is, therefore, not possible to accept the appellant's plea that the direction dated 16.2.1984 should be quashed on the grounds put forward by the petitioner.

Inherent power to declare orders to be null and void

181. The next line of argument of learned Counsel for the appellant is that the order dated 16.2.1984, in so far as it contained the impugned direction, was a complete nullity. Being an order without jurisdiction, it could be ignored by the person affected or challenged by him at any stage of the proceedings before any Court, particularly in a criminal case, vide Dhirendra Kumar v. Superintendent MANU/SC/0060/1954: [1955]1SCR224. Counsel also relied on the following observations made in Kiran Singh v. Chaman Paswan MANU/SC/0116/1954: AIR [1955]1SCR117.

The answer to these contentions must depend on what the position in law is when a Court entertains a suit or an appeal over which it has no jurisdiction, and what the effect of Section 11 of the Suits Valuation Act is on that position. It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under

consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non judice, and that its judgments and decree would be nullities.

(emphasis added)

He also extensively quoted from the dicta of this Court in M.L. Sethi v. R.P. Kapur MANU/SC/0245/1972: [1973]1SCR697, where after setting out the speeches of Lord Reid and Lord Pearce in Anisminic Ltd. v. Foreign Compensation Commissioner [1969] 2 A.C. 147 this Court observed:

The dicta of the majority of the House of Lords in the above case would show the extent to which 'lack' and 'excess' of jurisdiction have been assimilated or, in other words, the extent to which we have moved away from the traditional concept of "jurisdiction". The effect of the dicta in that case is to reduce the difference between jurisdictional error and error of law within jurisdiction almost to vanishing point. The practical effect of the decision is that any error of law can be reckoned as jurisdictional. This comes perilously close to saying that there is jurisdiction if the decision is right in law but none if it is wrong. Almost any misconstruction of a statute can be represented as "basing their decision on a matter with which they have no right to deal", "impose an unwarranted condition" or "addressing themselves to a wrong question." The majority opinion in the case leaves a Court or Tribunal with virtually no margin of legal error. Whether there is excess or jurisdiction or merely error within jurisdiction can be determined only by construing the empowering statute, which will give little guidance. It is really a question of how much latitude the Court is prepared to allow. In the end it can only be a value judgment (see R.W.R. Wade, "Constitutional and Administrative Aspects of the Anisminic case", Law Quarterly Review, Vo. 85, 1969 p. 198). Why is it that a wrong decision on a question of limitation or res judicata was treated as a jurisdictional error and liable to be interfered with in revision? It is a bit difficult to understand how an erroneous decision on a question of limitation or res judicata could oust the jurisdiction of the Court in the primitive sense of the term and render the decision or a decree embodying the decision a nullity liable to collateral attack. The reason can only be that the error of law was considered as vital by the Court. And there is no yardstick to determine the magnitude of the error other than the opinion of this Court.

He also referred to Badri Prasad v. Nagarmal [1959] 1 Su. S.C.R. 769 which followed the clear law laid down in Surajmul Nagarmul v. Triton Insurance Co. Ltd. MANU/PR/0044/1924, Balai Chandra Hazra v. Shewdhari Jadav MANU/SC/0375/1978: [1978]3SCR147 which followed Ledgard v. Bull, L.R. 13 I.A.p 134; Meenakshi Naidu v. Subramaniya Sastri, L.R. 14 I.A 140 and Sukhrani v. Hari Shankar MANU/SC/0538/1979: [1979]3SCR671. Sr Rao, citing a reference from Halsbury's Laws of England (4th Edition) Vol. X, para 713, pages 321-2, contended that

the High Court's jurisdiction clearly stood excluded by Section 7(1) of the 1952 Act and, hence, the direction of the Supreme Court was also one without jurisdiction.

182. In dealing with this contention, one important aspect of the concept of jurisdiction has to be borne in mind. As pointed out by Mathew J. in Kapur v. Sethi, (supra), the word "jurisdiction is a verbal coat of many colours." It is used in a wide and broad sense while dealing with administrative or quasi-judicial tribunals and subordinate courts over which the superior Courts exercise a power of judicial review and superintendence. Then it is only a question of "how much latitude the court is prepared to allow" and "there is no yardstick to determine the magnitude of the error other than the opinion of the court." But the position is different with superior Courts with unlimited jurisdiction. These are always presumed to act with jurisdiction and unless it is clearly shown that any particular order is patently one which could not, on any conceivable view of its jurisdiction, have been passed by such court, such an order can neither be ignored nor even recalled, annulled, revoked or set aside in subsequent proceedings by the same court. This distinction is well brought out in the speeches of Lord Diplock, Lord Edmund-Devier and Lord Scarman in Re. Racal Communications Ltd. [1980] 2 A.E.R. 634. In the interests of brevity, I resist the temptation to quote extracts from the speeches here.

183. In the present case, the order passed is not one of patent lack of jurisdiction, as I shall explain later. Though I have come to the conclusion, on considering the arguments addressed now before us, that the direction in the order dated 16.2.1984 cannot be justified by reference to Article 142 of the Constitution or Section 407 of the 1973 Cr.P.C., that is not an incontrovertible position. It was possible for another court to give a wider interpretation to these provisions and come to the conclusion that such an order could be made under those provisions. If this Court had discussed the relevant provisions and specifically expressed such a conclusion, it could not have been modified in subsequent proceedings by this Bench merely because we are inclined to hold differently. The mere fact that the direction was given, without an elaborate discussion, cannot render it vulnerable to such review.

184. Shri P.P. Rao then placed considerable reliance on the observations of the Privy Council in Isaacs v. Robertson [1984] 3 A.E.R. 140 an appeal from a decision of the Court of Appeal of St. Vincent and the Grenadines. Briefly the facts were that Robertson had obtained an interim injunction against Isaacs and two others on 31.5.1979 which the latter refused to obey. The respondents motion for committal of the appellant for contempt was dismissed by the High Court of Saint Vincent. The Court of Appeal allowed the respondents application; the appellants were found to be in contempt and also asked to pay respondents costs. However, no penalty, was inflicted because the appellant would have been entitled to succeed on an application for setting aside the injunction, has he filed one. The main attack by the appellant on the Court of Appeal's judgment was based on the contention that, as a consequence of the operation of certain rules of the Supreme

Court of St. Vincent, the interlocutory injunction granted by the High Court was a nullity: so disobedience to it could not constitute a contempt of court. Lord Diplock observed:

Glosgow J. accepted this contention, the Court of Appeal rejected it, in their Lordships' view correctly, on the short and well established ground that an order made by a court of unlimited jurisdiction, such as the High Court of Saint Vincent must be obeyed unless and until it has been set aside by the court. For this proposition Robotham AJA cited the passage in the judgment of Romer L.J. in Hadkinson v. Hadkinson [1952] 2 All. E.R. 567.

It is the plain and unqualified obligation of every person against, or in respect of whom an order is made by a Court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. Lord Cotteniiam, Leven to cases where the person affected by an order believes it to be irregular or even void. Lord Cotteniiam, L.C. said in Chuck v. Cremer [1946] 1 CTC 338: "A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it.... It would be most dangerous to hold that the suitors. or their solicitOrs. could themselves judge whether an order was null or valid-whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the Court that it might be discharged. As long as it existed it must not be obeyed." Such being the nature of this obligation, two consequences will, in general, follow from its breach. The first is that anyone who disobeys an order of the court...is in contempt and may be published by committal or attachment or otherwise.

It is in their Lordships view, says all that needs to be said oh this topic. It is not itself sufficient reason for dismissing this appeal.

Having said this, the learned Law Lord proceeded to say:

The cases that are referred to in these dicta do not support the proposition that there is any category of orders of a court of unlimited jurisdiction of this kind, what they do support is the quite different proposition that there is a category of orders of such a court which a person affected by the order is entitled to apply to have set aside ex debito justitiae in the exercise of the inherent jurisdiction of the court without his needing to have recourse to the rules that deals expressly with proceedings to set aside orders for irregularity and give to the Judge a discretion as to the order he will make. The judges in the case that have drawn the distinction between the two types of orders have cautiously refrained from seeking to lay down a comprehensive definition of defects that bring an order in the category that attracts ex debito justitiae the right to have it set aside save that specifically it includes orders that have been obtained in breach of rules of natural justice. The contrasting legal concepts of voidness and voidability form part of the English law

of contract. They are inapplicable to orders made by a court of unlimited jurisdiction in the course of contentions litigation. Such an order is either irregular or regular. If it is irregular it can be set aside by the court that made it on application to that court, if it is regular it can only be set aside by an appellate court on appeal if there is one to which an appeal lies.

Sri Rao strongly relied on this passage and, modifying his earlier, somewhat extreme, contention that the direction given on 16.2.1984 being a nullity and without jurisdiction could be ignored by all concerned-even by the trial judge-he contended, on the strength of these observations., that he was at least entitled ex debito justitiae to come to this Court and request the court, in the interests of justice, to set aside the earlier order "without his needing to have recourse to the rules that deal expressly with proceedings to set aside orders for irregularity", if only on the ground that the order had been made in breach of the principles of natural justice. Violation of the principles of natural justice, he contended, renders the direction a nullity without any further proof of prejudice (see Kapur v. Jagmohan MANU/SC/0036/1980: [1981]1SCR746).

185. Learned Counsel contended, in this context, that the fact the direction had been given in the earlier proceedings in this very case need not stand in the way of our giving relief, if we are really satisfied that the direction had been issued per incuriam, without complying with the principles of natural justice and purported to confer a jurisdiction on the High Court which it did not possess. In this context he relied on certain decisions holding that an erroneous decision on a point of jurisdiction will not constitute res judicata. In Mathura Prasad v. Dossibai MANU/SC/0420/1970: [1970]3SCR830, this Court observed:

A question relating to the jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of the Court. If by an erroneous interpretation of the statute, the Court holds that it has no jurisdiction, the question would not, in our judgment, operate as res judicata. Similarly, by an erroneous decision, if the Court assumes jurisdiction which it does not possess under the statute, the question cannot operate as res judicata between the same parties, whether the cause of action in the subsequent litigation is the same or otherwise. It is true that in determining the application of the rule of res judicata the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be re-opened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties.

xxxx xxxx

Where, however the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land.

Counsel also relied on the decision of this Court in Ghulam Sarwar v. Union of India [1965] 2 S.C.C. 271, where it was held that the principle of constructive res judicata was not applicable to habeas corpus proceedings. He also referred to the observations of D.A. Desai J. in Soni Vrijlal Jethalal v. Soni Jadavji Govindji, MANU/GJ/0033/1972: AIR1972Guj148 that no act of the court or irregularity can come in the way of justice being done and one of the highest and the first duty of all courts is to take care that the act of the court does no injury to the suitors. He also made reference to the maxim that an get of, or mistake on the part, of a court shall cause prejudice to no one, vide: Jang Singh v. Brij Lal MANU/SC/0006/1963: [1964]2SCR145. Relying on these decisions and passages from various treatises which I do not consider it necessary to set out in in extenso here, Sri Rao contended that this Court should not consider itself bound by the earlier order of the Bench or any kind of technicality where the liberty of an individual and the rights guaranteed to him under Articles 14 and 21 of the Constitution are in issue. It is urged that, if this Court agrees with him that the direction dated 16.2.1984 was an illegal one, this Court should not hesitate nay, it should hasten-to set aside the said order and repair the injustice done to the appellant without further delay. On the other hand, Sri Jethmalani vehemently urged that the present attempt to have the entire matter reopened constitutes a gross abuse of the process of court, that it is well settled that the principle of res judicata is also available in criminal matters (vide Bhagat Ram v. State MANU/SC/0090/1972: 1972CriLJ909 and State v. Tara Chand [1973] S.C.C. Crl. 774 that in the United States the principle of res judicata governs even jurisdictional issues and that "the slightest hospitality to the accused's pleas will lead to a grave miscarriage of justice and set up a precedent perilous to public interest."

186. I have given careful thought to these contentions. The appellant's counsel has relied to a considerable extent on the maxim "actus curiae neminem gravabit" for contending that it is not only within the power, but a duty as well, of this Court to correct its own mistakes in order to see that no party is prejudiced by a mistake of the Court. I am not persuaded that the earlier decision could be reviewed on the application of the said maxim. I share the view of my learned brother Venkatachaliah, J. that this maxim has very limited application and that it cannot be availed of to correct or review specific conclusions arrived at in a judicial decision. My brother Venkatachaliah, J. has further taken the view that this Court cannot exercise any inherent powers for setting right any injustice that may have been caused as a result of an earlier order of the Court. While alive to the consideration that "the highest court in the land should not, by technicalities of procedure, forge fetters on its own feet and disable itself in cases of serious miscarriages of justice", he has, nevertheless, come to the conclusion that "the remedy of

the appellant, if any, is by recourse to Article 137 and nowhere else." It is at this point that I would record a dissent from his opinion. In my view, the decisions cited do indicate that situations can and do arise where this Court may be constrained to recall or modify an order which has been passed by it earlier and that when ex facie there is something radically wrong with the earlier order, this Court may have to exercise its plenary and inherent powers to recall the earlier order without considering itself bound by the nice technicalities of the procedure for getting this done. Where a mistake is committed by a subordinate court or a High Court, there are ample powers in this Court to remedy the situation. But where the mistake is in an earlier order of this Court, there is no way of having it corrected except by approaching this Court. Sometimes, the remedy sought can he brought within the four corners of the procedural law in which event there can be no hurdle in the way of achieving the desired result. But the mere fact that, for some reason, the conventional remedies are not available should not, in my view, render this Court powerless to give relief. As pointed out by Lord Diplock in Isaac v. Robertson [1984] 3 A.E.R. 140, it may not be possible or prudent to lay down a comprehensive list of defects that will attract the ex debito justitiae relief. Suffice it to say that the court can grant relief where there is some manifest illegality or want of jurisdiction in the earlier order or some palpable injustice is shown to have resulted. Such a power can be tract d either to Article 142 of the Constitution or to the powers inherent in this Court as the apex court and the guardian of the Constitution.

187. It is, however, indisputable that such power has to be exercised in the "rarest of rare" cases. As rightly pointed out by Sri Jethmalani, there is great need for judicial discipline of the highest order in exercising such a power, as any laxity in this regard may not only impair the eminence, dignity and integrity of this Court but may also lead to chaotic consequences. Nothing should be done to create an impression that this Court can be easily persuaded to alter its views on any matter and that a larger Bench of the Court will not only be able to reverse the precedential effect of an earlier ruling but may also be inclined to go back on it and render it ineffective in its application and binding nature even in regard to subsequent proceedings in the same case. In Bengal Immunity Company Limited v. The State of Bihar and Ors. MANU/SC/0083/1955: [1955]2SCR603, this Court held that it had the power, in appropriate cases, to reconsider a previous decision given by it. While concurring in this conclusion, Venkatarama Ayyar, J. sounded a note of warning of consequences which is more germane in the present context:

The question then arises as to the principles on which and the limits within which this power should be exercised. It is of course not possible to enumerate them exhaustively, nor is it even desirable that they should not crystallised into rigid and inflexible rules. But one principle stands out prominently above the rest, and that is that in general, there should be finality in the decisions of the highest courts in the land, and that is for the benefit and protection of the public. In this connection, it is necessary to bear in mind that next to legislative enactments, it is decisions of Courts that form the most important source of law. It is on the faith of decisions that rights are acquired and obligations

incurred, and States and subjects alike shape their course of action. It must greatly impair the value of the decisions of this Court, if the notion came to be entertained that there was nothing certain or final about them, which must be the consequence if the points decided therein came to be re-considered on the merits every time they were raised. It should be noted that though the Privy Council has repeatedly declared that it has the power to reconsider its decisions, in fact, no instance has been quoted in which it did actually reverse its previous decision except in ecclesiastical cases. If that is the correct position, then the power to reconsider is one which should be exercised very sparingly and only in exceptional circumstances, such as when a material provision of law had been overlooked, or where a fundamental assumption on which the decision is based turns out to be mistaken. In the present case, it is not suggested that in deciding the question of law as they did in The State of Bombay v. The United Motors (India) Ltd. MANU/SC/0095/1953: [1953]4SCR1069 the learned Judges ignored any material provisions of law, or were under any misapprehension as to a matter fundamental to the decision. The arguments for the appellant before us were in fact only a repetition of the very contentions which were urged before the learned Judges and negatived by them. The question then resolves itself to this. Can we differ from a previous decision of this Court, because a view contrary to the one taken therein appears to be preferable? I would unhesitatingly answer it in the negative, not because the view previously taken must necessarily be infallible but because it is important in public interest that the law declared should be certain and final rather than that it should be declared in one sense or the other. That, I conceive, in the reason behind Article 141. There are questions of law on which it is not possible to avoid difference of opinion, and the present case is itself a signal example of it. The object of Article 141 is that the decisions of this Court on these questions should settle the controversy, and that they should be followed as law by all the Courts, and if they are allowed to be reopened because a different view appears to be the better one, then the very purpose with which Article 141 has been enacted will be defeated, and the prospect will have been opened of litigants subjecting our decisions to a continuous process of attack before successive Benches in the hope that with changes in the personnel of the Court which time must inevitably bring, a different view might find acceptance. I can imagine nothing more damaging to the prestige of this Court or to the value of its pronouncements. In James v. Commonwealth, 18 C.L.R. 54, it was observed that a question settled by a previous decision should not be allowed to be reopened "upon a mere suggestion that some or all of the Members of the later Court might arrive at a different conclusion if the matter was res integra. Otherwise, there would be grave danger of want of continuity in the interpretation of the law" (per Griffiths, C.J. at p. 58). It is for this reason that Article 141 invests decisions of this Court with special authority, but the weight of that authority can only be what we ourselves give to it.

Even in the context of a power of review, properly so called, Venkataramiah, J. had this to say in Sheonandan Paswan v. State of Bihar and Ors. MANU/SC/0206/1986: 1987CriLJ793:

The review petition was admitted after the appeal had been dismissed only because Nandini Satpathy cases,: 1987CriLJ778 and: [1987]1SCR680 had been subsequently referred to a larger bench to review the earlier decisions. When the earlier decisions are allowed to remain intact, there is no justification to reverse the decision of this Court by which the appeal had already been dismissed. There is no warrant for this extraordinary procedure to be adopted in this case. The reversal of the earlier judgment of this Court by this process strikes at the finally of judgments of this Court and would amount to the abuse of the power of review vested in this Court, particularly in a criminal case. It may be noted that no other court in the country has been given the power of review in criminal cases. I am of the view that the majority judgment of Baharul Islam and R.B. Misra, JJ. should remain undisturbed. This case cannot be converted into an appeal against the earlier decision of this Court.

The attempt of the appellant here is more far-reaching. He seeks not the mere upsetting of a precedent of this Court nor the upsetting of a decision of a High Court or this Court in accordance with the normal procedure. What he wants from us is a declaration that an order passed by a five judge Bench is wrong and that it should, in effect, be annulled by us. This should not be done, in my view, unless the earlier order is vitiated by a patent lack of jurisdiction or has resulted in grave injustice or has clearly abridged the fundamental rights of the appellant. The question that arises is whether the present case can be brought within the narrow range of exceptions which calls for such interference. I am inclined to think that it does not.

188. I have indicated earlier, while discussing the contentions urged by Shri P.P. Rao that some of them were plausible and, that, if I were asked to answer these questions posed by counsel for the first time, I might agree with his answers. But I have also indicated that, in my view, they do not constitute the only way of answering the questions posed by the learned counsel. Thus, to the question: did this Court have the jurisdiction to issue the impugned direction, a plausible answer could well be that it did, if one remembers that one of the transferred cases before this Court was the revision petition before the Bombay High Court in which a transfer of the case to the High Court has been asked for and if one gives a wide interpretation to the provisions of Article 142 of the Constitution. On the question whether this Court could transfer the case to a High Court Judge, who was not a Special Judge, a court could certainly accept the view urged by Sri Ram Jethmalani that Section 7(1) of the 1952 Act should not be so construed as to exclude the application of the procedural provisions of the Cr.P.C. in preference to the view that has found favour with me. Though the order dated 16.2.1984 contains no reference to, or discussion of, Section 407 Cr.P.C, this line of thinking of the judges who issued the direction does surface in their observations in their decision of even date rendered on the complainant's special leave petition MANU/SC/0082/1984: 1984CriLJ647. I have already pointed out that, if the transfer is referable to Section 407 of the 1973 Cr.P.C, it cannot be impugned as offending Article 14 and 21 of the Constitution. The mere fact that the judges did not discuss at length the facts or the provisions of Section 407 Cr.P.C vis-a-vis the

1952 Act or give a reasoned order as to why they thought that the trial should be in the High Court itself cannot render their direction susceptible to a charge of discrimination. A view can certainly be taken that the mere entrustment of this case to the High Court for trial does not perpetrate manifest or grave injustice. On the other hand, prima facie, it is something beneficial to the accused and equitable in the interest of justice. Such trial by the High Court, in the first instance, will be the rule in cases where a criminal trial is withdrawn to the High Court under Section 407 of the Cr.P.C. or where a High Court judge has been constituted as a Special Judge either under the 1952 Act or some other statute. The absence of an appeal to the High Court with a right of seeking for further leave to appeal to the Supreme Court may be considered outweighed by the consideration that the original trial will be in the High Court (as in Sessions cases of old, in the Presidency Towns) with a statutory right of appeal to the Supreme Court under Section 374 of the Cr.P.C. In this situation, it is difficult to say that the direction issued by this Court in the impugned order is based on a view which is manifestly incorrect, palpably absurd or patently without jurisdiction. Whether it will be considered right or wrong by a different Bench having a second-look at the issues is a totally different thing. It will be agreed on all hands that it will not behave the prestige and glory of this Court as envisaged under the Constitution if earlier decisions are revised or recalled solely because a later Bench takes a different view of the issues involved. Granting that the power of review is available, it is one to be sparingly exercised only in extraordinary or emergent situations when there can be no two opinion about the error or lack of jurisdiction in the earlier order and there are adequate reasons to invoke a resort to an unconventional method of recalling or revoking the same. In my opinion, such a situation is lot present here.

189. The only question that has been bothering me is that the appellant had been given no chance of being heard before the impugned direction was given and one cannot say whether the Bench would have acted in the same way even if he had been given such opportunity. However, in the circumstances of the case, I have come to the conclusion that this is not a fit case to interfere with the earlier order on that ground. It is true that the audi altarem partem rule is a basic requirement of the rule of law. But judicial decisions also show that the degree of compliance with this rule and the extent of consequences flowing from failure to do so will vary from case to case. Krishna Iyer, J. observed thus in Nawabkhan Abbaskhan v. State MANU/SC/0068/1974: 1974CriLJ1054 thus:

an order which infringed a fundamental freedom passed in violation of the audi alteram partem rule was a nullity. A determination is no determination if it is contrary to the constitutional mandate of Article 19. On this footing the externment order was of no effect and its violation was not offence. Any order made without hearing the party affected is void and ineffectual to bind parties from the beginning if the injury is to a constitutionally guaranteed right. May be that in ordinary legislation or at common law a Tribunal having jurisdiction and failing to hear the parties may commit an illegality which may render

the proceedings voidable when a direct attack was made thereon by way of appeal, revision or review but nullity is the consequence of unconstitutionality and so the order of an administrative authority charged with the duty of complying with natural justice in the exercise of power before restricting the fundamental right of a citizen is void ab initio and of no legal efficacy. The duty to hear manacles his jurisdictional exercise and any act is, in its inception, void except when performed in accordance with the conditions laid down in regard to hearing.

(emphasis added)

So far as this case is concerned, I have indicated earlier that the direction of 16.2.1984 cannot be said to have infringed the fundamental rights of the appellant or caused any miscarriage of justice. As pointed out by Sri Jethmalani, the appellant did know, on 16.2.84, that the judges were giving such a direction and yet he did not protest. Perhaps he did think that being tried by a High Court Judge would be more beneficial to him, as indeed was likely to be. That apart, as discussed earlier, several opportunities were available for the appellant to set this right. He did not move his little finger to obtain a variation of this direction from this Court. He is approaching the Court nearly after two years of his trial by the learned judge in the High Court. Volumes of testimony, we are told, have been recorded and numerous exhibits have been admitted as evidence. Though the trial is only at the stage of the framing charges, the trial being according to the warrant procedure, a lot of evidence has already gone in and the result of the conclusions of Sabyasachi Mukharji, J. would be to wipe the slate clean. To take the entire matter back at this stage to square No. 1 would be the very negation of the purpose of the 1952 Act to speed up all such trials and would result in more injustice than justice from an objective point of view A& pointed out by Lord Denning in R. v. Secretary of State for the Home Department ex parte Mughal [1973] 3 All E.R. 796, the rules of natural justice must not be stretched too far. They should not be allowed to be exploited as a purely technical weapon to undo a decision which does not in reality cause substantial injustice and which, had the party been really aggrieved thereby, could have been set right by immediate action. After giving my best anxious and deep thought to the pros and cons of the situation I have come to the conclusion that this is not one of those cases in which I would consider it appropriate to recall the earlier direction and order a retrial of the appellant de novo before a Special Judge. I would, therefore, dismiss the appeal.

ORDER

190. In view of the majority judgments the appeal is allowed; all proceedings in this matter subsequent to the directions of this Court on 16th February, 1984 as indicated in the judgment are set aside and quashed. The trial shall proceed in accordance with law, that is to say, under the Act of 1952.

MANU/UP/0180/1968

Back to Section 391 of Indian Penal Code, 1860

IN THE HIGH COURT OF ALLAHABAD

Decided On: 18.09.1968
Ghamandi and Ors. Vs. State

Hon'ble Judges/Coram:
T.P. Mukerjee, J.

JUDGMENT
T.P. Mukerjee, J.

1. (1-5) (After stations the facts, His Lordship proceeded.)

2. A point of law has now been raised by the learned Counsel for the defence that out of the six dacoits, two having been acquitted, it was not possible to sustain the conviction of the remaining four on a charge under Section 395, I. P. C. which contemplates participation of at least five persons in the offence. In support of his contention he relied on two decisions. The first is a decision of the High Court of Andhra Pradesh in the case of In re, K. Appalaswami MANU/AP/0164/1955: AIR 1957 AP 954 and the case of Devi v. State MANU/RH/0016/1953. Both these decisions were by single judges of the respective Courts. In the first case seven persons who were, apparently, known to the complainant had been named in the first information report as having committed a dacoity by forcibly harvesting and removing his crop. The Sessions Judge found that there was no case against three of the accused persons and he acquitted them for want of proof. He, however, convicted the other four under Section 395, I. P. C. Before the High Court a point was taken on behalf of the appellants that in the circumstances of the case, three of the accused persons having been acquitted the charge of dacoity against the other four under Section 395, I. P. C. could not be sustained. The learned Judge accepted the contention observing as under:

I am impressed with this argument. It is true that in the Sessions Court the prosecution witnesses stated, that apart from these accused there were a number of persons cutting the crops but this is belied by Exhibit P-12 the charge-sheet and by the admission made by the investigating officer. Nor does the Sessions Judge say that there were seven people who were engaged in removing the crop but the identity of persons other than the appellant has not been satisfactorily established.
It would thus be found that in that case the learned Judge was not satisfied that seven persons had participated in the dacoity. In point of fact, the learned Judge ultimately acquitted all the three accused persons who had appealed against their conviction. The observation of Chandra Reddy, J" quoted above, proceeded entirely on the basis that there was no evidence in the case to show that more than three persons were engaged in

the alleged dacoity. It was on this basis that it was held that conviction of the three appellants under Section 395. I, P. C. was not tenable.

7. In the other case which came from the Rajasthan High Court, there were five accused persons who were put on trial, but two of them were acquitted on the ground that only three had taken part in committing the offence. It was, therefore, held that those three persons could not be convicted under Section 395, I. P. C. for the offence of dacoity. In this case also the Court held that even as regards the three appellants who had been convicted by the Sessions Judge, no offence was proved beyond a reasonable shadow of doubt. The result was that all the appellants were acquitted. In the course of his judgment the learned Judge observed as follows:

The learned Sessions Judge has made an obvious error in convicting the three accused under Section 395 of the Penal Code. It was alleged that there were only five accused who committed the offence. Out of five, two were acquitted by the Sessions Judge himself. According to his finding only three accused took part in the offence, and therefore, the offence could not, in any case be one under Section 395 of the Indian Penal Code.
In view of what has been stated above it would appear that the observation of the learned Judge in point was in the nature of an obiter. In any case, the observation has to be read in the context of the facts of that case which are very different from the facts of the present case.

8. As I have already noticed, in the present case all the prosecution witnesses have clearly stated that there were six miscreants who were engaged in the commission of the dacoity and, as a matter of fact, two of them namely Ghamandi and Hetram were actually arrested by the villagers after a hot chase, The arrested dacoits were beaten up by the villagers and they gave out the names of the other four dacoits as Ramphal, Zalim alias Jagrua, Sarman and Gudru. Of these four dacoits, two of them have been acquitted by the learned sessions Judge on the ground that the evidence of identification as against those two accused could not be safely relied upon. It is possible that the two appellants viz., Ghamandi and Hetram who had been apprehended on the spot, had given out two wrong names purposely. The fact that two of the accused persons viz., Sarman and Gudru, were acquitted on the ground that the evidence of identification against them was not satisfactory, does not necessarily mean that the offence in the present case was committed by only four persons.

The learned Counsel for the State has produced before me certain authorities to support this view. The earliest case in point appears to be the decision of the Calcutta High Court in the case of Rashidazaman v. Emperor 12 Cri LJ 193 (Cal). In that case eight persons were charged with dacoity, but four of them were acquitted. It was contended on behalf of the defence that in consequence of the acquittal, the charge of dacoity under Section 395, I. P. C. could not be sustained against the remaining four. The learned Judges negatived the contention and upheld the conviction of the four appellants on the charge

of dacoity. The decision of the Calcutta High Court in this case was cited with approval by the Nagpur High Court in the case of Narayan Dinba v. Emperor MANU/NA/0061/1946 in which it was laid down that the mere fact that the evidence was not sufficient to convict four of the accused persons actually charged could not in any way affect the question of the number of persons engaged.

In a case before the Orissa High Court, Suka Misra v. State MANU/OR/0071/1950: AIR1951Ori71 a similar question arose. Twelve persons were put on trial, to answer a charge of dacoity. Nine of them were, ultimately, acquitted and three convicted under Section 395, I. P. C. The case was heard by a Division Bench of the High Court constituted of Jagannadhadas and Panigrahi. JJ. Panigrahi, J., who delivered the leading judgment had no hesitation in holding that the conviction of the three of the appellants on the charge of dacoity was quite correct, Jagannadhadas, J., however, came to the same conclusion with some amount of apparent hesitation, Ultimately, he agreed with Panigarhi, J. The correct position is that, in spite of the acquittal of a number of persons, if it is found as a fact that along with the persons convicted there were other unidentified persons who participated in the offence, bringing the total number of participants to five or more, the conviction of the identified persons, though less than five, is perfectly correct. In the present case, as I have pointed out above, there is the consistent testimony of the prosecution witnesses that there were six dacoits including the four appellants. This is also specifically the case stated in the first information report. If, therefore, two of the dacoits could not be traced and identified, there is no reason why the remaining four cannot be convicted of the offence of dacoity under Section 395, I. P. C.

9. Lastly the learned Counsel for the appellants pleaded that the sentences imposed on the appellants were too severe and should be appreciably reduced. I am unable to accept the contention. The sentences imposed by the learned Sessions Judge were perfectly justified in view of the seriousness of the crime.

10. The appeal is dismissed. Appellants Nos. 1 and 2 are in gaol. They will serve out the sentences imposed upon them. Appellants Nos. 3 and 4 are on bail. Their bail bonds are cancelled. They must immediately surrender and serve out the sentences imposed on them.

MANU/SC/0110/1962

Back to Section 405 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Delhi Appeal Nos. 7 to 9 of 1961

Decided On: 05.04.1962

R.K. Dalmia Vs. Delhi Administration

Hon'ble Judges/Coram:
K. Subba Rao, Raghubar Dayal and S.K. Das, JJ.

JUDGMENT
Raghubar Dayal, J.

1. These three appeals are by special leave. Appeal No. 7 of 1961 is by R. K. Dalmia. Appeal No. 8 of 1961 is by R. P. Gurha. Appeal No. 9 of 1961 is by G. L. Chokhani and Vishnu Prasad. All the appellants were convicted of the offence under section 120B read with section 409 I.P.C., and all of them, except Vishnu Prasad, were also convicted of certain offences arising out of the overt acts committed by them. Dalmia and Chokhani were convicted under section 409 I.P.C. Chokhani were convicted under section 477A read with section 110, I.P.C. Gurha was convicted under section 477A I.P.C.

2. To appreciate the case against the appellants, we may first state generally the facts leading to the case. Bharat Insurance Company was incorporated in 1896. In 1936 Dalmia purchased certain shares of the company and became a Director and Chairman of the company. He resigned from these offices in 1942 and was succeeded by his brother J. Dalmia. The head office of the Bharat Insurance Company was shifted from Lahore to 10, Daryaganj, Delhi, in 1947. Dalmia was co-opted a Director on March 10, 1949 and was again elected Chairman of the company on March 19, 1949 when his brother J. Dalmia resigned.

3. R. L. Chordia, a relation of Dalmia and principal Officer of the Insurance Company, was appointed Managing Director on February 27, 1950. Dalmia was appointed Principal Officer of the company with effect from August 20, 1954. He remained the Chairman and Principal Officer of the Company till September 22, 1955. The period of criminal conspiracy charged against the appellant is from August 1954 to September 1955. Dalmia was therefore, during the relevant period, both Chairman and Principal Officer of the Insurance Company.

4. During this relevant period, this company had its current account in the Chartered Bank of India, Australia and China Ltd. (hereinafter called the Chartered Bank) at

Bombay. The Company also had an account with this bank for the safe custody of its securities the company also had a separate current account with the Punjab National Bank, Bombay.

5. At Delhi, where the head office was, the company had an account for the safe custody of securities with the Imperial Bank of India, New Delhi.

6. Exhibit P-785 consists of the Memorandum of Association and the Articles of Association of the Bharat Insurance Company. Articles 116 and 117 deal with the powers of the Directors.

7. Exhibit P-786 is said to be the original Bye-laws passed by the Directors on September 8, 1951. The pages are signed by K. L. Gupta, who was the General Manager of the company during the relevant period, and not by Dalmia the Chairman, as should have been the case in view of the resolution dated May 8, 1951. The genuineness of this document is not, however, admitted.

8. Exhibit P-15 and P-897 are said to be copies of these Bye-laws which were sent to Shri K. Annadhanam (Chartered Accountant, appointed by the Government of India on September 19, 1955, to investigate into the affairs of the Bharat Insurance Company under section 33(1) of the Insurance Act) and to the Imperial Bank of India, New Delhi, respectively, and the evidence about their genuineness is questioned.

9. Bye-law 12 deals with the powers of the Chairman. Clause (b) thereof empowers the Chairman to grant loans to persons with or without security, but from August 30, 1954, the power was restricted to grant of loans on mortgages. Clause (e) empowers the Chairman to negotiate transfer buy and sell Government Securities and to pledge, indorse, withdraw or otherwise deal with them.

10. On January 31, 1951, the Board of Directors of the Insurance Company passed resolutions to the following effect: (1) To open an account in the Chartered Bank at Bombay. (2) To authorise Chokhani to operate on the account of the Insurance Company. (3) To arrange for the keeping of the Governments Securities held by the company, in safe custody, with the Chartered Bank. (4) To instruct the Bank to accept instructions with regard to withdrawal from Chokhani and Chordia.

11. On the same day, Dalmia and Chordia made an application for the opening of the account at Bombay with the result that Current Account No. 1120 was opened. On the same day Chokhani was appointed Agent of the company at Bombay. He was its agent during the relevant period. From 1951 to 1953, Chokhani alone operated on that account. On October 1, 1953, the Board of Directors directed that the current account of the company with the Chartered Bank, Bombay, be operated jointly by Chokhani and Raghunath Rai P.W. 4.

12. Raghunath Rai, joined the company in 1921 as a Clerk, became Chief Accountant in 1940 and Secretary-cum-Chief Accountant of the company from August 17, 1954.

13. The modus operandi of the joint operation of the bank account by Chokhani and Raghunath Rai amounted, in practice to Chokhani's operating that account alone. Chokhani used to get a number of blank cheques signed by Raghunath Rai, who worked at Delhi. Chokhani signed those cheques when actually issued. In order to have signed cheques in possession whenever needed, two cheque books were used. When the signed cheques were nearing depletion in one cheque book, Chokhani would send the other cheque book to Raghunath Rai for signing again a number of cheques. Thus Raghunath Rai did not actually know when and to whom and for what amount the cheques would be actually issued and therefore, so far as the company was concerned, the real operation of its banking account was done by Chokhani alone. This system led to the use of the company's funds for unauthorized purposes.

14. Chokhani used to purchase and sell securities on behalf of the company at Bombay. Most of the securities were sent to Delhi and kept with the Imperial Bank of India there. The other securities remained at Bombay and were kept with the Chartered Bank. Sometimes securities were kept with the Reserve Bank of India and inscribed stock was obtained instead. The presence of the inscribed stock was a guarantee that the securities were in the Bank.

15. Chokhani was not empowered by any resolution of the Board of Directors to purchase and sell securities. According to the prosecution, he purchased and sold securities under the instructions of Dalmia. Dalmia and Chokhani state that Dalmia had authorised Chokhani in general to purchase and sell securities and that it was in pursuance of such authorisation that Chokhani on his own purchased and sold securities without any further reference to Dalmia or further instruction from Dalmia.

16. The transactions which have given rise to the present proceedings against the appellants consisted of purchase of securities for this company and sale of the securities which the company held. The transactions were conducted through recognised brokers and ostensibly were normal transactions. The misappropriation of funds of the company arose in this way. Chokhani entered into a transaction of purchase of securities with a broker. The broker entered into a transaction of purchase of the same securities from a company named Bhagwati Trading Company which was owned by Vishnu Prasad appellant, nephew of Chokhani and aged about 19 years in 1954. The entire business for Bhagwati Trading Company was really conducted by Chokhani. The securities purchased were not delivered by the brokers to Chokhani. It is said that Chokhani instructed the brokers that he would have the securities from Bhagwati Trading Company. The fact, however, Chokhani however was that Bhagwati Trading Company did not deliver the securities. Chokhani however issued cheques on payment of the

purchase price of the securities to Bhagwati Trading Company. Thus, the amount of the cheques was paid out of the company's funds without any gain to it.

17. The sale transactions consisted in the sale of the securities held or supposed to be held by the company to a broker and the price obtained from the sale was unutilised in purchasing formally further securities which were not received. The purchase transaction followed the same pattern, viz., Chokhani purchased for the company from a broker, the broker purchased the same securities from Bhagwati Trading Company and the delivery of the securities was agreed to be given by Bhagwati Trading Company to Chokhani. Bhagwati Trading Company did not deliver the securities but received the price from the Insurance Company. In a few cases, securities so purchased and not received were received later when fresh genuine purchase of similar securities took place from the funds of the Bharat Union Agencies or Bhagwati Trading Company. These securities were got endorsed in favour of the Insurance Company.

18. The funds of the company, ostensibly spent on the purchase of securities, ultimately reached another company the Bharat Union Agencies.

19. Bharat Union Agencies (hereinafter referred to as the Union Agencies) was a company which dealt in speculation in shares and, according to the prosecution was practically owned by Dalmia who held its shares either in his own names or in the names of persons or firms connected with him. The Union Agencies suffered losses in the relevant period from August 1954 to September, 1955. The prosecution case is that to provide funds for the payments of these losses at the due time, the accused persons entered into the conspiracy for the diversion of the funds of the Insurance Company to the Union Agencies. To over up this unauthorised transfer of funds, the various steps for the transfer of funds from one company to the other and the falsification of accounts of the Insurance Company and the Union Agencies took place and this conduct of the accused gave rise to the various offences they were charged with and convicted of.

20. The real nature of the sale and purchase transactions of the securities did not come to the notice of the head office of the Insurance Company at Delhi as Chokhani communicated to the head office the contracts of sale and purchase with the brokers' Dagduas of accounts, with a covering letter stating the purchase of securities from the brokers, without mentioning that the securities had not been actually received or that the cheques in payment of the purchase price were issued to Bhagwati Trading Company and not to the brokers.

21. Raghunath Rai, the Secretary-cum-Accountant of the Insurance Company, on getting the advice about the purchase of securities used to inquire form Dalmia about the transaction and used to get the reply that Chokhani had purchased them under Dalmia's instructions. Thereafter, the usual procedure in making the entries with respect to the purchase of securities was followed in the office and ultimately the purchase of securities

used to be confirmed at the meeting of the Board of Directors. It is said that the matter was put up in the meeting with an office note which recorded that the purchase was under the instructions of the Chairman. Dalmia however, denies that Raghunath Rai ever approached him for the confirmation or approval of the purchase transaction and that he told him that the purchase transaction was entered into under his instructions.

22. The firm of Khanna and Annadhanam, Chartered Accountants, was appointed by the Bharat Insurance Company, its auditors for the year 1954. Shri Khanna carried out the audit and was not satisfied with respect to certain matters and that made him ask for the counterfoils of the cheques and for the production of securities and for a satisfactory explanation of the securities not with the company at Delhi.

23. The matter, however, came to a head not on account of the auditors' report, but on account of Shri Kaul, Deputy Secretary, Ministry of Finance, Government of India, hearing at Bombay in September 1955 a rumour about the unsatisfactory position of the securities of the Insurance Company. He contacted Dalmia and learnt on September 16, 1955 from Dalmia's relative that there was a short-fall securities. He pursued the matter Departmentally and eventually, the Government of India appointed Shri Annadhanam under section 33(1) of the Insurance Act, to investigate into the affairs of the company. This was done on September 19, 1955. Dalmia is said to have made a confessional statement to Annadhanam on September 20. Attempt was made to reimburse the Insurance Company with respect to the short-fall in securities. The matter was, however, made over to the Police and the appellants and a few other persons, acquitted by the Sessions Judge, were proceeded against as a result of the investigation.

24. Dalmia's defence, in brief, is that he had nothing to do with the details of the working of the company, that he had authorised Chokhani, in 1953, to purchased and sell securities and that thereafter Chokhani on his own purchased and sold securities. He had no knowledge of the actual modus operandi of Chokhani which led to the diversion of the funds of the company to the Union Agencies. he admits knowledge of the losses incurred by the Union Agencies and being told by Chokhani that he would arrange funds to meet them. He denies that he was a party to what Chokhani did.

25. Chokhani admits that he carried out the transactions in the form alleged in order to meet the losses of the Union Agencies of which he was an employee. He states that he did so as he expected that the Union Agencies would, in due course make up the losses and the money would be returned to the Insurance Company. According to him, he was under the impression that what he did amounted to giving of a loan by the Insurance Company to the Union Agencies and that there was nothing wrong in it. He asserts emphatically that if he had known that he was doing was wrongful, he would have never done it and would have utilised other means to raise the money to meet the losses of the Union Agencies as he had large credit in the business circle at Bombay and as the Union Agencies possessed shares which would be sold to meet the losses.

26. Vishnu Prasad expresses his absolute ignorance about the transactions which were entered into on behalf of Bhagwati Trading Company and states that what he did himself was under the instructions of Chokhani, but in ignorance of the real nature of the transactions.

27. Gurha denies that he was a party to the fabrication of false accounts and vouchers in the furtherance of the interests of the conspiracy.

28. The learned Sessions Judge found the offences charged against the appellants proved on the basis of the circumstances established in the case and, accordingly, convicted them as stated above. The High Court substantially agreed with the findings of the Sessions Judge except that it did not rely on the confession of Dalmia.

29. Mr. Dingle Foot, counsel for Dalmia, has raised a number of contentions, both of law and of facts. We propose to deal with the points of law first.

30. In order to appreciate the points of law raised by Mr. Dingle Foot, we may now state the charged which were framed against the various appellants.

31. The charge under section 120-B read with section 409, I.P.C., was against the appellants and five other persons and read:

"I, Din Dayal Sharma, Magistrate Class, Delhi do hereby charge you,

R. Dalmia (Ram Krishna Dalmia) s/o etc.

2. G. L. Chokhani s/o etc.

3. Bajranglal Chokhani s/o etc.

4. Vishnu Pershad Bajranglal s/o etc.

5. R. P. Gurha (Raghubir Pershad Gurha) s/o etc.

6. J. S. Mittal (Jyoti Swarup Mittal) s/o etc.

7. S. N. Dudani (Shri Niwas Dudani) s/o etc.

8. G. S. Lakhotia (Gauri Shanker Lakhotia) s/o etc.

9. V. G. Kannan Vellore Govindaraj Kannan s/o etc. accused as under:-

That you, R. Dalmia, G. L. Chokhani, Bajrang Lal Chokhani, Vishnu Pershad Bajranglal, R. P. Gurha, J. S. Mittal, S. N. Dudani, G. S. Lakhotia and V. G. Kannan,

during the period between August 1954 and September 1955 at Delhi, Bombay and other places in India.

were parties to a criminal conspiracy to do and cause to be done illegal acts; viz., criminal breach of trust of the funds of the Bharat Insurance Company Ltd.,

by agreeing amongst yourselves and with others that criminal breach of trust be committed by you R. Dalmia and G. L. Chokhani in respect of the funds of the said Insurance Company in current account No. 1120 of the said Insurance Company with the Chartered Bank of India, Australia and China, Ltd., Bombay,

the dominion over which funds was entrusted to you R. Dalmia in your capacity as Chairman and the Principal Office of the said Insurance Company, and

to you G. L. Chokhani, in your capacity as Agent of the said Insurance Company,

for the purposes of meeting losses suffered by you R. Dalmia in forward transaction (of speculation) in shares; which transactions were carries on in the name of the Bharat Union Agencies Ltd., under the directions and over all control of R. Dalmia, by you, G. L. Chokhani, at Bombay, and by you R. P. Gurha, J. S. Mittal and S. N. Dudani at Calcutta; and for other purposed not connected with the affairs of the said Insurance Company,

by further agreeing that current account No. R1763 be opened with the Bank of India, Ltd., Bombay and current account No. 1646 with the United Bank of India Ltd., Bombay, in the name of M/s. Bhagwati Trading Company, by you Vishnu Pershad accused with the assistance of you G. L. Chokhani, and Bajranglal Chokhani accused for the illegal purpose of diverting the funds of the said Insurance Company to the said Bharat Union Agencies, Ltd.,

by further agreeing that false entries showing the defalcated funds were invested in Government Securities by the said Insurance Company be got made in the books of accounts of the said Insurance Company at Delhi, and

by further agreeing to the making false and fraudulent entire by you R. P. Gurha, J. S. Mittal, G. S. Lakhotia, V. G. Kannan, and others relating to the diversion of funds of the Bharat Insurance Company to the Bharat Union Agencies Ltd., through M/s. Bhagwati Trading Company, in the books of account of the said Bharat Union Agencies Ltd., and its allied concern known as Asia Udyog Ltd., and

that the same acts were committed in pursuance of the said agreement and

thereby you committed an offices punishable under section 120-B read with section 409 I.P.C., and within the cognizance of the Court of Sessions."

32. Dalmia was further charged on two counts for and offence under section 409 I.P.C. These charges were as follows:

"I, Din Dayal Sharma, Magistrate I Class, Delhi charge you, R. Dalmia accused as under:-

FIRSTLY, that you R. Dalmia, in pursuance of the said conspiracy between the 9th day of August 1954 and the 8th day of August 1955, at Delhi.

Being the Agent, in your capacity as Chairman of the Board of Directors and the Principal Officer of the Bharat Insurance Company Ltd., and as such being entrusted with dominion over the funds of the said Bharat Insurance Company,

committed criminal breach of trust of the funds of the Bharat Insurance Company Ltd., amounting to Rs. 2,37,483-9-0,

by wilfully suffering you co-accused G. L. Chokhani to dishonestly misappropriate the said funds and dishonestly use or depose of the said funds in violation of the directions of law and the implied contract existing between you and the said Bharat Insurance Company, prescribing the mode in which such trust was to be discharged,

by withdrawing the said funds from current account No. 1120 of the said Bharat Insurance Company with the Chartered Bank of India, Australia & China, Ltd., Bombay, by means of cheque Nos. B-540329 etc., issued in favour of M/s. Bhagwati Trading Company, Bombay, and cheque No. B-540360 in favour of F.C. Podder, and

by dishonestly utilising the said funds for meeting losses suffered by you in forward transaction sin shares carried on in the name of Bharat Union Agencies, Ltd., and for other purposes not connected with the affairs of the said Bharat Insurance Company; and

thereby committed an offence punishable under section 409, I.P.C., and within the cognizance of the Court of Sessions;

SECONDLY, that you R. Dalmia, in pursuance of the said conspiracy between the 9th day of August 1955 the 30th day of September 1955, at Delhi,

Being the Agency in you capacity as Chairman of the Board of Directors and the Principal Officer of the Bharat Insurance Company, Ltd., and as such being entrusted with dominion over the funds of the said Bharat Insurance Company,

committed criminal breach of trust of the funds of the Bharat Insurance Company Ltd., amounting to Rs. 55,43,220-12-0,

by wilfully suffering you co-accused G. L. Chokhani to dishonestly misappropriate the said funds and dishonestly use of dispose of the said funds in violation of the direction of the and the implied contract existing between you and the said Bharat Insurance Company prescribing the mode in which such trust was to be discharged,

by withdrawing the said funds from current account No. 1120 of the said Bharat Insurance Company with the Chartered Bank of India, Australia & China, Ltd., Bombay by means of Cheque Nos. B-564835..... issued favour of M/s Bhagwati Trading Company Bombay, and,

by dishonestly utilising the said funds for meeting losses suffered by you in forward transactions in shares carried on in the name of the Bharat Union Agencies Ltd., and for other purposes not connected with the affairs of the said Bharat Insurance Company, and

thereby committed an offence punished under section 409 I.P.C., and within the cognizance of the Court of Sessions."

33. Mr. Dingle Foot has raised the following contentions:

(1) The Delhi Court had no territorial jurisdiction to try offences of criminal breach of trust committed by Chokhani at Bombay.

(2) therefore, there had been misjoinder of charges.

(3) The defect of misjoinder of charges was fatal to the validity of the trial and was not curable under section 531 of the Code.

(4) The substantive charge of the offence under section 409, I.P.C., against Dalmia offended against the provisions of section 233 of the Code; therefore the whole trial was bad.

(5) The funds of the Bharat Insurance Company in the Chartered Bank, Bombay, which were alleged to have been misappropriated were not 'property' within the meaning of sections 405 and 409, I.P.C.

(6) If they were, Dalmia did not have dominion over them.

(7) Dalmia was not an 'agent' within the meaning of section 409 I.P.C., as only that person could be such agent who professionally carried on the business of agency.

(8) If Dalmia's conviction for an offence under section 409 I.P.C., fails, the conviction for conspiracy must also fail as conspiracy must be proved as laid.

(9) The confessional statement Exhibit P-10 made by Dalmia on September 20, 1955, was not admissible in evidence.

(10) If the confessional statement was not in admissible in evidence in view of section 24 of the Indian Evidence Act, it was inadmissible in view of the provisions of clause (3) of Article 20 of the constitution.

(11) The prosecution has failed to establish that Dalmia was synonymous with Bharat Union Agencies Ltd.

(12) Both the Sessions Judge and the High Court failed to consider the question of onus of proof i.e., failed to consider whether the evidence on record really proved or established the conclusion arrived at by the Courts.

(13) Both the Courts below erred in their approach to the evidence of Raghunath Rai.

(14) Both the Courts below were wrong in holding that there was adequate corroboration of the evidence of Raghunath Rai who was an accomplice or at least such a witness whose testimony required corroboration.

(15) It is not established with the certainty required by law that Dalmia had knowledge of the impugned transactions at the time they were entered into.

34. We have Heard the learned counsel for the parties on facts, even though there are concurrent findings of fact, as Mr. Dingle Foot has referred us to a large number of inaccuracies, most of them not of much importance, in the narration of facts in the Judgment of the High Court and has also complained of the omission from discuss of certain matters which were admittedly urged before the High Court and also of misapprehension of certain arguments presented by him.

35. We need not, however, specifically consider points No. 12 to 15 as questions urged in that form. In discussing the evidence of Raghunath Rai, was would discuss the relevant contentions of Mr. Dingle Foot, having a bearing on Raghunath Rai's reliability. Our view of the facts will naturally dispose of the last point raised by him.

36. Mr. Dingle Foot's first four contention relating to the illegalities in procedure may now be deal with. The two charge under section 409, I.P.C., against Chokhani mentioned that the committed criminal breach of trusts in pursuance of the said conspiracy. One of the charge related to the period from August 9, 1954 to August 8, 1955 and the other related to the period from August 9, 1955 to September 30, 1955.

37. This Court held in Purushottam Das Dalmia v. State of West Bengal MANU/SC/0121/1961: 1961CriLJ728 that the Court having jurisdiction to try the offence conspiracy has also jurisdiction to try an offence constituted by the overt acts which are committed, in pursuance of the conspiracy, beyond its jurisdiction. M. Dingle Foot submitted that this decision required reconsideration and we heard him and the learned Solicitor General on the point and, having considered their submissions, came to the conclusion that no case for reconsideration was made out and accordingly expressed our view during the hearing of these appeals. We need not, therefore, discuss the first contention of Mr. Dingle Foot and following the decision in Purushottam Das Dalmia's case MANU/SC/0121/1961: 1961CriLJ728 hold that the Delhi court had jurisdiction to try Chokhani of the offence under section 409 I.P.C. as the offence was alleged to have been committed in pursuance of the criminal conspiracy with which he and the other co-accused were charged.

38. In view of this opinion, the second and third contentions do not arise for consideration.

39. The fourth contention is developed by Mr. Dingle Foot thus. The relevant portion of the charge under section 409 I.P.C., against Dalmia reads:

"Firstly, that you Dalmia, in pursuance of the said conspiracy between..... being the Agent, in your capacity as Chairman of the Board of Directors and as Principal Officer of the Bharat Insurance Company Ltd., and as such being entrusted with dominion over the funds of the said Bharat Insurance Company, committed criminal breach of trust of the funds... by wilfully suffering you co-accused G. L. Chokhani to dishonestly misappropriate the said funds and dishonestly use or dispose of the said funds in violations of the directions of law and the implied contract existing between you and the said Bharat Insurance Company prescribing the mode in which such trust was to be discharged....."

40. This charge can be split up into four charges, each of the charges being restricted to one particular mode of committing the offence of criminal breach of trust. These four offences of criminal breach of trusts were charged in one count, each of these four amounting to the offence of criminal breach of trust 'by wilfully suffering Chokhani (i) to dishonestly misappropriate the said funds; (ii) to dishonestly use the said funds in violation the directions of law; (iii) to dishonestly dispose of the said funds in violation of the directions of law; (iv) to dishonestly use the said funds in violation of the implied contract existing between Dalmia and the Bharat Insurance Company'.

41. Section 233 of the Code or Criminal Procedure permits one charge for every distinct offence and directs that every charge shall be tries separately except in the cases mentioned in sections 234, 235, 236 and 239. Section 234 allows the trial, together of offences up to three in number, when they be of the same kind and be committed within

the space of twelve months. The contention, in this case is that four offences into which the charge under section 409 I.P.C. against Dalmia can be split up were distinct offences and therefore cold not be tried together. We do not agree with this contention. The charge is with respect to no offence though the mode of committing it is not stated precisely. If it be complained that the charge framed under section 409 I.P.C. is vague because it does not specifically state one particular mode in which the offence was committed, the vagueness of the charge will not make the trial illegal, especial when no prejudice is caused to the accused and no contention has been raised that Dalmia was prejudiced by the form of the charge.

42. We my now pass on the other points raised by Mr. Dingle Foot.

43. Section 405 I.P.C. defines what amounts to criminal breach of trust. It reads:

"Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'criminal breach of trust'."

44. Section 406 provides for punishment for criminal breach of trust. Section 407 provides for punishment for criminal breach of trust committed by a carrier, wharfinger or warehouse-keeper, with respect to property entrusted to them as such and makes their offence more severe than the offence under section 406. Similarly, section 408 makes the criminal breach of trust committed by a clerk or servant entrusted in any manner, in such capacity, with property or with any dominion over property, more severely punishable than the offence of criminal breach of trust under section 406. Offences under sections 407 and 408 are similarly punishable. The last section in the series is section 409 which provided for a still heavier punishment when criminal breach of trust is committed by persons mentioned in that section. The section reads:

"Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the ways of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extended to ten years, and shall be liable to fine."

45. Both Dalmia and Chokhani have been convicted of the offence under section 409 I.P.C.

46. Mr. Dingle Foot contends that no offence of criminal breach of trust has been committed as the funds of the Bharat Insurance Company in the Bank do not come with the expression 'property' in section 405 I.P.C. It is urged that the word 'property' is used in the Indian Penal Code in different senses, according to the context, and that in section 405 it refers to movable property and not to immovable property or to a chose in action.

47. It is then contended that the funds which customer has in a bank represent chosen in action as the relationship between the customer and this banker is that of a creditor and a debtor, as held in Attorney General for Candy v. Attorney General for Province of Quebec & Attorneys General for Saskatchewan, Alberta & Manitoba [1947] A.C. 33 and in Foley v. Hill [1848] 2 H.L.C. 28 9 E.R. 1002.

48. Reliance is also placed for the suggested restricted meaning of 'property' in section 405 I.P.C, on the cases Reg. v. Girdhar Dharamdas [1869] 6 Bom. 33; Jugdown Sinha v. Queen Empress I.L.R. (1895) Cal. 372 and Ram Chand Gurvala v. King Emperor A.I.R. 1926 Lah 385 and also on the scheme of the Indian Penal Code with respect to the use of the expressions 'property' and 'movable property' in its various provisions.

49. The learned Solicitor General has, on the other hand, urged that the word 'property' should be given its widest meaning and that the provisions of the various sections can apply to property other than movable property. It is not to be restricted to movable property only but includes chose in action and the funds of a company in Bank.

50. We are of opinion that is no good reason to restrict the meaning of the word 'property' to movable property only when it is used without any qualification in section 405 or in other sections of the Indian Penal Code. Whether the offence defined in a particular section of the Indian Penal Code can be committed in respect of any particular kind of property will depend not on the interpretation of the word 'property' but on the fact whether that particular kind of property can be subject to the acts covered by that section. It is in this sense that it may be said that the word 'property' in a particular section covers only that type of property with respect to which the offence contemplated in that section can be committed.

51. Section 22 I.P.C. defines 'movable property'. The definitions not exhaustive. According to the section the words 'movable property' are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth. The definition is of the expression 'movable property' and no of 'property' and can apply to all corporal property except property excluded from the definition. It is thus clear that the word 'property' is used in the Code in a much wider sense than the expression 'movable property'. It is not therefore necessary to consider in detail what type of property will be included in the various sections of the India Penal Code.

52. In Reg. v. Girdhar Dharamdas (1869) 6 Bom. 33 it was held that reading sections 403 and 404 I.P.C. together section 404 applied only to movable property. No reasons are given in the Judgment.

53. It is to be noticed that though section 403 I.P.C. speaks of dishonestly misappropriating or converting to one's own uses any movable property, section 404 speaks of only dishonestly misappropriating or converting to one's own use property. If the Legislature had intended to restrict the operation of section 404 to movable property only, there was no reason why the general work was used without the qualifying word 'movable'. We thereof do not see any reason to restrict the word 'property' to 'movable property' only. We need not express any opinion whether immovable property could be the subject of the offence under section 404 I.P.C.

54. Similarly, we do not see any reason to restrict the work 'property' in section 405 to 'movable property' as held in Jugdown Sinha v. Queen Empress I.L.R. (1895) Cal. 372. In that case also the learned Judges gave no reason for their view and just referred to the Bombay Case (1869) 6 Bom 33. Further, the learned Judges observed at page 374:

"In this case the appellant was not at most entrusted it the supervision or management of the factory lands, and the fact that he mismanaged the land does not in our opinion amount to a criminal offence under Section 408."
55. A different view has been expressed with respect to the content of the word 'property' in certain section of the Indian Penal Code, including section 405.

56. In Emperor v. Bishan Prasad I.L.R. [1914] All. 128 the right to sell drugs was held to come within the definition of the word 'property' in section 185, I.P.C. which makes certain conduct at any sale of property an offence.

57. In Ram Chand Gurwala v. King Emperor MANU/LA/0334/1926: A.I.R. 1926 Lah. 385 the contention that mere transfer of amount from the bank account to his own account of by the accused did not amount to misappropriation was repelled, it being held that in order to establish a charge of dishonest misappropriation or criminal breach of trust, it was not necessary that the accuses should have actually taken tangible property such as cash from the possession of the bank and transferred it to is own possession, as on the transfer of the amount from the account of the Bank to his own account, the accused removed it form the control of the bank and placed it at his own disposal. The conviction of the accused for criminal breach of trust was confirmed.

58. In Manchersha Ardeshir v. Ismail Ibrahim I.L.R. (1935) 60 Bom. 706 it was held that the word 'property' in section 421 is wide enough to include a chose in action.

59. In Daud Khan v. Emperor MANU/UP/0140/1925: AIR1925All673 it was said at page 674:

"Like section 378, section 403 refers to movable property. Section 404 and some of the other sections following it refer to property without any such qualifying description; and

in each case the context must determine whether the property there referred to is intended to be property movable or immovable."
The case law, therefore, is more in favour of the wider meaning being given to the word 'property' in sections where the word is not qualified by any other expression like 'movable'.

60. In The Delhi Cloth and General Mills Co. Ltd. v. Harnam Singh MANU/SC/0058/1958: [1955]2SCR402 this court said

"That a debt is property is, we think clear. It is a chose in action and is heritable and assignable and it is treated as property in India under the Transfer of Property Act which calls it an 'actionable claim'."
61. In Allchin v. Coulthard [1942] 2 K.B. 228 the meaning of the expression 'fund' has been discussed it is said:

"Much of the obscurity which surrounds this matter is due to a failure to distinguish the two senses in which the phrase 'payment out of fund' may be used. The word 'fund' may mean actual cash resources of a particular kind (e.g., money in a drawer or a bank), or it may be a mere accountancy expression used to describe a particular category which a person used in making up his accounts. The words 'payment out of' when used in connection with the word 'fund' in its first meaning connection actual payment, e.g., by taking the money out of the drawer or drawing a cheque on of bank. When used in connection with the word 'fund' in its second meaning they connote that, for the purposes of the account in which the fund finds place, the payment is debits to that fund, an operation which, of course, has no relation to the actual method of payment or the particular cash resources out of which the payment is made. Thus, if a company marked a payment out its reserved fund - and example of the second meaning of the word 'fund' - the actual payment is made by cheque drawn on the company's banking account, the money in which may have been derived from a number of sources".
62. The expression 'funds' in the charge is used in the first sense meaning thereby that Dalmia and Chokhani had dominion over the amount credited to the Bharat Insurance Company in the accounts of the Bank inasmuch as they could draw cheques on that account.

63. We are therefore of opinion that the funds referred to in the charge did amount to 'property' within the meaning of that term in section 405 I.P.C.

64. It is further contended for Dalmia that he had not been entrusted with dominion over the funds in the Banks at Bombay and had no control over them as the Banks had no been informed that Dalmia was empowered to operate on the company's accounts in the Banks and no specimen signatures of his had been applied to the Bank. The omission in inform the Banks that Dalmia was entitled to operate on the account may disable Dalmia to actually issue the cheques on the company's accounts, but that position does not mean

that he did not have any demotion over those accounts. As Chairman and Principal Officer of the Bharat Insurance Company, he had the power, on behalf of the company, to operate on those accounts. If no further steps are taken on the execution of the plan, that does not mean that the power which the company had entrusted to him is nullified. One may have dominion over property but may not exercises any power which he could exercise with respect to it. Non-exercise of the power will not make the dominion entrusted to him nugatory.

65. Article 116 of the Articles of Association of the Bharat Insurance Company provides that the business of the company shall be managed by the Directors, who may exercises all such powers of the company as are not, under any particular law or regulation, not to be exercised by them. Article 117 declares certain powers of the Directors. Clause (7) of the Article authorises them to draw, make, give, accept endorse, transfer, discount and negotiate such bill of exchange, promissory notes and other similar obligation as may be desirable for carrying on the business of the company. Clause (10) authorizes them to let, mortgage, sell, or otherwise dispose of any property of the company either absolutely. Clauses (12) authorises them to invest such parts of the fund of the company as shall not be required to satisfy or provide for immediate demands, upon such security or investments as they may think advisable. It also provided that the funds of the company shall not be applied in making any loan or guaranteeing any loan made to a Directors of the company or to a firm of which such Director is a partner or to a private company of which such Direction is a Director. Clause (23) empowers the Directors to deal with and invest and moneys of the company not immediately required for the purposes there of in Government Promissory, Notes, Treasury Bills Bank Deposits, etc.

66. The bye-laws of the company entrusting the Chairman with dominion over its property were reviews in 1951. The Board of Directors, at their meeting held on September 8, 1951, resolved:

"The bye-laws as per draft signed by the Chairman for identification be and are hereby approved, in substitution and to the exclusion of the existing bye-laws of the company."
67. No such draft as signed by the Chairman has been produced in this case. Instead, K. L. Gupta, P.W. 112, who was the Manager of the Bharat Insurance Company in 1951 and its General Manager from 1952 to August, 1956, has proved the bye-laws Exhibit P. 786, to be the draft revised bye-laws approved by the Board of Director at that meeting. He states that he was present at that meeting and had put up these draft bye-laws before the Board of Directors and that the Directors, while passing these bye-laws, issued a directive that they should come into force on January 1, 1952, and that, accordingly, be added in ink in the opening words of the bye-laws that they would be effective from January 1, 1952. When cross-examined by Dalmia himself, he stated that he did not attend any other meeting of the Board of Directors and his presence was not notes in the minutes of the meeting. He further stated emphatically:

"I am definite that I put up the bye-laws P-786 in the meeting of the Board of Directors. I did not see any bye-laws signed by the Chairman."

68. There is so reason why Gupta should depose falsely. His statement finds corroboration from other facts. It may be that, as noted in the resolution, it was contemplated that the revised bye-laws be signed by the Chairman for the purposes of their identity in future, but by over-sight such signatures were not obtained. There is no evidence that he bye-laws approved by the Board of Directors were actually signed by the Chairman Dalmia. Dalmia has stated so. It is not necessary for he proof of the bye-laws of the company that the original copy of the bye laws bearing any mark of approval of the Committee be produced. The bye-laws of the company can be proved from other evidence K. L. Gupta was present at the meeting when the bye-laws were passed. It seems that it was not his draft to attend meetings of the Board of Directors. He probably tended that meeting because he had prepared the draft of the revised bye-laws. His presence was necessary or at least desirable for explaining the necessary changed in the existing by-laws. He must have got his own copy of the revised by-laws put up before the meeting and it is expected that he would make necessary corrections in his copy in accordance with the form of the bye-laws as finally approved at the meeting. The absence of the copy signed by the Chairman, if ever one existed, does not therefore make the other evidence about the bye-laws of the company in admissible. The fact that Gupta signed each page of Exhibit P. 786 supports is statement. There was no reason to sing every page of the copy if it was merely a draft office-copy the was with him. He must have signed each page on account of the importance attached to that copy and that could only be if that copy was to be the basis of the future bye-laws of the company.

69. Copies of the bye-laws were supplied to the Imperials Bank, New Delhi, and to the auditor. They are Exhibits P. 897 and P. 15. Raghunath Rai deposed about sending the bye-laws, Exhibits P. 897 to the Imperial Bank, New Delhi, with a covering letter signed by Dalmia on September 4, 1954. Mehra, P.W. 15, Sub-Accountant of the State Bank of India (which took over the under taking of the Imperial Bank of India on July 1, 1955) at the time of his deposition, stated that the State Bank of India was the successor of the Imperial Bank of India. Notice was issued by the Court to the State Bank of India to produce latter dated September 4, 1954, addressed by Dalmia to the Agent, Imperial Bank of India, and other documents. Mehra deposed that in spite of the best search made by the Bank officials that letter could not be found and that Exhibit P. 897 was the copy of the bye-laws of the Bharat Insurance Company which he was producing in pursuance of the notice issued by the Court. It appears from his statement in cross-examination that the words 'received 15th September 1954' meant that that copy of the bye laws was received by the Bank on that date. Mehra could not personally speak about it. Only such bye-laws would have been supplied to the Bank as would have been the corrected bye-laws. These bye-law Exhibit P. 897 tally with the bye-laws Exhibit P. 786. Raghunath Rai proves the letter Exhibit P. 896 to be a copy of the letter sent along with these bye-laws to the Bank and states that both the original and P. 896 were signed by Dalmia. He deposed:

"Ex. p. 786 are the bye-laws of the Bharat Insurance Company which came into operation on 1-1-52..... I supplied copy of Ex. P. 786 as the copy of the bye-laws of the Bharat Insurance Company to the State Bank of India, New Delhi..... Shri Dalmia thereupon certified as true copies of the resolutions which were sent along with the copy of the bye-laws. He also signed the covering letter which was sent to the State Bank of India along with the copy of the bye-laws Ex. P. 786 and the copies of the resolutions.

.....

I produce the carbon copy of the letter dated 4-9-54 which was sent as a covering letter with the bye-laws of the Bharat Insurance Company to the Imperial Bank of India, New Delhi. It is Ex. p. 896. The carbon copy bears the signatures of R. Dalmia accused, which signatures I identify..... The aforesaid Bank (Imperial Bank) put a stamp over Ex. p. 896 with regard to the receipt of its original. The certified copy of the bye-laws of the Bharat Insurance Company which was sent for registration to the Imperial Bank along with the original letter of which Ex. p. 896 is carbon copy is Ex. p. 897 (heretofore marked C). The copy of the bye-laws has been certified to be true by me under my signatures."

70. Dalmia states in answer to question No. 15 (put to him under section 342, Cr.P.C.) that the signatures on Ex. p. 896 appear to be his.

71. Letter Exhibit P. 896 may be usefully quoted here:

"SEC The Agent, Imperial Bank of India, New Delhi. Dear Sir,

4-9-54

Re: Safe Custody of Govt. Securities.

We are sending herewith true copies of Resolution No. 4 dated 10th March, 1949 Resolution No. 3 dated 19th March, 1949, and Resolution No. 8 dated 8th September, 1951, along with a certified copy of the Bye-laws of the Company for registration at your end.

By virtue of Article 12 clause (e) of the Bye-laws of the Company I am empowered to deal in Government Securities etc. The specimen signatures Card of the undersigned is also sent herewith.

Encls. 5

Yours faithfully,
Sd/ R. Dalmia
Chairman."

72. By Resolution No. 4 dated March 10, 1949, Dalmia was co-opted Director of the Company. By Resolution No. 3 dated March 19, 1949, Dalmia was elected Chairman of the Board of Director. Resolution No. 8 dated September 8, 1951 was:

"Considered the draft bye-laws of the Company and Resolved that the Bye-laws as per draft signed by the Chairman for identification be and are hereby approved in substitution and to the exclusion of the existing bye-laws of the Company."
73. The letter Exhibit P. 896 not only supports the statement of Raghunath Rai about the copy of the bye-laws supplied to the Bank to be a certified copy but also the admission of Dalmia that be was empowered to deal in Government Securities etc., by virtue of article 12, clause (e) of the bye-laws of the company. There therefore remains no room for doubt that bye-laws Exhibit P. 897 are the certified copies of the bye-laws of the company passed on September 8, 1951 and in force on September 4, 1954.

74. We are therefore of opinion that either due to oversight the draft bye-laws said to be signed by the Chairman Dalmia were not signed by him or that such signed copy is no more available and that bye-laws Exhibits P. 786 and P. 897 are the correct bye-laws of the company.

75. Article 12 of the company's bye-laws provides that the Chairman shall exercise the powers enumerated in that article in addition to all the powers delegated to the Managing Director. Clause (e) of this article authorises him to negotiate, transfer, buy and sell Government Securities, etc., and to pledge, endorse, withdraw or otherwise deal with charm. Article 13 of the bye-laws mentions the powers of the Managing Director. Clause (12) of this article empowers the Managing Director to make, draw, sign or endorse, purchase, sell, discount or accept cheques, drafts, hundies, bills of exchange and other negotiable instruments in the name and on behalf of the company.

76. Article 14 of the bye-laws originally mentioned the powers of the Manager. The Board of Directors by, resolution No. 4 dated October 6, 1952 resolved that these powers be exercised by. K. L. Gupta as General Manager and the necessary corrections be made.

77. By resolution No. 4 dated August 30, 1954, of the Board of Directors, the General Manager was empowered to make, draw, sign or endorse, purchase, sell discount or accept cheques, drafts, hundies, bills of exchange and other negotiable instruments in the name and on behalf of the company and to exercise all such powers from time to time incidental to the post of the General Manager of the Company and not otherwise excepted. By the same resolution, the words 'Managing Director' in Article 12 of the Bye-laws, stating the powers of the Chairman were substituted by the words General Manager. Thereafter, the Chairman could exercise the powers of the General Manager conferred under the bye-laws or other resolutions of the Board.

78. It is clear therefore from these provisions of the articles and bye-laws of he company and the resolutions of the Board of Directors, that the Chairman and the General Manager had the power to draw on the funds of the company.

79. Chokhani had authority to operate on the account of the Bharat Insurance Company at Bombay under the resolution of the Board of Directions dated January 31, 1951.

80. Both Dalmia and Chokhani therefore had dominion over the funds of the Insurance Company.

81. In Peoples Bank v. Harkishen Lal MANU/LA/0060/1935: A.I.R. 1936 Lah. 408 it was stated

"Lala Harkishen Lal as Chairman is a trustee of all the moneys of the Banks."
82. In Palmer's Company Law, 20th Edition, is stated at page 517:

"Directors are not only agents but they are in some sense and to some extent trustees or in the position of trustees."
83. In G.E. Ry. Co. v. Turner I.L.R. (1872) Ch. App. 149 Lord Selborne said:

"The directors are the mere trustees or agents of the company - trustees of the company's money and property - agents in the trisections which they enter into on behalf of the company.
84. In Re. Forest of Dean etc., Co. I.L.R. (1878) Ch. D. 450 Sir Garage Jessel said:

"Directors are called trustees. They are no doubt trustees of assets which have come into their hands, or which are under their control."
85. We are therefore of opinion that Dalmia and Chokhani were entrusted with the dominion over the funds of the Bharat Insurance Company in the Banks.

86. It has been urged for Chokhani that the could not have committed the offence of criminal breach of trust when he alone had not the dominion over the funds of the Insurance Company, the accounts of which he could not operate alone. Both Raghunath Rai and he could operate on the accounts jointly. In support of this contention, reliance is placed on the case reported as Bindeshwari v. King Emperor I.L.R. (1947) Pat. 703. We do not agree with the contention.

87. Bindeshwari's Case I.L.R. (1947) Pat. 703 does not support the contention. In that case, a joint family firm was appointed Government stockiest of food grain. The partners of the firm were Bindeshwari and his younger brother. On check, shortage in food grain was found. Bindeshwari was prosecuted and convicted by the trial Court of an offence under section 409 I.P.C. On appeal, the High Court set aside the conviction of Bindeshwari of the offence under section 409 I.P.C. and he him not guilty of the offence

under that section as the entrustment of the grain was made to the firm and no to him personally. The High Court convicted him, instead, of the offence under section 403 I.P.C. This is clear form the observation:

"In my opinion, the Government rice was entrusted to the firm of which the petitioner and his younger brother were the proprietors. Technically speaking, there was no entrustment to the petitioner personally."
88. This case clearly did not deal directly with the question whether a person who, jointly with another, has dominion over certain property, can commit criminal breach of trust with respect to that property or not.

89. On the other hand, a Full Bench of the Calcutta High Court took a different view in Nrigendro Lall Chatterjee v. Okhoy Coomar Shaw (1874) 21 W.R. 59. The Court said:

"We think the words of Section 405 of the Penal Code are large enough to include the case of a partner, if it be proved that he was in fact entrusted with the partnership property, or with a dominion over it, and has dishonestly misappropriated it, or converted it to his own use."
90. Similar view was expressed in Emperor v. Jagannath Raghunathdas. (1931) 33 Bom. L.R. 1518 Beaumont C.J., said at.

But, in my opinion, the words of the section (section 405) are quite wide enough to cover the case of partner. Where one partner is given authority by the other partners to collect moneys or property of the firm I think that he is entrusted with dominion over that property, and if he dishonestly misappropriates it, then I think he comes within the section."
91. Barlee J., agreed with this opinion.

92. The effect of Raghunath Rai's delivering the blank cheques signed by him to Chokhani may amount to putting Chokhani in sole control over the funds of the Insurance Company in the Bank and there would not remain any question of Chokhani's having joint dominion over those funds and this contention, therefore, will not be available to him.

93. It was also urged for Chokhani that he had obtained control over the funds of the Insurance Company by cheating Raghunath Rai inasmuch as he got blank cheques signed by the latter on the representation that they would be used for the legitimate purpose of the company but latter used them for purposes not connected with the company and that, therefore, he could not commit the offence of criminal breach of trust. This may be so, but Chokhani did not get dominion over the funds on account of Raghunath Rai's signing blank cheques. The signing of the blank cheques merely facilitated Chokhani's committing breach of trust. He got control and dominion over the funds under the powers conferred on him by the Board of Directors, by its resolution authorising him and

Raghunath Rai to operate on the accounts of the Insurance Company with the Chartered Bank Bombay.

94. The next contention is that Dalmia and Chokhani were not agents as contemplated by section 409 I.P.C. The contention is that the word 'agent' in this section refers to a 'professional agent' i.e., a person who carried on the profession of agency and that as Dalmia and Chokhani did not carry on such profession, they could not be covered by the expression 'agent' in his section.

95. Reliance is placed on the case reported as Mahumarakalage Edward Andrew Cooray v. The Queen (1953) A.C. 407. This case approved of what was said in Reg. v. Portugal (1885) 16 Q.B.D. 487 and it would better to discuss that case first.

96. That case related to an offence being committed by the accused under section 75 of the Larceny Act, 1861 25 Vict. c. 96. The relevant portion on the Section reads.

"Whosoever, having been intrusted, either solely or jointly with any other person, as a banker, merchant, broker, attorney or other agent, with any chattel or valuable security, or any power of attorney for the sale or transfer of any share or interest in any public stock or fund..... or in any stock or fund of any body corporate, &c., for safe custody or for any special purpose, without any authority to sell, negotiate, transfer, or pledge, shall, in violation of good faith and contrary to the object or purpose for which such chattel &c., was intrusted to him sell, negotiate, pledge, &c., or in any manner convert to his own use or benefit, or the use or benefit of any person other than the person by whom he shall have been so intrusted..... shall be guilty of a misdemeanor.

97. The accused in that case was employed by firm of Railway contractors for commission, to use his influence to obtain for them a contract for the construction of a railway and docks in France. In the course of his employment, he was entrusted with a cheque for Pounds 500/- for the purpose of opening a credit in their name on one of the two specified banks in Paris. He was alleged to have misappropriated the cheque to his own used fraudulently. He was also alleged to have fraudulently dealt with another bill for Pounds 250/- and other securities which had been entrusted to him for a special purpose. He was committed for trial for the offence under section 75. He, on arrest under an extradition warrant, was committed to prison with a view to his extradition in respect of an offence committed in France. It was contended on his behalf:

"To justify the committal under the Extradition Act, it was incumbent on the prosecutors to offer prima facie evidence that the money and securities which the prisoner was charged with having misappropriated were intrusted to him in the capacity of 'agent', that is, a person who carries on the business or occupation of an agent, and intrusted with them in that capacity, and without any authority to sell, pledge, or negotiate, and not one who upon one solitary occasion acts in a fiduciary character."

98. It was held, in view of the section referring to 'banker, merchant, broker, attorney or other agent', that section 75 was limited to a class, and did not apply to everyone who, might happen to be intrusted as prescribed by the section, but only to the class of persons therein mentioned. It was further said:

"In our Judgment, the 'other agent' mentioned in this section means one whose business or profession it is to receive money, securities or chattels for safe custody or other special purpose; and that the term does not include a person who carries on no such business or profession, or the like. The section is aimed at those classes who carry on the occupations or similar occupations to those mentioned in the section, and not at those who carry on no such occupation, but who may happened from time to time to undertake some fiduciary position, whether for money or otherwise".

99. This case therefore is authority to this effect only that the term 'agent' in that section does not include a person who just acts as an agent for another for a particular purpose with respect to some property that is entrusted to him i.e., does not include a person who becomes an agent was a consequence of what he has been charged to do, and who has been asked to do a certain thing with respect the property entrusted to him, but includes such person who, before such entrustment and before being asked to do something, already carried on such business for profession or the like as necessitates, in the course of such business etc., his receiving money securities or chattels for safe custody or other special purpose. That is to say, he is already an agent for the purpose of doing such acts and is subsequently entrusted with property with direction to deal with it in a certain manner. It is not held that a person to be an agent within that Section must carry on the profession of an agent or must have an agency. The accused, in that case, was therefore, not held to be an agent.

100. It may also be noticed that he was so employed for a specified purpose which was to use his influence to obtain for his employers a contract for the construction of a railway and docks in france. This assignment did not amount to making him an agent of the employers for receiving money etc. In Mahumarakalage Edward Andrew Cooray's Case (1953) A.C. 407 the Privy Council was dealing with the appeal of a person who had been convicted under section 392 of the Penal Code of Ceylon. Sections 388 to 391 of the Ceylon Penal Code correspond to sections 405 to 408 of the Indian Penal Code. Section 392 corresponds to section 409 I.P.C. It was contended before the Privy Council that the offence under section 392 was limited to the case of the one who carried on an agency business and did not comprehend a person who was casually entrusted with money either on one individual occasion or a number of occasions, provided that the evidence did not establish that he carried on an agency business. Their Lordships were of opinion that the reasoning in Reg. v. Portugal (1885) 16 Q.B.D. 487 for the view that section 75 of the Larceny Act was limited to the class of persons mentioned in it, was directly applicable to the case they were considering, subject to some immaterial variations, and finally said:

"In enunciating the construction which they have placed on section 392 they would point out that they are in no way impugning the decisions is certain cases that one act of entrustment may constitute a man a factor for another provided he is entrusted in his businesses as a mercantile agent, nor are they deciding what activity is required to establish that an individual is carrying on the business of an agent".
101. These observations mean that the view that section 75 was limited to the class of persons mentioned therein did not affect the correctness of the view that a certain act of entrustment may constitute a person a factor for another provided he was entrusted in his business as a mercantile agent. It follows that a certain entrustment, provided it be in the course of business as a mercantile agent, would make the person entrusted with a factor, i.e., would make him belong to the class of factors. The criterion to hold a person a factor, therefore, is that his business be that of a mercantile agent and not necessarily that he be a professional mercantile agent.

Further, the Lordships left it open as to what kind of activity on the part of person alleged to be an agent would establish that he was carrying on the business of an agent. This again makes it clear that the emphasis is not on the person's carrying on the profession of an agent, but on his carrying on the business of an agent.

102. These cases, therefore, do not support the contention for Dalmia and Chokhani that the terms 'agent' in section 409 I.P.C., which corresponds to section 392 of the Ceylon, Penal Code, is restricted only to those persons who carry on the profession of agents. These cases are authority for the view that the word 'agent' would include a person who belongs to the class of agents, i.e., who carries on the business of an agent.

103. Further, the accused in the Privy Council Case [1953] A.C. 407 was not held to be an agent. In so holdings, their Lordships said:

"In the present case the appellant clearly was not doing so, and was in no sense entitles to receive the money entrusted to him in any capacity, nor indeed, had Mr. Ranatunga authority to make him agent to hand it over to the bank."
104. To appreciate these reasons, we may mention here the facts of that case. The accused was the President of the Salpiti Koral Union. The Union supplied goods to its member societies through three depots. The accused was also President of the Committee which controlled one of these depots. He was also Vice-President of the Co-operative Central Bank which advanced moneys to business societies to enable them to buy their stocks. The societies repaid the advance weekly through cheques and/or money orders, except when the advance be of small sums. The Central Bank, in its turn, paid in the money orders cheques and cash to its account with the Bank of Ceylon. The accused appointed one Ranatunga to be the Manager of the deport which was managed by the Committee of which he was the President. The payments to the Central Bank used to be made through him. The accused instructed this Manager to follow a course other than the prescribed routine. I was that he was to collect the amounts from the stores in cash and

hand then over to him for transmission to the Bank. The accused thus got the cash from the Manager and sent his own cheques in substitution for the amounts to the Central Bank. He also arranged as the Vice-President of that Bank that in certain cases those cheques be not sent forward for collection and the result was that he could thus misappropriate a large sum of money. The Privy Council said that the accused was not entitled to receive the money entrusted to him in any capacity, that is to say as the Vice-President of the Cooperative Central Bank or the President of the Union controlling the depots or as the President of the Committee.

105. It follows from this that he could not have received the money in the course of his duties as, any of these office-bearers. Further, the Manager of the depot had no authority to make the accused an agent for purposes of transmitting the money to the Bank. The reason why the accused was not held to be an agent was not that he was not a professional agent. The reason mainly was that the amount was not entrusted to him in the course of the duties he had to discharge as the office-bearers of the various institutions.

106. Learned counsel also made reference to the case reported as Rangamannar Chatti v. Emperor (1935) M.W.M. 649. It is not of much help. The accused there is said to have denied all knowledge of the jewels which had been given to him by the complainant for pledging and had been pledged and redeemed. It was said that it was not a case under section 409 I.P.C. The reason given was:

"There is no allegation that the jewels were entrusted to the accused 'in the way of his business as an agent'. No doubt he is said to have acted as the complainant's agent, but he is not professionally the complainants agent nor was this affair a business transaction."
107. The reasons emphasize both those aspects we have referred to in considering the Judgment of the Privy Council in Mahumarakalag Edward Andrew Cooray's Case (1953) A.C. 407, and we need not say anything more about it.

108. What section 409 I.P.C. requires is that the person alleged to have committed criminal breach of trust with respect to any property be entrusted with that property or with dominion over that property in the way of his business as an agent. The expression 'in the way of his business' means that property is entrusted to him 'in the ordinary course of his duty or habitual occupation or profession or trade'. He should get the entrustment or dominion in his capacity as agent. In other words, the requirements of this section would be satisfied if the person be an agent of another and that other person entrusts him with property or with any dominion over that property in the course of his duties as an agent. A person may be an agent of another for some purpose and if he is entrusted with property not in connection with that purpose but for another purpose, that entrustment will not be entrustment for the purposes of section 409 I.P.C. if any breach of trust is committed by that person. This interpretation in no way goes against what has been held in Reg. v. Portugal (1885) 16 Q.B.D. 487 or in Mahumarakalage Edward Andrew Cooray's Case (1953) A.C. 407, and finds support from the fact that the section also deals with

entrustment of property or with any dominion over property to a person in his capacity of a public servant. A different expression 'in the way of his business' is used in place of the expression 'in his capacity,' to make it clear that entrustment of property in the capacity of agent will not, by itself, be sufficient to make the criminal breach of trust by the agent a graver offence than any of the offences mentioned is sections 406 to 408 I.P.C. The criminal breach of trust by an agent would be graver offence only when he is entrusted with property not only in his capacity as an agent but also in connection with his duties as an agent. We need not speculate about the reasons which induced the Legislature to make the breach of trust by an agent more severely punishable than the breach of trust committed by any servant. The agent acts mostly as a representative of the principal and has more powers in dealing with the property of the principal and, consequently, there are greater chances of his misappropriating the property if he be so minded and less chance of his detection. However, the interpretation we have put on the expression 'in the way of his business' is also borne out from the Dictionary meanings of that expression and the meanings of the words 'business' and 'way', and we give these below for convenience.

'In the way of' - of the nature of, belonging to the class of, in the course of or routine of

(Shorter Oxford English Dictionary)

- in the matter of, as regards, by way of

(Webster's New International Dictionary,

II Edition, Unabridged)

'Business' - occupation, work

(Shorter Oxford English Dictionary)

- mercantile transactions, buying and selling, duty, special imposed or undertaken service, regular occupation

(Webster's New International Dictionary,

II Edition Unabridged)

- duty, province, habitual occupation,

profession, trade

(Oxford Concise Dictionary)

'Way' - scope, sphere, range, line of occupation

(Oxford Concise Dictionary)

II Edition Unabridged)

- duty, province, habitual occupation,

profession, trade

(Oxford Concise Dictionary)

'Way' - scope, sphere, range, line of occupation

(Oxford Concise Dictionary)

109. Chokhani was appointed agent of the Bharat Insurance Company on January 31, 1951. He admits this in his statement under section 342, Cr.P.C. He signed various cheques as agent of this company and he had been referred to in certain documents as the agent of the company.

110. Dalmia, as a Director and Chairman of the company, is an agent of the company.

111. In Palmer's Company Law, 20th Edition, is stated, at page 513:

"A company can only act by agents, and usually the persons by whom it acts and by whom the business of the company is carried on or superintended are termed directors....."
112. Again, at page 515 is noted:

"Directors are, in the eye of the law, agents of the company for which they act, and the general principles of the law of principal and agent regulate in most respects the relationship of the company and its directors."
113. It was held in Gulab Singh v. Punjab Zamindara Bank A.I.R. 1942 Lah. 47 and in Jaswant Singh v. V. V. Puri A.I.R. 1951 Pun. 99 that a director is an agent of the company.

114. Both Dalmia and Chokhani being agents of the company the control, if any, they had over the securities and the funds of the company, would be in their capacity as agents of the company and would be in the course of Dalmia's duty as the chairman and Director or in the course of Chokhani 's duty appointed agent of the company. If they committed any criminal breach of trust with respect to the securities and funds of the company, they would be committing an offence under sections 409 I.P.C.

115. In view of our opinion with respect to Dalmia and Chokhani being agents within the meaning of section 409 I.P.C. and being entrusted with dominion over the funds of the Bharat Insurance Company in the Banks which comes within the meaning of the words 'property' in section 409, these appellant would commit the offence of criminal breach of trust under section 409 in cased they have dealt with this 'property' in the manner mentioned in section 405 I.P.C.

116. We may now proceed to discuss the detailed nature of the transactions said to have taken place in pursuance of the alleged conspiracy. It is, however, not necessary to give details of all the impugned transaction. The details of the first few transactions will illustrate how the whole scheme of diverting the funds of the Insurance Company to the Union Agencies was worked.

117. The Union Agencies suffered losses in its shares-speculation business in the beginning of August, 1954. The share brokers sent Dagduas of accounts dated August 6, 1954, to Chokhani and made demand of Rs. 22,25,687-13-0 in respect of the losses. The total cash assets of the Union Agencies in all its banks and offices at Bombay, Calcutta and Delhi amounted to Rs. 2,67,857-11-7 only. The Union Agencies therefore needed a large sum of money to meet this demand and to meet expected future demands in connection with the losses.

118. At this crucial time, telephone communications did take place between presumably Dalmia and Chokhani. The calls were made from Telephone No. 45031, which is Dalmia's number at 3, Sikandara Road, New Delhi, to Bombay No. 33726, of Chokhani. Two calls were made on August 7, 1954, three on August 8, two on August 11 and one each on August 13 and August 14, respectively. Of course, three is no evidence about the conversation which took placed at these talks. The significance of these calls lies in their taking place during the period when the scheme about the diversion of funds was coming into operation for the first time, but in the absence of evidence as to what conversation took place, they furnish merely a circumstance which is not conclusive by itself.

119. On August 7 and 9, 1954, the Punjab National Bank, Bombay, received Rs. 20,000 and Rs. 3,00,000 respectively in the account of the Union Agencies, telegraphically from Delhi.

120. On the same day, Vishnu Prasad, appellant, opened an account with the Bank of India, Bombay, in the name of Bhagwati Trading Company. He gave himself out as the sole proprietor and mentioned the business of the company in the form for opening account as 'merchants and commission agents'. He made a deposit of Rs. 1,100 said to have been supplied to him by Chokhani.

121. On August 11, 1954, Vishnu Prasad made another deposit of Rs. 1,100, again said to have been supplied by Chokhani, as the first deposit in the account he opened with the United Bank of India, Bombay, in the name of Bhagwati Trading Company. The business of the company was described in the form for opening account as 'merchants, piece-goods dealers.'

122. There is no dispute now that Bhagwati Trading Company did not carry on any business either as merchants and commission agents or as merchants and piece-goods dealers. Vishnu Prasad states that he acted just at Chokhani told him and did not know the nature of the transactions which were carried on in the name of this company. It is

however clear from the accounts and dealings of this company that its main purpose was simply to act in such a way as to let the funds of the Insurance Company pass on to the Union Agencies, to avoid easy detection of such transfer of funds.

123. Chokhani states that he did this business as the Union Agencies needed money at that time. He thought that the Union Agencies would make profit after some time and thereafter pay it back to Bhagwati Trading Company for purchasing securities and therefore he postponed the dates of delivery of the securities to the Insurance Company. He added that in case of necessity he could raise money by selling or mortgaging the shares of the Union Agencies in the exercise of his power of attorney on it behalf.

124. We may now revert to the actual transaction gone through to meet the demands in connection with the losses of the Union Agencies.

125. On August 9, 1954, Chokhani purchased 3% 1963-65 securities of the face value of Rs. 22,00,000 on behalf of the Insurance Company from Naraindas and Sons, Security Brokers. Chokhani entered into a cross-contract with the same firm of brokers for the sale of similar securities of the same face value on behalf of the Bhagwati Trading Company. He informed the brokers that the payment of purchase price would be made by the Insurance Company to Bhagwati Trading Company from whom it would get the securities. Thus the actual brokers practically got out of the transaction except for their claim of brokerage.

126. On August 11, 1954, a similar transaction of purchase on behalf of the Insurance Company from the brokers and sale by Bhagwati Trading Company to those brokers, of 3% 1963-65 securities of the face value of Rs. 5,00,000, was entered into by Chokhani.

127. It may be mentioned, to avoid repetition, that Chokhani always acted in such transaction - which may be referred to as usual purchase transactions - both on behalf to the Insurance Company and on behalf of Bhagwati Trading Company, and that the same arrangement was made with respect to the payment of the purchase price and the delivery of securities.

128. The securities were not delivered to the Insurance Company by Bhagwati Trading Company and yet Chokhani made payment of the purchase price from out of the funds of the Insurance Company.

129. On August 11, 1954, Chokhani got the statement of accounts from the brokers relating to the purchase of securities Worth Rs. 22,00,000. The total cost of those securities worked out at Rs. 20,64,058-6-9. Chokhani made the payment by issuing two cheques in favour of Bhagwati Trading Company, one for Rs. 10,00,000 and the other for the balance i.e., Rs. 10,64,058-6-9. Needless to say that he utilised the cheques which had already been

signed by Raghunath Rai, in pursuance of the arrangement to facilitate transactions on behalf of the Insurance Company.

130. On August 12, 1954, the statement of account with respect to the purchase of securities worth Rs. 5,00,000 was received. The cost worked out to Rs. 4,69,134-15-9. Chokhani made the payment by issuing a cheque for the amount in favour of Bhagwati Trading Company. All these cheques were drawn on the Chartered Bank, Bombay.

131. On August 12, 1954, Vishnu Prasad drew cheques for Rs. 9,00,000 in the account of Bhagwati Trading Company in the United Bank of India. The amount was collected by his father Bajranglal. He drew another cheque for Rs. 9,60,000 in the account of the Bhagwati Trading Company with the Bank of India, Bombay, and collected the amount personally. The total amount withdrawn by these two cheques viz., Rs. 18,60,000 was passed on to the Union Agencies through Chokhani that day. Thereafter Chokhani deposited Rs. 7,00,000 in the account of the Union Agencies with the Bank of India, Rs. 7,00,000 in the account of the Union Agencies with the United Bank of India and Rs. 4,40,000 in the account of the Union Agencies with the Punjab National Bank Ltd. The Punjab National Bank Ltd., Bombay, as already mentioned, had received deposits of Rs. 2,00,000 and Rs. 3,00,000 on August 7 and August 9, 1954, respectively, in the account of the Union Agencies from Delhi.

132. Between August 9 and August 19, 1954, Chokhani made payment to the brokers on account of the losses suffered by the Union Agencies. He issued cheques for Rs. 9,37,473-5-9 between August 9 and August 13, 1954, on the account with the Punjab National Bank. On August 13, he issued cheques on the account of the Union Agency with the United Bank of India in favour of the Bombay brokers on account of the losses of the Union Agencies, for Rs. 7,40,088-5-9. He also issued, between August 13 and August 19, 1954, cheque for Rs. 6,84,833-14-0 on the Bank of India, in favour of the share brokers at Bombay on account of the losses suffered by the Union Agencies.

133. Chokhani informed the head office at Delhi about these purchase transaction of securities worth Rs. 27,00,000 through letter dated August 16, 1954, and along with that letter sent the contract note and Dagduas of accounts received from the brokers. No mentioned was made in the letter about the payment being made to Bhagwati Trading Company through cheques or about the arrangement about getting the securities from Bhagwati Trading Company or about the postponement of the delivery of the securities by that company. On receipt of the letter, Raghunath Rai contacted Dalmia and, on being told that the securities were purchased under the latter's instructions, made over the letter to the office where the usual entries where made and records were prepared, as had to be done in pursuance of the office routine. Ultimately, the formal confirmation of the purchases was obtained on August 30, 1954, from the Board of Directors as its meeting for which the office note stating that the securities were purchase under the instruction of the Chairman (Dalmia) was prepared. the office note, Exhibit P. 793, with respect to

the purchased of these securities worth Rs. 27,00,000 was signed by Chordia, who was then the Managing Director of the Bharat Insurance Company.

134. On August 16, 1954, Vishnu Prasad withdrew Rs. 2,200 from the account of the Bhagwati Trading Company with the Bank of India, according to his statement, gave this money to Chokhani in return for the amount Chokhani had advanced earlier for opening accounts for Bhagwati Trading Company with the Bank of India and the United Bank of India. Thereafter, whatever money was in the account of Bhagwati Trading Company with these Banks was the money obtained through the dealings entered into on behalf of Bhagwati Trading Company, the funds for most of which came from the Bharat Insurance Company.

135. On August 18, 1954, Vishnu Prasad drew a sum of Rs. 50,000 from Bhagwati Trading Company's account with the Bank of India and passed on the amount to the Union Agencies through Chokhani. On August 23, 1954, he withdrew Rs. 90,000 from Bhagwati Trading Company's account with the United Bank of India and Rs. 5,10,000 from its account with the Bank of India and passed on these amounts also to the Union Agencies through Chokhani. Chokhani then issued cheques totalling Rs. 5,88,380-13-0 from August 23 to August 26, 1954, on the account of the Union Agencies with the Chartered Bank, Bombay, in favour of the brokers on account of the losses suffered by that company. Thus, out of the total amount of Rs. 25,33,193-6-6 withdrawn by Chokhani from the account of the Bharat Insurance Company and paid over to Bhagwati Trading Company Rs. 25,10,000 went to the Union Agencies, which mostly utilised the amount in payment of the losses suffered by it.

136. The Union Agencies suffered further losses amounting to about Rs. 23,00,000. Demands for payment by the brokers were received on September 3, 1954, and subsequent days.

137. The Bharat Insurance Company had no sufficient liquid funds in the Banks at Bombay. There was therefore necessity to deposit funds in the Bank before they could be drawn ostensibly to pay the price of securities to be purchased. This time the transactions of sale of securities held by the Insurance Company and the usual purchase transactions relating to certain other securities were gone through. The details of these transactions are given below.

138. On September 4, 1954, securities of the face value of Rs. 17,50,000 held by the Insurance Company were withdrawn from its safe-custody account with the Imperial Bank of India, New Delhi, by letter Exhibit P. 1351 under the signature of Dalmia. Securities worth Rs. 10,00,000 were 2-1/4% 1954 securities and the balance were 2-1/2% 1955 securities. These securities were then sent to Bombay and sold there. On September 9, 1954, Rs. 6,25,000 were transferred from Delhi to the account of the Insurance Company with the Chartered Bank, Bombay, by telegraphic transfer. Thus the balance of the funds

of the Insurance Company with the Chartered Bank rose to an amount out of which the losses of about Rs. 23,00,000 suffered by the Union Agencies could be met. The 1954 securities sold were to mature on November 15, 1954. The 1955 securities would have matured much later. No ostensible reason for their premature sale has been given.

139. On September 6, 1954, Chokhani purchased 3% 1959-61 securities of the face value of Rs. 25,00,000 on behalf of the Insurance Company from M/s. Naraindas & Sons, Brokers. A cross-contract of sale of similar securities by Bhagwati Trading Company to the brokers was also entered into. Steps which were taken in connection with the purchase of securities worth Rs. 27,00,000 in August 1954 were repeated. On September 9, 1954, Chokhani issued two cheques, one for Rs. 15,00,000 and the other for Rs. 9,20,875 on the account of the Insurance Company with the Chartered Bank, in favour of Bhagwati Trading Company which deposited the amount of the cheques into its account with the Bank of India, Bombay. Vishnu Prasad passed on Rs. 24,00,000 to the Union Agencies through Chokhani. This amount was utilised in meeting the losses suffered by the Union Agencies to the extent of Rs. 22,81,738-2-0. A sum of Rs. 75,000 was paid to Bennett Coleman Co. Ltd., of which Dalmia was a director and a sum of Rs. 15,000 was deposited in the Punjab National Bank.

140. It is again significant to note that telephonic communication took place between Dalmia's residence at New Delhi at Chokhani's at Bombay, between September 4 and September 10, 1954. There was two communications on September 4, one on September 5, three on September 6 and one on September 10, 1954.

141. The Union Agencies suffered further losses amounting to about Rs. 10,00,000 in the month of September. Again, the accounts of the Union Agencies or of the Insurance Company, at Bombay, did not have sufficient balance to meet the losses and, consequently, sale of certain securities held by the Insurance Company and purchase of other securities again took place. this time, 3% 1957 securities of the face value of Rs. 10,00,000 held by the Insurance Company in its safe-custody deposit with the Chartered Bank, Bombay, were sold on September 21, 1954, and Rs. 9,84,854-5-6, the net proceeds, were deposited in the Bank. On the same day, Chokhani purchased 3% 1959-61 securities of the face value of Rs. 10,00,000 on behalf of the Insurance Company following the procedure adopted in the earlier usual purchase transactions.

142. No telephonic communication appears to have taken place between Delhi and Bombay, on receipt of the demand from the brokers on September 17, 1954, for the payment of the losses, presumably because necessary steps to be taken both in connection with the fictitious purchase of securities, in order to pay money to Bhagwati Trading Company for being made over to the Union Agencies when funds were needed and also or providing funds in the Insurance Company's account with the Chartered Bank, Bombay, in case the balance was not sufficient to meet the losses, had already been adopted in the previous transactions, presumably, after consultations between Dalmia

and Chokhani. This lends weight to the significance of the telephonic communications between Delhi and Bombay in the critical period of August and early September, 1954.

143. To complete the entire picture, we may now mention the steps taken to cover up the non-receipt of securities purchased, at the proper time.

144. By November, 19, 1954, securities of the face-value of about Rs. 80,00,000 had been purchased by Chokhani on behalf of the Insurance Company and such securities had not been sent to the head office at Delhi. Raghunath Rai referred the matter to Dalmia and, on his approval, sent a letter on November 19, 1954, to Chokhani, asking him to send the distinctive numbers of those securities. The copy of the latter is Exhibit P. 805. The securities referred to were 3% Loan of 1959-61 of the face value of Rs. 35,00,000, 3% Loan of 1963-65 of the face value of Rs. 27,00,000 and 2-3/4% Loan of 1960 of face value of Rs. 18,00,000.

145. It was subsequent to this that stock certificates with respect to 3% 1963-65 securities of the face value of Rs. 27,00,000 and with respect to 2-3/4% 1960. Loan securities of the face value of Rs. 18,00,000 were received in Delhi.

146. We may now refer to the transactions which led to the obtaining of these stock certificates. The due dates of interest of 3% 1963-65 securities purchased in August 1954 were June 1 and December 1. It was therefore necessary to procure these securities or to enter into a paper transaction of their sale prior to December 1, as, otherwise, the non-obtaining of the income-tax deduction certificate from the Reserve Bank would have clearly indicated that the insurances Company did not hold these securities, Chokhani, therefore, entered into a genuine contract of purchase of 3% 1963-65 securities of the face value of Rs. 27,00,000 on behalf of Bhagwati Trading Company with Devkaran Nanjee, Brokers, Bombay, on November 3, 1954. He instructed the brokers to endorse the securities in favour of the Insurance Company, even though the securities were being sold to Bhagwati Trading Company. These securities so endorsed were received on November 24, 1954, and were converted into inscribed stock (Stock Certificate Exhibit P. 920) from the Reserve Bank of India on December 7, 1954. The stock certificate does not mention the date on which the securities were purchased and therefore it existence could prevent the detection of the fact that these securities were not purchased in August 1954 when, according to the books of the Insurance Company, they were shown to have been purchased.

147. The Insurance Company did not ostensibly pay for the purchase of these shares but partially paid for it through another share-purchase transaction. In order to enable Bhagwati Trading Company to pay the purchase price, Chokhani paid Rs. 16,00,000 to it from the account of the Bharat Union Agencies with the Banks at Bombay, and Rs. 10,08,515-15-0 from the account of the Insurance Company with the Chartered Bank by a fictitious purchase of 2-1/2% 1961 securities of the face value of Rs. 11,00,000 on behalf

of the Insurance Company. These 2-1/2% 1961 securities of the face value of Rs. 11,00,000 were purchased by Chokhani on November 16, 1954, by taking a step similar to those taken for the purchase of securities in August and September, 1954, already referred to.

148. Interest on the 2-3/4% Loan of 1960 of the face value of Rs. 18,00,000 was to fall due on January 15, 1955. Both on account of the necessity for obtaining the interest certificate and also on account of the expected check of securities by the auditors appointed for auditing the accounts of the Insurance Company for the year 1954, it became necessary to procure these securities or it sell them off. Chokhani purchased, on December 9, 1954, 2-3/4% 1960 securities of the face value of Rs. 18,00,000 on behalf of Bhagwati Trading Company. The purchase price was paid out of the funds of the Union Agencies and Bhagwati Trading Company. The securities were, however, got endorsed in the name of the Insurance Company. Chokhani got the securities sometimes about December 21, 1954, and, therefore, got them converted into stock certificates which were then sent to the head office at Delhi.

149. There still remained 3% 1959-61 securities of face value of Rs. 35,00,000 to be accounted for. They were purchased in September, 1954, as already mentioned, but had not been received up to the end of December. On December 27, 1954, Chokhani purchased 2-3/4% 1962 securities of the face value of Rs. 46,00,000 in two lots of Rs. 11,00,000 and Rs. 35,00,000 respectively, on behalf of the Insurance Company. He also entered into the usual cross-contract with the brokers for the sale of those securities of behalf of the Union Agencies. This was a fictitious transaction, as usual, and these securities were not received from the Union Agencies. On the same day, Chokhani entered into a contract for the sale of 3% 1959-61 securities of the face value of Rs. 35,00,000 on behalf of the Insurance Company and also entered into a cross-contract on behalf of the Union Agencies for the purchase of these securities from the same brokers. As these securities did not exist with the Insurance Company, these transactions were also paper transactions.

150. We need not give details of the passing of money from one concern to the other in connection with these transactions. For purposes of audit 3% 1959-61 securities of the face value of Rs. 35,00,000 had been sold. New securities viz., 2-3/4% 1962 securities of the face value of Rs. 46,00,000 had been ostensibly purchased. The auditors could demand inspection of these newly purchased securities. Chokhani therefore entered into another purchase transaction. This time a genuine transaction for the purchase of 2-3/4% 1962 securities of the face value of Rs. 46,00,000 was entered into on January 11, 1955. The purchase price was paid by the sale of 3% 1957 securities of the face value of Rs. 46,00,000 which the Insurance Company possessed. For this purpose, Chokhani withdrew these securities of the face value of Rs. 8,25,000 from the Chartered Bank, Bombay, and Rs. 37,75,000 worth of securities were sent to Bombay from Delhi. These securities were than converted into inscribed stock.

151. The Insurance Company was now supposed to have purchased 2-3/4% 1962 securities of the face value of Rs. 92,00,000 having purchased Rs. 46,00,000 worth of securities in December 1954 and Rs. 46,00,000 worth of securities in January 1955. It possessed securities worth Rs. 46,00,000 only and inscribed stock certificate with respect to that could serve the purpose of verifying the existence of the other set of Rs. 46,00,000 worth of securities. These transactions are sufficient to indicate the scheme followed by Chokhani in the purchase and sale of securities on behalf of the Insurance Company. It is clear that the transactions were not in the interests of the Insurance Company but were in the interests of the Union Agencies inasmuch as the funds were provided to it for meeting its losses. It is also clear that the system adopted of withdrawing the funds of the Insurance Company ostensibly for paying the purchase price of securities after the due date of payment of interest and selling the securities off, if not actually recouped from the funds of the Union Agencies or Bhagwati Trading Company prior to the next date of payment of interest, was not in the interests of the Insurance Company. When, however, the sale price could not be paid out of the funds of the Union Agencies or Bhagwati Trading Company, Chokhani, on behalf of the Insurance Company, entered into a fresh transaction of purchase of securities which were not actually received and thus showed repayment of the earlier funds, though out of the funds withdrawn from the same company (viz., the Insurance Company) ostensibly for paying the purchase price of newly purchased securities.

152. Turning to the evidence on record, the main statement on the basis of which, together with other circumstances, the Courts below have found that Dalmia had the necessary criminal intent as what Chokhani did was known to him and was under his instructions, is that of Raghunath Rai, Secretary-cum-Account of the Bharat Insurance Company. Mr. Dingle Foot has contended firstly that Raghunath Rai was an accomplice of the alleged conspirators and, if not, he was a witness whose testimony should not, in the circumstances be believed without sufficient corroboration which does not exit. He has also contended that the Courts below fell into error in accepting the Dagduas made by him which favoured the prosecution case without critically examining them, that they ignored his Dagduas in favour of the accused for the reason that he was under obligation to Dalmia and ignored his Dagduas inconsistent with his previous statement as he was not confronted with them in cross-examination.

153. An accomplice is a person who participates in the commission of the actual crime charged against an accused. He is to be a particeps criminis. There are two cases, however, in which a person has been held to be an accomplice even if he is not a particeps criminis. Receivers of stolen property are taken to be accomplices of the thieves from whom they receive goods, on a trial for theft. Accomplices in previous similar offences committed by the accused on trial are deemed to be accomplices in the offence for which the accused is on trial, when evidence of the accused having committed crimes of identical type on other occasions be admissible to prove the system and intent of the

accused in committing the offence charged: Davies v. Director of Public Prosecutions I.L.R. 1954 A.C. 378..

154. The contention that Raghunath Rai was an accomplice is mainly based on he facts that (i) Raghunath Rai did not produce the counterfoils of the cheques for the inspection of the auditors, though asked for by them, in spite of the fact that the counterfoils must have come to Delhi during the period of audit; (ii) the alleged scheme of the conspirators could not have been carried out without his help in signing blank cheques which were issued by Chokhani subsequently. The mere signing of the blank cheques is hardly an index of complicity when the bank account had to be operated both by Chokhani and Raghunath Rai, jointly. Raghunath Rai had to sign blank cheques in order to avoid delay in payments and possible occasional falling through of the transactions. No sinister intention can be imputed to Raghunath Rai on account of his signing blank cheques in the expectation that those cheques would be properly used by Chokhani. The counterfoils have not been produced and there is no evidence that they showed the real state of affairs, i.e., that the cheques were issued to Bhagwati Trading Company and not to the brokers from whom the securities were purchased.

155. It is not expected that the name of Bhagwati Trading Company would have been written on the counterfoils of the cheques when its existence and the part it took in the transactions were to be kept secret from the head office. When counterfoils were sent for in August, 1955, they were not received from Bombay. Chokhani states that he did not get that letter.

156. Moreover, counterfoils reach the head office after a long time and there is no particular reason why Raghunath Rai should notice the counterfoils then. He does not state in his evidence that he used to look over the counterfoils when the cheque books came to him for further signatures.

157. We do not therefore agree that Raghunath Rai was an accomplice.

Even if it be considered that Raghunath Rai's evidence required corroboration as to the part played by Dalmia, the circumstances to which we would refer later in this Judgment afforded enough corroboration in that respect.

Raghunath Rai made a statement. Exhibit P. 9, before Annadhanam on September 20, 1955. He made certain Dagduas in Court which were at variance with the statement made on that occasion. This variation was not taken into consideration in assessing the veracity of Raghunath Rai as he had not been cross-examined about it. The argument of Mr. Dingle Foot is that such variation, if taken into consideration, considerably weakness the evidence of Raghunath Rai. He has urged that no cross examination of Raghunath Rai was directed to the inconsistencies on any particular point in view of the general attack on his veracity through cross-examination with respect to certain matters. He has

contended that in view of section 155 of the Indian Evidence Act, any previous statement of a witness inconsistent with his statement in Court, if otherwise proved, could be used to impeach his credit and that therefore the Courts below were not right in ignoring the inconsistencies in the statement of Raghunath Rai merely on the ground that they were not put to him in cross-examination. On the other hand, the learned Solicitor General contends that section 155 of the Indian Evidence Act is controlled by section 145 and that previous inconsistent Dagduas not put to the witness could not be used for impeaching his credit. We do not consider it necessary to decide this point as we are of opinion that the inconsistent Dagduas referred to are not of any significance in impeaching the credit of Raghunath Rai.

158. The specific inconsistent statement are: (i) 'I never of my own accord send securities to Bombay nor am I authorised to do so': In Court Raghunath Rai said that certain securities were sent by him to Bombay on his own accord because those securities were redeemable at Bombay and the maturity date was approaching. (ii) Before the Administrator, Raghunath Rai had stated: 'I cannot interfere in the matter as, under Board Resolution, Chokhani is authorised to deal with the securities. Chokhani always works under instructions from the Chairman.' In Court, however, he stated that there was no resolution of the Board of Directors authorising Chokhani to sell and purchase securities. The mis-statement by Raghunath Rai, in his statement P. 9 to the Investigator made on September 20, 1955, about Chokhani's being authorised by a Board resolution to deal with the securities, is not considered by Dalmia to be a false statement as he himself stated, in answer to question No. 21, that such a statement could possibly be made by Raghunath Rai in view of the Board of Directors considering at the meeting the question whether Chokhani be authorised to purchase and sell securities on behalf of the company in order to make profits. (iii) 'Roughly 1.3/4 crores of securities were sent to Bombay from here during the period from April 1955 to June 1955'. The period was wrong and was really from July to August 1955. Raghunath Rai admitted the error and said that he had stated to Annadhanam without reference to books. (iv) 'Securities are sent to Chokhani at Bombay through a representative of Dalmia'. The statement is not quite correct as securities were sent to Bombay by post also.

159. Raghunath Rai stated that on the receipt of the advice from Chokhani about the purchase or sale of securities, he used to go to Dalmia on the day following the receipt of the advice for confirmation of the contract of purchase or sale of securities and that after Dalmia's approval the vouchers about the purchase of those securities and the crediting of the amount of the sale prince of those securities to the account of the Insurance Company with the Chartered Bank, as the case may be, used to be prepared.

160. Kashmiri Lal and Ram Das, who prepared the vouchers, describe the procedure followed by them on receipt of the advice but do not state anything about Raghunath Rai's seeking confirmation of the purchase transactions form Dalmia and therefore do not, as suggested for the appellants, in any way, contradict Raghunath Rai.

161. It is urged by Mr. Dingle Foot that it was somewhat unusual to put off the entire with respect to advices received by a day, that the entire must have been made on the day the advices were received and that in this manner the entries made by these clerks contradict Raghunath Rai. A witness cannot be contradicted by first supposing that a certain thing must have taken place in a manner not deposed to by any witness and then to find that that was not consistent with the statement made by that witness. Further, we are of opinion that there could be no object in making consequential entries on receipt of the advice about the purchase of securities if the purchase transaction itself is not approved of and is consequently cancelled. The consequent entire were to be with respect to the investments of the Insurance Company and not with respect to infructuous transactions entered into by its agents.

162. It has also been urged that if Dalmia's confirmation was necessary, it was extraordinary that no written record of his confirming the purchase of securities was kept in the office. We see no point in this objection. If confirmation was necessary, the fact that various entries were made consequent on the receipt of advice is sufficient evidence of the transaction being confirmed by Dalmia, as, in the absence of confirmation, the transaction could not have been taken to be complete. Further, office notes stating that securities had been purchased or sold 'under instructions of the Chairman' used to be prepared for the meeting of the Board of Directors when the matter of confirming sale and purchase of securities went before it. The fact that office notes mentioned that the securities had been purchased under the instructions of the Chairman is the record of the alleged confirmation.

163. The proceedings of the meeting of the Board of Directors with respect to the confirmation of the purchase and also of securities do not mention that that action was taken on the basis of the office notes. Minutes with respect to other matters do refer to the office notes. This does not, however, mean that office notes were not prepared. Confirmation of the purchase and sale of he shares was a formal matter for the Board.

164. All the office notes, except one, were signed by Raghunath Rai. The one not signed by him is Exhibit P. 793. It is signed by Chordia and is dated August 18, 1954. This also mentions 'under instructions of the Chairman certain shares have been purchased'. Chordia was a relation of Dalmia and had no reason to write the expression 'Under instructions of the Chairman' falsely. Such a note cannot be taken to be a routine note when the power to purchase and sell securities vested in Chordia as Managing Director of the company. Clause (4) of article 13 of the Bye-laws empowered the Managing Director to transfer, buy and sell Government securities. When Chordia, the Managing Director, wrote in this office note that securities were purchased under the instructions of the Chairman, it can be taken to be a true statement of fact. It is true that he has not been examined as a witness to depose directly about his getting it from Dalmia that the purchase of securities referred to in that note was under his instructions. This does not

matter as we have referred to this office note in connection with Raghunath Rai's statement that office notes used to be prepared after Dalmia's statement that the particular purchase of shares was under his instructions.

165. The Dagduas made by Raghunath Rai which are said to go in favour of the accused may now be dealt with. Raghunath Rai was cross-examined with respect to certain letters he had sent to Chokhani. He stated, in his deposition on July 29, 1958, that Dalmia accepted his suggestion for writing to Chokhani to sent him the distinctive numbers of the securities which had been purchased, but not received at the head office, and that when he reported non-compliance of Chokhani in communicating the distinctive numbers and suggested to Dalmia to ring up Chokhani to sent the securities to the head office, Dalmia agreed. This took place in November and December 1954. Dalmia's approval of the suggestion does not go in his favour. He could not have refused the suggestion.

166. Raghunath Rai also stated that in September or October 1954 there was a talk between heir, K. L. Gupta and Dalmia about the law yield of interest on the investments of the Insurance Company and it was suggested that the money be invested in securities, shares and debentures. Dalmia then said that he had no faith in private shares and debentures but had faith in Government securities and added that he would ask Chokhani to invest the funds of the Insurance Company in the purchase and sale of Government securities. He, however, denied that Dalmia had said that the investment of funds would be in the discretion of Chokhani, and added that Chokhani was not authorised to purchase or sell securities on behalf other Insurance Company unless he was authorised by the Chairman. The statement does not support Dalmia's authorising Chokhani to purchase and sell securities in his discretion.

167. Another statement of Raghunath Rai favourable to Dalmia is said to be that according to him he told the auditors on September 9, 1955, that the securities not then available were with Chokhani at Bombay from whom advices about their purchased had been received. Annadhanam stated that Raghunath Rai had told him that Dalmia would give the explanation of the securities not produced before the auditors. There is no reason to prefer Raghunath Rai's statement to that of Annadhanam. Annadhanam's statement in the letter Exhibit P. 2 about their being informed that in March, 1954, after the purchase, the securities were kept in Bombay in the custody of Chokhani refer to what they were told in the first week of January, 1955, and not to what Raghunath Rai told him on September 9, 1954.

168. Raghunath Rai stated that on one or two occasions he, instead of going to Dalmia, talked with him on telephone regarding the purchase and sale of securities by Chokhani and that Dalmia told him on telephone that he had instructed for the purchase and sale of securities and that he was confirming the purchases or sales. This does not really favour Dalmia as Raghunath Rai maintains that Dalmia did confirm the purchase or sale

reported to him. It is immaterial whether that was done on telephone or on Raghunath Rai actually meeting him.

169. Questions put to the Administrator, Mr. Rao, in cross-examination, implied that Raghunath Rai was a reliable person and efforts to win him over failed. It was suggested to the Administrator that the reasons for the appointment of Sundara Rajan as the Administrator's Secretary was that he wanted to conceal certain matters from Raghunath Rai. His reply indicated different reasons for the appointment. Another suggestion put to him was that Raghunath Rai offered to retire, but he kept his offer pending because of this case. This suggestions too was denied.

170. It was brought out in the cross-examination of Raghunath Rai that he was in a position in which he could be influenced by the Administrator. Raghunath Rai was using the office car. Its use was stopped by the Administrator in January, 1956. He was not paid any conveyance allowance. In April, 1958, he made a representation to the Administrator for the payment of that allowance to him. The Administrator passed to necessary order in May, 1958, with retrospective effect from January 1956. The amount of conveyance allowance was Rs. 75 per mensem. Raghunath Rai could not give any satisfactory explanation as to why he remained silent with regard to his claim for conveyance allowance for a period of over two years, but denied that he was given the allowance with retrospective effect in order to win him over to the prosecution.

171. Raghunath Rain applied for extension of service in the end of 1956 or in the beginning of 1957 and, in accordance with the resolution passed on August 17, 1954, by the Board of Directors, his service was extended up to 1961. The Administrator forwarded the application to the higher authorities. This matter had not been decided by July 29, 1958.

172. The amount of his gratuity and provident fund in the custody of he Insurance Company amounted to Rs. 35,000.

173. We do not think that the Administrator had any reason to influence Raghunath Rai's statement and acted improperly in sanctioning car allowance to him retrospectively and would have so acted with respect to Raghunath Rai's gratuity if Raghunath Rai had not made statement's supporting the prosecution case.

174. Raghunath Rai stated on July 29, 1958, that in July, 1955, when he informed Dalmia that the bulk of the securities were at Bombay and the rest were at Delhi, Dalmia asked him to write to Chokhani to deposited all the securities in Bombay in the Chartered Bank. At this he told Dalmia that if the sale and purchase of securities was to be carried on as hitherto fore there was no use depositing them in the Bank and thus pay frequent heavy withdrawal charges, and suggested that the securities could be deposited in the Bank if the sale and purchase of them had to be stopped altogether and that Dalmia then said

that the securities should be sent for to Delhi in the middle of December, 1955 for inspection by the auditors.

175. Raghunath Rai was re-examined on July 30 and stated that the aforesaid conversation took place on July 14, 1955, and added that he had, in the same context, a further talk with Dalmia in August, 1955. The Public Prosecutor, with the permission of the Court, then questioned him about the circumstances in which he had to go a second time to Dalmia and talk about the matter. His reply was that he had the second talk as the securities purchased in May, 1955, and those purchased in July and August, 1955, had not been received at the head office. He asked Dalmia to direct Chokhani to deposited all the securities in the Chartered Bank or to send them to Head Office. Dalmia then said that the sale and purchase of securities had to be carried on for some time and therefore the question of depositing those securities in the Bank or sending them to the head office did not arise for the time being and that the securities should be sent to the head office in December, 1955.

176. Raghunath Rai thus made a significant change in his statement. On July, 29, 1958, he opposed the direction of Dalmia for writing to Chokhani to deposit the securities in the Bank as that would entail heavy withdrawal charges in case the sale and purchase so securities were not to be stopped while, according to his statement the next day, he himself suggested to Dalmia in August, 1955, that Chokhani be asked to deposit all the securities in the Bank or to send them to the head office. He denied the suggestion that he made this change in his statement under pressure of the Police.

177. The cross-examination was really directed to show that he had been approached by the police between the close of his examination on July 29 and his further examination on July 30, 1958. Raghunath Rai admitted in court that after giving evidence he went to the room allotted in the Court building to the Special Police Establishment and that the Investigating Officer and the Secretary to the Administrator of the Insurance Company were there. He went there in order to take certain papers which he had kept there. He, however, had not brought any papers on July 30 as, according to him, his main cross-examination had been over. He however denied that the had been dictated notes by the police in order to answer questions in cross-examination or that he remained with the police till 9 p.m. or that the Secretary to the Administrator held out a threat about the forfeiture of his gratuity in case he did not make a statement favourable to the prosecution.

178. We see no reason for the police to bring pressure on Raghunath Rai to introduce falsely the conversation in August. Between July 14, 1955, and middle of August, 1955, the head office learnt of the purchase of securities of the face value of Rs. 74,00,000 and again, on or about August 26, of the purchase of securities of the face value of Rs. 40,00,000. A further conversation in August is therefore most likely as deposed to. The

main fact remains that Dalmia said that the securities be sent for in December, 1955, which implies his knowledge of the transactions in question.

179. We are of opinion that the discrepancies or contradictions pointed put in Raghunath Rai's statement are not such as to discredit him and make him an unreliable witness and that he is not shown to be under the influence of the prosecution. Further, his various Dagduas connecting Dalmia with the crime, find corroboration from other evidence.

180. Letter Exhibit P. 1351 dated September 4, 1954, was sent to the Imperial Bank of India, Delhi Branch, under the signature of Dalmia as Chairman. The letter directed bank to deliver certain securities to the bearer. Dalmia admits his signatures on this document and also on the letter Exhibit P. 1352 acknowledging the receipt of the securities sent for, thus corroborating Raghunath Rai's statement that the securities were withdrawn under this instructions.

181. Letters Exhibit D. 3, dated March 16, 1955, and P. 892 dated August 5, 1955, from Raghunath Rai to Chokhani, mentioned that the stock certificates were being sent under the instruction of the Chairman. They corroborate Raghunath Rai's Dagduas in Court of the despatch of these stock certificate under Dalmia's instructions. He had no reason to use this expression if he was sending them on his own.

182. It is true that the date on which the Chairman gave the instruction is not proved, but it stands to reason that the stock certificates must have been dispatched soon after the receipt of the instruction from the Chairman. It cannot be presumed that in such transactions there could be such delay as would make statement in these letters not corroborative evidence under section 157, of the Evidence Act which provides that previous Dagduas made at or about the time a fact took place can be used for corroborating the statement in Court.

183. Chokhani's statement that he did not mention the name of Bhagwati Trading Company in his letter to the head office as he did not want Dalmia to know about the dealings with Bhagwati Trading Company, implies that in the ordinary course of business the information conveyed in those letters would be communicated to Dalmia and thus tends to support Raghunath Rai statement that he used to visit Dalmia on receipt of the statement of account and inform him about the purchase or sale of the securities.

184. Chokhani had been inconsistent about Raghunath Rai's later knowledge of the existence of Bhagwati Trading Company. In answer to question No. 66, on November 13, 1958, he stated:

"I did not contradict the statement made in Ex. P. 813 that cheque No. B564809 dated 17-11-54 had been issued in favour of Narain Das and Sons although that cheque had in fact been issued in favour of Bhagwati Trading Company and not in favour of Narain Das

and Sons because those at the Head Office did not know anything about Bhagwati Trading Company".
185. In answer to question No. 149. on November 14, 1958, he stated:

"I did not mention the name of Bhagwati Treading Company in my letters addressed to the Head Office of the Bharat Insurance Company as the party with whom there were cross contracts because Raghunath Rai would not have known as to what was Bhagwati Trading Company. I also did not mention the name of Bhagwati Trading Company in my letter to the Head Office of the Bharat Insurance Company because I did not want Shri Dalmia to know that I was having dealings with Bhagwati Trading Company. I also want to add that Raghunath Rai must have known that the cross-contract were with Bhagwati Trading Company because the name of Bhagwati Trading Company was mentioned as the payee on the counterfoils of the cheques issued in favour of Bhagwati Trading Company."
186. Chokhani seems to have attempted to undo the effect of his statement on November 13, but being of divided mind, made inconsistent Dagduas even on November 14, 1958. he was in difficult position. He attempted to show that Dalmia did not know about Bhagwati Trading Company and also to show that Raghunath Rai had reasons to know about it and was therefore in the position of an accomplice, a stand which is also taken by Dalmia.

187. We may now deal first with the case of Chokhani, appellant. Chokhani has admitted his entering into the various transactions of purchase and sale and to have set up Bhagwati Trading Company for convenience to carry out the scheme of diverting the funds of the Insurance Company to the Union Agencies by way of temporary loan. His main plea is that he had no attention to cause loss to the Insurance Company and did not know that the way he arranged funds for the Union Agencies from the Insurance Company was against law. He contends that the had no dishonest intentions and therefore did not commit any of the offences he had been charged with, and convicted of.

188. Learned counsel for Chokhani has urged two points in addition to some of the points of law urged by learned counsel for Dalmia. He urged that the transactions entered into by Chokhani were ordinary genuine commercial transactions and that there was not evidence of Chokhani's acting dishonestly in entering into those transactions. It is further said that the High Court recorded not finding on the latter point though it was necessary to record such a finding, even though this point was not seriously urged.

189. In support of the contention that the purchase and sale transactions were genuine commercial transactions, it is urged that to meet the losses of the Union Agencies Chokhani was in a position to sell the shares held by it or could have raised the money on its credit. He did not sell the shares as they were valuable and as their sale would have affected the credit of the Union Agencies. Chokhani had been instructed in September, 1954, that the yield from the investment of the Insurance Company was not good and

that the funds of the Insurance Company be invested in securities. Such instructions are said to have been given when he was authorised by Dalmia to purchase and sell securities on behalf of the Insurance Company. It is suggested that these instructions were given in 1953, and not in 1954 when Dalmia was going abroad. In view of this authority, Chokhani decided on a course of action by which he could invest the insurance money in securities and also help the Union Agencies. It is submitted that it was not necessary to mention Bhagwati Trading Company to the head office as the Insurance Company was going to suffer no loss and was simply converted in knowing of the sale and purchase transactions. Chokhani's payment of the purchase price in anticipation of the delivery of the securities, was bona fide.

190. We have already expressed the opinion that the transaction in connection with the investment of the fund of the Insurance Company were not bonafide purchase an sale transactions. They were transactions with a purpose. They were motivated in the interests of the Union Agencies and not in the interests of the Insurance Company.

191. The mere fact that on account of the non-delivery of securities within a reasonable time of the payment of the purchase money made the brokers or Bhagwati Trading Company or both of them liable to an action, does not changes the nature of the transactions. That liability can co-exist with the criminal liability of Chokhani if the transactions were such which could amount to his committing breach of trust. In fact, the offence of breach of trust ins not with respect to his entering into the sale and purchase transactions. It is really on the basis of his paying the money out of the Insurance Company's funds to the Union Agencies through Bhagwati Trading Company, in contravention of the manner in which he was to deal with that money. These purchase and sale transactions were just a device for drawing on those funds.

192. We do not believe that Chokhani really intended to purchase the securities thought he did purchase some, in certain circumstances, and that the non-delivery of the securities was not a case of just his slightly postponing the delivery of he securities. No reason is given why such a concession should have been made to the seller of the securities and the period during which such purchased securities remained undelivered is much longer than what can be said to be a reasonable period during which purchased securities for ready delivery should be delivered. The fact, if true, that the Insurance Company suffered no monetary loss on account of the purchase and sale transactions and the passing of its money to the Union Agencies, does to suffice to make the transaction an honest one. The gain which the Union Agencies made out of the money it got from the Insurance Company was wrongful gain. It was not entitled to profit by that money. One is said to act dishonestly when he does any thing with the intention of causing wrongful gain to one person or wrongful loss to another. Wrongful gain means gain by unlawful means of property to which the person gaining is not legally entitled and wrongful loss is loss by unlawful means of property to which the person using it is legally entitled.

193. It is urged that Chokhani's keeping Bhagwati Trading Company secret from Delhi was not the result of a guilty conscience, but could be due to his nervousness or fear. We do not agree with this suggestion. He had nothing to fear when he was acting honestly and, according to him, when he was doing nothing wrong.

194. It is further submitted that what Chokhani did amounted simply to the mixing of the funds of the Insurance Company and the Union Agencies. We do not think that this would be the correct interpretation of what Chokhani did. It was not a case of mixing of funds but was a case of making over the funds of the Insurance Company to the Union Agencies.

195. The fact that the Administrator did to cancel any contract entered into on behalf of he Insurance Company under the powers given to him by section 52(c) of the Insurance Act, does not mean that every such contract was in the interest of the Insurance Company. The Administrator has stated that he did not know the legal position as to whether those contracts stood or not.

Of the points of law urged for Chokhani, we have already dealt with those relating to the jurisdiction of the Delhi Court to try the various offences, to the content of the words 'property', 'dominion' and 'agency' in s. 409, I. P. C. The only other points raised are that the offence under s. 477A could not be said to be committed in pursuance of the conspiracy and that it was not a case of one conspiracy but of several conspiracies.

196. The charge under section 477A, I.P.C. is based on the letter written by Chokhani from Bombay to Delhi intimating his entering into the contracts of purchase of securities and indicating that cheques had been issued in payment to the brokers. It is true that these letters did not specifically state that the cheques had been issued to the brokers, but that is the implication when the letters refer to the contacts and the statement sent along with them and which relate simply to the transactions between the Insurance Company and the brokers and in no way indicate the cross-contracts between the brokers and Bhagwati Trading Company. It is further said that the payment of Bhagwati Trading Company was as an agent of the brokers. There is no evidence that the broker appointed Bhagwati Trading Company as their agent for the purpose. The evidence is that on Chokhani's representation that the Insurance Company would pay to Bhagwati Trading Company and get the securities from Bhagwati Trading Company that the brokers neither got the price nor delivered the securities.

197. It is also contended that Chokhani was not a 'servant' of the Insurance Company and therefore does not come within section 477A. I.P.C. which makes certain conduct of a clerk, office or servant an offence Chokhani was a servant of the Insurance Company as he was its Agent and received payment for doing work as an agent. His being a full-time servant of the Union Agencies does not mean that he could not be a servant of any other company, or other employer.

198. We do not agree with the contention that it was a case of several conspiracies, each transaction to meet the losses, as they occurred, giving rise to an independent conspiracy. The conspiracy was entered into in the beginning of August, 1954, when such circumstances arose that funds had no provided to the Union Agencies to meet its losses. The conspiracy must have been to continue up to such time when it be possible to anticipate that such a situation would not more arise. Similar steps to meet the losses were taken whenever the occasion arose. The identity of purpose and method is to be found in all the transactions and they must be held to have taken place in pursuance of the original conspiracy.

199. We next come to the case of Vishnu Prasad, appellant. He was the sole proprietor of Bhagwati Trading Company. His main defence is that the was ignorant of the various transactions entered into by Chokhani on behalf of Bhagwati Trading Company and that it was Chokhani who kept the books of accounts and entered into those transactions. The courts below have found that he knew of transactions and the nature of the conspiracy. We agree with this opinion. There is sufficient material on record to establish his knowledge and part in the conspiracy.

200. Bhagwati Trading Company came into existence just when the Union Agencies suffered losses and was not in a position to pay them and, consequently, there arose the necessity for Dalmia and Chokhani to devise means to raise funds for meeting those losses. Vishnu Prasad opened the banking accounts in two banks at Bombay on August 9 and August 11, 1954, depositing the two sums of Rs. 1,100 each in each of the two banks. He states that the got this money from Chokhani. The money was, however, withdrawn after a short time and paid back to Chokhani and no further contribution to the funds of the Bhagwati Trading Company was made on his behalf. The Company functioned mainly on the amounts received from the Insurance Company. Vishnu Prasad, therefore, cannot be said to be quite innocent of the starting other company and the nature of its business.

201. He started, in answer to question No. 24:

"I started business in the name of Bhagwati Trading Company in 1953, or beginning of 1954. I however did no business in the name of that company. G. L. Chokhani stated that I should do business for the purchase or sale of securities."
and in answer to question No. 26 he stated that he had no knowledge about Chokhani's entering into contracts on behalf of the Bharat Insurance Company for the purchase of securities and his entering into cross-contracts with the same firm of brokers for the sale of those securities on behalf of Bhagwati Trading Company but admitted that he knew that Chokhani was doing business for the purchase and sale of securities on behalf of Bhagwati Trading Company. He expressed ignorance about similar future contracts for

purchase of securities on behalf of the Insurance Company and cross-contracts for the sale of those securities on behalf of Bhagwati Trading Company.

202. Vishnu Prasad, however, made a statement at the close of the day when he had made the above statement and said:

"In answer to question No. 24 I want to state that I did not start business of Bhagwati Trading Company in 1953 or the beginning of 1954 but only intended to start that business."
203. The latter statement deserves no acceptance and is a clear indication that the implications of his earlier statement worked on his mind and he attempted to indicate that he was not even responsible in any way for the starting of the business of Bhagwati Trading Company. Bhagwati Trading Company did come into existence and ostensibly did business. The latter statement therefore cannot be true.

204. Vishnu Prasad further knew, as his answer to question No. 157 indicates, that Chokhani did shares speculation business at Bombay. He, however, stated that he did not know on behalf of which company he did that business.

205. What Vishnu Prasad actually did in connection with the various transactions which helped in the diversion of the funds of the Insurance Company to the Union Agencies has to be looked at in this background. He cashed a number of cheques issued on behalf of the Insurance Company and made over that money to Chokhani, who passed it on the Union Agencies. he issued cheques on behalf of Bhagwati Trading Company in favour of Bharat Union Agencies after the amounts of the cheques of the Insurance Company in favour of Bhagwati Trading Company had been deposited in the Bank. Some of these cheques issued in favour of Union Agencies were filled in by Vishnu Prasad himself and therefore he must have known that he was passing on the money to the Union Agencies. In fact, some of the cheques issued on behalf of Bhagwati Trading Company in favour of the Union Agencies were deposited in the bank by Vishnu Prasad himself.

206. It is therefore no possible to believe that Vishnu Prasad did not know that the amounts which his company viz., Bhagwati Trading Company, received from the Insurance Company must have purported to be on account of securities sold to the Insurance Company, as that was the business which Bhagwati Trading Company professed to do and, according to him, he knew to be its business. He knew that most of this amount was passed on to the Union Agencies. Both these facts must have put him on enquiry even if he did not initially know of the nature of the business which brought in the money to, and took out the money form, Bhagwati Trading Company. he is expected to knew that the Insurance Company was not likely to purchase securities so frequently. If he had made enquiries, he would have learned about the nature of receipts and payment and in fact we are inclined to the view that the must have known of their nature and that it is not reasonable that he would be completely in the dark.

207. The business of Bhagwati Trading Company is said to have been started as Vishnu Prasad was not taking interest in the other business. This should indicate that he must have evinced interest in the activities of Bhagwati Trading Company which continued for over a year and which made him receive and dispose of lakhs Rupees. Surely, it is not expected that he would have made no effort to know what is required to be know by one carrying on business for the purchase and sale of securities, and any attempt to have known this would have necessarily led him to know that securities were being purchased on behalf of he Insurance Company and were not delivered to it and that Bhagwati Trading Company purchased no securities form the Union Agencies and that any payment by it to the latter was for something which Bhagwati Trading Company was not liable to pay. It follows that he must have known that money was being received from the Insurance Company for nothing which was due to Bhagwati Trading Company from that company and that most of that money was being paid to the Union Agencies for payment of which Bhagwati Trading Company had no liability and that the net result of the transactions of receipt of money from the Insurance company and payment of it to the Union Agencies was that Bhagwati Trading Company was acting to help the diversion of fund form the Insurance Company to the Union Agencies.

208. We therefore hold that Vishnu Prasad has been rightly found to be in the conspiracy.

209. We may now deal with the case of Dalmia, appellant. The fact that the funds of the Bharat Insurance Company were diverted to Union Agencies by the transactions proved by the prosecution, is no challenged by Dalmia. his main contention is that he did not know what Chokhani had been doing in connection with the raising of funds for meeting the losses of the Union Agencies. There is, however, ample evidence to indicate that Dalmia known of the Scheme of the transactions and was a party to the scheme inasmuch as the transactions were carried through under his instructions and approval:

210. The facts which have a bearing on this matter are:

(1) Dalmia had the clearest motive to devise means for meeting the losses of the Union Agencies.

(2) Dalmia actually looked after the share business of the Union Agencies at Calcutta and Delhi. He had knowledge of the losses of the Union Agencies.

(3) The frequency of telephonic calls between him and Chokhani during the period when the losses took place and steps were taken to meet them, especially during the early stages in August and September, 1954, when the scheme was being put into operation, and in July and August, 1955, when there had been heavy and recurring losses.

(4) Dalmia's informing the Imperial Bank, Delhi, on September 4, 1954, about his powers to deal with securities and actually withdrawing securities that day, which were shortly after sold at Bombay and whose proceeds were utilised for meeting the losses.

(5) The gradually increasing retention of securities in the office of the Insurance Company and consequently the gradually reduced deposit of securities in the Banks.

(6) The transfer of securities held by the Insurance Company from Delhi to Bombay when fund were low there to meet the losses.

(7) The purchase and sale of securities in the relevant period in order to meet the losses were under his instructions.

(8) A larger use of converting securities into inscribed stock certificates which was used for concealing the disclose of the interval between the date of purchase of the securities which were then not received, and the date when those securities were recouped later.

(9) Dalmia's annoyance and resentment on September 9, 1955, when the auditors made a surprise inspection of the office of the insurance company and wanted to see the securities.

(10) His conduct on September 15, 1955.

(11) His not going to meet Mr. Kaul on September 16, 1955, and instead, sending his relatives to state what was not the full and correct statement of facts which, according to his own statements, were known to him by then.

(12) His confession P. 10 together with the statement Exhibit p. 11 and the statement made to Annadhanam that he carried on his speculative business in shares in the name of the Union Agencies.

211. One of the main factors urged in support of the contention that Dalmia was in the conspiracy is that the entire scheme of conspiracy was entered into for the sole benefit of Dalmia. It is to reasonable probable that such a conspiracy would come into existence without the knowledge or consent of Dalmia. The conspiracy charge framed against Dalmia mentioned the object of the conspiracy as 'meeting losses, suffered by you, R. Dalmia, in forward transactions, of speculation in shares, which transactions were carried on in the name of the Bharat Union Agencies Limited...' and the charge under section 409 I.P.C. referred to the dishonest utilisation of he funds of the Insurance Company.

212. This matter has been considered form several aspects. The first is that Dalmia is said to have owned the entire shares issued by the Union Agencies, or at lest to have owned a substantial part of them and was in a position to control the other shareholders. The

appreciate his aspect, it is necessary to give an account to the share-holding in this company. The Union Agencies was incorporated at Bombay on April 1, 1948, as a private limited company, with its registered office at Bombay. It also had an office at 10, Daryaganj, Delhi, where the head office of the Bharat Insurance Company was. Its authorised capital was Rs. 5,00,000. The total number of shares issued in 1949 was 2,000. Out of these Dalmia held 1,200 shares, Dalmia Cement & Paper Marketing Company Ltd. (hereinafter called the Marketing Company) 600 shares, Shriyans Prasad Jain brother of S. P. Jain, 100 shares and Jagat Prasad Jain, the balance of 100 shares. The same position of share-holding continued in 1950. In 1951, Dalmia continued to hold 1,200 shares, but the other 800 shares were held by Govan Brothers. The position continued in 1952 as well and, in the first half of 1953, Dalmia increased the number of his shares to 1,800 and Govan Brothers increased theirs to 1,200 and the total shares issued thus stood at 3,000. This position continued up to September 21, 1954.

213. On September 22, 1954, 2,000 shares were further issued to S. N. Dudani, a nominee of Asia Udyog. The total shares on that date stood at 5,000 of which Dalmia held 1,800, Govan Brothers 1,200, and Dudani 2,000. On October 4, 1954. R. P. Gurha and J. S. Mittal each got 100 shares from Govan Brother with the result that thereafter the position of shares-holding was: Dalmia 1,800; Govan Brothers 1000; Dudani 2,000; Gurha 100; and Mittal 100, out of the total number of issued shares of 5000.

214. It is said that Dalmia transferred his 1,800 shares to one. L. R. Sharma on October 30, 1954. Sharma's holding 1,800 shares was mentioned in the return, Exhibit P. 3122 filed by the Union Agencies as regard shares capital and shares as on December 31, 1955, in the office of the Register of Companies in January 1956 with respect of the year 1955. The return showed that the transfer and taken place on January 31, 1955. It would appear that the alleged sale of shares to Sharma in October 1954 was no mentioned in a similar return which must have been submitted to the Registrar of Companies in January, 1955, and that therefore its transfer was shown on January 31, 1955, probably a date subsequent to the submission of the relevant return for the year 1954.

215. A brief account of the various share-holders may be given. Dalmia was a Director of Govan Brothers Ltd., and was succeeded, on his resignation, by O. P. Dhawan, who was an Accountant in the Delhi Office of the Union Agencies. He was also an employee of another company named Asia Udyog Ltd. Another Director of Govan Brothers Ltd. was D. A. Patil, Income-tax Adviser in the concerns of Dalmia. The shares scrapes in the Marketing Company standing in the name of Govan Brother Ltd. and three blank shares transfer from signed by S. N. Dudani as Secretary of Govan Brother Ltd., in the column entitled 'seller' were recovered form Dalmia's house on search on November 25, 1955. Dudani was the personal accountant of Dalmia and Manager of the Delhi Office of Bharat Union Agencies. The inference drawn by the Courts below from these circumstances is that Govan Bothers Ltd. was the concern of Dalmia, and this is reasonable. No

Satisfactory explanation is given why the shares standing in the name of Govan Brothers Ltd. and the blank transfer forms should be found in Dalmia's residence.

216. Dudani was the personal accountant of Dalmia and Manager of the Delhi Office of the Union Agencies, and was also Secretary of Asia Udyog Ltd. Asia Udyog appears to be a sister concern of the Union Agencies. It was previously known as Dalmia Jain Aviation Ltd. It installed a telephone at one of Dalmia's residences in January, 1953. Its offices were in the same room in which the offices of the Union Agencies were. Dhawan, who succeeded Dalmia as Director of Govan Brothers Ltd., was an employee of Asia Udyog. Gurha was the Accountant of Asia Udyog, in addition to being Director of the Union Agencies. He had powers over the staff of both the companies. J. S. Mittal was Director of Union Agencies and held 100 shares in the Union Agencies as nominee of Govan Brothers Ltd., from October 4, 1954, and 1,000 shares as nominee of Crosswords Ltd., from some time about January 31, 1955. L. N. Pathak, R. B. Jain and G. L. Dalmia, were authorised to operate on the account of both the Union Agencies, Calcutta, and Asia Udyog Ltd., with the United Bank of India, Calcutta.

217. The issue and transfer of shares of the Union Agencies in September and October, 1954, seem to be in pursuance of an attempt to meet a contention, as at present urged for the State, that Dalmia was the largest shareholder in it. The same idea seemed to have led to the transfer of shares to Sharma by Dalmia. The verbal assertion of the sale having taken place in October, 1954, is not supported by the entry in Exhibit P. 3122 and what may be taken to be the entries in a similar return for the year 1954. This can go to support the allegation that Dalmia knew about the shady transactions which were in progress from early August, 1954.

218. The learned Sessions Judge relied on the following circumstances for his conclusion that Dalmia was synonymous with Bharat Union Agencies.

"1. The speculation business of Dalmia Cement and Paper Marketing Co. Ltd., the paid up capital of which nearly all belonged to Dalmia was on the liquidation of that company taken over by Bharat Union Agencies and more or less the same persons conducted the business of Bharat Union Agencies who were previously looking after Dalmia Cement & Paper Marketing Company.

2. Bharat Union Agencies was known and taken to be the concern of Dalmia by its then Accountant Dhawan and by the brokers with whom it had dealings.

3. Chokhani, who held power of attorney on behalf of Dalmia and Bharat Union Agencies, told the brokers at the time he gave business of Bharat Union Agencies to them that it was the business of Dalmia.

4. The salaries of personal and domestic employees of Dilemma were paid by Bharat Union Agencies sand those payments were debited to the Salaries Account of the company. The personal employees of Dalmia were thus treated as the employees of Bharat Union Agencies.

5. The business done in the name of Dalmia with Jagdish Jagmohan Kapadia was treated as the business of Bharat Union Agencies.

6. The funds of Bharat Union Agencies were used to discharge an obligation personally undertaken by Dalmia. The price of the shares purchased in the process in the name of Dalmia was paid out of the fund of Bharat Union Agencies and the purchase of those shares was treated in the books of Bharat Union Agencies as part of its investment.

7. When sister-in-law of Dalmia wanted money it was lent to her out of the found of Bharat Union Agencies and in the books of that company no interest was charged form her".

219. It has been strenuously urged by Mr. Dingle Foot that what certain persons considered to be the nature of the Union Agencies or what Chokhani told them could not be evidence against Dalmia with respect to the question whether he could be said to be identical with the Union Agencies. We need not consider this legal objection as it is not very necessary to rely on these considerations for the purposes of the finding on this point. It may be said, however, that prima facie there seems to be no legal bar to the admissibility of Dagduas that Chokhani told certain persons that Union Agencies was the business of Dalmia. He had authority to represent Dalmia and Union Agencies on the basis of the power of attorney held by him from both. His statement would thus appear to be the statement of their 'agent' in the course of the business. We have considered the reasons given for the other findings by the learned Sessions Judge and accepted by the High Court and are of opinion that the findings are correct and that they can lead to no other conclusion than that no distinction existed between Dalmia and the Union Agencies and that whenever it suited Dalmia or the interests of the Union Agencies such transactions of one could be changed to those on behalf of the other. We may, however, refer to one matter.

220. Dalmia admits having purchased shares of Dalmia Jain Airways of the face value of Rs. 6,00,000/- from Anis Haji Ali Mohammad, on behalf of the Union Agencies, in his own name, though the real purchaser was the Union Agencies and that he did so as the seller and his solicitor did not agree to sell the shares in the name of the latter. The explanation does not appear to be satisfactory. The seller had no interest in whose name the sale took place so long as he gets the money for the shares he was selling.

221. Mr. Dingle Foot has urged that these various considerations may indicate strong association of Dalmia with the Union Agencies but are not sufficient to establish his

complete identity with it, as is necessary to establish in view of the charges framed. Dalmia's identity with Union Agencies or having great interest in it is really a matter providing motive for Dalmia's going to the length of entering into a conspiracy to raise fund of meeting the losses of the Union Agencies by diverting the funds of he Insurance Company and which would amount to committing criminal breach of trust.

222. Dalmia admits having given instructions about the business of the Union Agencies in 1954 when he was not a Director of that company, and in 1955 when he was not even a shareholder.

223. Dalmia's own statement to Annadhanam on September 20, 1955, goes to support the conclusion in this respect. He stated to him then that the had lost other moneys in speculation which he did through his private companies and that most of those transactions were through the Union Agencies.

224. Further, the charge said that he committed criminal breach of trust of the funds of the Insurance Company by wilfully suffering Chokhani to dishonestly misappropriate them and dishonestly use them or dispose of them in violation of the directions of law and the implied contract existing between Dalmia and the Insurance Company prescribing the mode in which such trust was to be discharged. It was in describing the manner of the alleged dishonest misappropriation or the use or disposal of the said funds in violation of the legal and contractual directions that the charge under section 409 I.P.C. described the manner to consist of withdrawing the funds from the banks by cheques in favour of Bhagwati Trading Company and by the utilisation of those funds for meeting losses suffered by Dalmia in forward transactions in shares carried on in the name of Bharat Union Agencies, and for other purposed not connected with the affairs of the Insurance Company. Even in this description of the manner, the emphasis ought to be placed on the expression 'for meeting losses suffered by Dalmia in forward transactions in shares carried on in the name of the Bharat Union Agencies and for other purposes not connected with the affairs of the said Bharat Insurance Company' and not on the alleged losses suffered by Dalmia personally. We are therefore of opinion that firstly the evidence is adequate to establish that Dalmia and the Union Agencies can be said to be interchangeable and, secondly, that even if that is not possible to say, Dalmia had sufficient motive, on account of his intimate relations with the Union Agencies, for committing breach of trust, and thirdly, that the second finding does not in any way adversely affect the establishment of the offence under section 409 I.P.C. against Dalmia even though the charge described the utilisation of the money in a somewhat different manner.

225. The entire scheme of the transactions must start at the instance of the person or persons who were likely to suffer in case the losses of the Union Agencies were not paid at the proper time. There is no doubt that in the first instance it would be the Union Agencies as a company which would suffer in its credit and its activities. We have found

that Dalmia was so intimately connected with this company as could make him a sort of sole proprietor to the company. He was to lose immensely in case the credit of the Union Agencies suffered, as it was commonly believed to be his concern and he had connections and control over a number of business concerns and had a gift stake in the business world. His prestige and credit were abound to suffer severely as a result of the Union Agencies losing credit in the market. There is evidence on record that if the losses are not promptly paid, the defaulter would suffer in credit and may not be able to persuade the brokers to enter into contracts with him.

226. It is suggested for Dalmia that Chokhani had a greater interest in seeing that Union Agencies does no suffer in credit. We do not agree. If the Union Agencies failed on account of its losing credit in the market on its failure to meet the losses, Chokhani may stand to lose his service with the Union Agencies. That would have meant the loss of a few hundred rupees a month. In fact, he need not have suffer any loss. He could have been employed by Dalmia who had great confidence in him and whom he had been serving faithfully for a long time. Chokhani, as agent of Dalmia, had certainly credit in the market. There is evidence of his good reputation, but much of it must be have been the result of his association with Dalmia and his concerns. He really enjoyed reflected glory. He had no personal interest in the matter as Dalmia had. We therefore do not consider this suggestion to be sound and are of opinion that Dalmia was the only person who had to devise means to meet the losses of the Union Agencies.

227. Further, Dalmia admits that he used to give instructions with regard to the speculation-in-shares business of the Union Agencies at Calcutta and Delhi during 1954 and 1955, and stated, in answer to question No. 210 with respect to the evidence that Delhi Office of the Union Agencies used to supply funds for meeting the losses suffered by it in the speculation business at Calcutta and Delhi:

"It is correct that as the result of shares, speculation business at Calcutta and Delhi Bharat Union Agencies suffered losses in the final analysis. I was once told by R. P. Mittal on telephone from Calcutta that G. L. Chokhani had informed him that the Bombay Office would arrange for funds for the loses suffered by the Calcutta Office of the Bharat Union Agencies. It was within my knowledge that if the Bombay Office of the Bharat Union Agencies was not in a position to supply full fund for meeting the losses at Calcutta the Delhi Office of the Company would supply those funds."

228. And, in answer to question No. 211 which referred to the evidence about the Delhi Office of the Union, Agencies being short of liquid fund from August, 1954, onward and in 1955, to meet the losses, he said:

"It was within my knowledge that Bharat Union Agencies was holding very large number of shares. But I did not know the name of the Companies of which the shares were held by the Bharat Union Agencies and the quantum of those shares."

229. Dalmia also admitted his knowledge that Chokhani had entered into contract for the forward sale of Tata Shares at Bombay on behalf of the Union Agencies during 1954 and 1955 and that the Union Agencies suffered losses on this business, but stated that he did not know the extent or details of the losses. Dalmia must be expected not only to know the losses which the Union Agencies suffered, but also their extent. He is also expected to devise or at least know the ways in which those loses would be met. A mere vague knowledge, as stated, about the Union Agencies possessing a number of shares could not have been sufficient satisfaction about the losses being successfully met. It is to be noted that he did to deny that the Delhi Office was short of funds and that it used to supply funds to meet the losses.

230. Further, if Dalmia's statement about Mittal's communication to him be correct, it would appear that when the Bombay Office of the Union Agencies was not in a position to meet the losses, Chokhani would not think of arranging, on his own, funds to meet the losses, but would first approach the Delhi Office of the Union Agencies. The Delhi Office, then, if unable to meet the losses, would necessarily obtain instructions from Dalmia. It can therefore be legitimately concluded that Dalmia alone, or in consultation with Chokhani devised the scheme of the transactions which led to the diversion of the fund of the Insurance Company to the Union Agencies and carried it out with the help of the other appellants.

231. It has been contended both for Chokhani and for Dalmia that funds could have been found to meet the losses of the Union Agencies by means other than the diversion of the Insurance Company's funds. We need not discuss whether the shares held by the Union Agencies at the time could be sold to raise the funds or whether on the mere credit of Dalmia funds could be raised in no time. These courses were not adopted. The selling of the shares which the Union Agencies possessed, might itself affect its credit, and that no business concern desires, especially a concern dealing in share speculation business.

232. Dalmia had been in telephonic communication with Chokhani. It is significant, even thought there is no evidence about the content of the conversations, that there had been frequent calls, during the period of the losses in August and September, 1954, between Dalmia's telephone and that of Chokhani at Bombay. That was the period when Dalmia was confronted with the position of arranging sufficient funds at Bombay for the purpose of diverting them to the Union Agencies. Very heavy losses were suffered in July and August, 1955. Securities of the face value of Rs. 79,00,000 and Rs. 60,00,000 were purchased in July and August, 1955, respectively. A very large number of telephone calls took place during that period between Dalmia at Delhi and Chokhani at Bombay. It is true that during certain periods of losses, the record of telephonic communications does not indicate that any telephonic communication took place. We have already stated, in considering the transactions, that the pattern of action to be taken had been fully determined by the course adopted in the first few transactions. Chokhani acted according to that pattern. The only thing that he had to do in connection with further contingencies

of demands for losses, was to sent for securities form Delhi when the funds at Bombay were low. Such requests for the transfer of securities could be made in good time or by telephonic communication or even by letter addressed to Dalmia personally. The fact remains that a number of securities were sent form Delhi to Bombay under the directions of Dalmia when there was not apparent reason to sent them other then the need to meet losses incurred or expected.

233. Dalmia informed the Imperial Bank at Delhi about his power to deal with securities on September 4, 1954, though he had that power form September, 1951, itself. This was at the really stage of the commencement of the losses of the Union Agencies suffered for a period of over a year and the planned diversion of the funds of the Insurance Company to meet the losses of the Union Agencies.

234. Raghunath Rai states that on the resignation of Chordia it was deemed necessary that the powers of the Chairman be registered with the Bank so that he be in a position to operate on the securities' safe-custody account of the company with the Bank, and that the sent the copy of the bye-laws etc., without the instructions of Dalmia, though with his knowledge, as he was told that it was necessary for the purpose of the withdrawal of the securities for which he had given instructions. This was, however, not necessary, as Raghunath Rai had the authority to endorse, transfer, negotiate and or deal with Government securities, etc., standing in the name of the company. We are of opinion that Dalmia took this step to enable him to withdrawn the securities form the Bank when urgently required and another person authorised to withdraw be not available or be not prepared to withdraw them on his own.

235. The position of the securities may be briefly described on the basis of Appendix I of the Investigator's report Exhibit D. 74. The amount of securities at Bombay with the Chartered Bank, on June 30, 1953, was Rs. 53,25,000 out of a total worth Rs. 2,69,57,200. The amount of securities in the Bank continued to be the same till March 31, 1954, even thought the total amount of securities rose to Rs. 3,04,88,600. Thereafter, there had been a depletion of securities with the Chartered Bank at Bombay with the result that on December 31, 1954, it had no securities in deposit. The amount of securities in the Imperial Bank of India, New Delhi, also fell subsequent to June 30, 1954. It came down to Rs. 2,60,000 on March 31, 1955, from Rs. 59,11,100 on June 30, 1954.

236. Securities worth Rs. 52,00,000 were in the two office on June 30, 1953. The amount of such securities kept on steadily increasing. It was Rs. 1,88,47,500 from September, 1953, to March 31, 1954. Thereafter, it rapidly increased every quarter, with the result that on March 31, 1955, the securities worth Rs. 3,76,50,804 out of the total worth Rs. 3,86,97,204 were in the offices. The overall position of the securities must have been known to Dalmia. The saving of Bank charges is no good explanation for keeping the securities of such a large amount, which formed a large percentage of the Company's holdings, in the

office and not in deposit with a recognized bank. The explanation seems to be that most of the securities were to really in existence.

237. Raghunath Rai states that he spoke to Dalmia a number of times, presumably, in July and August, 1955, about the non-receipt of the securities of the value of Rs. 81,25,000, Rs. 75,00,000 and Rs. 69,00,000 which were purchased in the months of April-May, July and August 1955 respectively, and Dalmia used to tell him that as the purchases and sale of securities had to be effected at Bombay, Chokhani could send them to the head office only after it had been decided about which securities would be finally retained by the Insurance Company. This statement implies that Dalmia knew and anticipated the sale of those securities and such a sale of those securities, as already mentioned, could not be in the usual courses of business of the company. The securities were to be sold only if by the next due date for payment of interest they could not be recouped and did not exist with the company. Such an inference is sufficient to impute Dalmia with the knowledge of the working of the scheme.

238. Securities were sent to Bombay from Delhi seven times during the relevant period and they were of the face value of Rs. 2,14,82,500. Securities of the face value of Rs. 17,50,000 were withdrawn from the Imperial Bank, Delhi, on September 4, 1954 - vide Exhibit P. 1351. They were sold at Bombay on September 9, 1954. Thereafter, 3% 1957 securities of the face value of Rs. 37,75,000 were sent on January 6, 1955. Raghunath Rai depose that he withdrew these from the Imperial Bank, Delhi, under the directions of Dalmia, and that he handed them over to Dalmia. These securities did reach Bombay. There is no clear evidence as to how they went from Delhi to Bombay. They were sold on January 11, 1955.

239. Eleven stock certificates of the face value of Rs. 57,72,000 were sent to Bombay on March 16, 1955, vide letter Ex, D. 3. Thereafter, stock certificates were sent thrice in July 1955. Stock certificate in respect of 3% Bombay Loan of 1955, of the face value of Rs. 29,75,000 was sent to Bombay on July 15, 1955 - vide Exhibit P. 923. On the next day, i.e., on July 16, 1955, stock certificates of 3% Bombay Loan of 1955 of the face value of Rs. 15,50,000 and stock certificates of 3% Loan of Government of Madhya Pradesh of the face value of Rs. 60,500 were sent to Bombay - vide Exs. D. 1 and D. 2 respectively.

240. Lastly, stock certificates of 2 3/4% Loan of 1962 of the face value of Rs. 56,00,000 were sent to Bombay on August 5, 1955.

241. Letters Exhibits D. 3 and P. 892 state that the stock certificates mentioned therein were bring sent 'under instructions of the Chairman'.

242. Raghunath Rai has deposed that the other stock certificates send with letters Exhibits D. 1, D. 2 and P. 923, were sent by him as the securities with respect to which those certificates were granted were maturing in September and were redeemable at Bombay.

It has been urged that they could have been redeemed at Delhi and that they need not have been sent by Raghunath Rai on his own a couple of months earlier. We do not consider the sending of the securities a month and a half or two months earlier than the date of maturity to be unjustified in the cause of business. It is to be notices that what was sent were the stock certificates and it might have been necessary to get the securities covered by those certificates for the purpose of redemption and that might have taken time. No pointed question was put to Raghunath Rai as to why he sent the securities two moths ahead of the date of maturity.

243. Dalmia denies that he gave any instructions for the sending of the securities. There seems to us to be no good reason why the expression 'under the instructions of the Chairman' would be noted in letters Exhibits D. 3 and P. 892, unless that represented the true statement of fact.

244. We have already discussed and expressed the opinion, in 'considering the evidence of Raghunath Rai, that Raghunath Rai was told by Dalmia, when informed of the purchase or sale of securities, that had been done under instructions and that he had confirmed them. We may further state that there is no resolution of the Board of Directors empowering Chokhani to deal with the securities. He was, however, empowered by resolutions at the meeting of the Board data June 29, 1953, to lodge and receive G. P. Notes from the Reserve Bank of India for verification and endorsement on the same and to endorse or withdraw the G. P. Notes on behalf of the company in the capacity of an agent. Chokhani was also empowered by a resolution dated October 1, 1953, to deposit and withdraw Government securities held in safe custody account by the company. The aforesaid powers conferred on Chokhani are different from the powers of sale or purchase of securities.

245. Dalmia has stated that he authorised Chokhani to purchase securities in about October, 1953, when he was to leave for abroad and that thereafter Chokhani had been purchasing and selling securities in the exercise of that authority without consulting him. It is urged for him that Raghunath Rai's statement that he used to obtain confirmation of the purchase and sale of the securities from him cannot be true, as there was no necessity for such confirmation. Chokhani does not appear to have exercised any such authority during the period Dalmia was aboard or till August, 1954, and therefore Dalmia's statement does not appear to be correct.

246. Chokhani and Raghunath Rai were authorised to operate upon the Bank account at Bombay on October 1, 1953. Dalmia states, in paragraph 17 of the written statement data March 30, 1959, that this wad done as Chokhani had been given the authority for the sale and purchases of securities at the same time. The Board did not give any such authority to Chokhani and if the system of joint signatures was introduced for the reason alleged, there seems to be no good reason why the Board itself did not resolve that Chokhani be

empowered to sell and purchase securities. The explanation for the interdict of joint-signature scheme does not stand to reason.

247. Even if it be not correct that Raghunath Rai had to obtain confirmation, it stands to reason that he should report such transactions on the part of Chokhani to the Chairman, if not necessarily for his approval, at least for his information, as Chokhani had no authority to purchase and sell securities. These transaction have to be confirmed by the Board of Directors and therefore confirmation of the Chairman who was the only person authorised to purchase and sell securities was natural.

248. Raghunath Rai states that when he received no reply to his letter dated November 19, 1954, asking for distinctive numbers of securities not received at headquarters. Dilemma said that he would arrange for the dispatch of those securities from Bombay to the head office. No action was apparently taken in that connection. Raghunath Rai further states that on March 23, 1955, when he spoke to Dalmia about the non-receipt of certain securities Dalmia told him that he had already instructed Chokhani for the conversion of those securities into stock certificates and that it was in view of its statement of Dalmia that he had written letter Exhibit P. 916 to Chokhani stating therein.

"Your were requested for conversion of the above said G. P. Notes into Stock Certificate. The said certificate has not been received by us as yet. It may be sent now immediately as it is required for the inspection of the company's auditors."
249. This indicates that Dalmia was in the know of the position of securities and, on his own, gave instructions to Chokhani to convert certain securities into inscribed stock.

250. Dalmia admits Raghunath Rai's speaking to him about the non-receipt of the securities and his telling him that he would ask Chokhani to send them when he would happen to talk to him on the telephone.

251. Mention has already been made of securities of the face value of Rs. 17,50,000 being sent to Bombay from Delhi in the first week of September 1954. At the time securities of the face value of Rs. 53,25,000 were in deposit in the Chartered Bank at Bombay. There was thus no need for sending these securities from Delhi. Chokhani could have withdrawn the necessary securities from the Bank at Bombay. This indicates that on learning that there were no liquid funds for meeting the losses at Bombay, Dalmia himself decided to send these securities to Bombay for sale and for thus providing for the liquid funds there for meeting the cost of the intended fictitious purchase of securities to meet the losses of the Union Agencies. It is not suggested that these securities were sent to Bombay at the request of Chokhani.

252. Securities withdrawn in January, 1955, and stock certificates sent in March and August, 1955, coincided with the period when the Union Agencies suffered losses and

the funds of the Insurance Company at Bombay were low and were insufficient to meet the losses of the Union Agencies.

3% 1957 securities of the face value of Rs. 46,00,000 (Rs. 37,75,000 sent from Delhi and Rs. 8,25,000 withdrawn from the Chartered Bank at Bombay) were sold on January 11, 1955, and the proceeds were utilised in purchasing 2-3/4% 1962 securities of the face values of Rs. 46,00,000 in two lots, one of Rs. 35,00,000 and the other of Rs. 11,00,000.

253. On January 11, 1955, Rs. 3,34,039-15-3 the balance of the sale proceeds was deposited in the accounts of the Insurance Company. Inscribed stock for these securities worth Rs. 46,00,000 was duly obtained. Dalmia himself handed over inscribed stock certificate to Raghunath Rai some time in the end of January 1955.

254. This purchases, though genuine, was not a purchase in the ordinary course of business, but was for the purpose of procuring the inscribed stock certificate to satisfy the auditors, as already discussed earlier, that similar securities purchased in December, 1954 existed. The auditor were than to audit accounts of 1954 and not of 1955. In this connection reference may be made to Dalmia's attitude to the auditors surprise inspection on September 9, 1954, on the ground that they could not ask for inspection of securities purchased in 1955.

255. It may also be mentioned that purchasing and selling securities was not really the business of the Insurance Company. The Insurance Company had to invest its money and, under the statutory requirements, had to invest a certain portion at least in Government Securities. The value of Government securities does not fluctuate much. Dalmia states, in answer to question No. 25 (under section 342 Cr.P.C): 'Government securities are gift edged securities and there is very small fluctuation in these.' The question of purchasing and selling of securities with view - to profit could not therefore be the ordinary business of the Insurance Company. It has to purchase securities when the statutory requirements make it necessary, or when it has got funds which could be invested.

256. The Insurance Company had Government of India 3% Loan of 1957 in deposit with the Chartered Bank, Bombay, the face value of the securities being Rs. 53,25,000, from April 6, 1951, onward. The fact that these securities remained intact for a period of over three years, bears out our view that the purchasing and selling of securities was not the normal business of the Insurance Company, Securities are purchased for investment and are redeemed on the date of maturity.

257. In this connection, reference may be made to Khanna's statement in answered to question in cross-examination - The frequency of transactions relating to purchase and sale of securities depends upon the share market and its trends? His answer was that that was so, but that it also depended on the character of the company making the investment

in securities. It may be said that the trend of the share market will only guide the purchase or sale transactions of securities of a company speculating in shares, like the Union Agencies, but will not affect the purchases and sale by a company whose business is not speculation of shares like the Insurance Company.

258. Raghunath Rai states that when on September 9, 1955, the auditors wanted the production of the securities, said to be at Bombay, in the next two days, he informed Dalmia about it and Dalmia said that he would arrange for their production after two days. Dalmia, however, took no steps to contact Chokhani at Bombay, but rang up Khanna instead and asked him to certify the accounts as they had to be laid before the Company by September 30, and told him that everything was in order, that he would give all satisfaction later, soon after Chokhani was available and that he did not ask for an extension of time for the filling of the accounts as that word affect the prestige of the company. On September 10, 1955, when Raghunath Rai handed over the letter Exhibit P. 2 of even date from the auditors asking him to produce a statement of investments as on September 9, 1955, along with the securities or evidence if they were with other persons, by Tuesday, September 13, Dalmia had stated that Chokhani's mother had died and that he would himself arrange for the inspection of securities direct with the auditors. Chokhani's mother died on September 4, 1955. Dalmia had no reason to tell Raghunath Rai on September 9 that the securities would be produced for inspection in the next two days, unless he believed that he could get them in that time on contacting Chokhani, or did not wish to tell him the real position. Dalmia states that he contacted Chokhani for the first time on September 15, the last days of the morning and then learnt form Chokhani that the securities were not in existence, the money withdrawn for their purchase having been lent to the Union Agencies. The various statement made by Dalmia in these circumstances and his conduct go to show that he had a guilty mind and when he made the statement to Raghunath Rai that the securities would be produced within two days, he trusted that he would be persuasive enough for the auditors to pass the accounts without further insistence on the production of those securities.

259. Dilemma's not going to Mr. Kaul's Officer on September 16, and sending and relation to inform the latter of the shortfall in securities can have no other explanation than that he was guilty and therefore did not desire to have any direct talk about the matter with Mr. Kaul. There was no need to avoid meeting him and miss the opportunity of explaining fully what Chokhani had done without his own knowledge.

260. Dalmia has admitted that he sent his relations to Mr. Kaul and has also admitted that what they stated to Mr. Kaul was under his instructions. He states in answer to questions No 450, that after the telephonic talk with Chokhani on the evening of September 15, he consulted his brother Jai Dayal Dalmia and his son-in-law S. P. Jain about the position and about the action to be taken and that it was decided between them before they left for the office of Mr. Kaul that they would tell him that either the securities would be restored or their price would be paid off as would be desired by the Government and in

answer to question No. 451, said that it was correct that these persons told Mr. Kaul that considerable amount of the securities were missing and that they were to make good the loss. It is clear that these persons decided not to disclose to Mr. Kaul that the securities were not in stock because they were not actually purchased and the amount shown to be spend on them was lend to the Union Agencies. It was not a case of the securities missing but a case of the Insurance Company not getting those securities at all. It is a reasonable inference from this conduct of Dalmia that he did not go himself to Mr. Kaul as he was guilty and would have around it inconvenient to explain to him how the shortfall had taken place.

261. We may now discuss the evidence relating to Dalmia's making a confession to Annadhanam. Annadhanam was a Chartered Accountant and partner of the Firms of Chartered Accountants M/s. Khanna and Annadhanam, New Delhi, and he was appointed by the Central Government, in exercise of its powers under section 33(1) of the Insurance Act, 1938 on September 19, 1955, to investigate into the affairs of the Bharat Insurance Company and to report to the Government on such investigation. He started this work on "September 20. Annadhanam, having learnt from Raghunath Rai about the missing of a number of Government securities and the amount of their value form the statement prepared by him, called Dalmia to his office that evening in order to make a statement. Dalmia made the Dagduas Exhibits P. 10 and P. 11. P. 10 reads:

"I have misappropriated securities of the order of Rs. 2,20,00,000 of the Bharat Insurance Company Ltd. I have lost this money in speculation."
262. Exhibit P. 11 reads:

"Further states on solemn affirmation.

At any cost, I want to pay full amount by requesting my relatives or myself in the interest of the policy holders."

263. Dalmia admits having made the statement Exhibit P. 11. but made some inconsistent Dagduas about his making the statement Exhibit P. 10. It is said that he never made that statement, but in certain circumstance he asked the Investigator to write what he considered proper and that he signed what Annadhanam recorded. He did not directly state, but it was suggested in cross-examination of Annadhanam and in his written statement that he made that statement as a result of inducement and promise held out by either Annadhanam of Khanna (the other partner of M/s. Khanna and Annadhanam, Chartered Accountants, New Delhi) or both.

264. Dalmia's contention that Exhibit P. 10 was inadmissible in evidence, it being not voluntary, was repelled by the learned Sessions Judge, but was, in a way, accepted by the High Court which did not cancer it safe to rely on it. The learned Solicitor General urged that the confession Exhibit P. 10 was voluntary and was wrongly not taken into

consideration by the High Court. Mr. Dingle Foot contended that the High Court took the proper view and the confession was not voluntary. He further urged that the confession was hit by the provision of clause (3) of Article 20 of the Constitution.

265. The only witnesses with respect to the recording of the statement Exhibit P. 10 are Annadhanam and Khanna. The third person who knew about it and has stated about it is Dalmia himself. He has given his version both in his statement recorded under section 342 Cr.P.C., and in his written statement filed on October 24, 1958.

266. We may first note the relevant statement in this connection before decussating the question whether the alleged confession is voluntary and therefore admissible in evidence. Annadhanam made the following relevant statements:

Dalmia came to the office at 6.30 p.m., though the appointment was for 5.30 p.m. His companion stayed outside the office room. Annadhanam asked Dalmia the explanation with regard to the missing securities. Dalmia wanted two hours' time to give the explanation. The was refused. He then asked for half-an-hour's time at least. This was allowed. Dalmia went out of the office, but returned within ten minutes and said that he would make the statement and it be recorded. Annadhanam, in the exercise of the powers under section 33(3) of the Insurance Act, administered oath to Dalmia and recorded the statement Exhibit P. 10. It was read over to Dalmia. Dalmia admitted it to be correct and signed it. Shortly after, Dalmia stated that he wanted to add one more sentence to his statement. He was again administered oath and his further statement, Exhibit P. 11 was recorded. This was also read over and Dalmia signed it, admitting its accuracy.

267. Annadhanam states that no threat or inducement or promise was offered to Dalmia before he made these statements.

268. A third statement is also attributed to Dalmia and it is that when Dalmia was going away and was nearing the stairs-case, Annadhanam asked him whether the speculation in which he had lost the money was carried on by him in the company's account or in his private account. Dalmia replied that he had lost that money in his personal speculation business which was carried on chiefly thought one of his private companies, viz., the Union Agencies. This statement was not recorded in writing. Annadhanam did not consider it necessary, but this was mentioned by Annadhanam in his supplementary interim report, Exhibit P. 13, which he submitted to the Deputy Secretary, Ministry of Finance, on September 21, 1955. Annadhanam also mentioned about the statement recorded in Exhibit P. 10 in his interim report, Exhibit P. 12, dated September 21, 1955, to the Deputy Secretary Ministry of Finance.

269. In-cross-examination, Annadhanam stated that he did not send for Dilemma to the office of the Bharat Insurance Company when he had examined Raghunath Rai, as he had not made up his mind with respect to the further action to be taken. He denied that he had any telephonic talk with Mr. Kaul, the Deputy Secretary, Ministry of Finance,

prior to the recording of the statements, Exhibits P. 10 and P. 11. His explanation for keeping Khanna with him during the examination of Dalmia was that Khanna had done the detailed auditing of the accounts of the company in pursuance of the firm Khanna and Annadhanam being appointed auditors for 1954 by the Insurance Company. He denied that Dalmia told him that he had no personal knowledge of the securities and that the only information he had form Chokhani was that the latter had given money on loan to the Union Agencies. He stated that the statements Exhibits P. 10 and 11 were recorded in the very words of Dalmia. The statements were not actually read over to Dalmia but Dalmia himself read them over.

270. Annadhanam denied that he told Dalmia that he would not be prosecuted if he made the Dagduas Exhibit P. 10 and P. 11 and deposited the money alleged to have been embezzled and further stated that Khanna did not tell this to Dalmia. He denied that Exhibit P. 10 was never made by Dalmia and was false and reiterated that that statement was made by Dalmia. He did not consider it proper to reduce to writing every word of what transpired between him and Dalmia from the moments of the latter's arrival in his office till the time of his departure, and considered it proper to reduce in writing the statement which was made with regard to the missing securities. He further stated that his statement above Dalmia's making Dagduas Exhibits P. 10 and P. 11 voluntarily was on account of the facts that Dalmia himself volunteered to make those statement and that he himself had offered no inducements or promises.

271. In cross-examination by Mr. T. C. Mathur, he denied that he told Dalmia that as Chairman of the Insurance Company he should own responsibility for the missing securities and that that would make him a greater Dilemma because he was prepared to pay for the short-fall and further denied that it was on account of the suggested statement that Dalmia had asked for two hours' time before making his statement.

272. In cross-examination by Dalmia personally, Annadhanam explained the discrepancy in the amount of the securities admitted to be misappropriated. Exhibit P. 10, mentions the securities to be of the order of Rs. 2,20,00,000/- In his report Exhibit P. 12, he stated the admission to be with respect to securities of the face value of Rs. 2,22,22,000/-. The explanation is that in the interim report he worked out the face value of the missing securities to be Rs. 2,22,22,000/-, and he mentioned this figures in his report as Dalmia had admitted the misappropriation of the securities. Nothing sinister can be inferred from this variation.

273. Khanna practically supports the statement of Annadhanam, not only with respect of Exhibit P. 10 and P. 11, but also with respect to the third statement said to have been made near the staircase. His statement in cross-examination that it was possible that Annadhanam might haves asked the companion of Dalmia to stay outside the offices as the proceedings were of a confidential nature, does not in any way belie Annadhanam's statement as this statement itself is not define. In answer to the question whether it struck

him rather improper that Dalmia made the statement Exhibit P. 10 in view of his previous statement to Khanna that satisfaction would be afforded to the auditors on the points raised by them after Chokhani was available, he replied, that his own feeling was that the Dagduas Exhibits P. 10 and P. 11 were the natural culminate of what he learned in the office of Mr. Kaul on September 16, 1955. He also denied that he told Dalmia that whoever was at fault, the ultimate responsibility would fall on the Chairman and other Directors as well as the officers of the Insurance Company by ways of misfeasance, and that Dalmia should sign the statement which would be prepared by himself and Annadhanam so that the other Directors and the officers of the Insurance Company be not harassed and that if this suggestion was accepted by Dalmia he would save every one and become a greater Dalmia. he denied the suggestion that when Dalmia talked of his charitable disposition in his office on September 20, 1955, is should have been in answer to his (Khanna's) provocative remarks wherein he had makes insinuations regarding Dilemma's interior and stated that he was merely a silent spectator of who actually had happened in the office that day. He further stated that no question arises of Annadhanam's attacking the integrity of Dalmia on September 20, 1955. He denied that Mr. Kaul had told him or Annadhanam on September 19, when the order appointing Annadhanam Investigator was delivered, that Dilemma had to be implicated in a criminal case.

274. Khanna denied that his tone and remarks during the discussion were very persuasive and that told Dalmia that it was very great of him that he was going to pay the amount represented by the short-fall of the securities. He also denied the suggestion that Dalmia told him and Annadhanam on September 20, at their office, that he had no knowledge of the missing securities, that it, appeared that the securities had either been sold or pledged and that the money had been paid to the Union Agencies, which Dalmia did not like, and that in the interest of the policy holders and the Insurance Company Dalmia was prepared to pay the amount of he short-fall of securities, and also that when Dalmia spoke about the securities being sold or pledged, Khanna and Annadhanam remarked that the securities has been misappropriated. He denied that he told Dalmia that if he took, personal responsibility in the matter, it would be only then that no action would be taken and stated that he and Annadhanam were nobody to give any assurance to Dalmia.

275. Dalmia stated, in this statement under section 342 Cr.P.C. on November 7, 1958, that his companion Raghunath Das Dalmia stayed out because he was not allowed to stay with him inside the office. He denied that he first spoke about his charitable disposition and piety when asked by Annadhanam to explain about the missing securities and stated that there could be no occasion for him to talk at that time of his piety and charitable disposition when he had been specifically called to explain with regard to the missing securities. His version of what took place may now be quoted (answer to question No. 471) in his own words:

"What actually happened was that I told Shri Annadhanam that I had learnt from G. L. Chokhani that the amount of the missing securities had been lent temporarily on behalf of the Bharat Insurance Company by Shri G. L. Chokhani to Bharat Union Agencies and that the amount had been lost in speculation. Shri Annadhanam then asked me about the missing securities. I then told him that I did not know as to whether the securities had been sole or mortgaged. My replies here being noted by Shri Annadhanam on a piece of paper. Shri Annadhanam then asked me as to when the securities has been sold or mortgaged I replied that I did not know with regard to the time when the securities had been sold or mortgaged. Shri Annadhanam then asked me as to what were the places where there were offices of Bharat Union Agencies. I then told him that the offices were at Bombay and Delhi. I than remarked that whatever has happened, I wanted to pay the amount of the missing securities as the interest of the policy holders of the Bharat Insurance Company were close to my heart. During the course of that talk sometime Shri Annadhanam questioned and sometimes the questioned were asked by Shri Khanna. Shri Khanna then stated that I should forget the events of 9-9-1955. Shri Khanna further stated. 'We too are men of hearts. And not bereft of all feelings. We too have children. I am very much impressed by your officer of such a huge amount'. Shri Khanna also remarked that Shri Annadhanam had been appointed under section 33 of the Insurance Act to investigate into the affairs of the Bharat Insurance Company and as such the words of Shri Khanna and Shri Annadhanam would carry weight with the Government. Shri Khanna also stated other things but I do not remember them. I however distinctly remember that Shri Khanna stated to me that I should go to Shri C. D. Deshmukh and that Shri Khanna would also help me. I than replied that I would not like to go to Shri Deshmukh. Shri Khanna then remarked that the Government attached great importance to the interests of the policy holder and that if the matter got undue publicity it would cause a great loss to the policy holders. Shri Khanna accordingly stated that if I agreed to his suggestion the matter would be settled satisfactorily and without and publicity. It was in those circumstances that I asked for two hours' time to consult my brother and son-in-law."

276. He further stated that when Annadhanam told him that he could have half-an-hour's time and that more time could not be given as the report had to be given to the Government immediately, he objected to the shortness of time as he could not during that interval go to meet his brother and son-in-law and return to the office after consulting them and further told Annadhanam and Khanna to write whatever they considered proper as he has trust in them.

277. His reply to question No. 476 is significant and reads:

"The statement was read over to me. I then pointed out that what I has stated had not been incorporated in Ex. P. 10. I made no mention that the statement Ex. P. 10 was correct or not. Shri Annadhanam then reduced to writing, whatever was stated by me. That writing if Ex. P. 11 and is in the very words used by me."

278. He does not directly answer question No. 479:

"It is in evidence that the statement Ex. P. 11 was read over to you, you admitted it to be correct and signed it. Do your want to say anything with regard to that?"
and simply stated, 'I did sing that statement'. He denied the third statement alleged to have been made near the staircase.

279. Dalmia also stated that he had mentioned some facts about the statements Exhibits P. 10 and 11 in his written statement.

Paragraphs 53 to 59 of the written statement dated October, 24, 1958, refer to the circumstances about the making of the Dagduas Exhibits P. 10 and P. 11. In paragraph 53 Dalmia sates that the recording of his statement in Annadhanam's office took place as it was only there that Annadhanam and Khanna could get the necessary privacy. The insinuation is that they did not want any independent person to know of what transpired between them.

Paragraph 54 refers to a very minor discrepancy. Paragraph 55 really given the version of what took place in, Annadhanam's office.

280. We refer only to such portions of this version as do not find a place either in the suggestions made to Annadhanam and Khanna in their cross-examination or in the statement of Dalmia under section 342 or which be inconsistent with either of them. Dalmia stated that he told Annadhanam that the money that had been received by Bharat Union Agencies as loan belonged to Bharat Insurance Company and it appeared that the Union Agencies has lost that money in speculation. He further made Dagduas which tend to impute an inducement on the part of Khanna to him. These statement may be quoted in Dalmia's own words:

"On this Shri Khanna said that I was a gentleman, that I was prepared to pay such a heavy amount which has never been paid so far by anybody, that I should accept his advice and that I should act according to his suggestion and not involve myself in this dispute, the Government was not such a fool that they would not arrive at a quite settlement with a man who thought that his first duty was to protect the policy holders and thus by spoiling the credit of the Bharat Insurance Co. would harm its policy holders. If the Government did so it would be an act of cruelty to the policy holder, and when I was prepared to pay the money it (Government) would not take any such course by which I may have to face troubles, that my name would go very high, that he advised me as being my well-wisher that I should confess that I had taken the securities, that they would help me. They added that Shri Annadhanam has been appointed as Investigator by the Government and therefore their words carry weight with the Government, that it was my responsibility, being the Chairman and Principal Officer of the Bharat Insurance to pay the money. At that time I was restless to pay the money. I was influenced by their talk and anybody in my place would have trusted their words. I was impressed by their saying to me that no

wise Government or officers would take such action which would harm the policyholders through publicity. therefore I took that whatever Shri Khanna and Annadhanam were saying was for my good".
281. He stated that he asked Annadhanam and Khanna for two hours' time to consult his brother and son-in-law and that one of them said that they could not give more than half-an-hour. This is inconsistent with what he stated under section 342. He further stated:

"I told them to write in whatever way they thought best and whatever they wrote I simply signed. After signing when I read it, I pointed out to them that they had not written that I wanted to pay every pie of the policy holders and then they wrote as I told them and I signed".
282. The statement referred to his a short one, and it is nor possible to believe that he signed it without reading it.

283. Paragraph 56 makes no reference to the events of that evening, but paragraph 57 refers to the improbability of his writing things which brought trouble to him when just before it he has been talking irrelevantly. The question in cross-examination did suggest that he was forced to make irrelevant talk due to certain provocation. That does not fit in with the explanation in paragraph 57 that his talk about a temple was invented to supported the statement Annadhanam has made to the policy about Dalmia's talking irrelevantly. His statement 'How could I have acted in such a way without any positive assurances, implies that he did make the Dagduas though on getting assurances. In paragraph 58 he states:

"On 20th September Shri Khanna and Annadhanam had put all sorts of questions to Raghunath Rai but let me off after recording my statement in just one or two lines. Their design had succeeded and therefore they did not care to record any further question".
284. This again implies his making the statement P. 10. of course, after he had made the statement P. 10 there was no necessity of asking anything further. His statement explained the missing of the securities.

285. Reference may now be made to what Raghunath Rai, who was the Secretary of the Bharat Insurance Company, states in reference to the statement make by Dalmia to Annadhanam. Raghunath Rai states that when he went to Dalmia about 7 p.m. on September 20, 1955, and told him about the recording of his own statement by Annadhanam and the preparation of the statement about Exhibit P. 8 and about his talk regarding the securities at Bombay, Dalmia said: 'I have been myself in the office of the Investigator. He has recorded my statement wherein I have admitted the short-fall of the securities'. This also points to Dalmia's making the statement Exhibit P. 10.

286. Raghunath Rai and no admit, but simply said that Dalmia did tell him something when he was questioned as to whether Dalmia told him that he had been told by

Annadhanam and Khanna that if he has made the statement in accordance with their desire, there would be no trouble.

287. Dalmia evaded a direct answer to the question put to him under section 342, Cr.P.C. When question No. 482 was put to him with reference to this statement of Raghunath Rai he simply stated that he had briefly told Raghunath Rai with regard to what has transpired between him and Khanna and Annadhanam and that he had told Raghunath Rai that he need not worry.

288. The various Dagduas of Dalmia suggesting that inducement was held out to him by Khanna have not been believed by the Courts below, and we see no good reason to differ from their view. There was no reason for Annadhanam to record an incriminating statement like P. 10 and get it signed by Dalmia.

289. The High Court does not also hold that the confession was the result of some threat extended by Annadhanam. It did not consider it safe to rely upon it as it considered the confession to be no voluntary in a certain sense. It said:

"In that sense, therefore, it was not a voluntary statement, because although no words of threat or inducement were uttered by Mr. Annadhanam or anyone else, the circumstances had shaped themselves in such a manner that there was an implied offer of amnesty being granted to him if he did not persist in his negative behavior. He therefore made a statement that he had misappropriated the securities and immediately offered to make good the loss through his relatives".

290. What are those circumstances which implied an offer of amnesty being granted to him if he did not persist in his negative behavior, presumably in not giving out full information about the missing securities? Such circumstances, as can be gathered from the judgment of the High Court seem to be these: (1) Dalmia, a person of considerable courage in commercial affairs was not expected to make a voluntary confession. (2) He had evaded meeting the issue full-face whenever he could do so and did not appear before Mr. Kaul on September 16, 1955, to communicate to him the position about the securities. (3) He not only appeared before Annadhanam on hour late, but further asked for two hours' time before answering a simple question about the missing securities. (4) He made the statement when he felt cornered on account of the knowledge that Annadhanam has the authority of law to question and thought that the only manner of postponing the evil consequence of his act was by making the statement which would soften the attitude of the authorities toward him.

291. We are of opinion that none of these circumstance would make the confession invalid. Dalmia's knowledge that Annadhanam could record his statement under law and his desire to soften the attitude of the authorities by making the statement do not establish that he was coerced or compelled to make the statement. A person of the position, grit and intelligence of Dalmia could not be so coerced. A person making a

confession may be guided by any considerations which, according to him, would benefit him. Dalmia must have made the statement after weighing the consequences which he thought would be beneficial to him. His making the confession with a view to benefit himself would not make the confession not voluntary. A confession will not be voluntary only when it is make under some threat or inducement or promise, form a person in authority. Nothing of the kind happened in this case and the considerations mentioned in the High Court's judgment do not justify holding the confession to be not voluntary. We are therefore of opinion that Dalmia made the confession Exhibit P. 10, voluntarily.

292. It was argued in the High Court, for the State, that Dalmia thought it best to make the statement because, by doing so, he hoped to avoid the discovery of his entire scheme of conspiracy which had make it possible for him to misappropriate such a large amount of the assets of the Insurance Company. The High Court held that even if the confession was made for that purpose, it would not be a voluntary confession. We consider this ground to hold the confession involuntary unsound.

293. Mr. Dingle Foot has contended that the statement, Exhibit P. 10, is not correct, that Annadhanam and Mr. Kaul colluded and wanted to get a confession from Dalmia and that is why Annadhanam extracted the confession and that various circumstances would show that the confession was not voluntary in the sense that it was induced or obtained by threat. He has also urged that Annadhanam was 'a person in authority' for the purpose of section 24 of the Indian Evidence Act. These circumstances, according to him, are that Dalmia's companion was not allowed to stay in the office, that only half-an-hour was allowed for Dalmia to make consultations, that there had been a discussion before the recording of Exhibit P. 10, that no record on the discussion was maintained, that Annadhanam, as Investigator, was a public servant, that section 176, I.P.C. was applicable to Dalmia if he had not made the statement and that the statement on oath really amounted to an inquisition. It was further contended that if the confession was not inadmissible under section 24 of the Evidence Act; it was inadmissible in vie of clause (3) of Article 20 of the Constitution.

294. Mr. Dingle Foot has further contended that the statement, Ex. P. 10, is not correct inasmuch as it records; 'I have misappropriated securities of the order of rupees two crores, twenty lakhs of the Bharat Insurance Company Ltd.', that it could not be the language of Dalmia and that these facts supported Dalmia's contention that he simply signed what Annadhanam had written.

295. The public prosecutor had also questioned the correctness of this statement inasmuch as the actual misappropriation was done by Chokhani and Dalmia had merely suffered it and as the accurate statement would have been that there was misappropriation of he money equivalent of the securities.

296. We are of opinion that any vagueness in the expression could have been deliberate. The expression used was not such that Dalmia, even if he has a poor knowledge of English, could not have used. The statement was undoubtedly very brief. It cannot be expected that every word was used in that statement in the strict legal sense. The expression 'I misappropriated the securities' can only mean that he misappropriated the amount which had been either spent on the purchase of the securities which were not in existence, or realised by the sale of securities, and which was shown to be utilised in the fictitious purchase of securities. The main fact is that Dalmia did admit his personal part in the loss of the amount due to the shortfall in the securities.

297. There is nothing on record to justify any conclusion that Annadhanam and Mr. Kaul had colluded and wanted to get a confession from Dalmia. It is suggested that Annadhanam was annoyed with Dalmia on account of the latter's resentment at the conduct of Annadhanam and Khanna in conducting a surprise inspection of the accounts and securities on September 9, 1955. Raghunath Rai protested saying that they had already verified the securities and that they, as auditors for the year 1954, has no right to ask for the inspection of securities in the year 1955. At their insistence Raghunath Rai showed the securities.

298. After their return to the office, Dalmia rang them up and complained that they were unnecessarily harassing the officers of the Bharat insurance Company and had no right to inspect the securities. Dalmia was not satisfied with their assertion of their right to make a surprise inspection. There was nothing in this conduct of Dalmia which should have annoyed Annadhanam or Khanna. They did what they considered to be their duty and successfully met the opposition of Raghunath Rai. If there could be any grievance on account of their inspection, it would be to Dalmia who, as a result, would not be easily induced by them to make the confession.

299. Mr. Kaul, as Deputy Secretary, Ministry of Finance, did take part in the bringing of the matter to a head, not on account of any personal animus against Dalmia - such animus is not even alleged - but on account of his official duties, when he heard a rumour in Bombay that Dalmia has incurred heavy losses amounting to over tow crores of rupees through his speculative activities and had been drawing upon the funds of the Insurance company of which he was the Chairman to cover his losses. He asked Dalmia on September 14, 1955, to see him on the 15th in connection with the securities of the Insurance Company. When Dalmia met him on the 15th in the presence of Mr. Barve, Joint Secretary, he asked whether he had brought with him an account of the securities of the Bharat Insurance Company. Dalmia expressed his inability to do so for want of sufficient time and promised to bring the account on September 16. On the 16th, Dalmia did not go to Mr. Kaul's office; instead, his relations S. P. Jain and others met Mr. Kaul and made certain statements. Mr. Kaul submitted a note, Ex. D. 67, to the Finance Minister on September 18, 1955, and in his note suggested that of all the courses of action open to the Government, the one to the taken should be to proceed in the matter in the legal

manner and launch a prosecution as the acceptance of S. P. Jain's offer would amount to compounding with a criminal offender. Mr. Kaul stated that he did not consider it necessary to make any enquiry because the merits of the case against Dalmia remained unaffected whether the loss was rupees to crores or a few lakhs, more or less. On the basis of the aforesaid suggestion of Mr. Kaul and his using the expression 'courses against Shri Dalmia' it is urged that criminal action was contemplated against Dalmia and that there must have been some understanding between Mr. Kaul and Annadhanam about securing some sort of confession form Dalmia for the purpose of the case which was contemplated. We consider this suggestion farfetched and not worthy of acceptance. As a part of his duty, Mr. Kaul has to consider the various course of action open to the Government in connection with the alleged drawing upon the funds of the Insurance Company to cover his losses in the speculative activities. Mr. Kaul did not know what had actually transpired with respect to the securities. He had heard something in Bombay and then he was told about the short-fall in the securities of the Bharat Insurance Company and, naturally, he could contemplate that the alleged conduct could amount to a criminal offence. In fact, according to Mr. Kaul, a suggestion had been made to him by S. P. Jain that on the making up of the short-fall in securities no further action be taken which might affect the position of Dalmia and his other associates in business and of various businesses run by them. The fact that Annadhanam knew that there had been a short-fall of over rupees two crores prior to Dalmia's making the statement Exhibit P. 10 cannot justify the conclusion that Annadhanam and Mr. Kaul were in collusion.

300. Annadhanam does not admit he had ordered Dalmia's companion to stay out of he office. Even if he did, as stated by Dalmia, that would not mean that Annadhanam did it on purpose, the purpose being that he would act unfairly towards Dalmia and that there be not any witness of such an attempt. Similarly, the non-maintenance of the record of what conversation took place between Dalmia and the Investigator, does not point out to any sinister purpose on the part of Annadhanam. It was Annadhanam's discretion to examine a person in connection with the affairs of the Insurance Company. He put simple question to Dalmia and that required him to explain about the missing securities. So long as Dalmia did not make a statement in that connection, it was not necessary to make any record of the talk which might taken place between the two. In fact, Annadhanam had stated that the word 'discussion' used by him in his supplementary interim report Exhibit P. 13, really be read as 'recording of the statement of Shri Dalmia and the talk he had with when he came to Annadhanam's office and which he had with him while going to the staircase'. This explanation seems to fit in which the context in which the word 'discussion' is used in Exhibit P. 13.

301. The interval of time allowed to Dalmia for consulting his relations might have been considered to be insufficient considering for confession voluntary in case that was the time allowed to a confessing accused produced before a Magistrate for recording a confession. But that was not the position in the present case. Annadhanam was not going to record the confession of Dalmia. He was just to examined him in connection with the

affairs of the Insurance Company and had simply to tell him that he had called him to explain about he missing securities. There was therefore no question of Annadhanam allowing any time to Dalmia for pondering over the pros and cons of his making a statement about whose nature and effect he would have had no idea. We do not therefore consider that this fact that Dalmia was allowed half-an-hour to consult his relations can point to compelling Dalmia to make the statement.

302. We do not see that examination of Dalmia on oath be considered to be an inquisition. Sub-Section (3) of section 33 of the Insurance Act empowers the Investigator to examine on oath any manager, managing director or other officer of the insures in relation to his business. Section 176 of the Indian Penal Code has no application to the examination of Dalmia under section 33 of the Insurance Act. Section 176 reads:

"Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be published with simple imprisonment for a term which may extent to one month, or with fine which may extend to five hundred rupees, or with both.

or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a terms which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

or, if the notice or information required to be given is required by an order passed under sub-section (1) of section 565 of the Code of Criminal Procedure, 1898, with imprisonment of either description for a terms which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

303. For the application of this section, it is necessary that Annadhanam, as Investigator, be a public servant. Annadhanam cannot be said to be a servant. He was not an employee of Government. He was a Chartered Accountant and had been directed by the order of the Central Government to investigate into the affairs of the Insurance Company and to report to the Government on the investigation made by him. Of course, he was to get some remuneration for the work he was entrusted with.

304. 'Public servant's is defined in section 21 of Indian Penal Code. Mr. Dingle Foot has argued that Annadhanam was a public servant in view of the ninth clause of section 21. According to this clause, every officer in the service or pay of the Government or remunerated by fees or commission for the purpose of any public duty would be a public servant. A person who is directed to investigate into the affairs of an Insurance Company under section 33(1) of the Insurance Act, does not ipso facto become an officer. There is

no office which he holds. He is not employed in service and therefore this definition would not apply to Annadhanam.

305. The making of a statement to the Investigator under section 33(3) of the Insurance Act does not amount to furnishing information on any subject to any public servant as contemplated by section 176 I.P.C., an omission to furnish which would be an offence under that section. This section refers to information to be given in Dagduas required to be furnished under some provision of law. We are therefore of opinion that section 176 I.P.C. did in no way compel Dalmia to make the statement Exhibit P. 10.

306. We believe the Dagduas of Annadhanam and Khanna about Dalmia's making the statement Exhibit P. 10 without his being induced or threatened by them. Their Dagduas find implied support from the statement of Raghunath Rai with respect to what Dalmia told him in connection with the making of the statement to Annadhanam and from certain Dagduas of Dalmia himself in his written statement and in answers to questions put to him under section 342, Cr.P.C.

307. We therefore hold the statement Exhibit P. 10 is a voluntary statement and is admissible in evidence.

308. We also hold that it is not inadmissible in view of clause (3) of Article 20 of the Constitution. It was not made by Dalmia at a time when he was accused of an offence, as is necessary for the application of that clause, in view of the decision of this Court in The State of Bombay v. Kathi Kalu Oghad MANU/SC/0134/1961: 1961CriLJ856 where the contention that the statement need not be made by the accused person at a time when the fulfilled that character was not accepted. Dalmia was not in duress at the time he made that statement and therefore was not compelled to make it. It was said in the aforesaid case:

"'Compulsion', in the context, must mean what in law is called 'duress'..... The compulsion in this sense is a physical objective act and not the state of mind of the persons making the statement, except where the mind has been so conditioned by some extraneous process as to render the making of the statement involuntary and, therefore, extorted."

309. The various circumstances preceding the making of the statement Exhibit P. 10 by Dalmia have all been considered and they fall far short of proving that Dalmia's mind had been so conditioned by some extraneous process as to render the making of this statement involuntary and therefore extorted.

310. We believe the statement of Annadhanam that Dalmia had told him near the staircase that he has lost the money in his personal speculation business which was carried on chiefly through one of his private companies, viz., the Union Agencies. The later part of his confession, Exhibit P. 10, is an admission of Dalmia's losing the money in

speculation. His further statement was only an amplification of it as to the name under which speculation was carried on. The statement find support from the fact established by other evidence that the speculation business carried on by the Union Agencies was really the business of Dalmia himself, though, ostensibly, it was the business of the company of which there were a few shareholders other than Dalmia.

311. Mr. Dingle Foot has urged that adverse inference be drawn against the prosecution case on account of the prosecution not producing certain documents and certain witnesses. We have considered the objection and are of opinion that there is no case for raising such an inference against the prosecution.

312. The prosecution did not lead evidence about the persons holding shares in Asia Udyog Ltd., and in Govan Brothers Ltd. Such evidence would have at best, indicated how many shares Dalmia held in these companies. That was not necessary for the prosecution case. The extend to shares Dalmia held in these companies had no direct bearing on the matter under inquiry in the case.

313. The prosecution led evidence about the telephonic calls up to August 31, 1955, and did not lead evidence about the calls between September 1 and September 20, 1955. It is urged that presumption be raised that Dalmia and Chokhani had not telephonic communication in this period Admittedly, Dalmia had telephonic communication with Chokhani on September 15. the prosecution has no impugned any transaction entered into by Chokhani during his period. It is not therefore essential for the prosecution to have led evidence of telephonic calls between Dalmia and Chokhani during this period.

314. Another documents which the prosecution is said not to have produced is the Dak Receipt Register. The Register could have at best shown on which dates the various advices received from Bombay about the transactions were received. On that point there had been sufficient evidence led by the prosecution. The production of the Register was therefore not necessary. The accused could have summoned it if he has particular reason to rely on its entries to prove his case.

Lastly, complaint is made of the non-production of certain document in connection with the despatch of certain securities from Delhi to Bombay. Again, there is oral evidence with respect to such despatch of securities and it was not essential for the prosecution to produce the documents in that connection.

Of the witnesses who were not produced, complaint is made about the prosecution not examining Mr. Barve, Joint-Secretary, Ministry of Finance, who was present at the interview which Dalmia had with Mr. Kaul on September 15, 1954, and of the non-production of the Directors of the Insurance Company. It was quite unnecessary to examine Mr. Barve when Mr. Kaul has been examined. It was also not necessary to examine the Directors of the company who are not alleged to have had any first-hand

knowledge about the transactions. They could have spoken about the confirmation of the sale and purchase transactions and about the passing of the bye-laws and other relevant resolutions at the meeting of the Board of Directors. The minute of the proceedings of the Board's meetings served this purpose.

315. It is admitted by Dalmia that there was no resolution of the Board of Directors conferring authority on Chokhani to purchase and sell securities.

Certain matters have been referred to at pages 206-210 of Dalmia's statement of case, which, according to Dalmia, could have been proved by the Directors. All these matters are such which were not necessary for the unfolding of the prosecution case and could be proved by the accused examining them if considered necessary. We therefore see no force in this contention.

316. It is urged for Dalmia that he could not have been a party to a scheme which would cause loss to the Insurance Company, because he was mainly responsible for the prosperity of the company. The Union Agencies has assets. The Government was displeased with Dalmia. The company readily agreed to the appointment of M/s. Khanna and Annadhanam as auditors. There was the risk of detection of the fraud to be committed and so Dalmia would have acted differently with respect to such affairs of the Union Agencies as have been used as evidence of Dalmia being synonymous with it. We are of opinion that these considerations are not such which would offset the inferences arrived at form the proved facts.

317. It cannot be a matter of mere coincidence that frequent telephonic conversations took place between Dalmia and Chokhani when the Union Agencies suffered losses, that the usual purchase transactions by which the funds of the Insurances Company were derived to the Union Agencies took place then, that such purchases should recur several times during the relevant period, that such securities which could not be recouped had to be shown as sold and when the Union Agencies or Bhagwati Trading Company could not pay of the sale price which had to be credited to the account of the Insurance Company, a further usual purchase transaction took place.

318. We are therefore satisfied form the various facts considered above that the transactions which led to the diversion of funds of the Insurance Company to the Union Agencies were carried through under the instructions and approval of Dalmia. It is clear that he had a dishonest intention to cause at lest temporary loss of it funds to the Insurance Company and gain to the Union Agencies. This could be achieved only as a result of the conspiracy between him and Chokhani. Vishnu Prasad was taken in the conspiracy to facilitate diversion of funds and Gurha to facilitate the making up of false accounts etc. in the officers of the Union Agencies and Asia Udyog Ltd., as would be discussed hereafter.

319. We may now turn to the charges against Gurha, appellant. He was charged under section 120-B read with section 409 I.P.C. and also on three counts under section 477A for making or abetting the making of false entries in three journal vouchers Nos. 98, 106 and 107 dated January 12, 1955, of the Union Agencies. It is necessary to give a brief account of how these vouchers happened to be made.

320. Gurha was a Director of the Union Agencies and looked after the work of its office at Delhi. He was also the Accountant of Asia Udyog Ltd.

At Delhi there was a ledger with respect to the account of the transactions by the Bombay Officer of the Union Agencies. Under the directness of Chokhani who was an agent of the Union Agencies at Bombay and also held power of attorney on its behalf. Kannan used to send a cash statement and a journal to the Bombay Office and the Union Agencies at Delhi. These documents used to sent to Gurha personally. Now, the cash statement from Bombay showed correctly entries of the amounts received from Bhagwati Treading Company. Such amounts were noted to the credit of Bhagwati Trading Company. When the Union Agencies made payment to Bhagwati Trading Company, an entry to that effect was noted in the cash statement to the debit of Bhagwati Trading Company. On receipt of these cash Dagduas in 1955, it is alleged, Gurha used to get the genuine cash statement substituted by another fictitious cash statement in which no mention was made of Bhagwati Trading Company. Entries to the credit of Bhagwati Trading Company used to be shown to be entries showing the receipt of those moneys from the Delhi Office of the Union Agencies through Chokhani. The debit entry in the name of Bhagwati Trading Company used to be shown as a debit to the Delhi office of the Union Agencies. This substituted cash statement was then made over to one Lakhotia, who worked in the Delhi Office of the Union Agencies on behalf of the Bombay Office of the company. He was also prosecuted, but was acquitted. Lakhotia issued credit advises on behalf of the Bombay Office of the Union Agencies to the Delhi Office of the Union Agencies in reference to the entry in the cash statement which, in the original statement, was in respect of the amount received from Bhagwati Trading Company, intimating that that amount had been credited by the Bombay Office to the account of the Delhi Office. A debit advice on behalf of the Bombay Office to the Delhi Office was issued intimating that the amount had been debited to the account of the Delhi Office when in fact, the original entry debited that amount to the account of Bhagwati Treading Company. Lakhotia also made entries in the ledger of the Bombay Officer which was maintained in the Delhi Office of the company. In its column entitled 'folios' reference to the folio of the cash statement was given by writing the letter 'C' and the number of the folio of the cash statement from which the entry was posted.

321. On receipt of such advices from Lakhotia on behalf of the Bombay Office, Dhawan, P.W. 19, Accountant of the Delhi Office of the Union Agencies used to prepare the Journal voucher. In the case of the credit advices, the amount was debited to the Bombay Office of the Union Agencies and credited to Asia Udyog Ltd. In the case of he debit advices,

the amount was debited to Asia Udyog Ltd., and credited to the Bombay Office of the Union Agencies. According to the statement of Dhawan, he did so under the instructions of Gurha. Gurha used to sign these voucher and when he fell ill, they were signed by another Director, J. S. Mittal. Corresponding entire used to be made in the account of the Bombay Office and the Asia Udyog Ltd., in the ledger of the Delhi Office of the Union Agencies.

After Dhawan has prepared these vouchers he also used to issue advices to Asia Udyog Ltd. intimating that the amount mentioned therein had been credited or debited to its account. Thus the name of Bhagwati Trading Company did not appear in the various advices, vouchers and the ledgers prepared at Delhi.

322. In the office of Asia Udyog Ltd., on receipt of the credit advice, a journal voucher crediting the amount to the Bombay Office and debiting it to the Delhi Office of the Union Agencies was prepared. A journal voucher showing the entries in the reverse order was prepared not the receipt of the debit advices. Asia Udyog Ltd., issued advice to the Bombay Office intimating that the amount had been credits or debited to the Bombay Officer of the Union Agencies in the case of vouchers relating to the credit of debit advice form that Office. All such vouchers in Asia Udyog Ltd. were signed by Gurha even during the period when he was ill and was not attending the office of the Union Agencies.

The result of all such entries in the vouchers was that on paper it appeared in the case of credit advices that the Delhi Office of the Union Agencies advanced money to the Bombay Office which paid in the money to Asia Udyog Ltd., which in its turn paid the money to the Delhi Office of the Union Agencies, and in the case of debit advices, the Bombay Office debited the amount to Delhi Office of the Union Agencies and that debited it to Asia Udyog Ltd., which in its turn debited it to the Bombay Office. All these entries were against facts and they must have been done with a motive and apparently it was to keep off the records any mention of Bhagwati Trading Company. No explanation has been given as to why this course of making entire was adopted.

323. The genuine cash Dagduas are on record. The alleged fictitious statements are not on the record. It is not admitted by Gurha that any fictitious cash statement was prepared. It is not necessary for our purposes to hold whether a fictitious cash statement in lieu of the genuine cash statement received from Bombay was prepared under the directions of Gurha or not. The fact remains that the entire in the various advices prepared by Lakhotia on the basis of the cash Dagduas received, did not represent the true entries in the genuine cash Dagduas and that journal vouchers prepared by Dhawan also showed wrong entries and did not represent facts correctly.

Of the journal vouchers with respect to which the three charges under section 477A, I.P.C. had been framed, two are the vouchers prepared by Dhawan crediting the amounts mentioned the rein to Asia Udyog Ltd., and debiting them to the Bombay Office of the

Union Agencies. They are Exhibits P. 2055 and P. 2060. Each of them is addressed to Asia Udyog Ltd. and states that the amount mentioned therein was the amount received by the former, i.e. the Bombay Office form Chokhani on account of the latter, i.e., Asia Udyog Ltd., on January 7 and January 10, 1955, respectively and adjusted. One Exhibit P. 2042 debits the amount to Asia Udyog Ltd., and credits it to the Bombay Office of Union Agencies and states the amount mentioned therein to have been paid by the latter, i.e., Bombay Office to Chokhani on account of the former, i.e. Asia Udyog Ltd., and adjusted.

Other facts which throw light on the deliberate preparation of these false vouchers are that there had been tampering of the ledger of the Bombay Office in the Delhi Office of the Union Agencies and also in the journal statement of that office. The letter 'C' in the folio column of the ledger had been altered to 'J' indicating that that entry referred to an entry in the journal statement received from Bombay. Sheets of the journal statement on which corresponding entries are noted have also been changed. These two documents remained in the possession of the Union Agencies till November 12, 1955, though the advices and vouchers in the Delhi Office were seized by the Police on September 22, 1955, and therefore interested persons could make alterations in them. It has been suggested for Gurha that the alterations were made by the Police. The suggestion has not been accepted by the learned Sessions Judge for good reasons. The changed entries did not in any way support the procession case and therefore the police had no reason to get those entire concocted. The entries did show the receipt of the amounts from Bhagwati Trading Company, but the prosecution case was that the amount was received in cash and not through transfers which transactions had to be adjusted. The learned Sessions Judge, did not, however, believer the statement of Sri Kishen Lal who investigated the case that he has noticed these alterations earlier than his statement in Court which was some time in 1958, for the reason that Dhawan was not questioned by the prosecution in this regard and no reference was made by Sri Kishen Lal in the case diary about his questioning Dhawan about the alterations. The learned Sessions Judge appears to have overlooked the statement of Sir Kishen Lal to the effect:

"I made a note in the case diary about myself having put the overwriting to Lakhotia and about having asked his explanation about that."
324. The Court could have verified the fact from the case diary. It is too much to suppose that Sri Kishen Lal would make a wrong statement whose inaccuracy could be very easily detected. However, the learned Session Judge himself has given good reasons for not accepting the suggestion that the over-writing of the letter 'C' by the letter 'J' and the changing of the journal papers were made by the police.

325. The part that Gurha played in getting these false entries prepared is deposed to by Dhawan, P.W. 19, who used, occasionally, to approach Gurha for instructions.

326. Further, Gurha, as the accountant of Asia Udyog Ltd., must have known that Asia Udyog Ltd., had neither advanced any amounts to the Bombay Office of the Union

Agencies nor received any amounts from the Bombay Office of the Union Agencies. He however signed all the vouchers prepared in the office of Asia Udyog Ltd., in connection with these transactions. He did so even during his illness (May, 1955, to July, 1955, which, according to the statement of Gurha, in answer, to question No. 134 was from March 15 to August 12, 1955, during which period he did not attend the office of the Union Agencies). He signed them deliberately to state false facts.

327. Dhawan particularly stated that on receipt of the advice, Exhibit P. 2041, on the basis of which journal entry No. 98 was prepared by him he went to Gurha to consult as it was not clear form that advice to whom the amount mentioned in it had been paid. Gurha, on looking up the Journal statement received from the Bombay Office told him to debit that amount to Asia Udyog Ltd. Dhawan prepared journal voucher P. 2042, accordingly, and Gurha initialled it. It may be mentioned that this debit advice was addressed to M/s. Delhi Office and therefore could be taken to refer either to the Delhi Office of the union Agencies or the Delhi Office of Asia Udyog Ltd., both these offices being in the same building and being looked after by Gurha. Gurha admits in his statement under section 342, Cr.P.C., that Dhawan referred this matter to him and that he asked him to debit the amount to Asia Udyog Ltd., The journal statement of the Bombay Office at the relevant time could have no reference to this item which was really entered in the cash statement and Gurha's conduct in looking up them journal was a mere ruse to show to Dhawan that was giving instructions on the basis of the entries and not on his own.

328. Gurha stated, in answer to question No. 45, that he remembered to have seen an entry relation to this amount of Rs. 4,61,000 which is the amount mentioned in Ex. P. 2042 in the cash statement of the Bombay Office of the Union Agencies when O. P. Dhawan referred an advice relating to that amount to him. In answer to questions Nos. 217 and 218, in connection with his advising Dhawan about the debiting of this amount to Asia Udyog Ltd., he stated that he gave that advice after tracing the relevant entry in the journal statement of the Bombay Office. This answer is not consistent with his earlier answer to question No. 45 as entry with respect to the same amount could not have existed simultaneously both in the cash statement and the journal statement of the Bombay Office. If his later answer is correct, his referring to the journal would have been just a ruse as already stated. If his earlier answer is correct that would indicate that either Gurha had supplied the office with them facetious cash statement of the Bombay Office as alleged by the prosecution or that seeing in the journal cash statement that the entry related to Bhagwati Trading Company, deliberately told Dhawan, in accordance with the scheme, to debit that amount to Asia Udyog Ltd. In either view of the matter, this conduct of Gurha in advising Dhawan to debit the amount to Asia Udyog Ltd., is sufficient to indicate his complicity in the whole scheme, as otherwise, he had no reason to behave in that manner.

329. Gurha, among these accused, must have been chosen for the purpose of the conspiracy because he had connection both with the Union Agencies and with Asia

Udyog Ltd. He had been in the employ of a Dalmia concern from long before. He was the Accountant of the Dalmia Cement and Paper Marketing Company from 1948 till its liquidation in 1953. Gurha, as Director of the Union Agencies, knew that it had suffered losses as a result of share speculation business in 1954-55 and that the Delhi Office was short of liquid funds to meet these losses. He must have knows how the funds to meet the losses were being secured form the funds of the Insurance Company thorough Bhagwati Trading Company. He musts have also known that this was wrong. It is only with such knowledge that he could have been a party to the making of false advice and vouchers. There could be not other reason. It could not have been possible for the prosecution to lead direct evidence about Gurha's knowledge with respect to the full working of the scheme to provide for the losses for the Union Agencies from the funds of the Insurance Company. It is further not necessary that each member of a conspiracy must know all the details of the conspiracy.

330. Mr. Kohli, for Gurha, has urged that Gurha could have had nothing to do with the diversion of the funds of the Insurance Company to the Union Agencies, even though he was a Director of the latter as he never issued instructions regarding the activities of the Union Agencies, had no knowledge of the passing of money from the funds of the Insurance Company to the Union Agencies as he had nothing to do with the movement of the securities held by the Insurance Company or the receipt of cash or the other transactions, his role having begun, according to the prosecution, after the offence under s. 409 I. P. C. had been actually committed, i.e., after Chokhani had issued cheques on the bank accounts of the Insurance Company with the Chartered Bank in favour of Bhagwati Trading Company, and therefore could know nothing regarding the diversion of funds and the desirability of falsifying the accounts and papers of the Offices he had to deal with. Great reliance is placed on the letter, Exhibit B. 956 in submitting that Gurha did not know about the whole affair and simply knew, as stated by him, that Chokhani had borrowed money, for the Union Agencies to pay its losses, from Bhagwati Trading Company. This letter is of significance and we quote it in full:

"Girdharilal Chokhani Times of India Building, Hornby Road, Bombay-1.

CONFIDENTIAL

17th September 55.

Bharat Union Agencies Ltd., Delhi.

Attn. Mr. R. P. Gurha

Dear Sir,

I have to inform you that the various a months arranged by me as temporary loans to Bharat Union Agencies Ltd., Bombay Office from time to time in the name of Bhagwati

Trading Company, actually represented the months movies relating to the under noted securities belonging to Bharat Insurance Company Limited.

	Face Value
2 1/2% 1961	Rs. 56,00,000
3% 1963-65	Rs. 79,00,000
3% 1966-68	Rs. 60,00,000

	Rs. 1,94,00,000

I have now to request you to please arrange at your earliest to pay about Rs. 1,80,00,000 in cash or purchase the aforesaid securities (or their equivalent) and deliver the same to Bharat Insurance Company Ltd., 10, Daryaganj, Delhi on my behalf debiting the amount to the credit standing in the books of the Company's Bombay Office in the name of M/s. Bhagwati Trading Company. Any debit or credit balance left thereafter in the said account would be settled later on.

I am getting this letter also signed by Vishnuprasad on behalf of Bhagwati Trading Company although he had neither any knowledge of these transactions nor had any connection with these affairs.

For :	Yours faithfully,
Bhagwati Trading Company	
	Sd/ G. L. Chokhani.
Sd. Illegible	
Vishnuprasad Bajranglal	
Proprietor."	

331. We are of opinion that this is a letter written for the purpose of the case and was, as urged for the State, ante-dated. There is inherent evidence in this letter to support this view. The letter makes a reference to Vishnu Prasad's having no knowledge of the transactions and having no connection with the affairs. Mention of these facts was quite out of place in a letter which chokhani was addressing to Gurha in the course of business for his immediately arranging for the payment of Rs. 1,80,00,000 in cash or securities to Bharat Insurance Company. Further, the opening expression in the letter does not necessarily mean that Gurha was being informed for the first time that the temporary loans arranged by him for the Union Agencies Ltd., in the name of Bhagwati Trading Company actually represented the moneys belonging to the Bharat Insurance Company. If it meant so, that must have been done so by design, just as the concluding portion of the letter was, as already mentioned, put in by design to protect Vishnu Prasad's interest.

332. The letter is dated September 17, 1955, and thus purports to have been written a few days before the formal complaint was made to the police. Even if it was written on September 17, it was written at a time when the mater of securities had come to the notice of the authorities and Dalmia was being pressed to satisfactorily explain the position of the securities. Chokhani could have written a letter of this kind in that setting.

333. Another fact relied upon by the learned Sessions Judge in considering this letter to be antedated is that it does not refer to one kind of securities which were not in the passion of the Insurance Company even though they had been ostensibly purchased. It does not mention of the securities worth Rs. 26,25,000 which were really supplied to the Insurance Company on September 23, 1955. This letter should have included securities of that amount and should have asked Gurha to make up for that amount to the Insurance Company. This is a clear indication that this letter was written after September 23, 1955.

334. Mr. Kohli has, however, urged that the contract for the purchases of these securities had taken place on September 16, 1955, and that therefore Chokhani did not include those securities in this letter. Reference is made to the statement of Jayantilal, P.W. 6, a partner of the Firm Devkaran Nanjee, Brokers in Shares and securities. He states that Bhagwati Trading Company wanted to purchases for immediate delivery 3% 1966-68 securities of the face value of Rs. 21,25,000 and that a contract about it was entered into. Securities of this amount were not available in the market. Securities worth Rs. 1,75,000 were available and were delivered to Chokhani that day. They had to purchased securities of the face value of Rs. 20,00,000, from the Reserve Bank of India in order to effect delivery and had to sell some other securities of that value. The result was that the required securities were received by them on September 22, 1955. Even this statement does not account for not including securities of the value of Rs. 4,50,000 in this letter Ex. P. 956.

335. It was further urged in the alternative that Chokhani had very extensive powers in all this alleged concerns of Dalmia and so could get any thing done due to his influence without divulging securities. That was not the position taken by Gurha in his statement. He did not say that he deliberately got false documents prepared due to directions from Chokhani and which he could not disregard. Even if it be so, that means that Gurha got false documents made deliberately.

336. Another submission for Gurha is that the case held proved for convicting him is different from the case as sought to be made out in the police charge sheet submitted to the Court under section 173 of the Code of Criminal Procedure. The charge-sheet is hardly a complete or accurate thesis of the prosecution case. Clause (a) of sub-section (1) of section 173, Cr.P.C., requires the officer-in-charge of the police station to forward to the Magistrate empowered to take cognizance of the offence on a place report, the report in the prescribed form setting forth the names of the parties, the nature of the information, and the names of the persons who appear to be acquainted with the circumstances of the case. Nothing further need be said on this point.

337. Further, it is submitted that the prosecution case has changed form stage to stage. This can only mean that facts came on the record which were not known before and therefore the complexion of the allegations against Gurha's conduct varied. Even if this is so, he can have no grievance against it unless he had been unable to meet it in defence. No such inability has been expressed. It is however stated that the prosecution based its ultimate case against him on the allegation that the cash statement received from Bombay was suppressed and another false cash statement was prepared at Delhi under the directions of Gurha. We have already dealt with this matter. There was no such allegation on the basis of the statement of any prosecution witness. This way really a suggestion to explain how despite certain entries in the cash statements received from Bombay different entries were made in the advices issued by Lakhotia which advices ought to have been in accordance with the entries in the cash statement. The suggestion may be correct or may not be correct. It cannot, however, be said on its basis that there has been such a change in the prosecution case as would make the prosecution cases reasonably doubtful.

338. In the same connection, a grievance has been made that Gurha was not questioned about the allegation that the cash statement had been suppressed and substituted by another fictitious one. No such question could have been put to him when there was no evidences about it. An accused is questioned under section 342 Cr.P.C., to explain any circumstances appearing in the evidence against him. It is not necessary to ask him to explain any inference that a Court may be asked to draw and be prepared to draw from the evidence on record.

339. Another point stressed for Gurha is that the cash Dagduas would not have mentioned Bhagwati Trading Company when the prosecution case is that Chokhani took deliberate steps to keep the Delhi Office of the Insurance Company in the dark about it. The fact is that the cash statement sent from Bombay did mention Bhagwati Trading Company. They were sent to Gurha personally. In the circumstances the reasonable conclusion can be that they mentioned Bhagwati Trading Company as that represented the true state of affairs and Chokhani had to inform the Delhi Office of the Bharat Union Agencies about the source of the money he was receiving for the Union Agencies to meet its losses. Chokhani did not disclose the true source, but disclosed a source fictitiously created to cancel the real source. There was no harm in disclosing Bhagwati Trading Company to the office of the Union Agencies at Delhi. With the same frankness it could not have been disclosed to the Insurance Company Office at Delhi both because that would required the complicity of the entire staff of the Insurance Company in the conspiracy and because otherwise, it would at once disclose to the Insurance Company and those who had to check its working that its funds were being misused. Disclosure of Bhagwati Trading Company to the Union Agencies was necessary and there was no harm in any way in informing Gurha confidentially about it. After Gurha had got possession of the cash statement it was for him how to direct the necessary entries to be made in the

advices prepared by Lakhotia on behalf of the Bombay Office at Delhi and on the basis of which journal vouchers were to be prepared by Dhawan and entries were to be made in the accounts of the Union Agencies at Delhi. We therefore do not consider that this contention in any way favours the appellant.

340. The fact that the account of the Asia Udyog Ltd., in the ledger Exhibit P. 2226 is not alleged to be fictitious and records in the column 'folio' the letter 'J' is of no help as the entries in that ledger must have been made on the basis of the journal vouchers issued by Dhawan. In fact once it is alleged that the advices issued by Lakhotia were fictitious any entry which can be traced to it must also be fictitious.

341. It is argued that the alleged scheme of making the circuitous entries could not have worked in keeping the source of money concealed as the Income tax Authorities could have detected by following the entire in the Bank records with respect to the source of payment of money (by cheques issued by Bhagwati Trading Company) to the Union Agencies at Bombay. They could have thus known only about Bhagwati Trading Company and, as already stated, it was not necessary to keep Bhagwati Trading Company secret from the Union Agencies. What was really to be kept secret was that the money came from the Insurance Company. The various circuitous entries were not really made to keep Bhagwati Trading Company unknowns, but were made to make it difficult to trace that he money really was received from the Insurance Company.

342. A suggestion has been made by Mr. Kohli that Chokhani might have showed the same amount both in the cash statement and in the journal statement. No such case, however, seems to have been raised in the Courts below and has been made in the appellant's statement of case.

It has been contended that an offence under section 477A I.P.C. has not been established against the accused as it is not proved that he falsified any book, papers, etc., in the possession of his employer with intent to defraud and that the intention to defraud should be to defraud someone in future and should not relate to an attempt to cover up what had already happened. It is submitted that an intent to defraud connotes and intention to deceive and make the person deceived suffer some loss, that the entries made in the journal vouchers did not make anyone suffer and therefore the entries could not be said to have been made with intent to defraud.

343. The expression 'intent to defraud' is not defined in the Penal Code but section 25 defines 'fraudulently' thus:

"A person is said to do a thing fraudulently, if he does that thing with intent to defraud and not otherwise."
344. The vouchers were falsified with one intention only and that was to let it go unnoticed that the Union Agencies had got funds from the Insurance Company. If they

had shown the money received and paid to Bhagwati Trading Company, it was possible to trace the money back to the Insurance Company through Bhagwati Trading Company which received the money from the Insurance Company through cross cheques as well. Whoever would have tried to find out the source of the money would have been deceived by the entries. The Union Agencies made wrongful gain from the diversion of the Insurance Company's funds to it through Bhagwati Trading Company and the Insurance Company suffered loss of funds. The false entries were made to cover up the diversion of funds and were thus to conceal and therefore to further the dishonest act already committed.

345. We agree with respect with the following observation in Emperor v. Ragho Ram MANU/UP/0302/1933: I.L.R. [1933] All. 783:

"If the intention with which as false document is made is to conceal a fraudulent or dishonest act which had been previously committed, we fail to appreciate how that intention could be other than an intention to commit fraud. The concealment of an already committed fraud is a fraud."

And, again, at pages 789:

"Where, therefore, there is an intention to obtain an advantage by deceit there is fraud and if a document is fabricated with such intent, it is forgery. A man who deliberately makes a false document in order to conceal fraud already committed by him is undoubtedly acting with intent to commit fraud, as by making the false document he intends the party concerned to believe that no fraud had been committed. It requires no argument to demonstrate that steps taken and devices adopted with a view to prevent persons already defrauded from ascertaining that fraud had been perpetrated on them, and thus to enable the person who practised the fraud to retain the illicit gain which he secured by the fraud, amount to the commission of a fraud. An act that is calculated to conceal fraud already committed and to make the party defrauded believe that no fraud had been committed is a fraudulent act and the person responsible for the acts fraudulently within the meaning of section 25 of the Code."

We agree, with this observation, and repel the contention for the appellant.

346. It has then been submitted that the falsification should have been necessarily connected with the commission of the breach of trust. There is no question of immediate or remote connection with the commission of breach of trust which is sought to be covered up by the falsification, so long as the falsification is to cover that up. In the present case, introduction of Bhagwati Trading Company in the transactions was the first step to carry out deception about the actual payment of money out of the funds of the Insurance Company to the Union Agencies.

347. The second step of suppressing the name of Bhagwati Trading Company in the papers of the Union Agencies Delhi, made it more difficult to trace the passing of the money of the Insurance Company to the Union Agencies and therefore the falsification of the journal vouchers related back to the original diversion of the Insurance Company's

moneys to the Union Agencies and was with a view to deceive any such person in future who be tracing the source of the money received by the Union Agencies.

348. A grievance is made of the fact that certain witnesses were not examined by the prosecution. Of the persons working for the Union Agencies, five were accused at the trial, Kannan, Lakhotia, Gurha, Mittal and Dudani. Only Gurha among them was convicted. The other were acquitted. The remaining person were Krishnan, Panchawagh and the clerks O. D. Mathur and Attarshi. Of the persons connected with Asia Udyog, one R. S. Jain of the Accounts Branch was not examined. Panchawagh who was an Accountant of the Union Agencies and had custody of the cash statement and journal was given up by the prosecution on the grounds that he was won over. We do not consider that it was necessary to examine him for the unfolding of the prosecution case against Gurha. Similarly it was not necessary to examine the others for that purpose. A mere consideration that they might have given a further description of how things happened in those office would not justify the conclusion that the omission to examine them was an oblique motive and could go to benefit the accused.

349. A grievance was made that the High Court did not deal with the questions whether the police tampered with the cash statement and the journal. It is not clear whether such a point was raised in the High Court. It was however not mentioned in the grounds of appeal. The trial Court did deal with the point and held against the appellant Gurha. In fact, paragraph 22 of the grounds of appeal by Gurha simply said that no value should have been attached to the said cuttings when it was not proved on the record as to who made the said cuttings and when they were not calculated to conceal the true facts or the further interest of the conspiracy.

350. We are therefore of opinion that Gurha has been rightly held to have been in the conspiracy and to have abetted the making of the false journal vouchers.

351. In view of the above, we are of opinion that the appellants have been rightly convicted of the offences charged.

352. It has been urged for Chokhani that his sentience be reduced to the period already undergone as he made no profit for himself out of the impugned transactions, that he is 59 years old and had already been ten days in jail. We do not consider these to justify the reduction of the sentence when he was the chief person to carry out the main work of the conspiracy.

353. We also do not consider Dalmia's sentence, in the circumstances of the case, to be severe.
354. We therefore dismiss these appeals.
355. Appeals Dismissed.

MANU/SC/0581/1980

Back to Section 408 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Writ Petn. No. 1543 and Civil Appeal No. 1379 of 1977, Writ Petns. Nos. 838 and 2360-2363 of 1978 and SLP (C) Nos. 2333 and 2530 of 1978 and 1927 of 1979 and SLP (C) No. 2529 of 1978 and W.P. No. 228 of 1979

Decided On: 09.05.1980

Ambika Prasad Mishra Vs. State of U.P. and Ors.

Hon'ble Judges/Coram:
Y.V. Chandrachud, C.J., P.N. Bhagwati, V.R. Krishna Iyer, V.D. Tulzapurkar and A.P. Sen, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: M.S. Gupta, Adv. in W.Ps. Nos. 838, 1542 and 1543 and C.A. 1379 of 1977, Arvind Kumar, Lakshmi Arvind and Prakash Gupta, Advs. in S.L.Ps. Nos. 1727, 2333 and 2530 of 1978, P.R. Mridul, Sr. Adv., R.K. Jain and Sukumar Sahu, Advs. in W.Ps. Nos. 2360-63 of 1978, Veda Vyasa, Sr. Adv., S.K. Gupta and A.K. Sharma, Advs. in S.L.P. No. 2599 and W.P. No. 228 of 1979

For Respondents/Defendant: B.P. Singh Chauhan, Addl. Adv.-General, U.P. and C.P. Rana, Adv.

JUDGMENT
V.R. Krishna Iyer, J.

1. This judgment deals with a flood of cases from Uttar Pradesh relating to limitation on agricultural land holdings, and specifically disposes of the writ petitions, civil appeals and petitions for special leave listed below.

2. The pervasive theme of this litigative stream is not anti-land-reform as such but the discriminatory flaws in the relevant legislation which make it 'unlaw' from the constitutional angle.

3. The march of the Indian nation to the Promised Land of Social Justice is conditioned by the pace of the process of agrarian reform. This central fact of our country's progress has made land distribution and its inalienable ally, the ceiling on land holding, the cynosure of legislative attention. And when litigative confrontation with large holders has imperilled the implementation of this vital developmental strategy, Parliament, in exercise of its constituent power, has sought to pre-empt, effectively and protect

impregnably such statutory measures by enacting Article 31A as the very first amendment in the very first year after the Constitution came into force. Consequent on the Constitution (First Amendment) Act, 1951, this Court repelled the challenges to land reform laws as violative of fundamental rights in State of Bihar v. Kameshwar Singh MANU/SC/0020/1952: AIR 1952 SC 252 but the constant struggle between agrarian reform legislation and never-say-die litigation has led to a situation where every such enactment has been inevitably accompanied by countless writ petitions assailing its vires despite Article 31A, not to speak of the more extensive Chinese walls like Articles 31B, 31C and 31D. The forensic landscape is cluttered up in this Court with appeals and writ petitions and petitions for leave to appeal, the common feature of each of which is a challenge to the validity of one or other of the State laws imposing ceiling on land holding in an in egalitarian milieu of the landed few and the landless many. Of course, the court is bound to judge the attack on the legislative projects for acquisition and distribution, on their constitutional merits and we proceed to essay the task with special reference to the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 (abbreviated hereafter as the Act). Several counsel have argued and plural objections have been urged but we will grapple with only those contentions which have been seriously pressed and omit others which have either been only formally mentioned or left to lie in silent peace, or but feebly articulated, In this judgment, we side-step the bigger issue of the vires of the constitutional amendments in Articles 31A, 31B and 31C as they are dealt with in other cases disposed of recently. Indeed, the history of land reform, in its legislative dimension has been a perennial race between judicial pronouncements and constitutional amendments.

4. The anatomy of the Act must be scanned as a preliminary exercise so that the constitutional infirmities alleged may be appreciated in the proper setting. The long title gives the primary purpose of the Act as imposition of ceiling on land holdings in Uttar Pradesh and the Preamble amplifies it further. All this is tersely spelt out in the Statement of Objects and Reasons which runs thus:

With a view to provide for more equitable distribution of land by making the same available to the extent possible to landless agricultural labourers and to provide for cultivation on co-operative basis and to conserve part of the available resources in land so as to increase the production and up reserve stock of foodgrains against lean years by carrying on cultivation on scientific lines in State-owned farms, it is expedient to impose ceiling on existing large land holdings. It is necessary to provide some land to the village communities for their common needs, such as establishment of fuel and fodder reserves. The Bill is, therefore, being introduced to promote the economic interest of the weaker section of community and to subserve the common good.

5. Thus we get the statutory perspective of agrarian reform and so, the constitutionality of the Act has to be tested on the touchstone of Article 31A which is the relevant protective armour for land reform laws. Even here, we must state that while we do refer to the range of constitutional immunity Article 31A confers on agrarian reform measures

we do not rest our decision on that provision. Independently of Article 31A, the impugned legislation can withstand constitutional invasion and so the further challenge to Article 31A itself is of no consequence. The comprehensive vocabulary of that purposeful provision obviously catches within its protective net the present Act and, broadly speaking, the antiseptic effect of that Article is sufficient to immunise the Act against invalidation to the extent stated therein. The extreme argument that Article 31A itself is void as violative of the basic structure of the Constitution has been negatived by my learned brother, Bhagwati, J. in a kindred group of cases of Andhra Pradesh. The amulet of Article 31A is, therefore, potent, so far as it goes, but beyond its ambit it is still possible, as counsel have endeavoured, to spin out some sound argument to nullify one section or the other. Surely, the legislature cannot run amok in the blind belief that Article 31A is omnipotent. We will examine the alleged infirmities in due course. It is significant that even apart from the many decisions upholding Article 31A, Golak Nath's case (MANU/SC/0029/1967: (1967) 2 SCR 762: AIR 1967 SC 1643) decided by a Bench of 11 Judges, while holding that the Constitution (First Amendment) Act exceeded the constituent power still categorically declared that the said amendment and a few other like amendments would be held good based on the doctrine of prospective overruling. The result, for our purpose, is that even Golak Nath's case has held Article 31A valid. The note struck by later cases reversing Golak Nath does not militate against the vires of Article 31A. Suffice it to say that in the Kesavananda Bharti's case, (MANU/SC/0445/1973: 1973 Supp SCR 1: AIR 1973 SC 1461) Article 31A was challenged as beyond the amendatory power of Parliament and, therefore, invalid. But, after listening to the marathon erudition from eminent counsel, a 13 Judge Bench of this Court upheld the vires of Article 31A in unequivocal terms. That decision binds, on the simple score of stare decisis and the constitutional ground of Article 141. Every new discovery or argumentative novelty cannot undo or compel reconsideration of a binding precedent. In this view, other submissions sparkling with creative ingenuity and presented with high pressure advocacy, cannot persuade us to re-open what was laid down for the guidance of the nation as a solemn proposition by the epic fundamental rights case. From Kameshwar Singh, AlR 1952 SC 252 and Golak Nath (1967) through Kesavananda (1973) and Kannan Devan, (MANU/SC/0543/1972: (1973) 1 SCR 356: AIR 1972 SC 2301) to Gwalior Rayons, (MANU/SC/0068/1973: (1974) 1 SCR 671: AIR 1973 SC 2734) and after Article 31A has stood judicial scrutiny although, as stated earlier, we do not base the conclusion on Article 31A. Even so, it is fundamental that the nation's Constitution is not kept in constant uncertainty by judicial review every season because it paralyses, by perennial suspense, all legislative and administrative action on vital issues deterred by the brooding threat of forensic blow-up. This, if permitted, may well be a kind of judicial destabilization of State action too dangerous to be indulged in save where national crisis of great moment to the life, liberty and safety of this country and its millions are at stake, or the basic direction of the nation itself is in peril of a shake-up. It is surely wrong to prove Justice Roberts of the United States Supreme Court right when he said: Smith v. Allwright (1944) 321 US 649, 669 and 670--

The reason for my concern is that the instant decision, overruling that announced about nine years ago, tends to bring adjudications of this tribunal into the same class as a restricted railroad ticket good for this day and train only.....It is regrettable that in an era marked by doubt and confusion, an era whose greatest need is steadfastness of thought and purpose, this Court which has been looked to as exhibiting consistency in adjudication, and a steadiness which would hold the balance even in the face of temporary ebbs and flows of opinion, should now itself become the breeder of fresh doubt and confusion in the public mind as to the stability of our institutions.

6. It is wise to remember that fatal flaws silenced by earlier rulings cannot survive after death because a decision does not lose its authority "merely because it was badly argued, inadequately considered and fallaciously reasoned" (Salmond 'Jurisprudence' p. 215 (11th edition)). And none of these misfortunes can be imputed to Bharti's case (MANU/SC/0445/1973: AIR 1973 SC 1461) (supra). For these reasons, we proceed to consider the contentions of counsel on the clear assumption that Article 31A is good. Its sweep is wide and indubitably embraces legislation on land ceiling. Long years ago, in Ranjit v. State MANU/SC/0245/1964: (1965) 1 SCR 82: AIR 1965 SC 632, a Constitution Bench, speaking through Hidayatullah, J., dwelt on the wide amplitude of Article 31A, referred to Precedents of this Court on agrarian reform vis-a-vis Article 31 A and concluded that equitable distribution of lands, annihilation of monopoly of ownership by imposition of ceiling and regeneration of the rural economy by diverse planning and strategies are covered by the armour of Article 31A. We may quote a part:

The scheme of rural development today envisages not only equitable distribution of land so that there is no undue imbalance in society resulting in a landless class on the one hand and a concentration of land in the hands of a few on the other, but envisages also the raising of economic standards and bettering rural health and social conditions. Provisions for the assignment of lands to Village Panchayat for the use of the general community, or for hospitals, schools, manure pits, tanning grounds etc. which enure for the benefit of rural population must be considered to be an essential part of the redistribution of holdings and open lands to which no objection is apparently taken. If agrarian reforms are to succeed, mere distribution of lands to the landless is not enough. There must be a proper planning of rural economy and conditions and a body like the Village Panchayat is best designed to promote rural welfare than individual owners of small portions of lands. Further the Village Panchayat is an authority for purposes of Part III as was conceded before us and it has the protection of Article 31A because of this character even if the taking over of shamlat deh amounts to acquisition.....

The setting of a body of agricultural artisans (such as the village carpenter, the village blacksmith, the village tanner, farrier, wheelwright, barber, washerman etc.) is a part of rural planning and can be comprehended in a scheme of agrarian reforms. It is a trite saying that India lives in villages and a scheme to make villages self-sufficient cannot but be regarded as part of the larger reforms which consolidation of holdings, fixing of ceiling on lands, distribution of surplus lands and utilising of vacant and waste lands contemplate: at pp. 94-95.

This view has been reinforced by the later pronouncement of a Constitution Bench in the Gwalior Rayan case, (MANU/SC/0068/1973: (1974) 1 SCR 671: AIR 1973 SC 2734) emphatically expressing support for the conceptual sweep of agrarian reform vis-a-vis Article 31A. The proposition, therefore, is invulnerable that Article 31A repulses all invasion on "ceiling legislation" (armed with Articles 14, 19 and 31).

7. The professed goal of the legislation is to maximise surplus lands for working out distributive justice and rural development, with special reference to giving full opportunities to the agrarian masses to become a major rural resource of the nation. How to maximise surplus lands? By imposition of severe ceiling on ownership of land holdings consistently with the pragmatics of rural economies and the people's way of life. The pervasive, pivotal concepts are, therefore, ceilings on holdings and surrender of surplus land. The working unit with reference to which the legal ceiling is set is the realistic family. So, the flexible concept of 'family' also becomes a central object of legislative definition. Having regard to the diversity of family units among the various communities making up Indian society and having the object of the legislation as the guiding principle the statute under consideration has given a viable and realistic definition of 'family' with provision for some variables and special situations. The machinery for implementing the statute is also set up with adjudicative powers, including appeals. Compensation, without invidious discrimination, has to be paid, according to the scheme, when surplus land is taken away and for the determination and payment of such compensation a whole chapter is devoted. The disposal of lands secured as surplus is, perhaps, the culmination of the legislative project, and so, Chap. 4 stipulates the manner of disposal and settlement of surplus land. Thus, we have the definitional provision in Chap. 1, followed by imposition of "ceilings" with ancillary provisions for exemption. The judicial machinery for enforcement and the provisions for preemption of manipulation and prevention of fraud on the statute, the assessment of compensation and its payment and the like have also been enacted in Chaps. 2 and 3. A miscellaneous chapter deals with a variety of factors, including offences and penalties, mode of hearing and appellate powers and kindred matters. Inevitably, such a progressive legislation runs drastically contrary to the feudal ethos of the landed gentry and the investment instincts of the nouveau riche and green revolutionists. Therefore, the holders who are hurt by the provisions of the Act have chosen to challenge their vires and they must succeed if the ground is good. Since the legislature has plenary power to the extent conferred by the Constitution, the attack has to be based, and, indeed, has been, on constitutional infirmities which, if sound, must shoot down the Act. By way of aside, one might query whether agrarian reform, with all the fanfare and trumpet, has seriously taken off the ground or is still in the hangar? Anyway, the court can only pronounce, the Executive must execute.

8. We will now proceed to formulate the points which, according to counsel, are fatal to the legislation and proceed to scan them in due course.

9. Various miniscule matters have been raised in the plethora of cases largely founded on some real or fancied inequity, inequality, legislative arbitrariness or sense of injustice. Speaking generally and with a view to set the record straight, injustice is conditioned by the governing social philosophy, the prevailing economic approach and, paramountly, by the constitutional parameters which bind the court and the community.

10. The Indian Constitution is a radical document, a charter for socio-politico-economic change and geared to the goals spelt out in the Objectives Resolution which commits the nation to a drive towards an egalitarian society, a note struck more articulately by the adjective 'socialist' to our Republic introduced by a recent Amendment and survives after Parliament, differently composed, had altered the 42nd Amendment. This backdrop suggests that agrarian legislation, organised as egalitarian therapy, must be judged, not meticulously for every individual injury but by the larger standards of abolition of fundamental inequalities, frustration of basic social fairness and shocking unconscionableness. This process involves detriment to vested interests. The perfect art of plucking the goose with the least squealing is not a human gift. A social surgery, supervised by law, minimises, not eliminates, individual hurt while promoting community welfare. The court, in its interpretative role, can neither be pachydermic nor hyperreactive when landholders, here and there lament about lost land. We will examine the contentions from this perspective, without reference to Articles 31B, C and D. Justice Cardozo has a message for us when he says: Cardozo 'Selected Writings' p. 159.--

Law and obedience to law are facts confirmed everyday to us all in our experience of life. If the result of a definition is to make them seem to be illusions, so much the worse for the definition; we must enlarge it till it is broad enough to answer to realities.
11. Shri Mridul, who led the arguments, mounted a three point attack. Article 31A (1) (ii) was the target of an obscure submission which counsel, with characteristic fairness, did not press at a later stage. Linked up with it was the queer nexus between Article 21 and the right to property, deprivation of which was contended to be an unreasonable procedure somehow falling within the lethal spell of Article 21.

12. Proprietary personality was integral to personal liberty and a mayhem inflicted on a man's property was an amputation of his personal liberty. Therefore, land reform law, if unreasonable, violates Article 21 as expansively construed in Maneka Gandhi, MANU/SC/0133/1978: (1978) 1 SCC 248: (AIR 1978 SC 597). The dichotomy between personal liberty, in Article 21, and proprietary status, in Articles 31 and 19 is plain, whatever philosophical justification or pragmatic realisation it may possess in political or juristic theory. Maybe, a penniless proletarian, is unfree in his movements and has nothing to lose except his chains. But we are in another domain of constitutional jurisprudence. Of course, counsel's resort to Article 21 is prompted by the absence of mention of Article 21 in Article 31 A and the illusory hope of inflating Maneka Gandhi to impart a healing touch to those whose property is taken by feigning loss of personal

liberty when the State takes only property. Maneka Gandhi is no universal nostrum or cure-all, when all other arguments fail.

13. The last point which had a quaint moral flavour was that transfers of landed property, although executed after the dates specified in the Act were unreasonably invalidated by the Act even when there was no "mens rea" vis-a-vis the Ceiling Law on the part of the transferor and this was violative of Article 19 (1) (f) and of Article 14 as arbitrary. A facet of over-inclusiveness which breaches Article 14 was also urged. It is perfectly open to the legislature, as ancillary to its main policy to prevent activities which defeat the statutory purpose, to provide for invalidation of such actions. When the alienations are invalidated because they are made after a statutory date fixed with a purpose, there is sense in this prohibition. Otherwise, all the lands would have been transferred and little would have been left by way of surplus. Let us read the text of Section 5(6) which is alleged to be bad being over-inclusive or otherwise anomalous. The argument, rather hard to follow and too subtle for the pragmatic of agrarian law, may be clearer when the provision is unfurled Section 5(6) runs thus:

In determining the ceiling area applicable to a tenure-holder, any transfer of land made after the twenty-fourth day of Jan. 1971, which but for the transfer would have been declared surplus land under this Act, shall be ignored and not taken into account:

Provided that nothing in this sub-section shall apply to:

(a) a transfer in favour of any person (including Government) referred to in Sub-section (2);

(b) a transfer proved to the satisfaction of the prescribed authority to be in good faith and for adequate consideration and under an irrevocable instrument not being a benami transaction or for immediate or deferred benefit of the tenure-holder or other members of the family.

14. There is no blanket ban here but only qualified invalidation of certain sinister assignments etc. Counsel weaves gossamer webs which break on mere judicial touch when he argues that transfer 'in good faith and for adequate consideration' have been unconstitutionally exempted. The bizarre submission is that 'adequate consideration' is an arbitrary test. We reject it without more discussion. The second limb of the submission is that while Section 5(6) directs the authority to ignore certain transfers it does not void it. The further spin-off adroitly presented by counsel is that the provision violates the second proviso to Article 31A. It is a little too baffling to follow and we dismiss the submission as hollow. The provision in Section 5(6), when read in the light of the Provisos, is fair and valid.

15. Counsel's further argument is to quote his own words that "the impugned provisions do not establish a reasonable procedure" because:

The expression 'in good faith' is over-inclusive and takes within its sweep situations which are not only very different but which may not have any nexus or legitimate relationship with the objects and purposes of the ceiling law.....We are hardly impressed by it and find no substance in it.
16. There is no question of morality or constitutionality even if the clause may be a little overdrawn. On the contrary, it is legislative folly not to preserve, by appropriate preventives and enacted contraceptives, the 'surplus' reservoir of land without seepage or spillover. It is legal engineering, not moral abandonment. Indeed, the higher morality or social legitimacy of the law requires a wise legislature to proscribe transfers, lest the surplus pool be drained off by a rush of transactions. Maybe, individual hardship may happen, very sad in some instances. But every great cause claims human martyrs; Poor consolation for the victim but yet a necessary step if the large owners are not to play the vanishing trick or resort to manipulated alienations After all, this ban comes into force only on a well-recognised date, not from an arbitrarily retroactive past.

17. We cannot discover anything which is morally wrong or constitutionally anathematic in such an embargo. Article 19 (1) (f) is not absolute in operation and is subject, under Article 19 (6), to reasonable restrictions such as the one contained in Section 5(6). We do not think there is merit in the triple submissions spun out by Shri Mridul.

18. Even on the merits, the transfers have been rightly ignored, the vendees who are the grandsons have been held to be not bona fide transferees for adequate consideration; and the findings are of fact and concurrent. We overrule the grounds of grievance as unsustainable. In sum, without reliance on Article 31A, Shri Mridul's contentions can be dismissed as without merit.

19. We will now consider the mini-arguments of the other counsel--some of them do merit serious consideration by the court--and even where direct relief does not flow from the judicial process, State action to avoid anomalies may well be called for in the light of genuine hardships.

20. Shri Veda Vyas, appearing in W.P. No. 228 of 1979 and S.L.P. No. 2599 of 1978, pleaded powerfully for gender justice and sex equity because, according to his reading, the Act had a built-in masculine bias in the definition of 'family unit' and allocation of ceiling on holdings, and therefore, perpetrated unconstitutional discrimination. Indeed, his case illustrated the anti-woman stance of the statute, he claimed. The submission is simple, the inference is inevitable but the invalidation does not follow even if Article 31A is not pressed into service to silence Article 14.

21. We will formulate the objections and examine their merits from the constitutional perspective. Maybe, there is force in the broad generalisation that, notwithstanding all the boasts about the legendary glory of Indian womanhood in the days of yore and the equal status and even martial valour of heroines in Indian history, our culture has suffered a traumatic distortion, not merely due to feudalism and medievalism, but also due to British imperialism. Indeed, the Freedom Struggle led by Mahatma Gandhi, the story of social reforms inspired by spiritual leaders like Swami Vivekananda and engineered by a galaxy of great Indians like Raja Rammohan Roy, Swami Dayananda Saraswati and Maharishi Karve and the brave chapter of participation in the Independence Movement by hundreds and thousands of woman-patriots who flung aside their unfree status and rose in revolt to overthrow the foreign yoke, brought back to Indian womanhood its lustrous status of equal partnership with Indian manhood when the country decided to shape its destiny and enacted a Constitution in that behalf. Our legal culture and corpus juris, partly a heritage of the past, do contain strands of discrimination to set right which a commission elaborately conducted enquiries and made a valuable report to the Central Government. Shri Veda Vyas may be right in making sweeping submissions only to this limited extent but when we reach the concrete statutory situation and tackle the specific provisions in the Act, his argument misses the mark.

22. A better appreciation of his contention must be preceded by excerption of two definitions and consideration of the concepts they embody. Section 3(7) defines 'family' thus:

'family' in relation to a tenure-holder, means himself or herself and his wife or her husband, as the case may be (other than a judicially separated wife or husband), minor sons and minor daughters (other than married daughters);
This definition is incomplete without contextually reading Section 5(3) and so we quote the provision which, in the view of Shri Veda Vyas, enwombs the vice of discrimination against women. Section 5(3)(a) and (b) and Explanation:

Section 5(3). Subject to the provisions of Sub-sections (4), (5), (6) and (7) the ceiling area for purposes of Sub-section (1) shall be--

(a) in the case of a tenure-holder having a family of not more than five members, 7.30 hectares of irrigated land (including land held by other members of his family) plus two additional hectares of irrigated land or such additional land which together with the land held by him aggregates to two hectares, for each of his adult sons, who are either not themselves tenure-holders or who hold less than two hectares of irrigated land, subject to a maximum of six hectares of such additional land;

(b) in the case of a tenure-holder having family of more than five members, 7.30 hectares of irrigated land (including land held by other members of his family), besides, each of

the members exceeding five and for each of his adult sons who are not themselves tenure-holders or who hold less than two hectares of irrigated land, two additional hectares of irrigated land or such additional land which together with the land held by such adult son aggregates to two hectares, subject to a maximum of six hectares of such additional land.

Explanation: The expression 'adult son' in Clauses (a) and (b) includes an adult son who is dead and has left surviving behind him minor sons or minor daughters (other than married daughters) who are not themselves tenure-holders or who hold land less than two hectares of irrigated land.

23. The anti-female kink is patent in that the very definition of family discloses prejudice against the weaker sex by excluding adult daughters without providing for any addition to the ceiling on their account. In the case of an adult son, Section 5(3)(a) of the Act provides for the addition of two hectares of irrigated land for each of his (tenure holder's) sons where the family has a strength of less than five. Section 5(3)(b) similarly provides for two additional hectares of irrigated land for each of his (tenure holder's) adult sons where the strength of the family is more than 5. It must be remembered that this addition is on account of the fact that there are adult sons, even though they are not tenure holders or hold less than two hectares or none. This privilege of adding to the total extent that the family of a tenure holder may keep is denied to an adult daughter, even though unmarried, and, therefore, dependent on the family, for that a married son stands on a different footing from a married daughter, what justice is there in barring a dependent unmarried daughter in the cold? Assuming, without admitting, Shri Veda Vyas further urges that having regard to the Child Marriage Restraint Act, 1929 and the increasing prevalence of unmarried adult daughters in families these days, the discrimination is not theoretical but real because no minor girl can now marry.

24. Another similar invidious provision is the definition of tenure-holder. Ceiling on holdings is fixed with reference to tenure-holders.

25. We wonder whether the Commission on the Status of Women or the Central Government or the State Governments have considered this aspect of sex discrimination in most land reforms laws, but undoubtedly the State should be fair especially to the weaker sex. Adult damsels should not be left in distress by progressive legislations geared to land reforms. This criticism may have bearing on the ethos of the community and the attitude of the legislators, but we are concerned with the constitutionality of the provision. Maybe, in this age of nuclear families and sex equal human rights it is illiberal and contrary to the Zeitgeist to hark back to history's dark pages nostalgically and disguise it as the Indian way of life with a view to deprive women of their undeniable half. Articles 14 and 15 and the humane spirit of the Preamble rebel against the de facto denial of proprietary personhood of womanhood. But this legal sentiment and jural value must not run riot and destroy provisions which do not discriminate between man and

woman qua man and woman but merely organise a scheme where life's realism is legislatively pragmatised. Such a scheme may marginally affect gender justice but does not abridge, even a wee-bit, the rights of women. If land-holding and ceiling thereon are organised with the paramount purpose of maximising surpluses without maiming women's ownership no submission to destroy this measure can be permitted using sex discrimination as a means to sabotage what is socially desirable. No woman's property is taken away any more than a man's property.

26. Section 5(3) reduces daughters or wives to the status of stooges. It forbids excessive holdings having regard to rural realities of agricultural life, 'Family' is defined because it is taken as the unit for holding land--a fact of extant societal life which cannot be wished away. This is only a tool of social engineering in working out the scheme of setting limits to ownership. Section 5(3) does not confer any property on an adult son nor withdraw any property from an adult daughter. That provision shows a concession to a tenure-holder who has propertyless adult sons by allowing him to keep two more hectares per such son. The propertyless son gets no right to a cent of land on this score but the father is permitted to keep some more of his own for feeding this extra mouth. If an unmarried daughter has her own land, this legislation does not deprive her any more than a similarly situated unmarried son. Both are regarded as tenure-holders. The singular grievance of a chronic spinster vis-a-vis a similar bachelor may be that the father is allowed by Section 5(3) to hold an extra two hectares only if the unmarried major is a son. Neither the daughter nor the son gets any land in consequence and a normal parent will look after an unmarried daughter with an equal eye. Legal injury can arise only if the daughter's property is taken away while the son's is retained or the daughter gets no share while the son gets one. The legislation has not done either. So, no tangible discrimination can be spun out. Maybe, the legislature could have allowed the tenure-holder to keep another two hectares of his on the basis of the existence of an unmarried adult daughter. It may have grounds rooted in rural realities to do so. The court may sympathise but cannot dictate that the landholder may keep more land because he has adult unmarried daughters. That would be judicial legislation beyond permissible process.

27. The same perspicacious analysis salvages the provision regarding a wife. True, Section 3(17) makes the husband tenure-holder even when the wife is the owner. So long as the land is within the sanctioned limit it is retained as before without affecting ownership or enjoyment. But where it is in excess, the compensation for the wife's land, if taken away as surplus, is paid to her under Chapter III. And even in the choice of land, to declare surplus, the law, in Section 12A, has taken meticulous care to protect the wife. The husband being treated as tenure-holder even when the wife is the owner is a legislative device for simplifying procedural dealings. When all is said and done, married women in our villages do need their husband's services and speak through them in public places, except, hopefully in the secret ballot expressing their independent political choice. Some of us may not be happy with the masculine flavour of this law but it is difficult to hold that rights of women are unequally treated, and so, the war for equal gender status

has to be waged elsewhere. Ideologically speaking, the legal system, true to the spirit of the Preamble and Article 14, must entitle the Indian women to be equal in dignity, property and personality, with man. It is wrong if the land reforms law denudes woman of her property. If such be the provision, it may be unconstitutional because we cannot expect that "home is the girl's prison and the woman's work-house". But it is not.

28. It must be said in fairness, that the legislature must act on hard realities, not on glittering ideals which fail to work. Nor can large land-holders be allowed to outwit socially imperative land distribution by putting female discrimination as a mask. There is no merit in these submissions of Sri Veda Vyas.

29. In the view we have taken, we need not discuss the soundness of the reasoning in the ruling in Sucha Singh v. State MANU/PH/0077/1974: AIR 1974 P&H 162 at p. 171 (FB). The High Court was right, if we may say so with respect in its justification of the section when it observed:

The subject of legislation is the person owning or holding land and not his or her children.

Section 5 provides for the measure of permissible area that a person with one or more adult sons will be allowed to select out of the area owned or held by him and his children, whether male or female, have not been given any right to make a selection for himself or herself. It cannot, therefore, be said that this section makes a discrimination between a son and a daughter in respect of his or her permissible area on the ground of sex alone. The legislature is the best Judge to decide how much area should be left as permissible area with each owner or holder of land. In so far as no distinction between a male and a female holder or owner of the land has been made in respect of the permissible area in any given circumstances, there is no violation of Article 15 of the Constitution. This section does not provide for any succession to the land; it only provides for the measure of the permissible area to be retained by every holder or owner of the land out of the area held or owned by him or her on the appointed day on the basis of the number of adult sons he or she has. It is for the legislature to prescribe the measure of permissible area and no exception can be taken because only adult sons have been taken into consideration.

30. Shri Veda Vyas objected to the further observations of Tuli, J.:

It is evident that distinction between an adult son and an adult daughter has been made not only on the ground of sex but also for the reason that a daughter has to go to another family after her marriage in due course, marriage being a normal custom which is universally practised. This is an institution of general prevalence which is the foundation of organised and civilised societies and communities.

Our rapidly changing times, when women after long domestic servitude, seek self-expression, cannot forge new legal disabilities and call it legislative wisdom. But, without assent or dissent, we may pass by these observations because no property right of women is taken away, and discrimination, if any, is not inflicted on rights, but sentiments. Shri Arvind Kumar, who followed, also made some persuasive points and seeming dents in the legislation when read in the light of the U. P. Consolidation of Holdings Act, 1953 (hereinafter called the Consolidation Act). In general terms, the submission turned on the operation of the law relating to consolidation of holdings.

31. It is a great pity that a benign agrarian concept--abolition of fragmentation and promotion of consolidation of agricultural holdings--has proved in practice to be a litigative treachery and opened up other vices. The provision for appeals and revisions and the inevitable temptation of the vanquished to invoke Article 226 and Article 136 of the Constitution has paved the protracted way for improvident layout on speculative litigation. More farmers are cultivating litigation than land, thanks to the multi-docket procedure in the concerned law. Even so, we see no force in counsel's contention which we may now state.

32. The thrust of his argument, omitting subsidiary submissions which we will take up presently, is that so long as consolidation proceedings under the sister statute (U.P. Consolidation of Holdings Act, 1953) are under way, two consequences follow: Firstly, all other legal proceedings including the ceiling proceedings must abate. A notification under Section 4 of the Consolidation Act has been issued in regard to many areas in the State. Consolidation has been completed in most places but is still pending in some places. Counsel's argument is that once a notification under Section 4 has been issued. Section 5(2)(a) operates. This latter provision states that

every proceeding for the correction of records and every suit and proceeding in respect of declaration of rights or interest in any land lying in the area, or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any court or authority whether of the first instance or of appeal, reference of revision, shall, on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending stand abated:

Provided that no such order shall be passed without giving to the parties notice by post or in any other manner and after giving them an opportunity of being heard:

Provided further that on the issue of a notification under Sub-section (1) of Section 6 in respect of the said area or part thereof, every such order in relation to the land lying in such area or part as the case may be, shall stand vacated; Thus the ceiling proceeding has abated and surplus land cannot be taken from him. This plea has only meretricious attraction and superficial plausibility as we will presently see.

33. The whole scheme of consolidation of holdings is to restructure agrarian landscape of U.P. so as to promote better farming and economic holdings by eliminating fragmentation and organising consolidation. No one is deprived of his land. What happens is, his scattered bits are taken away and in lieu thereof a continuous conglomeration equal in value is allotted subject to minimal deduction for community use and better enjoyment. Once this central idea is grasped, the grievance voiced by the Petitioner becomes chimerical. Counsel complains that the tenure-holder will not be able to choose his land when consolidation proceedings are in an on going stage. True, whatever land belongs to him at that time, may or may not belong to him after the consolidation proceedings are completed. Alternative allotments may be made and so the choice that he may make before the prescribed authority for the purpose of surrendering surplus lands and preserving 'permissible holding' may have only tentative value. But this factor does not seriously prejudice the holder. While he chooses the best at the given time the Consolidation Officer will give him its equivalent when a new plot is given to him in the place of the old. There is no diminution in the quantum of land and quality of land since the object of consolidation is not deprivation but mere substitution of scattered pieces with a consolidated plot. The tenure-holder may well exercise his option before the prescribed officer and if, later, the Consolidation Officer takes away these lands, he will allot a real equivalent thereof to the tenure-holder elsewhere. There is no reduction or

damage or other prejudice by this process of statutory exchange.

34. Chapter III of the Consolidation Act provides, in great detail, for equity and equality, compensation and other benefits when finalising the consolidation scheme. Section 19(1)(b) ensures that

the valuation of plots allotted to a tenure-holder subject to deductions, if any, made on account of contributions to public purposes under this Act is equal to the valuation of plots originally held by him:
Provided that, except with the permission of the Director of Consolidation, the area of the holding or holdings allotted to a tenure-holder shall not differ from the area of his original holding or holdings by more than twenty-five per cent of the latter."

When land is contributed for public purposes compensation is paid in that behalf, and in the event of illegal or unjust orders passed, appellate and revisory remedies are also provided. On such exchange or transfer taking place, pursuant to the finalisation of the consolidation scheme, the holding, up to the ceiling available to the tenure-holder, will be converted into the new allotment under the consolidation scheme. Thus, we see no basic injustice nor gross arbitrariness in the continuance of the land reforms proceedings even when consolidation proceedings are under way. We are not at all impressed with counsel's citation of the ruling in Agricultural & Industrial Syndicate Ltd. v. State of U.P. MANU/SC/0350/1973: (1974) 1 SCR 253: AIR 1974 SC 1920, particularly because there

has been a significant amendment to Section 5 subsequent thereto. The law as it stood then was laid down by this Court in the above case; but precisely because of that decision an Explanation has been added to Section 5 of the Consolidation Act which reads thus:

Explanation:-- For the purposes of Sub-section (2) a proceeding under the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 or an uncontested proceeding under Sections 134 to 137 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, shall not be deemed to be a proceeding in respect of declaration of rights or interest, in any land. The view of the Allahabad High Court in Kshetrapal Singh v. State of U.P. MANU/UP/0346/1975: 1975 RD 366 is correct, and in effect negatives the submission of Shri Arvind Kumar that there should be a stay of ceiling proceedings pending completion of consolidation proceedings. The head note in Kshetrapal Singh's case (supra) brings out the ratio and for brevity's sake, we quote it;

By adding the Explanation after Sub-section (2) of Section 5 of the Act a legal fiction has been created. What is otherwise a proceeding in respect of declaration of rights or interest in any land is deemed not to be such a proceeding. That is the clear legislative intent behind the Explanation. Ordinarily an Explanation is intended to explain the scope of the main section and is not expected to enlarge or narrow down its scope but where the legislative intent clearly and unambiguously indicates an intention to do so, effect must be given to the legislative intent notwithstanding the fact that the legislature named that provision as an Explanation.

35. A feeble submission was made that there was time-wise arbitrariness vitiating the statute in that various provisions in the Act were brought into force on random dates without any rhyme or reason, thus violating, from the temporary angle, Article 14. It is true that neither the legislature nor the Government as its delegate can fix fanciful dates for effectuation of provisions affecting the rights of citizens. Even so, a larger latitude is allowed to the State to notify the date on which a particular provision may come into effect. Many imponderables may weigh with the State in choosing the date and when challenge is made years later, the factors which induced the choice of such dates may be buried under the debris of time. Parties cannot take advantage of this handicap and audaciously challenge every date of coming into force of every provision as capriciously picked out. In the present case, Section 6(1)(g) has been brought into force on 8-6-73, Section 6(3) on 10-10-75, Section 3(4) on 15-8-72, Section 16 on 1-7-73 and Section 6(1)(e) on 24-1-71. This last date which was perhaps the one which gave the learned Advocate General some puzzlement was chosen because on that date the election manifesto of the Congress Party in all the States announced a revised agrarian policy and that party was in power at the Union level and in most of the States. Although a mere election manifesto cannot be the basis for fixation of a date, here the significance is depeer in that it was virtually the announcement of the political government of its pledge to the people that the agrarian policy would be revised accordingly. The other dates mentioned above do not create any problem being rationally related to the date of a preceding Ordinance or

the date of introduction of the bill. The details are not necessary except to encumber this judgment. We would emphasise that the brief of the State when meeting constitutional challenges on the ground of arbitrariness must be a complete coverage, including an explanation for the date of enforcement of the provision impugned. Court and counsel cannot dig up materials to explain fossil dates when long years later an enterprising litigant chooses to challenge.

36. A few other minor infirmities were faintly mentioned but not argued at all or seriously. Such as, for instance, the contention that Section 38B of the Act which understandably excludes res judicata is challenged as violative of the basic structure of the Constitution and otherwise exceeds legislative competence. We do not think there is need to dilate on every little point articulated by one or other of the numerous advocates who justify their Writ Petitions or civil appeals by formal expression of futile submissions.

37. We dismiss all the appeals and all the writ petitions and all the special leave petitions with costs one set in all.

MANU/BH/0100/1937

Back to Section 415 of Indian Penal Code, 1860

IN THE HIGH COURT OF PATNA

Decided On: 26.11.1937

Akhil Kishore Ram Vs. Emperor

Hon'ble Judges/Coram:
Saiyid Fazl Ali and Rowland, JJ.

JUDGMENT
Authored By: Rowland, Saiyid Fazl Ali
Rowland, J.

1. These two applications have been heard together, the facts in both being similar. The petitioner was brought before the Magistrate on six charges which were tried in two batches of three each, and was convicted of cheating on all the charges and sentenced in each trial to undergo rigorous imprisonment for 18 months. These sentences have been directed to run concurrently. He was also sentenced at each trial to pay a fine of Rs. 500, in default, to suffer further rigorous imprisonment for six months; the sentences of fine and of imprisonment in default are cumulative. Appeals to the Sessions Judge of Patna were dismissed.

2. In revision, some technical objections have been taken in the petition against the manner of institution and the regularity of conduct of the proceedings at the trial. But Mr. Manuk at the hearing did not press these; indeed there is nothing in them of substance The main argument put forward on behalf of the petitioner is that assuming him to have done those things which the Court's below have found that he did, he has committed no offence and the second contention is that even if the acts amounted to cheating, the sentences imposed are excessive. The facts are that the petitioner Akhil Kishore Ram resides at Katri Sarai, Police Station Giriak, in Patna District, where in his own name and under thirteen other a liases he carries on a business of selling charms and incantations which he advertises in a number of newspapers in several provinces of India and despatches by value-payable post to persons answering the advertisements. Six of these transactions have been the subject-matter of the charges.

3. Mr. Manuk at the outset asked us to bear in mind that what he called the materialist attitude which regards spells and charms as a fraudulent pretence and sale of them as a swindle, though widely held, is not shared by a large body of opinion in the East particularly in India and among Hindus, where the efficacy of magical incantations is still relied on by many and thought to have a religious basis; and he maintained that there was nothing in the evidence to show that the petitioner did not propound the spells or

incantations advertised by him in good faith and with a genuine and pious belief in their efficacy he urged that a conviction should not be founded on the mere fact that the Court had no faith in the efficacy of the incantations. We may recognise the existence of contrasting points of view, but I would express their opposition differently. One outlook is exemplified by words which the dramatist Shakespeare puts in the mouth of one of his characters:

It's not in mortals to command success

But we'll do more, Sempronius, we'll deserve it.

4. This is the mental attitude of those who will spare no effort to secure results by their own endeavours and to whom, even if results fail them, there is a satisfaction in having done all that man can do. There are those on the other hand who would like success to come to them but are averse from the efforts of securing it by their own sustained exertions; it is not in them to deserve success but they hope by some device to command it. It is to the latter class that the advertisements of the petitioner are designed to appeal.

5. The advertisement Ex. 1 says:

GUPTA MANTRA.
A reward of Rs. 100.

The objects which cannot be achieved by-spending lacs of rupees may be had by repeating this Mantra seven times. There is no necessity of undergoing any hardship to make it effective. It is effective without any preparation. She whom you want may be very hard-hearted and proud, but she will feel a longing for you and she will want to be for ever with you, when you read this Mantra. This is a "Vashi Karan Mantra." It will make you fortunate, give you service, and advancement, make you victorious in litigation, and bring you profits in trade. A reward of Rs. 100, if proved fallible. Price, including postage, etc., Rs. 2-7-0.

Sidh Mantra Ashram, No. 37, P.O. Katri Sarai, Gaya.

6. Those who answered this advertisement received a printed paper headed "Gupta Mantra." A formula follows and then the instructions:

Read the Mantra seven times and look at the moon for fifteen minutes without shutting up your eyes even for a moment. Have a sound sleep with desired object in your heart after that and you will succeed.

I. You should take only the milk of cow, fruit and sweets of pure fresh cow's milk during the day and night time, you should bathe at night and make your mind pure before you begin this process.

II. No other person should be taken into confidence however dear and nearly related he may be to you. If you allow such things it will lose its effects as it is so prepared that it can be used by only one man and that with strict secrecy.

Sidh Mantra Ashram, Katri Sarai, Gaya.

7. The leaflets are printed in English, Bengali, Hindi and Urdu: and it would appear from the registers of the post office that over 25,000 clients paid good money for them. Mr. Manuk argues that the Mantras have not been proved to be ineffective and sold with the knowledge of their uselessness; and therefore he says there was no cheating. But that was not what the prosecution set out to prove. The substance of the prosecution case and the findings of the Courts below was that whereas by the advertisement clients were made to believe that "there is no necessity of undergoing any hardship to make it effective" and that "it is effective without preparation", they were disappointed by finding on receipt of the leaflets that in order to work the oracle they must stare unlinking at the moon for fifteen minutes; a feat which, if not impossible as some of the prosecution witnesses have re-presented it to be, is at any rate beyond the powers of ordinary human beings except by long training and preparation. I have pointed cut that the advertisement is specially directed to those who are not content to win success by patient preparation and effort, and bids for their custom by the assurance that no hardship or preparation is needed.

8. The victims concerned in the six transactions which are before us have all said that had they known of the condition precedent to the using of the Mantra, they would never have sent for it: and the Courts below have accepted that evidence. Mr. Manuk argued that readers of the advertisement must have expected that there would be some instructions for its use; that to gaze at the moon for fifteen minutes was an ordinary instruction; and that a condition of this kind was no breach of faith with them. He referred to defence evidence adduced to show that the feat was not impossible, and submitted that his client had been unfortunate in his failure to secure the attendance of more witnesses on the point though he was unable to say that accused was entitled as of right to more assistance than the Court gave him. He also alluded to an offer by the accused to make a demonstration of moon gazing in the presence of the trying Magistrate, which the latter refused. As to that, the Magistrate was quite right. Section 539-B of the Code which empowers the Court to make a local inspection does not contemplate a procedure by which the presiding officer would, to all intents and purposes, put himself in the position of a witness in the case. The Magistrate rightly said that the accused could adduce no evidence of any such test. The accused examined as a witness a coal merchant who says that he used the Mantra, that he was able to gaze at the moon for fifteen minutes after some days' practice and that the capital of his business has grown from Rs. 300 to 1,500.

The feat of which he boasts does not appear to have been witnessed by any impartial observer and cannot be regarded as a well-authenticated record; his business success also rests on his own word only and he is himself related to the accused and thus not a disinterested witness.

9. The Courts below were fully entitled to refuse to rely on his evidence and to prefer the testimony of prosecution witnesses who have said that the condition attached to the Mantra was impossible or at least beyond the power of ordinary persons. Mr. Manuk argued that the petitioner was not bound to disclose in his advertisement all the procedure that was required to be followed in order to obtain the benefit of the Mantra. That is true; but the advertisement gave a definite assurance that there was no necessity for either hardship or preparation and the condition referred to is contrary to that assurance, on which the witnesses said that they acted, and without which they would not have answered the advertisement. I have no doubt then that the offences charged were committed and the petitioner has been rightly convicted. There remains the question of sentence. Mr. Manuk contended that at the worst the accused had committed a technical breach of the law and that if the Mantra was in fact genuine and effective, he might be, as was argued in the Magistrate's Court, wanting to do good to the universe. Whether the intentions of the accused were beneficent or otherwise can only be inferred from the materials before us, and such as they are, I can find more indications in them of a desire to do good to himself. Paragraph 2 of the instructions following the Mantra appears to be designed to secure the monopoly of his secret by the threat of the Mantra losing its effect if disclosed to others. The reader is presumably expected to forget that the vendor is disclosing it to thousands. This clause should also minimize the danger of victims discussing their experiences with one another and thus being moved to take action against the vendor. Should there be any such discussion, the use of the fourteen aliases might prevent the victims from being fully aware that, they were dealing with the same person. Then the advertisement is shrewdly drawn to disarm the suspicion with which at first sight the average newspaper reader is apt to regard magic, wizardry and incantations. The reward of Rs. 100 is placed in the forefront No time is lost in putting forward this assurance of genuineness in the headline and at the foot again it is said "a reward of Rs. 100 if proved fallible". Prospective purchasers are left to hope that by seven times repeating the Mantra they will attain their object whatever it may be with the assurance that in the event of failure they will get Rs. 100 reward and in case they should still be so sceptical as to wonder whether there is not a catch somewhere, there is the added assurance that the Mantra is effective without preparation and without the necessity of undergoing any hardship. If one may judge by the internal evidence, these compositions are the work of no ascetic or dreamer but of a hard-headed business man with organizing capacity and a flair for publicity. We know that he advertises widely and employs a staff of four clerks. The elements in human nature to which the appeal is made are not industry and patience but laziness and greed. The business is on a large scale and the convictions have been in. respect of six out of an unknown number of offences. These are considerations against treating the accused too lightly or imposing a nominal

sentence. The accused was liable to be sentenced to seven years' imprisonment of either description for any one of the six offences of which he has been convicted, and in my opinion, the sentences of substantive imprisonment imposed, namely eighteen months which will amount to no more than consecutive sentences of three months' for each offence are not excessive; nor are the fines. I would dismiss the applications and discharge the Rules.

Saiyid Fazl Ali, J.

10. I agree.

MANU/SC/0124/1961

Back to Section 420 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 226 of 1959

Decided On: 24.04.1961

Abhayanand Mishra Vs. The State of Bihar

Hon'ble Judges/Coram:
K. Subba Rao and Raghubar Dayal, JJ.

JUDGMENT
Raghubar Dayal, J.

1. This appeal, by special leave, is against the order of the High Court at Patna dismissing the appellant's appeal against his conviction under s. 420, read with s. 511, of the Indian Penal Code.

2. The appellant applied to the Patna University for permission to appear at the 1954 M.A. Examination in English as a private candidate, representing that he was a graduate having obtained his B.A. Degree in 1951 and that he had been teaching in a certain school. In support of his application, he attached certain certificates purporting to be from the Headmaster of the School, and the Inspector of Schools. The University authorities accepted the appellant's statements and gave permission and wrote to him asking for the remission of the fees and two copies of his photograph. The appellant furnished these and on April 9, 1954, proper admission card for him was despatched to the Headmaster of the School.

3. Information reached the University about the appellant's being not a graduate and being not a teacher. Inquiries were made and it was found that the certificates attached to the application were forged, that the appellant was not a graduate and was not a teacher and that in fact he had been de-barred from taking any University examination for a certain number of years on account of his having committed corrupt practice at a University examination. In consequence, the matter was reported to the police which, on investigation, prosecuted the appellant.

4. The appellant was acquitted of the charge of forging those certificates, but was convicted of the offence of attempting to cheat inasmuch as he, by false representations, deceived the University and induced the authorities to issue the admission card, which, if the fraud had not been detected, would have been ultimately delivered to the appellant.

5. Learned counsel for the appellant raised two contentions. The first is that the facts found did not amount to the appellant's committing an attempt to cheat the University but amounted just to his making preparations to cheat the University. The second is that even if the appellant had obtained the admission card and appeared at the M.A. Examination, no offence of cheating under s. 420, Indian Penal Code, would have been committed as the University would not have suffered any harm to its reputation. The idea of the University suffering in reputation is too remote.

6. The offence of cheating is defined in s. 415, Indian Penal Code, which reads:

"Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'.

Explanation. - A dishonest concealment of facts is a deception within the meaning of this section."

7. The appellant would therefore have cheated the University if he had (i) deceived the University; (ii) fraudulently or dishonestly induced the University to deliver any property to him; or (iii) had intentionally induced the University to permit him to sit at the M.A. Examination which it would not have done if it was not so deceived and the giving of such permission by the University caused or was likely to cause damage or harm to the University in reputation. There is no doubt that the appellant, by making false statements about his being as graduate and a teacher, in the applications he had submitted to the University, did deceive the University and that his intention was to make the University give him permission and deliver to him the admission card which would have enabled him to sit for the M.A. Examination. This card is 'property'. The appellant would therefore have committed the offence of 'cheating' if the admission card had not been withdrawn due to certain information reaching the University.

8. We do not accept the contention for the appellant that the admission card has no pecuniary value and is therefore not 'property'. The admission card as such has no pecuniary value, but it has immense value to the candidate for the examination. Without it he cannot secure admission to the examination hall and consequently cannot appear at the Examination.

9. In Queen Empress v. Appasami I.L.R(1889). 12 Mad. 151 it was held that the ticket entitling the accused to enter the examination room and be there examined for the Matriculation test of the University was 'property'.

10. In Queen Empress v. Soshi Bhushan MANU/UP/0055/1893: I.L.R(1893). 15 All. 210 it was held that the term 'property' in s. 463, Indian Penal Code, included the written certificate to the effect that the accused had attended, during a certain period, a course of law lectures and had paid up his fees.

11. We need not therefore consider the alternative case regarding the possible commission of the offence of cheating by the appellant, by his inducing the University to permit him to sit for the examination, which it would not have done if it had known the true facts and the appellant causing damage to its reputation due to its permitting him to sit for the examination. We need not also therefore consider the further question urged for the appellant that the question of the University suffering in its reputation is not immediately connected with the accused's conduct in obtaining the necessary permission.

12. Another contention for the appellant is that the facts proved do not go beyond the stage of preparation for the commission of the offence of 'cheating, and do not make out the offence of attempting to cheat. There is a thin line between the preparation for and an attempt to commit an offence. Undoubtedly, a culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; If it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence, therefore, can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. This is clear from the general expression 'attempt to commit an offence' and is exactly what the provisions of s. 511, Indian Penal Code, require. The relevant portion of s. 511 is:

"Whoever attempts to commit an offence punishable by this Code.....or to cause such an offence to be committed and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished.....".
13. These provisions require that it is only when one, firstly, attempts to commit an offence and, secondly, in such attempt, does any act towards the commission of the offence, that he is punishable for that attempt to commit the offence. It follows, therefore, that the act which would make the culprit's attempt to commit an offence punishable, must be an act which, by itself, or in combination with other acts, leads to the commission of the offence. The first step in the commission of the offence of cheating, therefore, must be an act which would lead to the deception of the person sought to be cheated. The moment a person takes some step to deceive the person sought to be cheated, he has embarked on a course of conduct which is nothing less than an attempt to commit the offence, as contemplated by s. 511. He does the act with the intention to commit the offence and the act is a step towards the commission of the offence.

14. It is to be borne in mind that the question whether a certain act amounts to an attempt to commit a particular offence is a question of fact dependent on the nature of the offence and the steps necessary to take in order to commit it. No exhaustive precise definition of what would amount to an attempt to commit an offence is possible. The cases referred to make this clear.

15. We may refer to some decided cases on the construction of s. 511, Indian Penal Code.

16. In The Queen v. Ramsarun Chowbey (1872) 4 N.W.P. 46 it was said at p. 47:

"To constitute then the offence of attempt under this section (s. 511), there must be an act done with the intention of committing an offence, and for the purpose of committing that offence, and it must be done in attempting the commission of the offence.

Two illustrations of the offence of attempt as defined in this section are given in the Code; both are illustrations of cases in which the offence has been committed. In each we find an act done with the intent of committing an offence, and immediately enabling the commission of the offence, although it was not an act which constituted a part of the offence, and in each we find the intention of the person making the attempt was frustrated by circumstances independent of his own volition.

From the illustrations it may be inferred that the Legislature did not mean that the act done must be itself an ingredient (so to say) of the offence attempted.....".

17. The learned Judge said, further, at p. 49:

"I regard that term (attempt) as here employed as indicating the actual taking of those steps which lead immediately to the commission of the offence, although nothing be done, or omitted, which of itself is a necessary constituent of the offence attempted".
18. We do not agree that the 'act towards the commission of such offence' must be 'an act which leads immediately to the commission of the offence'. The purpose of the illustrations is not to indicate such a construction of the section, but to point out that the culprit has done all that be necessary for the commission of the offence even though he may not actually succeed in his object and commit the offence. The learned Judge himself emphasized this by observing at p. 48:

"The circumstances stated in the illustrations to s. 511, Indian Penal Code, would not have constituted attempts under the English law, and I cannot but think that they were introduced in order to show that the provisions of Section 511, Indian Penal Code, were designed to extend to a much wider range of cases than would be deemed punishable as offences under the English Law".

19. In In the matter of the petition of R. MacCrea [I.L.R. 15 All. 173.] it was held that whether any given act or series of acts amounted to an attempt which the law would take notice of or merely to preparation, was a question of fact in each case and that s. 511 was not meant to cover only the penultimate act towards the completion of an offence and not acts precedent, if those acts are done in the course of the attempt to commit the offence, and were done with the intent to commit it and done towards its commission. Knox, J., said at p. 179:

"Many offences can easily be conceived where, with all necessary preparations made, a long interval will still elapse between the hour when the attempt to commit the offence commences and the hour when it is completed. The offence of cheating and inducing delivery is an offence in point. The time that may elapse between the moment when the preparations made for committing the fraud are brought to bear upon the mind of the person to be deceived and the moment when he yields to the deception practised upon him may be a very considerable interval of time. There may be the interposition of inquiries and other acts upon his part. The acts whereby those preparations may be brought to bear upon her mind may be several in point of number, and yet the first act after preparations completed will, if criminal in itself, be beyond all doubt, equally an attempt with the ninety and ninth act in the series.

20. Again, the attempt once begun and a criminal act done in pursuance of it towards the commission of the act attempted, does not cease to be a criminal attempt, in my opinion, because the person committing the offence does or may repent before the attempt in completed".

21. Blair, J., said at p. 181:

"It seems to me that section (s. 511) uses the word 'attempt' in a very large sense; it seems to imply that such an attempt may be made up of a series of acts, and that any one of those acts done towards the commission of the offence, that is, conducive to its commission, is itself punishable, and though the act does not use the words, it can mean nothing but punishable as an attempt. It does not say that the last act which would form the final part of an attempt in the larger sense is the only act punishable under the section. It says expressly that whosoever in such attempt, obviously using the word in the larger sense, does any act, etc., shall be punishable. The term 'any act' excludes the notion that the final act short of actual commission is alone punishable."
22. We fully approve of the decision and the reasons therefore.

23. Learned Counsel for the appellant relied on certain cases in support of his contention. They are not much to the point and do not in fact express any different opinion about the construction to be placed on the provisions of s. 511, Indian Penal Code. Any different view expressed had been due to an omission to notice the fact that the provisions of s. 511, differ from the English Law with respect to 'attempt to commit an offence'.

24. In Queen v. Paterson I.L.R. 1 All. 316 the publication of banns of marriage was not held to amount to an attempt to commit the offence of bigamy under s. 494, Indian Penal Code. It was observed at p. 317:

"The publication of banns may, or may not be, in cases in which a special license is not obtained, a condition essential to the validity of a marriage, but common sense forbids us to regard either the publication of the banns or the procuring of the license as a part of the marriage ceremony."
25. The distinction between preparation to commit a crime and an attempt to commit it was indicated by quoting from Mayne's Commentaries on the Indian Penal Code to the effect:

"Preparation consists in devising or arranging the means or measures necessary for the commission of the offence; the attempt is the direct movement towards the commission after the preparations have been made."
26. In Regina v. Padala Venkatasami (1881) I.L.R. 3 Mad. 4. the preparation of a copy of an intended false document, together with the purchase of stamped paper for the purpose of writing that false document and the securing of information about the facts to be inserted in the document, were held not to amount to an attempt to commit forgery, because the accused had not, in doing these acts, proceeded to do an act towards the commission of the offence of forgery.

27. In In the matter of the petition of Riasat Ali (1881) I.L.R. 7 Cal. 352. the accused's ordering the printing of one hundred receipt forms similar to those used by a company and his correcting proofs of those forms were not held to amount to his attempting to commit forgery as the printed form would not be a false document without the addition of a seal or signature purporting to be the seal or signature of the company. The learned Judge observed at p. 356:

"..... I think that he would not be guilty of an attempt to commit forgery until he had done some act towards making one of the forms a false document. If, for instance, he had been caught in the act of writing the name of the Company upon the printed form and had only completed a single letter of the name, I think that he would have been guilty of the offence charged, because (to use the words of Lord Blackburn) 'the actual transaction would have commenced, which would have ended in the crime of forgery, if not interrupted'."
28. The learned Judge quoted what Lord Blackburn said in Reg. v. Chessman [Lee & Cave's Rep. 145.]:

"There is no doubt a difference between the preparation antecedent to an offence and the actual attempt; but if the actual transaction has commenced, which would have ended in the crime if not interrupted, there is clearly an attempt to commit the crime."

29. He also quoted what Cockburn, C.J., said in M'Pherson's Case [Dears & B. 202.]:

"The word 'attempt' clearly conveys with it the idea, that if the attempt had succeeded, the offence charged would have been committed. An attempt must be to do that which, if successful, would amount to the felony charged."
30. It is not necessary for the offence under s. 511, Indian Penal Code, that the transaction commenced must end in the crime or offence, if not interrupted.

31. In In re: Amrita Bazar Patrika Press Ltd. (1920) I.L.R. 47 Cal. 190. Mukherjee, J., said at p. 234:

"In the language of Stephen (Digest of Criminal Law, Art. 50), an attempt to commit a crime is an act done with an intent to commit that crime and forming part of a series of acts which would constitute its actual commission if it were not interrupted. To put the matter differently, attempt is an act done in part execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime; in other words, an attempt consists in the intent to commit a crime, combined with the doing of some act adapted to, but falling short of, its actual commission; it may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted: Reg. v. Collins (1864) 9 Cox. 497.".
This again is not consistent with what is laid down in s. 511 and not also with what the law in England is.

32. In Stephen's Digest of Criminal Law, 9th Edition, 'attempt' is defined thus:

"An attempt to commit a crime is an act done with intent to commit that crime, and forming part of a series of acts, which would constitute its actual commission if it were not interrupted.

The point at which such a series of acts begins cannot be defined; but depends upon the circumstances of each particular case.

An act done with intent to commit a crime, the commission of which in the manner proposed was, in fact, impossible, is an attempt to commit that crime.

The offence of attempting to commit a crime may be committed in cases in which the offender voluntarily desists from the actual commission of the crime itself."

33. In In re: T. Munirathnam Reddi MANU/AP/0062/1955: AIR1955AP118 it was said at p. 122:

"The distinction between preparation and attempt may be clear in some cases, but, in most of the cases, the dividing line is very thin. Nonetheless, it is real distinction.

34. The crucial test is whether the last act, if uninterrupted and successful, would constitute a crime. If the accused intended that the natural consequence of his act should result in death but was frustrated only by extraneous circumstances, he would be guilty of an attempt to commit the offence of murder. The illustrations in the section (s. 511) bring out such an idea clearly. In both the illustrations, the accused did all he could do but was frustrated from committing the offence of theft because the article was removed from the jewel box in one case and the pocket was empty in the other case."

35. The observations 'the crucial test is whether the last act, if uninterrupted and successful, would constitute a crime' were made in connection with an attempt to commit murder by shooting at the victim and are to be understood in that context. There, the nature of the offence was such that no more than one act was necessary for the commission of the offence.

36. We may summarise our views about the construction of s. 511, Indian Penal Code, thus: A person commits the offence of 'attempt to commit a particular offence' when (i) he intends to commit that particular offence; and (ii) he, having made preparations and with the intention to commit the offence, does an act towards its commission; such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence.

37. In the present case, the appellant intended to deceive the University and obtain the necessary permission and the admission card and, not only sent an application for permission to sit at the University examination, but also followed it up, on getting the necessary permission, by remitting the necessary fees and sending the copies of his photograph, on the receipt of which the University did issue the admission card. There is therefore hardly any scope for saying that what the appellant had actually done did not amount to his attempting to commit the offence and had not gone beyond the stage of preparation. The preparation was complete when he had prepared the application for the purpose of submission to the University. The moment he despatched it, he entered the realm of attempting to commit the offence 'cheating'. He did succeed in deceiving the University and inducing it to issue the admission card. He just failed to get it and sit for the examination because something beyond his control took place inasmuch as the University was informed about his being neither a graduate nor a teacher.

38. We therefore hold that the appellant has been rightly convicted of the offence under s. 420, read with s. 511, Indian Penal Code, and accordingly dismiss the appeal.

39. Appeal dismissed.

MANU/SC/0290/1995

Back to Section 494 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Writ Petition (Civil) No. 1079 of 1989

Decided On: 10.05.1995

Sarla Mudgal and Ors. Vs. Union of India (UOI) and Ors.

Hon'ble Judges/Coram:
Kuldip Singh and R.M. Sahai, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: D.N. Diwedi, Additional Solicitir General, V.C. Mahajan, Shankar Ghosh, R.K. Garg and S. Janani, Advs

ORDER
Authored By: Kuldip Singh, R.M. Sahai
Kuldip Singh, J.

1. "The State shall endeavor to secure for the citizens a uniform civil code through-out the territory of India" is an unequivocal mandate under Article 44 of the Constitution of India which seeks to introduce a uniform personal law - a decisive step towards national consolidation. Pandit Jawahar Lal Nehru, while defending the introduction of the Hindu Code Bill instead of a uniform civil code, in the Parliament in 1954, said "I do not think that at the present moment the time is ripe in India for me to try to push it through". It appears that even 41 years thereafter, the Rulers of the day are not in a mod to retrieve Article 44 from the cold storage where it is lying since 1949. The Government - which have come and gone - have so far failed to make any effort towards "unified personal law for all Indians". The reasons are too obvious to be stated. The utmost that has been done is to codify the Hindu law in the form of the Hindu Marriage Act, 1955, The Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956 and the Hindu Adoptions and Maintenance Act, 1956 which have replaced the traditional Hindu law based on different schools of thought and scriptural laws into one unified code. When more than 80% of the citizens have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, any more, the introduction of "uniform civil code" for all citizens in the territory of India.

2. The questions for consideration are whether a Hindu husband, married under Hindu law, by embracing Islam, can solemnised second marriage? Whether such a marriage without having the first marriage dissolved under law, would be a valid marriage qua

the first wife who continue to be Hindu? Whether the apostate husband would be guilty of the offence under Section 494 of the Indian Penal Code (IPC)?

3. These are four petitions under Article 32 of the Constitution of India. There are two petitioners in Writ Petition 1079/89. Petitioner 1 is the President of "KALYANI" - a registered society - which is an organisation working for the welfare of needy- families and women in distress. Petitioner 2, Meena Mathur was married to Jitender Mathur on February 27, 1978. Three children (two sons and a daughter) were born out of the wed-lock. In early 1988, the petitioner was shocked to learn that her husband had solemnised second marriage with one Sunita Narula @ Fathima. The marriage was solemnised after they converted themselves to Islam and adopted Muslim religion. According to the petitioner, conversion of her husband to Islam was only for the purpose of marrying Sunita and circumventing the provisions of Section 494, IPC. Jitender Mathur asserts that having embraced Islam, he can have four wives irrespective of the fact that his first wife continues to be Hindu.

4. Rather interestingly Sunita alias Fathima is the petitioner in Writ Petition 347 of 1990. She contends that she along with Jitender Mathur who was earlier married to Meena Mathur embraced Islam and thereafter got married. A son was born to her. She further states that after marrying her, Jitender Prasad, under the influence of her first Hindu-wife, gave an undertaking on April 28, 1988 that he had reverted back to Hinduism and had agreed to maintain his first wife and three children. Her grievance is that she continues to be Muslim, not being maintained by her husband and has no protection under either of the personal laws.

5. Geeta Rani, petitioner in Writ Petition 424 of 1992 was married to Pradeep Kumar according to Hindu rites on November 13, 1988. It is alleged in the petition that her husband used to maltreat her and on one occasion gave her so much beating that her jaw bone was broken. In December 1991, the petitioner learnt that Pradeep Kumar ran away with one Deepa and after conversion to Islam married her. It is stated that the conversion to Islam was only for the purpose of facilitating the second marriage.

6. Sushmita Ghosh is another unfortunate lady who is petitioner in Civil Writ Petition 509 of 1992. She was married to G.C. Ghosh according to Hindu rites on May 10,1984. On April 20, 1992, the husband told her that he no longer wanted to live with her and as such she should agree to divorce by mutual consent. The petitioner was shocked and prayed that she was her legally wedded wife and wanted to live with him and as such the question of divorce did not arise. The husband finally told the petitioner that he had embraced Islam and would soon marry one Vinita Gupta. He had obtained a certificate dated June 17,1992 from the Qazi indicating that he had embraced Islam. In the writ petition, the petitioner has further prayed that her husband be restrained from entering into second marriage with Vinita Gupta.

7. Marriage is the very foundation of the civilised society. The relation once formed, the law steps in and binds the parties to various obligations and liabilities thereunder. Marriage is an institution in the maintenance of which the public at large is deeply interested. It is the foundation of the family and in turn of the society without which no civilisation can exist.

8. Till the time we achieve the goal - uniform civil code for all the citizens of India - there is an open inducement to a Hindu husband, who wants to enter into second marriage while the first marriage is subsisting, to become a Muslim. Since monogamy is the law for Hindus and the Muslim law permits as many as four wives in India, errand Hindu husband embraces Islam to circumvent the provisions of the Hindu law and to escape from penal consequences.

9. The doctrine of indissolubility of marriage, under the traditional Hindu law, did not recognise that conversion would have the effect of dissolving a Hindu marriage. Conversion to another religion by one or both the Hindu spouses did not dissolve the marriage. It would be useful to have a look at some of the old cases on the subject. In Re Ram Kumari 1891 Cal 246 where a Hindu wife became convert to the Muslim faith and then married a Mohammedan, it was held that her earlier marriage with a Hindu husband was not dissolved by her conversion. She was charged and convicted of bigamy under Section 494 of the IPC. It was held that there was no authority under Hindu law for the proposition that an apostate is absolved from all civil obligations and that so far as the matrimonial bond was concerned, such view was contrary to the spirit of the Hindu law. The Madras High Court followed Ram Kumari in Budansa v. Fatima MANU/TN/0159/1913. In Gul Mohammed v. Emperor MANU/NA/0076/1946 a Hindu wife was fraudulently taken away by the accused a Mohammedan who married her according to Muslim law after converting her to Islam. It was held that the conversion of the Hindu wife to Mohammedan faith did not ipso facto dissolve the marriage and she could not during the life time of her former husband enter into a valid contract of marriage. Accordingly the accused was convicted for adultery under Section 497 of the IPC.

10. In Nandi @ Zainab v. The Crown ILR (1920) Lah 440, Nandi, the wife of the complainant, changed her religion and became a Mussalman and thereafter married a Mussalman named Rukan Din. She was charged with an offence under Section 494 of the Indian Penal Code. It was held that the mere fact of her conversion to Islam did not dissolve the marriage which could only be dissolved by a decree of court. Emperor v. Mt. Ruri AIR (1919) Lah 389, was a case of Christian wife. The Christian wife renounced Christianity and embraced Islam and then married a Mahomedan. It was held that according to the Christian marriage law, which was the law applicable to the case, the first marriage was not dissolved and therefore the subsequent marriage was bigamous.

11. In India there has never been a matrimonial law of general application. Apart from statute law a marriage was governed by the personal law of the parties. A marriage solemnised under a particular statute and according to personal law could not be dissolved according to another personal law, simply because one of the parties had changed his or her religion.

12. In Sayeda Khatoon @ A.M. Obadiah v. M. Obadiah 49 CWN 745, Lodge, J. speaking for the court held as under:

The parties were originally Jews bound by the Jewish personal law... The plaintiff has since been converted to Islam and may in some respects be governed by the Mahommedan Law. The Defendant is not governed by the Mahommedan Law. If this were an Islamic country, where the Mahommedan Law was applied to all cases where one party was a Mahommedan, it might be that plaintiff would be entitled to the declaration prayed for. But this is not a Mahommedan country; and the Mahommedan Law is not the Law of the Land. Now, in my opinion, is it the Law of India, that when any person is converted to Islam the Mahommedan Law shall be applicable to him in all his relationships? I can see no reason why the Mahommedan Law should be preferred to the Jewish Law in a matrimonial dispute between a Mahommdan and a Jew particularly when the relationship, viz.: marriage, was created under the Jewish Law. As I stated in a previous case there is no matrimonial law of general application in India. There is a Hindu Law for Hindus, a Mahommedan Law for Mahommedans, a Christian Law for Christians, and a Jewish Law for Jews. There is no general matrimonial law regarding mixed marriages other than the statute law, and there is no suggestion that the statute law is applicable in the present case. It may be that a marriage solemnised according to Jewish rites may be dissolved by the proper authority under Jewish Law when one of the parties renounces the Jewish Faith. It may be that a marriage solemnised according to Mahommedan Law may be dissolved according to the Mahommedan Law when one of the parties ceases to be a Mahommedan. But I can find no authority for the view that a marriage solemnized according to one personal law can be dissolved according to another personal law simply because one of the two parties has changed his or her religion.
Sayeda Khatoon's case was followed with approval by Blagden, J. of the Bombay High Court in Robasa Khanum v. Khodadad Bomanji Irani [1946] B L R 864. In this case the parties were married according to Zoroastrian law. The wife became Muslim whereas the husband declined to do so. The wife claimed that her marriage stood dissolved because of her conversion to Islam. The learned Judge dismissed the suit. It would be useful to quote the following observations from the judgment:

We have, therefore, this position - British India as a whole, is another governed by Hindu, Mahommedan, Sikh, Parsi, Christian, Jewish or any other law except a law imposed by Great Britain under which Hindus, Mahomedans, Sikhs, Parsis, and all others, enjoy equal rights and the utmost possible freedom of religious observance, consistent in every

case with the rights of other people. I have to decide this case according to the law as it is, and there seems, in principle, no adequate ground for holding that in this case Mahomedan law is applicable to a non-Mahomedan.. Do then the authorities compel me to hold that one spouse can by changing his or her religious opinions (or purporting to do so) force his or her newly acquired personal law on a party to whom it is entirely alien and who does to want it? In the name of justice, equity and good conscience, or, in more simple language, of common sense, why should this be possible? If there were no authority on the point I (personally) should have thought that so monstrous an absurdity carried its own refutation with it, so extravagant are the results that follow from it. For it is not only the question of divorce that the plaintiffs contention affects. If it is correct, it follows that a Christian husband can embrace Islam and, the next moment, three additional wives, without even the consent of the original wife.
Against the judgment of Blagden, J. appeal was heard by a Division Bench consisting of Sir Leonard Stone, Chief Justice and Mr. Justice Chagla (as the learned Judge then was). Chagla, J. who spoke for the Bench posed the question that arose for determination as under: "what are the consequences of the plaintiffs conversion to Islam?" The Bench upheld the judgment of Blagden, J. and dismissed the appeal. Chagla, J. elaborating the legal position held as under:-

We have here a Muslim wife according to whose personal law conversion to Islam, if the other spouse does not embrace the same religion, automatically dissolves the marriage. We have a Zoroastrian husband according to whose personal law such conversion does not bring about the same result. The Privy Council in Waghela Rajsanji v. Shekh Masludin expressed the opinion that if there was no rule of Indian law which could be applied to a particular case, then it should be decided by equity and good conscience, and they interpreted equity and good conscience, to mean the rules of English law if found applicable to Indian society and circumstances. And the same view was confirmed by their Lordships of the Privy Council in Mohammed Raja v. Abbas Bandi Bibi. But there is no rule of English law which can be made applicable to a suit for divorce by a Muslim wife against her Zoroastrian husband. The English law only deals and can only deal with Christian marriages and with grounds for dissolving a Christian marriage. therefore we must decided according to justice and right, or equity and good conscience independently of any provisions of the English law. We must do substantial justice between the parties and in doing so hope that we have vindicated the principles of justice and right or equity and good conscience.... It is impossible to accept the contention of Mr. Peerbhoy that justice and right requires that we should apply Muslim law in dealing this case. It is difficult to see why the conversion of one party to a marriage should necessarily afford a ground for its dissolution. The bond that keeps a man and woman happy in marriage is not exclusively the bond of religion. There are many other ties which make it possible for a husband and wife to live happily and contentedly together. It would indeed be a starting proposition to lay down that although two persons may want to continue to live in a married state and disagree as to the religion they should profess, their marriage must be automatically dissolved. Mr. Peerbhoy has urged that it is rarely possible for two

persons of different communities to be happily united in wedlock. If conversion of one of the spouses leads to unhappiness, then the ground for dissolution of marriage could not be the conversion but the resultant unhappiness. Under Muslim law apostasy from Islam of either party to a marriage operates as a complete and immediate dissolution of the marriage. But Section 4 of the Dissolution of Muslim Marriages Act (VIII of 1939) provides that the renunciation of Islam by a married Muslim woman or her conversion to a faith other than Islam shall not by itself operate to dissolve her marriage. This is a very clear and emphatic indication that the Indian legislature has departed from the rigor of the ancient Muslim law and has taken the more modern view that there is nothing to prevent a happy marriage notwithstanding the fact that the two parties to it professed different religious. We must also point out that the plaintiff and the defendant were married according to the Zoroastrian rites. They entered into a solemn pact that the marriage would be monogamous and could only be dissolved according to the tenets of the Zoroastrian religion. It would be patently contrary to justice and right that one party to a solemn pact should be allowed to repudiate it by a unilateral act. It would be tantamount to permitting the wife to force a divorce upon her husband although he may not want it and although the marriage vows which both of them have taken would not permit it. We might also point out that the Shariat Act (Act XXVI of 1937) provides that the rule of decision in the various cases enumerated in Section 2 which includes marriage and dissolution of marriage shall be the Muslim personal law only where the parties are Muslims; it does not provide that the Muslim personal law shall apply when only one of the parties is a Muslim.

(the single Judge judgment and the Division Bench judgment are reported in 1946 Bombay Law Reporter 864)

13. In Andal Vaidyanathan v. Abdul Allam Vaidya [1946] Madras, a Division Bench of the High Court dealing with a marriage under the Special marriage Act 1872 held:

The Special Marriage Act clearly only contemplates monogamy and a person married under the Act cannot escape from its provisions by merely changing his religion. Such a person commits bigamy if he marries again during the lifetime of his spouse, and it matters not what religion he professes at the time of the second marriage. Section 17 provides the only means for the dissolution of a marriage or a declaration of its nullity.

Consequently, where two persons married under the Act subsequently become converted to Islam, the marriage can only be dissolved under the provisions of the Divorce Act and the same would apply even if only one of them becomes converted to Islam. Such a marriage is not a marriage in the Mahomedan sense which can be dissolved in a Mahomedan manner. It is a statutory marriage and can only be dissolved in accordance with the Statute: MANU/WB/0057/1941: AIR1941Cal582 and (1917) 1 K.B. 634, Rel. on; A.I.R. 1935 Bom. 8, Disting.

14. It is, thus, obvious form the catena of case-law that a marriage celebrated under a particular personal law cannot be dissolved by the application of another personal law to which one of the spouses converts and the other refuses to do so. Where a marriage take place under Hindu Law the parties acquire a status and certain rights by the marriage itself under the law governing the Hindu Marriage and if one of the parties is allowed to dissolve the marriage by adopting and enforcing a new personal law, it would tantamount to destroying the existing rights of the other spouse who continues to be Hindu. We, therefore, hold that under the Hindu Personal Law as it existed prior to its codification in 1955, a Hindu marriage continued to subsist even after one of the spouses converted to Islam. There was no automatic dissolution of the marriage.

15. The position has not changed after coming into force of the Hindu Marriage Act, 1955 (the Act) rather it has become worse for the apostate. The Act applies to Hindus by religion in any of its forms or developments. It also applied to Buddhists, Jains and Sikhs. It has no application to Muslims, Christians and Parsees. Section 4 of the Act is as under:

Overriding effect of Act. - Save as otherwise expressly provided in this Act, -

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act.

16. A marriage solemnised, whether before or after the commencement of the Act, can only be dissolved by a decree of divorce on any of the grounds enumerated in Section 13 of the Act. One of the grounds under Section 13(1)(ii) is that "the other party has ceased to be a Hindu by conversion to another religion". Sections 11 and 15 of the Act is as under:-

Void marriages. - Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in Clauses (i), (iv) and (v) of Section 5.

Divorced persons when may marry again.- When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, of there is such a right of appeal the time for appealing has expired without an appeal having been presented or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again.

17. It is obvious from the various provisions of the Act that the modern Hindu Law strictly enforces monogamy. A marriage performed under the Act cannot be dissolved except on the grounds available under Section 13 of the Act. In that situation parties who have solemnised the marriage under the Act remain married even when the husband embraces Islam in pursuit of other wife. A second marriage by an apostate under the shelter of conversion to Islam would nevertheless be a marriage in violation of the provisions of the Act by which he would be continuing to be governed so far as his first marriage under the Act is concerned despite his conversion to Islam. The second marriage of an apostate would, therefore, be illegal marriage qua his wife who married him under the Act and continues to be Hindu. Between the apostate and his Hindu wife the second marriage is in violation of the provisions of the Act and as such would be non-est. Section 494 Indian Penal Code is as under:-

Marrying again during lifetime of husband or wife. Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
The necessary ingredients of the section are: (1) having a husband or wife living; (2) marries in any case; (3) in which such marriage is void; (4) by reason of its taking place during the life of such husband or wife.

18. It is no doubt correct that the marriage solemnised by a Hindu husband after embracing Islam may not be strictly a void marriage under the Act because he is no longer a Hindu, but the fact remains that the said marriage would be in violation of the Act which strictly professes monogamy.

19. The expression "void" for the purpose of the Act has been defined under Section 11 of the Act. It has a limited meaning within the scope of the definition under the Section. On the other hand the same expression has a different purpose under Section 494, IPC and has to be given meaningful interpretation.

20. The expression "void" under Section 494, IPC has been used in the wider sense. A marriage which is in violation of any provisions of law would be void in terms of the expression used under Section 494, IPC.

21. A Hindu marriage solemnised under the Act can only be dissolved on any of the grounds specified under the Act. Till the time a Hindu marriage is dissolved under the Act none of the spouses can contract second marriage. Conversion to Islam and marrying again would not, by itself, dissolve the Hindu marriage under the Act. The second marriage by a convert would therefore be in violation of the Act and as such void in terms of Section 494, IPC. Any act which is in violation of mandatory provisions of law is per-se void.

22. The real reason for the voidness of the second marriage is the subsisting of the first marriage which is not dissolved even by the conversion of the husband. It would be giving a go-bye to the substance of the matter and acting against the spirit of the Statute if the second marriage of the convert is held to be legal.

23. We also agree with the law laid down by Chagla, J. in Robasa Khanum v. Khodadad Irani's case (supra) wherein the learned Judge has held that the conduct of a spouse who converts to Islam has to be judged on the basis of the rule of justice and right or equity and good conscience. A matrimonial dispute between a convert to Islam and his or her non-Muslim spouse is obviously not a dispute "where the parties are Muslims" and, therefore, the rule of decision in such a case was or is not required to be the "Muslim Personal Law". In such cases the Court shall act and the Judge shall decide according to justice, equity and good conscience. The second marriage of a Hindu husband after embracing Islam being violative of justice, equity and good conscience would be void on that ground also and attract the provisions of Section 494, IPC.

24. Looked from another angle, the second marriage of an apostate-husband would be in violation of the rules of natural justice. Assuming that a Hindu husband has a right to embrace Islam as his religion, he has no right under the Act to marry again without getting his earlier marriage under the Act dissolved. The second marriage after conversion to Islam would, thus, be in violation of the rules of natural justice and as such would be void.

25. The interpretation we have given to Section 494 IPC would advance the interest of justice. It is necessary that there should be harmony between the two systems of law just as there should be harmony between the two communities. Result of the interpretation, we have given to Section 494 IPC, would be that the Hindu Law on the one hand and the Muslim Law on the other hand would operate within their respective ambits without trespassing on the personal laws of each other. Since it is not the object of Islam nor is the intention of the enlighten Muslim community that the Hindu husbands should be encouraged to become Muslims merely for the purpose of evading their own personal laws by marrying again, the courts can be persuaded to adopt a construction of the laws resulting in denying the Hindu husband converted to Islam the right to marry again without having his existing marriage dissolved in accordance with law.

26. All the four ingredients of Section 494 IPC are satisfied in the case of a Hindu husband who marries for the second time after conversion to Islam. He has a wife living, he marries again. The said marriage is void by reason of its taking place during the life of the first wife.

27. We, therefore, hold that the second marriage of a Hindu husband after his conversion to islam is a void marriage in terms of Section 494 IPC.

28. We may at this stage notice the Privy Council judgment in Attorney General Ceylon v. Reid [1965] E.R. 812. A Christian lady was married according to the Christian rites. Years later she embraced Islamic faith and got married by the Registrar of Muslim Marriages at Colombo according to the statutory formalities prescribed for a Muslim marriage. The husband was charged and convicted by the Supreme Court, Ceylon of the offence of bigamy under the Ceylon Penal Code. In an appeal before the Privy Council, the respondent was absolved from the offence of bigamy. It was held by Privy Council as under:-

In their Lordship's view, in such countries there must be an inherent right in the inhabitants domiciled there to change their religion and personal law and so to contract a valid polygamous marriage if recognised by the laws of the country notwithstanding an earlier marriage. If such inherent right is to be abrogated, it must be done by statute.
29. Despite there being an inherent right to change religion the applicability of Penal laws would depend upon the two personal laws governing the marriage. The decision of Privy Council was on the facts of the case, specially in the background of the two personal laws operating in Ceylon. Reid's case is, thus, of no help to us in the facts and legal background of the present cases.

30. Coming back to the question " uniform civil code" we may refer to the earlier judgments of this Court on the subject. A Constitution Bench of this Court speaking through Chief Justice Y.V. Chandrachud in Mohd. Ahmed Khan v. Shah Bano Begum MANU/SC/0194/1985: 1985CriLJ875 held as under:

It is also a matter of regret that Article 44 of our Constitution has remained a dead letter. It provides that "The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India". There is no evidence of any official activity for framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country and, unquestionably; it has the legislative competence to do so. A counsel is the case whispered, somewhat audibly, that legislative competence in one thing, the political courage to use that competence is quite another. We understand the difficulties involved in bringing persons of different faiths and persuasions on a common platform. But, a beginning has to be made is the Constitution is to have any meaning. Inevitably, the role of the reformer has to be assumed by the courts because, it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable. But piecemeal attempts of courts to bridge that gap between personal laws cannot take the place of a common Civil Code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case.

In Ms. Jordan Diengdeh v. S.S. Chopra MANU/SC/0195/1985: AIR1985SC935 O. Chinnappa Reddy, J. speaking for the Court referred to the observations of Chandrachud, CJ in Shah Bano Begum's case and observed as under:

It was just the other day that a Constitution Bench of this Court had to emphasise the urgency of infusing life into Article 44 of the Constitution which provides that "The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India." The present case is yet another which focuses..on the immediate and compulsive need for a uniform civil code. The totally unsatisfactory state of a affairs consequent on the lack of a uniform civil code is exposed by the facts of the present case. Before mentioning the facts of the case, we might as well refer to the observations of Chandrachud, CJ in the recent case decided by the Constitution Bench (Mohd. Ahmed Khan v. Shah Bano Begum).
One wonders how long will it take for the Government of the day to implement the mandate of the framers of the Constitution under Article 44 of the Constitution of India. The traditional Hindu Law - personal law of the Hindu - governing inheritance, succession and marriage was given go-bye as back as 1955-56 by codifying the same. There is no justification whatsoever in delaying indefinitely the introduction of a uniform personal law in the country.

31. Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilised society. Article 25 guarantees religious freedom whereas Article 44 seeks to divest religion from social relations and personal law. Marriage, succession and like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25, 26 and 27. The personal law of the Hindus, such as relating to marriage, succession and the like have all a sacramental origin, in the same manner as in the case of the Muslims or the Christians. The Hindus alongwith Sikhs, Buddhists and Jains have forsaken their sentiments in the cause of the national unity and integration, some other communities would not, though the Constitution enjoins the establishment of a "common civil Code" for the whole of India.

32. It has been judicially acclaimed in the United States of America that the practice of Polygamy is injurious to "public morals", even though some religion may make it obligatory or desirable for its followers. It can be superseded by the State just as it can prohibit human sacrifice or the practice of "Suttee" in the interest of public order. Bigamous marriage has been made punishable amongst Christians by Act (XV of 1872), Parsis by Act (III of 1936) and Hindus, Buddhists, Sikhs and Jains by Act (XXV of 1955).

33. Political history of India shows that during the Muslim regime, justice was administered by the Qazis who would obviously apply the Muslim Scriptural law to Muslims, but there was no similar assurance so far litigations concerning Hindus was concerned. The system, more or less, continued during the time of the East India Company, until 1772 when Warren Hastings made Regulations for the administration of

civil justice for the native population, without discrimination between Hindus and Mahomedans. The 1772 Regulations followed by the Regulations of 1781 whereunder it was prescribed that either community was to be governed by its "personal" law in matters relating to inheritance, marriage, religious usage and institutions. So far as the criminal justice was concerned the British gradually superseded the Muslim law in 1832 and criminal justice was governed by the English common law. Finally the Indian Penal Code was enacted in 1860. This broad policy continued throughout the British regime until independence and the territory of India was partitioned by the British Rulers into two States on the basis of religion. Those who preferred to remain in India after the partition, fully knew that the Indian leaders did not believe in two-nation or three-nation theory and that in the Indian Republic there was to be only one Nation - Indian nation - and no community could claim to remain a separate entity on the basis of religion. It would be necessary to emphasise that the respective personal laws were permitted by the British to govern the matters relating to inheritance, marriages etc. only under the Regulations of 1781 framed by Warren Hastings. The Legislation - not religion - being the authority under which personal law was permitted to operate and is continuing to operate, the same can be superseded/supplemented by introducing a uniform civil code. In this view of the matter no community can oppose the introduction of uniform civil code for all the citizens in the territory of India.

34. The Successive Government till-date have been wholly re-miss in their duty of implementing the constitutional mandate under Article 44 of the Constitution of India.

35. We, therefore, request the Government of India through the Prime Minister of the country to have a fresh look at Article 44 of the Constitution of India and "endeavor to secure for the citizens a uniform civil code throughout the territory of India".

36. We further direct the Government of India through Secretary, Ministry of Law and Justice to file an affidavit of a responsible officer in this Court in August, 1996 indicating therein the steps taken and efforts made, by the Government of India, towards securing a "uniform civil code" for the citizens of India. Sahai, J. in his short and crisp supporting opinion has suggested some of the measures which can be undertaken by the Government in this respect.

37. Answering the questions posed by us in the beginning of the judgment, we hold that the second marriage of a Hindu-husband after conversion to Islam, without having his first marriage dissolved under law, would be invalid. The second marriage would be void in terms of the provisions of Section 494 IPC and the apostate-husband would be guilty of the offence under Section 494 IPC.

38. The question of law having been answered we dispose of the writ petitions. The petitioners may seek any relief by invoking any remedy which may be available to them as a result of this judgment or otherwise. No costs.

Petitions disposed of

R.M. Sahai, J.

39. Considering sensitivity of the issue and magnitude of the problem, both on the desirability of a uniform or common civil code and its feasibility, it appears necessary to add a few words to the social necessity projected in the order proposed by esteemed Brother Kuldip Singh, J. more to focus on the urgency of such a legislation and to emphasise that I entirely agree with the thought provoking reasons which have been brought forth by him in his order clearly and lucidly.

40. The pattern of debate, even today, is the same as was voiced forcefully by the members of the minority community in the Constituent Assembly. If, 'the non implementation of the provisions contained in Article 44 amounts to grave failure of Indian democracy' represents one side of the picture, then the other side claims that, 'logical probability appears to be that the code would cause dissatisfaction and disintegration than serve as a common umbrella to promote homogeneity and national solidarity'.

41. When Constitution was framed with secularism as its ideal and goal, the consensus and conviction to be one, socially, found its expression in Article 44 of the Constitution. But religious freedom, the basic foundation of secularism, was guaranteed by Articles 25 to 28 of the Constitution. Article 25 is very widely worded. It guarantees all persons, not only freedom of conscience but the right to profess, practice and propagate religion. What is religion? Any faith or belief. The Court has expanded religious liberty in its various phases guaranteed by the Constitution and extended it to practices and even external overt acts of the individual. Religion is more than mere matter of faith. The Constitution by guaranteeing freedom of conscience ensured inner aspects of religious belief. And ', external expression of it were protected by guaranteeing right to freely, practice and propagate religion. Reading and reciting holy scriptures, for instance, Ramayana or Quran or Bible or Guru Granth Sahib is as much a part of religion as offering food to deity by a Hindu or bathing the idol or dressing him and going to a temple, mosque, church or gurudwara.

42. Marriage, inheritance, divorce, conversion are as much religious in nature and content as any other belief or faith. Going round the fire seven rounds or giving consent before Qazi are as much matter of faith and conscience as the worship itself. When a Hindu becomes convert by reciting Kalma or a Muslim becomes Hindu by reciting certain Mantras it is a matter belief and conscience. Some of these practices observed by members of one religion may appear to be excessive and even violative of human rights to members of another. But these are matters of faith. Reason and logic have little role to play. The sentiments and emotions have to be cooled and tempered by sincere effort. But today there is no Raja Ram Mohan Rai who single handed brought about that atmosphere

which paved the way for Sati abolition. Nor is a statesman of the stature of Pt. Nehru who could pilot through, successfully, the Hindu Succession Act and Hindu Marriage Act revolutionising the customary Hindu Law. The desirability of uniform Code can hardly be doubted. But it can concretize only when social climate is properly built up by elite of the society, statesmen amongst leaders who instead of gaining personal mileage rise above and awaken the masses to accept the change.

43. The problem with which these appeals are concerned is that many Hindus have changed their religion and have become convert to Islam only for purposes of escaping the consequences of bigamy. For instance, Jitender Mathur was married to Meena Mathur. He and another Hindu girl embraced Islam. Obviously because Muslim Law permits more than one wife and to the extent of four. But no religion permits deliberate distortions. Much misapprehension prevails about bigamy in Islam. To check the misuse many Islamic countries have codified the personal law, 'wherein the practice of polygamy has been either totally prohibited or severely restricted. (Syria, Tunisia, Morocco, Pakistan, Iran, the Islamic Republics of the Soviet Union are some of the Muslim countries to be remembered in this context). But ours is a Secular Democratic Republic. Freedom of religion is the core of our culture. Even the slightest deviation shakes the social fibre. 'But religious practices, violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedoms, are not autonomy but oppression'. Therefore, a unified code is imperative both for protection of the oppressed and promotion of national unity and solidarity. But the first step should be to rationalise the personal law of the minorities to develop religious and cultural amity. The Government would be well advised to entrust the responsibility to the Law Commission which may in consultation with Minorities Commission examine the matter and bring about the comprehensive legislation in keeping with modern day concept of human rights for women.

44. The Government may also consider feasibility of appointing a Committee to enact Conversion of Religion Act, immediately, to check the abuse or religion by any person. The law may provide that every citizen who changes his religion cannot marry another wife unless he divorces his first wife. The provision should be made applicable to every person whether he is a Hindu or a Muslim or a Christian or a Sikh or a Jain or a Budh. Provision may be made for maintenance and succession etc. also to avoid clash of interest after death.

45. This would go a long way to solve the problem and pave the way for a unified civil code.

46. For the reasons and conclusions reached in separate but concurring judgments the writ petitions are allowed in terms of the answers to the questions posed in the opinion of Kuldip Singh, J.

MANU/SC/0559/2014

Neutral Citation: 2014/INSC/463

Back to Section 498A of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 1277 of 2014 (Arising out of SLP (Crl.) No. 9127 of 2013)

Decided On: 02.07.2014

Arnesh Kumar Vs. State of Bihar

Hon'ble Judges/Coram:
C.K. Prasad and Pinaki Chandra Ghose, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Rakesh Kumar and Kaushal Yadav, Advs.
For Respondents/Defendant: Rudreshwar Singh, Samir Ali Khan, Aparna Jha, Braj Kishore Mishra and Abhishek Yadav, Advs.

JUDGMENT
C.K. Prasad, J.

1. The Petitioner apprehends his arrest in a case Under Section 498-A of the Indian Penal Code, 1860 (hereinafter called as Indian Penal Code) and Section 4 of the Dowry Prohibition Act, 1961. The maximum sentence provided Under Section 498-A Indian Penal Code is imprisonment for a term which may extend to three years and fine whereas the maximum sentence provided Under Section 4 of the Dowry Prohibition Act is two years and with fine.

2. Petitioner happens to be the husband of Respondent No. 2 Sweta Kiran. The marriage between them was solemnized on 1st July, 2007. His attempt to secure anticipatory bail has failed and hence he has knocked the door of this Court by way of this Special Leave Petition.

3. Leave granted.

4. In sum and substance, allegation levelled by the wife against the Appellant is that demand of Rupees eight lacs, a maruti car, an air-conditioner, television set etc. was made by her mother-in-law and father-in-law and when this fact was brought to the Appellant's notice, he supported his mother and threatened to marry another woman. It has been

alleged that she was driven out of the matrimonial home due to non-fulfilment of the demand of dowry.

5. Denying these allegations, the Appellant preferred an application for anticipatory bail which was earlier rejected by the learned Sessions Judge and thereafter by the High Court.

6. There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A of the Indian Penal Code was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested.

"Crime in India 2012 Statistics" published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for offence Under Section 498-A of the Indian Penal Code, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under Indian Penal Code. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases Under Section 498A, Indian Penal Code is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.

7. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Code of Criminal Procedure. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

8. Law Commissions, Police Commissions and this Court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the Legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, the Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short 'Code of Criminal Procedure), in the present form came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. The value of the proportionality permeates the amendment relating to arrest. As the offence with which we are concerned in the present appeal, provides for a maximum punishment of imprisonment which may extend to seven years and fine, Section 41(1)(b), Code of Criminal Procedure which is relevant for the purpose reads as follows:

41. When police may arrest without warrant.-(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person -

(a) x x x x x x

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:

(i) x x x x x

(ii) the police officer is satisfied that such arrest is necessary -

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any 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 police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this Sub-section, record the reasons in writing for not making the arrest.

x x x x x x

From a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts. Law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. Law further requires the police officers to record the reasons in writing for not making the arrest. In pith and core, the police office before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by Sub-clauses (a) to (e) of Clause (1) of Section 41 of Code of Criminal Procedure.

9. An accused arrested without warrant by the police has the constitutional right Under Article 22(2) of the Constitution of India and Section 57, Code of Criminal Procedure to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey. During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorised by the Magistrate in exercise of power Under Section 167 Code of Criminal Procedure. The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner. Before a Magistrate authorises detention Under Section 167, Code of Criminal Procedure, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested is satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that condition precedent for arrest Under Section 41 Code of Criminal Procedure has been satisfied and it is only thereafter that he will authorise the detention of an accused. The Magistrate before authorising detention will record its own satisfaction, may be in brief but the said satisfaction must reflect from its order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement etc., the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording its satisfaction in writing that the Magistrate will authorise the detention of the accused. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant and secondly a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.

10. Another provision i.e. Section 41A Code of Criminal Procedure aimed to avoid unnecessary arrest or threat of arrest looming large on accused requires to be vitalised. Section 41A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009), which is relevant in the context reads as follows:

41A. Notice of appearance before police officer.-(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of Sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has

been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

11. Aforesaid provision makes it clear that in all cases where the arrest of a person is not required Under Section 41(1), Code of Criminal Procedure, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police office is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged Under Section 41 Code of Criminal Procedure has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

12. We are of the opinion that if the provisions of Section 41, Code of Criminal Procedure which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Code of Criminal Procedure for effecting arrest be discouraged and discontinued.

13. Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:
(1) All the State Governments to instruct its police officers not to automatically arrest when a case Under Section 498-A of the Indian Penal Code is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Code of Criminal Procedure;

(2) All police officers be provided with a check list containing specified sub-clauses Under Section 41(1)(b)(ii);
(3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;
(4) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;
(5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;
(6) Notice of appearance in terms of Section 41A of Code of Criminal Procedure be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;
(7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.
(8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

14. We hasten to add that the directions aforesaid shall not only apply to the cases Under Section 498-A of the Indian Penal Code or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

15. We direct that a copy of this judgment be forwarded to the Chief Secretaries as also the Director Generals of Police of all the State Governments and the Union Territories and the Registrar General of all the High Courts for onward transmission and ensuring its compliance.

16. By order dated 31st of October, 2013, this Court had granted provisional bail to the Appellant on certain conditions. We make this order absolute.

17. In the result, we allow this appeal, making our aforesaid order dated 31st October, 2013 absolute; with the directions aforesaid.

MANU/UP/1177/2002

Back to Section 499 of Indian Penal Code, 1860

IN THE HIGH COURT OF ALLAHABAD

Crl. Misc. Appln. No. 2504 of 2001

Decided On: 24.09.2002

C.L. Sagar Vs. Mayawati and Ors.

Hon'ble Judges/Coram:
R.K. Dash, J.

Counsels:
For Appellant/Petitioner/Plaintiff: G.S. Bisaria and D.P.S. Chauhan, Advs.
For Respondents/Defendant: S.C. Misra, Adv. General and Vinod Mishra, A.G.A.

ORDER
R.K. Dash, J.

1. Ms Mayawati, respondent No. 1, was the Vice-President and petitioner was a member of Bahujan Samaj Party at the relevant time. The petitioner lodged a complaint bearing No. 5278 of 1997 in the Court of C.J.M., Bareilly against respondent No. 1 and another alleging that on 21-3-1996 respondent No. 1 came to Amla-Bareilly to hold public meeting. The petitioner met her in the circuit-house where she assured him of a party ticket to contest the Assembly election from Faridpur constituency on his paying rupees fifty thousand. He believed her and paid the amount. Subsequently, her Private Secretary R. K. Vidyarthi, the other accused issued him receipt acknowledging payment of the said amount. Respondent No. 1 also nominated him as the District President of Bahujan Samaj Party. On 22-8-1996 she came to Bareilly and demanded further sum of rupees ten thousand, to which the petitioner expressed his inability to pay. On his refusal, she became annoyed and in the public meeting declared to have removed him from Presidentship of the district saying "Bari Lambi Muchhay hai. Bare Imandar Bantey ho. Baeman Kahin Ka." This statement of respondent No. 1, according to the petitioner has harmed his reputation and he is looked down upon by the general public. It is urged, the aforesaid statement made in the public meeting was published in daily newspapers in the heading "Bare Be-abaru hokar teray kuchay say hum niklay".

2. Learned Magistrate recorded the statements of the petitioner and two witnesses produced by him. Thereupon, he by order dated 19-4-1999 took cognizance of the offence under Sections 406/500, I.P.C. and directed for issuance of notice to both the accused persons.

3. Respondent No. 1, it is alleged, was not aware of the criminal proceedings and order of the Magistrate taking cognizance of the offence. She, for the first time, came to know when summons was served upon her and within four days thereafter she moved an application before the Magistrate to recall the order. The application remained pending till 9-1-2001 on which date her counsel moved the court to withdraw the said application since in the meanwhile a view was taken by this Court that such application was not maintainable. Thereafter, she filed revision before the Sessions Judge and along with the revision, she filed application for condonation of delay. Upon hearing the parties and having gone through the records, the revisional court came to hold that respondent No. 1 was not aware of the summoning order and no sooner as it came to her notice, she moved the learned Magistrate to recall the same. In such background facts, the Court excluded the time spent for prosecuting the case before the Magistrate from computing the period of limitation in preferring revision and condoned the delay. It is against this order the petitioner has filed the present case seeking Court's intervention in exercise of inherent power.

4. High Court being the superior Court exercises the power of superintendence as envisaged in Article 227 of the Constitution over the inferior Courts and the tribunals in order to keep them within the limit of their authority and to see that they perform their duties in the manner as law demands. Similar provision as in Article 227 has been provided in Section 483, Cr.P.C. investing High Court with supervisory jurisdiction so as to prevent miscarriage of justice or to mete out injustice. Thus, power of High Court being very wide, it was felt that while deciding the legality and propriety of the impugned order of the revisional court, the Court in exercise of both supervisory and inherent power should decide finally whether allegations made in the complaint reveal commission of an offence and whether order of the learned Magistrate taking cognizance of the offence if allowed to continue, would cause grave injustice to the accused persons. Accordingly, records of both the courts below were called for and counsel appearing for the parties were heard on the legality and correctness of the impugned order on limitation as well as the order of the Magistrate whereby cognizance of the offence was taken.

5. Learned Counsel for the petitioner contended that order under challenge condoning the delay in filing revision having been passed contrary to the statutory provisions and the law laid down by various judicial pronouncements, should be set at naught by the Court in exercise of inherent power. With regard to the order of Magistrate taking cognizance of the offence, he urged that the same being based on scrutiny of the allegations made in the complaint and statements of the witnesses, the Court should be slow to interfere with the same and the whole matter should be left to be adjudicated by the trial Court on the basis of the evidence to be laid during trial.

6. Per contra, Sri Satish Chandra Mishra learned Advocate General, with skill and adroitness, urged that the order of the revisional Court condoning the delay being based on sound exercise of discretion on appreciation of fact that respondent No. 1 was ignorant

about the criminal proceedings and consequent order of the learned Magistrate taking cognizance of the offence, this Court should be loath to interfere with the said order in exercise of inherent power.

7. As to the question of legality and correctness of the summoning order, he would contend that the criminal proceeding by way of complaint has been filed with mala fide intention to malign respondent No. 1 and dent her reputation in the society. Besides, the allegations made in the complaint even if accepted on their face value do not prima facie constitute any offence. In that view of the matter, continuance of the criminal proceeding will be an abuse of the process of Court and so, law demands that the same should be brought to a halt, otherwise justice will be a casualty.

8. Law of limitation does not destroy the primary and substantive right, but imposes a bar after certain period to file a 'lis' to enforce an existing right. In a sense, limitation bars the judicial remedy if approach is not made within prescribed time limit. In Halsbury's Laws of England the policy underlying the Limitation Act is laid down as under:

"The courts have expressed at least three different reasons supporting the existence of statutes of limitation, namely (i) that long dormant claims have more of cruelty than justice in them, (ii) that a defendant might have lost the evidence to dispute the stale claim, (iii) that persons with good causes of actions should pursue them with reasonable diligence."
9. Laws come to the assistance of the vigilant and not of sleepy (Vigilantibus non dormientibus jura subveniunt).

10. Section 5 of the Limitation Act enables a litigant to file an appeal or application beyond the prescribed period of limitation. As provided therein, an appeal or application can be entertained after expiry of the limitation period if 'sufficient cause' is shown in not doing so within time. The word 'sufficient cause' should receive a liberal construction. It is the duty of the court to decide as to whether the litigant acted with reasonable diligence in prosecuting the appeal or application. No doubt, Court has discretionary power to interpret in the facts and circumstances of a particular case as to what constitutes 'sufficient cause' but such discretion has to be exercised on sound principle and not on the mere fancy or whims. So, when the court finds that diligence or bona fide was manifest for claiming the condonation, discretion should be exercised in favour of the claimant for doing justice to him.

11. It has been ruled that expression 'sufficient cause' must receive liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fide is imputable to the party seeking condonation of delay. When substantial justice and technical considerations are pitted against each other cause of

substantial justice deserves to be preferred for, the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

12. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. (See Collector, Land Acquisition v. Katiji MANU/SC/0460/1987.

13. Keeping in view the aforesaid legal position, it is to be ascertained whether respondent No. 1 had sufficient cause in not preferring revision in time. To repeat with, her case before the revisional court was that she had no knowledge that a criminal complaint had been filed against her by the petitioner and as soon as she came to know about it, she moved the Magistrate to recall the order by which cognizance of the offence under Sections 406/500, I.P.C. was taken. When the said application was pending for adjudication, a judgment was rendered by a Full Bench of this Court reported in (2000) 40 All Cri C 342: 2000 All LJ 898 that Magistrate cannot review/recall his own order of taking cognizance of the offence and in view of the said decision, she moved the court below to withdraw her application and thereafter filed revision challenging the said order.

14. Nothing was placed by the petitioner before the revisional court that respondent No. 1 had the knowledge of the order of the learned Magistrate much before filing of the application. Therefore, learned Additional Sessions Judge, on consideration of the averments made in the affidavit explaining the cause of delay, was satisfied that she had sufficient cause in not preferring the revision within the prescribed period of limitation challenging the order of learned Magistrate.

15. Having given my anxious consideration to the materials available on record and the submissions made by the learned Counsel for the parties, I am of the opinion that no ground is made out to upset the findings and the conclusion arrived at by the learned Additional Sessions Judge.

16. Before adverting to the legality of the order of the learned Magistrate taking cognizance of the offence, it is desirable to allude to the legal position as to the scope and ambit of inherent power of the High Court as envisaged in Section 482, Cr.P.C. This section does not confer any new power. It provides that the power which the court inherently possesses shall be preserved. Consensus judicial opinion is unanimous that the inherent power should be exercised sparingly and with circumspection keeping in mind the principle that more is the power, more is the restraint. As would appear from Section 482, Cr.P.C., inherent power shall be exercised under three circumstances, namely, (i) to give effect to any order under the Code, (ii) to prevent abuse of the process of Court, (iii) to otherwise secure ends of justice. The Legislature, in its wisdom, has not laid down any inflexible, rule for exercise of such power. It has left to the Court's discretion to exercise the power in order to undo the wrong committed to a person,

accused of a criminal offence. It is no doubt true that the duties of the criminal justice system are to bring the culprit to book and to punish him, but it is very often noticed that both the wings of the justice delivery system namely, police and the courts are used as instruments by unscrupulous persons and false and concocted cases are instituted to wreak personal vengeance. In such a situation, it becomes onerous duty of the High Court to bring such cases to a halt in exercise of inherent power.

17. The Supreme Court in the celebrated judgment in the case of State of Haryana v. Bhajan Lal MANU/SC/0115/1992 laid down the categories of cases by illustrations when the High Court in exercise of inherent power can quash a criminal proceeding. The illustrations indicated therein are as follows (para 108):

"(1) where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations in the FIR or complaint are so absurd and inherently improbably on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

18. In S. W. Palanitkar v. State of Bihar MANU/SC/0672/2001 the Apex Court held that it is obligatory for the High Court to quash the proceedings in exercise of inherent power when the Magistrate issued the process despite the fact that allegations did not constitute any offence. The Court observed (para 27):

".....while exercising power under Section 482 of Criminal Procedure Code the High Court has to look at the object and purpose for which such power is conferred on it under the said provision. Exercise of inherent power is available to the High Court to give effect to any order under the Criminal Procedure Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. This being the position, exercise of power under Section 482 of Criminal Procedure Code should be consistent with the scope and ambit of the same in the light of the decisions aforementioned. In appropriate cases, to prevent judicial process from being an instrument of oppression or harassment in the hands of frustrated or vindictive litigants exercise of inherent power is not only desirable but necessary also so that the judicial forum of court may not be allowed to be utilized for any oblique motive. When a person approaches the High Court under Section 482 of Criminal Procedure Code to quash the very issue of process, the High Court on the facts and circumstances of a case has to exercise the powers with circumspection as stated above to really serve the purpose and object for which they are conferred."

19. In view of the legal position narrated above, a thorough scrutiny of the allegations made in the complaint should be made in order to find whether the allegations disclose offences under Sections 406/500, I.P.C. Necessary ingredients of offence of criminal breach of trust as envisaged in Section 405, I.P.C. are: (a) the person complained against was entrusted with the property or had dominion over it, (b) that the person so entrusted (i) dishonestly misappropriated or converted to his own use of the said property; or (ii) dishonestly used or disposed of that property in violation of any direction of law or of any legal contract, express or implied.

20. In the case on hand, it is not the case of the petitioner that he had entrusted rupees fifty thousand to respondent No. 1 and that she misappropriated the same. Rather his assertion in the complaint is that on being assured of a party ticket to contest the Assembly election, he paid her rupees fifty thousand and in support thereof he relied upon the receipt issued by her Private Secretary, the co-accused. The case of respondent No. 1 is that the petitioner, being the district President of Bahujan Samaj Party, deposited rupees fifty thousand in party's account of General Election, Lok Sabha/Vidhan Sabha, 1996 to meet the election expenses of Faridpur Vidhan Sabha Constituency. The allegation as made in the complaint that on her assurance to provide ticket to contest the Assembly election, he made such deposit, is false and baseless and the same does not find mention in the receipt which he relied upon in support of such allegation. Besides such discrepancies, on facts as alleged in the complaint, no offence under Section 406, I.P.C. is made out against respondent No. 1.

21. It is alleged in paragraph 9 of the complaint that defamatory statement, as stated therein, was aimed at the petitioner. As admitted by the petitioner, respondent No. 1 did not utter his name in the public meeting and whatever she stated using defamatory language was against the person having long moustache. The petitioner does not say either in the complaint or in his statement before the court that he was the only member in the party having long moustache and the defamatory statement was conveyed to him. Moreover, it appears that story of defamation as set out in the complaint is a cooked up story. This observation gains support from the newspaper reports on which the petitioner relies upon to prove his case. On scrutiny of the copies of the newspapers attached to the complaint, I find that the alleged defamatory statements are conspicuously absent. I would not have taken note of newspaper reports to ascertain the truth of the petitioner's case, but since he himself relies upon such reports. I scrutinized the same to appreciate the veracity of his statement as well as of his witnesses. Upon scrutiny of all the materials I find that no offence of defamation punishable under Section 500, I.P.C. is made out. against respondent No. 1.

22. Upshot of the discussions made about is that the order of the revisional court condoning the delay has to be affirmed and it is accordingly so ordered. As regards the order of the learned Magistrate taking cognizance of the offence under Sections 406/ 500 I.P.C., for the reasons aforestated, the same being contrary to law and facts is set aside and consequently the criminal proceeding is quashed.

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