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NEWSLETTER

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For Judicial Service Aspirants

In the service of Judicial Fraternity

1. Study Material-Law

Analysis of SCs/STs Atrocities Act

Introduction

The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989, represents a pivotal legislative effort to address and rectify the historical injustices faced by India's marginalized communities. The Act's primary aim is to shield Scheduled Castes (SC) and Scheduled Tribes (ST) from discrimination and violence rooted in the entrenched caste system. By establishing specific legal recourses and special courts to handle such cases, the Act seeks to provide a robust framework for social justice, ensuring that these vulnerable groups are afforded protection and support against systemic exploitation.

The significance of this Act lies not only in its intent to combat entrenched societal prejudices but also in its broader vision of fostering inclusivity and equality. It embodies a commitment to safeguarding the rights of individuals who have been historically oppressed and disenfranchised, thereby reinforcing the constitutional values of justice and equity.

However, the implementation of the Act has not been without complications. Recent data and judicial observations have highlighted a troubling trend: the misuse of the Act for personal gain or to settle scores. Reports of false accusations and exploitation of the legal provisions have emerged, raising concerns about the integrity of the Act's application. This misuse not only jeopardizes the reputations and livelihoods of innocent individuals but also undermines the very purpose of the Act. It is crucial to address these issues through stringent safeguards and ensure that the Act is applied fairly and justly, preserving its intended role as a defender of vulnerable communities while preventing its exploitation.

Historical Background and Objectives of the SC/ST Atrocities Act

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 represents a pivotal legislative measure aimed at addressing the deep-seated discrimination faced by India's marginalized communities. Historically, these groups have been subjected to systemic exclusion and oppression. Under British colonial rule, the Scheduled Districts Act of 1874 was one of the early attempts

to provide some measure of self-governance to these communities, acknowledging their distinct socio-political status within the British administration. However, this recognition was limited and did not translate into significant socio-economic upliftment.

Post-independence, India's Constitution sought to remedy this historical injustice. The Constitution enshrines several protections for Scheduled Castes (SCs) and Scheduled Tribes (STs), notably through Articles 15(4) and 16(4), which mandate affirmative action and reservations in education and employment. Article 17 also abolishes untouchability, a persistent form of social discrimination. Despite these constitutional provisions, the Protection of Civil Rights Act of 1955, which was India's first significant post-independence legislation aimed at safeguarding the rights of SCs and STs, was insufficient in addressing the evolving needs and systemic issues faced by these communities.

In response to persistent and widespread atrocities, the SC/ST Atrocities Act of 1989 was enacted. This legislation was a landmark development, crafted to specifically address and counteract the violence and discrimination faced by SCs and STs. The Act came into force on January 30, 1990, and was a significant step forward in providing legal recourse and protection to these historically marginalized groups.

Objectives and Impact

The primary objective of the SC/ST Atrocities Act is to prevent and punish atrocities committed against SCs and STs. The Act aims to achieve this by setting up Special Courts and Exclusive Special Courts dedicated to adjudicating cases of atrocities. This structure is intended to expedite justice for victims and ensure that their cases are handled with the seriousness and urgency they deserve.

Key objectives of the Act include:

1. Prevention and Punishment of Atrocities: The Act defines various forms of atrocities and prescribes stringent punishments for offenders. These offenses include social discrimination, physical violence, economic exploitation, and denial of basic rights. The Act makes these offenses cognizable and non-bailable, meaning that they require immediate police action and are not eligible for bail at the initial stages. This reflects the Act's commitment to deterring violence and ensuring swift legal action.

2. Special Courts and Legal Provisions: The establishment of Special Courts and Exclusive Special Courts is a central feature of the Act. These courts are specifically tasked with the trial of offenses under the Act, and they are empowered to take direct cognizance of cases. The Act mandates that trials be

completed within a specified period, generally within two months from the filing of the charge sheet, to ensure timely justice

3. Comprehensive Rehabilitation: The Act provides for a range of rehabilitative measures for victims of atrocities. This includes financial assistance for medical treatment, legal aid, and support for livelihood and housing. The aim is to not only provide immediate relief but also to assist in the long-term rehabilitation of victims.

4. Accountability and Oversight: The Act addresses the issue of false complaints and negligence by public officials. It mandates investigations to be conducted by officers of at least the rank of Deputy Superintendent of Police (DSP) and requires that reports be submitted to the Director-General of Police. Additionally, the Act empowers victims to seek recourse if they are falsely accused, including filing counter-complaints and claims for defamation.

5. Empowerment and Social Inclusion: Beyond legal provisions, the Act aims to promote social inclusion and empower SCs and STs by ensuring their access to justice and protecting their rights against social and economic exclusion. It seeks to address both historical injustices and contemporary challenges faced by these communities.

Misuse of the Act

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, designed to protect marginalized communities, has unfortunately been subject to misuse. Reports from the National Crime Records Bureau and other sources reveal a troubling trend: a significant number of cases filed under this Act have been found to be false or malicious. High-profile cases have highlighted the misuse of this legislation, where individuals exploit its provisions for personal vendettas or financial gain. Several common patterns of misuse have emerged:

1. False Complaints: Numerous instances involve individuals filing false complaints under the Act to settle personal disputes or exact revenge. These false accusations not only damage the reputations of those falsely accused but also waste valuable judicial resources.

2. Personal Vendettas: The Act has occasionally been weaponized in personal conflicts, with individuals leveraging its provisions to retaliate against those from non-SC/ST communities. Such misuse often arises from long-standing personal or professional grudges.

3. Financial Gain: There have been cases where the Act has been exploited to extract financial settlements or benefits. The potential for severe financial and reputational damage creates opportunities for extortion.

Impact of Misuse on the Credibility of Genuine Cases and Society

The misuse of the SC/ST Atrocities Act has significant consequences beyond just the immediate parties involved:

1. **Credibility of Genuine Cases:** When false cases proliferate, they undermine the credibility of legitimate claims, leading to skepticism about the Act's efficacy and reliability. This can result in genuine victims facing increased scrutiny and difficulties in having their cases taken seriously.

2. **Impact on Non-SC/ST Communities:** The misuse of the Act affects individuals from non-SC/ST communities, who may face unwarranted harassment and legal challenges. This not only results in personal and financial distress but can also foster animosity and division among different community groups.

3. **Legal System Strain:** Misuse places an additional burden on the legal system, diverting resources and attention away from genuine cases. This can slow down the processing of legitimate complaints and exacerbate delays in justice deliver

4. **Social Harmony**: The exploitation of the Act can contribute to social discord, increasing tensions between SC/ST and non-SC/ST communities. This can perpetuate divisions and undermine efforts toward social cohesion and equality.

Addressing the misuse of the SC/ST Atrocities Act is crucial for preserving its integrity and ensuring it fulfills its intended purpose of protecting marginalized communities while maintaining fairness and justice for all sections of society.

The judicial interpretation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, has been marked by several landmark judgments addressing both the protection of marginalized communities and the prevention of misuse.

Judicial Interpretation and Landmark Judgments

The interpretation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, by the judiciary has been critical in balancing its protective

intent with the need to prevent misuse. Several key judgments have shaped this balance, reflecting the judiciary's nuanced approach.

In Surendra Kumar Mishra v. State of Orissa & Anr. (2022), the Orissa High Court examined whether an accusation under Section 3(1)(x) of the Act was justified. The petitioner, charged under this provision alongside other sections of the Indian Penal Code, argued that his use of the complainant's caste name was incidental rather than intended to insult. The Court agreed, emphasizing that mere mention of a caste name does not suffice to establish an offence under the Act unless it is shown that the intention was to humiliate or intimidate based on caste. Consequently, the Court quashed the charges under the SC/ST Act, underscoring the need for clear intent in such allegations.

In **Suresh Ram Vishvakarma Vs. State of Chhattisgarh (2023),** the High Court addressed the overlap between crimes under the SC/ST Act and other statutes, such as the IPC and the POCSO Act. The appellant had been convicted of sexual assault but challenged the inclusion of SC/ST Act charges, arguing that the prosecution's charges were vaguely framed. The Court upheld the convictions under the IPC and POCSO Act but removed the charges under the SC/ST Act, noting that while the victim's caste identity is significant, the core offence must be substantiated independently of the SC/ST Act.

The High Court of Kerala in **Siji Vs. Sivaram v. State of Kerala (2023) dealt** with the issue of anticipatory bail under the SC/ST Act. The Court ruled that after a dismissal of anticipatory bail by a special court, a fresh bail application could not be entertained directly by the High Court but required a Supreme Court approach. This decision highlighted procedural limits and reinforced the structured approach to bail applications under this Act.

In **Dr. Shubhash Kashinath Mahajan Vs. State of Maharashtra and ors. (2018),** the Supreme Court introduced critical procedural safeguards to prevent misuse of the Act. The Court allowed anticipatory bail where no prima facie case was evident and mandated preliminary inquiries by senior officers. These measures aimed to ensure that the Act's protective measures do not become tools for personal vendettas or false accusations.

Finally, **Prathvi Raj Chauhan Vs. Union of India & Others (2020**) challenged the constitutionality of Section 18A of the Act, inserted to address the Mahajan judgment's concerns. The Supreme Court upheld the 2018 amendment, affirming its constitutionality while distinguishing it from previous judgments. The Court's decision reflected a nuanced balance between ensuring protection for SC/ST individuals and addressing concerns about misuse

Implications for Justice and Social Harmony

The misuse of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, has far-reaching consequences for the justice system and social harmony. One significant impact is the overburdening of courts. The filing of false complaints under the Act results in a surge of cases that can clog the judicial system, leading to delays in the adjudication of genuine cases. This not only strains judicial resources but also erodes public trust in the legal system, as people perceive a lack of efficiency and fairness in addressing their grievances.

Socially, the misuse of the Act can lead to a breakdown in community trust and harmony. When individuals exploit the Act for personal vendettas or financial gain, it fosters animosity between communities and undermines the principles of justice and fairness. This erosion of trust can contribute to heightened social tensions and exacerbate divisions within society.

For the SC/ST communities themselves, the broader impact is deeply troubling. The misuse of the Act can overshadow genuine cases of discrimination and violence, making it harder for victims to obtain justice. This dilution of the Act's protective intent can further entrench the marginalization of these communities, impeding their progress and reinforcing systemic inequalities. Therefore, addressing misuse is crucial not only for maintaining the integrity of the Act but also for ensuring that its intended beneficiaries receive the justice and protection they rightfully deserve.

Conclusion

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act remains a cornerstone in the fight against discrimination and violence faced by marginalized communities in India. This legislation is pivotal in offering protection and redress to those historically oppressed. However, the rising instances of misuse reveal a stark challenge that undermines its core purpose. False allegations and exploitative practices not only strain the judicial system but also erode the trust and social cohesion essential for a just society.

To uphold the integrity of the Act, it is crucial to address these abuses with a measured and balanced approach. Reforms must focus on safeguarding the Act's original intent while implementing safeguards to prevent misuse. By strengthening the legal framework and ensuring fair application, we can better protect vulnerable communities and reaffirm our commitment to justice. It is time to strike a balance that honors the Act's spirit and fosters a fair, equitable society for all.

B. Important Cases October 2024

Important Supreme Court Cases
October 2024

S.N.	Subject	Case Reference
1.	End caste-based allotment of work to prisoners, delete caste column in prison registers. Struck down the provisions of the Prison Manuals of several States as per which jobs were assigned to prisons based on their castes. The Court held that assigning cleaning and sweeping to the marginalized castes and assigning cooking to higher-caste prisoners is nothing but a direct caste discrimination and a violation of Article 15.	Sukanya Shantha Vs. Union of India, decided on 03/10/2024
2.	Mere delay in forwarding the FIR to the jurisdictional magistrate would not be fatal to the prosecution's case unless it is shown by the accused that the delay had caused prejudice to his case.	Rama Devi Vs. State of Bihar and Ors., decided on 03/10/2024
3.	Once a transaction is found to be hit by the doctrine of lis pendens, then the defences of being a bona fide purchaser and lack of notice regarding the sale agreement are not available. A transferee pendente lite is bound by the decree just as much as he was a party to the suit. The principle of lis pendens embodied in Section 52 of the Transfer of Property Act being a principle of public policy, no question of good faith or bona fide arises.	Shingara Singh Vs. Daljit Singh and Anr., decided on 14/10/2024
4.	Though an agreement to sell is a contract of sale, going by its definition under Section 54 of the Transfer of Property Act, **a sale cannot be said to be a contract.** Sale, going by the definition thereunder, is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.	Neelam Gupta and Ors. Vs. Rajendra Kumar Gupta and Anr., decided on 14/10/2024

	The conjoint reading of all the aforesaid relevant provisions would undoubtedly go to show that they would not come in the way of transfer of an immovable property in favour of a minor or in other words, they would invariably suggest that a minor can be a transferee though not a transferor of immovable property. The period of limitation to prove title by adverse possession would commence from the date of the defendant's possession becoming adverse and not from when the plaintiff acquires the right of ownership.	
5.	A pendente lite transferee, being a stranger to the suit, can file an application under Order 21 Rule 99 CPC against dispossession from the suit property. Order XXI Rule 99 CPC comes to the rescue of the person who being a stranger to the suit was dispossessed by the decree holder upon the execution of the decree.	Renjith K.G. and Ors. Vs. Sheeba, decided on 14/10/2024
6.	There is no bar for the trial court to decide an application seeking the summoning of an additional accused under Section 319 Cr.P.C. even after the cross-examination of the prosecution witness.	Asim Akhtar Vs. State of West Bengal and Anr., decided on 17/10/2024
7.	Urged the High Court judges to ensure that if they are pronouncing only the operative part of the judgment by saying that reasons will follow, then they should endeavour to give the reasons within 2-5 days. If a judge feels that the reasons can't be given within 5 days due to work pressure, then it would be prudent to reserve the judgment. To maximize judicial time by avoiding dictating lengthy judgments in court, recommended the High Court Judges	Ratilal Jhaverbhai Parmar and Ors. Vs. State of Gujarat and Ors., decided on 21/10/2024

	adopt a practice of pronouncing an operative part of the judgment/order when they believe that the estimated time for dictating a judgment/order would be beyond 20/25 minutes.	
8.	When the defence admits the genuineness of the prosecution documents and dispenses with its formal proof then, such evidence may be read as substantive evidence under Section 294 Cr.P.C. After the prosecution's documents were admitted under Section 294 Cr.P.C. by the defence without formal proof, then the only job left for the courts is "to appreciate, analyse and test the creditworthiness of the evidence led by the prosecution which was available on record and if such evidence beyond reasonable doubt established the charges, the conviction could be recorded." It is the defence's role to discredit the testimony of the prosecution, failing which the admission of the genuineness of the admitted documents produced by the prosecution could not be disputed and would be read into evidence.	Shyam Narayan Ram Vs. State of Uttar Pradesh & Anr. Etc., decided on 21/10/2024
9.	There is a tendency to over-implicate the persons and to present an exaggerated version in Section 498-A IPC domestic cruelty cases. The courts have to be careful to identify instances of over implication and to avert the suffering of ignominy and inexpiable consequences, by such persons.	Yashodeep Bisanrao Vadode Vs. State of Maharashtra & Anr., decided on 21/10/2024
10.	When the offence was committed in the presence of the accused in the privacy of their house, then their failure to offer explanations can be treated as an adverse circumstance against them as per Section 106 of the Indian Evidence Act, 1872.	Uma & Anr. Vs. State represented by the Deputy Superintendent of Police, decided on 22/10/2024

IN THE SUPREME COURT OF INDIA

Sukanya Shantha
Vs.
Union of India

Writ Petition (C) No. 1404/2023

HEADNOTE – End caste-based allotment of work to prisoners, delete caste column in prison registers. Struck down the provisions of the Prison Manuals of several States as per which jobs were assigned to prisons based on their castes. The Court held that assigning cleaning and sweeping to the marginalized castes and assigning cooking to higher-caste prisoners is nothing but a direct caste discrimination and a violation of Article 15.

JUDGMENT

Dr. Dhananjaya Y. Chandrachud, CJI

I. The Writ Petition

1. The petitioner, Sukanya Shantha, a journalist, wrote an article "From Segregation to Labour, Manu's Caste Law Governs the Indian Prison System", which was published on 10 December 2020. The article highlighted caste-based discrimination in the prisons in the country. The petitioner has sought directions for repeal of the offending provisions in State prison manuals. By an order dated 10 July 2024, judgment was reserved. We have heard a broad diversity of viewpoints from across India. Besides counsel for the petitioner and the intervenor, the Additional Solicitor General (ASG) of India appeared for the Union of India. The States of Jharkhand, Uttar Pradesh, West Bengal, Maharashtra, Orissa, Karnataka, Andhra Pradesh, and Tamil Nadu appeared through counsel.

II. Submissions

2. Dr. S. Muralidhar, Senior Advocate, appearing for the petitioner highlighted the issue of caste-based discrimination in the prisons in India. It was argued that various State prison manuals sanction blatantly unconstitutional practices, which are violative of Articles 14, 15, 17, 21, and 23 of the Constitution of India. Ms. Disha Wadekar referred to a chart of provisions from different State prison manuals/rules to highlight various forms of discrimination in the prisons. She highlighted that caste-based discrimination continues to persist in the prisons in the country with respect to: (i) The division of manual labour; (ii) Segregation of barracks; and (iii) Provisions that discriminate against prisoners belonging to Denotified tribes and "habitual offenders".

She further argued that the Model Prison Manual, 2016 does not address the impugned provisions related to caste discrimination inside prisons other than the discrimination in kitchens, and that it is not "model" when it comes to addressing caste discrimination. In the written submissions, the petitioner's side has further submitted that the Home Departments of the Respondent States may also be directed to clarify the definition of "Habitual Offenders" in their respective prison manuals so as to prevent its misuse against the denotified tribes in prisons.

3. Ms. Aishwarya Bhati, Learned ASG, submitted a written note arguing that the Ministry of Home Affairs prepared the Model Prison Manual for the Superintendence and Management of Prisons in India, 2003 and The Model Prison Manual, 2016, and circulated it to all States and Union Territories (UTs) in May 2016 explicitly prohibiting caste and religion based discrimination practices.

She also referred to the Advisory dated 26 February 2024 issued by the Ministry of Home Affairs, through the Deputy Secretary (PR & ATC) to the Principal Secretary (Home/Jails) of all states and UTs and the DG/IG Prisons of all States and UTs to ensure that the State Prison Manual/Prison Act should not contain any discriminatory provisions. She further argued that "prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein" as a subject fall under the domain of the States under Entry 4, List II of the Seventh Schedule of the Constitution.

4. Ms. Ashtha Sharma, counsel for the State of West Bengal, stated that the discrimination on the basis of caste/creed/ religion as envisaged in the provisions of West Bengal Jail Code Rules, 1967 (Rules No. 741, 793, 860 and 1117) are not in force/ practice within the Correctional Homes of West Bengal since long, and that a proposal for deletion/alteration/ amendment of the four Rules has been already sent to the appropriate authority. Mr. Anuj Saxena, counsel for the intervenor, has prayed for deletion of "caste" column and any references to caste in undertrial and/or convicts' prisoners' registers.

III. Constitutional Interpretation

5. As we deal with the present petition, we must refer to the values of the Constitution and the interpretation we must adopt. After all, the impugned provisions of the various prison manuals, highlighted in this petition, demonstrate that the values of the Constitution are at stake.

6. The Constitution reflects the vision of its founders to give India a collective future based on the values of liberty, equality, and fraternity. The Constitution mandates a more just and inclusive society, where every citizen has the opportunity to thrive. It envisages that the values embedded in its provisions are not just aspirations but lived realities. Any interpretation of the Constitution must be reflective of the blueprint laid down by its founders. The Constitution is - as Granville Austin put it- a "social document" and a "modernizing force", with its provisions embodying "humanitarian sentiments".[1]

7. The interpretation of the Constitution is not static. It has evolved with time to give recognition to a broader spectrum of rights to the citizens, as well as to impose additional safeguards against excesses of the State or even private entities, as the case may be. Over the last seventy-five years, the Supreme Court has recognized new rights such as the right to education,[2] the right to privacy,[3] and the right against the adverse impact of climate change,[4] among others.

These rights, though not explicitly mentioned in the original text, have been interpreted as inherent to the broader principle of the right to life which the

Constitution enshrines. The Constitution must serve as a robust framework for safeguarding the rights of citizens and maintaining the delicate balance between authority and individual freedom.

8. The Constitution recognizes the dignity and individual autonomy inherent in all citizens and their right to life and personal liberty. Liberty and autonomy advance the cause of human dignity.[5] Individual autonomy is the ability to make decisions on matters that impact one's life.[6] When individuals are granted the freedom to make choices about their own lives, they are empowered to take control of their destinies, and express their identities, in the "pursuit of happiness"[7] without undue interference. This freedom fosters a sense of self-worth and respect, thereby recognizing individual dignity. By safeguarding these principles, we ensure that the intrinsic worth of every human being is recognized and upheld. The right to life cannot be restricted except through a law which is "substantively and procedurally fair, just and reasonable".[8]

9. Our interpretation of the Constitution must fill the silences in its text. The framers of the Constitution could not have anticipated every situation that might arise in the future. They also intentionally left certain decisions to the discretion of future generations. However, the choices we make today must align with the broader constitutional framework and values. In filling the gaps, whenever they arise, our interpretation must enhance the foundational values of the Constitution such as equality, dignity, liberty, federalism and institutional accountability. Our interpretation must adhere to the postulate that "civil and political rights and socio-economic rights do not exist in a state of antagonism."[9] Our analysis must be based on a holistic reading of the provisions of the Constitution.[10]

10. The Constitution envisages that courts act as institutions which discharge the responsibility of protecting constitutionally entrenched rights. Courts are neutral institutions, whose primary function is to apply the law fairly and consistently. Transparency in processes also enhances public confidence in the system.[11] In their role as neutral institutions, courts also act as a check on the other branches of government, ensuring that their actions conform to constitutional and legal standards.

11. The Constitution mandates that laws enacted in the colonial era should align with its provisions.[12] Constitutional interpretation emphasizes the "need to reverse the philosophy of the colonial regime, which was founded on the subordination of the individual to the state".[13] The "assumptions which lay at the foundation of colonial rule have undergone a fundamental transformation for a nation of individuals governed by the Constitution".[14] By recognizing the injustices in the colonial and pre-colonial era, "we can certainly set the course for the future".[15] "In the transformation of society" against colonial and pre-colonial

ideology, the Constitution "seeks to assure the values of a just, humane and compassionate existence to all her citizens".[16]

12. Criminal laws of the colonial era continue to impact the postcolonial world. As a scholar noted, "while the pre-determined and codified nature of the diverse criminal justice rules provided the moral superiority and political legitimacy to colonial rule, the Imperial power was safeguarded by their coercive content, particularly in procedural matters."[17] Criminal laws in modern times thus, as "the strongest expression of the State's power" must "ensure that they do not deny equality before the law and the equal protection of laws".[18] Criminal laws must not endorse colonial or pre-colonial philosophy.

13. In a post-constitutional society, "the law must take affirmative steps to achieve equal protection of law to all its citizens".[19] Any discussion on the Constitution must therefore take a conscious view of the lived realities of citizens. It requires evaluating how constitutional provisions translate into meaningful outcomes in their lives. We must discuss this aspect of the Indian Constitution further, before we examine the impugned provisions.

IV. The Constitution of Emancipation, Equality, and Dignity

14. The Constitution of India is an emancipatory document. It provides equal citizenship to all citizens of India. The Constitution is not just a legal document, but in India's social structure, it is a quantum leap. In one stroke, it gave a dignified identity to all citizens of India. On 26 January 1950, the Constitution eliminated the legality of caste-based discrimination, thereby raising the human dignity of our marginalised communities.

15. Describing the vision of the framers, constitutional historian Granville Austin stated:

"India's founding fathers and mothers established in the Constitution both the nation's ideals and the institutions and processes for achieving them. The ideals were national unity and integrity and a democratic and equitable society. The new society was to be achieved through a social-economic revolution pursued with a democratic spirit using constitutional, democratic institutions. I later came to think of unity, social revolution, and democracy as three strands of a seamless web. The founders believed that none of these goals was to be pursued, nor could any be achieved, separately. They were mutually dependent and had to be sought together."[20]

Marc Galanter noted in this regard:

"Independent India embraced equality as a cardinal value against a background of elaborate, valued and clearly perceived inequalities. Her constitutional policies to

offset these proceeded from an awareness of the entrenched and cumulative nature of group inequalities."[21]

The Constitution mandates the replacement of fundamental wrongs with fundamental rights.[22] Through its provisions, it displaced a centuries-old caste-based hierarchical social order "that did not recognize the principle of individual equality".[23] It negated the ideals of social hierarchy. The Constitution is the embodiment of the aspirations of the millions of caste-oppressed communities, which hoped for a better future in independent India. To summarize, the "Constitution, by its very existence, was a social revolutionary statement."[24]

16. Some of the speeches in the Constituent Assembly give expression to this vision. On behalf of the Adivasi community, Jaipal Singh Munda shared the following sentiments and expectations from the Constitution:

"Mr. Chairman, Sir, I rise to speak on behalf of millions of unknown hordes-yet very important-of unrecognised warriors of freedom, the original people of India who have variously been known as backward tribes, primitive tribes, criminal tribes and everything else, Sir, I am proud to be a Jungli, that is the name by which we are known in my part of the country. Sir, if there is any group of Indian people that has been shabbily treated it is my people. They have been disgracefully treated, neglected for the last 6,000 years. You cannot teach democracy to the tribal people; you have to learn democratic ways from them. They are the most democratic people on earth. We want to be treated like every other Indian."[25]

H.J. Khandekar, a leader from the Dalit community, raised the plight of the so-called "criminal tribes":

"We have been given according to this Constitution freedom of speech and freedom of movement and so on. But there is no freedom of movement for one crore of unfortunate people in this country. That is, the Criminal Tribes. Nothing is said about them in this Constitution. Will the Government repeal the Criminal Tribes Act and give every freedom to the Criminal Tribes?"[26]

Dakshayani Velayudhan, the lone Dalit woman in the Constituent Assembly, noted:

"The working of the Constitution will depend upon how the people will conduct themselves in the future, not on the actual execution of the law. So I hope that in course of time there will not be such a community known as Untouchables and that our delegates abroad will not have to hang their heads in shame if somebody raises such a question in an organisation of international nature."[27]

Dr Ambedkar, as Chairman of the Drafting Committee, remarked in his last address to the Constituent Assembly:

"On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value.

How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up."[28]

The vision laid down by Dr. Ambedkar, Jaipal Singh Munda, H.J. Khandekar, and Dakshayani Velayudhan, among others, emphasizes that there shall be no discrimination in the country. The Constitution envisions a society where there is no room for anyone to feel superior to another citizen.

17. The chapter on fundamental rights places the provisions on equality, nondiscrimination, equality of opportunity, affirmative action, abolition of untouchability, freedom of speech and expression, right to life, and prohibition of forced labour together. This has been done for a special reason. The framers of the Constitution conceptualized that without the provisions on the prohibition of discrimination, abolition of untouchability, and prohibition on forced labour, the imagination of broader rights such as equality before law, freedom of speech and expression, and the right to life would remain incomplete. The Constitution thus complements the basic principles of constitutionalism with provisions designed specifically to address India's social problems.

18. This underlying philosophy of the Constitution has been highlighted by this Court in several judgments. Chief Justice S.M. Sikri, in his opinion in Kesavananda Bharati v. State of Kerala,[29] held that the objective of various provisions of the Constitution is to build "a welfare State and an egalitarian social order in our country", and "to bring about a socio-economic transformation based on principles of social justice". Referring to Part III of the Constitution, the judgment stated that the founders were "anxious that it should be a society where the citizen will enjoy the various freedoms and such rights as are the basic elements of those freedoms without which there can be no dignity of individual".

19. Justice Krishna Iyer in his concurring opinion in State of Kerala v. N.M. Thomas[30] called the Constitution "a great social document, almost revolutionary in its aim of transforming a medieval, hierarchical society into a modern, egalitarian democracy". In Indian Medical Association v. Union of India,[31] the Court held that "various aspects of social justice, and an egalitarian social order, were also inscribed, not as exceptions to the formal content of equality but as intrinsic, vital and necessary components of the basic equality code itself".

20. This Court held in Justice K.S. Puttaswamy v. Union of India[32] that the "vision of the founding fathers was enriched by the histories of suffering of those who suffered oppression and a violation of dignity both here and elsewhere". One of us (Justice DY Chandrachud) authored the plurality opinion, holding that the interpretation of the Constitution must keep evolving to facilitate justice for the citizens.

21. In Navtej Singh Johar v. Union of India,[33] the Court while dealing with the validity of a colonial provision (Section 377 of the Penal Code), held that the Constitution envisages that "every person enjoys equal rights which enable him/her to grow and realize his/her potential as an individual".[34] The Court also acknowledged that "throughout history, socio-cultural revolts, anti-discrimination assertions, movements, literature and leaders have worked at socializing people away from supremacist thought and towards an egalitarian existence."[35] In that backdrop, the Indian Constitution "was an attempt to reverse the socializing of prejudice, discrimination, and power hegemony in a disjointed society".[36]

22. The Court, in Indian Young Lawyers Association v. State of Kerala,[37] described the anti-caste vision of the Constitution. One of us (Justice DY Chandrachud) wrote a concurring opinion, noting that:

"Besides the struggle for independence from the British rule, there was another struggle going on since centuries and which still continues. That struggle has been for social emancipation. It has been the struggle for the replacement of an unequal social order. It has been a fight for undoing historical injustices and for righting fundamental wrongs with fundamental rights. The Constitution of India is the end product of both these struggles.

It is the foundational document, which in text and spirit, aims at social transformation, namely, the creation and preservation of an equal social order. The Constitution represents the aspirations of those, who were denied the basic ingredients of a dignified existence. It contains a vision of social justice and lays down a roadmap for successive governments to achieve that vision. The document sets out a moral trajectory, which citizens must pursue for the realisation of the values of liberty, equality, fraternity and justice. It is an

assurance to the marginalised to be able to rise to the challenges of human existence."

The Court emphasized the need to scrutinize social practices to keep them in consonance with the egalitarian values of the Constitution:

"The Constitution embodies a vision of social transformation. It represents a break from history marked by the indignation and discrimination attached to certain identities and serves as a bridge to a vision of a just and equal citizenship. In a deeply divided society marked by intermixing identities such as religion, race, caste, sex and personal characteristics as the sites of discrimination and oppression, the Constitution marks a perception of a new social order. This social order places the dignity of every individual at the heart of its endeavours. Existing structures of social discrimination must be evaluated through the prism of constitutional morality. The effect and endeavour is to produce a society marked by compassion for every individual."

(emphasis added)

23. The Constitution thus stands as a testament to the fight against historical injustices and for the establishment of an egalitarian social order. It aims to prevent caste-based discrimination. This commitment is not limited to preventing discriminatory actions by the State alone. It extends to the actions of citizens and private entities as well. It empowers the State to enact appropriate legislation or take executive measures to tackle caste-based discrimination.

At the same time, it mandates the decision-makers to take every step to end discrimination in Indian society. The pervasive influence of caste necessitates continuous efforts to ensure equality and justice for all citizens. The manifestations of caste are too numerous to exhaustively enumerate.[38] They can manifest in various forms and across different sectors of society, from education and employment to social interactions and access to resources. As has been observed:

"Continued to be attributed typically to the rural hinterlands and assumed to be limited only to the discussions on reservation policy and electoral politics, caste has mutated and diversified during the past three decades. Today, its presence is visible in urban housing, its markets and businesses, higher educational institutions, and public sector offices as well as the private sector working spaces, which were projected to be secular and privilege class over caste, and the various socio-economic and political institutions that interface with everyday lived experiences."[39]

The fight against caste-based discrimination is not a battle that can be won overnight; it requires sustained effort, dedication, and the willingness to confront

and challenge societal norms that perpetuate inequality. When faced with practices of caste-based discrimination, this Court must take an active stand. In entertaining the current petition, this Court is making its contribution to the ongoing struggle to dismantle caste-based discrimination.

24. Based on this constitutional philosophy, we shall now refer to constitutional provisions under which the impugned provisions have been challenged.

V. The Contours of Article 14

25. Article 14 guarantees that the "State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." Equality is a crucial aspect of the constitutional vision. Immediately after the adoption of the Constitution, this Court laid down the standard to test the validity of laws against Article 14.

In a Constitution Bench decision in Chiranjit Lal Chowdhuri v. Union of India,[40] Justice B.K. Mukherjea articulated that a classification under Article 14 "should never be arbitrary". It was held that such classification must always "rest upon some real and substantial distinction bearing a reasonable and just relation to the things in respect to which the classification is made". If a classification is "made without any substantial basis", it should be "regarded as invalid". The principle of classification was reiterated in a subsequent Constitution Bench decision in State of Bombay v. F. N. Balsara.[41]

26. Later, a seven-judge Bench decision in State of West Bengal v. Anwar Ali Sarkar[42] solidified the requirement of the twin test under Article 14. Speaking for the Court, Justice S.R. Das held:

"In order to pass the test, two conditions must be fulfilled, namely (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia, which is the basis of the classification, and the object of the act are distinct things, and what is necessary is that there must be a nexus between them.

In short, while the Article forbids class legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense I have just explained."

27. Adding to the above principles, Justice S.R. Das, in Ram Krishna Dalmia v. Justice S.R. Tendolkar,[43] held that the classification "may be founded on different bases, namely, geographical, or according to objects or occupations or the like", but it needs to have a reasonable nexus with the object of the statute. It was held that "Article 14 condemns discrimination not only by a substantive law but also by a law of procedure". Furthermore, the Court "may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation". The Court further reiterated that:

"A statute may direct its provisions against one individual person or thing or to several individual persons or things but no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances, or matters of common knowledge. In such a case the court will strike down the law as an instance of naked discrimination."

28. Subsequently, in E.P. Royappa v. State of Tamil Nadu,[44] a Constitution Bench of this Court added a crucial principle of non-arbitrariness to the discourse of equality under Article 14. The Court was adjudicating the validity of an administrative order. The Court held that:

"Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. 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."

29. The principle of non-arbitrariness and reasonableness was then emphasized in the seven-judge Bench decision in Maneka Gandhi v. Union of India.[45] It was held: "Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. 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."

30. To test the validity of laws, the twin test of intelligible differentia and reasonable nexus held ground. Whether the test of arbitrariness is a valid principle under Article 14 led to a conflicting set of decisions.[46] In Shayara Bano v. Union of India,47 in testing the validity of Section 2 of the Muslim Personal

Law (Shariat) Application Act, 1937 which validates the triple talaq, Justice R.F. Nariman endorsed the test of manifest arbitrariness. It was held:

"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."

31. A formalistic understanding of the classification test was then critiqued by this Court in Navtej Singh Johar v. Union of India.[48] The Court was dealing with a challenge to the constitutionality of Section 377 of the Indian Penal Act, 1860, to the extent that it criminalized consensual sexual conduct between adults. In his concurring opinion, one of us (Justice DY Chandrachud) held:

"Equating the content of equality with the reasonableness of a classification on which a law is based advances the cause of legal formalism. The problem with the classification test is that what constitutes a reasonable classification is reduced to a mere formula: the quest for an intelligible differentia and the rational nexus to the object sought to be achieved. In doing so, the test of classification risks elevating form over substance. The danger inherent in legal formalism lies in its inability to lay threadbare the values which guide the process of judging constitutional rights.

Legal formalism buries the life-giving forces of the Constitution under a mere mantra. What it ignores is that Article 14 contains a powerful statement of values-of the substance of equality before the law and the equal protection of laws. To reduce it to a formal exercise of classification may miss the true value of equality as a safeguard against arbitrariness in State action. As our constitutional jurisprudence has evolved towards recognising the substantive content of liberty and equality, the core of Article 14 has emerged out of the shadows of classification.

Article 14 has a substantive content on which, together with liberty and dignity, the edifice of the Constitution is built. Simply put, in that avatar, it reflects the quest for ensuring fair treatment of the individual in every aspect of human endeavour and in every facet of human existence." The judges declared that Section 377 is manifestly arbitrary. The doctrine of manifest arbitrariness was also adopted in the Constitution Bench decision in Joseph Shine v. Union of India.[49]

32. Referring to the decisions in Shayara Bano, Navtej Johar, and Joseph Shine, a Constitution Bench in Association for Democratic Reforms (ADR) v. Union of India[50] summarized the doctrine of manifest arbitrariness in the following words:

"Courts while testing the validity of a law on the ground of manifest arbitrariness have to determine if the statute is capricious, irrational and without adequate determining principle, or something which is excessive and disproportionate. This Court has applied the standard of "manifest arbitrariness" in the following manner:

a. A provision lacks an "adequate determining principle" if the purpose is not in consonance with constitutional values. In applying this standard, Courts must make a distinction between the "ostensible purpose", that is, the purpose which is claimed by the State and the "real purpose", the purpose identified by Courts based on the available material such as a reading of the provision; and

b. A provision is manifestly arbitrary even if the provision does not make a classification."

The Constitution Bench further elucidated the standards of manifest arbitrariness to test the validity of a plenary legislation with those of subordinate legislation:

"The above discussion shows that manifest arbitrariness of a subordinate legislation has to be primarily tested vis-a-vis its conformity with the parent statute. Therefore, in situations where a subordinate legislation is challenged on the ground of manifest arbitrariness, this Court will proceed to determine whether the delegate has failed "to take into account very vital facts which either expressly or by necessary implication are required to be taken into consideration by the statute or, say, the Constitution."

In contrast, application of manifest arbitrariness to a plenary legislation passed by a competent legislation requires the Court to adopt a different standard because it carries greater immunity than a subordinate legislation. We concur with Shayara Bano (supra) that a legislative action can also be tested for being manifestly arbitrary. However, we wish to clarify that there is, and ought to be, a distinction between plenary legislation and subordinate legislation when they are challenged for being manifestly arbitrary."

33. The Court recently in State of Punjab v. Davinder Singh[51] dealt with whether sub-classification among the Scheduled Castes is permissible under Article 14. The seven-judge bench reiterated that the State is allowed to classify in a manner that is not discriminatory. The Court summarized the twin-test of classification as follows:

"The Constitution permits valid classification if two conditions are fulfilled. First, there must be an intelligible differentia which distinguishes persons grouped together from others left out of the group. The phrase "intelligible differentia" means difference capable of being understood. The difference is capable of being understood when there is a yardstick to differentiate the class included and others excluded from the group. In the absence of the yardstick, the differentiation would be without a basis and hence, unreasonable.

The basis of classification must be deducible from the provisions of the statute; surrounding circumstances or matters of common knowledge. In making the classification, the State is free to recognize degrees of harm. Though the classification need not be mathematical in precision, there must be some difference between the persons grouped and the persons left out, and the difference must be real and pertinent. The classification is unreasonable if there is "little or no difference". Second, the differentia must have a rational relation to the object sought to be achieved by the law, that is, the basis of classification must have a nexus with the object of the classification."

34. The constitutional standards laid down by the Court under Article 14 can be summarized as follows. First, the Constitution permits classification if there is intelligible differentia and reasonable nexus with the object sought. Second, the classification test cannot be merely applied as a mathematical formula to reach a conclusion. A challenge under Article 14 has to take into account the substantive content of equality which mandates fair treatment of an individual.

Third, in undertaking classification, a legislation or subordinate legislation cannot be manifestly arbitrary, i.e. courts must adjudicate whether the legislature or executive acted capriciously, irrationally and/or without adequate determining principle, or did something which is excessive and disproportionate. In applying this constitutional standard, courts must identify the "real purpose" of the statute rather than the "ostensible purpose" presented by the State, as summarized in ADR. Fourth, a provision can be found manifestly arbitrary even if it does not make a classification. Fifth, different constitutional standards have to be applied when testing the validity of legislation as compared to subordinate legislation.

VI. Non-Discrimination under Article 15

35. Clauses 1 and 2 of Article 15 provide that:

"Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.-

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public."

Article 15(1) imposes an enforceable obligation on the State to not discriminate against citizens on any of several grounds, including "caste". If the State itself discriminates against a citizen under any of the mentioned grounds, then it is discrimination of the highest form. After all, the State is expected to prevent discrimination, not perpetuate it. That is why our Constitution prohibits the State from discriminating against any citizen. Besides, Article 15(2) was adopted to specifically prohibit the discrimination faced by certain marginalized communities in accessing public services and resources.

Historically, the so-called untouchable community was not allowed to use public resources such as water tanks and wells. This provision has a unique imprint of Dr Ambedkar, as he consistently advocated for such a provision for decades.[52] Not only does Article 15(2) prohibit the State from discriminating, it also restricts the citizens or private entities from discriminating against other citizens on the grounds mentioned therein.

36. Discrimination is prohibited, because it has several repercussions on human lives. Discrimination arises due to a feeling of superiority/inferiority, bias, contempt, or hatred against a person or a group. In history, such feelings have led to the genocide of certain communities. Discrimination also lowers the self-esteem of the person being discriminated against. It can lead to unfair denial of opportunities and constant violence against a set of people. Discrimination can also be done by continuously ridiculing or humiliating someone, who is on the weaker side of the social spectrum.

It can cause trauma to a person with which they may be affected their entire life. Discrimination also includes stigmatizing the identity or existence of a marginalized social group. Discrimination can also happen based on certain stereotypes against a marginalized group. As a society that divided people into a hierarchy, we must remain conscious of the forms and kinds of discrimination against marginalized groups. Discriminatory laws enacted before the Constitution of India came into force need to be scrutinized and done away with.

37. In India, there have been several instances of laws being enacted based on certain stereotypes against certain groups of people. Our citizens have brought challenges before the constitutional courts against the validity of such laws. In Anuj Garg v. Hotel Association of India,[53] the validity of Section 30 of the Punjab Excise Act, 1914 was challenged.

The provision prohibited the employment of women and men under the age of 25 years in premises where liquor or other intoxicating drugs were consumed by the public. In adjudicating the case, this Court applied the principle that "[l]egislation should not be only assessed on its proposed aims but rather on the implications and the effects". It struck down the provision, holding that it "suffers from incurable fixations of stereotype morality and conception of sexual role." It was held that "[n]o law in its ultimate effect should end up perpetuating the oppression of women".

38. In National Legal Services Authority v. Union of India,[54] this Court recognised hijras, eunuchs, apart from binary gender, as "third gender" and extended the protection of Articles 15 and 16 to them. It was held that discrimination on the ground of "sex" under Articles 15 and 16 includes "discrimination on the ground of gender identity". The Court declared that the expression "sex" used in Articles 15 and 16 "is not just limited to the biological sex of male or female, but intended to include people who consider themselves to be neither male or female." This Court concluded that "discrimination on the basis of sexual orientation or gender identity includes any discrimination, exclusion, restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under our Constitution".

39. However, the judgment of a two-judge bench in Rajbala v. State of Haryana[55] rejected a challenge founded on the claim of discriminatory impact. A state legislation introduced conditions to contest panchayati elections, as a result of which, a significant section of Scheduled Castes was debarred from contesting elections. The Bench held that a statute cannot be held unconstitutional on the ground that it is "arbitrary".

The Court held, "If it is constitutionally permissible to debar certain classes of people from seeking to occupy the constitutional offices, numerical dimension of such classes, in our opinion should make no difference for determining whether prescription of such disqualification is constitutionally permissible unless the prescription is of such nature as would frustrate the constitutional scheme by resulting in a situation where holding of elections to these various bodies becomes completely impossible".

However, this reasoning prima facie is contrary to the decisions in Shayara Bano, Navtej Singh Johar, and Joseph Shine, which upheld manifest arbitrariness as a ground to strike down a law. At the same time, the impact of the law on the Scheduled Caste population is an example of "indirect discrimination", a constitutional test which has been applied by the Court in subsequent decisions.

40. In Karma Dorjee v. Union of India,[56] the Court emphasized that "[t]he Governments, both at the centre and the states have a non-negotiable obligation to take positive steps to give effect to India's commitment to racial equality". The Court was hearing a public interest petition seeking guidelines to be set down to curb acts of discrimination against persons from the north-eastern states. It directed the Union Government to take "proactive steps to monitor the redressal of issues pertaining to racial discrimination faced by citizens of the nation drawn from the north-east".

41. A Constitution Bench in Navtej Singh Johar[57] gave a broader interpretation to Article 15, while striking down Section 377 of the Indian Penal Code insofar as it decriminalizes homosexual intercourse amongst consenting adults, on the ground that it was discriminatory. In a concurring opinion written by one of us (Justice DY Chandrachud), it was held that discrimination, whether direct or indirect, "founded on a stereotypical understanding of the role of the sex" is prohibited by Article 15. The Court held, "If certain characteristics grounded in stereotypes, are to be associated with entire classes of people constituted as groups by any of the grounds prohibited in Article 15(1), that cannot establish a permissible reason to discriminate."

It was further held that a provision challenged as being ultra vires the prohibition of discrimination on the grounds only of sex under Article 15(1) "is to be assessed not by the objects of the State in enacting it, but by the effect that the provision has on affected individuals and on their fundamental rights". The Court discussed the principle that even if the law or action by the State is facially neutral, it "may have a disproportionate impact upon a particular class". Though facially neutral, the effect of Section 377 was seen to target members of the LGBTQIA+ community.

42. Another Constitution Bench in Joseph Shine[58] struck down Section 497 of the Indian Penal Code, which related to adultery. It was held that the premise of "Section 497 is a gender stereotype that the infidelity of men is normal, but that of a woman is impermissible", and hence, it violates the non-discrimination principle embodied in Article 15. The provision, the Court held, "builds on existing gender stereotypes and bias and further perpetuates them", by giving "legal recognition to socially discriminatory and gender-based norms". The Court held that a "provision of law must not be viewed as operating in isolation from the social, political, historical and cultural contexts in which it operates".

43. In Indian Young Lawyers Association v. The State of Kerala[59], this Court dealt with the validity of a rule excluding menstruating women between the ages of 10 and 50 from entry in a temple in Kerala, based upon a custom. In his concurring opinion, Justice Nariman held that the said rule is hit by Article 15(1), as it "discriminates against women on the basis of their sex only". One of us (Justice DY Chandrachud) who was also a part of the judgment held, "Exclusion of women between the age groups of ten and fifty, based on their menstrual status, from entering the temple in Sabarimala can have no place in a constitutional order founded on liberty and dignity".

44. In Secretary, Ministry of Defence v. Babita Puniya,[60] a two-judge Bench upheld the claims of women engaged on Short Service Commissions in the Army to seek parity with their male counterparts in obtaining Permanent Commissions. It was held that "Arguments founded on the physical strengths and weaknesses of men and women and on assumptions about women in the social context of marriage and family do not constitute a constitutionally valid basis for denying equal opportunity to women officers." The Court gave several directions to the Union Government to grant Permanent Commission to women officers in the Army and consequential benefits.

45. The issue of Permanent Commissions to women officers once again came before the Court in Lt. Col. Nitisha v. Union of India.[61] The petitioners challenged the evaluation criteria applied by the Army as unjust and arbitrary as "the women officers who are in the age group of 40-50 years of age are being required to conform to the medical standards that a male officer would have to conform to at the age of 25 to 30 years, among other factors". In deciding the case, the Court discussed the principles of substantive equality, indirect discrimination, and anti-stereotyping under Articles 14 and 15(1). The Court defined indirect discrimination as follows:

"We must clarify here that the use of the term 'indirect discrimination' is not to refer to discrimination which is remote, but is, instead, as real as any other form of discrimination. Indirect discrimination is caused by facially neutral criteria by not taking into consideration the underlying effects of a provision, practice or a criterion."

The Court distinguished between direct and indirect discrimination in the following formulation:

"as long as a court's focus is on the mental state underlying the impugned action that is allegedly discriminatory, we are in the territory of direct discrimination. However, when the focus switches to the effects of the concerned action, we enter the territory of indirect discrimination. An enquiry as to indirect

discrimination looks, not at the form of the impugned conduct, but at its consequences.

In a case of direct discrimination, the judicial enquiry is confined to the act or conduct at issue, abstracted from the social setting or background fact-situation in which the act or conduct takes place. In indirect discrimination, on the other hand, the subject matter of the enquiry is the institutional or societal framework within which the impugned conduct occurs. The doctrine seeks to broaden the scope of antidiscrimination law to equip the law to remedy patterns of discrimination that are not as easily discernible."

The Court however held that "[i]n order to conceptualize substantive equality, it would be apposite to conduct a systemic analysis of discrimination that combines tools of direct and indirect discrimination", and not just the claim of either of the two. To evaluate the claim of discrimination, the Court laid down the following test:

"A particular discriminatory practice or provision might often be insufficient to expose the entire gamut of discrimination that a particular structure may perpetuate. Exclusive reliance on tools of direct or indirect discrimination may also not effectively account for patterns arising out of multiple axles of discrimination. Therefore, a systemic view of discrimination, in perceiving discriminatory disadvantage as a continuum, would account for not just unjust action but also inaction. Structures, in the form of organizations or otherwise, would be probed for the systems or cultures they produce that influence day-today interaction and decisionmaking.

The duty of constitutional courts, when confronted with such a scheme of things, would not just be to strike down the discriminatory practices and compensate for the harm hitherto arising out of them; but also structure adequate reliefs and remedies that facilitate social redistribution by providing for positive entitlements that aim to negate the scope of future harm. Therefore, an analysis of discrimination, with a view towards its systemic manifestations (direct and indirect), would be best suited for achieving our constitutional vision of equality and antidiscrimination. Systemic discrimination on account of gender at the workplace would then encapsulate the patriarchal disadvantage that permeates all aspects of her being from the outset, including reproduction, sexuality and private choices which operate within an unjust structure."

Applying the above principles, the Court concluded that the process adopted by the Army to grant Permanent Commissions to women officers "did not redress the harms of gendered discrimination that were identified by this Court in Babita Puniya". The Court found the evaluation process to be an instance of "indirect discrimination" and "systemic discrimination", which "disproportionately affects

women". "This discrimination", it was held, "has caused an economic and psychological harm and an affront to their dignity".

46. The petitioner in Nipun Malhotra v. Sony Pictures Films India (P) Ltd,[62] was aggrieved by the manner in which persons with disabilities have been portrayed in a movie and approached the Court seeking directions for the inclusion of an expert on disability within the Central Board of Film Certification and its advisory panel constituted under Sections 3 and 5 of the Cinematograph Act, among other reliefs. This Court recapitulated "the impact of stereotypes on discrimination and the enjoyment of fundamental rights". It reiterated that the anti-discrimination code under Article 15 prevents stereotyping. Regarding the safeguards against stereotyping of persons with disabilities, the Court held:

"language that disparages persons with disabilities, marginalises them further and supplements the disabling barriers in their social participation, without the redeeming quality of the overall message of such portrayal must be approached with caution. Such representation is problematic not because it offends subjective feelings but rather, because it impairs the objective societal treatment of the affected groups by society. We believe that representation of persons with disabilities must regard the objective social context of their representation and not marginalise persons with disability."

47. The jurisprudence evolved by this Court shows that discriminatory laws have no place in our democracy. Discriminatory laws based on stereotypes against a social group were stuck down in judgments like Anuj Garg, Navtej Johar, Joseph Shine, and Indian Young Lawyers Association. Through judgments like NALSA and Babita Puniya, this Court recognized the dignity and aspirations of social groups which have traditionally faced exclusion from equal rights. This Court recognized indirect discrimination and systemic discrimination in Lt. Col. Nitisha, emphasized the responsibility of the State to curb discrimination in Karma Dorjee, and provided safeguards against discriminatory stereotypes in Nipun Malhotra.

48. Based on the analysis of the judgments, certain anti-discrimination principles emerge under Article 15(1). First, discrimination can be either direct or indirect, or both. Second, facially neutral laws may have an adverse impact on certain social groups, that are marginalized. Third, stereotypes can further discrimination against a marginalized social group. Fourth, the State is under a positive obligation to prevent discrimination against a marginalized social group. Fifth, discriminatory laws based on stereotypes and causing harm or disadvantage against a social group, directly or indirectly, are not permissible under the constitutional scheme. Sixth, courts are required to examine the claims of indirect discrimination and systemic discrimination; and seventh, the test to examine

indirect discrimination and systemic discrimination has been laid down in judgments of the Court such as Lt. Col. Nitisha.

VII. The Ban on Untouchability in Article 17

49 Article 17 of the Constitution provides that:

""Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law." This provision has a special place in the Constitution. It puts an end to the socially discriminatory practice of "untouchability".

50. Dr Ambedkar described the impact of "untouchability" as follows:

"The word untouchable is an epitome of their ills and sufferings. Not only has untouchability arrested the growth of their personality but also it comes in the way of their material well-being. It has also deprived them of certain civil rights. The untouchable is not even a citizen."[63] Untouchability and caste discrimination led to "severe social and economic disabilities and cultural and educational backwardness" of the untouchables.[64] Throughout history, "the oppressive nature of the caste structure has denied to those disadvantaged castes the fundamentals of human dignity, human self-respect and even some of the attributes of the human personality".[65]

As a system, it enforced "disabilities, restrictions, conditions and prohibitions on Dalits for access to and the use of places of public resort, public means, roads, temples, water sources, tanks, bathing ghats, etc., entry into educational institutions or pursuits of avocation or profession which are open to all and by reason of birth they suffer from social stigma."[66] Article 17 is a constitutional sanction against discrimination. It "strikes at caste-based practices built on superstitions and beliefs that have no rationale or logic."[67]

51. Article 17 has several components.[68] It abolishes the practice of "untouchability". At the same time, it prohibits "its practice in any form". Furthermore, "enforcement of any disability" arising out of "Untouchability"" is a criminal offense as per the "law". The meaning of "law" is any legislation enacted to tackle any practice or disability arising out of "untouchability".[69] It is a provision that can be implemented both against the State and non-state actors such as the citizens.[70] Moreover, the framers of the Constitution did not refer to any religion or community in the text of the provision.[71] "The injunction against untouchability under Article 17" is further "strengthened by taking away the subject-matter from State domain and placing it as an exclusive legislative head to Parliament."[72]

52 .In his concurring opinion in State of Karnataka v. Appa Balu Ingale,[73] Justice K. Ramaswamy discussed the basis of Article 17. "The thrust of Article 17", it was held, "is to liberate the society from blind and ritualistic adherence and traditional beliefs which lost all legal or moral base". Furthermore, Article 17 "seeks to establish a new ideal for society - equality to the Dalits, on a par with general public", which would give them "a sense of being a participant in the mainstream of national life".[74]

53. The constitutional vision behind Article 17 and its impact was extensively discussed in the concurring opinion authored by one of us (Justice DY Chandrachud) in Indian Young Lawyers Association v. State of Kerala.[75] It was held that Article 17 was made a part of fundamental rights to fulfil the constitutional mandate of equality: "Article 17 is the constitutional promise of equality and justice to those who have remained at the lowest rung of a traditional belief system founded in graded inequality.

It has been placed on a constitutional pedestal of enforceable fundamental rights, beyond being only a directive principle, for two reasons. First, "untouchability" is violative of the basic rights of socially backward individuals and their dignity. Second, the Framers believed that the abolition of "untouchability" is a constitutional imperative to establish an equal social order. Its presence together and on an equal footing with other fundamental rights, was designed to "give vulnerable people the power to achieve collective good".

Article 17 is a reflection of the transformative ideal of the Constitution, which gives expression to the aspirations of socially disempowered individuals and communities, and provides a moral framework for radical social transformation." The judgment stated that "untouchability" is "a symptom" of the "caste system" and the interconnected notions of "purity and pollution", which are rejected by Article 17. It was noted:

"While the top of the caste pyramid is considered pure and enjoys entitlements, the bottom is considered polluted and has no entitlements. Ideas of "purity and pollution" are used to justify this distinction which is self-perpetuality. The [so-called] upper castes perform rituals that, they believe, assert and maintain their purity over lower castes. Rules of purity and pollution are used to reinforce caste hierarchies. The notion of "purity and pollution" influences who people associate with, and how they treat and are treated by other people."

Article 17 rejects such notions of purity and pollution. It strikes at the heart of the caste system, which manifests in discriminatory practices based on the notions of purity and pollution. It was further held:

"The incorporation of Article 17 into the Constitution is symbolic of valuing the centuries' old struggle of social reformers and revolutionaries. It is a move by the Constitution makers to find catharsis in the face of historic horrors. It is an attempt to make reparations to those, whose identity was subjugated by society. Article 17 is a revolt against social norms, which subjugated individuals into stigmatised hierarchies. By abolishing "untouchability", Article 17 protects them from a repetition of history in a free nation. The background of Article 17 thus lies in protecting the dignity of those who have been victims of discrimination, prejudice and social exclusion. Article 17 must be construed from the perspective of its position as a powerful guarantee to preserve human dignity and against the stigmatization and exclusion of individuals and groups on the basis of social hierarchism."

The concurring opinion examined the Constituent Assembly Debates to conclude that the framers deliberately left the term "untouchability" in Article 17 undefined, as they wanted to give the provision a broad scope:

"The Constitution has carefully eschewed a definition of "untouchability". The draftspersons realised that even a broadly couched definition may be restrictive. A definition would become restrictive if the words used or the instances depicted are not adequate to cover the manifold complexities of our social life through which prejudice and discrimination is manifest.

Hence, even though the attention of the Framers was drawn to the fact that "untouchability" is not a practice referable only to the lowest in the caste ordering but also was practised against women (and in the absence of a definition, the prohibition would cover all its forms), the expression was designedly left undefined. The Constitution as a constantly evolving instrument has to be flexible to reach out to injustice based on untouchability, in any of its forms or manifestations. Article 17 is a powerful guarantee against exclusion. As an expression of the anti-exclusion principle, it cannot be read to exclude women against whom social exclusion of the worst kind has been practised and legitimised on notions of purity and pollution."

Article 17 was interpreted broadly to declare that the practice of excluding menstruating women from visiting the temple is based on the notions of purity and pollution, which arise from the caste system, and the practice was thus unconstitutional.

54. Article 17 enunciates that everyone is born equal. There cannot be any stigma attached to the existence, touch or presence of any person. By way of Article 17, our Constitution strengthens the equality of status of every citizen. From time to time, to implement the mandate of Article 17, Parliament has enacted several legislations such as the Untouchability (Offenses) Act, 1955 (later renamed as

Protection of Civil Rights Act, 1955), Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter "PoA Act"), Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, and Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013.

This Court, in a number of cases, has upheld the validity of these laws.[76] It has held that offences enumerated under PoA Act "arise out of the practice of 'untouchability'."[77] The Court also held that the practice of "manual scavenging" prohibited under the 2013 Act is "squarely rooted in the concept of the caste-system and untouchability."[78] The laws enacted under Article 17 aim to provide dignity to the affected individuals.

VIII. Article 21: Of Life and Dignity

55. Article 21 provides that "[n]o person shall be deprived of his life or personal liberty except according to procedure established by law". In a number of judgments, the Court has expanded the meaning of "life". It has been held that the right to life enshrined in Article 21 "cannot be restricted to mere animal existence" and "means something much more than just physical survival".[79]

It includes the right to live with dignity.[80] In fact, dignity forms a part of the basic structure of the Constitution.[81] The "references" to dignity are "found in the guarantee against arbitrariness (Article 14), the lamps of freedom (Article 19) and in the right to life and personal liberty (Article 21)."[82] Thus, dignity is the "core" which "unites the fundamental rights because the fundamental rights seek to achieve for each individual the dignity of existence".[83] In that sense, human dignity is a constitutional value and a constitutional goal.[84]

56. The Court has authoritatively ruled, "[t]o live is to live with dignity".[85] Human dignity is intrinsic to and inseparable from human existence.[86] Implicit in this right under Article 21 is "the right to protection against torture or cruel, inhuman or degrading treatment".[87] There also exists "a close relationship between dignity and the quality of life".[88] Dignity of human existence is fully realized only when one leads a quality life.[89]

57. Dignity under Article 21 is an integral aspect of life, which requires sustenance of one's being to the fullest.[90] One can truly embrace their identity, whether on the basis of caste, race, gender, sexual orientation, or ethnicity, only if they are given dignity. An individual's dignity is fundamental to their sense of self and autonomy. Thus, the right to dignity "encapsulates the right of every individual to be treated as a selfgoverning entity having intrinsic value".[91] Above all, "there is a growing recognition that the true measure of development of a nation is not economic growth; it is human dignity."[92] A nation must prioritize

human dignity-ensuring that every person, regardless of their background or identity, is able to live with respect, equality, and freedom. Thus, human dignity forms the bedrock of social justice and a just, compassionate society.

58. The right to live with dignity extends even to the incarcerated. Not providing dignity to prisoners is a relic of the colonizers and pre-colonial mechanisms, where oppressive systems were designed to dehumanize and degrade those under the control of the State. Authoritarian regimes of the pre-constitutional era saw prisons not only as places of confinement but as tools of domination. This Court, focusing on the changed legal framework brought out by the Constitution, has recognized that even prisoners are entitled to the right to dignity.

59. A Constitution bench of this Court in Sunil Batra (I) v. Delhi Administration[93] took serious note of the treatment meted out to undertrials, convicts, and those awaiting the death penalty. Justice Krishna Iyer, in his opinion, expounded:

"The humane thread of jail jurisprudence that runs right through is that no prison authority enjoys amnesty for unconstitutionality, and forced farewell to fundamental rights is an institutional outrage in our system where stone walls and iron bars shall bow before the rule of law."

He emphasized the need to re-look at the prison conditions:

"A prison is a sound-proof planet, walled from view and visits regulated, and so, rights of prisoners are hardly visible, checking is more difficult and the official position of the repository of power inspires little credibility where the victims can be political protesters, unpopular figures, minority champions or artless folk who might fail to propitiate arrogant power of minor minions."

Justice Krishna Iyer advocated for a humane system within prisons:

"In every country, this transformation from cruelty to compassion within jails has found resistance from the echelons and the Great Divide between pre-andpost Constitution penology has yet to get into the metabolism of the Prison Services. And so, on the national agenda of prison reform is on-going education for prison staff, humanisation of the profession and recognition of the human rights of the human beings in their keep."

The Court admonished the usage of iron fetters and held that the practice of solitary confinement and cellular segregation as inhuman and irrational:

"I hold that bar fetters are a barbarity generally and, like whipping, must vanish. Civilised consciousness is hostile to torture within the walled campus. We hold that solitary confinement, cellular segregation and marginally modified editions

of the same process are inhuman and irrational. More dangerous are these expedients when imposed by the unturned and untrained power of a jail superior who has, as part of his professional equipment, no course in human psychology, stressology or physiology, who has to depend on no medical or psychiatric examination prior to infliction of irons or solitary, who has no obligation to hear the victim before harming him, whose "reasons" are in English on the historytickets and therefore unknowable and in the Journal to which the prisoner has no access. The law is not abracadabra but at once pragmatic and astute and does not surrender its power before scary exaggerations of security by prison bosses. Social justice cannot sleep if the Constitution hangs limp where its consumers most need its humanism."

60. In Charles Sobraj v. Supdt., Central Jail,[94] this Court upheld the constitutionally guaranteed fundamental rights of prisoners against the undue harshness of prison practices. Justice Krishna Iyer observed:

"a prison system may make rational distinctions in making assignments to inmates of vocational, educational and work opportunities available, but is constitutionally impermissible to do so without a functional classification system. The mere fact that a prisoner is poor or rich, high-born or ill-bred, is certainly irrational as a differentia in a 'secular, socialist republic'. The reason is, prisoners retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement. Moreover, the rights enjoyed by prisoners under Articles 14, 19 and 21, though limited, are not static and will rise to human heights when challenging situations arise."

61. In Sunil Batra (II) v. Delhi Administration,[95] this Court emphasized that a person in prison does not cease to be a human being or lose all human rights, and that it is the duty of the State to take care of justifiable needs and requests. It was held that "in the eye of law, prisoners are persons, not animals", and that courts must "punish the deviant 'guardians' of the prison system where they go berserk and defile the dignity of the human inmate". Speaking for the Court, Justice Krishna Iyer held:

"Prison houses are part of Indian earth and the Indian Constitution cannot be held at bay by jail officials "dressed in a little, brief authority", when Part III is invoked by a convict. For when a prisoner is traumatized, the Constitution suffers a shock. Whether inside prison or outside, a person shall not be deprived of his guaranteed freedom save by methods "right, just and fair" Prisoners are peculiarly and doubly handicapped.

For one thing, most prisoners belong to the weaker segment, in poverty, literacy, social station and the like. Secondly, the prison house is a walled-off world which is incommunicado for the human world, with the result that the bonded inmates

are invisible, their voices inaudible, their injustices unheeded. So it is imperative, as implicit in Article 21, that life or liberty, shall not be kept in suspended animation or congealed into animal existence without the freshening flow of fair procedure."

The Court also noted down various injustices which may be committed against a prisoner:

"Inflictions may take many protean forms, apart from physical assaults. Pushing the prisoner into a solitary cell, denial of a necessary amenity, and, more dreadful sometimes, transfer to a distant prison where visits or society of friends or relations may be snapped, allotment of degrading labour, assigning him to a desperate or tough gang and the like, may be punitive in effect. Every such affliction or abridgment is an infraction of liberty or life in its wider sense and cannot be sustained unless Article 21 is satisfied."

62. The Court in Kishore Singh Ravinder Dev v. State of Rajasthan[96] reiterated that the infliction of physical torture on the undertrial prisoner is a violation of Article 21. It was held that "the State must re-educate the constabulary out of their sadistic arts and inculcate a respect for the human person - a process which must begin more by example than by precept if the lower rungs are really to emulate".

The Court ruled that if any escort policemen are found guilty of misconduct, the authorities must not allow a sense of police solidarity or internal camaraderie to shield the wrongdoing. There is no greater harm to our constitutional values than a State official acting recklessly and violating fundamental rights. The Court expressed hope that the root causes enabling police brutality will be addressed by the government with the seriousness it deserves. The Court posed the question: "Who will police the police?"

63. In Francis Coralie Mullin v. Administrator, Union Territory of Delhi,[97] the Court struck down a rule which regulated the right of a detenu to have interviews with a legal adviser of his choice as violative of Articles 14 and 21. The Court held that "as part of the right to live with human dignity" and "as a necessary component of the right to life", a detenu "would be entitled to have interviews with the members of his family and friends" and "to have interview with his legal adviser at any reasonable hour during the day after taking appointment from the Superintendent of the Jail".

Such appointment, it was held, "should be given by the Superintendent without any avoidable delay." Correspondingly, when Sheela Barse,[98] a freelance journalist, sought permission to interview prisoners, this Court held that the press and citizens are entitled to interview prisoners in order to ensure the availability

of their rights under Article 21, subject to reasonable restrictions. It was noted, "Prison administrators have the human tendency of attempting to cover up their lapses and so shun disclosure thereof. Interviews become necessary as otherwise the correct information may not be collected but such access has got to be controlled and regulated."

64. In Nilabati Behera v. State of Orissa,[99] this Court emphasized "great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life". While confinement inherently restricts a person's liberty, the limited freedom they retain becomes all the more valuable. The State has a strict duty of care in such situations, without exception. This Court declared that if a person in police custody is deprived of life, except according to the procedure established by law, the wrongdoer is held accountable, and the State is ultimately responsible.

65. This Court laid down guidelines on arrest and detention in D.K. Basu v. State of West Bengal,[100] while highlighting the constitutional violations caused due to custodial violence and deaths in police lock-ups. It noted, "If the functionaries of the Government become law-breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchism". In Mehmood Nayyar Azam v. State of Chhattisgarh,[101] it was noted that a person in custody has "his basic human rights" and human dignity, and that the police officers cannot treat him in an inhuman manner. It was held that even "any treatment meted out to an accused while he is in custody which causes humiliation and mental trauma corrodes the concept of human dignity".

66. In Shabnam v. Union of India,[102] this Court elucidated the principle that human dignity should be preserved even when a prisoner is sentenced to death. The Court held, "the process/procedure from confirmation of death sentence by the highest court till the execution of the said sentence, the convict is to be treated with human dignity to the extent which is reasonable and permissible in law". Similarly, in 'X' v. State of Maharashtra,[103] the Court while holding that "post conviction severe mental illness will be a mitigating factor" in commuting the death sentence, emphasized that the "right to dignity of an accused does not dry out with the Judges' ink, rather, it subsists well beyond the prison gates and operates until his last breath".

67. Thus, the jurisprudence which emerges on the rights of prisoners under Article 21 is that even the incarcerated have inherent dignity. They are to be treated in a humanely and without cruelty. Police officers and prison officials cannot take any disproportionate measures against prisoners. The prison system must be considerate of the physical and mental health of prisoners. For instance,

if a prisoner suffers from a disability, adequate steps have to be taken to ensure their dignity and to offer support.

IX. Article 23: Prohibition of Forced Labour and Human Trafficking

68. Article 23 provides that:

"Prohibition of traffic in human beings and forced labour.-

(1) Traffic in human beings and begar 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 purposes, 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."

Article 23(1) provides an enforceable fundamental right against social and economic exploitation. It aims to prohibit human trafficking, "begar", and "other similar forms of forced labour". Like Articles 15(2) and 17, it is enforceable both against the State and non-state actors. At the same time, the scope of the provision is wide, as it has left the term "begar" undefined, and supplemented by the phrase "other similar forms of forced labour". The "other similar forms" can be many. The framers of the Constitution consciously left the terms undefined so that future interpretation is not restrictive.

69. Interestingly, the foundations of Article 23 were laid even prior to the discussions in the Constituent Assembly. In his work titled "States and Minorities" (1947),[104] Dr Ambedkar conceptualized the interlinkages between one's economic condition and their ability to exercise fundamental rights. He wrote, "The fear of starvation, the fear of losing a house, the fear of losing savings if any, the fear of being compelled to take children away from school, the fear of having to be a burden on public charity, the fear of having to be burned or buried at public cost are factors too strong to permit a man to stand out for his Fundamental Rights."[105]

In his view, "The unemployed are thus compelled to relinquish their Fundamental Rights for the sake of securing the privilege to work and to subsist."[106] Dr. Ambedkar proposed that the rights of individuals should be protected from exploitation by adopting a favourable constitutional framework.[107] The intellectual background of Article 23 lies in what Dr Ambedkar was explaining - to facilitate the citizens in exercising their fundamental rights.[108] Exploitative socio-economic practices can hinder the right to live a dignified life.

70. In adopting Article 23(1) in the Constitution, the framers were conscious of oppressive practices such as Slavery in the United States as well as domestic practices of exploiting labour of the Bahujan castes and poor sections of society.[109] Several members of the Constituent Assembly, who came from the Scheduled Caste communities expressed their support for Article 23, as they believed that such a provision would prevent economic exploitation of their community. V.I. Muniswamy Pillai stated, "If there is any labour required for common purposes in the village, this most unfortunate fellow, the Harijan [Scheduled Caste], is always caught hold of to do all menial and inferior service."[110]

By the provision, he was confident that the country would be "elevating a community that has been outside the pale of society". S. Nagappa gave examples of how "begar" was imposed on the Scheduled Castes:

"Sir, whenever cattle die; the owner of the cattle wants these poor Harijans to come and remove the dead cattle, remove the skins, tan them and make chappals and supply them free of cost. For this, what do they get? Some food during festival days. Often, Sir, this forced labour is practised even by the government. For instance, if there is any murder, after the postmortem, the police force these people to remove the dead body and look to the other funeral processes.

I am glad that hereafter this sort of forced labour will have no place. Then, Sir, this is practised in zamindaries also. For instance, if there is a marriage in the zamindar's family, he will ask these poor people, especially the Harijans, to come and white wash his whole house, for which they will be given nothing except food for the day whenever the big zamindar's lands are to be ploughed, immediately he will send word for these poor people, the Harijans, the previous day, and say:

"All your services are confiscated for the whole of tomorrow; you will have to work throughout the day and night. No one should go to any other work." In return, the zamindar will give one morsel of food to these poor fellows. Sir, this sort of forced labour is in practice in the 20th century in our so called civilised country."[111]

(emphasis added)

71 Another member from the Scheduled Caste community, H.J. Khandekar, expressed his happiness "to see in the Constitution that begar and forced labour are abolished and the curse on untouchables from whom the begar and forced labour were taken has gone".[112] Raj Bahadur also gave examples how "begar" was practiced:

"I know how some of the Princes have indulged in their pomp and luxury, in their reckless life, at the expense of the ordinary man, how they have used the down-trodden labourers and dumb ignorant people for the sake of their pleasure. I know for instance how for duck shooting a very large number of people are roped in forcibly to stand all day long in mud and slush during cold chilly wintry days. I know how for the sake of their game and people have been roped in large numbers for beating the lion so that the Princes may shoot it.

I have also seen how poor people are employed for domestic and other kinds of labour, no matter whether they are ailing or some members of their family are ill. These people are paid nothing or paid very little for the labour extorted from them." He stated that Article 23 will free "downtrodden millions" from the handcuffs of exploitation. T.T. Krishnamachari said that "some form of forced labour does exist in practically all parts of India, call it 'begar' or anything like that and in my part of the country, the tenant often times is more or less a helot attached to the land and he has certain rights and those are contingent on his continuing to be a slave."

72. While the framers did not define the term "begar", they largely referred to those practices, where the workers were either unpaid or paid very little for their jobs. "Begar" or bonded labour was entrenched in India's social system, against which Article 23 makes a blow. Over the years, this Court has taken a strict view against bonded labour in existence in society.

73. The Court in People's Union for Democratic Rights v. Union of India[113] considered the scope of the terms "begar" and "forced labour" under Article 23(1). The Court entertained a letter as a writ petition, which sought compliance with the provisions of labour laws in relation to workmen employed in the construction work of projects connected with the Asian Games. The petitioner contended that the labourers were also not paid their minimum daily wages, and were not provided with proper living conditions. The Court observed that the issue related to a "breach of a fundamental right" under Article 23.

74. The judgment noted that the framers of the Constitution adopted Article 23 to put an enforceable obligation on the State to end bonded labour, which was "the relic of feudal exploitative society" and "incompatible with the new egalitarian socioeconomic order". It was further stated that the term "begar" is of Indian origin, referring loosely to "labour or service which a person is forced to give without receiving any remuneration for it". The judgment held that the phrase "forced labour" is of wide amplitude and would cover instances "where a person provides labour or service to another for remuneration which is less than the minimum wage". "Forced labour" may manifest in many forms. It was held that labour provided as a result of any kind of force or compulsion would be counted as "forced labour" under Article 23(1). It was held:

"What Article 23 prohibits is "forced labour" that is labour or service which a person is forced to provide and "force" which would make such labour or service "forced labour" may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution.

Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as "force" and if labour or service is compelled as a result of such "force", it would be "forced labour". Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or to feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage.

He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly "forced labour". It was held that non-payment of minimum wage to workmen in the Asian Games project was a violation of their fundamental right under Article 23. The judgment also laid down an important constitutional principle that when fundamental rights such as under Articles 17 or 23 are violated by private individuals, then "it is the constitutional obligation of the State to take necessary steps for the purpose of interdicting such violation and ensuring observance of the fundamental right by the private individual who is transgressing the same".

75. The interpretation of Article 23 laid down in PUDR was relied upon in a subsequent decision in Sanjit Roy v. State of Rajasthan.[114] A writ petition was filed seeking payment of minimum wages to women workers belonging to Scheduled Castes, who were engaged in a construction project of the Rajasthan government, under the Minimum Wages Act, 1948.

It was argued by the State government that the construction project was a famine relief work, and payment of minimum wages in such projects was exempted by the Rajasthan Famine Relief Works Employees (Exemption Act from Labour Law) Act, 1964. The Court declared the Exemption Act, in so far as it excluded the applicability of the Minimum Wages Act 1948 to workmen employed on famine relief work and permitted the payment of less than the minimum wage to such workmen as violative of Article 23. It was held:

"The State cannot be permitted to take advantage of the helpless condition of the affected persons and extract labour or service from them on payment of less than the minimum wage. No work of utility and value can be allowed to be constructed on the blood and sweat of persons who are reduced to a state of helplessness on account of drought and scarcity conditions. The State cannot under the guise of helping these affected persons extract work of utility and value from them without paying them the minimum wage."

Justice Pathak wrote a concurring opinion, holding the Exemption Act to be violative of Article 14. The Court directed the State government to pay the arrears of the difference between the minimum wage and the actual wage paid to the construction workers.

76. It was pointed out to this Court in Labourers Working on Salal Hydro Project v. State of Jammu & Kashmir[115] that a large number of migrant workmen from different States working on a hydro-electric project were denied the benefit of labour laws and were exploited by the contractors. This Court directed the Union government to ensure that its senior officers carry out thorough inspections of the project at regular intervals to verify whether the labour laws are being properly followed, particularly concerning workmen employed, either directly or indirectly, by the contractors or subcontractors.

77. In Bandhua Mukti Morcha v. Union of India,[116] the petitioner had highlighted the issue of bonded labourers in stone quarries of Faridabad district and and their inhuman living conditions. Referring to the provisions of the Bonded Labour System (Abolition) Act 1976, the judgment discussed the meaning of "bonded labour". According to the Act, a bonded labourer is someone who has incurred or is presumed to have incurred a bonded debt.[117]

A bonded debt refers to an advance received or presumed to have been received by a bonded labourer under or in pursuance of the bonded labour system.[118] The inference of this definition, according to the State government, was that bonded labourers must first prove that they are providing forced labour in consideration of an advance or other economic consideration received by them. The Court rejected this reasoning, stating that it would be "cruel to insist" that a bonded labourer "should have to go through a formal process of trial with the normal procedure for recording of evidence."

It was further observed that "a bonded labourer can never stand up to the rigidity and formalism of the legal process due to his poverty, illiteracy and social and economic backwardness and if such a procedure were required to be followed, the State Government might as well obliterate this Act from the statute book". The Court also noted that statistically, "most of bonded labourers are members of Scheduled Castes and Scheduled Tribes or other backward classes".

78. The judgment held that whenever a labourer is made to provide forced labour, the presumption would be that it is consideration of an advance or other economic consideration received by him, and he is thus a bonded labourer. This presumption may, however, be rebutted by the employer or the State Government by providing satisfactory material.

The Court reiterated the constitutional obligation of the Union government and the State government to ensure observance of various social welfare and labour laws enacted for the benefit of the workmen. The State government was directed "to take up the work of identification of bonded labour as one of their top priority tasks and to map out areas of concentration of bonded labour". The concurring opinion regarded Article 23 as "a vital constituent of the Fundamental Rights".

79. Pursuant to this Court's decision in Bandhua Mukti Morcha, 135 bonded labourers were released from bondage in stone quarries of Faridabad district, under the provisions of the Bonded Labour System (Abolition) Act, 1976. However, they were not rehabilitated even after a lapse of several months. This inaction of the State government was brought before this Court in Neeraja Chaudhary v. State of Madhya Pradesh.[119] The Court directed the State government to provide rehabilitative assistance to these 135 freed bonded labourers within one month.

It noted with compassion, "They have waited too long; they cannot wait any longer". This Court also directed the State government to ascertain within its territory whether there were any more bonded labourers or not, by applying the principle laid down in Bandhua Mukti Morcha. It was reiterated, "Whenever it is found that any workman is forced to provide labour for no remuneration or nominal remuneration, the presumption would be that he is a bonded labourer unless the employer or the State Government is in a position to prove otherwise by rebutting such presumption."

80. The issue of bonded labourers in stone quarries in several districts of Andhra Pradesh was highlighted before this Court in P. Sivaswamy v. State of Andhra Pradesh.[120] The Court emphasized on "effective rehabilitation" of bonded labourers. It was stated, "Uprooted from one place of bonded labour conditions the persons are likely to be subjected to the same mischief at another place". The Court appealed for "requisite social consciousness", where it is "the obligation of every citizen to cooperate" to bring an end to bonded labour.

81. In State of Gujarat v. Hon'ble High Court of Gujarat,[121] a three-judge Bench dealt with the question whether prisoners, who are required to do labour as part of their punishment should be paid minimum wages for such work. This Court held that jail authorities are "enjoined by law to impose hard labour" on convicted prisoners who were sentenced to rigorous imprisonment, irrespective of "whether

he consents to do it or not". However, undertrials, detainees with simple imprisonment, or even detenus who are kept in jails as preventive measures cannot be "asked to do manual work during their prison term." Justice KT

Thomas, speaking for the Court, held that "a directive from the court under the authority of law to subject a convicted person (who was sentenced to rigorous imprisonment) to compulsory manual labour gets legal protection under the exemption provided in Clause (2) of Article 23 of the Constitution, as it "serves a public purpose" of reforming the convict and rehabilitating them in future with savings earned from such labour. The Court held that a prisoner "should be paid equitable wages for the work done by them". It directed the State to fix the quantum of equitable wages payable to prisoners, which would be calculated after deducting the expenses incurred for food and clothes of the prisoners from the minimum wage rates.

82. However, in his concurring opinion, Justice D.P. Wadhwa differed with Justice Thomas' invocation of Article 23. According to him, "there will be no violation of Article 23 if prisoners doing hard labour when sentenced to rigorous imprisonment are not paid wages".

He, however, observed that the State is free to enact legislation for granting wages to prisoners subject to hard labour under courts' orders, for their beneficial purpose or otherwise. Justice M.M. Punchhi, in his concurrence with Justice Thomas, made no comment on the application of Article 23. The inference of this judgment, however, is not that imposing mandatory labour on convicts is entirely immune from the operation of Article 23. Reading Article 23 with Article 21 and the decision in Sunil Batra (II),[122] a convict cannot be subjected to "allotment of degrading labour".

83. In Public Union for Civil Liberties v. State of Tamil Nadu,[123] when the issue of bonded labourers and their exploitation was again brought to the notice of this Court, a two-judge Bench issued a fresh set of directives to the State. Among other directions the bench directed proper and effective implementation of the Minimum Wages Act, the Workmens' Compensation Act, the Inter-State Migrant Workmen Act, and the Child Labour (Prohibition and Regulation) Act.

84. A three-judge Bench of this Court in Gujarat Mazdoor Sabha v. State of Gujarat[124] adjudicated a challenge to two notifications issued by the Gujarat government under section 5 of the Factories Act, 1948, during the COVID19 pandemic. These notifications exempted factories from observing some of the obligations which employers have to fulfil towards the workmen employed by them. According to the notifications, among other provisions, all factories registered under the Act were exempted "from various provisions relating to weekly hours, daily hours, intervals for rest, etc. for adult workers".

One of us (Justice DY Chandrachud) authored the judgment, declaring that the notifications issued by the government during the pandemic were ultra vires and against the fundamental rights of labourers. The Court stated that "[t]o a worker who has faced the brunt of the pandemic and is currently laboring in a workplace without the luxury of physical distancing, economic dignity based on the rights available under the statute is the least that this Court can ensure them." It was held that "[t]he notifications, in denying humane working conditions and overtime wages provided by law, are an affront to the workers' right to life and rights against forced labour that are secured by Articles 21 and 23 of the Constitution."

85. What emerges from the above discussion is that the broad scope of Article 23 can be invoked to challenge practices where no wages are paid, non-payment of minimum wages takes place, social security measures for workers are not adopted, rehabilitation for bonded labour does not happen, and in similar unfair practices. The State shall be held accountable even in cases where the violation of fundamental rights such as Article 23 is done by private entities or individuals. Article 23 can also be applied to situations inside prisons, if the prisoners are subjected to degrading labour or other similar oppressive practices.

86. Having analysed the philosophy of the Constitution and the principles under Articles 14, 15, 17, 21, and 23, we must now reflect on the patterns of discrimination against the Scheduled Castes, Scheduled Tribes, and Denotified Tribes. This exercise is necessary to examine and understand the systemic discrimination based on caste against these communities, of which the impugned provisions are an instance.

The counsel for the petitioner has argued that the impugned provisions are an example of State-sanctioned caste-based discrimination. Analysing the systemic discrimination not only requires looking at the colonial era, but also the pre-colonial era. Doing so will present before us the exact patterns of discrimination against Scheduled Castes, Scheduled Tribes, and Denotified Tribes over the course of history, which the Constitution seeks to remedy.

X. A History of Discrimination in the Pre-Colonial Era

87. The history of India has witnessed centuries of discrimination towards the oppressed castes. Violence, discrimination, oppression, hatred, contempt, and humiliation, towards these communities were the norm. The caste system entrenched these social injustices deeply within society, creating an environment where the principles of natural justice were blatantly disregarded. In this hierarchical system, neutrality was virtually non-existent, and there was an inherent and pervasive bias against those belonging to the oppressed castes. This bias manifested in numerous ways, including exclusion from social, economic,

and political opportunities. The caste system ensured that the oppressed castes remained marginalized and deprived of their basic rights and dignity.

88. The foundational principle of equality for all individuals was absent in the social framework defined by caste. The caste system operated as a mechanism that thrived on the labour of Bahujan communities, ultimately eroding their identity. In other words, the story of the caste system is, therefore, a story of enduring injustice. It is a narrative of how millions of Indians, relegated to the bottom of the social ladder, faced relentless discrimination and exploitation. The lower castes were systematically denied access to education, land and employment, further entrenching their disadvantaged position in society.

89. The caste system led to harrowing practices of discrimination and subjugation, rooted in the notions of purity and pollution, where some communities were deemed impure, and their presence was considered contaminated. The penal sanctions and discriminatory practices under the caste system have been well-documented in several scholarly works. Dr. Ambedkar referred to this as the "law of caste" in his writings.[125]

90. The caste system was based on four varnas or groupings. Dr. Ambedkar described the caste system in the following words:

"One striking feature of the caste system is that the different castes do not stand as an horizontal series all on the same plane. It is a system in which the different castes are placed in a vertical series one above the other the Brahmin is placed at the first in rank. Below him is the Kshatriya. Below Kshatriya is the Vaishya.

Below Vaishya is the Shudra and Below Shudra is the Ati-Shudra (the Untouchables). This system of rank and gradation is, simply another way of enunciating the principle of inequality. This inequality in status is not merely the inequality that one sees in the warrant of precedence prescribed for a ceremonial gathering at a King's Court. It is a permanent social relationship among the classes to be observed- to be enforced-at all times in all places and for all purposes."[126] In his classic "Annihilation of Caste", Dr. Ambedkar stated that:

"the Varnavyavastha is like a leaky pot or like a man running at the nose. It is incapable of sustaining itself by its own virtue and has an inherent tendency to degenerate into a caste system unless there is a legal sanction behind it which can be enforced against every one transgressing his Varna."[127] Castes were considered "self-enclosed units",[128] which could not be changed. That is, was assigned to individuals at birth, with each caste linked to a specific profession, and all castes organized into a hierarchical structure.

91. Dr Ambedkar also theorized that an essential aspect of the caste system was the control over the sexuality of women. In "Castes in India", he stated: "Sati,

enforced widowhood and girl marriage are customs that were primarily intended to solve the problem of the surplus man and surplus woman in a caste and to maintain its endogamy. Strict endogamy could not be preserved without these customs, while caste without endogamy is a fake."[129]

92. Scholars have also stated that "the idea of criminal tribe"[130] existed even before the British colonisers. Anthropologist Anastasia Piliavsky noted, "while colonial uses of the stereotype add up to a lurid history of violence against people branded as congenital criminals in colonial law, the stereotype itself has a history stretching back far beyond British colonialism."[131]

93. The caste system permeated itself in several ways. First, it was based on a hierarchy of four caste-based groupings, where the Shudras occupied the lowest level. Second, the castes outside these four groupings were treated as "untouchables". Third, the caste system controlled the sexuality or agency of women to maintain the sanctity of caste. Fourth, the caste structure considered certain castes and tribal communities as professional criminals. Fifth, penal sanctions were imposed on those who violated the "law of caste".

94. The rules of caste continued in medieval history. The law of caste manifested in several ways- with each manifestation causing a form of violence against the oppressed communities.

XI. The Colonial Suppression of Marginalized Castes and Tribes

95. The colonial history indicates that the British reproduced the systems of social hierarchy in their legal framework. Following several revolts from indigenous communities in India, in particular their participation in the 1857 revolt, the British focused on restricting their activities. The British increased surveillance upon them by the Thuggee Act (XXX of 1836) and Dacoity Act (XXIV of 1843).

96. Reference must be drawn to the statement of J. F. Stephen, legal member of the Viceroy's Council, who in the early 1870s, stated:

"The caste system is India's distinguishing trait. By virtue of this system, merchants are constituted in a caste, a family of carpenters will remain a family of carpenters for a whole century from now, or five centuries from now, if it survives that long. Let us bear that in mind and grasp quickly what we mean here by professional criminals. We are dealing here with a tribe whose ancestors have been criminals since the very dawn of time, whose members are sworn by the laws of their caste to commit crime for it is his vocation, his caste, I would go to the extent of saying his faith, to commit crimes (from Fourcade 2003: 146)."[132]

These caste-based stereotypes were given the form of the Criminal Tribes Act of 1871.

i. Criminal Tribes Acts

97. The legislation of 1871 empowered the government to declare any community as "criminal tribe".[133] The Act provided for the "registration, surveillance and control" of "criminal tribes" and "eunuchs". The major part of the Act operated in the North- Western province, Punjab and Oudh.[134] The Act allowed the local government, with due permission of the Governor General in Council, to designate any "tribe, gang or class of persons" as "criminal tribes" if they were deemed to be "addicted to systematic commission of non-bailable offences".[135] The local government needed to give a comprehensive report to the Governor General giving reasons for declaring any tribe as criminal and also provide a manner in which these tribes would earn their livelihood.[136]

98. The Act authorized the local government to term a "wandering tribe" having no fixed place of residence as criminals, except in cases where they can identify a "lawful occupation" of the tribe.[137] The government was allowed to settle such tribes in a specified place.[138] Subsequently, with the authorization of the Governor General, the local government will publish the declaration of criminal tribes in the local gazette in form of a notification.[139] Such notification acted as conclusive proof of the applicability of the provisions of the Act on the tribe and debarred any judicial review irrespective of any procedural non-compliance.[140]

99. Members of the designated criminal tribes were required to mark their presence in a register made by the magistrate, failing which they were subjected to penalties in accordance with the provision of the Indian Penal Code.[141] Such a register was kept in the custody of the District Superintendent of Police.[142] A person aggrieved by any entry in the register could request alteration by filing a complaint before the Magistrate, who had the final say.[143] The designated criminal tribes were forced to either settle or move to another place chosen by the local government,[144] or could be moved to any reformatory settlement.[145]

Headmen, village-watchmen and landowners or occupiers of the village were informed about the designated criminal tribes.[146] They were subjected to frequent checks, and their movements were closely monitored.[147] The local government could restrict their movement within a territorial limit.[148] The designated criminal tribes required permission to move from one place to another.[149] They were mandated to carry "passes" which had permission to move to another specified place.[150] The Act allowed the government to employ the individuals from designated criminal tribes "placed in a reformatory settlement".[151]

100. The Act included provisions for punitive measures against members of the criminal tribes, including rigorous imprisonment extending from six months (in first breach) to one year (in second breach), whipping, or fine, if they were found violating the Act's provisions.[152] It gave extensive powers to any police officer, or village watchman to arrest without warrant a person of a designated criminal tribe, if they move beyond any prescribed limits of residence without a pass.[153] The Act mandated "every village-headman and village-watchman", and "every owner or occupied of land" to inform the police about the absence of a person from a designated criminal tribe or the arrival in the village of such persons "who may reasonably be suspected of belonging" to a criminal tribe.[154]

101. The Act also mandated creation of "a register of the names and residence of all eunuchs residing" in the territorial jurisdiction of the Act, "who are reasonably suspected of kidnapping or castrating children, or of committing offences under section [377] of Indian Penal Code, or of abetting the commission of any of the said offences".[155] The "eunuchs" were required to give information of their property.[156]

The Act further provided for arrest and punishment, including imprisonment up to two years, or fine, or both, of a "eunuch", "who appears dressed or ornamented like a woman, in a public street" or even in a private space visible from a public street, or "dances or plays music, or takes part in any public exhibition, in a public street or place of for hire in a private house".[157] The Act imposed a penalty on a "eunuch", if a boy under 16 years of age was found in his house or "under his control".[158] The Act also prohibited "eunuchs" of "being or acting as guardian to any minor", "making a gift", "making a will", or "adopting a son".[159]

102. The provisions of the CTA were based on a stereotype which considered several marginalized communities as born criminals. By declaring them as born criminals and assuming that they are addicted to the commission of a crime, the Act restricted their life and identity in a negative way. The Act imposed unnecessary and disproportionate restrictions on their movement. It also took away the opportunity from them to settle in a place, as it was prescribed that they could be forced to move to another place decided by the government. This was forced nomadism.

The Act, further, subjected the criminal tribes to heightened surveillance, as their movements were frequently and closely monitored. It also led to social discrimination, as it imposed a stigma of born criminality. At the same time, it gave extensive powers to local village headmen (generally higher caste) to collaborate with the police to report their movements. The Act was also based on a stereotype and further reinforced that "eunuchs" are suspected of kidnapping or castrating children. Thus, the impact of CTA was discriminatory and punitive.

103. The Act was first amended in 1876 to extend its operation to Bengal.[160] The agents of landowners were also given the duty to inform the police about the presence or absence of any individual from a criminal tribe.[161] The Act was then modified in 1897 to make the penalties more stringent Penalties for second and third convictions of individuals from the designated criminal tribes for specified offenses were imposed.[162] The amendment also empowered the local governments "to separate children of the Criminal Tribes between the ages of 4 and 18 years from their irreclaimable parents" and "place them" in specially established "reformatory settlements".[163]

104. In 1908, the Criminal Tribes Settlement Act was passed, "permitting the various provincial governments of India to make plans whereby tribes suspected of living by crime could be registered and supervised by the police, and those members of criminal tribes which had been convicted could be placed in settlements."[164]

105. The Criminal Tribes Act 1911 repealed the earlier Act of 1871 and the amendments of 1876 and 1897. The application of the Criminal Tribes Act was extended to the whole of British India.[165] The Act amended the law relating to the registration, surveillance, and control of criminal tribes. It strengthened the power of the local government to declare any community as a "criminal tribe" without having to seek permission of any higher authority.[166] However, the local government was still required to take orders from the Governor General if it wanted to restrict the movements of any criminal tribe to any specified area or settle them in any place of residence.[167]

106. The 1911 amendment gave additional powers to the district magistrate or any officer to order finger-impressions of a registered member of the designated tribe.[168] The individuals belonging to such tribes were required to inform "any change or intended change of residence and any absence or intended absence from his residence".[169] Further, the 1911 Act reinforced the provisions for the registration of the members of the designated criminal tribes with the authorities[170] and regular reporting.[171] Similarly, the Act reiterated the "duty" of "every village-headman and village-watchman" and landowners to check the activities of these individuals.[172]

107. The Act also provided that the criminal tribes could be placed in any "industrial, agricultural, or reformatory settlements" to restrict their movements.[173] The local government was also allowed to "separate and remove" children (between 6 and 18 years of age) from their parents or guardians and place them in any "established industrial, agricultural or reformatory schools".[174] These children were deemed as "youthful offenders" under Reformatory Schools Act, 1897.[175] Furthermore, the adults working in industries or children in reformatory schools could be transferred to any other similar

establishment in any part of British India.[176] A person of a criminal tribe found beyond the prescribed territorial limit or having escaped from an industrial, agricultural or reformatory settlement or school was liable for punishment.[177]

108. Moreover, the Act introduced stringent penalties for non-compliance with its provisions as well as rules framed by the local government.[178] This included imprisonment that extended to three years in certain cases, and fines extending to five hundred rupees, which was significantly high at that time. Additionally, in case of a previous conviction for offences under the Schedule of the Act, punishment could vary from seven years to transportation of life.[179] The Act also prescribed punishment to an individual of a designated criminal tribe, if the court was satisfied that "he was about to commit, or aid in the commission of, theft or robbery" or "was waiting for an opportunity to commit theft or robbery".[180] Like the previous Act, courts had no jurisdiction to decide on the validity of the notifications issued by the local government.[181]

109. In 1919, based on the requests of local governments, the "Indian Jails Committee" was appointed by the Government of India to analyze the working of settlements constituted under the 1911 Act and make recommendations for better administration. The Committee stated that "the ultimate aim of the settlements should be the absorption of the settlers into the general body of the community".[182] Thereafter, the Act was amended in 1923 to make certain additions.

The criminal tribes notified by the local government of a province could be restricted or settled in another province with the approval of the government of that province.[183] Before the internment of any criminal tribe in a settlement, a formal enquiry was required to ascertain the necessity of restricting that tribe in the settlement.[184] The amendment also empowered the local government to deport criminal tribes to any princely states, provided the states consented and appropriate arrangements were made to restrict the movements of the criminal tribes.[185]

110. The law relating to criminal tribes was then consolidated as the Criminal Tribes Act of 1924.[186] Another amendment to the Act happened in 1925 to clarify that if an individual from a designated criminal tribe moved to another district in the same province or to another province, he shall still be treated as a criminal tribe in that district or province.[187]

111. Several Indian States of pre-independent India had enacted their own local laws for the surveillance of criminal tribes. According to the Criminal Tribes Manual of Gwalior, an individual from a criminal tribe could be convicted with rigorous imprisonment up to one year, if he kept an arm or "means of locomotion such as horses, ponies, camels, donkeys, bicycles".[188]

The general public was prohibited from selling any arms or means of locomotion to the criminal tribes, giving shelter to an individual from a criminal tribe not having a valid pass, or lending any cash to them.[189] Absence of an individual of a criminal tribe from his specified residence without a pass was punishable with rigorous imprisonment from one to two years or whipping with 20 to 30 stripes.[190] Other States' manuals also prohibited criminal tribes from possessing any means of locomotion.[191]

The Rewa Wandering Criminal Tribes Act, 1925, applied in Vindhya Pradesh, required members of wandering criminal tribes to report at all nearest police stations in their way of travel.[192] Failure to do so was punishable with whipping and rigorous imprisonment upto three months.[193] The Bhopal government compelled both men and women from criminal tribes settled in different colonies to answer the roll call and give attendance to a police constable four times at night- 6 PM, 12 midnight, 4 AM, ad 6 AM.194[194]

112. The Act notified around 150 tribes and castes in India as criminals. This provided an affirmation of the State that any person who belonged to such a tribe was born as a criminal. Between the period 1871 and 1949, a large number of communities were registered as "criminal tribes".

113. The separation of children from their families led to the destruction of their childhood and deprived them of their innocence. They were considered as young offenders. The criminal tribes were subjected to inhuman living conditions, as they were required to mark their attendance even during late nights. The idea of rehabilitation of the so-called criminal tribes also led to the exploitation of their labour. Ostensibly meant to "reform", the settlements provided for institutionalized incarceration. The compulsive stay in "settlement camps" led to many nomadic groups leaving their traditional livelihoods involuntarily. These camps, created by the Act, distanced the criminal tribes from mainstream society. Harsh provisions on punishment for members of the criminal tribes were imposed.

114. American sociologist John Lewis Gillin travelled across India to document the situation of settlement camps. He noted:

"There are four types of settlements besides the institutions for children and loose women:

(a) Industrial settlements near some large industrial plant such as a cotton mill, railroad shops, or a large tea plantation;

(b) agricultural settlements. In these settlements lands are provided by the government which the settlers are allowed to cultivate at a certain rental;

(c) forest settlements where the settlers work in the woods getting out timber and reforesting land either for the government or for private owners. So far as the Bombay Presidency and the Punjab are concerned, these are mostly government forests;

(d) reformatory settlements. The last are intended for those who cannot be trusted and who attempt to escape. In 1919 all of British India had settlements for criminal tribes except Burma, Assam, the Central Provinces, and the Northwest Frontier Province. It is uncertain from the reports whether all of the native states have them. In the Punjab in 1919 there were twenty-six settlements besides the reformatory settlement at Amritsar. Of these, twelve were industrial, one semi-agricultural, three old agricultural, and seven new agricultural, together with three old settlements which had no supervising staffs."[195]

ii. Caste Discrimination in Colonial India

115. Several leaders led the fight against caste discrimination in colonial India. These included Jotiba Phule, Babasaheb Ambedkar, E.V. Ramasami 'Periyar', Narayan Guru, among many others. They challenged the system of caste and exploitation from multiple fronts.

116. In his submissions before the Southborough Committee in 1919, Dr Ambedkar highlighted how the "untouchables" faced the worst form of social disabilities:

"The untouchables are usually regarded as objects of pity but they are ignored in any political scheme on the score that they have no interests to protect. And yet their interests are the greatest. Not that they have large property to protect from confiscation. But they have their very persona confiscated. The socio religious disabilities have dehumanized the untouchables and their interests at stake are therefore the interests of humanity. The interests of property are nothing before such primary interests."[196]

He described how "untouchability" is a form of slavery:

"If one agrees with the definition of slave as given by Plato, who defines him as one who accepts from another the purposes which control his conduct, the untouchables are really slaves. The untouchables are so socialized as never to complain of their low estate. Still less do they ever dream of trying to improve their lot, by forcing the other classes to treat them with that common respect which one man owes to another. The idea that they have been born to their lot is so ingrained in their mind that it never occurs to them to think that their fate is anything but irrevocable. Nothing will ever persuade them that men are all made of the same clay, or that they have the right to insist on better treatment than that meted out to them."[197]

He then explained how "untouchability" led to the denial of civil and political rights of the caste-oppressed communities:

"The right of representation and the right to hold office under the State are the two most important rights that make up citizenship. But the untouchability of the untouchables puts these rights far beyond their reach. In a few places they do not even possess such insignificant rights as personal liberty and personal security, and equality before law is not always assured to them. These are the interests of the untouchables. And as can be easily seen they can be represented by the untouchables alone. They are distinctively their own interests and none else can truly voice them."[198]

117. Before the Simon Commission in 1928, Dr Ambedkar raised the demand of representation of caste-oppressed communities in government services. Dr Ambedkar also confronted the British government in the Round Table Conferences during 1930- 32. He stated that there was no change in the material condition of the oppressed castes in the colonial period. He thundered:

"When we compare our present position with the one which it was our lot to bear in Indian society of the pre-British days, we find that, instead of marching on, we are only marking time. Before the British, we were in the loathsome condition due to our untouchability. Has the British Government done anything to remove it ? Before the British, we could not enter the temple. Can we enter now ? Before the British, we were denied entry into the Police Force.

Does the British Government admit us in the Force? Before the British, we were not allowed to serve in the Military. Is that career now open to us? To none of these questions can we give an affirmative answer there is certainly no fundamental change in our position. Indeed, so far as we were concerned, the British Government has accepted the social arrangements as it found them, and has preserved them faithfully. Our wrongs have remained as open sores and they have not been righted, although 150 years of British rule have rolled away."[199]

(emphasis added)

In his classic "Annihilation of Caste", he stated:

"Caste System is not merely division of labour. It is also a division of labourers. Civilized society undoubtedly needs division of labour. But in no civilized society is division of labour accompanied by this unnatural division of labourers into water-tight compartments. Caste System is not merely a division of labourers which is quite different from division of labour-it is an heirarchy in which the divisions of labourers are graded one above the other."[200]

118. Like Dr Ambedkar, other scholars have documented how the British reinforced the caste system by not interfering in the matters of caste-based customs. While in enacting the Criminal Tribes Act, the British directly applied the logic of caste, in courts, they facilitated caste oppression directly or directly. In this regard, Marc Galanter noted:

"from the early days of the "British" legal system a group of matters that might roughly be described as family law - marriage and divorce, adoption, joint family, guardianship, minority, legitimacy, inheritance, and succession, religious endowments - were set aside and left subject to the laws of the various religious communities; i.e., the applicable law in these fields was "personal" rather than territorial. In these family and religious matters Hindus were ruled by dharmasastra not by the ancient texts as such, but as interpreted by the commentators accepted in the locality. At first the courts relied on Brahmin pundits or sastris to advise them on the applicable rules and their interpretation."[201]

He highlighted the practice of British non-interference as follows:

"The cases show widespread acquiescence by local authorities in the enforcement of these disabilities and suggest that active governmental support of these practices at a local level was at least not uncommon. It should be emphasized however, that these prescriptive rights and disabilities received their greatest governmental support not from direct judicial enforcement but from the recognition of caste autonomy i.e., from the refusal of the courts to interfere with the right of caste groups to apply sanctions against those who defied these usage."[202]

119. Galanter also highlighted how caste discrimination received direct support from British courts in certain cases:

"Caste groups did enjoy active support of the courts in upholding their claims for precedence and exclusiveness. Courts granted injunctions to restrain members of particular castes from entering temples - even ones that were publicly supported and dedicated to the entire Hindu community. Damages were awarded for purificatory ceremonies necessitated by the pollution caused by the presence of lower castes; such pollution was actionable as a trespass on the person of the higher caste worshippers. It was a criminal offence for a member of an excluded caste knowingly to pollute a temple by his presence."[203]

British criminal law became intertwined with pre-colonial notions of who should be disciplined and punished.

iii. Repeal of Criminal Tribes Act

120. When the Objectives Resolution was placed in the Constituent Assembly, HJ Khandekar stated, on 21 January 1947:

"One thing is wanting in the Resolution, and, if the mover agrees, it can be modified. The Resolution promises safeguards and rights to all the minorities. But unfortunately there are 10 million people in India who, without any fault on their part, are described as criminal tribes from their very birth. Hundreds of thousands of men and women in India were declared as criminal tribes according to the current law. To deprive them of their rights they are declared so. No matter whether they are criminals or not, from their very birth they are made criminals. Some provision to abolish this law must be embodied in this Resolution." Khandekar raised the concerns of the persons who were declared as criminal tribes.

121. In 1947, an amendment to the Act abolished the punishment imposed on criminal tribes for second and third convictions under specified offences.[204] As some provinces had concurrent jurisdiction on this issue, they could amend or repeal the Act in its application to their territories.[205] The Madras government enacted the Criminal Tribes (Madras Repeal) Act, 1947 to end the application of the Act in its territory. Similarly, the Bombay government also repealed the application of the Act to its territory in 1949.[206]

122. By a resolution dated 28 September 1949, the Government of independent India appointed "The Criminal Tribes Act Enquiry Committee" under the chairmanship of Ananthasayanam Ayyangar. The resolution stated:

"There has been a persistent demand in the Central Legislature in recent years that the Criminal Tribes Act, 1924, should be repealed as its provisions which seek to classify particular classes of people as Criminal Tribes, are inconsistent with the dignity of free India. Some of the Provinces have already repealed the Act in its application to their areas and replaced it by other legislation, e.g., Habitual Offenders' Acts. The Government of India consider that the question whether the Act should be modified or repealed altogether on an all-India basis should be considered after an enquiry into the working of the Act in the Provinces."[207]

123. The Committee submitted its report in 1951, after the Constitution of India came into force. After doing field inspections of several regions, the Committee concluded that "[e]xcept a few hardened criminals the other persons, belonging to these tribes, are as good as the people belonging to other communities of the same economic and social status, and desire to live an honourable life."[208] The Committee further noted, "Wherever we went we heard one single cry from all the criminal tribes that whereas India obtained freedom, they continue to be in bondage and their demand for setting them free by repealing the Act was

insistent".[209] The stigma attached to a community declared as a criminal tribe was highlighted.[210]

124. The Committee noted that "criminality is not hereditary".[211] It was observed that the stigma and discrimination against communities declared as criminal by birth was violative of the equality framework adopted in the Indian Constitution in 1950. It was stated:

"Untouchability proved oppressive and its practice is now made illegal under the Constitution, as it involves social injustice and perpetuates discrimination. More so is the stigma of criminality by birth. Under section 3 of the Criminal Tribes Act, 1924, any tribe, gang or class of persons or any part of a tribe, gang or class who is addicted to the systematic commission of non-bailable offences can be notified to be a Criminal Tribe. As a result of this, many tribes or parts of tribes including families who have never criminal, have been notified as criminal tribes.

The children born in these notified tribes automatically become members of the criminal tribes so notified, and the members of such tribes, who may never have committed or aided in commission of any offence or even suspected of having done so, as well as newly born children of these people are thus branded as criminal and denied equality before the law and thus a discrimination is imposed against them on the ground that they belong to a tribe or a part of a tribe, which has been notified as a Criminal Tribe.

In this respect, this section would appear to go against the spirit of our Constitution. Moreover, this section gives powers to the executive to declare any tribe, part of tribe or gang or part of gang or a class of persons as a Criminal Tribe and it is provided in section 29 of this Act that no court shall question the validity of any notification issued under section 3 and that every such notification shall be a conclusive proof that it has been issued in accordance with law.

We feel that it is not proper to give such wide powers to the executive. The Act also gives powers to restrict the movements of the Criminal Tribes or to place them in settlements to the executive and by making suitable rules under the Act to take work from settlers on pain of punishment. This would virtually amount to "begar" or forced labour which is an offence under the Indian Penal Code and is opposed also to Article 23 of the Constitution."[212]

125. The Committee recommended the repeal of the Act:

"The Criminal Tribes Act, 1924, should be replaced by a Central legislation applicable to all habitual offenders without any distinction based on caste, creed or birth and the newly formed States included in Parts B and C of the First Schedule of the Constitution, which have local laws for the surveillance of the Criminal Tribes, should be advised to replace their laws in this respect by the

Central legislation for habitual offenders, when passed."[213] The Act was repealed in 1952. The criminal tribes were then denotified, as a result of which they were known as "Denotified Tribes".

126. It must be noted under the Criminal Tribes Act, several marginalized "castes" were also declared as criminal "tribes". It is for this reason Article 341(1) of the Constitution employs the words "castes" and "tribes" while defining the Scheduled Castes.[214] After the repeal of the Act, some of the castes earlier declared as criminal tribes, have been accordingly notified as Scheduled Castes.

XII. Jurisprudence on Social Protection in Post-Independence India

127. Parliament enacted legislation to prevent discrimination and atrocities against the Scheduled Castes and the Scheduled Tribes. In State of Karnataka v. Appa Balu Ingale,[215] Justice Ramaswamy noted that Parliament enacted the stringent provisions of the PoA Act, 1989 when "the mandate of Article 17 was being breached with impunity, and commission of atrocities on Dalits and Tribes continued unabated".

128. The Court in State of Madhya Pradesh v. Ram Krishna Balothia[216] held that the offences under PoA Act "constitute a separate class and cannot be compared with offences under the Penal Code". These offences are "committed to humiliate and subjugate members of Scheduled Castes and Scheduled Tribes with a view to keeping them in a state of servitude", and "prevent them from leading a life of dignity and selfrespect".

The Court quoted the Statement of Objects and Reasons of the Act to highlight that "when members of the Scheduled Castes and Scheduled Tribes assert their rights and demand statutory protection, vested interests try to cow them down and terrorise them" if they are on anticipatory bail. For this reason, the Court dismissed a challenge to Section 18 of the PoA Act, which debarred the opportunity to seek anticipatory bail in respect of offences committed under the Act.

129. In Safai Karamchari Andolan v. Union of India,[217] the Court noted that "the practice of manual scavenging has to be brought to a close". Making a "member of a Scheduled Caste or a Scheduled Tribe to do manual scavenging or employing or permiting the employment of such member for such purpose" is a criminal offence under the PoA Act.[218] The Court took a step further, and held that "entering sewer lines without safety gears should be made a crime even in emergency situations". The Court declared that for a death in sewer lines, "compensation of Rs. 10 lakhs should be given to the family of the deceased". It was emphasized that "Persons released from manual scavenging should not have to cross hurdles to receive" compensation or rehabilitation "due under the law".

130. The Court showed a deep concern about non-implementation of the PoA Act in National Campaign on Dalit Human Rights v. Union of India.[219] It remarked that "there has been a failure on the part of the authorities concerned in complying with the provisions" of the PoA Act. Calling out the "indifferent attitude of the authorities", the Court directed the State and the Union governments to strictly do their role in implementing the Act.

131. These rulings emphasized that the PoA Act is a significant legislative measure designed to protect the fundamental rights and freedoms of the Scheduled Castes and Scheduled Tribes, ensuring their dignity and safety against discrimination and violence. However, the subsequent judgment in Subhash Kashinath Mahajan v. State of Maharashtra[220] marked a departure from this protective stance.

132. Dealing with a criminal appeal, the judgment in Subhash Mahajan expressed a "concern that working of the Atrocities [PoA] Act should not result in perpetuating casteism which can have an adverse impact on integration of the society and the constitutional values". It held that there is "no absolute bar against grant of anticipatory bail" by the concerned court "in cases under the Atrocities [PoA] Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide". The Court issued the following guidelines:

"(iii) In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention;

(iv) To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated;

(v) Any violation of direction (iii) and (iv) will be actionable by way of disciplinary action as well as contempt."

133. The directions in Subhash Mahajan were later recalled in the review petition in Union of India v. State of Maharashtra.[221] In doing so, the Court noted that the Scheduled Castes and the Scheduled Tribes "are still making the struggle for equality and for exercising civil rights in various areas of the country". It remarked that there is "no presumption that the members of the Scheduled Castes and Scheduled Tribes may misuse the provisions of law as a class".

Instead, "members of the Scheduled Castes and Scheduled Tribes due to backwardness hardly muster the courage to lodge even a first information report, much less, a false one". The Court further declared that treating the Scheduled Castes and the Scheduled Tribes as "prone to lodge false reports under the Scheduled Castes and Scheduled Tribes Act for taking revenge" or monetary gain, especially when they themselves are victims of such offenses, contradicts fundamental principles of human equality.

134. The review judgment also observed that guidelines issued in Subhash Mahajan "may delay the investigation of cases". The judgment termed the directions as "discriminatory", as "it puts the members of the Scheduled Castes and Scheduled Tribes in a disadvantageous position", compared to complaints lodged by members of upper castes, where no such preliminary investigation is required. The Court also found the directions to be "without statutory basis", as they are in conflict with PoA Act, and amounts to "encroaching on a field which is reserved for the legislature". The Court however clarified that "if prima facie case has not been made out attracting the provisions" of PoA Act, "the bar created under section 18 on the grant of anticipatory bail is not attracted".

135. Before the review judgment was delivered, Parliament amended the PoA Act, undoing the effect of the guidelines issued in Subhash Mahajan. The amendment was unsuccessfully challenged in Prathvi Raj Chauhan v. Union of India.[222]

136. The hurdles faced by the Scheduled Castes and the Scheduled Tribes were highlighted by this Court in Hariram Bhambhi v. Satyanarayan.[223] The Court cancelled the bail of an accused on the ground that the statutory requirement of Section 15A[224] of PoA Act was not fulfilled in the case. Authoring the judgment, one of us (Justice DY Chandrachud) noted:

"Scheduled Castes and Scheduled Tribes specifically suffer on account of procedural lapses in the criminal justice system. They face insurmountable hurdles in accessing justice from the stage of filing the complaint to the conclusion of the trial. Due to the fear of retribution from members of upper caste groups, ignorance or police apathy, many victims do not register complaints in the first place. If victims or their relatives muster up the courage to approach the police, the police officials are reluctant to register complaints or do not record allegations accurately.

Eventually, if the case does get registered, the victims and witnesses are vulnerable to intimidation, violence and social and economic boycott. Further, many perpetrators of caste based atrocities get away scot-free due to shoddy investigations and the negligence of prosecuting advocates. This results in low

conviction rates under the SC/ST Act giving rise to the erroneous perception that cases registered under the Act are false and that it is being misused.

On the contrary, the reality is that many acquittals are a result of improper investigation and prosecution of crime, leading to insufficient evidence. This is evident from the low percentage of cases attracting the application of the provisions of the Penal Code relating to false complaints as compared to the rate of acquittals."

(emphasis added)

The Court observed that the provisions of the PoA Act, in particular Section 15A, "enable a member of the marginalized caste to effectively pursue a case and counteract the effects of defective investigations".

137. In Patan Jamal Vali v. State of Andhra Pradesh,[225] this Court expanded the scope of jurisprudence relating to Section 3(2)(v) of the PoA Act. The case dealt with the offence of rape of a woman from the Scheduled Caste community, who was blind by birth. Prior to the amendment in 2016, Section 3(2)(v) provided, "Whoever not being a member of a Scheduled Caste or Scheduled Tribe commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine".

The Court observed that in such cases, "an intersectional lens enables us to view oppression as a sum of disadvantage resulting from multiple marginalized identities." It was held that "A true reading of Section 3(2)(v) would entail that conviction under this provision can be sustained as long as caste identity is one of the grounds for the occurrence of the offence." The Court observed:

"To deny the protection of Section 3 (2) (v) on the premise that the crime was not committed against an SC & ST person solely on the ground of their caste identity is to deny how social inequalities function in a cumulative fashion. It is to render the experiences of the most marginalized invisible. It is to grant impunity to perpetrators who on account of their privileged social status feel entitled to commit atrocities against socially and economically vulnerable communities."

138. In Dr. Balram Singh v. Union of India,[226] while dealing with the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013, the Court directed the Union government to take "appropriate measures" and "issue directions, to all statutory bodies, including corporations, railways, cantonments, as well as agencies under its control, to ensure that manual sewer cleaning is completely eradicated in a phased manner". The Court also instructed that

guidelines and directions should be issued to prevent the need for individuals to enter sewers, even when sewer cleaning work is outsourced or carried out by contractors or agencies.

The Court held that "where minimum protective gear and cleaning devices are not provided to hazardous workers, the employment of hazardous workers amounts to forced labour", prohibited under the Constitution. Hence, the Court held that "the provisions for protective gear and cleaning devices are not mere statutory rights or rules, but are entitlements" guaranteed under the Constitution.

139. On a number of occasions, this Court has expressed concern about the nonimplementation of the PoA Act and the legislation prohibiting manual scavenging. The Court has also expressed concern about the false implication of people from nomadic/denotified tribes in criminal cases. In NALSA, the Court noted that the colonial-era Criminal Tribes Act "deemed the entire community of Hijras as innately 'criminal'". In Ankush Maruti Shinde v. State of Maharashtra,[227] the High Court confirmed the conviction and death penalty of six accused for the offence of rape and murder.

Their appeal was previously dismissed by this Court. However, in a review petition, the Court restored the appeal and acquitted all the accused, finding that they were falsely implicated. Taking account of the fact that the accused belonged to nomadic tribes, the Court noted that "there was no fair investigation and fair trial" and the "serious lapse on the part of the investigating agency". As five of the accused spent 16 years in jail on false implication and all "were facing the hanging sword of death penalty", the Court granted them monetary compensation for violating their rights under Article 21.

140. In a recent decision in Amanatullah Khan v. The Commissioner of Police, Delhi,[228] the petitioner sought "quashing of opening/approval of the History Sheet declaring him as bad character and consequential entries in the Surveillance Register being exercised" by the respondents. The Court reiterated that "History Sheet is only an internal police document and it shall not be brought in public domain".

Further, it emphasized that "extra care and precaution", needs to be observed "by a police officer while ensuring that the identity of a minor child is not disclosed as per the law". It directed that Delhi Police "shall periodically audit/review the contents of the History Sheets and will ensure confidentiality and a leeway to delete the names of such persons/juveniles/children who are, in the course of investigation, found innocent and are entitled to be expunged from the category of "relations and connections"' in a History Sheet".

141. The crucial aspect of the above decision is that the Court exercised its suo motu powers to give directions to the police in other states to not act arbitrarily against the marginalized communities. It noted: "Having partially addressed the grievance of the appellant, we now, in exercise of our suo motu powers, propose to expand the scope of these proceedings so that the police authorities in other States and Union Territories may also consider the desirability of ensuring that no mechanical entries in History Sheet are made of innocent individuals, simply because they happen to hail from the socially, economically and educationally disadvantaged backgrounds, along with those belonging to Backward Communities, Scheduled Castes & Scheduled Tribes.

While we are not sure about the degree of their authenticity, but there are some studies available in the public domain that reveal a pattern of an unfair, prejudicial and atrocious mindset. It is alleged that the Police Diaries are maintained selectively of individuals belonging to Vimukta Jatis, based solely on caste-bias, a somewhat similar manner as happened in colonial times. We must bear in mind that these preconceived notions often render them 'invisible victims' due to prevailing stereotypes associated with their communities, which may often impede their right to live a life with self-respect."

(emphasis added)

The Court expected that the State governments "take necessary preventive measures to safeguard such communities from being subjected to inexcusable targeting or prejudicial treatment". It directed all the States/Union territories to revisit their policies to adopt a "periodic audit mechanism overseen by a senior police officer" to scrutinize the entries made in history sheets. It was noted that "[t]hrough the effective implementation of audits, we can secure the elimination of such deprecated practices and kindle the legitimate hope that the right to live with human dignity" will be protected.

142. The Court has also warned the police on misusing the power to arrest. In Arnesh Kumar v. State of Bihar,[229] a three-judge Bench adverted to the misapplication of the provision for arrest by the police. It was noted:

"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."

(Emphasis added)

143. In Mallada K. Sri Ram v. State of Telangana,[230] the Court, speaking through one of us (Justice DY Chandrachud), highlighted the constitutional mandate to prevent arbitrary exercise of prevention detention:

"the personal liberty of an accused cannot be sacrificed on the altar of preventive detention merely because a person is implicated in a criminal proceeding. The powers of preventive detention are exceptional and even draconian. Tracing their origin to the colonial era, they have been continued with strict constitutional safeguards against abuse. Article 22 of the Constitution was specifically inserted and extensively debated in the Constituent Assembly to ensure that the exceptional powers of preventive detention do not devolve into a draconian and arbitrary exercise of state authority."

The exercise of the power to arrest or detain may become reflective of a colonial mindset, if not exercised with caution. The misuse of the power of arrest not just violates rights, but it can prejudice generations of innocent citizens, especially marginalized communities such as the Denotified Tribes. Arrests can create a stigma of criminality if not done diligently. Innocent people, if arrested on the grounds of stereotypes and mere suspicion, may face barriers in securing employment and earning a dignified livelihood. Entering the mainstream becomes impossible when those who have suffered incarceration find themselves unable to secure livelihoods, housing, and the necessities of life.

144. Discrimination against the Scheduled Castes, Scheduled Tribes, and Denotified Tribes has continued in a systemic manner. Remedying systemic discrimination requires concrete multi-faceted efforts by all institutions. In discharge of their role, courts have to ensure that while there should be proper implementation of the protective legislation such as the PoA Act, there should not be unfair targeting of members from marginalized castes under various colonial-era or modern laws. With this nuanced approach, we shall now examine the prison manuals.

XIII. Impugned Provisions

(i) Prison Act

145. At the outset, we must clarify that the Prison Act 1984 is not under challenge. Accordingly, we shall not be dealing with the validity of the Act. We are referring to its provisions to understand the background of prison manuals/rules.

146. The Act was enacted to amend the law relating to prisons and to provide for the regulation of prisons. The Statement of Objects and Reasons stated that four different Acts were in force for the regulation of prisons, which were different on important points such as the enumerated jail offences and their punishments, and were thus resulting in divergent jail management systems across provinces, non-uniform enforcement of sentences, and lack of administrative uniformity.

147. The Act provided for various aspects of prison administration including maintenance of prisons, officers of prisons, duties of prison officers, admission, removal and discharge of prisoners, discipline, food and other amenities for civil and non-convicted prisoners, employment of prisoners, health of prisoners, visits to prisons, and prison offences. Chapter II provides for the duties of prison officers. All officers are supposed to obey the directions of the Superintendent and act in accordance with the directions of the Jailer (and sanctioned by the Superintendent) and in line with the rules under Section 59 of the Act.

The officers are proscribed from dealing with the prisoners, or to have an interest in the contracts for supply of the prison. The Superintendent is responsible for managing the prison in matters relating to discipline, labour, expenditure, punishment and control, subject to the orders of the Inspector General.[231] The Chapter further provides for provisions regarding jailers, medical officers and subordinate officers, including convict officers. Chapter V of the Act contains provisions regarding 'Discipline of Prisoners'. It provides for separation of prisoners based on gender, age, conviction and civil or criminal imprisonment[232] and the confinement of convicts in association or by segregation.

The Act further provides for employment of prisoners under Chapter VII. It provides that civil prisoners may be permitted to follow any trade or profession and that certain safeguards need to be observed in engaging criminal prisoners in labour.[233] Chapter VIII and IX pertain to the health of prisoners and visits to prisoners respectively. Chapter X and XI provide for offences in relation to prisons and prison offences respectively. The miscellaneous chapter contains provisions regarding extramural custody, control and employment of prisoners, confinement in irons for safe custody, and the power to make rules.

148. In a constitutional set-up, the Act is governed by constitutional principles. Though the Act was enacted in the colonial era, its provisions and subsequent manuals/rules enacted therein are subject to constitutional provisions.

(ii) Prison manuals/rules

149. The impugned prison manuals and rules are listed below:

The Uttar Pradesh Jail Manual, 2022

- 158. Remission to convicts on scavenging duty - Subject to good work and conduct in jail, convicts of the scavenger class working as scavengers in jails, or convicts who on administrative grounds it is not found expedient to promote to the grades of convict officers, shall, though they may not be appointed convict officers, be titled to receive ordinary remissions at the scales sanctioned in the preceding paragraph for convict night watchmen and convict overseers, respectively, with effect from the first day of the month following the one on which they would, but for this rule, be eligible for promotion to those grades.
- 267. Classification necessary in the case of every convict- The Superintendent shall see that every convicted prisoner has been classified as habitual or casual in accordance with the form of classification furnished by the convicting court.
- 269. In a jail where prisoners of more than one class are confined, the Superintendent shall make arrangements, as far as possible, for the complete segregation of different classes in separate circles, enclosures or barracks in accordance with the requirements of section 27 of the Prisons Act, 1894 and the rules contained in this chapter.
- 270. Segregation of casual from habitual prisoners - Casual convicts shall as far as possible, be kept separate from habitual convicts.
- 271. There shall, as far as possible, be separate wards for nonprofessional and professional sub-categories of habitual prisoners. Prisoners belonging to the latter sub-category should be kept entirely separate from all other categories of prisoners.
- 289. Rules for observance - A convict sentenced to simple imprisonment,- (a) shall rise and retire to rest at such hours as may be prescribed by the Superintendent ; (b) shall be permitted to wear his own clothes, which if insufficient for decency or warmth shall be supplemented by such jail clothing, not exceeding the scale provided for convicts sentenced to rigorous imprisonment, as may be necessary to make up the deficiency, but shall wear the ordinary convict's clothing if he elects to labour and is employed on extra-mural labour; (c) shall clean his own cell, barrack or yard and keep his bedding and clothing in a clean and orderly condition; (d) shall, with the approval of the Superintendent, be allowed to possess and use his own books and periodicals in addition to those available from the prison library; (e) shall not be allowed to purchase his own food; (f) shall not be shaved unless he desires it or under the orders of the Medical Officer on grounds of health; (g) shall not be called upon to perform duties

of a degrading or menial character unless he belongs to a class or community accustomed to perform such duties; but may be required to carry water for his own use provided he belongs to the class of society the members of which are accustomed to perform such duties in their own homes.

The West Bengal Jail Code Rules for Superintendence and Management of Jail in West Bengal, 1967

- 404. Qualification for eligibility of a convict overseer for appointment as a night guard - A convict overseer may be appointed to be a night guard provided- (a) that he has served as a convict overseer for three months; (b) that he does not belong to any class that may have a strong natural tendency to escape, such as men of wandering tribes and those whose homes are outside India; and (c) that his antecedents have been verified through the Superintendent of Police.
- 694. Non-interference with religious practices or caste prejudices- (a) Interference with genuine religious practices or caste prejudices of prisoners should be avoided. But no relaxation of the working rules shall be allowed. Prisoners shall be permitted to perform their devotions at suitable times and in suitable places. Care should be taken to see that this principle is not made the cloak for frivolous complaints or for attempts to escape from jail labour or discipline. If the Superintendent feels any doubt as to the validity of any plea advanced by a prisoner on the grounds of caste or religion he should refer the matter for the orders of the Inspector General whose decision shall be final.
- 741. Sickness in cells - In case of sickness immediate notice shall be given by the guard to the Head Warder on duty by passing the ward from sentry to sentry. The Head Warder shall at once report the case to the Medical Subordinate, who shall visit the cell, and, if necessary, remove the prisoner to hospital, and inform the Superintendent, Medical Officer and Jailor of the circumstance at their next visit. Two prisoners shall, under no circumstances whatever, be confined in one cell except in the case of female prisoners condemned to death. If male condemned prisoners or dangerous lunatics have to be watched by convicts, they must remain outside the grated door of the cell. Convict sweepers, cooks and watermen may enter the cells when necessary, accompanied by a warder. Food shall be cooked and carried to the cells by prisoner-cooks of suitable caste, under the superintendence of a jail officer.
- 793. percentage of prisoners employed as jail servants - The total number of prisoners employed regularly in essential jail services as cooks, barbers, water-carriers, sweepers, etc., shall not exceed 10 per cent. of the whole number of prisoners in Central and 1st or 2nd class District jails and 12 percent. in 3rd class District jails. (For the proportion of cooks, sweepers

and hospital attendants to the number of prisoners to be attended to, see Rule 789.) The appointment of cooks is regulated by Rule 1117. The barber should belong to the A class. Sweepers should be chosen from the Mether or Hari caste, also from the Chandal or other castes, if by the custom of the district they perform similar work when free, or from any caste if the prisoner volunteers to do the work. Hospital attendants should be selected from prisoners passed for light work or those who have completed at least half their sentences. Hospital attendants shall wear a plain square red badge, 5 cm. x 5 cm., on the left breast of the kurta. Prisoners in the "convalescent and infirm" gang may be put to this duty under the Medical Officer's orders. If there is a large number of serious cases in hospital, the proportion of one attendant to 10 patients may be temporarily exceeded; with this exception, Superintendents must see that no more than the authorised percentage of prisoners is employed as jail servants or as convict officers. If any convict employed in an essential jail service has not enough work to occupy his whole time, he should be placed upon some other work for the remainder of his time.

- 1117. Selection of cooks - The cooks shall be of the A class except at the Presidency Jail where well-behaved 'B' class prisoners may be employed as such. Any prisoner in a jail who is of so high a caste that he cannot eat food cooked by the existing cooks shall be appointed a cook and be made to cook for the full complement of men. Individual convicted prisoners shall under no circumstances be allowed to cook for themselves exception being made in the cases of Hindu widows who, if they desire it, may be allowed, at the discretion of the Superintendent, to cook for themselves if it does not interfere with their work and discipline.

Madhya Pradesh Jail Manual, 1987

- 36. Latrine Parade - While the latrine parade is being carried out, the mehtars attached to each latrine shall be present, and shall call the attention of the convict overseer to any prisoner who does not cover up his dejecta with dry earth. The mehtars shall empty the contents of the small receptacle into large iron drums and replace the receptacles in the latrine after having cleaning them.
- 411. Habitual and non-habitual criminals - 411. All convicted criminal prisoners shall be classified and placed in one or other of the following categories, namely:- (a) Habitual Criminals. (b) Nonhabitual Criminals. Note.-For Convenience of reference, prisoner falling in the first of the above categories are referred to as "habitual", and those falling in the second category are described as "non-habitual" or "casuals". The following persons shall be liable to be classified habitual criminals- (i) Any person convicted of an offence whose previous conviction, or convictions under Chapters XII, XVI, XVII or XVIII of the lndian Penal

Code taken by themselves or with the facts of present case show that he habitually commits in offence or offences punishable under any or all of those Chapters;
(ii) Any person committed to or detained in prison under section 123 (read with section 109 or section 110) of the Code or Criminal Procedure;
(iii) Any person convicted of any of the offences specified in (i) above when it appears from the facts of the case. Even although no previous conviction has been proved that he is by habit member of a gang of dacoits, or of thieves or a dealer in slaves or in stolen property.
(iv) Any member of denotified tribe subject to the discretion of the State Government concerned.
(v) Any person convicted by a Court or tribunal acting outside India under the general or special authority of the Government of India of an offence which should have rendered him liable to be classified as a habitual criminal if he had been convicted in a court established in India.
Explanation.- For the purpose of these definition the word "conviction" shall include an order made under section 118 read with section 110 of the Criminal Procedure Code.

- 563. Cooking of food, cleanliness of vessels etc. - The cooks shall perform all preparations and processes necessary after issue of the daily supplied to them, and shall cook the food with due care and attention. The dough for chapaties shall be 'slowly and thoroughly kneaded and then rolled to a uniform thickness on a table by a rolling pin, not patted by hands; a circular curter shall be used to make the cakes of one size; and the cooking must be done slowly on a gently heated plate; so as not to burn the outside whilst the inner part remains Uncooked. All cooking utensils must be kept scrupulously clean and bright, and the cook-house and feeding places as clean and tidy as it is possible to make them. Any breach of this rule shall subject the cooks to such punishment, within the limits fixed by these rules, as the Superintendent may after due and proper enquiry award.

Andhra Pradesh Prison Rules, 1979

- 217. Definition of habitual - The following persons shall be liable to be classified as "habitual criminals" , namely:-
(i) Any person convicted of an offence punishable under chapters XII, XVII and XVIII of the Indian Penal Code whose previous conviction or convictions, taken in conjuction with the facts of the present case, show that he is by habit a robber, housebreaker, dacoit, thief or receiver of stolen property or that he habitually commits extortion, cheating, counterfeiting coin, currency notes or stamps or forgery;
ii) Any person convicted of an offence punishable under Chapter XVI of the Indian Penal Code, whose previous conviction or convictions taken in conjunction with the facts of the present case, show that he habitually

commits offences against the person;
(iii) Any person committed to or detained in prison under section 122 read with section 109 or section 110 of the Code of Criminal Procedure;
(iv) Any person convicted of any of the offences specified in i) above when it appears from the facts of the case, even though no previous conviction has been proved, that he is by habit a member of a gang of dacoits, or of thieves or a dealer in stolen property;
(v) Any habitual offender as defined in the Andhra Pradesh Habitual Offenders Act, 1962;
(vi) Any person convicted by a court or tribunal acting outside India under the general or special authority of the Central Government or any State Government of by any court or tribunal which was before the commencement of the constitution acting under the general or special authority of an offence which would have rendered him liable to be classified as a habitual criminal if he had been convicted in a court established in India.
EXPLANATION:- For the purpose of this definition the word "conviction" shall include an order mate under section 117, read with section 110 of the Criminal Procedure Code.

- 440. Allowance for caste prejudice - The prison tasks including conservancy work shall be allotted at the discretion of the Superintendent with due regard to capacity of the prisoner, his education, intelligence and attitude and so far as may be practicable with due regard to his previous habits.
- 448. Restrictions on extramural employment of convicts-
- (1) Without the sanction of the Inspector General, no convict shall, at any time, be employed on any labour outside the walls of the prison, or be permitted to pass out of the prison for employment of the purpose of being so employed:-
(a) Unless he has undergone not less than one-fourth of the substantive term of imprisonment to which he has been sentenced;
(b) If the unexpired term of substantive sentence together with imprisonment (if any) awarded in lieu of fine, still to be undergone, exceeds two years;
(c) If his appeal (if any) is undisposed of:
d) If any other charge or charges are pending against him or he has to undergo a period of police surveillance on the expiry of his sentence;
(e) If he is a resident of foreign territory; and
(f) If he is a member of a wandering or criminal tribe, or is of a bad or dangerous character, or has, at any time, escaped of attempted to escape from lawful custody.
(2) Not withstanding anything contained in sub-rule (1) of this rule, every prisoner, who has not more than twelve months of sentence remaining, may be employed on extramural labour irrespective of the portion of

sentence already passed in prison.
(3) In every case in which a convict is employed on any labour outside the walls of the prison or is permitted to pass out of the prison for the purpose of being so employed, it shall be subject to the condition that the Superintendent has sanctioned his employment outside the prison and recorded the fact of his having done so in the Prisoner's History Ticket.
NOTE:- When there are more prisoners eligible, for employment outside the prison than are actually required, casuals and men with the shortest unexpired terms should be selected in preference to others

- 1036. Classes of convicted prisoners and their treatment - (1): As mentioned in rule 216 supra, convicted prisoners are divided into three divisions namely classes A, B and C.
(2) Prisoners shall be treated as "A" Class if-
(i) They are non-habitual prisoners of good character;
(ii) They by social status, education and habit of life have been accustomed to a superior mode of living; and
(iii) They have not been convicted of-
(a) Offenses involving elements of cruelty, moral degradation or personal greed;
(b) Serious or premeditated violence;
(c) Serious offences against women and children;
(d) Serious offences against property;
(e) Offences relating to the possession of explosives, fire-arms and other dangerous weapons with the object of committing an offence or of enabling an offence to be committed;
(f) Abetment or incitement of offences falling within these subrules.
(3) Prisoners shall be treated as "B" Class if -(i) They, by social status, education and habit of life have been accustomed to superior mode of living; and
(ii) They have not been convicted of:
(a) Offences involving elements of cruelty, moral degradation or personal greed;
(b) Serious or premeditated violence;
(c) Serious offence against women and children;
(d) Serious offences against property;
(e) Offences relating to the possession of explosives, firearms and other dangerous weapons with the object of committing an offence or of enabling an offence to be committed
(f) Abetment or incitement of offences falling within these sub rules.
NOTE:- Habitual prisoners may be included under this class or grounds of character and antecedents.
(4) (i) If no orders about classification are passed by the sentencing court, it should be assumed that a prisoner belongs to "C" Class. A reference should be made in doubtful cases but it should not be presumed in the

absence of specific orders that the prisoner belongs to a class higher than "C".

Odisha Model Jail Manual Rules for the Superintendence and Management of Jails in Odisha, 2020

- 3. Definitions - (t) "Habitual offender" means an offender who has been convicted in a particular offence for more than one occasion.
- 4. Criteria for establishment of prisons.-
- (2) Prison administration shall ensure that the prisoners human rights are respected.
  (3) Prison administration shall ensure separation of the following categories of prisoners, namely:- (a) Civil Prisoners; (b) Undertrials; (c) Female Prisoners; (d) Convicted Prisoners; (e) Young Offenders; (f) First Offenders; (g) Habitual Offenders; (h) High Security Prisoners; (i) Detenue; (j) Geriatric and infirmed prisoners;(k) Transgender Prisoners; (l) Psychiatric Prisoners; (m) Higher Division Prisoners; and(n) Political Prisoners
  (4) There shall be a separate prison for hig security prisoners.
  (5) The prisons' regime shall take care to prepare prisoners to lead a law-abiding, self supporting, reformed and socially rehabilitated life.
- 515. Division of Police registered prisoners into two classes.- (1)The first class consists of prisoners who are to be transferred before release to the Jails of the districts in which their homes are situated. (2) This class shall be described in the Admission Register provided in Form No.17 and Release Diaries provided in Form No 23 as P.R./T Prisoners.
  Explanation :- The letter P.R. standing for "Police Registered", and the letter T, signifying 'transfer'.
  (3) The prisoners stated in sub-rule (2) shall include prisoners in respect of whom the sentencing court may have recorded an order under section 565 of the Code of Criminal Procedure, 1973 (2 of 1974)and any such prisoner shall be described in the Admission Register and Release Diaries as "Police Registered Transfer -565" prisoners.
  (4) The second class consists of prisoners who are not to be transferred, but are to be released from the jails in which they are confined at the time of the expiry of their sentences and this class shall be described in the Admission Registers and Release Diaries as Police Registered prisoners.
  (5) If any prisoner known to be a member of a criminal tribe is not police-registered, his case shall be brought to the notice of the Superintendent of Police.
  (6) When intimation respecting a prisoner's Police-registration is received from the police after his name has been entered in Admission Register and Release Diaries, the letter Police- Registered, Police-Registered/Transfer, Police Registered Transfer "565", as the case maybe, shall be added in red

ink.
(7) Entries on the back of the P.R. form relating to the Finger Impression, viz., "F.I. taken" or "tested" shall be similarly added.
(8) The police P.R. form intimating the fact that a prisoner is on the police register shall be attached to and kept with, the warrant, and sent with him to the jail to which he may be transferred.
(9) On the death or escape of a Police Registered Prisoner of either class, the Police P.R. form attached to his warrant shall be returned to the Superintendent of Police of his district with an endorsement, showing the date of his death or escape.
(10) All other P.R. slips shall be sent to the Superintendent of Police of the district, a fortnight before the release is due.
Note:- The number and name of P.R./T and P.R.T/565 prisoners shall be noted in red ink in the Release Diaries four months before the date of probable release, any remission likely to be earned being taken into account.

- 784. Prison Industries and Work Programmes.- (1) The work programmes shall also include essential institutional maintenance services like culinary, sanitary and hygienic services, prison hospital, other prison services, repairs and maintenance services... (25) Prisoners who have shown, or are likely to have, a strong inclination to escape or are members of a wandering or criminal tribe, even though eligible, shall not be employed on extramural work.

The Kerala Prison Rules 1958

- 201. Definition of habitual criminals - The following persons shall be liable to be classified as "Habitual Criminals" namely:-
(1) any person convicted of an offence punishable under Chapters XII, XVII and XVIII of the Indian Penal Code, whose facts of the present case, show that he is by habit a robber, house breaker, dacoit, thief or receiver of stolen property or that he habitually commits extortion, cheating, counterfeiting coin, currency notes or stamps or forgery;
(2) any person convicted of an offence punishable under Chapter XVI of the Indian Penal Code, whose previous conviction or convictions taken in conjunction with the facts of the present case show that he habitually commits offences against the person;
(3) any person committed to or detained in prison under Section 123 (read with Section 109 or Section 110) of the Code of Criminal Procedure;
(4) any person convicted of any of the offence specified in (i) above when it appears from the facts of the case, even though no previous conviction has been proved, that he is by habit a member of a gang of dacoit, or of thieves or a dealer in slaves or in stolen property;
(5) any person of a Criminal tribe subject to the discretion of the

Government.
Explanation.-For the purpose of the definition the word "conviction" shall include an order made under Section 118, .read with Section 110 of the Code of Criminal Procedure.

The Tamil Nadu Prison Rules, 1983

- 214. Separation of categories - Subject to the availability of accommodation, the prisoners; shall be segregated as follows:
(a) "A" class prisoners from "B" class prisoners;
(b) Civil prisoner from Criminal prisoners;
(c) Female prisoners from male prisoners;
(d) Adult prisoners from adolescents;
(e) Convicted prisoners from undertrial prisoners;
(f) Habitual prisoners from non-habitual prisoners;
(g) Prisoners suffering from communicable diseases;
(h) Prisoners suspected to be suffering from mental disorders;
(i) Homosexuals;
(J) Sex perverts;
(k) Drug addicts and traffickers in narcotics;
(l) Inmates having suicidal tendencies;
(m) Inmates exhibiting violent and aggressive tendencies;
(n) Inmates having escape discipline risks; and
(o) known bad characters.
- 219. Definition of habitual criminal - The following persons shall be liable to be classified as habitual criminals, namely:
(i) Any person convicted of an offence punishable under chapters XII, XVII, XVIII of the Indian Penal Code (Central Act XIIV of whose previous conviction or convictions taken in conjunction with the facts of the present case shows that he is by habit a robber, dacoit thief or receiver of stolen property or that he habitually commits extortion cheating, counterfeiting coin, currency notes or stamps or forgery.
(ii) Any person convicted of an offence punishable under Chapter XVI of the Indian Penal Code (Central Act XIV (1860) or under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Central Act 104 of 1956) whose previous conviction or convictions, taken in conjunction with the facts of the present case, show that he habitually commits offences against the person or is habitually engaged in immoral traffic in women or girls;
(iii) Any person committed to or detained in prison under section 122 read with sections 109 or 110 of the Code or Criminal Procedure,1973 (Central, Act 2 of 1974);
(iv) Any person convicted of any of the offences specified in clauses (1) and (2) above when at appears from the facts of the case, even though no

previous conviction has been, proved, that he is by habit a member of a gang of dacoits, or of thieves or a dealer in stolen property, or a tracker in women or girls for immoral purposes;
(v) Any person convicted of an offence and sentenced to imprisonment under the corresponding sections of the Indian Penal Code (Central Act XIV of 1860) and the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).
(vi) Any person convicted by a Court or tribunal acting outside India, of an offence which would have rendered him liable to be classified as a habitual offender if he had been convicted in a Court established in India.
(vii) Any person who is a habitual offender under the Tamil Nadu Restriction of Habitual Offenders Act, 1948 (Tamil Nadu Act VI of 1948) or other corresponding Acts: (viii) If a prisoner was previously classified as habitual prisoner by a court he shall be continued to be classified as habitual prisoner whatever be the nature of offences for which he is later convicted.
Explanation.- For the purposes of this definition the word conviction shall include an order made under section 117 read with 110 of the Code of Criminal Procedure,1973 (Central Act 2 of 1974).

- 225. Classes of prisoners: (1) As mentioned in rule 217, convicted prisoners are divided into two divisions or classes, A and B.
(i) prisoners shall be eligible for class A, if they by social status, education or habit of life have been accustomed to a superior mode of living, Habitual prisoners may at the discretion of the classifying authority , be included under this class on grounds of character and antecedents.
(ii) Class B shall consist of prisoners who ate not classified in Class A.
(iii) Notwithstanding anything contained in sub-rule (i), any person convicted of an offence involving gross indecency or exhibiting grave depravity of character may not be placed in class A.

The Rules for the Superintendence and Management of Jails in the Bombay State, 1954

- Chapter XLI, Section II: Rule 3: Habitual women prisoners; prostitutes and procuress and young women prisoners shall be segregated.

The Karnataka Prisons and Correctional Services Manual - 2021

- 418. Classification of convicted prisoners - Convicted prisoners are divided into two classes as Class I(Class-A)and Class II(Class- B).-
i. Prisoners will be eligible for Class I(Class-A) if.-
a) They are non-habitual prisoners of good character;
b) They by social status, education and habit of life have been accustomed to a superior mode of living; and

c) They have not been convicted of.-
1) Offences involving elements of cruelty moral degradation or personal greed;
2) Serious premeditated violence;
3) Serious offence against women and children;
4) Serious offences against property;
5) Offences relating to the possession of explosives, fire arms and other dangerous weapons with the object of committing an offence or of enabling an offence to be committed;
6) An offence under the suppression of immoral traffic Act;
7) Abetment or incitement of offences;
ii. Class II(Class-B) will consist of prisoners who are not classified as Class I (Class-A)
iii. Notwithstanding anything contained in any person convicted of an offence involving gross indecency or exhibiting gross depravity of character may not be placed in Class I (Class-A).

Rajasthan Prisons Rules, 2022

- 681. Prison Industries and Work Programmes. Rule (22) Prisoners who have shown, or are likely to have, a strong inclination to escape or are members of a wandering or criminal tribe, even though eligible, shall not be employed on extramural work.

Prison Manual 2021 for the Superintendence and Management of the Jails in Himachal Pradesh

- 26.69. State Government shall lay down dietary scales for women prisoners keeping in view their calorie requirements as per medical norms. The diet shall be in accordance with the prevailing dietary preferences and tastes of the local area in which the prison is located. Cooked food shall be brought to the female enclosure by a convict-cook accompanied by a warder and placed outside the enclosure gate from where it shall be taken inside by the female warder or a female prisoner. The menial during shall, whenever possible, be performed by the female prisoners and the refuse etc., placed outside the enclosure, to be removed by paid sweeper. If there are no females of suitable caste for conservancy work paid-sweepers shall be taken into the enclosure in charge of a wander and under the conditions laid down in paragraph 214.

XIV. Prison Manuals and the Legacy of Discrimination

150. We shall begin the analysis of the manuals/rules by examining whether caste was a ground of classification before the Constitution came into force.

(i) History of "Caste" in Prison Manuals

151. According to the Committee on Prison Discipline 1836-38, to force a man of 'higher caste' to work at any trade would 'disgrace him' and his family, and would be viewed as cruelty.[234] Convicts from communities lower in the caste hierarchy were expected to continue with their customary occupations in jail. The caste hierarchy outside the prison was replicated within the prison.

152. The Committee's recommendations for including a common mess instead of food allowances for prisoners to cook their own meals, which was greater accommodation of caste, were shelved. In the 1840s, prisoners were granted food allowances and they could prepare their own meals, duly observing their caste practices. To replace this, a stricter mess system was introduced in some prisons. However, prisoners were divided along caste lines and each group was assigned a different prisoner cook. Among Europeans outside the prison system, "there was bewilderment, even rage, at the extent to which caste had been 'basely and indecently succumbed to in our Indian jails'".[235]

153. But the British prison administration broadly agreed that caste must be respected even inside prisons. An 1862 Report of the Inspector of Prisons in Oudh showed that in Lucknow Central Jail, these prejudices were entertained to the extent that Brahmin inmates would be allowed to bathe before they ate and to mark out a designated area where they would receive their food and where no one would be allowed to enter.[236] David Arnold wrote about the complexity of managing caste in Indian prisons and the administration's fears:

"With regard to caste and community, the issue was more complex. Physical labour was the mark of the lowest Hindu castes (and their Muslim counter parts), while such ritually polluting tasks as shoemaking, which involved handling leather, or the removal of human urine and excrement, were regarded as the stigmatising occupations of the very lowest castes, the untouchables. Was it, therefore, legitimate penal practice to force high-caste Hindus, or well-born (ashraf) Muslims, to toil as if they were from labouring or untouchable castes? Was denial of caste status a morally justified attribute of prison life, even a fitting deterrent against further criminal acts?

The British were particularly wary on this score because of the intense resistance to common messing in north Indian jails in the 1840s and 1850s, which, by denying highcaste prisoners the right to cook their own food, provoked fierce prison demonstrations and contributed to the rash of jailbreaks during the opening phase of the 1857-58 uprising. Colonial authorities also recognized the strength of Indian feeling against any measures (whether in the jails, the army, or the courts) that appeared to attack caste or favour the imposition of Christianity."[237]

154. In line with their overall approach, the colonial administrators linked caste with prison administration of labour, food, and treatment of prisoners. They emboldened the occupational hierarchy with legal policy and imported the vice of caste-based allocation of labour into the prison, due to pressure from the oppressor castes. Responding to the doubts raised by Inspector General of Madras in 1871, the Government of India responded that prisoners shall not be put into labour that "really causes the loss of caste" and that the management should not give an impression that the government wished to destroy caste of the native inmates.[238]

Similarly, the Madras Jail Manual, 1899 stated that "In allotting labour to convicts reasonable allowance shall be made for caste prejudice, e.g., no Brahmin or caste Hindu shall be employed in chucklers' [cobblers'] work. Care shall, however, be taken that caste prejudice is not made an excuse for avoiding heavy forms of labour".[239]

155. Thus, the supposedly polluting occupations were allocated to the communities placed lower in the caste hierarchy. Not only were certain communities expected to carry out their "hereditary trades" within prisons, the supposed higher caste prisoners' caste privileges were preserved.

156. The 1919-1920 Indian Jail Committee Report suggested classification in prisons should ensure that the young and inexperienced offenders were not contaminated by the influence of the more experienced, habitual offenders. This classification and resultant segregation were deemed essential primarily as a means of achieving sound prison administration.[240]

157. Caste was used as a ground for differentiating prisoners. The nature of the Manuals could be seen from Rule 825 of the Uttar Pradesh Jail Manual, 1941 which provided:

"The Superintendent shall not inflict the punishment of whipping on a superior class convict except with previous permission of the State Government." Rule 719 provided, "Reasonable respect shall be paid to religious scruples and caste prejudices of the prisoners in all matters as far as it is compatible with discipline."

158. Even after independence, Rule 37 of the Rajasthan Prison Rules 1951, until recently, provided as follows:

"Separate receptacles shall be provided in all latrines for solid and liquid excreta, and the use of them shall be fully explained to all prisoners by the members. The Mehtars shall put a layer of dry earth at least 1 inch thick Into each receptacle for solid excreta before it is used, and every prisoner after he uses a receptacle shall cover his dejecta with a scoopful of dry earth. Vessels for urine shall be one-third

filled with water." Rule 67 provided, "The cooks shall be of the nonhabitual class. Any Brahmin or sufficiently high caste Hindu prisoner from this class is eligible for appointment as cook. All prisoners who object on account of high caste to eat food prepared by the existing cooks shall be appointed a cook and be made to cook for the full complement of men. Individually criminal prisoners shall, under no circumstances, be allowed to cook for themselves".

159. In 1987, the RK Kapoor Committee made observations about the inadequacy of classification and segregation in prisons. It noted that while women, young offenders, criminal lunatics, and prisoners suffering from infectious diseases and even prisoners with 'better socio-economic background' were duly segregated, the rest of the prisoners were huddled together. The report noted that the classification into smaller groups was not along systematic lines.[241]

It underlined the objective of classification as follows:

"11.4. The objective of classification should be not only to prescribe and pursue individualised treatment programmes for reformation and rehabilitation of inmates, but also to ensure effective management from the angle of security and discipline.

11.5 A prisoner should not be classified merely by his physical appearance or by the nature of the crime committed by him or the information/data, if any, furnished by the police about his activities. It is necessary to know and understand, as thoroughly as possible, each prisoner as an individual, soon after his admission. An in-depth study of his total personality is required.

Personality means the whole background of the prisoner, i.e. his entire life history, and what he thinks, feels and acts by natural instinct and by habit of social conditioning. Hence, it is essential that each prisoner should be studied separately by a team consisting of experienced hail officials and of experts like psychiatrists, psychologists, trained social workers and medical officers. The officer-in-charge of industries, education and vocational training should also join this team which should be called the Classification Committee.

11.7 The recommendations of the classification committee should broadly fall under two heads: (a) classification in respect of security and control, and (b) classification from the point of view of correction, reformation and rehabilitation. After studying a prisoner, in detail, and making its assessment the classification committee should make recommendations on the following points in regard to his needs."[242]

The Report thus suggested that first, the purpose of classification in prisons must be two-fold: prison security/discipline as well as reformation of the prisoner;

second, classification should be based on the individual needs of the prisoner based on a studied assessment of their personality.

160. It is clear from the above discussion that caste was used as a factor of classification in prisons. However, this does not have any effect on examining the validity of the impugned provisions. In fact, it suggests that the colonial administrators were open to even adopting discriminatory social practices to not upset the oppressor castes. The upholding of caste differences by the British inside the prisons reflected their overall support to legitimizing the law of caste. However, this Court cannot adopt the approach taken by the colonial administrators. The impugned provisions shall be examined on the basis of principles laid under the Constitution.

(ii) Can Caste be a Basis in Classification?

161. The petitioner has averred that the Prison Manuals violate Article 14 of the Constitution of India in so far as they privilege a particular section of the society based entirely on its caste identity. They cast disparate burdens on prisoners based on their caste-identity.

162. A valid classification under Article 14 presupposes a definite yardstick to distinguish the classes created, and the difference must be real, pertinent and discernible.[243] The State is free to recognise degrees of harm as long as the basis of classification is not arbitrary, artificial, or evasive. The line between the two classes must be clear and not illusory, vague, and indeterminate.

163. The impugned rules are challenged on the ground that first, they directly identify caste as a means to allocate intramural labour, food-duties; second, by using vague terms such as "suitable caste" or "superior method of living" and similar terms, they tend to advantage the so-called higher castes; and third, they target the members of denotified tribes. We will now discuss whether caste is an intelligible and rational principle of classification and whether it has a rational nexus with the object of the classification.

164. Caste can be an intelligible principle of classification as it has been used to create protective policies for the marginalized castes. The Constitution recognises caste as a proscribed ground of discrimination under Article 15(1), and envisions a society free from caste-prejudices. Furthermore, the Constitution provides for the enumeration of certain castes and tribes as Scheduled Castes and Scheduled Tribes in order to facilitate protective discrimination and overall promote equitable distribution of resources. Article 15(4) allows the state to make special provisions for the advancement of socially and educationally backward classes of citizens, which includes Scheduled Castes and Scheduled Tribes. In that sense,

caste can be ground for classification, as long as it is used to grant benefits to the victims of caste-discrimination.

165. However, as evident from the language of Article 15(1), caste cannot be a ground to discriminate against members of marginalized castes. Any use of caste as a basis for classification must withstand judicial scrutiny to ensure it does not perpetuate discrimination against the oppressed castes. While caste-based classifications are permissible under certain constitutional provisions, they are strictly regulated to ensure they serve the purpose of promoting equality and social justice.

166. In the context of prisons, valid classification must be a functional classification.[244] The classification of prisoners has been considered both from the point of view of security and discipline as well as reform and rehabilitation.[245] This has been the objective. However, there is no nexus between classifying prisoners based on caste and securing the objectives of security or reform. Limitations on inmates that are cruel, or irrelevant to rehabilitation are per se unreasonable, arbitrary and constitutionally suspect.[246]

Inmates are entitled to fair treatment that promotes rehabilitation, and classification of any kind must be geared towards the same. Courts have been enjoined with the duty "to invigorate the intra-mural man-management so that the citizen inside has spacious opportunity to unfold his potential without overmuch inhibition or sadistic overseeing".[247] Segregating prisoners on the basis of caste would reinforce caste differences or animosity that ought to be prevented at the first place. Segregation would not lead to rehabilitation.

167. The petitioner's counsel have brought to the notice the observations made by the Madras High Court in C. Arul v. The Secretary to Government.[248] One of the prayers in the writ petition was "not to discriminate the prisoners on the basis of the caste and forbearing the jail authority from confining Palayamkottai prison inmates on caste basis". The writ petition was not entertained, as the High Court accepted the explanation of the State government that "the inmates belonging to different castes are housed in different blocks, in order to avoid any community clash, which is prevailing common in Tirunelveli and Tuticorin Districts".

It was also noted that "there is rivalry between two groups on account of caste feeling, which is regular in the District and in order to avoid any untoward incident and put an end to such rivalry, the Prison Authority is compelled to house the inmates of different communities in different blocks". We cannot agree with the position taken by the High Court. It is the responsibility of the prison administration to maintain discipline inside the prison without resorting to extreme measures that promote caste-based segregation.

Adopting the logic accepted by the High Court is similar to the argument which was given in the United States to legalize race-based segregation: separate but equal.[249] Such a philosophy has no place under the Indian Constitution. Even if there is rivalry between individuals of two groups, it does not require segregating the groups permanently. Discipline cannot be secured at the altar of violation of fundamental rights and correctional needs of inmates. The prison authorities ought to be able to tackle perceived threats to discipline by means that are not rights-effacing and inherently discriminatory.

168. Furthermore, the differentia between inmates that distinguishes on the basis of "habit", "custom", "superior mode of living", and "natural tendency to escape", etc. is unconstitutionally vague and indeterminate. These terms and phrases do not serve as an intelligible differentia, that can be used to demarcate one class of prisoners from the other. These terms have resultantly been used to target individuals from marginalized castes and denotified tribes.

169. The objective of classification for labour for treatment and for conferment of entitlements such as remissions has to be maximisation of the reformatory potential of prisons. Such classification should be based solely on the correctional needs of the individual prisoner. An objective assessment of these needs prior to the classification is a constitutional imperative. Only such classification that proceeds from an objective inquiry of factors such as work aptitude, accommodation needs, special medical and psychological needs of the prisoner would pass constitutional muster.

Classification based on caste reduces the individual prisoner to a group identity and does not leave room for an objective assessment of their correctional needs. Their reformation is stultified by the burdens of their group-identity and thereby, their presumed ability to discharge stereotypical occupational tasks. This classification bears no nexus with individual qualifications, abilities and needs. Such a classification does not aid reformation. It rather effaces the prisoner's individuality and deprives them of individualised assessment of their correctional needs.

Such classification bears no rational nexus with either prison discipline or prison reform. It is also opposed to substantive equality within prisoners as a class as it deprives some of them of equal opportunity to be assessed for their correctional needs, and consequently, opportunity to reform. The classification on obsolete understanding of caste, based on preconstitutional legislations and practices, lacks a rational nexus with the correctional objectives of classification in prisons.

170. Thus, Rules that discriminate among individual prisoners on the basis of their caste specifically or indirectly by referring to proxies of caste identity are

violative of Article 14 on account of invalid classification and subversion of substantive equality.

(iii) The discriminatory manuals

171. On a reading of the impugned provisions, it is clear that the provisions discriminate against marginalized castes and act to the advantage of certain castes. By assigning cleaning and sweeping work to the marginalized castes, while allowing the high castes to do cooking, the Manuals directly discriminate. This is an instance of direct discrimination under Article 15(1).

172. The manuals/rules suffer from indirect discrimination by using broad terms which act to the disadvantage of the marginalized castes. Phrases such as "menial" jobs to be performed by castes "accustomed to perform such duties" may appear to be facially neutral, but refer to marginalized communities, given the history of systemic discrimination against them. Such indirect usages of phrases, which target the socalled 'lower castes', cannot be permitted in our constitutional framework.

The phrases, though neutral on their face, carry an embedded bias that disadvantages marginalized communities by reinforcing historical patterns of labour based on caste. Even if caste is not explicitly mentioned, phrases like "menial" and "accustomed" indirectly uphold traditional caste roles. These provisions disproportionately harm marginalized castes, perpetuate caste-based labour divisions and reinforce social hierarchies.

173. The manuals/rules are also based on and reinforce stereotypes against the marginalized castes. These stereotypes not only demean and stigmatize marginalized communities but also serve to maintain and legitimize a social hierarchy that goes against the constitutional values of equality. The persistence of such associations in official documents like the Manuals/Rules normalizes the idea that these tasks are somehow natural for marginalized communities, reinforcing harmful societal hierarchies. By assigning specific types of work to marginalized castes based on their supposed "customary" roles, the Manuals perpetuate the stereotype that people from these communities are either incapable of or unfit for more skilled, dignified, or intellectual work.

174. The manuals/rules also reinforce stereotypes against denotified tribes. Rule 404 of the West Bengal Manual provides that a convict overseer may be appointed to be a night guard provided that "he does not belong to any class that may have a strong natural tendency to escape, such as men of wandering tribes". The Madhya Pradesh Manual permits the classification of habitual and non-habitual criminals, where habitual criminals are described as someone who "is by

habit member of a gang of dacoits, or of thieves or a dealer in slaves or in stolen property", even if no previous conviction has been proved.

Furthermore, any member of a denotified tribe may be treated as a habitual criminal, subject to the discretion of the State Government.[250] Similarly, Rule 217 of the Andhra Pradesh Manual, Rule 219 of the Tamil Nadu Manual, and Rule 201 of the Kerala Manual classify as "habitual criminals" those who are by "habit" a "robber, housebreaker, dacoit, thief or receiver of stolen property" or that he "habitually commits extortion, cheating, counterfeiting coin, currency notes or stamps or forgery", even if "no previous conviction has been proved, that he is by habit a member of a gang of dacoits, or of thieves or a dealer in stolen property".

The Andhra Manual also paints "a member of a wandering or criminal tribe" with the same brush of being "a bad or dangerous character, or has, at any time, escaped of attempted to escape from lawful custody", and prohibits their employment on any labour outside the walls of the prison, or to be permitted to pass out of the prison for employment of the purpose of being so employed.[251] The Manual also describes "non-habitual prisoners of good character" as someone who "by social status, education and habit of life have been accustomed to a superior mode of living". Conversely, habitual prisoners are accustomed to an inferior mode of living.[252]

The Odisha Manual and Rajasthan Manual also prohibit employment on extramural work of "Prisoners who have shown, or are likely to have, a strong inclination to escape or are members of a wandering or criminal tribe". The Odisha Rules[253] and Tamil Nadu Rules[254] prescribe the separation of habitual offenders from other prisoners. The Maharashtra Rules state that "Habitual women prisoners; prostitutes and procuress and young women prisoners shall be segregated."[255]

175. The tendency to treat members of denotified tribes as habitual to crime or having bad character reinforces a stereotype, which excludes them from meaningful participation in social life. When such stereotypes become a part of the legal framework, they legitimize discrimination against these communities. Members of the denotified tribes have faced the brunt of colonial caste-based undertones of discriminating against them, and the prison Manuals are reaffirming the same discrimination. Discrimination against denotified tribes is prohibited under the ground of "caste" in Article 15(1), as the colonial regime considered them as belonging to separate hereditary castes.

(iv) Whether a "practice" of untouchability?

176. At the risk of repetition, we must reproduce some of the impugned provisions. Rule 289(g) of the Uttar Pradesh Manual provides:

"A convict sentenced to simple imprisonment, shall not be called upon to perform duties of a degrading or menial character unless he belongs to a class or community accustomed to perform such duties; but may be required to carry water for his own use provided he belongs to the class of society the members of which are accustomed to perform such duties in their own homes."

Rule 158 states:

"Remission to convicts on scavenging duty - Subject to good work and conduct in jail, convicts of the scavenger class working as scavengers in jails."

177. Rule 694 of West Bengal Manual provides: "Interference with genuine religious practices or caste prejudices of prisoners should be avoided". Rule 741 states: "Food shall be cooked and carried to the cells by prisoner-cooks of suitable caste, under the superintendence of a jail officer." Rule 793 provides: "The barber should belong to the A class. Sweepers should be chosen from the Mether or Hari caste, also from the Chandal or other castes, if by the custom of the district they perform similar work when free, or from any caste if the prisoner volunteers to do the work." Rule 1117 states: "Any prisoner in a jail who is of so high a caste that he cannot eat food cooked by the existing cooks shall be appointed a cook and be made to cook for the full complement of men."

178. Rule 36 of the Madhya Pradesh manual states: "While the latrine parade is being carried out, the mehtars attached to each latrine shall be present, and shall call the attention of the convict overseer to any prisoner who does not cover up his dejecta with dry earth. The mehtars shall empty the contents of the small receptacle into large iron drums and replace the receptacles in the latrine after having cleaned them." Rule 26.69 of the Himachal Pradesh Manual states, "If there are no female of suitable caste for conservancy work, paid-sweepers shall be taken into the enclosure in charge of a warder and under conditions laid down in paragraph 214".

179. The notion that an occupation is considered as "degrading or menial" is an aspect of the caste system and untouchability. The caste system rigidly assigns certain tasks to specific communities based on birth, with the lowest castes, being relegated to tasks considered impure or unclean, such as manual scavenging, cleaning, and other forms of physical labour. That a person belonging to such a community is accustomed to performing menial tasks is a mandate of the caste system. Similarly, the reference to "scavenger class" is a practice of the caste system and untouchability. No social group is born as a "scavenger class". They

are forced to undertake certain jobs that are considered 'menial' and polluting based on the notions of birth-based purity and pollution.

180. Refusal to check caste practices or prejudices amounts to cementing of such practices. If such practices are based on the oppression of the marginalized castes, then such practices cannot be left untouched. The Constitution mandates an end to caste discrimination and untouchability. The provision that food shall be cooked by "suitable caste" reflects notions of untouchability, where certain castes are considered suitable for cooking or handling kitchen work, while others are not. Besides, the division of work on the basis of caste is a practice of untouchability prohibited under the Constitution.

181. As discussed, prison manuals allot tasks of a barber to individuals from a certain caste, while sweeping work is allowed to Mehtar/Hari/Chandal or similar castes. It is also provided that work shall be allotted on the basis of "attitude and sofar as may be practicable with due regard to his previous habits." This is a caste-based delegation of work based on the perceptions of the caste system that certain castes are meant to do jobs of "sweeping". The rule that a prisoner of a high caste be allowed to refuse the food cooked by other castes is a legal sanction by the State authorities to untouchability and the caste system.

182. Let us refer again to the impugned provisions which deal with "habits" of certain communities. Rule 440 of the Andhra Pradesh Manual states: "The prison tasks including conservancy work shall be allotted at the discretion of the Superintendent with due regard to capacity of the prisoner, his education, intelligence and attitude and so far as may be practicable with due regard to his previous habits." Rule 784 of the Odisha Manual states, "Prisoners who have shown, or are likely to have, a strong inclination to escape or are members of a wandering or criminal tribe, even though eligible, shall not be employed on extramural work." Rule 201 of Kerala Manual defines "habitual criminals" as follows:

"(1) any person convicted of an offence punishable under Chapters XII, XVII and XVIII of the Indian Penal Code, whose facts of the present case, show that he is by habit a robber, house breaker, dacoit, thief or receiver of stolen property or that he habitually commits extortion, cheating, counterfeiting coin, currency notes or stamps or forgery";

"(4) any person convicted of any of the offence specified in (i) above when it appears from the facts of the case, even though no previous conviction has been proved, that he is by habit a member of a gang of dacoit, on of thieves or a dealer in slaves or in stolen property";

"(5) any person of a Criminal tribe subject to the discretion of the Government."

183. The provisions that "men of wandering tribes" or "criminal tribes" have a "strong natural tendency to escape" or are by "habit" accustomed to theft reflects a stereotype that has its basis in the colonial understanding of India's caste system. These stereotypes not only criminalize entire communities but also reinforce caste-based prejudices. They resemble a form of untouchability, as they assign certain negative traits to specific groups based on identity, perpetuating their marginalization and exclusion.

By marking them as "criminal by birth," the law institutionalized a prejudiced view of these tribes, treating them as inherently dishonest and prone to theft. This stereotype-echoing elements of untouchability-reduced their humanity to a set of negative traits and perpetuated their exclusion from mainstream society. Once labelled a criminal tribe, individuals from these communities faced systematic discrimination in employment, education, and social services. The stigma attached to these labels extended beyond legal frameworks and became a part of social consciousness

184. The provision that a "non-habitual" prisoner is "by social status" and "habit of life accustomed to a superior mode of living" is another caste-based construct. This hierarchical view of social status plays into the caste-based division of labour and morality that has long been entrenched in Indian society. While those from higher castes or classes were perceived as refined and deserving of more lenient treatment (even within the colonial criminal justice system), those from lower castes or marginalized communities were viewed as having a natural tendency towards criminality or immorality. This was not only an injustice but also reinforced existing power structures, ensuring that marginalized groups were trapped in cycles of poverty and discrimination, unable to transcend the stigmatization they faced.

(v) The right to overcome caste prejudices under Article 21

185. The impugned rules foster the antiquated notions of fitness of a particular community for a certain designated job. These rules reinforce occupational immobility of prisoners who belong to certain castes. For instance, rules assigning sweeping work which stipulate that "sweepers shall be chosen from the Mehtar or Hari caste, also from the Chandal or other low castes, if by the custom of the district they perform similar work when free, or from the caste if the prisoner volunteers to do the work" designate the enumerated castes for the work in issue.

The three castes enumerated in the Rule are Scheduled Castes and have historically been compelled to do manual scavenging. The only link between the caste so designated and the work in question is their historical, caste-based link with the profession. It does not regard their work capacity, health, education, and

ability, based on an individualised assessment of the individual. Effectively, such rules obviate any inquiry into the correctional needs of the inmate and how, if at all they may be furthered by the assignment of work.

186. Such rules are indifferent to the potential of the individual prisoner to reform. Such a state of affairs is entirely opposed to substantive equality, as it contributes to institutional discrimination, depriving inmates of an opportunity to reform, at par with the others over whom the pall of caste does not hang.

187. Article 21 envisages the growth of individual personality. Caste prejudices and discrimination hinder the growth of one's personality. Therefore, Article 21 provides for the right to overcome caste barriers as a part of the right to life of individuals from marginalized communities. The protection provided by Article 21 can be seen as a constitutional guarantee that individuals from marginalized communities should have the freedom to break free from these traditional social restrictions. It extends beyond mere survival to ensure that they can flourish in an environment of equality, respect, and dignity, without being subjected to caste-based discrimination which stifles their personal growth.

188. When caste prejudices manifest in institutional settings, such as prisons, they create further restrictions on the personal development and reformation of individuals from marginalized communities. When Prison Manuals restrict the reformation of prisoners from marginalized communities, they violate their right to life. At the same time, such provisions deprive prisoners from marginalized groups of a sense of dignity and the expectation that they should be treated equally. When prisoners from marginalized communities are subjected to discriminatory practices based on caste, their inherent dignity is violated.

(vi) Caste-based division of labour/work: Whether forced labour?

189. Several provisions of different Prison Manuals impose a restriction on labour of certain communities. That is, these communities are allowed to undertake only one kind of labour. "Menial" jobs are prescribed to be performed by those communities who have been "accustomed" to performing such duties. The language used in such Manuals/Rules is rooted in a caste-based societal structure, where traditionally, certain communities were relegated to tasks considered impure or inferior, such as cleaning, manual scavenging, or other forms of servitude.

190. Again, at the risk of repetition, let us now refer to these impugned provisions. Rule 289 of the Prison Manual of Uttar Pradesh provides that a convict "shall not be called upon to perform duties of a degrading or menial character unless he belongs to a class or community accustomed to perform such duties". Rule 741 of the West Bengal Prison Manual provides "Food shall be

cooked and carried to the cells by prisoner-cooks of suitable caste, under the superintendence of a jail officer". Rule 793 provides, "The barber should belong to the A class. Sweepers should be chosen from the Mehther or Hari caste, also from the Chandal or other castes, if by the custom of the district they perform similar work when free, or from any caste if the prisoner volunteers to do the work".

Rule 36 of the Madhya Pradesh Jail Manual 1987 provides, "While latrine parade is being carried out, the mehtars attached to each latrine shall be present. The Mehtars shall empty the small receptacles into large iron drums and replace the receptacles after having cleaned them". Rule 563 provides, "The cook shall be of non-habitual class". Rule 26.69 of the Himachal Pradesh Manual states, "If there are no female of suitable caste for conservancy work, paid-sweepers shall be taken into the enclosure in charge of a warder and under conditions laid down in paragraph 214".

191. Such provisions often lead to an unfair distribution of labour within the prison system, with persons from specific communities performing honourable tasks, while those from marginalized communities are forced into undesirable work. It perpetuates the idea that some individuals are inherently suited to low-status labour based solely on their birth, reinforcing deep-rooted caste inequalities.

192. The provision that "food" shall be cooked by prisoner-cooks of "suitable caste" empowers the jail officer to discriminate against the marginalized castes. At the same time, it takes away the opportunity from them to cook food. The imposition of cleaning latrines and sweeping work to only "Mehtar, Hari caste or Chandal" or similar castes is forcing only a type of work, which is considered low-grade, upon them. Imposing labour or work, which is considered impure or low-grade, upon the members of marginalized communities amounts to "forced labour" under Article 23. The Court in Sunil Batra (II)[256] had also held that "degrading labour" cannot be forced upon prisoners.

193. Being forced to undertake the menial tasks simply because of their caste background robs prisoners of the element of choice that other prisoners enjoy. Forcing marginalized caste inmates to perform tasks like cleaning latrines or sweeping, without providing them any choice in the matter and based purely on their caste, constitutes a form of coercion. These prison rules assign them degrading labour that other inmates are not required to perform. Prisoners from lower castes are systematically exploited and their vulnerability as marginalized individuals is used as justification for assigning them low-grade tasks.

194. This type of labour assignment, based on their caste, cannot be classified as voluntary. Forcing the members of oppressed castes to selectively perform

menial jobs amounts to forced labour under Article 23. Dr Ambedkar had articulated that the socioeconomic situation of oppressed communities should not be used to exploit their labour. Article 23 strikes at this philosophy. The said article is not a caste-ignorant provision, but a caste-conscious provision.

195. Article 23 was incorporated into the Constitution to protect the members of oppressed castes from exploitative practices, where their labour is taken advantage of, and without any adequate return. This is evident from the Constituent Assembly Debates. However, the prison rules, by exploiting the labour of the oppressed castes, perpetuate the same injustice to guard against which Article 23 was inserted into the Constitution. Assigning labour based on caste background strips individuals of their liberty to engage in meaningful work, and denies them the opportunity to rise above the constraints imposed by their social identity.

196. We therefore find that the impugned provisions are violative of Articles 14, 15, 17, 21, and 23. We shall now refer to the Model Prison Manual 2016, which has been cited by the Union government as a modern manual addressing all concerns.

XV. Model Prison Manual 2016: Whether Adequate?

197. Ms. Aishwarya Bhati, learned ASG, has submitted a brief note referring to the Model Prison Manual for the Superintendence and Management of Prisons in India, 2003, and The Model Prison Manual, 2016. It is argued that the 2016 Manual explicitly prohibits caste and religion-based discrimination practices. The note refers to some of the relevant provisions:

2003 Manual

a. The 2003 Manual in Para 2.15.1 states that "Management of kitchen or cooking of food on caste or religious places will be totally banned in prisons."

b. In Para 15.22 the Manual states that "any special treatment to a group of prisoners belonging to a particular caste or religion is strictly prohibited."

c. In Chapter XXIV, Para 24.02 Note (ii) states that "No classification of prisoners shall be allowed on grounds of socioeconomic status, caste or class."

d. Para 24.35 states that "Management of kitchen or cooking of food on caste or religious places will be totally banned in prisons for women."

2016 Manual

a. The 2016 Manual in Para 2.12.4 states that "Management of kitchen or cooking of food on caste or religious places will be prohibited in prisons."

b. In Para 17.22 the Manual states that "any special treatment to a group of prisoners belonging to a particular caste or religion is strictly prohibited."

c. In Para 17.25 Note (ii) states that "No classification of prisoners shall be allowed on grounds of socio-economic status, caste or class."

d. Para 24.35 states that "Management of kitchen or cooking of food on caste or religious places will be strictly banned in prisons for women."

198. The note submitted by Ms. Bhati also refers to the Advisory dated 26 February 2024 issued by the Ministry of Home Affairs, through the Deputy Secretary (PR & ATC) to the Principal Secretary (Home/Jails) of all states and UTs and the DG/IG Prisons of all States and UTs to ensure that the State Prison Manual/Prison Act should not contain any discriminatory provisions. The advisory further states that:

"It may be noted that the Constitution of India prohibits any kind of discrimination on the grounds of religion, race, caste, place of birth etc. The Model Prison Manual, 2016 prepared by the Ministry of Home Affairs and circulated to all States and UTs in May 2016 explicitly prohibits caste and religionbased discrimination of prisoners in management of kitchen or cooking of food on caste or religious basis. The manual also provides that any special treatment to a group of prisoners belonging to a particular caste or religion is strictly prohibited. It further provides that no classification of prisoners shall be allowed on grounds of socio-economic status, caste or class."

199. To the contrary, Ms. Disha Wadekar counsel for the petitioner, has argued that the Model Prison Manual 2016 is not adequate and that it does not address issues of caste-based division of labour, segregation, and discrimination against denotified tribes. A reference was made to the definition of "habitual offenders" to argue that it is misused against persons from denotified tribes in prison. It has been submitted that the Ministry of Home Affairs may be directed to incorporate and reform the Model Prison Manual, 2016, to address the highlighted issues.

200. The Model Prison Manual 2016 was prepared "to reflect the understanding behind constitutional provisions, Supreme Court directions on prison administration and international instruments".[257] It covers a range of aspects relating to prisons, including institutional framework, custodial management, medical care, education and training of prisoners, maintenance of prisoners, emergency situations, remission, parole, premature releases and inspection of prisons, among other things. The Model Prison Manual 2016 also focuses on "prison computerization, special provisions for women prisoners, focus on after

care services, rights of prisoners sentenced to death, repatriation of prisoners from abroad, enhanced focus on prison correctional staff".[258] New chapters on legal aid and inspection of prisons have been incorporated.

201. The Model Prison Manual 2016 suffers from several lacunae. The first issue to be noted with reference to the Manual is its classification of "habitual offenders". The Manual defines "habitual offender" as "a prisoner classified as such in accordance with the provisions of applicable law or rules".[259] "Casual prisoner" is defined as "a prisoner other than a habitual offender".[260] The Manual provides for "the setting up of separate institutional facilities for different categories of prisoners", including "maximum security prisons/annexes/yards for high-risk prisoners and hardened or habitual offenders".[261]

The Manual mandates the classification of undertrial prisoners in three categories, wherein habitual offenders are tagged along with "Gangsters, hired Assassins, dacoits, serial killers/rapists/violent robbers, drug offenders, communal fanatics and those highly prone to escapes/ previous escapees/attack on police and other dangerous offenders/including those prone to self-harm/posing threat to public order".[262]

The habitual offenders are tagged in the same category in relation to classification of high risk offenders and for determination of the level of security for effective surveillance.[263] Similarly, regarding the women prisoners, it has been provided that "Habitual offenders shall be separated from casual prisoners"[264] and that "Habitual offenders, prostitutes and brothel keepers must also be confined separately".[265]

202. In a previous section of this judgment, we highlighted that the phrase "habitual offender" in several prison manuals refers to people from denotified or wandering tribes. Therefore, this definition cannot be left to be interpreted and applied "in accordance with the provisions of applicable law or rules". Otherwise, what it will end up doing is to classify and separate people from denotified tribes in prisons without any basis.

203. Second, the Manual does not explicitly prohibit physical caste-based segregation of prisoners, except in prisons for women. Only the chapter on "Women Prisoners" provides that "[n]o classification of prisoners shall be allowed on grounds of socioeconomic status, caste or class".[266] This is concerning, as the Manual was prepared in 2016, when prison manuals in different States mandated caste-based division of prisoners, as indicated in our analysis in the previous section. The Manual of 2016 therefore should have adopted a specific provision prohibiting the classification of prisoners on the basis of caste for all prisoners, as it does in the case of women prisoners.

204. Third, the Manual does not prohibit division of work on the basis of caste, except in cooking. Para 2.12.4 provides that "Management of kitchen or cooking of food on caste or religious basis shall be prohibited in prisons". Similarly, for women prisons, para 26.45 provides "Management of kitchens or cooking food on caste or religious basis should be strictly banned in prisons for women". In effect, prohibition of caste discrimination in kitchens shall also apply to allotment of work to cooks.[267] However, the Manual does not prohibit discrimination on the allotment of work other than cooking. As analysed, various prison manuals in different States specify different work to people on the basis of caste. The Model Manual 2016 should have taken into account such practices and provided specifically for their prohibition.

205. Instead, the Manual empowers the jail superintendent "for the execution of all orders regarding the labour of prisoners" and that they "shall assign to each prisoner his work on the recommendation of the classifying Committee constituted in each Central Prison for the purpose".[268] Furthermore, the medical officer shall "examine all newly admitted prisoners and record in the admission register and medical sheets particulars regarding their health, and the kind of labour they can perform in view of their health conditions".[269]

If the medical opinion states that "the health of any prisoner suffers from employment of any kind or class of labour, he shall record such opinion in the prisoner's sheet and the prisoner shall not be employed on that labour".[270] Besides, the Manual penalizes any resistance by the prisoners to perform labour allotted to them. "Wilfully disabling himself from labour" is listed as a prison offence.[271]

206. The above provisions prima facie may be essential to maintain prison discipline, but absent any provision prohibiting caste-based allotment of work, these provisions may be used to target prisoners from marginalized castes. It may create a scenario where a prisoner from a marginalized caste may not be able to deny the work allotted to them on the basis of their caste, which would also be violative of the Articles 21 and 23 of the Constitution of India, which protects individual dignity and prohibits forced labour.

In this regard, we may again refer to Sunil Batra (II)[272] which held that "allotment of degrading labour" in prisons is "an infraction of liberty or life in its wider sense and cannot be sustained" unless the procedure under Article 21 is satisfied. No such procedure which divides labour on the basis of caste can be sustained. This prohibition shall also apply to labour done in prison industries and skill development programmes under paras 15.30 and 15.31, work done by undertrial prisoners under paras 24.43 and 24.44, work done by high-risk offenders under paras 25.19, work done by women prisoners under paras 26.106 to 26.109, and labour done by young offenders under paras 27.32 and 27.33.

207. Fourth, the counsel for the petitioner have argued that the Manual does not refer to the provisions of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, which prohibit manual scavenging. Clauses 2.10 and 6.79 deal with toilets. We clarify that the Act has a binding effect even on prisons. In relation to toilets, manual scavenging[273] or hazardous cleaning[274] of a sewer or a septic tank inside a prison shall not be permitted.

208. Fifth, it has also been argued that caste-based privileges provided to certain prisoners are not forbidden, except in para 17.22. The said para states, "The main festivals of all religions should be celebrated. In these, every prisoner should be encouraged to participate. Any special treatment to a group of prisoners belonging to a particular caste or religion is strictly prohibited". In addition, prison offences include "wilfully hurting other's religious feelings, beliefs and faiths"[275] and "agitating or acting on the basis of caste or religious prejudices".[276] We clarify that no special treatment shall be given to any group of persons or individuals on the basis of caste in any scenario.

XVI. Model Prisons and Correctional Services Act, 2023

209. We now refer to the provisions of the "Model Prisons and Correctional Services Act, 2023". The Ministry of Home Affairs, in consultation with various stakeholders, prepared this draft legislation and forwarded it to all States and Union Territories in May 2023 for adoption in their respective jurisdictions.[277]

The vision behind the preparation of the Model Act was to replace the previous colonial legislations, which have been "found to be outdated and obsolete", with "a progressive and robust Act which is in tune with contemporary modern day needs and correctional ideology".[278] According to the Ministry, the Model Act is "a comprehensive document which covers all relevant aspects of prison management, viz. security, safety, scientific & technological interventions, segregation of prisoners, special provision for women inmates, taking appropriate action against criminal activities of prisoners in the prison, grant of parole and furlough to prisoners, their education, vocational training and skill development, etc."[279]

The Ministry also indicated that as "Prison" is a "State" subject, "it is for the respective State Governments to make use of the guidance provided in the Model Prisons and Correctional Services Act, 2023 and enact a suitable legislation on Prisons in their jurisdictions for bringing improvement in prison management and administration of prisoners."[280]

210. The Model Act does not contain a reference to the prohibition of caste-based discrimination. This is concerning because the Act empowers the officer-in-charge of the prison to "utilize the services of prisoners" for "administration and

management of the prisons".[281] Further, disabling from labour and continuously refusing to work is a prison offence.[282] The officer-in-charge should not be given the liberty to discriminate against any group of prisoners on the basis of caste. While the Model Prison Manual 2016 refers to the prohibition of caste discrimination in prisons in several provisions, the Model Act of 2023 has completely avoided any such mention. A provision to that effect should be inserted in the Model Act. It should ban segregation or division of work based on caste.

211. The definition of "Habitual Offender" under Section 2(12) is also problematic. It states that, "Habitual Offender means a prisoner who is committed to prison repeatedly for a crime". The phrase "committed to prison repeatedly" is vague and over-broad. It can be used to declare anyone as a habitual offender, even if they have not been convicted for a crime. The Model Act also provides that "habitual offenders" may be housed in a high security prison.[283] In addition to the category of habitual offender, the Act creates a category of "recidivist", which means "any prisoner who is convicted for a crime more than once".[284] "Habitual/recidivist prisoners" may be classified separately and segregated in prisons.[285]

212. Chapter IX of the Model Act, dealing with "Protection of Society from Criminal Activities of High-Risk Prisoners, Habitual Offenders and Hardened Criminals", also seems to be over-broad. Section 27(1) states that the society needs to be protected from "habitual offenders, along with high-risk prisoners, and hardened criminals. The said category is prohibited for "parole, furlough, or any kind of prison leave in the normal course".[286] The Act provides that "the release of a high-risk/hardened/habitual offender convict on completion of sentence or an under-trial on bail or an inmate released temporarily on parole/furlough, etc. shall be informed to the Superintendent of Police of the concerned district, who shall keep a watch on the activities of such prisoners".[287] This provision gives wide powers to the police, which may be misused.

XVII. The Continued Targeting of Denotified Tribes

213. The impugned provisions are also an instance of existing discrimination and targeting of the members of the Denotified Tribes. In a previous section of this judgment, we held that the impugned provisions discriminate against the Denotified Tribes. Dr. Muralidhar argued that the classification of "habitual offender" needs to be completely done away with. At this stage, it is necessary to discuss how the classification of "habitual offender" was initially conceptualized.

214. The classification of "habitual offender" emerged prior to the repeal of the Criminal Tribes Act. Several Provinces had enacted their habitual offender laws.

The Madras Restriction of Habitual Offenders Act, 1948 applied to individual habitual offenders.[288] The Act neither required a notified offender to attend roll call to any authority nor provided for taking finger impressions of such offender.[289]

However, once a person was notified under the Act to be a habitual offender, "no opportunity" was given to him "to defend himself against orders of restriction or internment in a settlement". Contrary to the Criminal Tribes Act or the Madras Restriction of Habitual Offenders Act, the Bombay Habitual Offenders Restriction Act, 1947 granted power to only competent courts to pass restrictive orders after necessary legal proceedings. Under the Madras law, such orders could be passed by government or officers authorised by them.[290]

215. The Rajasthan Habitual Criminals (Registration and Regulation) Act, 1950 defined "habitual criminal" as "a person who being a member of a notified tribe" who within the prescribed period, has not "been declared by an order in writing of the District Magistrate as no longer a habitual criminal". Further, it included "a person, who whether he was a member of a notified tribe or not, has within any period of ten years following the aforesaid date, been convicted not less than thrice of any of the offences specified".[291] The Rajasthan Act gave "too much discretion" to the District Magistrate.[292] A biased officer may never declare any members of a Criminal Tribe as "no longer habitual criminals" even if they may not have any convictions at all.[293] The Rajasthan Act was "hardly any improvement" from the Criminal Tribes Act.[294]

216. The Criminal Tribes Enquiry Committee, while recommending the repeal of the Criminal Tribes Act, suggested enactment of a central habitual offender legislation. However, it stated that "a person should not be branded as a habitual offender merely on grounds of suspicion".[295] In his oral evidence before the Committee, a deputy inspector general rank officer from Bihar stated, "In some of the democratic countries of the world, the surveillance kept over even hardened criminals is not done in the way in which we do it India, and a time should come when no criminal should know that he is really being followed or pursued".[296]

The Committee recommended that "a person who has been convicted twice for any non-bailable offences under Chapters XII, XVI and XVII of the Indian Penal Code including an order under section 118 of the Criminal Procedure Code should be considered a habitual offender for the purposes of the new Act".[297] The Committee was of the view that provisions similar to sections 23, 24, 26, and 27 of the Criminal Tribes Act should not be included in the new Act.[298]

217. After the repeal of the Criminal Tribes Act, several States enacted new habitual offender laws in their jurisdictions. Significantly, most States adopted an

identical definition of "habitual offenders", referring to a person who has been sentenced on conviction for at least three occasion to "a substantive term of imprisonment" for any of more of the specified offences.[299] Similarly, the respective State legislations conferred power on the government to direct the District Collector to make a register of habitual offenders within his district by entering the names and prescribed particulars of such offenders.[300]

These Acts also oust the jurisdiction of courts to review the validity of any direction or order issued under the Acts.[301] Furthermore, the District Collector or any officer authorised by him in this behalf may at any time order the finger and palm impressions, foot-prints and photographs of any registered offender to be taken.[302] Several of these Acts require the notified offenders to share their residential details, and may also restrict their movements.

218. The "habitual offender" legislations were enacted to replace the Criminal Tribes Act. However, in States such as Rajasthan, they were used to refer to members belonging to criminal tribes/denotified tribes. Applying that logic, several Prison Manuals/Rules have also referred to "habitual offender" to mean members of Denotified Tribes or wandering tribes. This cannot be accepted. A whole community ought not to have either been declared a criminal tribe in the past or a habitual offender in the present. It would not be wrong to say that the classification of "habitual offender" has been used to target members of Denotified Tribes.

219. Various habitual offender laws enacted by States are not under challenge before us in the present. Hence, we shall not deal with their validity. However, the classification is constitutionally suspect, given the vague and broad language various laws and rules have employed, which is used to target the members of Denotified Tribes. The Criminal Tribes Enquiry Committee had noted that no person can be declared as a habitual offender merely on ground of suspicion. But the same has happened, as the vague language employed leaves the discretion for the authorities to declare persons as habitual offenders merely on the ground of suspicion.

We urge the State governments to reconsider the usage of various habitual offender laws, i.e. whether such laws are needed in a constitutional system. In the meantime, the definition of "habitual offender" in the prison manuals/rules shall be in accordance with the definition provided in the habitual offender legislation enacted by the respective State legislature, subject to any constitutional challenge against such legislation in the future. In case, there is no habitual offender legislation in the State, the references to habitual offenders directly or indirectly, as discussed in this judgment, are struck down as unconstitutional. The Union and the State governments are directed to make necessary changes in the prison manuals/rules in line with this judgment.

XVIII. The Role of Legal Service Authorities in Prisons

220. In order to ensure that the fundamental rights of prisoners are not violated, the role of legal services authorities is crucial. The importance of free legal aid has been emphasized by this Court in several judgments.

(i) Right to Free Legal Aid

221. The Court, in Hussainara Khatoon v. Home Secretary, State of Bihar, recognized the "right to free legal services" as "an essential ingredient" of "reasonable, fair and just" procedure under Article 21 for a person accused of an offence.[303] It is "a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation".[304]

Later, in Sheela Barse v. State of Maharashtra,[305] regarding the plight of women prisoners in the jails of Maharashtra, the Court, while emphasizing free legal assistance, expressed its concern on "the helpless condition of a prisoner who is lodged in a jail who does not know to whom he can turn for help in order to vindicate his innocence or defend, his constitutional or legal rights or to protect himself against torture and ill-treatment or oppression and harassment at the hands of his custodians".

222. The Court declared in Mohd. Hussain v. The State (Govt. of NCT) Delhi[306] that Article 39A "casts duty on the State to ensure that justice is not denied by reason of economic or other disabilities in the legal system and to provide free legal aid to every citizen with economic or other disabilities". In Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid v. State Of Maharashtra,[307] the Court held that the right to access to legal aid "flows from Articles 21 and 22(1) of the Constitution and needs to be strictly enforced".

The Court directed all the magistrates in the country to inform a person accused of committing a cognizable offence produced before their court, that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, that one would be provided to him from legal aid at the expense of the State. The Court clarified that "any failure to fully discharge the duty would amount to dereliction in duty and would make the concerned magistrate liable to departmental proceeding".

(ii) Inspection by Legal Services Authorities

223. Section 12 of the Legal Services Authorities Act, 1987, provides that all "persons in custody" are entitled to free legal aid. In 2015, NALSA wrote a letter to all State Legal Services Authorities (SLSAs) to constitute a prison legal aid clinic (PLAC) in every prison under their jurisdiction.[308] To further strengthen

the functioning of PLACs, NALSA formulated the Standard Operating Procedures (SOP) on Access to Legal Aid Services to Prisoners and Functioning of the Prison Legal Aid Clinics, 2022.

224. Under this SOP, there are provisions for two types of inspection visits to the prisons. One shall be undertaken by the secretary of the DLSA, and the other is to be done by the chairperson of the DLSA, i.e., the district and sessions judge:

"4. Monitoring of functioning of PLAC by DLSA

4.1 Periodicity of visits by DLSA Secretary: DLSA Secretary will visit and inspect the Prison Legal Aid Clinics at least once a month.

4.2 Role of the DLSA Secretary during prison visits: The following is the role:

a) To ensure that legal aid lawyers have been appointed to represent all undertrials. In circumstances where any prisoner is found without legal representation during the visit by the DLSA, immediate steps to be taken towards ensuring appointment.

b) To verify whether panel lawyers are meeting and interacting with prisoners including legal aid beneficiaries. In circumstances where panel lawyers are not interacting and communicating with the prisoners, the lawyer must be called to understand the concern and best respond to it. If need be, where deemed appropriate by the Secretary, DLSA, the concern lawyer may be removed from the panel, and a fresh appointment initiated.

c) To check the prison conditions with respect to health, sanitation, food and hygiene in addition to access to legal representation. If any such concerns are raised, the same shall be shared with the Chairman of the DLSA, Member Secretary of SLSA as well as the Board of Visitors who have the authority to raise it to the appropriate authority.

d) To track whether there are any instances of non-production at court hearings, be it physical or virtual. If such instances are reported, take immediate steps to rectify such misgivings.

e) To ensure that concerns of vulnerable category of prisoners are heard and responded to.

f) To ensure and check the documentation and reporting practices of the Clinic.

g) To ensure that the PLVs and JVLs are able to perform their duties effectively, and have access to the prison at all times. They should ensure that no unnecessary

hindrances are set forward from the prison officers, which may create hurdle in working of the PLAC.

4.3 Periodicity of visits by the Chairman, DLSA (District & Sessions Judge): The Chairman, DLSA (District & Sessions Judge) shall visit the Prison Legal Aid Clinics at least once in three months. He would also visit the premises of the prison to understand any concerns regarding prison conditions, and also enquire into the functioning of the PLAC. They may also interact with prisoners to received feedback for services provided.

4.4 Role of the Chairman, DLSA during prison visits: The Chairman DLSA would undertake to inspect the condition of the prisons, communicate with the inmates to understand their concerns with respect to their regimen, food, sanitation hygiene etc. in addition to access to legal representation. In circumstances where concerns are raised, the same may be raised in the meetings with the Secretary, DLSA to take measures to combat them. Specialized formats for documentation of prison visits by the Chairman may be prepared by the SLSA."[309]

The inspections have to be undertaken every month by the Secretary, DLSA, and quarterly by the Chairperson, DLSA. During these inspections, the authority inspecting is supposed to look at the overall condition of the prisons.

225. Apart from this, a Board of Visitors is constituted, as per the Model Prison Manual 2016, at a district level. The Board comprises of:

"29.03 The Board of Visitors shall comprise the following official members:

a) The District Judge at the District level, or the Sub- Divisional Judicial Magistrate exercising Jurisdiction, at Sub-Division level

b) The District Magistrate, at the District level or Sub- Divisional officer at Sub-Divisional level

c) District Superintendent of Police

d) The Chief Medical Officer of the Health Department, at the District level or the Sub-Divisional Medical Officer at Sub-Division level

e) The Executive Engineer, PWD at the District level, or Assistant Engineer PWD at Sub-Divisional level

f) The District Education Officer dealing with literacy programmes.

g) District Social Welfare Officer

h) District Employment Officer

i) District Agricultural Officer

j) District Industrial Officer

The Board shall make at least one visit per quarter and for this purpose, presence of three members and the chairman shall constitute quorum.

29.04 The Board of Visitors shall also comprise the following Non-Official Members:-

a) Three Members of the Legislative Assembly of the state of which one should be a woman.

b) A nominee of the State Human Rights Commission

c) Two social workers of the District/Sub-Division; one of them shall be a woman having an interest in the administration of prisons and welfare of prisoners.

29.05 The District Judge shall be the Chairman of the Board of visitors at District level and the Sub- Divisional Judicial Magistrate shall be the Chairman at Sub-Division level. The Non-official visitors after their appointment must be sensitised and trained about their duties, roles and responsibilities."

226. The duties of the Board have been provided as follows:

"29.22 All Visitors, official and non-official, at every visit shall:

(a) examine the cooked food;

(b) inspect the barracks, wards, work-sheds and other buildings of the prison generally;

(c) ascertain whether considerations of health, cleanliness and security are attended to, whether proper management and discipline is maintained in every respect and whether any prisoner is illegally detained, or is detained for undue length of time while awaiting trial;

(d) examine prison registers and records, except secret records and records pertaining to accounts;

(e) hear and attend to all representation and petitions made by or on behalf of the prisoners;

(f) direct, if deemed advisable, that any such representation or petition be forwarded to the Government;

(g) suggest new avenues for improvement in correctional work."[310]

The comments of the Board of Visitors are recorded in the visitors' book of the prison and are forwarded to the Inspector General (IG) of Prisons. Any action on the comments is at the discretion of the IG Prisons.

227. The Model Prisons and Correctional Services Act, 2023 also envisages inspection of prisons, including by a Board of Visitors headed by the district judge/additional district judge/sub-divisional judicial magistrate.[311] It also includes the provision for "free legal aid to the prisoners in accordance with the provisions of the Legal Services Authorities Act, 1987" and the relevant standard operating procedure.[312]

XIX. The Future of Substantive Equality & Institutional Discrimination

228. What does the future hold for India? Dr Ambedkar had expressed this concern in his last address to the Constituent Assembly. The concern holds true even today. More than 75 years since independence, we have not been able to eradicate the evil of caste discrimination. We need to have a national vision for justice and equality, which involves all citizens. As Jamal Greene noted:

"There is also such a thing as rights. Those individual people and families have hopes and fears that matter but that conflict with the fears and hopes of their fellow human beings. Their aspirations and worries don't depend on what Framers believed, or how Madison phrased the Bill of Rights, or whether some judicial opinion says "strict scrutiny" applies to a case. They depend on what people's expectations are, how they are treated by others, and why. We are bound to experience the rights we have differently than anyone else does-this is what makes them ours. The central challenge for any system of justice has always been that we dream alone but we live together."[313]

Therefore, we need real and quick steps to identify the instances of existing inequalities and injustices in our society. Words, without action, would mean nothing for the oppressed. As Paulo Freire noted in the "Pedagogy of the Oppressed":

"The oppressor is solidary with the oppressed only when he stops regarding the oppressed as an abstract category and sees them as persons who have been unjustly dealt with, deprived of their voice, cheated in the sale of their labor- when he stops making pious, sentimental, and individualistic gestures and risks an act of love. True solidarity is found only in the plenitude of this act of love, in its existentiality, in the praxis. To affirm that men and women are persons and as

persons should be free, and yet to do nothing tangible to make this affirmative a reality, is a farce."[314]

We need a compassionate approach, as Alan Paton had described: "It is my own belief that the only power which can resist the power of fear is the power of love. It's a weak thing and a tender thing; men despise and deride it. But I look for the day when we shall realize that the only lasting and worth-while solution of our grave and profound problems lies not in the use of power, but in that understanding and compassion without which human life is an intolerable bondage, condemning us all to an existence of violence, misery and fear."[315]

229. We need an institutional approach where people from marginalized communities could share their pain and anguish about their future collectively.[316] We need to reflect and do away with institutional practices, which discriminate against citizens from marginalized communities or treat them without empathy. We need to identify systemic discrimination in all spaces by observing patterns of exclusion. After all, the "bounds of caste are made of steel"- "Sometimes invisible but almost always inextricable".[317] But not so strong that they cannot be broken with the power of the Constitution.

230. This petition highlighted an instance of institutional systemic discrimination. We appreciate the assistance provided by the lawyers in dealing with the issue.

XX. Conclusion and Directions

231. In light of the discussion, we issue the following directions:

(i) The impugned provisions are declared unconstitutional for being violative of Articles 14, 15, 17, 21, and 23 of the Constitution. All States and Union Territories are directed to revise their Prison Manuals/Rules in accordance with this judgment within a period of three months;

(ii) The Union government is directed to make necessary changes, as highlighted in this judgment, to address caste-based discrimination in the Model Prison Manual 2016 and the Model Prisons and Correctional Services Act 2023 within a period of three months;

(iii) References to "habitual offenders" in the prison manuals/Model Prison Manual shall be in accordance with the definition provided in the habitual offender legislation enacted by the respective State legislatures, subject to any constitutional challenge against such legislation in the future. All other references or definitions of "habitual offenders" in the impugned prison manuals/rules are declared unconstitutional. In case, there is no habitual offender legislation in the State, the Union and the State governments are directed to make necessary

changes in the manuals/rules in line with this judgment, within a period of three months;

(iv) The "caste" column and any references to caste in undertrial and/or convicts' prisoners' registers inside the prisons shall be deleted;

(v) The Police is directed to follow the guidelines issued in Arnesh Kumar v. State of Bihar (2014) and Amanatullah Khan v. The Commissioner of Police, Delhi (2024) to ensure that members of Denotified Tribes are not subjected to arbitrary arrest;

(vi) This Court takes suo motu cognizance of the discrimination inside prisons on any ground such as caste, gender, disability, and shall list the case from now onwards as In Re: Discrimination Inside Prisons in India. The Registry is directed to list the case after a period of three months before an appropriate Bench;

(vii) On the first date of hearing of the above suo motu petition, all States and the Union government shall file a compliance report on this judgment;

(viii) The DLSAs and the Board of Visitors formed under the Model Prison Manual 2016 shall jointly conduct regular inspections to identify whether caste-based discrimination or similar discriminatory practices, as highlighted in this judgment, are still taking place inside prisons. The DLSAs and the Board of Visitors shall submit a joint report of their inspection to the SLSAs, which shall compile a common report and forward it to NALSA, which shall in turn file a joint status report before this Court in the above-mentioned suo motu writ petition; and

(ix) The Union government is directed to circulate a copy of this judgment to the Chief Secretaries of all States and Union territories within a period of three weeks from the date of delivery of this judgment.

232. The writ petition is disposed of.

233. Pending application(s), if any, stand disposed of.

.....CJI. [Dr. Dhananjaya Y. Chandrachud]

.....J. [J.B. Pardiwala]

.....J. [Manoj Misra]

New Delhi;

October 03, 2024

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2 Unni Krishnan v. State of Andhra Pradesh, (1993) 1 SCC 645

3 Justice (Retd.) K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1

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11 CPIO, Supreme Court of India v. Subhash Chandra Agarwal, 2019 (16) SCALE 40

12 Article 13(1) of the Indian Constitution provides: "All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void."

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14 Ibid

15 Navtej Singh Johar v. Union of India, 2018 INSC 790 [Justice Chandrachud]

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206 Ibid, p. 8

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220 2018 INSC 248

221 2019 INSC 1102

222 (2020) 4 SCC 727

223 2021 INSC 701

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proceedings or arguments and file written submission on conviction, acquittal or sentencing."

225 2021 INSC 272

226 2023 INSC 950

227 2019 INSC 305

228 2024 INSC 383

229 2014 INSC 463

230 2022 INSC 386

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232 Ibid, Section 27

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244 Charles Sobraj v. Supdt., Central Jail, 1978 INSC 149

245 RK Kapoor Committee, pp. 157-160.

246 Sunil Batra (I) v. Delhi Administration, (1978) 4 SCC 494

247 Hiralal Mallick v. State of Bihar, (1977) 4 SCC 44.

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252 Rule 1036, Andhra Pradesh Manual 1979

253 Rule 4, Odisha Rules 2020

254 Rule 214, Tamil Nadu Prison Rules 1983

255 Chapter XLI, Section II: Rule 3, Maharashtra Rules

256 1979 INSC 271

257 Model Prison Manual 2016, p. 4, https://www.mha.gov.in/sites/default/files/PrisonManual2016.pdf

258 Ibid

259 Para 13 of Chapter I, Model Prison Manual 2016

260 Para 3 of Chapter I, Model Prison Manual 2016

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262 Ibid, Para 24.01

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301 Section 19, Andhra Pradesh Habitual Offenders Act, 1962; Section 15, Tamil Nadu Habitual Offenders Act, 1948; Section 22, Goa, Daman and Diu Habitual Offenders Act, 1976; Section 22, Gujarat Habitual Offenders Act, 1959; Section 22, Bombay Habitual Offenders Act, 1959; Section 21, Himachal Pradesh Habitual Offenders Act, 1969; Section 23, Jammu and Kashmir Habitual Offenders (Control and Reform) Act, 1956; Section 18, Karnataka Habitual Offenders Act, 1961; Section 18, Kerala Habitual Offenders Act, 1960; Section 12, Orissa Restriction of Habitual Offenders Act, 1952; Section 14, Rajasthan Habitual Offenders Act, 1953

302 Section 6, Andhra Pradesh Habitual Offenders Act, 1962; Section 6, Goa, Daman and Diu Habitual Offenders Act, 1976; Section 6, Gujarat Habitual Offenders Act, 1959; Section 6, Bombay Habitual Offenders Act, 1959; Section 6, Himachal Pradesh Habitual Offenders Act, 1969; Section 9, Jammu and Kashmir Habitual Offenders (Control and Reform) Act, 1956; Section 6, Karnataka Habitual Offenders Act, 1961; Section 6, Kerala Habitual Offenders Act, 1960; Section 4, Rajasthan Habitual Offenders Act, 1953;

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IN THE SUPREME COURT OF INDIA

Rama Devi
Vs.
State of Bihar and Others

[Criminal Appeal Nos. 2623-2631 of 2014]
[Criminal Appeal Nos. 2632-2640 of 2014]

HEADNOTE – Mere delay in forwarding the FIR to the jurisdictional magistrate would not be fatal to the prosecution's case unless it is shown by the accused that the delay had caused prejudice to his case.

JUDGMENT

Sanjiv Khanna, J.

1. This judgment decides two sets of appeals, one by the State of Bihar, through the Central Bureau of Investigation[1], and the other by Rama Devi, wife of one of the deceased - Brij Bihari Prasad, a member of the Bihar Legislative Assembly. The second deceased - Lakshmeshwar Sahu - was the bodyguard of Brij Bihari Prasad and a member of the Bihar police.

2. The impugned judgment of the High Court of Judicature at Patna dated 24.07.2014 reverses the judgment of the trial court and acquits the nine accused[2] of the charges punishable under Sections 302, 307, 333, 355 and 379, all read with Section 34 of the Indian Penal Code, 1860[3], and Section 27 of the Arms Act, 1959.[4]

3. The incident in question took place on 13.06.1998 at around 08:15 p.m. at the Indira Gandhi Institute of Medical Science, Patna.[5] On the basis of the fardbeyan (Exhibit 50) of Amarendra Kumar Sinha (PW-10) recorded by S.S.P. Yadav, Inspector-cum-Officer-in-Charge, Shastri Nagar Police Station[6], on 13.06.1998 at 9:00 p.m., First Information Report[7] No. 336/1998, (Exhibit 51 and 51/1) was lodged under Sections 302, 307, 34, 120B, 379 of the IPC and Section 27 of the 1959 Act at 12:15 a.m. on 14.06.1998.

The Prosecution Case

4. The prosecution case is as follows:

(i) On 13.06.1998 at around 6:30 p.m., Brij Bihari Prasad, who was in judicial custody and admitted for treatment at IGIMS hospital, was taking a walk outside

the wardroom along with - Amarendra Kumar Sinha (PW-10), Arbind Singh (PW-13), Ram Nandan Singh (PW-12), Mahant Ashwani Das (PW-25), Paras Nath Chaudhury (PW-1), Onkar Singh and 2-4 others.

(ii) Brij Bihari Prasad was also accompanied by his bodyguard - Lakshmeshwar Sahu, who was armed with a carbine, and other sepoys.

(iii) Two vehicles, a Sumo car, with registration number, BR-1P-1818, followed by an Ambassador car, registration number of which could not be ascertained, entered the IGIMS hospital from the southern main gate, Bailey Road side and stopped near Brij Bihari Prasad.

(iv) Occupants of the said cars, namely - Mantu Tiwari (A-4), Vijay Kumar Shukla @ Munna Shukla (A-8), Rajan Tiwari (A-9), and Shri Prakash Shukla @ Shiv Prakash Shukla (since deceased), Satish Pandey (since deceased) and Bhupendra Nath Dubey (since deceased) came out of the vehicles.

(v) Mantu Tiwari(A-4) was armed with a sten gun and all others were armed with pistols. Bhupendra Nath Dubey (since deceased) abusively exhorted others to shoot at Brij Bihari Prasad while he himself also fired at Brij Bihari Prasad with his pistol.

(vi) Mantu Tiwari (A-4) and Shri Prakash Shukla @ Shiv Prakash Shukla (since deceased) fired at Brij Bihari Prasad from their sten gun and pistol respectively.

(vii) Satish Pandey, Vijay Kumar Shukla @ Munna Shukla (A-8) and Rajan Tiwari (A-9) fired at Lakshmeshwar Sahu.

(viii) Both Brij Bihari Prasad and Lakshmeshwar Sahu collapsed and died.

(ix) Rabindra Bhagat (PW-14) suffered a gunshot wound in the crossfire.

5. The post-mortem reports dated 14.06.1998 (Exhibits 9 & 9/1), proved by Dr. Arvind Kumar Singh (PW-7), establish the homicidal death of Brij Bihari Prasad and Lakshmeshwar Sahu due to multiple gunshot injuries resulting in haemorrhage and shock. The multiple gunshot wound entries are consistent with successive firing from firearms/pistol. To this extent the prosecution version is unchallenged.

6. As per the prosecution case, there were eleven eye-witnesses, namely, Paras Nath Chaudhury (PW-1), Amarendra Kumar Sinha (PW-10), Amod Kumar (PW-11), Ram Nandan Singh (PW-12), Arbind Singh (PW- 13), Rabindra Bhagat (PW-14), Kamakhya Narain Singh (PW-15), Bhola Prasad Premi (PW-16), Mahanth Ashwani Das (PW-25), Shashi Bhushan Singh (PW-42) and Binod Kumar Singh (PW-19). However, Paras Nath Chaudhury (PW-1), Mahanth

Ashwani Das (PW-25), Shashi Bhushan Singh (PW-42), and to some extent, Amarendra Kumar Sinha (PW-10) had supported the prosecution case. Others were hostile or partly hostile as they did not support the prosecution case or did not name/identify the perpetrators.

7. Primarily relying on the testimonies of Paras Nath Chaudhury (PW-1), Mahant Ashwani Das (PW-25), Shashi Bhushan Singh (PW-42) and Amarendra Kumar Sinha (PW-10), the trial court convicted the respondents Suraj Bhan Singh (A-1), Mukesh Singh (A-2), Lallan Singh (A-3), Mantu Tiwari (A-4), Captain Sunil Singh (A-5) (since deceased)[8], Ram Niranjan Chaudhary (A-6), Vijay Kumar Shukla @ Munna Shukla (A-8), Rajan Tiwari (A-9) and Shashi Kumar Rai (A-7) (since deceased).[9]

Reasoning of the High Court

8. The judgment of the High Court refers to the evidence in detail, with the acquittal of the respondents grounded in the following findings:

(i) FIR No. 336/1998, marked Exhibit 51, is ante-timed.

(ii) Shashi Bhushan Singh (PW-42) is not an eye-witness, but rather a planted witness, as his name was not mentioned in the fardbeyan (Exhibit 50). His antecedents are questionable.

(iii) The testimony of Paras Nath Chaudhury (PW-1) implicating the respondents-accused is unreliable because:

(a) he is Brij Bihari Prasad's brother-in-law;

(b) he should have been the informant but was not, which raises doubts about his presence at the IGIMS hospital;

(c) he contradicted the prosecution's case by accepting that Rajan Tiwari (A-9), whom he knew beforehand, was not present during the incident. However, in his statement under Section 161 of the Code of Criminal Procedure, 1973[10], he claimed that Rajan Tiwari (A-9) was one of the assailants of Lakshmeshwar Sahu; and

(d) he deposed under the pressure of his sister, Rama Devi (PW- 24), who was present in the court during the recording of his evidence on all (three) days.

(iv) The deposition of Mahanth Ashwani Das (PW-25) is unreliable on the following grounds:

(a) he is a convict in a murder case registered in the year 1979;

(b) he did not surrender after the dismissal of his appeal by the High Court and was accordingly declared an absconder;

(c) he was arrested on 04.05.2006 while deposing before the trial court in the present case;

(d) he was under the patronage and protection of Brij Bihari Prasad and his wife, Rama Devi (PW-24);

(e) there is a contradiction between the versions of Shashi Bhushan Singh (PW-42) and Mahanth Ashwani Das (PW-25) regarding their presence in the hospital room of Brij Bihari Prasad at IGIMS hospital. While Shashi Bhushan Singh (PW-42) claims that Mahanth Ashwani Das (PW-25) was in the hospital room when he arrived there, Mahanth Ashwani Das (PW-25) states that Shashi Bhushan Singh (PW-42) was already present in the hospital room of Brij Bihari Prasad when he (Mahanth Ashwani Das) reached the hospital.

(f) there is a discrepancy as to when the police recorded the statement of Mahanth Ashwani Das (PW-25) and his version of events on 13.06.1998 and 14.06.1998. Mahanth Ashwani Das (PW-25) claims that after the occurrence he and Rama Devi (PW-24) had proceeded to the official residence of Brij Bihari Prasad from IGIMS hospital at about 9:00-9:30 p.m. Mahanth Ashwani Das (PW-25) had left for Muzzaffarpur Math in the night at about 12:30 a.m. on 14.06.1998. Thus, the police could not have recorded the statement of Mahanth Ashwani Das (PW-25) in the IGIMS hospital at 12:30 a.m. on 14.06.1998. Further, if Mahanth Ashwani Das (PW-25) was present at the time of occurrence, as deposed by him, police should have recorded his statement before he left the IGIMS hospital campus around 9:30 p.m.

(v) Shashi Bhushan Singh (PW-42) was not an eye-witness, as his presence is not mentioned in the fardbeyan (Exhibit 50) or the FIR (Exhibits 51 and 51/1). His statement under Section 161 of the CrPC was recorded belatedly, five days after the incident.

(vi) Rama Devi (PW-24) is not an eye-witness, as she had left the place of occurrence prior to the incident. The police did not produce Rama Devi's statement under Section 161 of the CrPC recorded on 13.06.1998 by the second investigating officer[11] - Shashi Bhushan Sharma (PW-54), who had taken charge of the investigation in compliance with the instructions of Senior Superintendent of Police, Patna. The version of Rama Devi (PW- 24) that she learnt names and details of the assailants from the visitors she had met earlier in the day in the hospital room is not mentioned in the Section 161 CrPC statements dated 18.10.1999 and 28.03.2001 given by her to Rai Singh Khatri (PW-62), IO of CBI.

This is corroborated by the statement of Rai Singh Khatri (PW-62), IO of CBI, who testified that Rama Devi (PW-24) did not name the assailants. Since the initial statement of Rama Devi (PW-24) under Section 161 CrPC recorded by Shashi Bhushan Sharma (PW-54) was not on record and she later failed to disclose the name of the assailants in her Section 161 CrPC statements to Rai Singh Khatri (PW-62), IO of CBI, her deposition in court, stating that Paras Nath Chaudhury (PW-1), Ram Niranjan Chaudhary (A-6), Kamakhya Narain Singh (PW-15), Arbind Singh (PW-13), Amarendra Kumar Sinha (Informant/PW-10), Onkar Singh, Mahanth Ashwani Das (PW-25), Shashi Bhushan Singh (PW-42) and others were present with the deceased, should not be relied on.

(vii) The eye-witnesses did not testify about the retaliatory firing by the security personnel of Brij Bihari Prasad who were present at the scene of the occurrence. The recovery of empty cartridges and the firearms examination report (Exhibit-17) indicate that shots were fired from two of the four rifles which had been issued to the security guards.

Court depositions and analysis of evidence

9. We will now examine in some detail the court depositions of Paras Nath Chaudhury (PW-1), Mahanth Ashwani Das (PW-25), Amarendra Kumar Singh (PW-10) and Rama Devi (PW-24), before scrutinising the reasons given by the High Court to discredit their versions. Our discussion will also address the arguments raised by both sides, with particular focus on the contention of the respondents that the court depositions of Paras Nath Chaudhury (PW-1), Mahanth Ashwani Das (PW-25), Amarendra Kumar Singh (PW-10) and Rama Devi (PW-24) should not be accepted.

10. At the outset, we express our agreement with the reasoning given by the High Court for disbelieving the presence of Shashi Bhushan Singh (PW- 42) at the spot, and consequently, his deposition as an eye-witness for the following reasons:

(i) Shashi Bhushan Singh (PW-42) is not mentioned as one of the persons present at the place of occurrence in the fardbeyan (Exhibit-50), as also in the FIR (Exhibits 51 and 51/1). These documents name the eyewitnesses. Therefore, the absence of the name of Shashi Bhushan Singh (PW-42) is significant.

(ii) His statement under Section 161 CrPC was recorded on 18.06.1998, i.e., 5 days after the date of occurrence;

(iii) Shashi Bhushan Singh (PW-42) has deposed about taking the dead body of Brij Bihari Prasad on 14.06.1998 from Patna to Behihari village, the native place of Brij Bihari Prasad. Therefore, the delay in his Section 161 CrPC statement impairs his assertion of being an eyewitness, making it unworthy of acceptance;

(iv) Although Paras Nath Chaudhury (PW-1), Mahant Ashwani Das (PW-25), and Rama Devi (PW-24) have testified to the presence of Shashi Bhushan Singh (PW-42) as an eyewitness, this assertion should not be accepted. The fardbeyan (Exhibit P-50), being the first written account made immediately after the incident, is unexceptionable. Furthermore, the unexplained delay of five days in recording the statement of Shashi Bhushan Singh (PW-42) as an eyewitness dents the credibility of his account.

(v) For the same reasons, the reliance of the prosecution on the court testimony of Amarendra Kumar Sinha (PW-10), averring the presence of Shashi Bhushan Singh (PW-42) at the place of occurrence, contrary to his fardbeyan, is erratic and untrustworthy. Amarendra Kumar Sinha (PW-10), did not entirely support the prosecution case, yet being conscious of the fact that he was the informant of the fardbeyan, he could not completely resile. His dock version about the presence of Shashi Bhushan Singh (PW-42) has been rightly disbelieved.

Testimony of Paras Nath Chaudhury (PW-1)

11. Paras Nath Chaudhury (PW-1) is categoric about his presence in the hospital at about 6:40-7:00 p.m. on 13.06.1998 to visit Brij Bihari Prasad. He named the persons who were present with him in the hospital room, which includes Mahanth Ashwani Das (PW-25). The testimony captures the following:

(i) Brij Bihari Prasad went for a walk along with the people of his constituency and supporters who had come to see him. The police personnel assigned for his protection also accompanied him.

(ii) After some time, two vehicles - a white Sumo car (Registration No. BR-1P-1818) and a white Ambassador car - came into the hospital and stopped at a distance of about 20 steps in front of Brij Bihari Prasad.

(iii) Bhupendra Nath Dubey (since deceased) alighted from the Sumo car, which was also carrying 2-3 more persons. 2-3 other people also alighted from the Ambassador car.

(iv) Bhupendra Nath Dubey (since deceased) pointed towards Brij Bihari Prasad and ordered that he be killed, while he himself also started firing shots. Others joined him in the firing.

(v) Paras Nath Chaudhury (PW-1) specifically identified Satish Pandey (since deceased) as an occupant of the Ambassador car.

(vi) Vijay Kumar Shukla @ Munna Shukla (A-8), who was a legislator from Lal Ganj, got down from the Ambassador car, while Mantu Tiwari (A-4), along with 1-2 more people, alighted from the Sumo.

(vii) Paras Nath Chaudhury (PW-1) saw Mantu Tiwari (A-4) but did not know his name. He came to know about the name subsequently from Amarendra Kumar Sinha (PW-10) and Shashi Bhushan Singh (PW-42).

(viii) Mantu Tiwari (A-4) was carrying a big firearm while Bhupendra Nath Dubey (since deceased) was carrying a small firearm. The other assailants were carrying either a revolver or a small firearm.

(ix) Bodyguard Lakshmeshwar Sahu who was carrying a carbine, was also fired upon.

(x) As a result of the firing, both Lakshmeshwar Sahu and Brij Bihari Prasad collapsed.

(xi) While leaving, Bhupendra Nath Dubey (since deceased) took the carbine that belonged to Lakshmeshwar Sahu and raised the slogan "Jai Bajrang Bali".

(xii) After the assailants left, Paras Nath Chaudhury (PW-1) and other visitors went near the dead bodies of Brij Bihari Prasad and Lakshmeshwar Sahu.

(xiii) Paras Nath Chaudhury (PW-1) identified both Mantu Tiwari (A-4) and Vijay Kumar Shukla @ Munna Shukla (A-8) in the court.

(xiv) While Paras Nath Chaudhury (PW-1) identified Rajan Tiwari (A-9) in the court, he testified that Rajan Tiwari (A-9) was not present at the place of occurrence. Paras Nath Chaudhury (PW-1) had not seen Suraj Bhan Singh (A-1) and Shashi Kumar Rai (A-7) at the place of occurrence.

(xv) Paras Nath Chaudhary (PW-1) establishes the presence of Amarendra Kumar Sinha (PW-10), Arbind Singh (PW-13), Shashi Bhushan Singh (PW-42), Ram Nandan Singh (PW-12), Mahanth Ashwani Das (PW-25), Rabindra Bhagat (PW-14), one Kanti, resident of Jamui, Kamakhya Narain Singh (PW-15), Ram Niranjan Chaudhary (A-6), Vijay Jha (PW-51) and 2-3 other persons at the IGIMS hospital.

12. The cross-examination of Paras Nath Chaudhury (PW-1) brings the following aspects to light:

(i) He accepted that Rama Devi (PW-24) was his sister and that she was present in the court on the day of the hearing but left while his evidence was being recorded.

(ii) He affirmed that Brij Bihari Prasad was admitted to the hospital 10- 12 days before the occurrence.

(iii) Before the date of occurrence, he met Brij Bihari Prasad in the hospital on 4-5 occasions.

(iv) Brij Bihari Prasad, being in judicial custody, was admitted to IGIMS hospital by the jail administration.

(v) He accepted that his sister, Rama Devi (PW-24), had contested Lok Sabha elections in the past. Rama Devi (PW-24) contested Vidhan Sabha elections after the death of Brij Bihari Prasad.

(vi) He states that he had also taken part in the election campaign of Rama Devi (PW-24).

(vii) He denied knowing the fact that Devendra Nath Dubey, one of the candidates of Motihari constituency, was the main rival of Rama Devi (PW-24).

(viii) He further denied that Brij Bihari Prasad along with his brother, Shyam Bihari Prasad, murdered Devendra Nath Dubey.

(ix) He affirmed his presence at the place of occurrence and denied the claim that he did not witness the incident.

(x) He refuted the suggestion that being the brother-in-law of Brij Bihari Prasad, he is giving false evidence.

(xi) He also denied the claim that he was deposing at the behest of his sister Rama Devi (PW-24).

(xii) He reiterates that Mahanth Ashwani Das (PW-25) and others were present at the hospital.

(xiii) Two guards, which included Lakshmeshwar Sahu, were walking beside Brij Bihari Prasad.

(xiv) After the firing, the hospital staff and other people present started running in different directions.

(xv) Rama Devi (PW-24) came to the hospital after the incident. He testifies to seeing her cry beside the dead body of Brij Bihari Prasad.

(xvi) Police officers examined the dead body of Brij Bihari Prasad and prepared an Inquest Report. He denies signing the Inquest Report or any other document.

(xvii) He had gone to the hospital the next morning on 14.06.1998.

(xviii) He mentioned that his police statement was recorded about 10-12 hours[12] after the incident but could not recall the exact date since it was taken seven years ago.

13. Though it was pointed out that Paras Nath Chaudhury (PW-1), in his testimony, could not remember the number of the hospital room or whether it was south-facing or not, this aspect would not, in our opinion, dent his core testimony. It is apposite to note that Paras Nath Chaudhury (PW-1) was aware that the hospital room was on the ground floor and there was a verandah after crossing 4-5 rooms on the west side. He further stated that there was a cycle stand, a vacant place for sitting, and a road which joins Bailey Road on the west side.

14. Paras Nath Chaudhury[13] (PW-1) accepts that he did not seek prior permission from the court or the jail authorities to visit Brij Bihari Prasad in the hospital, nor did he make any entry into the hospital register. This is also true for other visitors, a position accepted by the prosecution.

The absence of a register entry or prior permission, a factor to be taken into consideration, is not sufficient reason to discard bounteous and credible evidence and material establishing that Brij Bihari Prasad, a political leader with influence, had numerous visitors and supporters meeting him at the hospital. The fardbeyan (Exhibit-50) and the ocular evidence of Rama Devi[14] (PW-24) and Mahanth Ashwani Das[15] (PW- 25), establish the presence of Paras Nath Chaudhury (PW-1) and other visitors. Further, the following witness accounts establish the presence of visitors and eyewitnesses:

➢ Amarendra Kumar Sinha (PW-10) has deposed and accepted the presence of Arbind Singh (PW-13), Shashi Bhushan Singh (PW- 42), Ram Niranjan Chaudhary (A-6) and 7-8 other persons.

➢ Arbind Singh (PW-13), who was declared hostile, accepted that Amarendra Kumar Sinha (PW-10), Shashi Bhushan Singh (PW- 42) and 5-7 other persons had come to the hospital.

➢ Rabindra Bhagat (PW-14), the injured witness who also turned hostile, deposed to the presence of two other persons accompanying Brij Bihari Prasad.

Once the presence of a witness at the place of occurrence is proven, their testimony, if credible and truthful, should not be dismissed solely based on non-compliance with hospital and prison protocols.

15. The reasoning given by the High Court to disregard and doubt the eyewitness account of Paras Nath Chaudhury (PW-1), on the premise that he ought to have been the informant because he is the brother-inlaw of Brij Bihari Prasad and was present at the hospital at the time of occurrence, is conjectural and unfounded. This fact cannot ipso facto lead to the disavowal of his testimony.

Such a presumption imposes a rigid formula for determining who should be an informant, which the law does not envision. It is an accepted and admitted position that the name of Paras Nath Chaudhury (PW-1) has been mentioned in the fardbeyan and in the FIR as one of the persons present at the hospital. Any person can be an informant of a case, and the police may also register a case on their own. The rationale of the High Court for dismissing the testimony of Paras Nath Chaudhury (PW-1) is fundamentally flawed.

16. Yet another reason for rejecting his testimony stems from contradictions about the presence of Rajan Tiwari (A-9) as an assailant at the hospital. In his police statement, Paras Nath Chaudhury (PW-1) identified Rajan Tiwari (A-9) as being at the hospital, but in his court testimony, he stated that Rajan Tiwari (A-9) was not present. In our considered view, this contradiction does not weaken Paras Nath Chaudhury's (PW-1) account of witnessing Mantu Tiwari (A-4) and Vijay Kumar Shukla @ Munna Shukla (A-8) commit the offence.

Indian law does not recognise the doctrine - falsus in uno, falsus in omnibus. In Deep Chand and Others v. State of Haryana[16], this Court had observed that the maxim falsus in uno, falsus in omnibus is not a sound rule to apply in the conditions of this country. This maxim does not occupy the status of rule of law. It is merely a rule of caution which involves the question of the weight of evidence that a court may apply in the given set of circumstances.[17]

In cases where a witness is found to have given unreliable evidence, it is the duty of the court to carefully scrutinise the rest of the evidence, sifting the grain from the chaff. The reliable evidence can be relied upon especially when the substratum of the prosecution case remains intact. The court must be diligent in separating truth from falsehood. Only in exceptional circumstances, when truth and falsehood are so inextricably connected as to make it indistinguishable, should the entire body of evidence be discarded.

Testimony of Mahanth Ashwani Das (PW-25)

17. The deposition of Mahanth Ashwani Das (PW-25) equally supports the prosecution case. His testimony captures the following:

(i) On 13.06.1998, he reached IGIMS hospital at about 7:00 p.m. to meet Brij Bihari Prasad.

(ii) He confirmed the presence of Paras Nath Chaudhury (PW-1). Amarendra Kumar Sinha (PW-10), Arbind Singh (PW-13), Shashi Bhushan Singh (PW-42), Ram Niranjan Chaudhary (A-6), Ram Nandan Singh (PW-12), Onkar Singh and some other people at the hospital.

(iii) After a passing remark by Ram Niranjan Chaudhary (A-6) that it was hot in the hospital room, Brij Bihari Prasad stepped outside for a stroll. Brij Bihari Prasad was accompanied by Ram Niranjan Chaudhary (A-6), Lakshmeshwar Sahu and other security personnel.

(iv) In the meanwhile, a Sumo car and an Ambassador car came inside the hospital campus. About 10-12 persons alighted from the said vehicles and moved toward Brij Bihari Prasad.

(v) Mantu Tiwari (A-4) was carrying a carbine and others were carrying pistols.

(vi) He specifically identified Bhupendra Nath Dubey (since deceased), Shri Prakash Shukla @ Shiv Prakash Shukla (since deceased), Rajan Tiwari (A-9), Vijay Kumar Shukla @ Munna Shukla (A-8) and Satish Pandey as the persons who alighted from the aforementioned vehicles.

(vii) Mantu Tiwari (A-4), Bhupendra Nath Dubey (since deceased) and Shri Prakash Shukla @ Shiv Prakash Shukla (since deceased) fired at Brij Bihari Prasad. Others were also firing indiscriminately in different directions.

(viii) Vijay Kumar Shukla @ Munna Shukla (A-8), Satish Pandey and Rajan Tiwari (A-9) shot at Lakshmeshwar Sahu.

(ix) On being shot, Brij Bihari Prasad and Lakshmeshwar Sahu collapsed.

(x) Bhupendra Nath Dubey (since deceased) took the carbine belonging to Lakshmeshwar Sahu and thereafter exclaimed that the work had been done. He raised the slogan "Jai Bajrang Bali".

(xi) His signed statement (Exhibit-29) was also recorded by a judicial magistrate.

(xii) The occurrence took place at about 8:30 p.m.

(xiii) The police and CBI had interrogated him in this regard.

18. We have carefully scrutinized the cross-examination of Mahanth Ashwini Das (PW-25). His cross-examination states:

(i) Mahanth Ashwani Das (PW-25) was introduced to Brij Bihari Prasad in 1996. This was around the same time Mahanth Ashwani Das (PW-25) became a disciple under Sanatan Dharma.

(ii) He had also known Rama Devi (PW-24), wife of Brij Bihari Prasad, since 1996.

(iii) Rama Devi (PW-24) was present in the court while his testimony was being recorded. However, Mahanth Ashwani Das (PW-25) denies speaking to her.

(iv) Mahanth Ashwini Das (PW-25) states that while there was no particular reason to meet Brij Bihari Prasad on 13.06.1998, he would generally meet Brij Bihari Prasad whilst in Patna.

(v) Earlier also he had visited Brij Bihari Prasad in the hospital on another occasion, but he could not remember the date and time of this meeting.

(vi) He met Brij Bihari Prasad approximately 8-10 days prior to the date of incident.

(vii) He did not know the specific treatment for which Brij Bihari Prasad was admitted to the hospital. He states that the treatment had been going on for about one and a half months.

(viii) He denies having knowledge of any case(s) pending against Brij Bihari Prasad.

(ix) He states that he is unaware of any case pending against him. However, he accepts that way back in 1979, a murder case was registered against him, for which he had remained in jail for 3-4 months.

(x) He states that he was sentenced to life imprisonment and filed an appeal in 1987; however, he was uncertain whether the appeal was still pending or had been dismissed, and he could not recall the grounds for the appeal.

(xi) He did not have any documentary proof of visiting the hospital on 13.06.1998.

(xii) He had not made any signatures on the death summary report and the seizure memo.

(xiii) He did not know if the wife of Onkar Singh (since deceased) had given a police statement that her husband was murdered by Brij Bihari Prasad due to a contract dispute.

(xiv) Mahanth Ashwani Das (PW-25) had deposed about remaining at the place of occurrence after the firing. He saw the police coming and lifting the dead bodies of Brij Bihari Prasad and Lakshmeshwar Sahu. He left the hospital for the residence of Brij Bihari Prasad at 9:30 p.m., where several people, including Kamakhya Narain Singh (PW-15), Shiv Ji Prasad, Ram Nandan Singh (PW-12), Onkar Singh, and Raj Bala Verma (Collector, Patna), had already gathered. Later that night, on 14.06.1998, around 12:30 a.m., he departed for Muzzaffarpur Math.

(xv) He was arrested on 04.05.2006 in Patna. Thereafter, he was given protection by the Bihar Government to give evidence in the present trial. Armed security guards, who were generally not present with him, used to accompany him whilst going to the court.

(xvi) He states that he used to reach Smriti Bhawan of Brij Bihari Prasad at about 5:00 a.m. Rama Devi (PW-24), her driver and security guards reside at the Smriti Bhawan.

(xvii) During the firing he had hidden about 30-40 steps away from the hospital room.

(xviii)He denies the suggestion of giving false evidence due to his close relationship with Brij Bihari Prasad.

19. As noted above, the High Court has rejected the testimony and complicity of the accused by Mahant Ashwani Das (PW-25) on the ground that he is himself an accused in a murder case and had absconded despite being convicted in appeal, while he was being examined as a witness in the present case. The High Court had also held that Mahant Ashwani Das (PW-25) had the patronage of Rama Devi (PW-24) and the deceased Brij Bihari Prasad.

20. The criminal background of a witness necessitates that the courts approach their evidence with caution. The testimony of a witness with a chequered past cannot be dismissed as untruthful or uncreditworthy without considering the surrounding facts and circumstances of the case, including their presence at the scene of the offence. In cases involving conflicts between rival gangs or groups, the testimony of members from either side is admissible and relevant.

If the court is convinced of the veracity and truthfulness of such testimony, it may be considered. Courts typically assess the broader context to determine if there is sufficient corroboration, as long as there are no valid reasons to discredit the evidence. The crucial test is whether the witness is truly an eyewitness and whether their testimony is credible. If their presence at the scene is established beyond doubt, their account of the incident can be relied upon. Such evidence cannot be discarded merely on the grounds of criminal background.[18]

Testimony of Amarendra Kumar Sinha (PW-10)

21. No doubt, Amarendra Kumar Sinha (PW-10) turned hostile, but his core deposition captures the following:

(i) He accepts having recorded the fardbeyan (Exhibit-50) on 13.06.1998 at about 9 p.m. It bears his signatures which are marked Exhibits 12 and 12/1.

(ii) He had gone to the hospital at about 6:00 - 6:30 p.m. Some of the people, including Arbind Singh (PW-13), Shashi Bhushan Singh (PW-42) and 7-8 other persons, whom he did not remember, accompanied him.

(iii) He met Brij Bihari Prasad at about 6:30 p.m. in the ward. He states that the incident took place at about 8:15 p.m., and he, along with the others, stayed there till after the incident.

(iv) At the time of the incident, Amarendra Kumar Sinha (PW-10) along with Arbind Singh (PW-13), Shashi Bhushan Singh (PW-42), Ram Niranjan Chaudhary (A-6) and some others, had come out for a stroll with Brij Bihari Prasad.

(v) Two vehicles, a Sumo and an Ambassador car, had come in. 5-6 persons alighted from the two vehicles and moved towards Brij Bihari Prasad. Thereafter, one of the assailants pointed towards Brij Bihari Prasad, identifying him as the Minister. The assailants then started firing. Brij Bihari Prasad and Lakshmeshwar Sahu were shot at, and they collapsed. Amarendra Kumar Sinha (PW- 10) and others ran towards the parking lot. One of the accused took the carbine of Lakshmeshwar Sahu. While exiting the hospital, slogans of "Jai Bajrang Bali" were raised by the assailants. They exited in the same vehicles from the east gate.

(vi) He does not remember the registration number of the vehicles. He, along with the other visitors present there, had informed the hospital staff, who in turn, informed the police.

(vii) He identified Bhupendra Nath Dubey (since deceased) and Mantu Tiwari (A-4). He could not identify the other accused. He claimed that Bhupendra Nath Dubey (since deceased) and Mantu Tiwari (A-4) were carrying pistols.

(viii) Mantu Tiwari (A-4) was not present in the court when Amarendra Kumar Sinha (PW-10) was being examined. However, he identified Ram Niranjan Chaudhary (A-6) who was present in the court.

(ix) As he did not recognize the other accused, he was declared hostile and was allowed to be cross-examined by the prosecution.

(x) In his cross-examination, he denied that Mantu Tiwari (A-4) fired from his sten gun.

(xi) He also denied the presence of Paras Nath Chaudhury (PW-1), claiming that he had not seen him in the hospital.

(xii) However, he accepts in the cross-examination that he had put his signatures on the fardbeyan.

(xiii) He was not cross-examined at length by the defence.

22. We have already referred to judgments of this Court while examining the doctrine of falsus in uno, falsus in omnibus. The same principles equally apply when the court examines the statement of a witness who has been declared hostile by the prosecution. In a catena of judgments, this Court has observed that the evidence of a hostile witness is not to be completely rejected, so as to exclude versions that support the prosecution. Rather, the testimony of the hostile witness is to be subjected to close scrutiny, thus enabling the court to separate truth from falsehood, exaggerations and improvements.

Only reliable evidence should be taken into consideration. The court is not denuded of its power to make an appropriate assessment. The entire testimony of a hostile witness is discarded only when the judge, as a matter of prudence, finds the witness wholly discredited, warranting the exclusion of the evidence in toto.[19] The creditworthy portions of the testimony should be considered for the purpose of evidence in the case. It is in this context that we have to examine the testimony of Amarendra Kumar Sinha (PW-10), the complainant/informant, who gave the fardbeyan (Exhibit P-50) on which basis the FIR (Exhibit P-50/51) was registered.

Testimony of Rama Devi (PW-24)

23. Rama Devi (PW-24) confirmed the presence of the witnesses - Paras Nath Chaudhury (PW-1), Mahanth Ashwani Das (PW-25), and Amarendra Kumar Sinha (PW-10) at the IGIMS hospital. On 13.06.1998, Rama Devi (PW-24) had taken food to the hospital at about 2:50 p.m. and stayed there till about 7:00 p.m. From the hospital, she went to Maurya Lok to purchase some items for her sons and remained there for about one and a half hours. Whilst leaving Maurya Lok, she learnt about the attack on her husband, Brij Bihari Prasad. She immediately reached IGIMS hospital where she saw Brij Bihari Prasad and Lakshmeshwar Sahu lying dead in a pool of blood. Several people had gathered there. She established the presence of Paras Nath Chaudhury (PW-1), Mahanth Ashwani Das (PW-25), and Amarendra Kumar Sinha (PW-10) at the hospital.

24. We will exclude the testimony of Rama Devi (PW-24) regarding the individuals who arrived in the two vehicles and the detailed version about the occurrence which she heard from the people present there, including Paras Nath Chaudhury (PW-1), Mahanth Ashwani Das (PW-25), and Amarendra Kumar Sinha (PW-10), which is hearsay. However, her testimony establishing the presence of Paras Nath Chaudhury (PW-1), Mahanth Ashwani Das (PW-25), and Amarendra Kumar Sinha (PW-10) is direct evidence and cannot be discarded. Rama Devi (PW-24) was at the hospital for a considerable time before and after the incident. Her version is factually accurate and fosters confidence. Thus, the testimony of Rama Devi (PW-24) can be used to partly corroborate and affirm the testimonies of Paras Nath Chaudhury (PW-1), Mahanth Ashwani Das (PW-25), and Amarendra Kumar Sinha (PW-10).

25. The testimony of Rama Devi (PW-24) is also relevant from the point of view of motive, a question which is not contentious, as is clear from the questions posed to her in her cross-examination. She has affirmed having contested the Lok Sabha elections against Devendra Nath Dubey, who was murdered. Brij Bihari Prasad, her husband, was implicated in the said case as an accused. Her husband was also arrested in MEDHA scam by the CBI. He was subsequently lodged in Beur Jail. Due to his ill health, he was taken to Patna Medical College from where he was referred to IGIMS hospital.

26. Mantu Tiwari (A-4) is the nephew of the late Bhupendra Nath Dubey (since deceased), who was the brother of Devendra Nath Dubey, a political rival of Rama Devi (PW-24). Devendra Nath Dubey was killed a day before the re-poll for the Motihari Lok Sabha Constituency. Brij Bihari Prasad was named as an accused in the case.

The longstanding animosity is further highlighted by the fact that Vijay Kumar Shukla @ Munna Shukla (A-8) is the brother of Chottan Shukla and Bhutkun Shukla, who were allegedly killed by the henchmen of Brij Bihari Prasad. Further, Rama Devi (PW-24) testified that in 1987, there was an assassination attempt on her husband, Brij Bihari Prasad, statedly orchestrated at the behest of Raghunath Pandey (chargesheeted in the present case but since deceased), with Vijay Kumar Shukla @ Munna Shukla (A-8), Chottan Shukla and Bhutkun Shukla involved in the attack.

Identification and non-recovery of vehicles and weapons

27. Paras Nath Chaudhury (PW-1) and Mahanth Ashwani Das (PW-25) have identified the vehicles used by the accused on 13.06.1998. They have specifically deposed about a Sumo bearing registration no. BR-1P-1818. The Sumo and the Ambassador cars, which they have referred to in their depositions, were not

recovered. The weapons used in the offence, including the carbine belonging to the deceased Lakshmeshwar Sahu, also could not be recovered.

However, given the facts and circumstances of the case, the failure of the police to recover the vehicles and the weapons is not sufficient to undermine the credibility of the eyewitness accounts or the corroborative evidence regarding the cause of the homicidal deaths of Brij Bihari Prasad and Lakshmeshwar Sahu. The ocular version of the witnesses should not be disregarded solely because the weapon used in the crime and the vehicles allegedly used by the accused were not located or seized by the police.[20]

28. It is significant to note that the vehicle No. BR-1P-1818 (Sumo), as per the deposition of the second IO, Shashi Bhushan Sharma (PW-54), had been taken under a hire-purchase agreement by the late Devendra Nath Dubey, brother of Bhupendra Nath Dubey (since deceased), from a finance company - SBR Private Limited, Calcutta. The said assertion had remained unchallenged in the cross-examination of Shashi Bhushan Sharma (PW-54). The vehicle No. BR-1P-1818 is also mentioned in the fardbeyan (Exhibit P-50) of Amarendra Kumar Sinha (PW-10).

Forwarding of the FIR

29. The impugned judgment has observed that the FIR (Exhibits 51 and 51/1) is ante-timed. The High Court, in its reasoning, highlights this as one of the grounds for acquitting the accused. In the present case, the first IO, SSP Yadav, passed away before he could depose. However, registration of the FIR itself is not in doubt and debate and has been deposed to by Amarendra Kumar Sinha (PW-10).

We have evidence with regard to the statement of eye-witnesses which were recorded under Section 161 CrPC on the night of occurrence, as is clear from the depositions of Paras Nath Chaudhury (PW-1), Mahanth Ashwani Das (PW-25), and Amarendra Kumar Sinha (PW-10). The inquest reports of Brij Bihari Prasad and Lakshmeshwar Sahu (Exhibits 42/1 and 52) were prepared on the same night and, thereafter, the post-mortem was conducted by Dr. Arvind Kumar Singh (PW-7) at 12:30 a.m. and 1:30 a.m. respectively on 14.06.1998.

30. The occurrence having taken place at night on 13.06.1998, normally the FIR should have been sent to the jurisdictional magistrate on 14.06.1998. However, 14.06.1998 being a Sunday was a holiday. The FIR was forwarded to the jurisdictional magistrate on 15.06.1998. There is, therefore, an explanation for the delay in forwarding a copy of the FIR to the jurisdictional magistrate in terms of Section 157 of the CrPC. It is trite law that a delay in forwarding the FIR to the jurisdictional magistrate is not fatal to the prosecution case.

This Court, in State of Rajasthan v. Daud Khan[21], has examined the case law on the subject and held that when there is a delay in forwarding the FIR to the jurisdictional magistrate and the accused raises a specific contention regarding the same, they must demonstrate how this delay has prejudiced their case. Mere delay by itself is not sufficient to discard and disbelieve the case of the prosecution.

If the investigation starts in right earnest and there is sufficient material on record to show that the accused were named and pinpointed, the prosecution case can be accepted when evidence implicates the accused. The requirement to dispatch and serve a copy of the FIR to the jurisdictional magistrate is an external check against ante dating or ante timing of the FIR to ensure that there is no manipulation or interpolation in the FIR. If the court finds the witnesses to be truthful and credible, the lack of a cogent explanation for the delay may not be regarded as detrimental.

Police Statements of Eye-witnesses

31. The High Court, in its reasoning, takes an exception on the minor discrepancies regarding the place and time of recording the statement under Section 161 CrPC of Mahanth Ashwani Das (PW-25). Similarly, the impugned judgment has adversely commented on the versions given by Shashi Bhushan Singh (PW-42) and Mahanth Ashwani Das (PW-25) as to who had reached the hospital at an earlier point in time. Considering the efflux of time of more than 4-6 years between the date of occurrence and recording of court testimony, these issues are at best superficial and peripheral and would not warrant disregarding the prosecution case.

The questions posed to the witnesses were more in the nature of a memory test rather than questions posed to test the truthfulness and credibility of their core testimony. Equally, the observation of the High Court on the statement under Section 161 CrPC of Rama Devi (PW-24) to Rai Singh Khatri (PW-62), IO of the CBI, is inconsequential. Section 161 CrPC statement of Rama Devi, in which she had given the names and details of the persons who were present in the hospital, cannot be brushed aside solely on this ground. Statements under Section 161 CrPC are per se not evidence in the court. Rama Devi's statement under Section 161 CrPC was recorded on 13.06.1998 and the same was filed along with the chargesheet. She was not cross-examined regarding the said statement.

32. The assertion that Rama Devi's (PW-24) Section 161 CrPC statement dated 13.06.1998 to Shashi Bhushan Sharma, IO (PW-54), has not been included in the record is solely predicated on her cross-examination conducted on 21.02.2006. Rama Devi's (PW-24) acknowledgement during her cross-examination reflects a

clear lapse in memory, likely due to the nearly eight-year gap and the length of her questioning.

It is a wellestablished fact that SSP Yadav was the IO on 13.06.1998, making it impossible for Shashi Bhushan Sharma (PW-54) to have recorded her Section 161 CrPC statement on that date. Moreover, Shashi Bhushan Sharma (PW-54) was never questioned about whether he had recorded Rama Devi's (PW-24) Section 161 CrPC statement on 13.06.1998. In fact, both the defence and prosecution agree that Shashi Bhushan Sharma (PW-54) took over the investigation on 14.07.1998.

Attesting Witnesses and Retaliatory Firing

33. The contention that Paras Nath Chaudhury (PW-1) and Mahanth Ashwani Das (PW-25) were not attesting witnesses to the inquest report, fardbeyan, FIR, etc. is inconsequential and does not in any way weaken their ocular evidence. Similarly, the contention that they were not injured during the cross-fire is nugatory as it is clear from the evidence on record that it was Brij Bihari Prasad who was the target of the attack. The armed bodyguards who were attacked had retaliated. Although it is true that the depositions of Paras Nath Chaudhury (PW-1) and Mahanth Ashwani Das (PW-25) do not mention the retaliatory firing by the bodyguards, an independently proven fact, this alone is not a sufficient ground to dismiss their presence at the spot or their versions including the culpability of the persons who had committed the offence.

Offence under Section 307 read with Section 34 of the IPC

34. Rabindra Bhagat (PW-14) had averred to his presence at IGIMS hospital on 13.06.1998 in the evening at about 7-7:30 p.m. when he was shot at and received a bullet injury in his left arm during the attack on Brij Bihari Prasad. He called his brother, Sanjeev Kumar, who took him to Alok Nursing Home for treatment. Rabindra Bhagat (PW-14), however, did not identify the culprits.

Dr. Tarkeshwar Prasad Singh (PW-8) examined injured Rabindra Bhagat (PW-14) on 13.06.1998 at 9:30 P.M. and issued the injury report dated 08.08.1998 (Exhibit-10). The deposition of Dr. Tarkeshwar Prasad Singh (PW-8) refers to the entry and exit wounds on the left arm of Rabindra Bhagat (PW-14) inflicted by a gunshot approximately two hours before the medical examination. In any case, it is proven that in spite of the number of people present, there was extensive firing and the use of firearms with intent to kill. The charge under Section 307 of the IPC is, therefore, established and proved.

The Charge of Criminal Conspiracy

35. The case was transferred to CBI by Notification dated 07.03.1999, pursuant to which it conducted an investigation. The CBI filed two supplementary chargesheets implicating Suraj Bhan Singh (A-1), Ram Niranjan Chaudhary (A-6), Shashi Kumar Rai (A-7) and Raghunath Pandey, who had since died, as conspirators who were responsible for the incident. A supplementary chargesheet was filed against Shashi Kumar Rai (A-7) on 08.11.2000, followed by a second supplementary chargesheet dated 20.04.2001 against Raghunath Pandey.

36. The prosecution case makes a charge of conspiracy based on an alleged meeting which took place in Beur Jail where Suraj Bhan Singh (A-1) was incarcerated. Suraj Bhan Singh (A-1) is said to have reportedly met with Vijay Kumar Shukla @ Munna Shukla (A-8), Lallan Singh (A-3) and Ram Niranjan Chaudhary (A-6). However, the witnesses to this meeting, Sone Lal (PW-32) and Lal Babu Chaudhury (PW-39), turned hostile and did not support the prosecution version.

This evidence is based on the testimony of Shashi Bhushan Sharma (PW-54) that Sone Lal (PW-32) and Lal Babu Chaudhury (PW-39) informed him about the said jail meeting on 19.08.1998, nearly two months after the date of occurrence. Shashi Bhushan Sharma (PW-52) failed to establish how he discovered the purported version of Sone Lal (PW-32) and Lal Babu Chaudhury (PW-39). He was also unable to establish that Sanjay Singh, the inmate whom Sone Lal (PW-32) and Lal Babu Chaudhury (PW-39) had allegedly visited, was present in Beur Jail 2-3 days before the incident. There is no record of Sone Lal (PW-32) and Lal Babu Chaudhury (PW- 39) visiting Beur Jail.

37. Further, the claim of the prosecution regarding the dubious character of Ram Niranjan Chaudhary (A-6) and that he encouraged Brij Bihari Prasad to go outside his hospital room for a walk is not directly implicatory. Rather, it is an assumption requiring substantial evidence to be established. It only expresses doubt about Ram Niranjan Chaudhary (A-6), an insider who could have given information.

38. To prove the charge of conspiracy, the prosecution further relied upon the telephone records of Mokama landline number 32772, which was supposedly subscribed to by Suraj Bhan Singh (A-1). The telephone records indicate calls made from Mokama landline number 32772 to Shashi Kumar Rai (A-7), Sunil Singh (A-5) (since deceased) and Munna Shuka (A-8).

The prosecution relied on the report dated 29.10.1999 (Exhibit-1) submitted by Shiya Sharan Ram (PW-2), Sub-Divisional Engineer (Vigilance), Bharat Sanchar Nigam Limited, which stated that the landline number was subscribed in the name of one Shrawan Kumar Agrawal but was operational in the house of Suraj Bhan Singh (A-1) at Mokama. However, the said report of Shiya Sharan Ram

(PW-2) is based on the physical verification of S.M.M. Rahman, Sub-Divisional Engineer, Barh and Jitan Mehta, Junior Telecom Officer, Hatida, both of whom, have not been examined. Further, Shrawan Kumar Agrawal has also not been examined.

The original report prepared by S.M.M. Rahman and Jitan Mehta is also not on record. The prosecution version establishing the landline number as belonging to Suraj Bhan Singh (A-1) hinges on the testimony of M.L. Meena (PW-60), Assistant IO, CBI. However, M.L. Meena (PW-60) accepts in his testimony that he did not enter the house to verify the existence of a telephone set. Rather, his entire version is based on his interaction with the step-mother of Suraj Bhan Singh (A-1). The telephone records indicating the exchange of calls between 11.05.1998 and 11.06.1998, as deposed by Rai Singh Khatri (PW-62), do not substantively prove and establish the conspiracy charge in the absence of revelatory and weighty incriminating material.

39. The CBI also relied upon the post-incident celebration held in village Khanjah Ghat on 15.06.1998 at the behest of Vijay Kumar Shukla @ Munna Shukla (A-8). Amod Kumar (PW-11), Sushil Kumar Singh (PW- 35) and Pooja (PW-37), who were statedly witnesses to the post-incident celebration turned hostile. The statement of Avadhesh Kumar Singh (PW-36), who did not turn hostile, was recorded one year and two months after the date of occurrence.

The prosecution has not placed any material on record to showcase how M.L. Meena, IO, CBI (PW-60) had traced Avadhesh Kumar Singh (PW-36), though Rai Singh Khatri, IO, CBI (PW-62) had stated that M.L. Meena, IO, CBI (PW-60) had got in touch with Avadhesh Kumar Singh (PW-36). The evidence of Avadhesh Kumar Singh (PW-36) and Pooja (PW-37) establishing the presence of Shashi Kumar Rai (A-7), since deceased, in the post-incident celebration is not entirely credible. In any case, Shashi Kumar Rai (A-7) passed away during the pendency of the present appeals.

40. To fortify the charge of conspiracy, the prosecution has further relied on the fax message (Exhibit-6) regarding the threat to the life of Brij Bihari Prasad. This fax message would not help the prosecution implicate the accused persons - Suraj Bhan Singh (A-1), Mukesh Singh (A-2), Lallan Singh (A-3) and Captain Sunil Singh (A-5) (since deceased) - on the charge of criminal conspiracy.

Discrepancy regarding the presence of Rajan Tiwari (A-9)

41. As noticed above, Paras Nath Chaudhury (PW-1) in his deposition had categorically stated that Rajan Tiwari (A-9) was not present with the other accused who had murdered Brij Bihari Prasad and Lakshmeshwar Sahu. Even though Mahanth Ashwani Das (PW-25) had referred to the presence of Rajan

Tiwari (A-9), given the discrepancy in the statement of the two eye-witnesses, we feel that the benefit of doubt must be given to Rajan Tiwari (A-9).

Conclusion

42. Even if we completely exclude the testimony of Shashi Bhushan Singh (PW-42), the depositions of Paras Nath Chaudhury (PW-1), Mahanth Ashwani Das (PW-25) and, to some extent of Rama Devi (PW-24) and Amarendra Kumar Sinha (PW-10) with other evidence and material are conclusive enough to prove the charge against Mantu Tiwari (A-4) and Vijay Kumar Shukla @ Munna Shukla (A-8). Bhupendra Nath Dubey and Captain Sunil Singh (A-5) are no more, and, therefore, we need not consider the evidence against them. Similarly, we need not examine the depositions implicating Shashi Kumar Rai (A-7), who died during the pendency of the present appeals.

43. Regarding the question of conspiracy and the evidence against Suraj Bhan Singh (A-1), Mukesh Singh (A-2), Lallan Singh (A-3) and Ram Niranjan Chaudhary (A-6), there is no direct ocular evidence implicating them through the testimonies of Paras Nath Chaudhury (PW-1) and Mahanth Ashwani Das (PW-25). Since the charge of conspiracy is not substantiated, we will not interfere with the judgment of the High Court acquitting them, and they are entitled to the benefit of the doubt.

44. In light of the above discussion, we hold and direct as under:

a) The charge under Section 302 read with Section 34 of the IPC against Mantu Tiwari (A-4) and Vijay Kumar Shukla @ Munna Shukla (A-8) for the murders of Brij Bihari Prasad and Lakshmeshwar Sahu is proven and established beyond reasonable doubt.

b) The charge under Section 307 read with Section 34 of the IPC against Mantu Tiwari (A-4) and Vijay Kumar Shukla @ Munna Shukla (A-8) for attempting to murder, as held in paragraph 34 above, is proven and established beyond reasonable doubt.

c) The conviction and sentence awarded to Mantu Tiwari (A-4) and Vijay Kumar Shukla @ Munna Shukla (A-8) by the trial court under Sections 302 and 307 read with Section 34 of the IPC are affirmed and restored.

d) Consequently, Mantu Tiwari (A-4) and Vijay Kumar Shukla @ Munna Shukla (A-8) shall have to undergo imprisonment for life with a fine of Rs. 20,000/- (Rupees Twenty Thousand Only) each under Section 302 read with Section 34 of the IPC, and in addition to undergo rigorous imprisonment for five years with a fine of Rs. 20,000/- (Rupees Twenty Thousand Only) each under Section 307 read with Section 34 of the IPC. Both the sentences shall run concurrently.

Section 428 of the CrPC shall apply. As default punishment was not imposed by the trial court, we direct that in case of non-payment of fine on each account, Mantu Tiwari (A-4) and Vijay Kumar Shukla @ Munna Shukla (A-8) shall undergo rigorous imprisonment for six months.

e) Mantu Tiwari (A-4) and Vijay Kumar Shukla @ Munna Shukla (A-8) are directed to surrender within two weeks from today to the concerned jail authorities/court to serve the remainder of their respective sentences. In case of failure to surrender, the authorities shall take appropriate measures to arrest and detain them in accordance with law.

f) Insofar as Suraj Bhan Singh (A-1), Mukesh Singh (A-2), Lallan Singh (A-3), Ram Niranjan Chaudhary (A-6) and Rajan Tiwari (A-9) are concerned, we give them benefit of doubt and uphold their acquittal.

45. The appeals are partially allowed and the impugned judgment is set aside in terms and vide the directions issued in paragraph 44 above.

Pending applications, if any, shall also stand disposed of.

.....J. (Sanjiv Khanna)

.....J. (Sanjay Kumar)

.....J. (R. Mahadevan)

New Delhi;

October 03, 2024.

1 For short, "CBI."

2 Suraj Bhan Singh @ Suraj Singh @ Suraj, Mukesh Singh, Lallan Singh, Mantu Tiwari, Captain Sunil Singh (since deceased), Ram Niranjan Chaudhary, Shashi Kumar Rai (since deceased), Vijay Kumar Shukla @ Munna Shukla, Rajan Tiwari.

3 For short, "IPC".

4 For short, "1959 Act".

5 For short, "IGIMS Hospital".

6 S.S.P. Yadav subsequently expired and did not depose.

7 For short, "FIR".

8 It is an accepted and admitted position that Captain Sunil Singh (A-5) has passed away. The appeal qua him shall stand abated.

9 The appeal qua Shashi Kumari Rai (A-7) stood abated on account of his demise vide order dated 28.02.2020.

10 For short, "CrPC".

11 For short, "IO".

12 See Trial Court Record, Vol. II, p.58.

13 See para 11(xv).

14 See para 23.

15 See para 17(ii).

16 (1969) 3 SCC 890.

17 Ponnam Chandraiah v. State of Andhra Pradesh, (2008) 11 SCC 640.

18 See State of U.P. v. Farid Khan and Others, (2005) 9 SCC 103.

19 See C. Muniappan and Others v. State of Tamil Nadu, (2010) 9 SCC 567.

20 See Yogesh Singh v. Mahabeer Singh and Others, (2017) 11 SCC 195 which refers to several other decisions. See also State of Rajasthan v. Arjun Singh and Others (2011) 9 SCC 115.

21 (2016) 2 SCC 607.

IN THE SUPREME COURT OF INDIA

Shingara Singh
Vs.
Daljit Singh and Anr.

Civil Appeal No. 5919 of 2023

HEADNOTE – Once a transaction is found to be hit by the doctrine of lis pendens, then the defences of being a bona fide purchaser and lack of notice regarding the sale agreement are not available. A transferee pendente lite is bound by the decree just as much as he was a party to the suit. The principle of lis pendens embodied in Section 52 of the Transfer of Property Act being a principle of public policy, no question of good faith or bona fide arises.

JUDGMENT

Prashant Kumar Mishra, J.

1. The defendant No. 2 in the suit has preferred this appeal challenging the judgment and decree passed by the High Court allowing the appeal preferred by the plaintiff/Daljit Singh to set aside the judgment and decree of the Trial Court and the First Appellate Court which concurrently decreed the suit partially only for the alternative relief of recovery of Rs. 40,000/- along with interest while dismissing the suit in respect of specific performance of the agreement dated 17.08.1990.

2. The facts of the case emerging from the pleadings of the parties are that plaintiff/Daljit Singh instituted the suit on 24.12.1992 claiming specific performance of the agreement to sell dated 17.08.1990 in respect of the land measuring 79 Kanals 09 marlas @ of Rs. 80,000/- per acre against the payment of earnest money of Rs. 40,000/- and the balance amount of Rs. 7,54,000/- at the time of execution and registration of the sale deed on or before 30.11.1992.

3. According to the plaintiff, he remained present in the office of the Sub-Registrar on 30.11.1992 with the balance sale consideration and all the expenses for stamp papers but defendant no. 1 did not turn up to perform his part of the agreement. The plaintiff marked his presence by submitting an affidavit before the Executive Magistrate. The suit was preferred within 23 days as stipulated in the agreement.

Defendant no. 1 initially denied the execution of the agreement to sell, much less, receipt of the earnest money with further averment that the subject land was a Joint Hindu Family property. During the pendency of the suit, the present

appellant/defendant no. 2/Shingrara Singh was impleaded on 25.01.1993 on the basis that defendant no. 1/ Janraj Singh executed a sale deed in his favour on 08.01.1993 in respect of the suit land on the basis of alleged agreement to sell dated 19.11.1990 for a sum of Rs. 6,45,937.50. It is to be noted that the Trial Court passed an order of status quo on 24.12.1992 qua alienation with regard to the share of defendant no. 1.

4. Defendant No. 2/appellant filed his separate written statement stating that defendant no. 1 has sold the property to him by executing a registered sale deed on 08.01.1993 and delivered possession after which mutation has also been carried out. According to the appellant/defendant no. 2, the agreement, basing which the suit is filed, is a fabricated antedated document because defendant no. 1 did not disclose the factum of this agreement while executing the sale deed in his favour and thus, the appellant/defendant no. 2 is a bona fide purchaser.

5. In the Trial Court plaintiff examined himself as PW-2, Deed Writer/ Kulwant Singh as PW-1, Jasjit Singh as PW-3 whereas defendants examined Kirpan Singh as DW 1, Shangara Singh as DW 2, B.M. Sehgal as DW 3 and Subhash Chander as DW 4. The Trial Court vide its judgment dated 27.04.2007 held that the plaintiff has proved the agreement to sell wherein defendant no. 2 has failed to prove that the agreement is a result of fraud and fabricated document. However, the Trial Court denied the decree for specific performance on the ground that since defendant no. 2 is the owner in possession of the suit land upon execution of the sale deed dated 08.01.1993, defendant no. 1 has left with no right or title of the suit land.

Thus, he is unable to execute the sale deed in favour of the plaintiff and moreover the plaintiff and defendant no. 1 are close relative. The Trial Court also held that the plaintiff was ready and willing to perform his part of the contract. It was also held that defendant no. 2 is a bona fide purchaser as he was not having any knowledge about the agreement to sell between the plaintiff and defendant no. 1. The Trial Court eventually dismissed the suit in respect of the specific performance but allowed the alternative prayer for recovery of Rs. 40,000/- with interest @ 12% per annum.

6. The First Appellate Court maintained the Trial Court's judgment and decree by holding that the subject sale agreement is a result of fraud and collusion between the plaintiff and defendant no. 1. The First Appellate Court observed that in his first written statement he denied the execution of the agreement but subsequently after amendment in the plaint and impleadment of the appellant, he admitted the claim of the plaintiff. The First Appellate Court further observed that the doctrine of lis pendens is not applicable in the facts of the present case.

7. The High Court, under the impugned judgment in this appeal, opined that the sale deed executed by defendant no. 1 in favour of defendant no. 2/appellant is hit by doctrine of lis pendens and that defendant no. 2/appellant is not a bona fide purchaser. The High Court noted that the suit was filed on 24.12.1992 and the next date before the Trial Court was fixed on 12.01.1993. However, the sale deed was executed by defendant no. 1 in favour of defendant no. 2 on 08.01.1993.

Both defendant no. 1 and defendant no. 2 being the residents of same village, it is unbelievable that he was not having the knowledge of the agreement, for, the sale deed in favour of defendant no. 2 was for a lesser amount than the subject agreement. The agreement was for a sale consideration of Rs. 7,94,000/- whereas the sale deed was for Rs. 6,45,937.50. It is also held that mere relationship between the plaintiff and defendant no. 1 would not be a ground to deny the discretionary relief and moreover, when both the courts below have found that the plaintiff was always ready and willing to perform his part of the contract.

8. Mr. Hrin P. Raval, learned senior counsel appearing for the appellant argued that the High Court ought not to have disturbed the concurrent judgment and order passed by the Trial Court and the Appellate Court. On the other hand, Mr. Manoj Swarup, learned senior counsel appearing on behalf of the respondents argued that the judgment and order passed by the Trial Court and the Appellate Court being based on perverse findings and reasoning, the High Court has rightly set aside the same for decreeing the plaintiff's suit in respect of specific performance. According to him, the High Court has rightly applied the doctrine of lis pendens.

9. Before proceeding to deal with the applicability of doctrine of lis pendens, it is significant to note that Issue no. 5 framed by the Trial Court was to the effect as to whether the agreement dated 17.08.1990 is a result of fraud and collusion, therefore, not binding on defendant no. 1. This issue was decided against the defendant. When the plaintiff preferred first appeal, the defendant did not move any cross-appeal or cross-objections, yet the first Appellate Court entered into this aspect of the matter to hold that the subject agreement was collusive between the plaintiff and defendant no. 1. This is not permissible in view of the law laid down by this Court in Banarsi vs. Ram Phal1 wherein this Court held thus in paras 10 & 11:

"10. The CPC amendment of 1976 has not materially or substantially altered the law except for a marginal difference. Even under the amended Order 41 Rule 22 sub-rule (1) a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross-objection. However, the insertion made in the text of sub-rule (1) makes it permissible to file a cross-objection against a finding.

The difference which has resulted we will shortly state. A respondent may defend himself without filing any cross-objection to the extent to which decree is in his favour; however, if he proposes to attack any part of the decree, he must take cross-objection. The amendment inserted by the 1976 amendment is clarificatory and also enabling and this may be made precise by analysing the provision. There may be three situations:

(i) The impugned decree is partly in favour of the appellant and partly in favour of the respondent.

(ii) The decree is entirely in favour of the respondent though an issue has been decided against the respondent.

(iii) The decree is entirely in favour of the respondent and all the issues have also been answered in favour of the respondent but there is a finding in the judgment which goes against the respondent.

11. In the type of case (i) it was necessary for the respondent to file an appeal or take cross-objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour he is entitled to support without taking any cross-objection. The law remains so post amendment too. In the type of cases (ii) and (iii) pre-amendment CPC did not entitle nor permit the respondent to take any cross-objection as he was not the person aggrieved by the decree.

Under the amended CPC, read in the light of the explanation, though it is still not necessary for the respondent to take any cross-objection laying challenge to any finding adverse to him as the decree is entirely in his favour and he may support the decree without cross-objection; the amendment made in the text of sub-rule (1), read with the explanation newly inserted, gives him a right to take crossobjection to a finding recorded against him either while answering an issue or while dealing with an issue.

The advantage of preferring such cross-objection is spelled out by sub-rule (4). In spite of the original appeal having been withdrawn or dismissed for default the cross-objection taken to any finding by the respondent shall still be available to be adjudicated upon on merits which remedy was not available to the respondent under the unamended CPC. In the pre-amendment era, the withdrawal or dismissal for default of the original appeal disabled the respondent to question the correctness or otherwise of any finding recorded against the respondent."

10. In the case at hand, the Trial Court had partly decreed the suit to the extent of recovery of Rs. 40,000/-. This part of the decree was not challenged by the defendants either by filing a separate appeal or by way of cross objections. They did not prefer any cross objection challenging the finding on issue no. 5. In this

situation the defendants have conceded to the decree for refund and finding on issue no. 5. Therefore, in absence of cross-appeal or cross-objections by the defendants, the First Appellate Court could not have recorded a finding that the subject agreement was a result of collusion between the plaintiff and defendant no. 1.

11. In Usha Sinha vs. Dina Ram2 this Court held that the doctrine of lis pendens applies to an alienation during the pendency of the suit whether such alienees had or had no notice of the pending proceedings. The following has been held I paras 18 & 23:

"18. Before one-and-half century, in Bellamy v. Sabine [(1857) 1 De G & J 566 : 44 ER 842] , Lord Cranworth, L.C. proclaimed that where a litigation is pending between a plaintiff and a defendant as to the right to a particular estate, the necessities of mankind require that the decision of the court in the suit shall be binding not only on the litigating parties, but also on those who derive title under them by alienations made pending the suit, whether such alienees had or had not notice of the pending proceedings. If this were not so, there could be no certainty that the litigation would ever come to an end.

23. It is thus settled law that a purchaser of suit property during the pendency of litigation has no right to resist or obstruct execution of decree passed by a competent court. The doctrine of "lis pendens" prohibits a party from dealing with the property which is the subjectmatter of suit. "Lis pendens" itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit. Rule 102, therefore, clarifies that there should not be resistance or obstruction by a transferee pendente lite. It declares that if the resistance is caused or obstruction is offered by a transferee pendente lite of the judgmentdebtor, he cannot seek benefit of Rules 98 or 100 of Order 21."

12. This Court in Sanjay Verma vs. Manik Roy3 was dealing with a suit for specific performance. During pendency of the suit, a temporary injunction was granted in favour of the plaintiff and different portions of the suit land were sold whereafter the purchasers applied for impleadment, which was rejected by the Trial Court but allowed by the High Court against which special leave to appeal was filed. In the above background, this Court observed the following in para 12:

"12. The principles specified in Section 52 of the TP Act are in accordance with equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee pendente lite is bound by the decree just as much as he was a party to the suit. The principle of lis pendens embodied in Section 52 of the TP Act being a principle of public policy, no question of good faith or bona fide arises.

The principle underlying Section 52 is that a litigating party is exempted from taking notice of a title acquired during the pendency of the litigation. The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court."

13. Guruswamy Nadar vs. P. Lakshmi Ammal4 also arose out of a suit for specific performance of agreement wherein this Court considered the effect of subsequent sale of properties by owner (proposed vendor) in favour of a third party. In the above facts, this Court held thus in paras 9 & 15:

"9. Section 19 of the Specific Relief Act clearly says subsequent sale can be enforced for good and sufficient reason but in the present case, there is no difficulty because the suit was filed on 3-5-1975 for specific performance of the agreement and the second sale took place on 5-5-1975. Therefore, it is the admitted position that the second sale was definitely after the filing of the suit in question. Had that not been the position then we would have evaluated the effect of Section 19 of the Specific Relief Act read with Section 52 of the Transfer of Property Act. But in the present case it is more than apparent that the suit was filed before the second sale of the property. Therefore, the principle of lis pendens will govern the present case and the second sale cannot have the overriding effect on the first sale.

15. So far as the present case is concerned, it is apparent that the appellant who is a subsequent purchaser of the same property, has purchased in good faith but the principle of lis pendens will certainly be applicable to the present case notwithstanding the fact that under Section 19(b) of the Specific Relief Act his rights could be protected."

14. In a recent judgment of this Court in Chander Bhan (D) through Lr. Sher Singh vs. Mukhtiar Singh & Ors.5 it is observed, "once it has been held that the transactions executed by the respondents are illegal due to the doctrine of lis pendens the defence of the respondents 1 - 2 that they are bona fide purchasers for valuable consideration and thus, entitled to protection under Section 41 of the Transfer of Property Act, 1882 is liable to be rejected."

15. In the case in hand also, it is an admitted position that the suit was filed on 24.12.1992 and the sale deed was executed on 08.01.1993 by defendant no. 1 in favour of defendant no. 2/appellant during pendency of the suit. The doctrine of lis pendens as contained in Section 52 of the Transfer of Property Act, 1882 applies to a transaction during pendency of the suit.

The Trial Court found execution of agreement to be proved and directed for refund of the amount of Rs. 40,000/- by defendant no. 1 to the plaintiff/appellant with further finding on issue no. 5 that the agreement was not a result of fraud and collusion. The defendant did not prefer any cross-appeal or crossobjections against the said partial decree and allowed the finding to become final. The plaintiff was non-suited only on the ground that defendant no. 2 had no notice of the agreement and is a bona fide purchaser.

However, once sale agreement is proved and the subsequent sale was during pendency of the suit hit by the doctrine of lis pendens, the High Court was fully justified in setting aside the judgment and decree of the Trial Court and the First Appellate Court and passing a decree for specific performance.

16. In our considered view, the High Court has not committed any error of law in rendering the judgment impugned which is hereby affirmed and the instant appeal deserves to be and is hereby dismissed. No order as to costs.

.....J. (Hrishikesh Roy)

.....J. (Prashant Kumar Mishra)

New Delhi;

October 14, 2024

1 (2003) 9 SCC 606

2 (2008) 7 SCC 144

3 (2006) 13 SCC 608

4 (2008) 5 SCC 796

5 204 INSC 377

IN THE SUPREME COURT OF INDIA

Neelam Gupta & Ors.
Vs.
Rajendra Kumar Gupta & Anr.

[Civil Appeal Nos. 3159-3160 of 2019]

Rajendra Kumar Gupta
Vs.
Neelam Gupta and Ors.

[Contempt Petition (C) Nos. 517-518 of 2020]
[Civil Appeal Nos. 3159-3160 of 2019]

HEADNOTE – Though an agreement to sell is a contract of sale, going by its definition under Section 54 of the Transfer of Property Act, a sale cannot be said to be a contract. Sale, going by the definition thereunder, is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

The conjoint reading of all the aforesaid relevant provisions would undoubtedly go to show that they would not come in the way of transfer of an immovable property in favour of a minor or in other words, they would invariably suggest that a minor can be a transferee though not a transferor of immovable property.

The period of limitation to prove title by adverse possession would commence from the date of the defendant's possession becoming adverse and not from when the plaintiff acquires the right of ownership.

JUDGMENT

C.T. Ravikumar, J.

1. The legal representatives of original defendant No.1 viz., appellant Nos. 1 to 3 herein and original defendant No. 2 in Civil Suit No.195A/95, are in appeal against the judgment dated 11.07.2014 passed by the High Court of Chhattisgarh at Bilaspur in Second Appeal No.401/2003, reversing the concurrent judgments of the Courts below and the consequently, drawn decree dated 25.07.2014.

2. The facts, in succinct, that led to the impugned judgment and decree are as follows:-

"Respondent No.1 herein viz., Rajendra Kumar Gupta filed Civil Suit No.195A/95 (evidently, renumbered) admittedly on 24.12.1986, against the original defendants, namely, Ashok Kumar Gupta and Rakesh Kumar Gupta for recovery of possession of suit schedule property based on title besides claiming damages to the tune of Rs. 10,500/- and future damages at the rate of Rs. 1000/- per acre and for costs.

It was averred that he purchased the suit schedule property admeasuring 7.60 acres comprised in Khasra No.867/1 of Mowa village in Tehsil and District Raipur, as per registered sale deed dated 04.06.1968 from one Late Sh. Sitaram Gupta, who was the common cousin of himself and the original defendants. Furthermore, he averred that since its registration he had been enjoying peaceful possession of the suit schedule property under Bhumiswami Rights till he was dispossessed by the original defendants in the month of July, 1983."

3. The original defendants jointly filed a written statement on 04.04.1990 contending that their father, Sh. Ramesh Chandra Gupta, and father of the plaintiff, Sh. Kailash Chandra Gupta, purchased the suit schedule property in the name of their nephew Late Sh. Sitaram Gupta, on 15.03.1963. They further contended that Ramesh Chandra Gupta and Kailash Chandra Gupta had also purchased another land admeasuring 5 acres comprised in Khasra No.924 of the same village.

It was also contended by them that their father had installed electric pump and dug well besides constructing three rooms in the suit schedule property for dairy purpose. They averred, rather admitted, that upon the death of plaintiff's father on 25.12.1967, the suit schedule property was transferred in the name of the plaintiff in the year 1968 and his name was recorded in the revenue records, albeit claimed that its possession still remained with them.

They went on to contend that Ramesh Chandra Gupta and Kailash Chandra Gupta were members of joint family and they had joint business of bangles in Firozabad in the State of Uttar Pradesh and that in the year 1952 they started the business of bangles in Raipur by opening a shop in the name and style 'Laxmi Bangles Store'. According to them, in the year 1973 their father had opened another shop of bangles at Dhamtari and on 31.03.1976 an oral partition had taken place between their father viz., the original defendant No.1 and plaintiff's family whereunder land in Khasra No.924 admeasuring 5 acres and the bangle shop at Dhamtari were given to the plaintiff and his family and the suit schedule property and the bangle shop at Raipur were allotted to the share of defendant's family.

They had also contended that till the aforementioned partition effected on 31.03.1976, the plaintiff was a member of the Joint Hindu Family. In their joint

written statement, they had also taken up the pleas of adverse possession and limitation, as special objections on the ground of being in possession of the suit schedule property for more than 12 years.

4. Based on the rival pleadings, the Trial Court had framed 11 issues as hereunder:-

"1. Did the Plaintiff by purchasing the suit land through registered sale deed dated 04/06/1968 get the possession of the suit land?

2. Whether the Plaintiff is Bhumiswami of the suit land?

3. Did the father of the Defendants purchased the suit land in the name of his nephew in 1963 and 1967, since then the Defendants are in possession of the suit land?

4. Whether the Defendants within the knowledge of the Plaintiff have completed 12 years of continuous and uninterrupted possession on the suit land?

5. Did the father of the Defendants transfer the suit land in the name of the Plaintiff on papers on 04/06/1968 all the lands of Sitaram in which suit land is also included.

6. Whether there is income of Rs. 1000 per year from the suit land?

7. Is the claim of the Plaintiff is barred by Limitation?

8. Did the Defendants in the year 1983 forcible take possession of the suit land.

9. Is the Plaintiff entitled to get the possession of the suit land from the Defendants?

10. Is the Plaintiff entitled to get damages of Rs. 10500/- from the defendants/

11. Reliefs and costs?"

5. The Trial Court answered issue Nos.2 & 8 to 10 in the negative and issue Nos.6 & 7 in the affirmative. Furthermore, it was held that the evidence on record would reveal that prior to the year 1952, the father of the first respondent-plaintiff and father of original defendants were carrying on business in Bangles jointly and Bangle shops were opened in Raipur in the year 1952, and thereafter, in Dhamtari in the year 1973 as joint business.

Joint business would create strong presumption of joint family. The Trial Court also held that the age of the aforesaid Sitaram, the vendor who was the common cousin of the plaintiff and the original defendants, was shown in Ext.P1/C - sale

deed dated 04.06.1968, as 22 years and hence, at the time of purchase of the said suit schedule property, Sitaram must have been aged only 17 years. Consequently, it was held thus:-

"Till otherwise is not proved this evidence of age shows the incapacity of self earning and creates strong presumption that the suit land was purchased by the income of joint family. The defendants have also stated that on the suit land their father had in the year 1964 installed electric pump, dugged well and constructed gate, fencing and three rooms, which statement is unrebutted and that also clears that the suit land was joint family property. By the aforesaid analysis, it is clear that the suit land was purchased by the joint family in the name of Sitaram and after purchase suit land was the Joint Hindu Family Property which was purchased by father of the Defendants in the year 1963 jointly with his brothers in the name of Sitaram."

(underline supplied)

6. After holding that the suit land was Joint Hindu Family property the Trial Court continued to consider the question whether by the purchase of the suit land under Ext.P1/C - sale deed dated 04.06.1968 the plaintiff-first respondent herein accrued any right in the suit land based on Ex-P-1C. In that regard, the Trial Court held that since the suit schedule property was purchased in the year 1963, in the name of Sitaram out of the income of joint family, it became the joint family property and there was no evidence to show that Sitaram was then the head of the family.

Consequently, the Trial Court held that Sitaram had no right to sell the suit land under Ext.P1/C - sale deed dated 04.06.1968 and, therefore, the execution of Ext.P1/C was without any authority or right and, therefore, it is void. That apart, the Trial Court upheld the contention of the original defendants that the suit was barred by limitation as the plaintiff-the first respondent was aware of the possession of defendant in the suit schedule property adverse to his interest since 1968. Based on such observations, conclusions and findings, the Trial Court dismissed the suit.

7. Aggrieved by the dismissal of the suit, the plaintifffirst respondent challenged the judgment and decree of the Trial Court in Civil Appeal No. 17 A of 2002 before the Third Additional District Judge, Raipur.

8. The First Appellate Court as per the judgment dated 09.04.2003 dismissed the appeal and confirmed the dismissal of the suit. Nonetheless, on an analysis of the evidence on record, the First Appellate Court interfered with the finding of the Trial Court that the suit schedule property was a Joint Hindu Family property and held thus: -

"The Trial Court had dismissed the suit by holding that the suit land was the Joint Hindu Family property and further that the suit was barred by time but I have after analysis of evidence held that the suit land was never the Joint Hindu Family property of the parties but have also held that the suit of the Plaintiff is barred by time. Under these circumstances, the finding recorded by the Trial Court against issue No. 7 for dismissing the suit is found to be in order. Hence, no case is made out to interfere with the judgment dated 13/10/1999 passed by the Trial Court."

(underline supplied)

9. It is feeling aggrieved by the judgment and decree of the First Appellate Court dated 09.04.2003 to the extent it is adverse to him that the plaintiff-first respondent herein filed the S.A. No.401/2003 which culminated in the impugned judgment. As noted hereinbefore, as per the impugned judgment the High Court reversed the concurrent judgment and decree of dismissal of the suit and allowed the same after setting them aside. After allowing the appeal under the impugned judgment the suit of the plaintiff-first respondent herein was decreed on the following terms:-

"(A) Plaintiff is entitled for recovery of possession of the suit land bearing Khasra No. 867/ 1, area 7.60 acres situated at village Mowa, Tahsil and District Raipur from the defendants No. 1 and 2; and it is directed that defendants shall deliver the vacant and peaceful possession of the Schedule suit land to the plaintiff herein."

10. A scanning of the impugned judgment of the High Court would reveal that the High Court virtually found that the appreciation of evidence by the courts below was perverse and on a proper appreciation of evidence on record felt that the plaintiff-first respondent herein had succeeded in establishing title over the suit land. Paragraphs 10 and 11 of the impugned judgment assume relevance in the context of the challenge made against the sale by the appellants herein and they read thus:-

"10. The Commissioner, by its order dated 29th March, 1988 again confirmed the order of Sub Divisional Officer, Raipur by dismissing the appeal filed by the defendants herein and declined to direct mutation in name of the defendants in the suit land. Thus, the document Ex.P-4 clearly recites the admission on the part of the defendants that the suit land is held by the plaintiff in his bhumiswami rights and to whom they cultivated the suit land for two consecutive years i.e. 1973 and 1974, not only this, defendants have clearly stated in document Ex.P-4 that they have cultivated the suit land only for more than two years. The date of the said document is 27.1.1981; and the instant civil suit has been filed on 24.12.1986.

11. Coming back to the sale deed (Ex.P-1) dated 4.6.1986 by which the plaintiff has purchased the suit land on 4.6.1986, which clearly recites that the delivery of possession by erstwhile owner Sitaram Agrawal in favour of plaintiff coupled with the admission on the part of the defendants that the suit land was held by plaintiff only for the two consecutive years i.e. 1973 and 1974, they were in permissive possession of the suit land as Adhiyadar; therefore, it is held that the trial Court as well as first appellate Court have committed manifest illegality in holding that the plaintiff has failed to establish his title over the suit land. On the contrary it is held that the plaintiff has satisfactorily pleaded and established his title over the suit land and finding recorded by the two courts below with respect to the plaintiff's title is liable to be set aside."

11. The contentions of the appellants 1, 2 & 3 herein, who are legal representatives of original defendant No.1 as also appellant No.4 who was the original defendant No.2 is that the alleged sale effected as per Ext.P1/C - sale deed dated 04.06.1968 was merely on paper and was bogus and sham document. According to them, Sitaram, the common cousin of original defendants as also the plaintiff got no right to transfer the suit schedule property to the plaintiff as he himself had not accrued any right over the suit schedule property based on sale deed registered in the year 1963.

It is their contention that the said property was purchased in the name of Sitaram by father of original defendants along with his brothers for the joint family (and thus in sum-andsubstance) as their benami and hence, he was not the real owner of the suit schedule property. That apart, they would contend that they have perfected the title over the suit schedule property by way of adverse possession since they have been in continuous possession of the suit schedule property since the year 1968. That apart, it is contended that as rightly held by the Trial Court as also the First Appellate Court, the suit filed by the plaintifffirst respondent was barred by limitation as it was not filed within 12 years from the date of alleged sale.

12. Per contra, the learned counsel appearing for the first respondent would contend that the High Court was perfectly justified in interfering with the judgments and decree of the courts below as they were outcome of perverse appreciation of evidence. To buttress this contention, he relied on Section-4 of Benami Transactions (Prohibitions) Act, 1988 and Article 65 of the Limitation Act, 1963 and the decisions rendered thereunder and relied on by the High Court.

It is the contention that in Ex- P-4, the respondent - defendants categorically admitted that they were placed in possession of a suit land in 1973 and continued in possession up to 1974 as Adhiyadar (lessee) and hence, their possession could be termed only as permissive possession and it could never be said to be adverse possession except by proving that their possession is adverse to the title of the

property to the knowledge of the true owner viz. the plaintiff for a period of 12 years or more. He would further contend that by no stretch of imagination possession of defendants as Adhiyadar (lessee) could be said to be adverse and it could only be permissive possession.

13. A careful analysis of the impugned judgment would reveal that while reversing the concurrent judgment of dismissal of the suit, the High Court found various perversities in the manner of appreciation of evidence. The High Court found that the defendants had never challenged the Ex- P- 1C sale deed dated 04.06.1968. Consequently, it was found that possession was transferred to the plaintiff in 1968 pursuant to the sale deed and Ex-P-2 and P-3, Khasra entries for the period of year 1971-1972 to 1977 and 1978 would further reveal the ownership and possession of the plaintiff over the suit schedule property.

It was further found that though the defendants had contended that there occurred an oral partition of the properties in the year 1976 between the family of the plaintiff and the defendants whereunder, the defendants received the suit schedule property and shop at Raipur and the plaintiff received shop at Dhamtari and land in Khasra No. 924, the First Appellate Court held that the said oral partition was not proved by the defendants/the appellants herein and the said finding of the First Appellate Court had become final.

The High Court had also taken note of the fact that earlier the defendants filed Ex- P-4 application dated 27.01.1981 (produced as Annexure P-13 in these proceedings) before Tahsildar, Raipur stating that they had been or they had cultivated the suit land for two years i.e. 1973 and 1974 as Adhiyadar (lessee) and thereby acquired the rights of occupancy tenants and their names be recorded in revenue records. It was found that in the said application they had again admitted the ownership of plaintiff over the suit schedule property. Ex- P-4 application was rejected by the Tahsildar as per order dated 22.06.1985 and the same was upheld by the Sub Divisional Officer and later by the Commissioner as per orders dated 29.10.1986 and 29.03.1988 respectively.

The High Court also found that the contents of Ex-P-4 application dated 27.01.1981 filed before Tahsildar, Raipur was admitted by defendant No. 1 while being cross-examined ultimately to arrive at the conclusion that such permissive possession could not be converted as adverse possession except by proving their possession adverse to the title of the plaintiff for a continuous period of 12 years or more. Obviously, the High Court found that the contentions raised to claim the occupancy tenancy before the Tahsildar and the contentions qua adverse possession before the Civil Court are contradictory in nature.

The High Court relied on the decision of this court in Indira v. Arumugam and Anr.1 to hold that when the suit is one for possession based on title and when

once title is established on the basis of relevant documents and other evidence brought on record in such suit unless the defendant could prove adverse possession for the prescriptive period, the suit of the plaintiff could not be dismissed. Relying on the decision of this court in Saroop Singh v. Banto and Ors.2, the High Court held that in the light of Article 65 of the Limitation Act, the starting point of limitation would not commence from the date when the right of ownership arises to the plaintiff but would commence from the date the defendant's possession became adverse.

Furthermore, it was held that when plaintiff's title and possession over the suit schedule property within twelve years from the date of institution of the suit is proved, it is for the defendants to prove title by adverse possession and in that regard, the starting point of limitation in terms of Article 65 of the Limitation Act would commence from the date of defendant's possession becoming adverse and not from the date when the right of ownership is acquired by the plaintiff. Suffice it to say, that the concurrent judgment of dismissal of the suit by the Trial Court and the First Appellate Court on the ground that the suit was barred by limitation was set aside by the High Court under the impugned judgment assigning such reasons.

14. While considering the rival contentions raised before us to challenge/ sustain the impugned judgment indisputable facts based on evidence on record and certain well settled position qua the laws involved on the factual matrix involved in the case on hand require to be borne in mind. The Trial Court dismissed the suit mainly on two counts, firstly, holding that the suit schedule property is a Joint Hindu Family property and therefore, the common cousin Sitaram had no right to sell the property as per Ext.P1/C dated 04.06.1968 to the plaintiff (First respondent herein) and secondly, that the suit was barred by limitation.

The judgment dated 09.04.2003 passed by the First Appellate Court in Civil Appeal No. 17 A / 2002 would reveal that after appreciating the evidence the First Appellate Court set aside the finding of the Trial Court that the suit schedule property is a Joint Hindu Family property. As a matter of fact, even after interfering with the said finding and holding it otherwise the First Appellate Court sustained the judgment of dismissal of the suit concurring with the finding of the Trial Court that the suit filed by the plaintiff was barred by limitation.

Thus, it is evident that though, the Trial Court and the First Appellate Court are ad idem on the issue on limitation they were at issues upon the finding as to whether the suit schedule property is the Joint Hindu Family property. Despite the reversal of the finding of the Trial Court the defendants, who were respondents before the First Appellate Court, had not chosen to file appeal and had allowed the finding that the suit schedule property is not a Joint Hindu Family property to become final, for reasons best known to them.

The First Appellate Court, inter alia, considered, rather, re-appreciated the oral testimony of the original defendant No.1-Shri Ashok Kumar Gupta who was examined as DW-1 and also documentary evidence. On such appreciation, it was held that the suit schedule property is not a Joint Hindu Family property of the four sons of late Mangal Sen Gupta, viz., plaintiff's father late Shri Ramesh Chand Gupta, defendant's father Late Shri Ramesh Chand Gupta, Late Ram Prasad and Beniram Gupta.

It is despite all such conclusions and finding that the respondents before the first appellate court viz., the appellants herein did not file cross-appeal or crossobjection to challenge the adverse finding that the suit schedule property is not a Joint Hindu Family property before the High Court. Suffice it to say that in the said circumstances the appellants cannot be permitted to canvass that suit schedule property is a Joint Hindu Family Property.

15. That apart, a scanning of the impugned judgment would reveal that the High Court has picked up certain crucial perversities that infected the judgments of the courts below. In Stroud's Judicial Dictionary of Words & Phrases, 4th Edn., the expression 'perverse' has been defined thus: -

"Perverse. - A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

In the decision in Arulvelu & Anr. v. State Rep. by Public Prosecutor & Anr.3 this Court held that 'perverse finding' would mean a finding which is not only against the weight of evidence but is altogether against the evidence itself.

In the decision in General Manager (P), Punjab & Sind Bank and Others v. Daya Singh4, this Court held perverse finding as one which is based on no evidence or one that no reasonable person would arrive at. Furthermore, it was held that unless it is found that some relevant evidence had not been considered or that certain inadmissible material had been taken into consideration the finding could not be said to be perverse."

16. Bearing the aforesaid position as to perverse finding we will proceed to consider whether the impugned judgment is to be sustained in view of the indisputable or undisputed facts and the decisions of precedential value applicable to such situations and circumstances revealed from the evidence on record. Before proceeding to undertake such a consideration it is not inappropriate to refer to the settled positions of law with respect to pleadings in civil proceedings before a civil court.

17. The ordinary rule of law is that evidence can be permitted to be given only on a plea properly raised and not in contradiction of the plea (see the decision in Mrs. Om Prabha Jain v. Abnash Chand & Anr.5).

18. In the decision in Ram Sarup Gupta (dead) by LRs v. Bishun Narain Inter College and Others6, this Court held: -

"It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it."

19. In Kashi Nath (Dead) through LRs. v. Jaganath7, this Court held that where the evidence is not in line with the pleadings and is at variance with it, the said evidence could not be looked into or relied on. In Damodhar Narayan Sawale (D) through LRs. v. Tejrao Bajirao Mhaske8, this Court held:-

"the well neigh settled position of law is that one could be permitted to let in evidence only in tune with his pleadings. We shall not also be oblivious of the basic rule of law of pleadings, founded on the principle of secundum allegata et probate, that a party is not allowed to succeed where he has not set up the case which he wants to substantiate."

20. Now, for undertaking a consideration as mentioned above, we will firstly refer to the pleadings of the defendants in their jointly filed written statement. In paragraph 1-a, thereof it was averred thus:-

"1-a. True and correct position is that plaintiff's father late Kailash Chand; defendants' father late Ramesh Chandra; late Ram Prasad Gupta; and Beni Ram Gupta, all sons of Mangal Sen Gupta, were members of Hindu Undivided Family and all of them were doing their business of manufacturing glass bangles in Firozabad (Uttar Pradesh) in the name and style of Ganesh Glass Bangles. In the year 1952, the father of the defendants and father of plaintiff opened a shop in Raipur City in the name of Lakshmi Bangle Stores. Thereafter Defendants' Father Late Ramesh Chandra and Plaintiff's father purchased suit lands on 15.03.1963 in the name of their nephew late Sitaram for a total price of Rs. 8,950/. Because late Sitaram was a member of the Joint Family."

"In the year 1968, late Ram Prasad who was the brother of Defendant's father requested Defendants' father to transfer the suit lands and other lands which are in the name of his (Ram Prasad's) son Sitaram in favour of any other member. Because Sitaram's condition is not sound and he can ruin and fritter away suit lands under influence from anyone. Thereafter Defendants' father transferred suit lands and other lands which were in the name of Sita Ram, in favour of the plaintiff on 4.6.1968 at an estimated price, although those lands were purchased for Rs. 16,000/- and suitable amendments were made in the records also.

But suit lands were always maintained and occupied by the defendants herein and their father. In the year 1973, brothers of Defendants' father opened a bangle shop

in Dhamtari and plaintiff and his brother Surinder used to sit in this shop. Later on, an oral partition was arrived at in between the Defendants' father and Plaintiff's family according to which the shop in Dhamtari and agricultural lands of khasra no. 924 measuring 5.00 acres situated in Village Mowa were given to plaintiff and his family. Whereas suit lands herein and the shop in Raipur fell to the share of defendants."

21. In paragraph 1-b, thereof it was averred as under:-

"1-b. In fact suit lands were always and even today also are in possession of defendants and their father and after the aforesaid partition, defendants and their father and after the aforesaid partition, defendants and their father became absolute and exclusive owners of the suit lands and plaintiff has absolutely no right or interest in the suit lands."

22. It is true that in paragraphs 9 and 10 of the written statement special objections were taken as under:-

"9. Even if it is presumed that defendants are not the owners of the suit lands described in paragraph 1 above, then also defendants have become owner of the suit lands due to their constant and uninterrupted possession thereof since last more than 12 years and which was within the full knowledge of the plaintiff. Therefore suit of the plaintiff is liable to dismissed on this ground alone."

"10. THAT Suit is beyond the prescribed limitation and as such is liable to be dismissed with costs."

23. Now, having noted the aforementioned specific averments in the written statement and the positions of law regarding pleadings referred above, we will refer to the oral evidence of original defendant No.1, who was examined as DW-1. The chief examination of DW-1 would reveal that in contradiction to the averment that the defendants' father late Ramesh Chandra and plaintiffs' father purchased suit lands on 15.03.1963, Ashok Kumar Gupta deposed that the disputed land were purchased in jointness by his father and his three brothers, namely, Beni Ram Gupta, late Ram Prashad Gupta and late Kailash Gupta and hence, it was a joint family. He would also depose that it was so purchased in the name of Sita Ram Gupta in the year 1963. It is to be noted that while being cross examined, he would depose: -

"disputed lands were purchased by my father in the name of Sita Ram. But neither the original nor the copy of that sale deed has been filed. We did not give any application for mutation of our names on the disputed lands in the year 1976 after partition had been arrived at."

24. We have referred to the pleadings and the evidence adduced by the defendants not for the purpose of re-visiting the findings of the First Appellate Court that the suit schedule property is not a joint family property. We will reveal the raison d'etre therefor, a little later.

25. In view of the non-availability of the contention for the appellants that the suit schedule property is a Joint Hindu Family property. The next question is whether the finding of the High Court that the plaintiff is the owner of the suit schedule property is the correct conclusion on assimilation of facts and appreciation of evidence. We have no hesitation to answer it in the affirmative. The sale deed dated 04.06.1968 (Ext.P1/C) is a registered sale deed whereunder the plaintiff had purchased the suit land from late Shri Sita Ram Aggarwal.

26. It is a fact that the Trial Court held Ext.P1/C-sale deed dated 04.06.1968 as void on twin grounds. As a matter of fact, the Trial Court held that in Ext.P1/C the age of Sh. Sitaram was shown as 22 years and hence, when the suit land was purchased in the name of Sitaram on 15.03.1963, Sh. Sitaram must have been aged 17 years. Further, it was held:-

"Till otherwise is not proved this evidence of age shows the incapacity of self-earning and creates strong presumption that suit land was purchased by the income of joint family."

27. The Trial Court further held in paragraphs 16 and 17 of its judgment thus:-

"16. Now the analysis of the point that did the Plaintiff purchases the suit land through Exhibit P- 1 sale deed or whether any right on the suit land accrues to the Plaintiff on the basis of document Exhibit P-1 C. According to previous paragraph the burden to prove the illegality of Exhibit P-1C is on the Defendants and to prove Exhibit P-1 illegal Defendants have failed and in the previous concluded issue it is held that the suit land after being purchased in the name of Sitaram was the property of joint family. There is no evidence that shows that Sitaram was the head of the family therefore, it is held that Sitaram had no right to sell the suit land by the sale deed Exhibit P-1 C executed without any authority or right is void.

17. Another ground for concluding that Exhibit P-1 C is void is that when it is proved that the Plaintiff on the date of sale i.e. 04/06/1968 was one of the member of joint family and was minor at that time then what was the need for which one member of the joint family to sell the Suit land to another member of the same joint family. On the date of sale the Plaintiff being the purchaser was minor and had no capacity of earning money on his own. The business of Plaintiff's father was joint business. It appears that the intention of the joint family behind that action was to keep the suit land and other properties of sitaram

in the name of the Plaintiff. But it is pertinent to mention that even after such intention Exhibit P-1 C is not transfer on papers only and therefore Exhibit P-1 does not bear any legal weightage."

28. It is to be noted that though the First Appellate Court reversed the finding of the Trial Court that suit land is a Joint Hindu Family property, it did not consider in detail and arrive at any positive finding as to the correctness or otherwise of the declaration of the Trial Court of Ext.P1/C as void. At any rate, the Frist Appellate Court did not set it aside. At the same time, it may be possible to infer from the following recital from paragraph 17 of the judgment of the First Appellate Court that it held the finding of the Trial Court that sale of suit land by Sitaram in favour of the plaintiff did not confer any title to the plaintiff as not one in accordance with law:-

"But the Trial Court had treated the suit property as Joint Hindu Family property and has further held that sale of the suit land by the Sitaram in favour of the plaintiff does not confer any title on the plaintiff which finding is not in accordance with law."

29. In the contextual situation, especially with reference to the observation and finding of the Trial Court on the ground of minority at the time of purchase of suit land, be it that of Sitaram or plaintiff, we think it only appropriate to observe and hold thus, in the fitness of things: -

Section 6(h) of the Transfer of Property Act provides inter alia, that no transfer can be made "to a person legally disqualified to be a transferee." Section 7 of the Transfer of Property Act deals with persons competent to transfer. It provides that every person competent to contract is competent to transfer property to the extent and in the manner allowed and prescribed by any law for the time being in force.

Section 11 of the Indian Contract Act, 1872, provides as to who are competent to contract and it provides that every person is competent to contract who is of the age of majority according to the law to which he is subject (of course the reference is to the Indian Majority Act, 1875) and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

30. Though an agreement to sell is a contract of sale, going by its definition under Section 54 of the Transfer of Property Act, a sale cannot be said to be a contract. Sale, going by the definition thereunder, is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

The conjoint reading of all the aforesaid relevant provisions would undoubtedly go to show that they would not come in the way of transfer of an immovable property in favour of a minor or in other words, they would invariably suggest

that a minor can be a transferee though not a transferor of immovable property. In such circumstances, it can only be said that Sh. Sitaram had no legal disability or disqualification at the time of purchase of suit land on 15.03.1963 in his name as also the plaintiff, as a transferee, at the time of execution of Ext.P1/C - sale deed on 04.06.1968. It is nobody's case that at the time of execution of Ext.P1/C Sitaram had not attained majority.

31. Owing to the oscillative stand of the defendants/the appellants over the sale deed dated 15.03.1963 and 04.06.1968, and on account of the disentitlement of the defendants to resurrect the contention that the suit land is a Joint Hindu family property coupled with the indisputable position obtained from the materials on record that admittedly suit land was purchased in the name of Sh. Sita Ram, we find absolutely no reason to ascribe voidness to the said sale deed dated 15.03.1963 as also Ext.P1/C sale deed dated 04.06.1968 or to hold that they did not have the effect of transfer of ownership.

Though, the defendants did not raise a contention specifically on the ground that Sh. Sita Ram was a benami, the said question whether such a contention is available and can be sustained by the defendants to invalidate the said sale deeds have been gone into by the High Court taking note of the contention that though it was purchased in his name in the year 1963 he did not have right to transfer the suit land to the plaintiff as per Ext.P1/C-sale deed.

In that regard, Section 4 of the Benami Transaction Act, 1988 was referred to by the High Court. After referring to Sub-sections 4 (1) and (2) thereof, the High Court held that no suit, claim or action to enforce a right in respect of any property held benami shall lie against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property because of the prohibitory nature therefor.

Relying on the decision of this Court in R. Rajagopal Reddy (D) by LRs. v. Padmini Chandrasekharan (D) by LRs.9 and in view of the prohibition contained in the aforesaid provisions, the High Court virtually held such a contention that Sh. Sita Ram was not the owner of the property with right to alienate, (of course, on attaining majority) as also the challenge against the right acquired by the plaintiffs pursuant to the purchase of the suit land under Ext.P1/C as meritless. Suffice it to say that in view of the reasons assigned by the High Court and given by us supra, there can be no doubt with respect to the transfer of the ownership of the suit land from Sh. Sita Ram to the plaintiff on the strength of Ext.P1/C sale deed.

32. The question that survives further consideration is whether the High Court was right in declining to accept the appellants' contention that they perfected the

title over the suit land by adverse possession. While being cross examined as DW-1, the original defendant No.1 would depose thus: -

"An application was given by me and my brother in the Court of Tehsildar for mutation of our names on the disputed lands on the ground of lease and our possession of the lands. Ext. P4 is that application and it bears my signature and portion A-A and signature of my brother at B-B."

33. During further cross examination, he would depose:-

"Our name was not legally mutated on the disputed lands in the revenue court under Application Ext. P4."

34. We have already found that the High Court was perfectly correct in holding that the plaintiff had acquired ownership over the property on the strength of Ext.P1/C sale deed. In such circumstances, the claim put forth as relates perfecting the title by adverse possession as also the suit being barred by limitation have to be considered with reference to the oral testimony of DW-1 as extracted above and the other allied evidences and also the various decisions referred to and relied on by the High Court to negate the said claim based on adverse possession.

The deposition of DW-1 himself would go to show that the original defendants applied for getting occupancy right over the said property and in that regard filed Ext.P4 and at the same time sought for entering their names in place of the plaintiff in respect of the suit land in revenue records. However, such a mutation had never happened. In fact, the evidence would reveal that the defendants made an application on 27.01.1981 (Ext.P4) before the Tehsildar, Raipur, stating that they have taken the suit land on lease as a Adhiyadar from plaintiff in 1973-1974 and cultivated the same for more than two years and thereby they became the absolute owners of the property in question.

In the said application in paragraph (1) they stated specifically that they took agricultural lands on lease (patta) from the plaintiff Rajendra Kumar under his ownership. It is a fact borne out from the records that the said application was rejected by the Tehsildar vide order dated 22.06.1985 and the appeal against the same was dismissed by Sub- Divisional Officer, Raipur on 29.10.1986. Though, the matter was further taken up before the Commissioner, he confirmed the order of the SDO as per order dated 29.03.1988.

These evidence available on record were duly taken note of and dealt with by the High Court. The factum of submission of Ext.P4 application and the passing of orders thereon, as above, are indisputable and undisputed and hence, in the teeth of evidence, as above, the defendants/the appellants cannot claim adverse possession against the respondent/the plaintiff.

In view of the above indisputable and undisputed facts as also the rejection of the contention of voidness of the sale deeds referred above, the defendants would not be justified in claiming that they had perfected the title by adverse possession and at the same time the aforesaid position would reveal that their possession was permissive in nature. The conclusion so arrived by the High Court based on proper appreciation of the evidence, in detail, as is discernible from the impugned judgment is nothing but the outcome of correct appreciation of the materials on record.

35. It is also a fact that the defendants earlier took up a contention that there occurred an oral partition of the properties between the family of plaintiff and defendants in the year 1976 whereunder they received the suit land and the bangle shop at Raipur. The First Appellate Court after considering the said case declined to accept the claim regarding oral partition and held the oral partition as not proved and that finding of the First Appellate Court was also permitted to become final by the appellants herein.

36. Now, we will revert back to the claim of adverse possession raised by the appellants. In this context, it is also relevant to refer to the decisions of this Court relied on by the High Court to reject their claim of the adverse possession. In Indira's case (supra), whereunder this Court held that once the plaintiff proved his title, the defendant in order to claim ownership had to establish on the basis of relevant documents and other evidence to prove the plea of adverse possession for the prescriptive period and unless it is so proved, the plaintiff could not be non-suited.

37. We have already taken note of the fact that the High Court had duly taken note of Ext.P4 application submitted by the defendants, and also the evidence of DW-1, while being cross examined which were not given due weight by the Courts below. We have also found that the High Court has rightly reached the conclusion that the appellants herein had only permissive possession over the scheduled land and it was not adverse possession. In the contextual situation the following decisions including the one in Saroop Singh v. Banto10, relied on by the High Court, assume much relevance. Paragraphs 28, 29 and 30 of Saroop Singh's decision read thus: -

"28. The statutory provisions of the Limitation Act have undergone a change when compared to the terms of Articles 142 and 144 of the Schedule appended to the Limitation Act, 1908, in terms whereof it was imperative upon the plaintiff not only to prove his title but also to prove his possession within twelve years, preceding the date of institution of the suit. However, a change in legal position has been effected in view of Articles 64 and 65 of the Limitation Act, 1963. In the instant case, the plaintiff-respondents have proved their title and, thus, it was for the first defendant to prove acquisition of title by adverse possession. As

noticed hereinbefore, the first defendant-appellant did not raise any plea of adverse possession. In that view of the matter the suit was not barred.

29. In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse. (See Vasantiben Prahladji Nayak v. Somnath Muljibhai Nayak [(2004) 3 SCC 376].)

30. "Animus possidendi" is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See Mohd. Mohd. Ali v. Jagadish Kalita [(2004) 1 SCC 271])"

38. The decision of this Court in M. Durai v. Muthu and Others11, reiterated the law laid down, as above in Saroop Singh's case, and further held thus: -

"7. The change in the position in law as regards the burden of proof as was obtaining in the Limitation Act, 1908 vis-à-vis the Limitation Act, 1963 is evident. Whereas in terms of Articles 142 and 144 of the old Limitation Act, the plaintiff was bound to prove his title as also possession within twelve years preceding the date of institution of the suit under the Limitation Act, 1963, once the plaintiff proves his title, the burden shifts to the defendant to establish that he has perfected his title by adverse possession."

39. The law laid down in Saroop Singh's case was again reiterated by this Court in the decision in Prasanna & Ors. v. Mudegowda (D) by LRs12 and Vasantha v. Rajalakshmi13.

40. In the light of Saroop Singh's case there can be no doubt that once the plaintiff proves his title over suit property it is for the defendant resisting the same claiming adverse possession that he perfected title through adverse possession and in that regard, in terms of Article 65 of the Limitation Act, 1963 the starting point of limitation would not commence from the date when the right of ownership arises to the plaintiff but would commence only from the date the defendant's becomes adverse.

41. In the decision in Brij Narayan Shukla (D) through LRs. v. Sudesh Kumar alias Suresh Kumar (D) through LRs. and Ors.14, this Court while considering the question whether tenants of original owner could claim adverse possession against transferee of land lord held that tenants or lessees could not claim adverse possession against their landlord/lessor, as the nature of their possession is permissive in nature.

42. In the contextual situation, especially in view of the nature of the evidence adduced by the defendants in setting up and supporting the claim of adverse possession, the decisions of this Court in Ravinder Kaur Grewal and Ors. v. Manjit Kaur and Ors.15 and the decision of a Constitution Bench in M. Siddiq (D) through LRs (Ram Janmabhumi Temple case) v. Mahant Suresh Das and Ors.16 require reference. Paragraph 60 of the decision in Ravinder Kaur Grewal's case, in so far as it is relevant, reads thus:-

"60. The adverse possession requires all the three classic requirements to co-exist at the same time, namely, nec vi i.e. adequate in continuity, nec clam i.e. adequate in publicity and nec precario i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is required."

43. In the case on hand, the evidence on the part of the defendants/appellants herein would reveal that instead of establishing 'animus possidendi' under hostile colour of title they have tendered evidence indicating only permissive possession and at the same time failed to establish the time from which it was converted to adverse to the title of the plaintiff which is open and continuous for the prescriptive period.

44. In M. Siddiq's case (supra) paragraphs 1142 and 1143 assume relevance and they, in so far as relevant to this case, run as under: -

"1142. A plea of adverse possession is founded on the acceptance that ownership of the property vests in another against whom the claimant asserts a possession adverse to the title of the other. Possession is adverse in the sense that it is contrary to the acknowledged title in the other person against whom it is claimed. Evidently, therefore, the plaintiffs in Suit 4 ought to be cognizant of the fact that any claim of adverse possession against the Hindus or the temple would amount to an acceptance of a title in the latter. Dr Dhavan has submitted that this plea is a subsidiary or alternate plea upon which it is not necessary for the plaintiffs to stand in the event that their main plea on title is held to be established on evidence. It becomes then necessary to assess as to whether the claim of adverse possession has been established.

1143. A person who sets up a plea of adverse possession must establish both possession which is peaceful, open and continuous possession which meets the requirement of being nec vi nec claim and nec precario. To substantiate a plea of adverse possession, the character of the possession must be adequate in continuity and in the public because the possession has to be to the knowledge of

the true owner in order for it to be adverse. These requirements have to be duly established first by adequate pleadings and second by leading sufficient evidence. Evidence, it is well settled, can only be adduced with reference to matters which are pleaded in a civil suit and in the absence of an adequate pleading, evidence by itself cannot supply the deficiency of a pleaded case."

45. Upon considering the evidence on the part of the appellants herein (the defendants), we have no hesitation to hold that the requirements to co-exist to constitute adverse possession are not established by them. So also, it can only be held that the reckoning of the period of limitation from the date of commencement of the right of ownership of the plaintiff over the suit land instead of looking into whether they had succeeded in pleading and establishing the date of commencement of adverse possession and satisfaction regarding the prescriptive period in that regard, was rightly interfered with, by the High Court.

46. There can be no doubt that being concurrent cannot be a ground for confirmation and as held by this Court in D.R. Rathna Murthy v. Ramappa17, concurrent findings could be set aside if perversity is found with the impugned decision.

47. The upshot of the discussion as above is that the well-merited decision of the High Court in the impugned judgment invite no interference in exercise of appellate jurisdiction and the appeals are liable to be dismissed. Hence, the captioned appeals are dismissed. No order as to costs.

Contempt Petition (C) Nos. 517-518 of 2020 IN Civil Appeal Nos. 3159-3160 of 2019

48. The Contempt Petition arises out of an order passed on 27.03.2015 in Civil Appeal Nos. 3159-3160 of 2019 when it was remaining only as SLP Nos. 6995-6996 of 2015. This court, while issuing notice ordered thus: -

"Status quo regarding possession, as it exists today, shall be maintained by the parties, till further orders."

On 27.10.2020 this court passed another order, wherein, inter-alia, it was ordered:

"It is made clear that on the next occasion, the contempt petition as well as CA Nos. 3159- 3160/2019 shall be disposed of finally."

49. The alleged contempt is that pending the Civil Appeal and after the passing of the order of status quo regarding possession, the respondents in the contempt petition viz., the appellants created third party rights in the property. Obviously, with the dismissal of the civil appeals the impugned judgment and decree of the High Court got confirmed and the declaration that the first respondent in the

appeal - plaintiff is entitled to recovery of possession of the suit property mentioned specifically therein has become final. Therefore, indisputably, in terms of the judgment and decree the appellants herein are bound to deliver vacant and possession of the scheduled suit land to the plaintiff viz., the first respondent.

50. Since the same is executable we do not propose to go into the contentions in the contempt petition and are inclined only to close the contempt petition in view of the judgment in Civil Appeal Nos. 3159-3160 of 2019 and to discharge the notice issued to alleged contemnors and to leave the first respondent in the Civil Appeals viz., the plaintiff to execute the decree, in accordance with law.

51. Accordingly, the contempt petition is closed as above.

.....J. (C.T. Ravikumar)

.....J. (Sanjay Kumar)

New Delhi;

October 14, 2024

1 AIR 1999 SC 1549

2 (2005) 8 SCC 330

3 (2009) 10 SCC 206

4 (2010) 11 SCC 233

5 (AIR 1968 SC 1083)

6 (1987) 2 SCC 555

7 (2003) 8 SCC 740

8 2023 SCC OnLine SC 566

9 AIR 1996 SC 238

10 (2005) 8 SCC 330

11 (2007) 3 SCC 114

12 2023 SCC OnLine SC 511

13 2024 SCC OnLine SC 132

14 (2024) 2 SCC 590

15 (2019) 8 SCC 729

16 (2020) 1 SCC 1

17 (2011) 1 SCC 158

IN THE SUPREME COURT OF INDIA

Renjith K.G. and Ors.
Vs.
Sheeba

[Civil Appeal Nos. 8315 - 8316 of 2014]

HEADNOTE – A pendente lite transferee, being a stranger to the suit, can file an application under Order 21 Rule 99 CPC against dispossession from the suit property. Order XXI Rule 99 CPC comes to the rescue of the person who being a stranger to the suit was dispossessed by the decree holder upon the execution of the decree.

JUDGMENT

R. Mahadevan, J.

1. Heard Mr. Sanand Ramakrishnan, learned counsel for the appellants and Mrs.Nishe Rajen Shonker, learned counsel for the Respondent.

2. These Civil Appeals are preferred against the judgment and order dated 11.11.2011 passed by the High Court of Kerala at Ernakulam1 in E.F.A Nos.6 and 7 of 1998, whereby, the High Court allowed the said appeals and remanded the matter to the trial Court for fresh consideration.

3. Succinctly stated facts are that the appellants are the legal representatives of the original plaintiff / decree holder viz., Padmakshy (deceased), who had filed a suit in O.S.No.38 of 1956 before the Sub Court, Parur, for partition and separate possession of her share in the plaint schedule 13 items of immovable properties. The Sub Court, Parur, passed a preliminary decree on 23.10.1958. Subsequently, the said suit was transferred to the file of the Additional District Court, Parur and re-numbered as O.S.No.82 of 1960, in which, a final decree was passed on 09.03.1970.

4. The dispute revolved around is qua item no.4 of the plaint schedule property measuring an extent of 1 acre 57 cents in Sy.No.120/10 situated at Muppathepadam Kara, Kodungallur Village, Paravur Taluk, Kerala, which originally belonged to one Ayyapan, who had eight children.

In the year 1085 M.E.2 the said Ayyappan executed a mortgage in favour of one Kunjan and created a further mortgage in favour of the same mortgagee in the year 1093 M.E.3 On the death of Ayyappan, his six children assigned their 6/8 shares in favour of one Raghuthaman, by gift deed No. 2147 dated 17.07.1963 and the remaining 2/8 shares were obtained by the Defendant No.1, by name,

Padmanabhan, as per the deed No.1491 of 1119 M.E.4 On the death of the mortgagee Kunjan, his rights devolved on the Defendant No.1 and the original plaintiff Padmakshy (who was a minor at that time).

The Defendant No.1, without the concurrence of Padmakshy, executed a mortgage for Rs.1,000/- in favour of one Nanu, in the year 1123 M.E.5 and the said Nanu, in turn, assigned his right to the Defendant No.10, by name, Veeran, as per deed No.101 of 1951. As per document No.3669 of 1964, the Defendant No.10 assigned his right to the said Raghuthaman.

5. In the final decree proceedings, qua item no.4, based on the Advocate Commissioner's report, the plaintiff was allotted one half portion of the property in Sy.No.120/10 i.e., red shaded portion in Ex.C2 plan; and the Defendant No.10 was directed to pay a sum of Rs.461.67 towards equalisation and also mesne profit at the rate of Rs.64.80 per year to the plaintiff.

The final decree was engrossed on the requisite stamp paper on 19.11.1990. To execute the same, the plaintiff preferred an Execution Petition bearing No.4 of 1991, in which, notice was ordered to the defendants / judgment debtors, but, they did not turn up. Ultimately, the Executing Court ordered delivery of possession and accordingly, a portion of item no.4 plaint schedule property, as shown in Ex.C2 plan, was delivered to the plaintiff on 22.11.1994.

6. Thereafter, the aforesaid Raghuthaman preferred E.A.No.1 of 1995 in E.P. No.4 of 1991under Order XXI Rule 99 of the Civil Procedure Code6 for redelivery of the property mentioned in Ex.C2 plan, claiming independent right, title and interest in the same. Along with this application, he also filed E.A.No.2 of 1995 seeking an order of injunction restraining the plaintiff from committing waste till the disposal of EA No.1 of 1995; and E.A.No.3 of 1995 for recovery of damages to the tune of Rs.25,000/- from the plaintiff for having committed waste in the property. All the three applications were jointly heard and were dismissed, by a common order dated 12.08.1997.

7. Aggrieved by the aforesaid order passed in E.A. Nos.1 and 3 of 1995, the said Raghuthaman filed Execution First Appeals viz., EFA Nos.6 of 1998 and 7 of 1998, which came to be dismissed by the High Court, by judgment dated 30.05.2007. Seeking to review the said judgment, the respondents herein, who are the legal representatives of the said Raghuthaman, filed R.P.Nos.1107 and 934 of 2007, which came to be allowed, by order dated 22.03.2010. Pursuant to the same, E.F.A Nos.6 and 7 of 1998 were re-heard and were eventually, allowed by the High Court, by the judgment dated 11.11.2011 which is impugned herein.

8. The first and foremost contention of the learned counsel appearing for the appellants is that the predecessor of the respondents (Raghuthaman) did not

establish his independent right, title or interest in the property in question and he was only a pendente lite transferee and therefore, he cannot resist the execution of a decree filed by the original plaintiff / decree holder. Additionally, the learned counsel submitted that the decision in Chiranji Lal (D) by LRs. v. Hari Das (D) by LRs.7 relied on by the High Court is not applicable to the facts of the present case.

9. The learned counsel appearing for the contesting respondent, on the other hand, submitted that the final decree was passed on 09.03.1970; it was engrossed on the stamp paper on 19.11.1990; the execution petition seeking delivery of possession of the property under the decree was preferred only on 13.03.1991, which was clearly barred by limitation as per Article 136 of the Limitation Act.

That apart, the predecessor of the respondents under Order XXI Rule 99 CPC is entitled to raise the question of limitation for the execution of the decree, which has become time-barred. Accordingly, the High Court set aside the order dated 12.08.1997 passed in EA Nos.1 and 3 of 1995 and remanded the matter to the trial Court for fresh consideration, by the judgment impugned herein, which does not call for any interference at the hands of this Court.

10. We have considered the rival submissions made by the learned counsel on either side and perused the records carefully and meticulously.

11. The facts narrated above are not disputed. Concededly, in the suit filed by the original plaintiff, preliminary decree was passed on 23.10.1958; final decree was passed on 09.03.1970 and it was engrossed on stamp paper on 19.11.1990; and the Execution Petition seeking delivery of possession of the suit properties, came to be filed only on 13.03.1991. It is also to be noted that in the final decree, there was no order directing the parties to furnish stamp papers for the purpose of engrossing the decree.

12. Seemingly, the predecessor of the respondents claimed right, title and interest qua 78.5 cents forming part of item no.4 of the plaint schedule property, by virtue of the assignment deed dated 01.12.1964 bearing No.3669 executed by the Defendant No.10. Pursuant to the order of the Executing Court, he was dispossessed from the subject property, in which, he was occupying and the possession was handed over to the plaintiff / decree holder.

After repeated challenge, the applications preferred by the predecessor of the respondents seeking re-delivery of possession and damages, contending inter alia that the Execution Petition was barred by limitation, came to be allowed and the matter was remanded to the trial Court for fresh consideration, by the judgment impugned herein.

13. It was the specific plea of the appellants that the predecessor of the respondents being a pendente lite transferee, is not entitled to file an application under Order XXI Rule 99 CPC and raise the question of limitation of the Execution Petition, so as to deprive the right of the appellants to enjoy the fruits of the decree.

14. On a reading of Order XXI Rule 99 CPC, it is lucid that where any person other than the judgment debtor is dispossessed of immovable property by the holder of a decree for the possession of such property, or where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

It also means that a third party to the decree has a right to approach the Court even after dispossession of the immovable property, which he was occupying. In the case on hand, the predecessor of the respondents was not a party to the suit and he was dispossessed from the property, in execution of the decree passed in the suit and therefore, he who is purported to be a stranger to the decree, can very well adjudicate his claim of independent right, title and interest in the decretal property as per Order XXI Rule 99 CPC.

15. In so far as the claim of appellants that the predecessor of the respondents, namely Mr.Raghuthaman, being pendent lite transferee and hence would have no locus to file the application seeking re-delivery, we have already held that "any person" not a party to the suit or in other words a stranger to the suit can seek redelivery, after he has been dispossessed. The term "Stranger" would cover within its ambit, a pendent lite transferee, who has not been impleaded. That apart, the facts in the present case disclose that the property stood transferred to the predecessor of the respondents before the Final Decree was passed in 1970.

The fact that Mr.Raghuthaman had successfully resisted the claim of the 9th Defendant for delivery of possession, in the presence of the predecessor of the appellant is not disputed. While so, it was incumbent on the appellants to have impleaded the predecessor of the respondents by filing an application under Order 21 Rule 97 of CPC, when they resisted the delivery. The pendent lite purchaser has every right to defend his right, title, interest and possession. This Court recently while adjudicating the right of a pendent lite transferee held as under:

Yogesh Goyanka v. Govind, (2024) 7 SCC 524 : 2024 SCC OnLine SC 1692

"16. The fulcrum of the dispute herein concerns the impleadment of a transferee pendente lite who undisputedly had notice of the pending litigation. At the outset, it appears pertinent to reiterate the settled position that the doctrine of lis pendens as provided under Section 52 of the Act does not render all transfers pendente lite

to be void ab initio, it merely renders rights arising from such transfers as subservient to the rights of the parties to the pending litigation and subject to any direction that the Court may pass thereunder.

"17. Therefore, the mere fact that RSD was executed during the pendency of the underlying suit does not automatically render it null and void. On this ground alone, we find the impugned order to be wholly erroneous as it employs Section 52 of the Act to nullify RSD and on that basis, concludes that the impleadment application is untenable. Contrary to this approach of the High Court, the law on impleadment of subsequent transferees, as established by this Court has evolved in a manner that liberally enables subsequent transferees to protect their interests in recognition of the possibility that the transferor pendente lite may not defend the title or may collude with the plaintiff therein (see the decision of this Court in Amit Kumar Shaw v. Farida Khatoon [Amit Kumar Shaw v. Farida Khatoon, (2005) 11 SCC 403] & A. Nawab John v. V.N. Subramaniyam[A. Nawab John v. V.N. Subramaniyam, (2012) 7 SCC 738 : (2012) 4 SCC (Civ) 324])."

16. The difference between the rights of a decree holder qua a third party to the suit and the right of a third party after being dispossessed has been laid down by this Court in Sriram Housing Finance & Investment (India) Ltd. v. Omesh Mishra Memorial Charitable Trust, (2022) 15 SCC 176 : 2022 SCC OnLine SC 794, wherein it was held as follows:

"24. On conjoint reading of the aforesaid provisions, it can be observed that under Rule 97, it is only the "decree-holder" who is entitled to make an application in case where he is offered resistance or obstruction by "any person". In the present case, as admitted by the appellant itself, it is a bona fide purchaser of the property and not the "decree-holder".

As available from the material placed on record, it is the respondent Trust along with legal heirs of late N.D. Mishra who are the decree-holders and not the appellant. Therefore, it is obvious that the appellant cannot take shelter of Rule 97 as stated above to raise objections against execution of decree passed in favour of the respondent. Further, Rule 99 pertains to making a complaint to the Court against "dispossession" of the immovable property by the person in "possession" of the property by the holder of a decree or purchaser thereof.

"25. It is factually not in dispute that the appellant purchased the said property from Mr Yogesh Mishra vide sale deed dated 12-4-2004 and has been in vacant and physical possession of the property since then. Had it been the case that the appellant was dispossessed by the respondent Trust in execution of decree dated 2-9-2003, the appellant would have been well within the ambit of Rule 99 to make an application seeking appropriate relief to be put back in possession.

On the contrary, the appellant in the instant case was never dispossessed from the property in question and till date, as contended and unrefuted, the possession of same rests with the appellant. Considering the aforesaid, the appellant cannot be said to be entitled to make an application under Rule 99 raising objections in execution proceedings since he has never been dispossessed as required under Rule 99.

26. Now, as stated above, applications under Rule 97 and Rule 99 are subject to Rule 101 which provides for determination of questions relating to disputes as to right, title or interest in the property arising between the parties to the proceedings or their representatives on an application made under Rule 97 or Rule 99. Effectively, the said Rule does away with the requirement of filing of fresh suit for adjudication of disputes as mentioned above. Now, in the present case, Order 21 Rule 101 has no applicability as the appellant is neither entitled to make an application under Rule 97 nor Rule 99 for the reasons stated above. Accordingly, we find no substance in the argument raised by the learned counsel for the appellant."

Therefore, once an application under Order 21 Rule 99 is filed, it is incumbent upon the Trial Court to consider all the rival claims including the right title and interest of the parties under Order 21 Rule 101 which bars a separate suit by mandating the execution court to decide the dispute.

17. As regards the question of limitation for execution of a decree passed in the suit for partition, this Court, in the decision in Chiranji Lal (supra), has categorically held that the time begins to run from the date of final decree and not from the date on which it is engrossed on the stamp paper. For better appreciation, the relevant passage of the said decision is reproduced below:

"24. A decree in a suit for partition declares the rights of the parties in the immovable properties and divides the shares by metes and bounds. Since a decree in a suit for partition creates rights and liabilities of the parties with respect to the immovable properties, it is considered as an instrument liable for the payment of stamp duty under the Indian Stamp Act. The object of the Stamp Act being securing the revenue for the State, the scheme of the Stamp Act provides that a decree of partition not duly stamped can be impounded and once the requisite stamp duty along with penalty, if any, is paid the decree can be acted upon.

25. The engrossment of the final decree in a suit for partition would relate back to the date of the decree. The beginning of the period of limitation for executing such a decree cannot be made to depend upon date of the engrossment of such a decree on the stamp paper. The date of furnishing of stamp paper is an uncertain act, within the domain, purview and control of a party. No date or period is fixed for furnishing stamp papers. No rule has been shown to us requiring the court to

call upon or give any time for furnishing of stamp paper. A party by his own act of not furnishing stamp paper cannot stop the running of period of limitation.

None can take advantage of his own wrong. The proposition that period of limitation would remain suspended till stamp paper is furnished and decree engrossed thereupon and only thereafter the period of twelve years will begin to run would lead to absurdity. In Yeswant Deorao Deshmukh v. Walchand Ramchand Kothari [1950 SCR 852] it was said that the payment of court fee on the amount found due was entirely in the power of the decree holder and there was nothing to prevent him from paying it then and there; it was a decree capable of execution from the very date it was passed.

26. Rules of limitation are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. As above noted, there is no statutory provision prescribing a time limit for furnishing of the stamp paper for engrossing the decree or time limit for engrossment of the decree on stamp paper and there is no statutory obligation on the Court passing the decree to direct the parties to furnish the stamp paper for engrossing the decree.

In the present case the Court has not passed an order directing the parties to furnish the stamp papers for the purpose of engrossing the decree. Merely because there is no direction by the Court to furnish the stamp papers for engrossing of the decree or there is no time limit fixed by law, does not mean that the party can furnish stamp papers at its sweet will and claim that the period of limitation provided under Article 136 of the Act would start only thereafter as and when the decree is engrossed thereupon.

The starting of period of limitation for execution of a partition decree cannot be made contingent upon the engrossment of the decree on the stamp paper. The engrossment of the decree on stamp paper would relate back to the date of the decree, namely, 7th August, 1981, in the present case. In this view the execution application filed on 21st March, 1994 was time barred having been filed beyond the period of twelve years prescribed under Article 136 of the Act. The High Court committed illegality in coming to the conclusion that it was not barred by limitation."

18. The above judgment was relied upon by the Constitutional Bench of this Court while deciding the validity of an unstamped agreement, wherein it was observed as under: Interplay Between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 SCC OnLine SC 1666

"255. In Chiranji Lal v. Hari Das [Chiranji Lal v. Hari Das, (2005) 10 SCC 746], a three-Judge Bench of this Court rejected the contention that an unstamped preliminary decree is not enforceable and, therefore, the period of limitation

begins to run when the decree is engrossed on the stamp paper. The Stamp Act is a fiscal measure with the object to secure revenue for the State on certain classes of instruments.

The Stamp Act is not enacted to arm the litigant with a weapon of technicality to meet the case of his opponent. As there is no rule which prescribes any time for furnishing of stamp paper or to call upon a person to pay stamp duty on a preliminary decree of partition, the proposition that period of limitation would remain suspended till stamp paper is furnished and decree engrossed thereon was rejected."

19. Applying the ratio laid down in Chiranjilal case (Supra) to the facts of the present case, the High Court rightly set aside the order passed in the Execution Petition and remanded the matter to the trial court for fresh consideration, leaving all the issues including the independent right, title or interest claimed by the respondents in the property in question, to be adjudicated therein. Therefore, we do not find any infirmity or illegality in the judgment so rendered by the High Court, warranting our interference.

20. In view thereof, these Civil Appeals stand dismissed. However, it is open to the appellants to raise all the contentions available to them before the trial Court. Costs made easy.

21. Pending application(s), if any, shall stand disposed of.

.....J. [Pankaj Mithal]

.....J. [R. Mahadevan]

New Delhi

October 14, 2024.

1 Hereinafter shortly referred to as "the High Court"
2 Malayalam Era or the Malayalam Calendar. To get the corresponding year on the Gregorian Calendar, add 826 which makes it 1911.
3 Gregorian Calendar year 1919
4 Gregorian Calendar year 1945
5 Gregorian Calendar year 1949
6 For short, "CPC"
7 (2005) 10 SCC 746

IN THE SUPREME COURT OF INDIA

Asim Akhtar
Vs.
State of West Bengal & Anr.

[Criminal Appeal No._____ of 2024
@ SLP (Crl.) No.12292 of 2022]

HEADNOTE – There is no bar for the trial court to decide an application seeking the summoning of an additional accused under Section 319 Cr.P.C. even after the cross-examination of the prosecution witness.

JUDGMENT

Vikram Nath, J.

1. Leave Granted.

2. By means of this appeal, the accused has assailed the correctness of the judgment and order dated 11.08.2022 passed by the Calcutta High Court in CRA No.222/2020 whereby the High Court allowed the appeal filed by the complainant (respondent no.2) and after setting aside the acquittal recorded by the Trial Court on 31.09.2020, remanded the case to proceed in a manner whereby the Trial Court would first decide the application under Section 319 of the Code of Criminal Procedure, 19731 and thereafter proceed to decide the trial.

Brief facts relating to the present case are:

3. That the First Information Report2 was lodged by respondent no.2 alleging that the appellant had tried to kidnap him which was registered under sections 366/323/506(II) of the Indian Penal Code, 18603 with section 25(1)(B)(a) of the Arms Act, 1950 as FIR No. 125 on 11.10.2017. After investigation, a charge-sheet was submitted on 08.02.2019 under the aforesaid sections.

4. During the trial the Examination-in-Chief of the victim (respondent no.2) PW1, her mother Sabiya Rahaman (PW 2) and her father Aslam Shaikh (PW 3) were recorded. However, their cross-examination was deferred on an application made by the accused-appellant. The Examination-in-Chief was conducted on 29.02.2020. On 07.03.2020 an application under section 319 CrPC was filed by respondent no.2 for further summoning the father and mother of the accused-appellant. Thereafter it appears that the above three prosecution witnesses did not

appear before the Trial Court for their cross-examination despite having received the summons.

On 14.09.2020 again an adjournment was sought on behalf of PWs 1, 2 and 3 whereupon the Trial Court recorded that despite the specific repeated orders, the prosecution witnesses are not coming forward for cross-examination and that the witnesses as such are wilfully disobeying the orders of the Court. The Trial Court directed that the cross-examination of the witnesses is fixed for the next date and orders would be passed on the application under section 319 CrPC after the examination of all the witnesses are over. The order dated 14.09.2020 is reproduced hereunder:

"Today is fixed for cross-examination of PW 1, PW2 and PW 3. Sole accused Asim Akhtar is present by filing hazira. SR of summons are received after service. On behalf of the defacto complainant a petition has been filed praying for disposal of the application under section 319 CrPC with affidavit. Copy is seen by the PP in charge. On behalf of the PW 1 PW 2 and PW 3 a petition has been filed for an adjournment with xerox copy of prescription Copy is also seen by the PP in charge. Perused the petition. Heard both sides. Admittedly, the petition has been filed by the de facto complainant with an affidavit.

The affidavit is sworn at Sealdah Court on 14.09.2020 before the Notary Public Sarbani Mitra but the said witness failed to appear before the court. That factum goes to show that the said witness wilfully disobeyed the order of court. The application under section 319 CrPC is heard in presence of both sides. The order will be passed after the examination of all the witnesses are over. Tomorrow for examination and cross examination of all the witnesses and order to respect the application under section 319 CrPC."

5. On 15.09.2020 again the witnesses remained absent and filed an application for adjournment. They also moved an application seeking four weeks' time to bring appropriate orders from the High Court regarding no adverse orders being passed in case of non-appearance of parties owing to the Covid-19 pandemic. Yet another application was filed for giving a direction to the concerned authority to issue urgent certified copy of the order passed by the High Court.

6. The Trial Court recorded in detail the past conduct of the PWs 1, 2 and 3 that despite the service of summons, they had not been appearing for cross-examination. It was also recorded that PW 1 - the complainant had come to the Court with a sworn affidavit in her application under section 319 CrPC but did not care to attend the trial proceedings and present herself for cross-examination.

7. The Trial Court further proceeded to record that although the complainant wants the trial to proceed but is not coming forward for being cross-examined

and has only filed an application to the effect that the application under section 319 CrPC may be heard and decided before the cross-examination. Even the Public Prosecutor had opposed the application filed by the de facto complainant for hearing of the 319 CrPC application.

He also stated that other witnesses are coming and returning because of the repeated absence of PWs 1,2 and 3. The Trial Court thus fixed 29.09.2020 for cross-examination and also recorded its displeasure and inclination to execute the bailable warrants of arrest against the witnesses. It directed the Public Prosecutor to ensure presence of the witnesses and also directed the Investigating Officer to remain present with the witnesses.

8. Again on 21.09.2020 the sole accused - appellant was present. An application was filed by the complainant-respondent no.2 stating that aggrieved by the orders dated 14.09.2020 and 15.09.2020 she had preferred CRR No.1357/2020 and CRAN No.1/2020 which is likely to be taken up on 23.09.2020, as such the matter be adjourned for two more weeks. Respondent no.2 further filed an application for offences under Section 354 and 354B of the IPC which required to be added along with existing sections. Once again PWs 1 and 3 were present but the counsel for the complainant again insisted that they are ready to face the crossexamination, however, the application under section 319 CrPC may be disposed of first.

9. The Trial Court recorded their stand that they would not face cross-examination until the application under Section 319 CrPC is decided. The counsel for the accused-appellant was ready to cross-examine but could not proceed as the prosecution witnesses did not agree and continued to insist that the application under section 319 CrPC be decided first.

10. The Trial Court recorded all the facts, the contentions and also the conduct of the parties during the trial and ultimately proceeded to close the evidence of the prosecution. The Trial Court further went on to decide the application under section 319 CrPC and held that the evidence recorded so far was not admissible as the witnesses had failed to present themselves for cross-examination as such there was no justification for summoning the parents of the accused-appellant on the basis of inadmissible evidence. Accordingly, the same was rejected. The Trial Court further proceeded to hold that it was a case of no evidence under Section 232 CrPC and thereby acquitted the accused-appellant.

11. Aggrieved by the same, respondent no.2 preferred an appeal before the High Court which has since been allowed by the impugned judgment and order, giving rise to the present appeal.

12. We have heard learned counsel for the appellant and for the respondent no.1 - State of West Bengal. Despite service of notice, no one has put in appearance on behalf of respondent no.2- Complainant.

13. The High Court in paragraph 15 of the impugned judgment relied upon a paragraph of the Constitution Bench judgment in the case of Hardeep Singh vs. State of Punjab & Ors.4 wherein it was held that "power under section 319 CrPC can be exercised at the stage of completion of examination-in-chief and the court does not need to wait till the said evidence is tested in cross-examination, for it is the satisfaction of the court, which can be gathered from the reasons recorded by the court, in respect of complicity of some other person(s) not facing the trial in the offence."

The said view of the Constitution Bench has been taken as a mandate by the High Court that application under section 319 CrPC must be necessarily decided even if the cross-examination has not been conducted, only on the basis of Examination-in-Chief. Relying upon the same, the High Court has set aside the order of the acquittal passed by the Trial Court and has remanded the matter to the Trial Court with the direction to first decide the application under section 319 CrPC and thereafter proceed with the sessions trial expeditiously.

14. The judgment in the case of Hardeep Singh (supra) does not provide that it is mandatory to decide the application under section 319 CrPC before conducting cross-examination and only on the basis of examination-in-chief. It merely clarifies that even examination-in-chief is part of evidence and record and thus can be relied upon to decide an application under section 319 CrPC.

15. The judgment does not take away the discretion of the Trial Court to wait for the cross-examination to take place before deciding the application under section 319 CrPC. It merely provides that consideration of such an application should not be a mini trial. It is for the Trial Court to decide whether the application should be decided without waiting for the cross-examination to take place or to wait for it. The same would depend upon the satisfaction of the Trial Court on the basis of the material placed on record. 16. The five-Judges Bench in Hardeep Singh (supra) concluded the following:

"89. We have given our thoughtful consideration to the diverse views expressed in the aforementioned cases. Once examination-in chief is conducted, the statement becomes part of the record. It is evidence as per law and in the true sense, for at best, it may be rebuttable. An evidence being rebutted or controverted becomes a matter of consideration, relevance and belief, which is the stage of 5 Page 56 judgment by the court. Yet it is evidence and it is material on the basis whereof the court can come to a prima facie opinion as to complicity of some other person who may be connected with the offence.

90. As held in Mohd. Shafi (Supra) and Harbhajan Singh (Supra), all that is required for the exercise of the power under Section 319 Cr.P.C. is that, it must appear to the court that some other person also who is not facing the trial, may also have been involved in the offence. The pre-requisite for the exercise of this power is similar to the prima facie view which the magistrate must come to in order to take cognizance of the offence. Therefore, no straight-jacket formula can and should be laid with respect to conditions precedent for arriving at such an opinion and, if the Magistrate/Court is convinced even on the basis of evidence appearing in Examination-in- Chief, it can exercise the power under Section 319 Cr.P.C. and can proceed against such other person(s).

It is essential to note that the Section also uses the words 'such person could be tried' instead of should be tried. Hence, what is required is not to have a mini-trial at this stage by having examination and cross-examination and thereafter rendering a decision on the overt act of such person sought to be added. In fact, it is this mini-trial that would affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all, for in light of sub-section 4 of Section 319 Cr.P.C., the person would be entitled to a fresh trial where he would have all the rights including the right to cross examine prosecution witnesses and examine defence witnesses and advance his arguments upon the same.

Therefore, even on the basis of Examination-in-Chief, the Court or the Magistrate can proceed against a person as long as the court is satisfied that the evidence appearing against such person is such that it prima facie necessitates bringing such person to face trial. In fact, Examination-in-Chief untested by Cross Examination, undoubtedly in itself, is an evidence."

17. Therefore, the complicity of any person sought to be arrayed as an accused can be decided with or without conducting cross-examination of the complainant and other prosecution witnesses, and there is no mandate to decide the application under section 319 CrPC before cross-examination of other witnesses.

18. In the present case, we find that the Trial Court having tried its best to ensure that the prosecution witnesses nos.1, 2 and 3 present themselves for cross-examination and thereafter it would decide the application under section 319 CrPC, the prosecution witnesses repeatedly continued to either absent themselves or file adjournment applications and only insisted for deciding the application under section 319 CrPC first and only thereafter the trial could proceed. The complainant has no such mandatory right to insist that an application be decided in such a manner.

Even the Public Prosecutor had not supported the complainant's counsel in filing of the application under section 319 CrPC. The role of the complainant in a trial

does not permit it to act as a Public Prosecutor on behalf of the State. The complainant and its counsel have a limited role in a sessions trial in a State case. The High Court failed to take into consideration all these aspects. Why the prosecution witnesses were shying from facing the cross-examination is not understood. Their only insistence was that the parents of the accused should be summoned and dragged into the trial and to somehow or the other keep the trial pending.

19. In view of the facts and circumstances of the case, we are of the view that the Trial Court was correct in proceeding under section 232 CrPC and accordingly acquitting the appellantaccused, treating it to be a case of no evidence. The Trial court was also correct in rejecting the application under section 319 CrPC for want of admissible evidence on part of the prosecution.

20. For all the reasons recorded above, the appeal is allowed, the impugned order of the High Court is set aside and that of the Trial Court is restored.

.....J. (Vikram Nath)

.....J. (Prasanna B. Varale)

New Delhi

October 18, 2024

1 CrPC

2 FIR

3 IPC

4 (2014) 3 SCC 92

IN THE SUPREME COURT OF INDIA

Ratilal Jhaverbhai Parmar and Ors.
Vs.
State of Gujarat and Ors.

[Civil Appeal No. 11000 of 2024]

HEADNOTE – Urged the High Court judges to ensure that if they are pronouncing only the operative part of the judgment by saying that reasons will follow, then they should endeavour to give the reasons within 2-5 days. If a judge feels that the reasons can't be given within 5 days due to work pressure, then it would be prudent to reserve the judgment.

However, while it would be prudent to leave it to the learned Judges to pick any one of the three options:-
(i) dictation of the judgment in open court,
(ii) reserving the judgment and pronouncing it on a future day, or
(iii) pronouncing the operative part and the outcome, i.e., "dismissed" or "allowed" or "disposed of", while simultaneously expressing that reasons would follow in a detailed final judgment supporting such outcome.

It would be in the interest of justice if any learned Judge, who prefers the third option (supra), makes the reasons available in the public domain, preferably within 2 (two) days thereof but, in any case, not beyond 5 (five) days to eliminate any kind of suspicion in the mind of the party losing the legal battle. If the pressure of work is such that in the assessment of the learned Judge the reasons in support of the final judgment cannot be made available, without fail, in 5 (five) days, it would be a better option to reserve the judgment."

JUDGMENT

Dipankar Datta, J.

1. In recent times, on more occasions than one, this Court has suo motu initiated proceedings having noticed attitudinal and thought patterns of learned Judges of various high courts across the country which tended to lower the image of the judiciary in general and the high courts in particular. While some of the proceedings are still pending, one such proceeding has been disposed of recently emphasising the need for learned Judges to exercise restraint while expressing one's views in open court.

2. Yet again, a fortnight back, this Court set aside a judgment of a high court on the ground that such judgment had been signed by the learned Judge after demitting office.

3. These are distressing trends indeed.

4. As if there is no end to it, the present case unfolds facts which are equally disturbing and meets with our disapproval.

5. However, before we refer to the factual matrix giving rise to this civil appeal, noticing a decision of fairly recent origin of this Court in Balaji Baliram Mupade vs State of Maharashtra[2] is considered imperative. Relevant excerpts from such decision read as follows:

"1. Judicial discipline requires promptness in delivery of judgments-an aspect repeatedly emphasised by this Court. The problem is compounded where the result is known but not the reasons. This deprives any aggrieved party of the opportunity to seek further judicial redressal in the next tier of judicial scrutiny.

10. We must note with regret that the counsel extended through various judicial pronouncements including the one referred to aforesaid appear to have been ignored, more importantly where oral orders are pronounced. In case of such orders, it is expected that they are either dictated in the court or at least must follow immediately thereafter, to facilitate any aggrieved party to seek redressal from the higher court. The delay in delivery of judgments has been observed to be a violation of Article 21 of the Constitution of India in Anil Rai case [(2001) 7 SCC 318] and as stated aforesaid, the problem gets aggravated when the operative portion is made available early and the reasons follow much later.

11. It cannot be countenanced that between the date of the operative portion of the order and the reasons disclosed, there is a hiatus period of nine months! This is much more than what has been observed to be the maximum time period for even pronouncement of reserved judgment as per Anil Rai case.

12. The appellant undoubtedly being the aggrieved party and prejudiced by the impugned order is unable to avail of the legal remedy of approaching this Court where reasons can be scrutinised. It really amounts to defeating the rights of the appellant to challenge the impugned order on merits and even the succeeding party is unable to obtain the fruits of success of the litigation.

13. We are constrained to pen down a more detailed order and refer to the earlier view on account of the fact that recently a number of such orders have come to our notice and we thought it is time to send a reminder to the High Courts."

6. We are surprised, not a little, that the strong reminders issued by this Court from time to time have had little effect on the high courts in the country and that decisions, binding under Article 141 of the Constitution, are being persistently ignored. It has been stressed time and again over the years and we feel pained to observe, once more, that neglect/omission/refusal to abide by binding precedents augurs ill for the health of the system.

Not only does it tantamount to disservice to the institution of the judiciary but also affects the administration of justice. For a learned Judge to deviate from the laid down standards would be to betray the trust reposed in him by the nation. We sincerely hope that learned Judges of the high courts while being careful and cautious will remain committed to the service of the litigants, for whom only they exist, as well as the oath of office that they have taken so that, in future, we are not presented with another case of similar nature to deal with.

7. In this case, which is a civil appeal arising from a judgment and order bearing the date 1st March, 2023, we find the High Court of Gujarat at Ahmedabad[2] to have egregiously breached the law.

8. The bare facts necessary for decision, without any reference to the facts and law involved in the case before the High Court, culled out from the pleadings before us are these.

9. R/Special Civil Application No. 10912 of 2015[3], being a petition under Article 227 of the Constitution of India, was filed by the appellant before the High Court challenging an order dated 16th June, 2015 passed by the Deputy Collector, Kamrej Prant, District Surat. The Deputy Collector, by such order, had confirmed the order dated 23rd February, 2015 of the Mamlatdar, Kamrej. The petition came up for consideration on 1st March, 2023 before a learned Judge, having been listed in the causelist as Item No.17. According to the appellant, he was represented before the learned Judge by his counsel.

Hearing having concluded on 1st March, 2023, "he was under the belief that the detailed order is reserved in the proceeding. However, even an order recording the reserving of orders has not been passed or made available on the official website of the Hon'ble High Court till date". Since the detailed order was not pronounced, the appellant's counsel did not also apply for the certified copy. In the process, more than a year passed by. On 30th April, 2024, the appellant's counsel received from the IT Cell of the High Court soft copy of a reasoned order dated 1st March, 2023 containing the reasons for dismissal of the petition.

10. The impugned order is part of the records. At the beginning of the said order, "ORAL ORDER" is printed in bold font, i.e., it is supposed to be an order which has been dictated in open court. However, the appellant has alleged something

rather serious : that the learned Judge had passed the reasoned order more than a year after 1st March, 2023 and ante-dated the same to project that the reasoned order was passed on 1st March, 2023.

11. Such allegation prompted us to seek, by an order dated 12th August, 2024, a report[4] from the Registrar General of the High Court as to whether the allegation of the appellant that the reasoned order bearing the date 1st March, 2023 was communicated to him for the first time on 30th April, 2024 is correct or not. A report has since been filed by the Registrar General and on perusal thereof, we have found the allegation of the appellant to be substantially correct. It is revealed that the learned Judge dictated the reasoned order on 12th April, 2024 to His Lordship's personal secretary, whereafter such order was uploaded on the website of the High Court on 30th April, 2024 as well as communicated to the appellant's counsel by the IT Cell.

12. Having regard to the nature of controversy raised by the appellant, we also had the occasion to witness (on the virtual platform) the recorded version of the proceedings dated 1st March, 2023 before the learned Judge of the High Court. After briefly hearing counsel for the appellant and his adversary, the learned Judge was heard to say, "I will dismiss" and a few seconds thereafter, pronounced the outcome of the petition as "dismissed". Counsel representing the appellant before the High Court being present could hear what the learned Judge said while his adversary acknowledged that he was "grateful". Immediately thereafter, the next item on the board was called. This is precisely what happened on 1st March, 2023, while dealing with the petition.

13. There can be no two opinions that if not the appellant, but his counsel certainly did have knowledge of dismissal of the petition by the learned Judge; also, we have no doubt that the appellant feigned complete ignorance and deliberately did not plead that his counsel was well and truly aware of the outcome of the petition moments after hearing stood concluded before the learned Judge.

14. At the same time, from the proceedings of the court of the learned Judge available on the virtual platform, it is patently clear that His Lordship did not even express that the 'reasons would follow' for the dismissal of the petition. Not having so expressed, His Lordship practically rendered the court functus officio.

We say so because it is not too clear as to whether any order of dismissal was signed by His Lordship on 1st March, 2023, or at any point of time immediately thereafter, although we have noted from the report that the Disposal Log Report of 1st March, 2023 of His Lordship's court duly recorded that the petition stood disposed of.

In Vinod Kumar Singh v. Benaras Hindu University[5], this Court held that when a judgment is pronounced in open court, parties act on the basis that it is the operative judgment and that signing is a mere formality; however, in exceptional circumstances, an order pronounced in open court can be amended or even altered before the same has been authenticated by the Judge by signing the order but such a course ought to be adopted judicially, sparingly and for adequate reasons and upon putting the parties to notice. Such is not the case here. We are inclined to the view that the learned Judge not having expressed that reasons for the dismissal would follow, His Lordship ceased to retain jurisdiction over the petition and foreclosed assignment of reasons for the dismissal.

15. Assuming that His Lordship were to express that reasons for the dismissal would follow, still there could be no valid reason to write a detailed reasoned order after lapse of a year having expressed "dismissed" and upload such order on the website. No doubt, as per the good practice prevailing in the High Court, the order was communicated to the appellant's counsel by the IT Cell but that is little consolation in a case of the present nature.

16. Having said thus, and bearing in mind the onerous responsibilities that learned Judges of the high courts across the country have to shoulder on a daily basis, we are persuaded to think that the duty and responsibility of assigning reasons for dismissal of the petition completely escaped the mind of the learned Judge. Perhaps, there is hardly any individual including any Judge who can truly claim to have committed no mistake in his life. It is a feature of human fallibility that people are prone to commit mistakes. It is how lessons that individuals learn from mistakes which facilitate in putting the past behind for moving forward.

17. Nonetheless, we regret to observe that the learned Judge having realised in April, 2024 of having omitted to assign reasons for dismissal of the petition although His Lordship had pronounced "dismissed" in open court proceedings on 1st March, 2023, could have avoided committing an act of indiscretion, by breaching all norms of ethics, in proceeding to assign reasons more than a year later. In accordance with the highest standards of fairness, propriety and discipline, the need of the hour required the learned Judge to bring the matter back on board once again, recall the verbal order of dismissal and place it before the Hon'ble the Chief Justice of the High Court for assigning it to some other Bench for fresh consideration.

18. It cannot be gainsaid that in today's world, particularly when more and more people are showing interest in court proceedings and there is wide coverage thereof on social media platforms, the presiding officers of courts are equally at the centre of attention as the controversy that is involved and the manner of its resolution. The society expects every Judge of a high court, so to say, to be a model of rectitude, an epitome of unimpeachable integrity and unwavering

principles, a champion of moral excellence, and an embodiment of professionalism, who can consistently deliver work of high-quality guaranteeing justice.

Although, on the whole, the weight of work on learned Judges of the high courts across the country is immense and the Judges have also been performing commendably despite various odds, instances such as the one under consideration, which we view as nothing more than an aberration, bring disrepute to the judicial system of the country and show the entire judiciary in poor light. This, in our opinion, could have well been avoided with a little bit of care and caution, and deference to the decisions on the point by this Court.

19. The situation presents us with an opportunity where we feel it expedient to share our thoughts only for the purpose of future guidance to overcome adversity. Having regard to the demands of changing times, one of the significant aspects of judging that has been at the forefront of discussion in many a conference/conclave or legal circle is the need for prompt 'pronouncement of judgments'. Order XX of the Code of Civil Procedure, 1908 ordains that a judgment can be pronounced, in an open court, either at once or as soon thereafter as may be practicable on a future day. Guided by the principles enshrined in Order XX, number of learned Judges scrupulously follow the same.

Learned Judges do come across cases requiring short orders which, in their assessment, may not consume more than 15/20 minutes. These orders are generally dictated in open court immediately after a hearing is over. On the other hand, if in any given case the judgment could justifiably be reserved after hearing of extensive arguments, it would not be proper to criticize a learned Judge if he dictates the judgment in open court notwithstanding the length of time to be taken therefor. As per the ordainment of Order XX, the learned Judge would be perfectly justified in doing so.

In such cases, it could roughly take any time between 20 minutes to a couple of/few hours or even more spilling over to the next day (in rare cases) to accomplish the task. This approach could result in the board (if it is heavy) getting choked and the remaining cases on the board having slim chances of being considered. As the saying goes, necessity is the mother of invention. The necessity to strike a balance, in turn, has led to an innovative approach (many a times followed even by this Court) which, though not strictly in tune with Order XX, has transitioned into a regular practice by passage of time.

This contemplates a rough assessment made by a learned Judge of the time to be taken for dictating a judgment after hearing in a matter is concluded and if, in such assessment, it is likely to take more than 20/25 minutes, the learned Judge proceeds to pronounce the operative part together with the outcome while

expressing "reasons to/would follow" and then concludes the exercise of pronouncing the final judgment by providing the reasons as soon as possible thereafter.

Having regard to the exploding docket of a majority of the high courts, learned Judges consider it wise and prudent to make optimum use of judicial time by not dictating lengthy judgments in court. This practice, no doubt, seeks to serve a salutary purpose. People unversed with the functioning of the judicial system are perhaps unaware as to how development of this practice has contributed to saving of precious judicial time, which the learned Judges invariably devote and utilize for hearing more cases that are on board in the anxiety to consider and decide as many cases as are possible during the scheduled working orders.

Burdened though with immense pressure of work and brushing aside fatigue, which is quite likely to develop, the learned Judges after retiring for the day dictate the judgment in their court chambers or in their residential offices either on the same day or within a few days thereafter. The hearing having concluded not too long back, the arguments remain fresh in the mind of the learned Judges and it becomes all the more easy to dictate the judgment.

While this approach without a doubt has its own benefits, recent happenings leave us to lament that reasons for the conclusion reached are being placed in the public domain much too late, as in the case of Balaji Baliram Mupade (supra) as well as this case. In an attempt to save time to attend to as many cases as possible, certain learned Judges unwittingly are contributing to justice being delayed in given cases which, concomitantly, have been giving rise to criticism of unpleasant flavours.

Critics of such practice (to pronounce the operative part with the outcome and to provide the reasons later in detailed final judgments) could and do legitimately argue in favour of reserving judgments as required by the procedural laws if the particular case so demands but as Judges, we know, reserving too many judgments has its own pitfalls. Once the files pile up, it becomes increasingly difficult to remember the minute details of the case and the arguments advanced by the parties in support of their respective cases which leads to a shift to rely on the written notes of arguments.

However, if only written notes were enough, there would be no need of oral hearing in court. Additionally, drawing from our experience on the bench, we can safely say that inclination of learned Judges to reserve judgments is invariably the course adopted where cases involving complex and intricate points of law do call upon learned Judges to craft well-researched and well-reasoned judgments. That apart, there are cases arising from recent enactments involving questions of law

not having arisen hitherto and consequently such questions have never been answered.

Such categories of cases demand the high courts to lay down the law in clear terms for comprehension of all concerned. Obviously, this process is time consuming and the time limit for delivering judgments by the high courts as laid down in Anil Rai vs State of Bihar[6], at times, is breached. We have full trust and confidence in the learned Judges of the high courts since they are well-equipped to tackle any kind of pressure situation.

However, while it would be prudent to leave it to the learned Judges to pick any one of the three options [(i) dictation of the judgment in open court, (ii) reserving the judgment and pronouncing it on a future day, or (iii) pronouncing the operative part and the outcome, i.e., "dismissed" or "allowed" or "disposed of", while simultaneously expressing that reasons would follow in a detailed final judgment supporting such outcome], it would be in the interest of justice if any learned Judge, who prefers the third option (supra), makes the reasons available in the public domain, preferably within 2 (two) days thereof but, in any case, not beyond 5 (five) days to eliminate any kind of suspicion in the mind of the party losing the legal battle.

If the pressure of work is such that in the assessment of the learned Judge the reasons in support of the final judgment cannot be made available, without fail, in 5 (five) days, it would be a better option to reserve the judgment. Also, if the ultimate order would have the effect of changing the status of the parties or the subject matter of the lis, it would always be advisable to stick to the course envisaged in Order XX.

Since, the fraternity of learned Judges of all the courts are interested to preserve the dignity of the respective judicial institutions with which they are associated, all learned Judges must be mindful of the impact of their actions on the society at large. Dealing with lakhs of litigation is no mean task, but at the same time we must realize that instances do emerge leaving absolutely no margin for error. It is our duty as Judges to stand tall and rise to the challenge.

20. While concluding, we are reminded of the universal truth "to err is human, to forgive is divine" emphasizing the human tendency of committing mistakes and the importance of forgiving a human error.

21. Conscious that we are of learned Judges of the high courts working overtime to render justice to the litigants by conducting judicial proceedings, at times, by sitting in excess of normal working hours, discharging administrative duties in addition to judicial work, etc, and in the process overlooking health issues and

sacrificing all pleasures of social life, we need to look at the issue wearing glasses of grace and compassion.

As has been held by this Court in Tirupati Balaji Developers (P) Ltd. vs State of Bihar[7], in the unified hierarchical judicial structure that we have under the Constitution, vertically the Supreme Court is placed over the high courts; but if the Supreme Court and the high courts were thought of as brothers, we as Judges of the apex court in the country remain as the elder brother only to the extent of exercise of appellate jurisdiction.

Promoting empathy and understanding by encouraging forgiveness, which is a divine quality transcending human limitation, should be preferred to anything else in the given circumstances, particularly when the learned Judge has not been put on notice and is unable to place His Lordship's version. This approach is considered to be a better option rather than remarking adversely or giving unsolicited advice.

22. We, thus, allow the controversy to rest here.

23. It is now time for us to give our decision. Notwithstanding that the appellant has not been entirely clean in his approach but having regard to the famous words of Lord Hewart, the Lord Chief Justice of England in R. vs Sussex JJ., ex p McCarthy[8] that "justice must not only be done, but must also be seen to be done", meaning thereby that the outcome of proceedings should be visibly just, the impugned order bearing the date 1st March, 2023 has to be set aside which we do hereby order.

This would result in revival of the petition of the appellant and it shall stand restored on the file of the High Court. The Hon'ble the Chief Justice of the High Court is requested to place the petition before the learned Judge currently having the assignment to hear the same.

24. Needless to observe, the petition shall be considered and decided by the High Court uninfluenced by any observation made in the order bearing the date 1st March, 2023.

25. The appeal stands allowed on the aforesaid terms.

26. We make it clear that we have not examined the rival claims on merits.

.....J. (Dipankar Datta)

.....J. (Prashant Kumar Mishra)

New Delhi

1 (2021) 12 SCC 603

2 High Court, hereafter

3 petition, hereafter

4 the report, hereafter

5 1987 SCC

6 (2001) 7 SCC 318

7 (2004) 5 SCC 1

8 (1924) 1 KB 256

IN THE SUPREME COURT OF INDIA

Shyam Narayan Ram
Vs.
State of Uttar Pradesh & Anr. Etc.

[Criminal Appeal Nos._____ of 2024
@ SLP (Crl.) Nos.16282-16284 of 2023]

HEADNOTE – When the defence admits the genuineness of the prosecution documents and dispenses with its formal proof then, such evidence may be read as substantive evidence under Section 294 Cr.P.C.

After the prosecution's documents were admitted under Section 294 Cr.P.C. by the defence without formal proof, then the only job left for the courts is "to appreciate, analyse and test the creditworthiness of the evidence led by the prosecution which was available on record and if such evidence beyond reasonable doubt established the charges, the conviction could be recorded."

It is the defence's role to discredit the testimony of the prosecution, failing which the admission of the genuineness of the admitted documents produced by the prosecution could not be disputed and would be read into evidence.

JUDGMENT

Vikram Nath, J.

1. Leave granted.

2. By means of these appeals, the informant-appellant has assailed the correctness of the judgment and order dated 01.11.2023 passed by the Allahabad High Court in Criminal Appeal Nos.4982/2019, 5346/2019 and 5347/2019 whereby the High Court allowed the appeals, set aside the order of conviction passed by the Trial Court dated 15/16th July, 2019 and had remanded the matter to the Trial Court to decide SLP(Crl.) Nos. 16282-16284 of 2023 Page 2 of 17 the same afresh and that the matter be retried from the stage of testimony of PW 2 onwards.

Further a direction was issued that the authors of the exhibited documents liable to establish the authenticity of the same would be cross-examined by the defence, and that the trial would proceed on day to day basis and shall conclude on or before 31st May, 2024. Further, the appellants before the High Court were to be released on bail on furnishing personal bonds and two heavy sureties each of the like amount to the satisfaction of the court concerned.

They were further liable to give additional affidavit to the Trial Court concerned, that they would remain present on every day or as and when required by the Trial Court. It was further directed that the fine amount imposed by the Trial Court would remain stayed during the period of trial and would remain subject to final verdict to be pronounced by the Trial Court.

3. Brief facts giving rise to the present appeals are:

3.1 First Information Report1 was lodged on 22.04.1998 at 05.30 am by the appellant which was registered as FIR bearing No.27/1998, Police Station Dhanapur, District Chandauli, U.P.under section 302/34 of the Indian Penal Code, 18602 and 3(1)(v) of the SC/ST Act. According to the prosecution story, on the intervening night of 21/22.04.1998 the appellant (PW 1), Ram Dular (PW2) who were harvesting crops in the fields, on hearing gunshots, rushed to the pumping set from where the shots were being fired and saw that the four accused namely Radhey Shyam Lal A-1, Pratap A-2, Rajesh Kumar @ Pappu A-3 and Jagannath A-4 were assaulting the parents of the appellant namely Bodha Devi and Mohan Ram who belonged to Scheduled Caste. After brutally assaulting the two deceased, they threw their bodies into the well.

3.2 Upon registration of the FIR, the police came to the site and with the help of the villagers, pulled out the two dead bodies of parents of the appellant from the well. An inquest was prepared and their bodies were thereafter sent for postmortem. The deceased Bodha Devi had suffered seven injuries all over her body including a fatal wound on the back of the chest extending upto the neck measuring 48 cm x 28 cm. The cause of death was recorded as due to the fracture in the vertebra and injury to the spinal cord. The postmortem of the deceased Mohan Ram disclosed as many as sixteen injuries which included eleven lacerated wounds and the cause of death was reported as death due to injuries to spine and spinal cord.

3.3 The Investigating Officer recovered blood soaked gamcha (scarf) belonging to accused Pratap (A-2), licensed SBBL gun with two live cartridges. From the place of occurrence, the Investigating Officer also recovered three empty-shell-casings of 12 bore, 1 live 12 bore cartridge, cardboard and plastic rods, tikli and other remnants of spent cartridges, apart from other standard recoveries. The recovered articles were sent to the forensic laboratory and as per the report one out of the three cartridges has been found to have been fired from the seized licensed SBBL gun. The FSL report further confirmed that in the barrel of the seized SBBL gun, there was residue of firing. Further, the presence of lead and nitrate clearly indicated that the gun had been recently used.

4. After completing the investigation charge-sheet was submitted. The Magistrate concerned took cognizance and thereafter committed the case to the Sessions

Court for trial. The charges were read out to the four accused who denied the same and claimed to be tried.

5. The prosecution examined the informant-appellant as PW 1 and the other eye-witness Ram Dular as PW 2 and also filed the relevant documents. Counsel for the defence on 28.04.2005 admitted the genuineness of the prosecution documents and dispensed with its formal proof. The Public Prosecutor had filed an application under section 311 of the Code of Criminal Procedure, 19733 for summoning the formal witnesses which was opposed by the defence. The Trial Court, after recording the submissions and the admission of the prosecution documents by the defence counsel, exhibited the prosecution papers which had not been exhibited.

Further, the Trial Court closed the prosecution evidence and fixed 4th May, 2005 for recording the statement of the accused under section 313 CrPC. The statements of all the accused were recorded under section 313 CrPC on 4th May, 2005 and later on because of a few incriminating circumstances which were not put to the accused, a supplementary statement was also recorded under section 313 CrPC. Despite the statement under section 313 CrPC was recorded as far back as May, 2005, the trial could not proceed further, apparently as the same was stayed by the High Court. The trial, however, further commenced in 2019.

6. At this stage also the Public Prosecutor pressed upon the court for consideration of their applications 29 kha and 30 kha for summoning Dr.S.K.Srivastava, who had conducted the autopsy on the dead bodies of the two deceased, and the Investigating Officer to prove the recovery memos etc. These applications were also seriously objected to by the defence.

7. The Trial Court, vide judgment and order dated 15/16th July, 2019 convicted all the four accused and sentenced them to life imprisonment under section 302 IPC and other ancillary sentences for the rest of the offences and all of them to run concurrently. The accused were taken into custody on the date of the judgment.

8. Aggrieved by their conviction and sentence, the four accused preferred three separate appeals before the High Court. Appeal No.4982/2019 was preferred by Rajesh Kumar @ Pappu, 5346/2019 was preferred by Radhey Shyam Lal and 5347/2019 was preferred by Pratap and Jagannath. The High Court, by the impugned judgment and order dated 1st November, 2023 recorded that the accused did not get a fair trial as their counsel had admitted the documents of the prosecution and had dispensed with its formal proof.

This resulted into a serious and fatal illegality and as such in order to extend to the accused a fair trial, it was expedient to remit the matter back to the Trial

Court for further trial SLP(Crl.) Nos. 16282-16284 of 2023 Page 8 of 17 from the stage of recording of evidence of PW 2 (he had not been cross-examined by the defence), after affording liberty to cross-examine PW 2. The prosecution would produce its formal witnesses and the defence would have liberty to cross-examine them also and only thereafter the trial may be concluded and decided.

9. Aggrieved by the said order of remand, the informant has preferred the present appeals.

10. The submission advanced on behalf of the appellant is to the effect that the High Court fell in error in remanding the matter and giving liberty to the accused to first cross-examine PW 2 and thereafter allow the prosecution to lead further evidence in the form of formal witnesses to prove the police papers and only thereafter proceed further with the trial, maybe by recording a further statement under section 313 CrPC.

11. According to the learned counsel for the appellant, if the judgment of the High Court is allowed to stand, it would render the provisions of section 294 CrPC redundant and otiose. It was also submitted that it is not for any error or oversight of defence counsel that they had admitted the genuineness of the police papers by dispensing formal proof of the same, rather they had repeatedly confirmed their stand of admitting the genuineness of the documents and had opposed the recall of witnesses by the Public Prosecutor on two occasions, once in 2005 and again in 2019. It was thus submitted that the High Court ought to have decided the appeal on merits on the basis of evidence led during the trial and there was no justification for remanding the matter.

12. On the other hand, learned counsel for the respondent-State of U.P. has supported the case of the appellant and submitted that despite the Public Prosecutor having repeatedly requested the Trial Court to allow them to produce the formal witnesses but on account of strong opposition by the counsel for defence, the Trial Court had rejected the said request as such there was no justification for remitting the matter back to the Trial Court for a further trial from the stage of recording of evidence of PW 2.

13. Learned counsel for the respondents accused in the three appeals supported the judgment of the High Court. There is no denial by the learned counsel that the stand taken by the defence counsel before the Trial Court was any different from what has been submitted by the counsel for the appellant. He only submitted that considering the principles of fair trial, this Court may not interfere with the impugned judgment and order.

14. Section 294 of the CrPC reads as follows:

"Section 294 - No formal proof of certain documents

1. Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

2. The list of documents shall be in such form as may be prescribed by the State Government.

3. Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed: Provided that the Court may, in its discretion, require such signature to be proved."

15. A bare reading of the aforesaid provision, in particular, sub-section (3) provides that where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed. That is to say that if the authors of such documents does not enter the witness box to prove their signatures, the said documents could still be read in evidence. Further, under the proviso the Court has the jurisdiction in its discretion to require such signature to be proved.

In the present case, the documents filed by the investigating agency were all public documents duly signed by public servants in their respective capacities either as Investigating Officer or the doctor conducting the autopsy or other police officials preparing the memo of recoveries etc. As such the Trial Court had rightly relied upon the same and exhibited them in view of the specific repeated stand taken by the defence in admitting the genuineness of the said documents. In so far as the police papers which had been signed by private persons like the informant, the same had been duly proved.

16. Thus the only job left for the Court was to appreciate, analyse and test the creditworthiness of the evidence led by the prosecution which was available on record and if such evidence beyond reasonable doubt established the charges, the conviction could be recorded. However, if the evidence was not credit-worthy and worthy of reliance, the accused could be given benefit of doubt or clean acquittal.

17. The Trial Court, after appreciating the evidence, found that the evidence of PW 1 and 2, eye-witnesses to the account, to have fully supported the prosecution story and during the cross-examination, the defence could not elicit anything which could discredit their testimony.

18. Coming back to the applicability of section 294 CrPC, reference may be had to the following judgments of this Court in the case of Sonu alias Amar vs. State of Haryana4 wherein this Court had held in para 30 as follows:

"30. Section 294 of the Cr.P.C. 1973 provides a procedure for filing documents in a Court by the prosecution or the accused. The documents have to be included in a list and the other side shall be given an opportunity to admit or deny the genuineness of each document. In case the genuineness is not disputed, such document shall be read in evidence without formal proof in accordance with the Evidence Act."

19. Further, in the case of Shamsher Singh Verma vs. State of Haryana5, this Court held in para 14 as under:

"14. It is not necessary for the court to obtain admission or denial on a document under sub-section (1) to Section 294 CrPC personally from the accused or complainant or the witness. The endorsement of admission or denial made by the counsel for defence, on the document filed by the prosecution or on the application/ report with which same is filed, is sufficient compliance of Section 294 CrPC.

Similarly on a document filed by the defence, endorsement of admission or denial by the public prosecutor is sufficient and defence will have to prove the document if not admitted by the prosecution. In case it is admitted, it need not be formally proved, and can be read in evidence. In a complaint case such an endorsement can be made by the counsel for the complainant in respect of document filed by the defence."

20. Also, this Court in the case of Akhtar vs. State of Uttaranchal6 has held in para 21 as under:

"21. It has been argued that non-examination of the concerned medical officers is fatal for the prosecution. However, there is no denial of the fact that the defence admitted the genuineness of the injury reports and the poot-mortem examination reports before the trial court. So the genuineness and authenticity of the documents stands proved and shall be treated as valid evidence under Section 294 of the CrPC.

It is settled position of law that if the genuineness of any document filed by a party is not disputed by the opposite party it can be read as substantive evidence under sub-section (3) of Section 294 CrPC. Accordingly, the post-mortem report, if its genuineness is not disputed by the opposite party, the said post-mortem report can be read as substantive evidence to prove the correctness of its contents without the doctor concerned being examined."

21. On a plain reading of section 294 CrPC and its interpretation by this Court in the above judgments, we do not find any error in the judgment of the Trial Court and particularly considering the facts of the present case where the defence repeatedly continued to admit the genuineness of the prosecution documents exempting them from formal proof.

22. In our opinion, the High Court fell in error. Moreover, reliance by the High Court on the case of Munna Pandey vs. State of Bihar7 was misplaced, because in that case the issue was of fair trial and not of the application of section 294 CrPC. In the case of Munna Pandey (supra), prosecution witnesses were not confronted with their statements under section 161 CrPC for purposes of contradiction and in such a situation this Court had held that if the same be put to witnesses under section 145 of the Evidence Act, 1872 it would have a bearing and, therefore, remitted the matter to the Trial Court for further examination/cross-examination of the prosecution witnesses.

23. For all the reasons recorded above, we allow these appeals, set aside the impugned judgment and order of the High Court and restore the criminal appeals before the High Court to be heard and decided afresh on merits on the basis of material on record.

24. Considering the fact that the incident is of 1998, we request the High Court to make an endeavour to decide the appeals afresh on the basis of the evidence led during the trial as early as possible.

25. The private respondents in all the three appeals who stand convicted under the order of the Trial Court, would surrender within six weeks before the Trial Court and it would be open for them to apply for suspension of sentence before the High Court on admissible grounds in accordance to law, which application would be considered on its own merits uninfluenced by any observations made in this order. We further make it clear that the evidence has not been appreciated by us.

.....J. (Vikram Nath)

.....J. (Prasanna B. Varale)

New Delhi

October 21, 2024

1 FIR

2 IPC

3 CrPC

4 (2017) 8 SCC 570

5 (2016) 15 SCC 485

6 (2009) 13 SCC 722

7 (2023) SCC OnLine SC 1103

IN THE SUPREME COURT OF INDIA

Yashodeep Bisanrao Vadode
Vs.
State of Maharashtra & Anr.

[Criminal Appeal Nos._____ of 2024
arising out of SLP (Crl.) No. 8245 of 2023]

HEADNOTE – There is a tendency to over-implicate the persons and to present an exaggerated version in Section 498-A IPC domestic cruelty cases. The courts have to be careful to identify instances of over implication and to avert the suffering of ignominy and inexpiable consequences, by such persons.

JUDGMENT

C.T. Ravikumar, J.

Leave granted.

1. This appeal by special leave is directed against the judgment and order dated 15.12.2020, passed by the High Court of Judicature of Bombay at Bombay in Criminal Appeal No.1014 of 2014, which was heard along with Criminal Appeal No.14/2015, both arising from a common judgment in two Sessions Cases emerged from a single First Information Report.

The appellant was the second appellant in Criminal Appeal No.1014 of 2014 which was partly allowed under the impugned judgment whereunder, his conviction under Section 498-A of the Indian Penal Code, 1860 (for short, 'the IPC') was confirmed and the sentence imposed therefor was commuted to the period of imprisonment already undergone.

2. The second respondent, who is the father of the deceased Renuka, lodged FIR No.87/11 before Wadala T.T. Police Station on 17.04.2011 on her unnatural death occurred on 16.04.2011. Two Sessions Cases viz., 621/2011 and 853/2011 emerged therefrom. The first and sixth accused in the crime faced trial in the former Sessions Case and the appellant herein along with others faced trial in the latter Sessions Case, for the offences punishable under Sections 498-A, 304-B, 306 and 406 read with Section 34, IPC.

After the joint trial, all the accused were convicted for the offence punishable under Section 498-A read with Section 34, IPC, and sentenced to undergo rigorous imprisonment for 3 years each and to pay a fine of Rs. 1000/- each and in default of payment of fine to undergo rigorous imprisonment of 2 months.

Since in this appeal we are only concerned with the appellant, the 3rd accused, we are not going to refer to the details of conviction of others except to the extent necessary, at the appropriate place.

The appellant herein was the third accused in the said crime after subjected to trial in SC No.853/2011 and in respect of all the other offences he was acquitted. It is against the conviction and the modified sentence handed down for the aforesaid offence that he along with the co-convicts in the said Sessions Case filed Criminal Appeal No.1014 of 2014.

3. The case of the prosecution is as under:-

The daughter of the second respondent, Renukathe victim, was married to the first accused Rajesh Jagan Karote on 11.12.2008 as per Hindu customs and rituals. The said Rajesh Jagan Karote and his relatives demanding dowry for purchasing a residential flat and used to torture her physically and mentally. On 16.04.2011 at about 9.00 pm the appellant herein, who is the husband of Savita, one of the sisters-in-law of the deceased, informed the second respondent that Renuka was admitted in Sion Hospital at Mumbai and by the time the second respondent along with his wife, children and other relatives reached the hospital Renuka breathed her last.

On her body he noticed abrasion on forehead and ligature marks on the neck. Suspecting the death of his daughter as unnatural death, he lodged a complaint which resulted in the registration of the aforementioned FIR and ultimately, the consequential trial of the accused. The appellant herein was also implicated as one of the accused and as noted hereinbefore, he stood the trial which culminated in his conviction under Section 498-A, IPC, and consequential imposition of sentence, as mentioned hereinbefore.

4. Heard the learned counsels appearing for the parties.

5. Manifold contentions were raised by the appellant to assail the judgment of conviction passed by the High Court confirming his conviction under Section 498-A, IPC. Though the sentence imposed therefor by the trial Court was interfered with by the High Court in the appeal and converted it to the sentence already undergone the appellant is aggrieved inasmuch as pursuant to his conviction and consequently imposed sentence he was terminated from the post of Laboratory Attendant, Balbheem College, Beed, as per order dated 23.11.2015.

It is the contention of the appellant that the very case of the prosecution is that since January, 2010, the first accused and his relatives demanded dowry and started torturing Renuka physically and mentally to fetch Rs. 5 lakhs for purchasing house under MHADA Scheme and the fact is that his marriage with

the second accused Savita was solemnised only on 26.10.2010 and hardly within five and half months the unfortunate incident occurred. According to the learned counsel for the appellant the said indisputable facts obtained from the materials on record would reveal that the appellant had not even had opportunity to interact with the deceased much less to harass or to show cruelty to her.

The learned counsel would further contend that the said circumstances and the conspicuous absence of specific accusation and lack of any specific evidence against the appellant would reveal that the implication of the appellant in the case is because of the unwholesome attitude over implication, which was deprecated by this Court. Furthermore, it is submitted that the implication of accused Nos.5 and 4, who are respectively another sister-in-law and husband of the deceased and their acquittal would fortify the factum over implication.

In short, it is the contention that during the alleged period of torture for dowry of Rs. 5 lakhs, which is the main alleged cruelty, the appellant was not even a relative of the first accused and his family, to fall within the expression 'relative' used in Section 498-A, IPC. That apart, it is the contention of the appellant that there is absolute absence of any evidence against the appellant to connect him with the alleged crime and it is only because he being the husband of the second accused who is the sister of the first accused, the husband of the deceased that he was implicated.

Yet another contention was taken to the effect that in the absence of any evidence against the appellant he ought to have been acquitted extending, at least the benefit of doubt granted in the case of accused No.4 and 5 who are respectively the husband of Kavita and Kavita, another sister of accused No.1. As per the impugned judgment, Harinarayan Raja Ram Kurane (accused No.4) and Kavita Harinarayan Kurane (accused No.5) were acquitted by the High Court under Section 498-A, IPC. It is also the contention of the appellant that there is absolutely no basis for the finding in paragraph 42 of the impugned judgment, which reads thus:-

"In view of the specific material evidence against accused No.2, 3, 6 and 7 in respect of subjecting the deceased to harassment and cruelty on account of demand of dowry till her last breath would make them liable for an offence punishable under Section 498-A of the Indian Penal Code."

(Underline supplied)

6. A scanning of the impugned judgment would reveal that even after detailed discussion of the oral testimonies of the prosecution witnesses nothing specific was unearthed against the appellant herein, by both the trial Court and the High Court.

7. Per contra, the learned counsel appearing for the respondents would submit that the trial Court as also the High Court carefully examined the evidence and arrived at the finding of guilt against the appellant based on proper appreciation of evidence.

8. A bare perusal of Section 498-A would reveal that the following as the essential ingredient to attract the said offence:-

(a) The victim was a married lady (may also be a widow);

(b) That she has been subjected to cruelty by her husband or relative(s) of her husband;

(c) That such cruelty consisted of either

(i) harassment with a view to coerce meeting a demand for dowry, or

(ii) a wilful contact by the husband or his relative of such a nature as is likely to lead the lady to commit suicide or to cause grave injury to her life, limb or health;

(d) That such injury as aforesaid may be physical or mental.

9. On an anxious consideration of the materials on record would reveal that the main instance of demand for Rs. 5 lakhs for the purpose of purchasing residential flat was allegedly occurred since January, 2010 onwards. But then, the evidence on record would show that the marriage between the appellant and Savita (accused No.2) who is one of the sisters of the first accused was conducted much later viz., only on 26.10.2010. The unfortunate incident resulting in her death occurred hardly within five and half months since he became a relative of the family of the husband of the deceased.

It is a fact that despite the general, vague allegation no specific accusation was raised against the appellant. That apart, despite our microscopic examination, we could not find any specific evidence brought out by the prosecution against the appellant herein through anyone of the witnesses. In other words, the fact discernible from the impugned judgment is that none of the prosecution witnesses had specifically deposed against the appellant herein of his having committed any cruelty which will attract the offence under Section 498-A, IPC, against him.

There is also no case that no complaints were filed implicating the appellant earlier to the subject FIR. In short, we find that there is no scintilla of evidence against the appellant herein to hold that he has committed the offence under Section 498-A, IPC, even with the aid of Section 34, IPC. Being the husband of the second accused, Savita, who was found guilty by the courts below for the

aforesaid offence cannot be a ground to hold the appellant guilty under the said offence in the absence of any specific material on record.

10. Para 35 and 36 of the judgment of the trial Court would reveal the manner how the appellant was found guilty. They read thus:

"35. It is brought into the argument that there are no specific allegations against rest of the accused except husband and mother-in-law, However they were staying and witnessing all the incidents in the house, Though specific act of the other accused is not there in evidence making the victim to work like servant and allowing the accused no.1 to 6 do cruelty is also not different than assisting them. However the gravity of ill-treatment to which Renuka was subjected is due to the acts of Accused No.1 and 6. They repeatedly assaulted and subjected Renuka cruelty Old burn marks dearly point out the previous incident of cruelty.

36. Thus, considering the circumstances it is found that prosecution has clearly proved the guilt of all the accused punishable under section 498-A r/w. 34 and 304-B of Indian Penal Code 1860 against accused No.1 and 6. Hence point No.2 and 3 are answered in the affirmative."

We have already referred to and extracted paragraph 4 of the impugned judgment in the appeal.

11. In the contextual situation, it is only appropriate to keep reminded of the observations of this Court in the decision in Preeti Gupta v. State of Jharkhand1. This Court observed that it is a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints and the tendency of over implication is also reflected in a large number of cases.

12. We are of the view that in view of such circumstances, the courts have to be careful to identify instances of over implication and to avert the suffering of ignominy and inexpiable consequences, by such persons.

13. The upshot of the discussion is that the finding of guilt against the appellant by the courts below for the offence under Section 498-A, IPC, with the aid of Section 34, IPC, is absolutely perverse in view of the absolute absence of any evidence against him to connect him with the said offence in any manner.

14. For the reasons given above the conviction of the appellant under Section 498-A, IPC, and the consequential imposition of sentence therefor cannot be sustained.

Hence, the appeal is allowed, consequently, the impugned judgment and order dated 15.12.2020, passed by the High Court of Judicature of Bombay at Bombay in Criminal Appeal No.1014 of 2014, and the judgment of the trial Court dated

09.12.2014 in Sessions Case No.853/2011, qua the appellant are set aside and the appellant is acquitted of the offence under Section 498-A, IPC.

.....J. (C.T. Ravikumar)

.....J. (Sanjay Kumar)

New Delhi;

October 21, 2024

1 (2010) 7 SCC 667

IN THE SUPREME COURT OF INDIA

Uma & Anr.
Vs.
State represented by the Deputy Superintendent of Police

[Criminal Appeal No. 757 of 2015]
[Criminal Appeal No. 67 of 2016]

HEADNOTE – When the offence was committed in the presence of the accused in the privacy of their house, then their failure to offer explanations can be treated as an adverse circumstance against them as per Section 106 of the Indian Evidence Act, 1872

JUDGMENT

Satish Chandra Sharma, J.

Introduction

1. These appeal(s) assail the correctness of the Final Judgment/Order dated 04.03.2015 passed by the Hon'ble High Court of Madras at Madurai (the "High Court") in Criminal Appeal (MD) No. 161 of 2011 titled State Vs Uma & Ors. whereby the judgement of acquittal dated 19.10.2010 passed by the Additional Sessions Judge, Fast Track Court No.1, Thoothukudi (the "Trial Court") in Sessions Case No.300 of 2009, has been reversed and consequently, Appellant No.1/Accused No.1 has been convicted and sentenced to undergo imprisonment for life under Section 120B and 302 of the IPC together with a fine of Rs.10,000/- (Indian Rupees Ten Thousand); and Appellant No.2/Accused No.3 has been convicted and sentenced to undergo imprisonment for life under Section 120B read with 302 of the IPC together with a fine of Rs.10,000/- (Indian Rupees Ten Thousand).

Pertinently, Ravi i.e., Accused No.2 was convicted and sentenced to undergo imprisonment for life under Section 120B and 302 of the IPC together with a fine of Rs.10,000/- (Indian Rupees Ten Thousand) (the "Impugned Order"). Ravi i.e., Accused No.2 has assailed the correctness of the Impugned Order before this Hon'ble Court by way of a separate criminal appeal i.e., Criminal Appeal No. 67 of 2016. As the appeal(s) arise out of a common judgement, they have been heard together; are being disposed of by this Judgement.

Case of the Prosecution

2. It is the case of the prosecution that on 23.08.2008, Ms. Rajalakshmi (the "Deceased") was murdered by her husband, Mr. Ravi (Accused No.2) and her

aunt & uncle i.e. Ms. Uma (Accused No.1) and Mr. Balasubramanian (Accused No.3).

3. The factual matrix reveals that the marriage between the deceased Rajalaksmi and the Accused No.2 had been solemnized at Arthi Thirumana Mandapam, Vilathikulam on 10.02.2008. At the time of marriage, 50 sovereign of gold jewels; and vessels and other items worth Rs.50,000/- (Indian Rupees Fifty Thousand) were given to the Husband and his family. As revealed by P.W.-1, Mr. Chandrakasan (PW-1), the adoptive father of the deceased in his examination, one week after the marriage, the Deceased had informed him, that Accused No.2 continuously harasses her & treated her like a servant.

It was further stated that Accused No.2 used to consume alcohol, play cards, and also had an illegal illicit relationship with his aunt, i.e., Accused No.1. P.W.-1 in the Complaint (Exhibit P-1) and his examination as P.W.-1, stated that on one occasion Accused Nos. 1 and 2 along with Deceased came to his house, and Accused Nos. 1 and 2 slept together in a single bedsheet in the hall while the Deceased slept in the bedroom. It later came to his knowledge through the Deceased that this was not an usual practice at the Appellants' home.

4. On 23.08.2008, one Arunachalam had informed P.W.-1 that the Deceased has consumed paint and had been taken to the local hospital. It was upon receiving the said information, P.W.-1 and his wife (P.W.-2) had come down to Government Hospital, Kovilpatti and found the dead body of the deceased in the mortuary. Subsequent thereto, P.W.-1 gave a written Complaint to the Sub Inspector of Police (P.W.-15) exhibited as Exhibit P-1, which was registered as Crime No. 183 of 2008 under Section 174 of the Code of Criminal Procedure, 1973. It is highlighted that none of the accused persons i.e., the Appellants, informed the P.W. 1 or the family of the deceased of her death.

5. The contents of the Complaint, reveal glaring details of the disturbing circumstances & troubles that the Deceased was being subjected to, by the Appellants at the time of her marriage and the said details, have been substantiated & corroborated by P.W.-1 in his cross-examination. The wife of P.W.-1 i.e., Ms. Sooriya Kalavathi has also adduced identical circumstances in her evidence, which affirm the allegations of the de-facto complainant. Notwithstanding thereto, such evidence needs to be tested on the anvil of consistency with the circumstances.

6. Since the Deceased had passed away within a period of 6 (six) months from the date of her marriage, the Investigating Officer (the "IO") (P.W.-20) had also made arrangements to conduct enquiry by Revenue Divisional Officer (P.W.-l7). Although the Inquest Report marked as Exhibit P.14, stated that the death had not occurred due to demand of dowry, it is the case of the Prosecution, that Accused

No.1 and Accused No.2 strangulated the neck of the Deceased with a saree. It is further alleged that Accused No.3 poured kerosene into the mouth of the Deceased. It is the case of the prosecution that with the intention to camouflage the incident, the accused persons i.e., the Appellants poured paint and kerosene into the mouth of Rajalakshmi to make the death appear like suicide.

7. The said assertion of the prosecution is substantiated with medical evidence which reveal ante-mortem injuries sustained by the deceased. The Postmortem Report i.e., Exhibit P-3 prepared by Dr. Venkatesh, P.W.-10 reveals that 3 external injuries over the left upper arm, left shoulder, right shoulder and neck & the hyoid bone was found to be broken. The relevant extract of Postmortem Report is reproduced as under:

"1. Multiple contusions over left arm upper 1/3rd and left shoulder (anterior aspect) each of size 2 x 2 cms (3 Nos)

2. Multiple contusions right shoulder (anterior aspect)

3. Contusion in front of neck 6 x 2 cm extending from right sternocleidomastoid to left sternocleidomastoid."

8. P.W.-10, Dr. Venkatesh, in his examination-in-chief further makes it clear that the fracture on the hyoid bone was found broken before the demise of the Deceased. He disclosed that the death of the Deceased occurred from suffocation in breathing. There was no chance of consuming liquid for a person whose hyoid/Navaldi bone had been fractured and the person could have died due to pressure on the neck & problem in breathing. The relevant extract of his examination-in-chief is reproduced as under:

"I started the Postmortem at 4.15 p.m. Rigor Mortis present in hands and legs. The dead body was kept lying on its back. There are external injuries. It was broken on the inner side. Food pipe was found callus. At 5.15 p.m., the Postmortem was completed. Internal organs of the dead body were sent to Chemical analysis. Navaldi bone was sent to the professor. In the Navaldi bone investigation, it was found broken before the death. Based on the report, Chemical Analysis Department, there is no poison found on the internal ~ organs, I have stated the said information in the Postmortem Report. I opined the aforesaid person would have died due to the pressure given to aforesaid person on his neck and I issued the Postmortem Report Ex.P.3. Visera Report is Ex.P.4."

The wounds 1 and 2 noted in the Post Mortem Report would have caused due to the pressure made on his neck. Blood clots in the neck and the congestion in the food pipe due to pressing of the neck. The fracture of Navaldi bone found on the internal side is caused due to the pressure made on the neck. There is no chance of liquid consumption to a person whose Navaldi bone was fractured. There is no

chance for demise of a person whose Navaldi bone was fractured. Breathing problem may be caused and then the death may occur."

9. P.W.-11, Muppidathi, Scientific Assistant, who prepared the Viscera Report, also deposed on 18.09.2008 that there was no poison found in the internal organs of the deceased and it was her ultimate opinion that the Deceased appeared to have died of compression over neck. The Postmortem Report prepared by Dr. Venkatesh, Assistant Doctor (P.W.-10) as well as Exhibit P-4 (Visera Report) prepared by the Muppidathi, Scientific Assistant, clearly establish that the Deceased had sustained external as well as internal ante-mortem injuries, which could not have been a natural consequence of consuming paint, as alleged by the Appellants.

10. A cumulative reading of the medical record along with deposition of P.W.-1 to P.W.-4 create a chain of circumstances, that establish that the death of the deceased is homicidal. It has been submitted by the Prosecution that the injuries sustained by the Deceased are ante-mortem in nature, and in view of the fact that the Deceased and the Appellants were related and more importantly, resided together at the time of occurrence it was incumbent upon the Appellants to prove as to how the death of the Deceased occurred in view of the burden contemplated under Section 106 of the Indian Evidence Act 1872 (the "Evidence Act").

In this context, it is the Prosecution' case that the Appellants have not only failed to offer any alternative explanation so as to the cause of death of the Deceased, but also failed to dent to Prosecutions' version vis-à-vis their sole presence at the scene of the alleged offence, thereby being unable to negate the contention that no one else could have inflicted the said injuries on the body of the Deceased.

11. It is the case of the Prosecution that the Appellants had a clear motive to eliminate the Deceased i.e., the illicit/incestuous relationship between Accused no. 1, Ms. Uma and Accused No.2, Mr. Ravi, which has subsequently become a stumbling block between the Deceased i.e., Rajalakshmi and the aforenoted Appellants.

This naturally, swelled the common intention of the accused persons to murder the Deceased. This factum coupled with the narrative of P.W.-1 and P.W.-2 read together with the medical evidence as well as the deposition of the doctors substantiates the culpability of the accused persons to murder the Deceased. It is urged that the case of the Prosecution does not rest on circumstantial evidence alone and corresponds to circumstances so complete, that they point towards the guilt of the Accused Persons/Appellants.

Findings of the Trial Court and the Appellate/High Court

12. The Trial Court has concluded that the case of the Prosecution is not proved beyond reasonable doubt and hence, the Appellant are entitled to an acquittal. It was observed despite the medical evidence on record, Courts can prefer to accept the eyewitness testimony(ies) in preference to the opinion of a medical expert.

In the absence of any direct ocular evidence, the Trial Court did not consider it appropriate to award due to the medical evidence. The Trial Court, came to the conclusion that the motive alluded to the Appellants i.e., of being embroiled in an illegal/illicit relationship was held to be highly artificial and unbelievable. In these circumstances together, the Trial Court held that the Appellants were not guilty of the offences under sections 120B, 302, 201 IPC and Section 4A of the Tamil Nadu Prohibition of Harassment of Women Act.

13. Aggrieved by the aforesaid decision of the Trial Court, an appeal came to be preferred before the High Court. The High Court has reversed the findings of the Trial Court; and convicted the Appellant(s) for inter alia the murder of the Deceased i.e, Rajalakshmi. In its considered opinion, the High Court after a thorough re-appreciation of the entire evidence on record, held that the Postmortem Report supported the case of the Prosecution that the death of Rajalakshmi was homicidal on account of the clear motive ascribed to the Appellants, and the presence of the Appellants at the time of occurrences of incident. The aforenoted conclusion was substantiated on the basis of evidence of P.W-1 to P.W.-4.

Submissions of the Parties

14. It is the case of the Appellant that it is settled law that a judgment by the Trial Court could have only been reversed by the High Court if the view taken was not a plausible view on the evidence on record or there is an error apparent/perversity. The High Court in the present case has not given any reason why the view taken by the Trial Court was not a sustainable or plausible view as it not commented on any findings of the Trial Court nor has marshaled all evidence before itself before coming to the conclusion of guilt of the Appellants. It was submitted that, in cases where another view is possible, the more liberal outlook ought to be preferred and must not ordinarily be displaced.

15. It was further stressed that the case of the Prosecution is entirely based on a presumption, insofar as there was no material to establish the alleged story of P.W.-1; and there is no evidence on record to establish the motive of the Appellants to murder the Deceased. It was contended that there was nothing on record to establish that the Appellants were residing together and were present at the time of occurrence of the said incident.

16. The Ld. Counsel appearing on behalf of the Appellant(s) submitted that that the presence of the tin of paint is demonstrable from the Observation Mahazar (Ex P.8), however there is also nothing to show that the Appellants had inflicted the injuries on the Deceased. In this respect, it is also stated the observation made by the Hon'ble High Court vis-à-vis the shift of burden of proof under Section 106 CrPC to prove a certain fact, strictly within the knowledge of the Appellants is wholly erroneous.

17. It is further submitted that the entire case of the Prosecution rests upon a confession of the Appellant No.1, however the same is struck by Section 27 of the Evidence Act and hence cannot be admissible in the court of law in order to bring home the guilt of the present Appellants. 18. Per contra, the Ld. Counsel appearing on behalf of the Respondent State defended the Impugned Order, it was submitted that that the Trial Court did not appreciate the evidence in a proper manner; and consequently, this glaring error led to the acquittal of the accused persons i.e., the Appellants.

It was further submitted that the testimonies of P.W.-3 and P.W.-4 were incorrectly rejected by the Trial Court as purely circumstantial, whereas the entire set of facts read together with the medical evidence, strictly point towards the guilt of the Appellants. It was further submitted that once a grave error is found in the decision of the Trial Court, the High Court was fully empowered to reappreciate the entire evidence and reach a different conclusion.

Analysis & Conclusions

19. The case of the Prosecution rests on circumstantial evidence, the testimonies of P.W.-1 to P.W.-4 read with the reports of medical examination (Exhibit P.3), Postmortem Report (Exhibit P.4.) and the evidence of the doctors. Admittedly there are no direct eyewitness to the said incident. In such cases, an inference of guilt must be sought to be drawn from a cogently and firmly established chain of circumstances.

20. This Court in its decision in Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116, has laid down following five golden principles, which constitutes the panchsheel of proof, for a case based on circumstantial evidence: insofar as the facts so established should be consistent only with the hypothesis of the guilt of the accused, and the circumstances should be of a conclusive nature and tendency; they should exclude every possible hypothesis except the one to be proved; there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

21. The prosecution has proved its case beyond reasonable doubt, established the complete chain of circumstances including the; (i) motive (ii) presence of the Appellants at the time of incident (iii) false explanation in the statement under Section 313 of the CrPC (iv) the conduct of the Appellants before and after the incident & most pertinently (v) the medical evidence; which in all human probability only correspond to the guilt of the Appellants.

22. At the outset, the medical evidence in the present case, clearly shows that the Deceased i.e., Rajalakshmi had sustained multiple ante-mortem injuries, including external injuries over the left upper arm, left shoulder, right shoulder and neck. Pertinently, the Deceased's hyoid bone was also found to be broken. P.W.-10. in his deposition discloses that the death of the Deceased occurred from suffocation in breathing & there was no chance of consuming liquid for a person whose hyoid/Navaldi bone had been fractured.

It was deposed that Deceased could have died due to pressure on the neck & problem in breathing. P.W.-11 also noted that no poison found in the internal organs of the Deceased and it was her ultimate opinion that the deceased appeared to have died of compression over neck. The medical record clearly establishes that the Deceased had died due to external injuries, which could not have been a natural consequence of consuming paint, as alleged by the Appellants.

23. The presence of the Appellants at the time and place of incident is demonstrable from their conduct before and after the incident. In their defence under section 313 CrPC, the Appellants have stated that all 3 of them had went to Keela Earal to attend a function in the Tractor Company. They returned home only at 6 P.M. and found the deceased in an unconscious stage and they took her to the hospital. Admittedly, the Appellants had taken the deceased to the local hospital, however, none of the Appellants have been able to establish an alibi at the time of the incident.

The silence of the Appellants in informing P.W.-1 or the family of the deceased of her death, also speaks volume of their conduct. Undisputedly, the Appellants and the Deceased resided together since the marriage of the Deceased to Accused No.2, which substantiates their presence at the time of occurrence of the incident; and consequently the invocation of Section 106 of the Evidence Act cannot be faulted.

24. In the case of Trimukh Maroti Kirkan v. State of Maharashtra, [2006] Supp. (7) S.C.R. 156, this Court has pointed out that there are two important consequences that play out when an offence is said to have taken place in the privacy of a house, where the accused is said to have been present. Firstly, the standard of proof expected to prove such a case based on circumstantial evidence

is lesser than other cases of circumstantial evidence. Secondly, the appellant would be under a duty to explain as to the circumstances that led to the death of the deceased.

In that sense, there is a limited shifting of the onus of proof. If he remains quiet or offers a false explanation, then such a response would become an additional link in the chain of circumstances. In terms of Section 106 of the Evidence Act, the Appellants have not discharged their burden that the injuries sustained by the deceased were not homicidal and not inflicted by them.

25. There is also enough evidence adduced by the Prosecution to hold that the Appellants had the clear motive to eliminate the Deceased. An illicit/incestuous relationship between Accused No.-1 i.e., Ms. Uma and Accused No.-2 i.e., Mr. Ravi had become known to the Deceased Rajalakshmi & her family, and she had become a stumbling block in the relationship, which swelled the common intention of the Appellants to murder her. The factum that the Deceased has passed away within six months of her marriage also becomes a relevant consideration to attribute culpable intent of the Appellants. Although, the motive of Mr. Balasubramanian remains unclear, his aid & assistance in the commission of the crime cannot be ruled out.

26. We are hence of the opinion that the Prosecution has been able to prove its case beyond reasonable doubt that the Accused Nos. 1 and 2, with the aid & support of the Accused No.3 have murdered the deceased Rajalakshmi and strangulated her to death.

27. The collusion & motive of the accused person certainly synthesizes with the medical evidence on record, false explanation by the Appellants and the entire chain of circumstances, not leaving any link missing for the Appellants to escape from the clutches of justice. In our considered opinion, the observation of the Trial Court that in absence of a direct occurrence witness, motive to commit the crime and the evidence being purely circumstantial in nature, the medical evidence becomes of less consequences, thus cannot be a fairly plausible view.

The Trial Court has simply discarded the consistent testimonies of prosecution witnesses P.W.-1 & P.W.-2 as being simply based on presumption; whereas the High Court in appeal has extensively dealt with each charge framed against the Appellants, the grounds on which the acquittal had been based and has dispelled those grounds with reasons.

28. Although, this Court is conscious of the fact that an Appellate Court must not ordinarily reverse the finding of acquittal, the High Court has been able to demonstrate perversity and non-appreciation of the materials on record. On a fresh appreciation of evidence, we also find ourselves unable to agree with the

findings of the Trial Court and are of the considered view that the circumstances in this case are conclusive and a conclusion of guilt can be drawn.

29. For the reasons mentioned hereinabove, the Appeals stand dismissed. Interim applications, if any, shall also stand disposed of.

.....J. [Bela M. Trivedi]

.....J. [Satish Chandra Sharma]

New Delhi

October 22, 2024

Maratha Empire

Maratha Empire (1674 – 1818)

The Maratha Empire, flourishing from the 17th to the 18th century was a strong and key force in Indian History, known for its strong military, innovative governance, and resilience against foreign invasions. The Maratha's rise in the Deccan began in the early 17th century under the leadership of Shivaji. He carved his territories out of **Bijapur**, **Ahmednagar** and **Golkonda**

- **Shahji**, Shivaji's father, joined the services of Bijapur as a Zamindar in 1636 and obtained Poona as a grant.
- Born at **Shivneri** (Poona) in **1627**, Shivaji was the youngest son of **Shahji** and **Jija Bai**. In 1637, Shivaji inherited the Poona jagir under the guardianship of **Dadaji Kondadev.**
- Shivaji assumed full charge of his jagir in 1647 after the death of his guardian Dadaji Kondadev.
- Shivaji began his military campaign at a very young age; he captured several forts like Raigarh, Kondana and Torana from the Bijapur kingdom between 1645-47.
- In 1646, he took control of the Purandhar fort, providing an impregnable defence to the Marathas in the coming times.
- **Battle of Pratapgarh (1659)**: The Sultan of Bijapur sent his general Afzal Khan against Shivaji. But he was killed by Shivaji.

Maratha Empire Relations with the Mughals

First Phase: 1615-1664

- Mughals during **Jahangir's** reign recognised the importance of Maratha chieftains in Deccan politics.
- While **Shah Jahan**, too, attempted to bring Marathas on their side, after the defection of **Shahji**, Sivaji's father, he chose to ally with the Bijapur kingdom against the Marathas.
- **Aurangzeb's** attempts to align with Shivaji as early as 1657 failed because Shivaji demanded **Dabhol** and the Adil Shahi Konkan, a fertile and rich region important for foreign trade.
- In 1660, Aurangzeb sent **Shaista Khan**, the Mughal governor of Deccan, to invade Maratha dominions. He captured Poona and north Konkan from the Marathas.

- However, in **1663**, Shivaji seriously wounded Shaista Khan in a night raid in the Mughal camp. It was a significant blow to the Mughal prestige.
- This was followed by the Marathas' sack of the Mughal port of Surat in 1664.

Second Phase: 1664-1667

- Aurangzeb appointed **Mirza Raja Jai Singh** as the viceroy of Deccan.
- He succeeded in defeating Shivaji at **Purandar** (**1665**).
- Jai Singh proposed the Mughal-Maratha alliance. By the resultant **Treaty of Purandhar (1665)**, Shivaji surrendered 23 out of 35 forts; on the other hand, the Mughals recognised the rights of the Marathas to keep certain territories in Bijapur.
- **Shivaji's son** was enrolled as a **mansabdar of 5000 zat** in the Mughal army.
- In 1665, Shivaji and his son visited Agra, but he was imprisoned there due to heated arguments in court. However, he managed to escape in 1666.

Third Phase: 1667-1680

- After he escaped from Agra, Shivaji did not desire conflict with the Mughals immediately.
- However, **Aurangzeb**, enraged by his son **Muazzam's** friendship with Shivaji, asked Muazzam to arrest Maratha agents in his court. Mughals also attacked Maratha territories to settle their dues.
- Alarmed by the situation, Shivaji attacked many forts ceded to the Mughals during the Treaty of Purandhar (1665).
- **Battle of Sinhagadh (Kondhana), 1670:** Marathas won, but Tanhaji, Shivaji's aide, lost his life.
- Taking advantage of the internal conflict in the Mughal army, Shivaji again sacked the **Surat port** in 1670. In the next four years, he recovered most of his forts.
- **Battle of Salher (1672):** First of few battles in which the Marathas, known for Guerrilla warfare, defeated the Mughals on an open battlefield.
- Shivaji **crowned himself as king on 6 June 1674** at **Raigarh** and took the title of **Chhatrapati**.
- In **1680**, Shivaji died, leaving behind him the foundation of a strong empire that dominated Deccan and north India for more than a century.

Maratha Administration

Central administration

- The Maratha administration was essentially **derived from Deccan Sultanate**, with some influence from the Mughal structure.
- It was a **centralised monarchy** in which the king was at the helm of affairs.

- The king's chief objective was the happiness and prosperity of his subjects **(Raja Kalsya Karanam)**
- The king was assisted by a council of ministers known as **Ashtapradhan**.

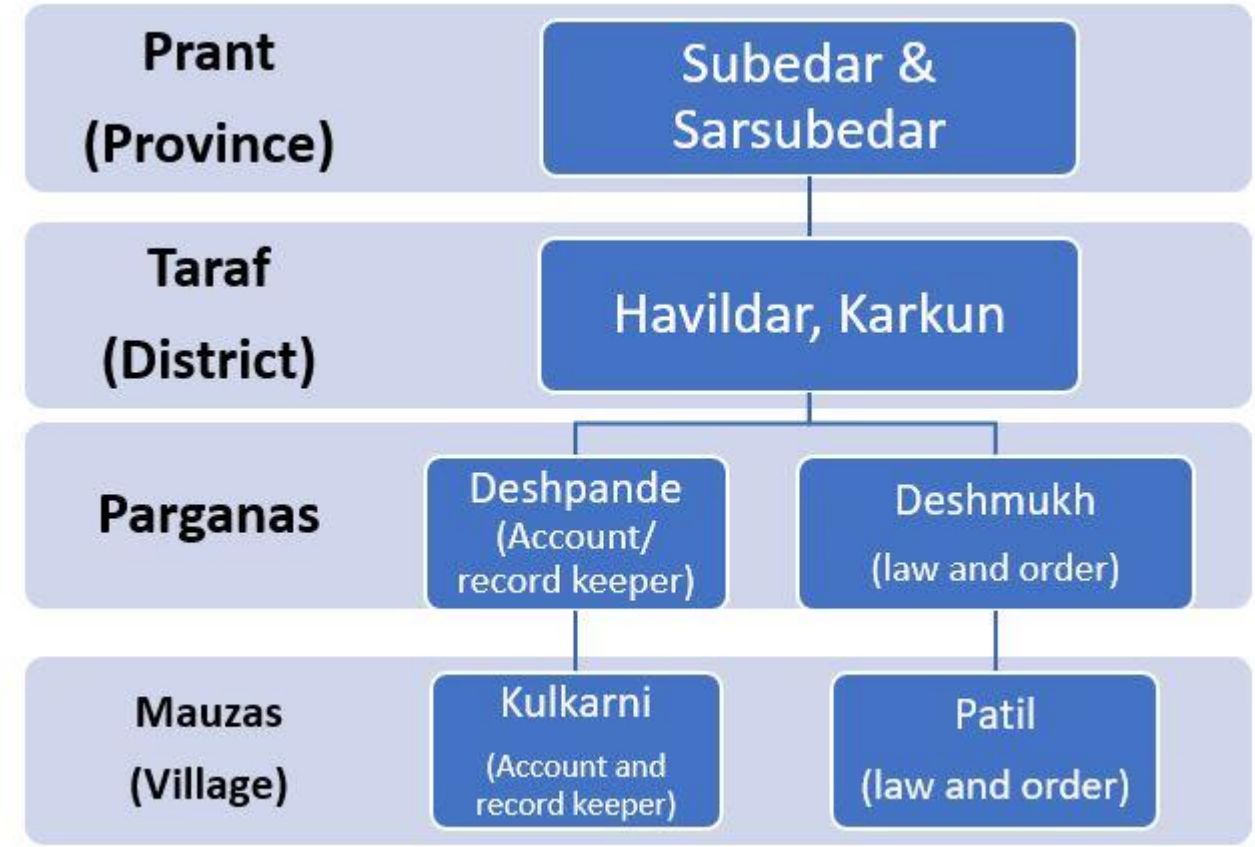
1.
1. **Peshwa** (Prime Minister): He was the **head of both civil and military affairs.**
2. **Amatya/Mazumdar** (auditor): He looked into the income and expenditure of the state.
3. **Waqe Navis**: He was in charge of intelligence.
4. **Dabir/Sumanta**: Foreign secretary.
5. **Shurnavis/Sachiv** (superintendent): He used to take care of all the official correspondences.
6. **Pandit Rao**: Ecclesiastical head.
7. **Senapati**: Commander in chief
8. **Nyayadhish**: Chief Justice

Maratha Central Administration

-

- The institution of the ashtapradhan was not a creation of Shivaji, and it already existed in the Deccan administration.
- During Shivaji, these offices were **not hereditary** and held office till the king's pleasure. They were **frequently transferred**. However, under Peshwas, the posts were made permanent and hereditary.
- They were **directly paid from the exchequer**, and no jagir was granted to any civil or military official.
- Every ashtapradhan was assisted by **eight assistants**: Diwan, Mazumdar, Fadnis, Sabnis, Karkhanis, Chitnis/Sachiv (secretary), Jamadar and Potnis.

Provincial Administration of Maratha



Shivaji adopted the administrative units from Deccan Sultans and renamed and reorganised them as follows:

Judiciary in Maratha Empire

- The Marathas failed to develop any organised judicial department.
- At the village level, civil cases were heard by the **village elders (panchayat)** in the Patil's office or the village temple.
- Patil decided on criminal cases.
- **Hazir Majlis** was the **highest court** for civil and criminal cases.

Revenue administration

- Maratha's revenue administration was adopted from Malik Ambar's model.
- **The Jagirdari** system was abolished in many areas, and the Ryotwari system was introduced.
- **Chauth** and **Sardeshmukhi** were two taxes introduced by Shivaji. These were collected in the neighbouring areas of the Maratha kingdom.

Chauth: one-fourth of the land revenue to ward off the Maratha raid**.**

Sardeshmukhi: Additional 10 % additional levy where the Marathas claimed hereditary rights.

Military Organisation

- **Forts** had an important place in Shivaji's military architecture.
- He built a series of forts, covering every single Taluka or Pargana.
- No single officer was given charge of a fort. Instead, each fort had three types of officers of equal rank and equal status. They were **Havaldar**, **Sabnis** and **Sarnobat**.
- Officers were **not allowed to form caste groups**. It was clearly specified that the Havaldar and Sarnobat should be a **Maratha**, while the Sabnis a **Brahaman** and the Karkhanis a **Kayastha**.
- The **smallest unit** in Shivaji's infantry consisted of 9 men headed by a **Naik**.

Naik	The smallest unit of infantry
Havaldar	Head of five Naiks
Jumledar	Head of two to three Havaldars
Hazari	Head of ten Jumledars
Sarnobat	Head seven such Hazaris

Military organisation	
Under Shivaji	**Under Peshwas**
In urgent situations, **Watandars** (feudal lords) were asked to supply forces. But Shivaji hardly depended on such feudal levies.	• Under the **Peshwas**, the entire country was divided into **military tenures**. They relied more on feudal levies. • They had two kinds of armies : I. Army of Peshwa II. Army of Maratha Sardars • **Pindaris**, who were robbers and plunderers, were also allowed to accompany the

	army. In lieu of their services, they used to get the right to collect **Palpatti** (25 per cent of the war booty)
The army was directly paid by the exchequer.	Under Peshwas military started getting paid in jagirs (**saranjams**).
Shivaji's military strength lay in **swift mobilisation** and **strict discipline**. He did not allow female slaves or dancing girls to accompany the army.	• However, under Peshwas, that discipline was gone. • They tried to maintain disciplined battalions on **European lines** called **Kampus.**
Shivaji maintained light cavalry infantry trained in guerrilla and hilly warfare. The Mevalis and the Hetkaris were his most excellent troopers.	The Peshwas **established a separate artillery department**. Even they had their own factories for manufacturing cannons and cannon balls.
Shivaji's cavalry consisted of **Bargirs** and the **Siledars**. · **The state supplied bargir** troopers, horses and arms. · **Siledars** had to bring their own horses and arms.	Peshwas also maintained Private elite cavalry, **Khasgi paga.**
Shivaji preferred recruitment of his own race. However, he had Muslims in his navy.	Peshwas recruited men from all religions and ethnic groups.

Maratha Navy

- Shivaji built a strong navy after his conquest of **Konkan**.
- His fleet was equipped with **Ghurabs** (gunboats) and **Gallivats** (row boats with two masts and 40-50 oars). His fleet was mainly manned by the **Koli** sea-fearing tribe of the Malabar coast.

- He also employed **Muslims** in his navy. **Daulat Khan** was one of his admirals.
- Shivaji used his naval power to harass both the indigenous and European traders. However, he could not check the menace of **Siddis** of Janjira, who worked for **the Bijapur** sultanate and later for the Mughals.
- The Peshwas also maintained a strong fleet to defend the western coast.

Marathas after Shivaji

- There ensued a war of succession among two sons of Sivaji, **Sambhaji** and **Rajaram**, in which Sambhaji emerged victorious.
- Sabhaji gave shelter to **Akbar**, the rebellious son of **Aurangzeb**. In 1689, he was defeated by the Mughals at **Sangameshwar**. He was executed, and his widow and son Sahu were held captives.
- Rajaram ascended the throne, but he was made to flee by the Mughals, and later, he died at Satara.
- His minor son, **Shivaji II**, succeeded him with his mother, Tara Bai, as regent.
- After the death of Aurangzeb, the Mughal king **Bahadur Shah** released Sahuji, which led to civil war among the Marathas.
- In **1707**, at the **battle of Khed**, Sahuji defeated Queen Regent Tarabai with the help of **Balaji Vishwanath**.
- **Tarabai** moved to **Kolhapur** and established a rival branch at Kolhapur.
- In 1731, in **the treaty of Warna**, both the Branches, Satara and Kolhapur, were formally recognised.

The Marathas under Peshwas

- Peshwa was **the most important official** of the Maratha kingdom. He was in charge of both civil and military affairs.
- However, after the death of Shivaji and the subsequent civil war in the royal family, the Peshwas emerged as the most significant figure in the kingdom.
- They were **Chitapavan Brahmans** from the Konkan region.

Map Of Maratha Empire During Shahji'S Reign (1730)

Balaji Vishwanath Bhatt **(1713 – 1719)**	• He **supported Sahuji** in the civil war among the royal family. • He made the post of Peshwa most important and influential in the Maratha Kingdom. • He also made the post of Peshwa **hereditary**. • Assisted **Sayyid brothers** in **dethroning Farrukhsiyar** and

	attained **Chauth** and **Sardeshmukhi** rights from the successor Mughal ruler.
Baji Rao I (1720 – 1740)	• He succeeded his father at the young age of 20. • He did not lose any battle in his life. • Defeated **Nizam-ul-Mulk** twice in Palkhed and Bhopal. • Captured Salsette and Bassein from Portuguese in 1722. • He **transferred the administrative capital** from Satara to Pune. • The system of the **Maratha confederacy** started during his tenure. In this system, the King (Chatrapati) issued letters of authority to his various Maratha sardars for collecting taxes like Chauth or Sardeshmukhi from various parts of the territory.
Balaji Baji Rao I/Nana Sahib I (1740 – 1761)	• During his tenure, King Sahuji died in 1749. • The position of Peshwa effectively became supreme after Sahuji. • Under his leadership, the borders of the Maratha Empire expanded to **Peshawar** in present-day Pakistan, **Srirangapattanam** in the South, and **Medinipore** in present-day West Bengal. • The **third battle of Panipat** was fought during his tenure, in which Marathas were defeated. With the defeat, the **fragmentation** of the Empire also started.

Maratha Empire Map In 1750

Third Battle of Panipat

- Marathas took advantage of declining Mughal power and made rapid territorial gains.
- During Peshwa Baji Rao, **Gujarat,** and **Malwa** came under the Marathas.
- Baji Rao defeated the Mughals on the outskirts of Delhi in 1737 and brought much of the former Mughal territories in the south of Agra under his control.
- Under Balaji Baji Rao, the **Marathas attacked Punjab in 1757**, which brought them into a **direct confrontation with Ahmad Shah Durrani**/Abdali of Afghanistan.
- In 1759, Abdali raised an army of **Pashtuns** and **Balochs** tribes and joined with **Rohillas** under **Najib-ud-Daula**, their fellow Pashtuns.

- The Marathas were commanded by **Shadashivrao Bhau**, nephew of Bajirao I.
- Both Marathas and Afghans tried to get the Nawab of Oudh, **Shuja-ud-Daula**, on their side. However, the Nawab chose to support the Afghans.

Outcome of Third Battle of Panipat

- After initial successes, the Marathas were defeated, with 40000 of them perishing in the war, including the commander Sadashivrao Bhau and Vishwasrao, son of then Peshwa Balaji Bajirao.
- Both sides **suffered heavy casualties**, and Abdali wrote to the Peshwa and sought peace.
- The **Jats** under **Surajmal** gave the retreating Marathas shelter.
- Abdali left India at the earliest and **reinstated Shah Alam II**.

Impact of Third Battle of Panipat

- The Maratha defeat **halted their further advances** in the North. However, under **Madhavrao**, the **Marathas revived again** and continued their stronghold in Delhi until their defeat by the British.
- Even **Afghans** did not benefit from the victory. They could not even hold Punjab after the war.
- It can be said that the battle did not decide who was to rule India but rather who was not. The battle gave the **opportunity to East India Company** to consolidate its power in South India and Bengal.

Causes of Maratha Defeat in Third Battle of Panipat

- The Afghans had **numerical** as well as **qualitative advantages**. They had better supplies. At the same time, the supplies of the Marathas were cut during the battle.
- **Regional animosity:** Maratha's ambitions and behaviour had antagonised the regional players. **The Rajputs, the Sikhs, the Jats**, none of them came to their help.
- **Internal Rivalry:** The Maratha chiefs bickered with each other, and some of them were not prepared for pitched battles but wanted to fight using guerrilla warfare.

Later Peshwas

Madhav Rao (1761 – 1772)	• He is credited for the ***resurrection of the Maratha Empire*** after their defeat in the third battle of Panipat. • He defeated the Nizam of Hyderabad and

	Hyder Ali. • He had major differences with his uncle **Raghunath Rao**. • He was the last powerful Peshwa of Maratha Empire.
Raghunath Rao (1773 – 1774)	• He conspired against the successor of **Madhav Rao**, **Narayan Rao** and got him assassinated. • He captured the throne but was overthrown by the Emperor.
Sawai Madhav Rao (1774 – 1795)	• He was the infant son of Madhav Rao. • **Nana Phadnavis** managed the Empire with the help of the **Barbhai council**.
Baji Rao II (1796 – 1818)	• He was the **son of Raghunath Rao** and the last Peshwa. • He signed the **Treaty of Bassein** with the British. • He was **defeated** by the British in the **Third Anglo-Maratha War in 1818.** • After the war, the Peshwa territories were annexed into the British Empire, and he was pensioned off. • His adopted son **Nana Sahib** (Dhondu Pant) played a key role in the **1857 rebellion**.

Maratha chiefs (Sardars)

- Their origin can be traced to the revival of granting of **Jagirs** (**saranjams**) by **Rajaram**.
- During the tenure of **Madhav Rao** as Peshwa, they were given a **semi-autonomous position.**
- They often made conquests outside the original kingdom with the help of their private army, which caused their clashes with one another.
- The **lack of unity** among them became a major reason for the decline of the Maratha Empire.
- **Mahadji Scindhia** was the most important Sardar; he organised a powerful European-style army. He established control over the **Mughal Emperor Shah Alam** in 1784.
- Maratha Confederacy consisted of very important Maratha jagirdars:

1.
1. Peshwa of Poona
2. Bhonsle of Berar
3. Gaekwad of Baroda
4. Holkar of Indore
5. Scindhia of Gwalior

Marathas Territory In 1760

Administration under Peshwas

- The central ministry of the Peshwas was called the **Huzur office**, situated in Poona.
- The provinces under the Peshwas were of varied sizes.
- The larger provinces were under **Sar-subadars**.
- **Mamlatdar** and **Kamavistar** were district representatives of Peshwa.
- **Deshmukh** and **Deshpande** were account officers of Districts.
- **Kotwal** was the chief officer in the city.
- **Patel** was the chief village officer, and his post was hereditary. He was assisted by **Kulkarni**, who kept the records.
- The **village artisans** like Blacksmiths and carpenters were supposed to do **Begar** or compulsory labour.
- They started the practice of **tax farming** in which land was settled against a stipulated amount to be paid annually to the government.

Critical Evaluation of the Maratha Empire

Having emerged as a major political and military power in the middle of the 17th century, Maratha reached the zenith of political erosion by the middle of the 18th century. The defeat was brought due to the combined effects of numerous factors.

1. **Geographical limitations**
- Maratha land was resource deficient, so naturally, they **depended highly on Chauth and Sardeshmukhi**. Therefore, they were very harsh in levying these taxes.
- The Maratha chiefs bickered with each other, and some of them were not prepared for pitched battles but wanted to fight using **guerrilla warfare**. But this was not feasible in Northan planes.
2. **Limitations of the Maratha political system**
- Maratha's political system was **despotic**. It was an example of a **military state**. Powerful feudal lords were prevalent.

- Due to internal differences, the Marathas could not stand together against serious challenges, and their divisions doomed the fate of the Maratha empire.

3. **Limitations of the Maratha revenue system**

- The **role of intermediaries** was quite important in the Maratha land revenue system. These intermediaries, such as patils and patels, started exploiting the common peasants after the death of Shivaji.
- Due to the availability of limited resources, Marathas could not maintain a large professional army and elaborate administration machinery. The foundation of the Maratha empire remained weak, and it could not last for very long.

4. **Limitations of the Confederacy system:**

- **Internal differences** prevailing among Maratha commanders and conspiracies hatched by dissatisfied Maratha nobles also played an important role in the decline of Marathas.
- The Marathas focused more on territory expansion, but **they couldn't Consolidate** their extensive Empire. Due to this structure, the Maratha Empire remained weak and could not last long.

5. **Strategic Blunders:**

- Maratha's ambitions and behaviour had antagonised the regional players. So, The Rajputs, the Sikhs, and the Jats, none supported them wholeheartedly in the 3rd battle of Panipat against Ahmed Shah Abdali.
- The geographical isolation of Maratha land provided them with a **unique** cultural identity this came in the way of forging close relations with other allies.

Conclusion

The Maratha's commitment to establishing a Hindu state in the subcontinent is recorded by their immense effort to coronate Shivaji in 1674. The restoration of several temples, like the Saptakoteshwar Temple in Goa, can be mentioned as proof of the same. So, we can say they were the first to give an idea of **Hindavi Swarajya** at the pan-India level. But the strategic failure of later Marathas to **comprehend the English company's true intentions** doomed the Maratha empire's fate in the long run.

3. Study Material-Language

Words Confused and Misunderstood

S.N.	Words	Meaning
1.	**Acceptance**	Acceptance is used to express the active sense of the verb i.e. the act of accepting. It is a common word.
	Acceptation	Acceptation is used to express the passive sense (to be accepted). Acceptation is indicator of the state of being accepted.
2.	**Accident**	Accident means; (a) chance, fortune (b) untoward happening, mishappening
	Incident	Incident means event, occurrence or episode
3.	**Accord**	Accord means agreement
	Accordance	Accordance means conformity or compliance
4.	**Act**	An act is the single thing done, or what is done by a single effort, as that is your act or his act
	Action	An action may consist of more acts than one or embrace the causes or the consequence of the action, as a bold action, judge of actions etc.
5.	**Advice**	Advice is a noun, which means an opinion or recommendation offered as a guide to action, conduct, etc.
	Advise	Advise is a verb, which means "to give counsel to; offer an opinion or suggestion as worth following
6.	**Actuate**	Actuate means to move mechanical things to action
	Activate	Activate means to make active
7.	**Affect**	Affect is verb and stoats to influence; to have effect on.
	Effect	Effect means result or consequence
8.	**Allusion**	Allusion means reference
	Illusion	Illusion means deception
9.	**Alluvion**	Alluvion means "the flow or wash of water against a river bank"
	Alluvium	Alluvium means "a deposit of soil, clay, or the sock of such a deposit caused by an alluvion."
10.	**Ascent**	Ascent means the act of ascending
	Assent	Assent means to approve, to sanction or to put signature on
11.	**Bath**	Bath means a large open container for water, in which to wash the whole body while sitting in it or an act washing the body in a bath.
	Bathe	Bathe refers to swimming or to therapeutic washing
12.	**Beside**	Beside means next to, by the side of or near something or someone.
	Besides	Besides means in addition to, other than, as well as, apart from something or someone.
13.	**Beneficial**	Beneficial means advantageous, profitable, favourable, producing benefits
	Beneficent	Beneficent means doing good, charitable.

14.	**Blatant**	Blatant means done openly and unashamedly
	Flagrant	Flagrant means shocking
15.	**Breath**	The word "breath" is a noun. It is the act of breathing; the air that is inhaled and exhaled.
	Breathe	The word "breathe" is a verb. It means to take a breath by inhaling and exhaling.
16.	**Cannon**	Cannon means a big gun or the ear of a bell by which the bell hangs
	Canon	Canon means (a) a corpus of writings; (b) an accepted notion or principle; or (c) a law or regulation.
17.	**Canvass**	Canvas means (i) to examine in detail (ii) to discuss or debate (iii) to solicit orders or political support or (iv) to take stock of public opinion.
	Canvas	Canvas is the heavy cloth
18.	**Cast**	Cast means to throw, to give
	Caste	Caste is a form of social stratification characterized by endogamy, hereditary transmission of a style of life which often includes an occupation, ritual status in a hierarchy, and customary social interaction and exclusion based on cultural notions of purity and pollution.
19.	**Cause**	A thing that gives rise to an action, phenomenon, or condition
	Reason	Reason is the explanation of something, as the court gives reason for its judgment
20.	**Causality**	Causality shows the principle of causal relationship; the relation of cause and effect.
	Causation	Causation means the causing or producing effect.
21.	**Chasten**	Chasten means to discipline, punish, or subdue.
	Chastise	Chastise means to punish, thrash.
22.	**Centre**	Centre means the middle point of something
	Center	Center means a place or institution
23.	**Ceremonial**	Ceremonial relates to all manners of ceremonies and ritual or formal
	Ceremonious	Ceremonious represent lightly disparaging, suggests an overtone formality.
24.	**Childlike**	Childlike has positive connotations of simplicity; innocence and truthfulness
	Childish	Childish has negative connotations of puerility, peevishness and silliness
25.	**Chronic**	Chronic stands for old, lasting for considerable time like chronic Asthma, chronic phothisis etc.
	Acute	Acute indicates extreme intensity, as acute pain, acute inflammation etc.
26.	**Cleanliness**	Cleanliness is used of persons and their habits.
	Cleanness	Cleanness is used of things or places.
27.	**Clear**	Clear is used to show transparency; free from hindrance.
	Clean	Clean is used to express the opposite of dirty

28.	**Codicil**	Codicil is a testamentary instrument ancillary to a will that adds to, varies or revokes provisions in the will.
	Will	Will is a written or oral expression of one's intention regarding the disposition of one's property at death.
29.	**Collision**	Collision is when two vessels strike each other
	Allision	An allision occurs when a vessel strikes a stationary object, such as a bridge or dock
30.	**Collocate**	Collocate means to arrange in place to set side by side.
	Collate	Collate means to compare minutely and critically; to collect and compare for the purpose of arranging accurately; or to assemble in proper order.
31.	**Commendable**	Commendable means praiseworthy, laudable.
	Commendatory	Commendatory means 'expressing commendation, laudatory.
32.	**Comminate**	Comminate means "to denounce".
	Comminute	Comminute means "to pulverize".
33.	**Complacent**	Complacent means self-satisfied, smug, pleased with oneself.
	Complaisant	Complaisant means obliging, accommodating, polio.
34.	**Complement**	Complement means to supplement appropriately or adequately,
	Compliment	Compliment means to praise, pay tribute.
35.	**Comprehensive**	Comprehensive means large, extensive e.g., comprehensive account, comprehensive note.
	Comprehensible	Comprehensible means understandable.
36.	**Condemn**	Condemn means to render judgment against a person or a thing
	Contemn	Contemn means to hold in contempt, to despise.
37.	**Congruent**	Congruent is used in the sense "coincident throughout; in accordance with"
	Congruous	Congruous means "appropriate, fitting; marked by harmonious agreement."
38.	**Connote**	Connote implies in addition to the literal meaning.
	Denote	Denote signifies the literal meaning, to indicate.
39.	**Consensual**	Consensual means "having or expressing, or made with consent."
	Consentaneous	Consentaneous means unanimous or agreeing.
40.	**Consignment**	Consignment means "the act of delivering goods to a carrier to be transmitted to a designated agent."
	Consignation	Consignation means, "the act of formally paying over money, as into a bank, or to a person legally appointed to receive it, often because it is the subject of a dispute."
41.	**Contagious**	A contagious disease is communicable by contact or touch, as Eczema; Leprosy etc.
	Infectious	An infectious disease spread by contact with the germs, e.g., in air or water, as plague (air) cholera and typhoid (water) some contagious diseases are not infectious and vice-versa.
42.	**Contemporary**	Contemporary indicates modem, contemporary with us.
	Contemporaneous	Contemporaneous is usually used of actions or things.
43.	**Contemptible**	Contemptible means worthy of contempt, despisable.
	Contemptuous	Contemptuous means worthy of contempt or scorn.
44.	**Continual**	Continual means frequently recurring
	Continuous	Continuous means occurring without interruption. e.g.,

		continuous use, in reference to a roadway, etc.,
45.	**Coarse**	Coarse is rough, vulgar; as coarse cloth, coarse manner; coarse (obscene) book.
	Course	Course means race course (ground); evil course (behaviour); course of studies or lectures; or in due course; etc.
46.	**Contravene**	Contravene means to transgress, infringe; to defy or to be contrary to, come in conflict with
	Controvert	Controvert means to dispute or contest; to debate; to contend against or oppose in argument,
47.	**Contributory**	Contributory means making contribution; that contributes to a common fund;
	Contributive	Contributive having the power of contributing; conducive (exercise is contributive to health).
	Contributorial	Contributorial relates to a contributor.
	Contributional	Contributional relates to a contribution.
48.	**Contumacious**	Contumacious means wilfully disobedient of a court order.
	Contemptuous	Contemptuous means showing contempt; scornful.
49.	**Contumacity**	Contumacy is a particular kind of contempt of court and contumacity is a long needless variant of contumacy
	Contumely	Contumely means rude and haughty language
50.	**Corporal**	Corporal means of or affecting human body.
	Corporeal	Corporeal means having a physical material body and
51.	**Corespondent**	Corespondent is a man charged with adultery and proceeded against together with wife or respondent;
	Correspondent	A correspondent is a letter-writer, an on-location news gatherer or a business representative.
52.	**Corrigendum**	Corrigendum means correction
	Erratum	Erratum means error
53.	**Corps**	Corps means singular and plural both; a division of any army, National Cadet
	Corpse	Corpse means a dead body
54.	**Council**	Council means an advisory or a deliberative body as Privy Council, the Council of State; the Executive Council.
	Counsel	Counsel means advice, advocate, barrister; as verb, it means to advice.
55.	**Credible**	Credible means worthy of credence or believable.
	Credulous	Credulous means tending to believe.
	Creditable	Creditable means worthy of credit, laudable.
56.	**Crevice**	A Crevice is a narrow crack or break, as in a side walk or a wall.
	Crevasse	A crevasse is a large split or rupture, as in a levee, glacier, or embankment;
57.	**Cultured**	Correctly cultured is used of a person
	Cultivated	Cultivated is used of the mind. A cultivated mind is well trained and highly developed.
58.	**Cursory**	Cursory means perfunctory; superficial.
	Cursorial	Cursorial means pertaining to running.
59.	**Dairy**	Dairy is a place where milk, cheese, butter etc, are kept or sold.
	Diary	Diary is a journal for recording daily memoranded

60.	**Debauch**	Debauch means "to defile, to seduce away from virtue, to corrupt".
	Debouch	Debouch means 'to emerge or cause to emerge", "to come out into open ground."
61.	**Debility**	Debility means weakness; feebleness etc.
	Debilitation	Debilitation means the action of making weak of feeble.
62.	**Declaim**	Declaim is done by lawyers in court.
	Disclaim	Disclaim is done by manufacturers in warranties.
63.	**Decry**	Decry means to disapprove of, to disparage.
	Descry	Descry means to see in the distance, to discern with the eye
64.	**Deduce**	Deduce means "to infer"
	Deduct	Deduct means "to substract"
65.	**Deducible**	Deducible means "inferable",
	Deductible	Deductible, means "capable of being (usually lawfully) substracted."
66.	**Defective**	Defective means faulty, imperfect, subnormal.
	Detectible	Detectible means likely to fail or become defective
	Deficient	Deficient means insufficient, lacking in quantity.
67.	**Defer**	Defer means "to postpone".
	Defer to	Defer to means "to give way", yields the toot deference.
68.	**Definite**	Definite means fixed, exact, explicit.
	Definitive	Definitive means authoritative; conclusive; exhaustive; providing it final solution.
69.	**Deliberate**	Deliberate means intentional, fully considered
	Deliberative	Deliberative means appointed for the purpose of, deliberation or debate.
70.	**Delivery**	Delivery means to transfer or conveyance something; utterance
	Deliverance	Deliverance means "rescue, release",
71.	**Delusive**	Delusive means tending to delude
	Delusional	Delusional applies in the nature of delusion
72.	**Dependent**	Dependent (adj.) means depending on another for maintenance.
	Dependant	Dependant (noun) is one who depends on another for maintenance
73.	**Deportation**	Deportation means the act of removing (a person) to another country; the expulsion of an alien from a country.
	Deportment	Deportment means the bearing, demeanor, or manners of a person.
74.	**Depone**	Depone means to testify.
	Depose	Depose means to bear witness or testify or to take deposition of some one.
75.	**Depravity**	Depravity shows the condition of being depraved or corrupt.
	Depravation	Depravation is the act or process of depraving or corrupting.
76.	**Depositary**	Depositary means a person with whom one deposits something, a custodian. a trustee like depositary bank
	Depository	Depository is store house, a place where you deposit something. It is used for places.
77.	**Depreciate**	Depreciate means "to belittle, disparage".
	Deprecate	Deprecate means to disapprove regretfully
78.	**Deprivation**	Deprivation the damaging lack of material benefits considered

		to be basic necessities in a society
	Privation	Privation means the loss or absence of a quality or attribute that is normally present.
79.	**Depute**	Depute means to delegate.
	Deputize	Deputize means to make another one's deputy or to act as deputy.
80.	**Derisive**	Derisive means scoffing; expressing derision.
	Derisory	Derisory means worthy of derision or of being scoffed at.
81.	**Desirable**	Desirable means wished for as being an attractive, useful, or necessary course of action.
	Desirous	Desirous is used in reference to people's emotions.
82.	**Desert**	Desert is a sandy waste like Sahara, Thar etc.
	Dessert	Dessert is the last course of a dinner and consists of fruits, sweat meats etc.
83.	**Deterrent**	A deterrent is that which deters.
	Deterrence	Deterrence is preventing by fear.
	Determent	Determent means the act or fact of deterring.
84.	**Detinuit**	Detinuit means an action of replevin in which the plaintiff already possesses the goods for which he sues.
	Detinet	Detinet means an action alleging simply that the defendant is wrongfully withholding money or chattels.
85.	**Devastavit**	Devastavit means the failure of a personal representative to administer a descendent; estate promptly or property.
	Devisavit	Devisavit is invariably used in the phrase devisavit vel non (he devises or not)
86.	**Deviser**	A deviser is one who invents or contrives.
	Devisor	A devisor is one who disposes property at will.
	Divisor	Divisor is a mathematical term referring to the number, by which another number is divided
87.	**Devisibility**	Devisibility means the capability of being devised or bequeathed
	Divisibility	Divisibility means the capability of being divided. 89.
88.	**Diagnosis**	A diagnosis is any analysis of one's present bodily condition with reference to disease or disorder.
	Prognosis	A prognosis is the projected future of a present diseases or disorder.
89.	**Dialogue**	Dialogue means a conversation between two or more persons; or the exchange of ideas
	Duologue	Duologue means "a conversation between two persons only
90.	**Disburse**	Disburse is used only in reference to distribution of money.
	Disperse	Disperse is used in reference to distribution of all other things, such as crowd or diseases.
91.	**Discrete**	Discrete means separate, distinct.
	Discreet	Discreet means cautious, judicious.
92.	**Discriminatory**	Discriminatory means applying discrimination in treatment, especially on ethnic ground.
	Discriminative	Discriminative is ambiguous and is a needless variation of both discriminatory and discriminating
	Discriminating	Discriminating means keen, discerning, judicious

	Discriminant	Discriminant is a needless variant of discriminating
93.	**Disincentive**	Disincentive provides an incentive not to do something.
	Non-incentive	Non-incentive is no incentive at all.
94.	**Disinterested**	Disinterest means impartiality or freedom from bias
	Uninterested	Uninterested means "lack of interest" or "having no interest."
95.	**Disorganized**	Disorganized means in confusion or disarmy; broken up.
	Unorganized	Unorganized means "not organized"
96.	**Disposal**	Disposal means the action or process of getting rid of something.
	Disposition	Disposition connotes a preconceived plan and an orderly arrangement
97.	**Disqualified**	Disqualified means disabled, debarred.
	Unqualified	Unqualified means not meeting the requirements.
98.	**Dissemble**	Dissemble means "to present a false appearance"
	Disassemble	Disassemble means "take apart"
99.	**Dissent**	Dissent refers to a difference of opinion
	Dissension	Dissension refers to contentious or partisan arguing
100.	**Dissentient**	Dissentient means in opposition to a majority or official opinion.
	Dissentious	Dissentious means given to dissension; quarrelsome
101.	**Distinct**	Distinct means well defined; discernibly separate
	Distinctive	Distinctive means serving to distinguish, set all by appearance
102.	**Divers**	Divers implies severalty, various, sundry.
	Diverse	Diverse implies difference. It means marked by different; unlike.
103.	**Doctrinal**	Doctrinal means of or relating to a doctrine.
	Doctrinaire	Doctrinaire means dogmatic; impractically adhering to dogma.
104.	**Dominance**	Dominance express the fact or position of being dominant
	Domination	Domination means the exercise of ruling power
105.	**Economic**	Economic refers to the study of economics
	Economical	Economical means 'thrifty' or in the current Jargon "cost-effective"
106.	**Educational**	Educational means having to do with education
	Educative	Educative means tending to educate; instructive
	Educatory	Educatory is a needless variant of educative
	Educable	Educable means capable of being educated
107.	**Educible**	Educible means capable of being educed, or drawn out.
	Educable	Educable means capable of being educated.
108.	**Effective**	Effective means having a high degree of effect, powerful, striking
	Effectual	Effectual means producing desired result.
	Efficacious	Efficacious means to have desired effect.
	Efficient	Efficient increasingly has economic connotations in law that are evident
109.	**Egress**	Egress means the right or liberty of going out (leave)
	Ingress	Ingress means the right or liberty of going in (enter)
	Regress	Regress means right or liberty to re-enter.
110.	**Elemental**	Elemental means "of or relating to the elements of something; essential; primal or primitive
	Elementary	Elementary means introductory, rudimentary; simple;

		fundamental.
111.	**Elocution**	Elocution means style in speaking: the art of speaking persuasively
	Locution	Locution means a word or phrase.
112.	**Eligible**	Eligible means legally qualified for selection.
	Illegible	Illegible means incapable of being read.
113.	**Emigrant**	Emigrant is one who goes out of his country to settle in another country.
	Immigrant	Immigrant is one who comes into a foreign country to settle there
114.	**Eminent**	Eminent means great, distinguished
	Imminent	Imminent means impending, threatening to occur immediately
115.	**Empanel** **Impanel**	Empanel and Impanel have the same meaning. It means to put name on panel of jury
116.	**Empathy**	Empathy is the ability to imagine oneself in another person's position and to experience all the sensations connected with it
	Sympathy	Sympathy is compassion for or commiseration with another
117.	**Emulate**	Emulate means to strike to equal or rival, to copy or imitate with the object of equalling
	Immolate	Immolate is to kill as a sacrifice
118.	**Envisage**	Envisage means to contemplate or view in a certain way
	Envision	Envision means to picture to oneself
119.	**Equitable**	Equitable derives from equity and has associations of justice and fairness or that which can be sustained in a court of equity
	Equable	Equable means even; tranquil; level.
120.	**Eruption**	Eruption is breaking out like volcanic eruption, eruption of war, revolution or disease etc.
	Irruption	Irruption means sudden and violent entry into a country of an invador in large numbers.
121.	**Especial**	Especial means distinctive, significant, peculiar
	Special	Special means specific, particular
122.	**Ethics**	Ethics relates to the field of moral science.
	Ethos	Ethos means the characteristic spirit or beliefs of a community, people, system, or person.
123.	**Euphuism**	Euphuism is the name given to highly affected and elaborate style.
	Euphemism	Euphemism is a mild or vague expression in place of a harsh and blunt one, as stout for fat, in exactitude for falsehood.
124.	**Exalt**	Exalt means to raise in rank, place in a high position or extol
	Exult	Exult means is to rejoice exceedingly
125.	**Exceptionable**	Exceptionable means open to exception and objectionable
	Exceptional	Exceptional means out of the ordinary; uncommon; rare; superior.
126.	**Excercise**	Exercise is familiar enough in physical exercise, mental exercise.
	Exorcise	Exorcise means to drive out an evil spirit by prayers.
127.	**Exlex**	Exlex is an adjective meaning "outside the law; without legal authority"
	Ex ege	Ex ege is an adverb meaning “as a matter of law”
128.	**Exhausting**	Exhausting is draining all one's energy, tiring.

	Exhaustive	Exhaustive is comprehensive or leaving out nothing of a subject.
129.	**Expatiate**	Expatiate means to wander; or to discourse on at length
	Expatriate	Expatriate means to leave one's home country to live elsewhere; or to banish or exile.
130.	**Facility**	Facility means ease, the quality of being easily done.
	Felicity	Felicity means happiness or blessedness.
131.	**Factious**	Factious is related to faction or party and means turbulent.
	Factitious	Factitious means made up, false, artificial. It is indicative of man-made and not natural;
	Fictitious	Fictitious means imaginary, not real.
132.	**Fair**	Fair means a gathering to celebrate a holiday or a market held at stated time.
	Fare	Fare means price for conveyance by land, water or air.
133.	**Forceful**	Forceful means full of force, powerful, convincing.
	Forcible	Forcible means "effected by force against resistance."
134.	**Foul**	Foul is the opposite of fair i.e., unfair and use familiarly in foul play
	Fowl	Fowl formerly meant a bird, but now is restricted to cock or hen.
135.	**Garnish**	Garnish means to take property; usually a portion of someone's salary, by legal authority.
	Garnishee	Garnishee is usually reserved for the nominal sense.
136.	**Generative**	Generative means procreative.
	Generational	Generational means relating to generations.
137.	**Gibe**	Gibe means a caustic remark or taunt
	Jibe	Jibe means to make things fit, uniform, or consistent.
138.	**Gilt**	Gilt means covered with a thin layer of gold as gilt edged paper; such as gilt-edged securities.
	Guilt	Guilt means crime, offence, neglect of duty.
139.	**Gratuitous**	Gratuitous means done or performed without obligation to do so (gratuitous promises); done unnecessarily (gratuitous criticisms).
	Fortuitous	Fortuitous means occurring by chance (fortuitous circumstances):
140.	**Hoard**	Hoard means a store or treasure.
	Horde	Horde is a contemptuous expression for gong, or mob.
141.	**Human**	Human pertaining to human being
	Humane	Humane means kind or compassionate.
	Humanitarian	Humanitarian is one who is full of sympathy for all living things
142.	**Humanism**	Humanism indicates study in human as opposed to divine interests.
	Humanities	Humanities was the name given to Roman and Greek classics (comprising literature, philosophy, history, oratory etc.).
	Humanist	Humanist means the students of these classics.
143.	**Illegible**	Illegible means not plain or clear enough to be read.
	Unreadable	Unreadable means too dull or obfuscatory to be read (used of bad writings)
144.	**Illusion**	An illusion exists in one's fancy or imagination.

	Delusion	A delusion is an idea or thing that deceives, or misleads a person.
145.	**Imaginary**	Imaginary is non-existent, fabricated by imagination.
	Imaginative	Imaginative is having the creative faculty of imagination.
146.	**Immoral**	Immoral means "evil depraved".
	Unmoral	Unmoral means merely "without moral sense, not moral, and is used, for example, of animals and inanimate objects.
147.	**Impartable**	Impartable means capable of being imparted.
	Impartible	Impartible means indivisible.
148.	**Impassible**	Impassible means incapable of feeling or suffering.
	Impassable	Impassable means not capable of being passed.
149.	**Imperial**	Imperial means of or belonging to an emperor or empire.
	Imperious	Imperious means overbearing; supercilious, tyrannical. Additionally it means urgent; absolute and imperative.
150.	**Imprudent**	Imprudent means rash, indiscreet.
	Impudent	Impudent means insolently disrespectful shamelessly presumptous
151.	**Incipient**	Incipient means 'beginning in an initigstage."
	Insipient	Insipient is an obsolete word meaning unwise and foolish.
152.	**Incredible**	Incredible means not believable.
	Incredulous	Incredulous means skeptical.
153.	**Ingenious**	Ingenious means clever, having ingenuity.
	Ingenuous	Ingenuous means honest, frank.
154.	**Insidious**	Insidious means things or persons lying in wait or seeking to entrap on ensnare, operating subtly or secretly so to not to excite suspicion.
	Invidious	Invidious means offensive; entailing odium or ill will upon the person performing, discharging or discussing; giving offense to others.
155.	**Insoluble**	Insoluble is used both for substances that will not dissolve in liquids and of problems that cannot be solved
	Insolvable	Insolvable is used only of problems that cannot be solved.
	Unsolvable	Unsolvable is needless variant and therefore should be avoided.
156.	**Interpretivism**	Interpretivism means a plea that judges can enforce only norms stated or clearly implicit in the Constitution
	Non-Interpretivism	Non-Interpretivism mean the view that courts can legitimately go beyond those sources.
157.	**Innovation**	Innovation is novelty, something new.
	Renovation	Renovation is indicative of making a new again.
158.	**Judgmental**	Judgmental means of or relating to judgment; or judging when uncalled for.
	Judgmatic	Judgmatic means facetious formation
159.	**Judicial**	Judicial means (1) of or relating to court or by the court (2) in court (judicial admission); (3) legal; (4) of or relining to a judgment.
	Judicious	Judicious means well considered; discreet; wisely circumspect.
160.	**Jural**	Jural means of or relating to law or its administration; legal :

		juristic; or of or pertaining to rights or obligations
	Juridical	Juridical means relating to judicial proceedings or to the law
161.	**Juratory**	Juratory is a rare term used today to mean of or pertaining to an oath or oaths; expressed or contained in an oath.
	Juratorial	Juratorial means "of or relating to a jury."
162.	**Jurisprudent**	Jurisprudent means a jurist or learned lawyer.
	Jurisprudential	Jurisprudential means "of or relating to jurisprudence".
163.	**Justiciable**	Justiciable means liable to be determined in a court of justice.
	Judicable	Judicable is a needless variant.
164.	**Levee**	Levee means a river embankment; alike; pier.
	Levy	Levy means (i) to impose (as a fine) by legal sanction, (ii) to conscript For service in military; (iii) to wage (a war); (4) to seize (the property).
165.	**Lightning**	Lightning means thunderbolt.
	Lightening	Lightening means (i) shining, brightening or making bright, illuminating; (ii) making (lighter, reducing weight or burden; giving or feeling relief.
166.	**Loath**	Loath means reluctant, unwilling.
	Loathe	Loathe means to detest, to hate intensely.
167.	**Lost Property**	Property is said to be lost when the owner has involuntarily relinquished possession of it, usually by accident or forgetfullness
	Abandoned Property	Property is abandoned if the owner has knowingly forsaken his interest in the property.
168.	**Lose**	Lose means to suffer the deprivation of; to part with;
	Loose	Loose means to release; unbind; as he loosed the dog.
169.	**Luxuriant**	Luxuriant means growing abundantly, lush.
	Luxurious	Luxurious means characterized by luxury or sensuous enjoyment.
170.	**Malevolent**	Malevolent is a person 'desirous of evil to others.'
	Maleficent	Maleficent is a person who is positively "hurtful or criminal to others.
171.	**Malfeasance**	Malfeasance means an unlawful act.
	Misfeasance	Misfeasance means the negligent or otherwise improper performance of lawful act.
172.	**Malignancy**	Malignancy should be confined to denoting any cancerous disease.
	Malignity	Malignity means wicked or deep rooted ill will or hatred; malignant feelings or actions.
173.	**Mean**	Mean means (i) small; (ii) obstreperous; or (iii) median - average.
	Median	The median is the 'point in a series of numbers above which is half the series and below which is the other half.
174.	**Mean**	Mean means average.
	Mien	Mien means general manner, demeanour, appearance, bearing or behaviour of a person
175.	**Mistreat**	Mistreat means to treat badly or wrongly.
	Maltreat	Maltreat mean to abuse, to handle roughly or cruelly.
176.	**Mitigate**	Mitigate means to take less severe or intense.
	Militate	Militate means to exert a strong influence.

177.	**Momentary**	Momentary means lasting a moment, short lived, fleeting; as momentary feeling of despair, relief, momentary pleasure.
	Momentous	Momentous means of great importance or significance.
178.	**Non-Constitutional**	Non-Constitutional means a issue relating to some legal basis or principle other than the Constitution.
	Unconstitutional	Unconstitutional means in violation of or not in accordance with principles enshrined in the Constitution.
179.	**Non feasance**	Non feasance implies the failure to act where a duty to act existed
	Non act	Non act means merely the failure to act
180.	**Observation**	Observation is the act of observing i.e., seeing, marking, examining alternatively, also a remark.
	Observance	Observance is obeying of a rule, keeping a custom or performing a ceremony.
181.	**Official**	Official means pertaining to office.
	Officious	Officious means servile, fussy in offering unwanted service.
182.	**Ordance**	Ordance means military supplies, cannon; artillery.
	Ordinance	Ordinance means a rule or law made to meet some emergent situation.
	Ordonnance	Ordonnance means the ordering of parts in a whole; arrangement.
183.	**Persecute**	Persecute means to harass.
	Prosecute	Prosecute means (i) to take legal proceedings against a person, (ii) to pursue or carry on study,
184.	**Personal**	Personal is one's own, private, individual
	Personnel	Personnel is used collectively for a body of persons engaged in any service or institution
185.	**Perspicuity**	Perspicuity is the quality of clear statement and is used of books, style, writing
	Perspicacity	Perspicacity is the quality of clear, sharp understanding or penetration and is used of persons
	Perspicuous	Perspicuous means clear; lucid; seen readily
	Perspicacious	Perspicacious means penetrating in thought: acutely discerning; keen, shrewd
186.	**Practical**	Practical means manifested in practice; capable of being put to good use.
	Practicable	Practicable means capable of being accomplished; feasible, possible.
187.	**Pray**	Pray means to offer prayer
	Prey	Prey means victim
188.	**Precautionary**	Precautionary means (i) suggesting or advising provident caution; (ii) of, relating to, or of the nature of a precaution.
	Precautions	Precautious means using precaution; displaying previous or provident caution or care.
189.	**Precede**	Precede means to go ahead of; to come before.
	Proceed	Proceed means to go ahead; to continue.
190.	**Precision**	Precision means accuracy.
	Precisian	Precisian means a person who adheres to rigidly high standards
	Precisionist	Precisionist means a person who prizes absolute correctness of

		expression and performance
191.	**Precipitate**	Precipitate means sudden; hasty; rash; showing violent or uncontrollable speed.
	Precipitous	Precipitous is like a precipice; steep.
192.	**Presumptive**	Presumptive means giving reasonable grounds for presumption or belief; warranting inferences; or based on presumption or inference.
	Presumptuous	Presumptuous means arrogant, presuming, bold, forward, impudent.
193.	**Presumptively**	Presumptively means by legal presumption
	Presumably	Presumably means may presume or reasonably suppose; by presumption or supposition.
194.	**Principal**	Principal is the head of the institution
	Principle	Principle means a truth, law, doctrine or course of action
195.	**Prophesy**	Prophesy means to predict or foretell.
	Prophecy	Prophecy means a prediction or foretelling
196.	**Proscribe**	Proscribe means to prohibit
	Prescribe	Prescribe means to impose authoritatively
197.	**Quaere**	Quaere means "question".
	Query	Query means to enquire.
198.	**Quantum Meruit**	Quantum Meruit means the reasonable value of the services as quasi-contract. Literally it means “as much as he deserved."
	Quantum Valebant	Quantum Valebant means the reasonable value of goods and materials.
199.	**Recital**	Recital means the formal statement, or setting forth, of some related matter of fact in any deed or writing,
	Recitation	Recitation connotes an oral delivery before an audience, whether in the classroom or an stage.
200.	**Recognizance**	Recognizance means a bond or obligation, entered into and recorded before a court or a magistrate, by which a person engages himself to perform some act or observe some condition (as to appear when called on, to pay a debt or to keep the peace)
	Reconnaissance	Reconnaissance means a preliminary survey, a military or intelligence gathering examination of a region.
	Reconnoisance	Reconnoisance is the older spelling of reconnaissance, it is also a needless variant of recognizance and of recognition
201.	**Recourse**	Recourse means application and is used in idiomatic phrases without recourse and have recourse to.
	Resort	Resort means that which one turns to for refuge or aid
202.	**Rejoinder**	A rejoinder is the pleading served by a defendant in answer to the plaintiff's reply
	Surrejoinder	Surrejoinder is a plaintiff's pleading in reply to a defendant's rejoinder
203.	**Remainder**	A remainder is defined as `what is left' of an entire grant of lands or tenements after the preceding part of the some grant or estate has been disposed of in possession, whose regular expiration the remainder must await
	Reversion	A reversion is the remnant of an estate continuing in the grantor, undisposed of, after the grant of a party of his

		interest."
204.	**Remediable**	Remediable means capable of being remedied
	Remedial	Remedial means providing a remedy; corrective; curative
205.	**Remittance**	Remission means either forgiveness or diminution of force, effect, degree, or violence.
	Remittal	Remittal is a needless variant.
	Remission	Remittance correspondence to transmit (as money) and means "money sent to a person or the sending of money to a person.
	Remitment	Remitment is a needless variant.
206.	**Remitter**	A remitter is one who sends a remittance
	Remittitur	A remittitur is the process by which the court reduces the damages awarded in a jury verdict.
207.	**Reprise**	Reprise means (i) an annual deduction, duty, or payment out of manor or estate; as an annuity or the like; or (ii) (in music) a repetition.
	Reprisal	Reprisal means an act of retaliation, usually, of one nation against another but short of war.
208.	**Rescission**	Rescission means an act of rescinding; annulling; vacating,' or cancelling
	Recision	Recision comes from the Latin verb recisio meaning "the cut back, lop off'.
209.	**Revalidate**	Revalidation consists in repetition of the formalities of execution of the will previously revoked.
	Revive	Revival consists in revocation of the superseding or revoking will i.e., the will that is displaced or invalidated the original will.
210.	**Right**	Right means correct, proper, just etc.
	Righteous	Righteous means morally upright, virtuous or law-abiding
	Rightful	Rightful means (i) (of an action) equitable; fair (ii) (of a person) legitimately entitled to a position (the rightful heir); or (iii) (of an office or piece of property) that one is entitled to (his rightful inheritance).
211.	**Sanitary**	Sanitary means of or relating to health or more usually, cleanliness.
	Sanative	Sanative means health-producing; healthful.
	Sanatory	Sanatory is a needless variant
212.	**Savable**	Savable means capable of being saved.
	Salvable	Salvable means admitting of salvation.
	Salvageable	Salvageable means "that can be salvaged."
213.	**Scarify**	Scarify means (i) "to make superficial incisions in, cut off skin from". (ii) "to pain by severe criticism"; or (iii) "to loosen soil by means of an agricultural machine (a sacrificer) with prongs for spiked road breaking".
	Scorify	Scorify means "to reduce or to dross or slag."
214.	**Sensuous**	Sensuous means of or relating to five senses or arousing any of the five senses.
	Sensual	Sensual means sexual; salacious; voluptuous (sexual desires).
215.	**Sequential**	Sequential means "forming a sequence or consequence".
	Sequacious	Sequacious means "intellectually servile."
216.	**Sequester**	Sequester means to remove (as property) from the possession

		of the owner temporarily; to seize and hold the effects of a debtor until the claims of creditors are satisfied.
	Sequestrate	Sequestrate means to divert the income of an estate or benefice, temporally or permanently, from its owner into other hands."
217.	**Sideswipe**	Sideswipe means to strike a glancing blow.
	Sidewipe	Sidewipe means an artificial form, has no valid standing.
218.	**Signatory**	Signatory means forming one of those persons or governments whose signatures are attached to a document.
	Signatural	Signatural means of or pertaining to signatures.
219.	**Significance**	Significance means (i) a subtly or indirectly conveyed meaning; suggestiveness; the quality of implying; (ii) the quality of being important or significant.
	Signification	Signification means (i) the act of signifying; as by symbols; or (ii) the purport or sense intended to be conveyed by a word or other symbol.
220.	**Sophistical**	Sophistical means "quibbling, specious, or captious in reasoning."
	Sophical	Sophical means learned; intellectual.
221.	**Specious**	Specious is used of arguments or reasoning and means having special appeal but false.
	Spurious	Spurious is used of things. It means not genuine.
222.	**Stationary**	Stationary means remaining in one place.
	Stationery	Stationery means materials for writing on or with.
223.	**Statutable**	Statutable means (i) prescribed, authorised, or permitted by statute; (ii) conformed to the requirements of the statutes as to quality, size, or amount; (iii) (of an offense) legally punishable.
	Statutory	Statutory means pertaining to or consisting in statutes, enacted, appointed, or created by statute; conformable to the provisions of a statute.
224.	**Staunch**	Staunch is preferable as the adjective i.e., trustworthy, loyal.
	Stanch	Stanch means to restrain the flow of blood.
225.	**Terminus**	Terminus means the city at the end of a rail road or bus line
	Terminal	Terminal means the station of a transportation line
226.	**Timbre**	Timbre is primarily a musical term meaning "tone quality".
	Timber	Timber means wood prepared for use in building and carpentry.
227.	**Treble**	Treble means consisting of three parts; threefold.
	Triple	Triple means having three times the usual size, quality, or strength.
228.	**Trustee**	Trustee means a person having a nominal title to property that he holds for the benefit of one or more others, the beneficiaries.
	Trusty	Trusty means trustworthy.
229.	**Turpid**	Turpid means "filthy; worthless".
	Turbid	Turbid means muddy, thick; disordered.
	Torpid	Torpid means dormant, sluggish, apathetic.
230.	**Urban**	Urban means city or town (as opposed to rural).
	Urbane	Urbane means cultured, polite.

231.	**Venal**	Venal means purchasable or for sale;
	Venial	Venial means slight (used of sin's); pardonable; excusable; trivial.
232.	**Void**	Void means completely null.
	Voidable	Voidable means capable of being voided or confined.
233.	**Vocation**	Vocation is sense of fitness or urge for some particular career or profession.
	Avocation	Avocation is occupation or profession.
234.	**Wave**	Wave is noun associated with water i.e., wave of the sea means to move
	Waive	Waive means to give up the claim; to forgo
235.	**Wrack**	Wrack means to destroy utterly; to wreck.
	Rack	Rack means to torture or oppress.

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5. Current Affairs

OCTOBER 2024

1. Indian-origin Ravi Ahuja has recently been appointed the new CEO of which company?
(a) Meta
(b) Microsoft
(c) Boeing
(d) Sony Pictures Entertainment

2. SBI Card has launched a co-branded credit card with which airlines?
(a) Vistara
(b) Singapore Airlines
(c) Qatar Airways
(d) Indigo

3. Who has been recently appointed as the new CMD of IL&FS Group?
(a) Ravi Ahuja
(b) Alok Sinha
(c) Nand Kishore
(d) Rajeev Prasad

4. Which mission has been launched to promote cruise tourism in India?
(a) 'Cruise Bharat Mission'
(b) 'Kalash Mission'
(c) 'Cruise Jalavihar' Mission
(d) 'Cruz Sndhi' Mission

5. Exercise 'KAZIND' recently started between India and which country?
(a) Russia
(b) Kazakhstan
(c) Israel
(d) Singapore

6. Where was the World Green Economy Forum inaugurated recently?
(a) New Delhi
(b) Dubai
(c) Mumbai
(d) London

7. Who won the gold medal for India in the ISSF Junior 25m pistol?
(a) Divyanshi
(b) Anchal Singh
(c) Tejaswini
(d) Vedangi Kapoor

8. In which state did PM Modi unveil four bio-gas units?
(a) Uttar Pradesh
(b) Madhya Pradesh
(c) Assam
(d) Haryana

9. NITI Aayog has recently launched the Women Entrepreneurship Platform with which state?
(a) Telangana
(b) Tamil Nadu
(c) Assam
(d) Himachal Pradesh

10. In which state did PM Modi launch 'Dharti Aba Tribal Village Development Campaign'?
(a) Bihar
(b) Jharkhand
(c) Chhattisgarh
(d) Uttar Pradesh

11. For which discovery were Victor Ambros and Gary Ruvkun awarded the 2024 Nobel Prize in Medicine?
(a) DNA fingerprinting
(b) Discovery of miRNA
(c) Gene editing
(d) Protein synthesis

12. Which state government recently launched the 'Nijut Moina' scheme for girl students?
(a) Assam
(b) Maharashtra
(c) Uttar Pradesh

(d) Haryana

13.Who won his second gold at the ISSF Junior World Championship 2024?
(a) Manvi Jain
(b) Divyanshi
(c) Shikha Chaudhary
(d) None of these

14.Who launched the logo depicts 'Amrit Kalash, website and app of the upcoming Mahakumbh Mela 2025?
(a) Narendra Modi
(b) Anandiben Patel
(c) Yogi Adityanath
(d) Keshav Prasad Maurya

15.Who has been appointed by the BCCI as the new chairman of its Anti-Corruption Unit?
(a) Sharad Kumar
(b) Alok Joshi
(c) Rajeev Sinha
(d) Abhay Kohli

16.In which state did PM Modi inaugurate the Banjara Heritage Museum?
(a) Assam
(b) Maharashtra
(c) Uttar Pradesh
(d) Madhya Pradesh

17.How many scientists were awarded the Nobel Prize for Chemistry for the year 2024?
(a) 1
(a) 2
(d) 3
(d) 4

18.Who was recently appointed as the next Ambassador of India to France?
(a) Sanjeev Kumar Singla
(b) Rajeev Kumar
(c) Abhishek Kumar
(d) Alok Kumar Joshi

19.Who was awarded the Nobel Prize in Physics this year?
(a) Alan Turing and Richard Feynman
(b) John Hopfield and Geoffrey Hinton

(c) Stephen Hawking and Albert Einstein
(d) Pierre Curie and Marie Curie

20.When is World Post Day celebrated every year?
(a) 07 October
(b) 08 October
(c) 09 October
(d) 10 October

21.Who has been chosen as the new MD of Nestle India?
(a) Suresh Narayanan
(b) Raghav Prasad
(c) Manish Tiwari
(d) Rahul Joshi

22.Who has recently been appointed the head coach of the Sri Lankan cricket team?
(a) Ajay Jadeja
(b) Rahul Dravid
(c) Sanath Jayasuriya
(d) Mahela Jayawardene

23.In which state will the 38th National Games be organized?
(a) Uttar Pradesh
(b) Madhya Pradesh
(c) Uttarakhand
(d) Rajasthan

24.Where did PM Modi recently inaugurate the Indian Institute of Skills?
(a) Lucknow
(b) Jaipur
(c) Mumbai
(d) Shimla

25.Where will the 21st ASEAN-India Summit be held?
(a) Manila
(b) Laos
(c) Mumbai
(d) Colombo

26.In which state will the National Maritime Heritage Complex be established?
(a) Assam
(b) Gujarat

(c) Tamil Nadu
(d) Kerala

27. Which country won the bronze medal of Asian Table Tennis Women's Championship 2024?
(a) Malaysia
(b) China
(c) India
(d) Japan

28. Who has been appointed as the new Chairman of Tata Trusts?
(a) Lia Tata
(b) Maya Tata
(c) Noel Tata
(d) N Chandrasekaran

29. In which district of Bihar will the state's second Tiger Reserve be established?
(a) Kaimur
(b) Muzaffarpur
(c) Gone
(d) Bhagalpur

30. International Energy Agency has collaborated with which IIT for clean energy?
(a) IIT Varanasi
(b) IIT Mumbai
(c) IIT Delhi
(d) IIT Kharagpur

31. Who has been appointed as the new CMD of IRFC Limited?
(a) Alok Kumar
(b) Manoj Kumar Dubey
(c) Ajay Sinha
(d) Rajiv Kapoor

32. Which tennis star recently announced his retirement from professional tennis?
(a) Carlos Alcaraz
(b) Rafael Nadal
(c) Novak Djokovic
(d) Andy Murray

33.The Nobel Prize for Literature 2024 was awarded to Han Kang, she is from which country?

(a) Spain
(b) Thailand
(c) South Korea
(d) Japan

34.The 2024 Nobel Prize in Economics was awarded to Daron Acemoglu, Simon Johnson and James A. Robinson for which study?

(a) Models of economic development
(b) How institutions are formed and affect prosperity
(c) Analysis of financial markets
(d) Climate change and economy

35.Hindustan Aeronautics Limited has become which central enterprise to receive Maharatna status?

(a) 10th
(b) 12th
(c) 14th
(d) 15th

36.Which country will host the ISSF Junior World Cup 2025?

(a) Malaysia
(b) India
(c) South Korea
(d) China

37.Harmanpreet Kaur created a national record in which weight category at the IWLF weightlifting event?

(a) 45 kilograms
(a) 53 kilograms
(d) 76 kilograms
(d) 83 kilograms

38.Who was recently appointed as the additional CEO of Government e Marketplace (GeM)?

(a) Arun Puri
(b) Ramesh Sinha
(c) Ravi Shankar Prasad
(d) L Satya Srinivas

39.Which team made the second-highest team score in T20 International cricket?

(a) India

(b) Pakistan
(c) England
(d) Australia

40. Who inaugurated the ITU World Telecommunication Standardization Assembly 2024?
(a) Narendra Modi
(b) Amit Shah
(c) Eknath Shinde
(d) Chirag Paswan

41. Who has built the Indian Navy's new ship 'Samarthak'?
(a) Hindustan Shipyard
(b) L&T Shipyard
(c) Mazagon Dock Shipbuilders
(d) Garden Reach Shipbuilders

42. Recently S Parameshwar has been appointed as the chief of which company?
(a) BSF
(b) NIA
(c) CRPF
(d) Indian Coast Guard

43. Who was named ICC Player of the Month for September 2024?
(a) Virat Kohli
(b) Kamindu Mendis
(c) Sanju Samson
(d) Joe Root

44. Who will take oath as the new Chief Minister of Jammu and Kashmir?
(a) Farooq Abdullah
(b) Omar Abdullah
(c) Mehbooba Mufti
(d) None of these

45. Who was recently appointed as the MD and CEO of Bandhan Bank?
(a) Abhishek Ranjan
(b) Ramesh Kumar Garg
(c) Partha Pratim Sengupta
(d) Rekha Mehta

46.Who has been sworn in as the new Chief Minister of Haryana?
(a) Manohar Lal Khattar
(b) Nayab Singh Saini
(c) Anil Vij
(d) Sunil Jakhar

47.Who was recently named the National Brand Ambassador of the Indian Cyber Crime Coordination Centre?
(a) Anushka Sharma
(b) Kriti Sanon
(c) Virat Kohli
(d) Rashmika Mandanna

48.With which country did India recently sign a $3.5 billion drone deal?
(a) France
(b) Germany
(c) Canada
(d) USA

49.Where was India's first airport-based self-operated indoor air quality monitoring facility launched?
(a) Jaipur
(b) Thiruvananthapuram
(c) Mumbai
(d) Varanasi

50.Who won silver medal in ISSF World Cup Men's Final?
(a) Shreyansh Sinha
(b) Saurabh Singh
(c) Vivaan Kapoor
(d) Vijay Kumar

51.Where did Indian Navy's First Training Squadron (1TS) complete a long distance training deployment?
(a) Dubai
(b) Kuwait
(c) Manama
(d) Abu Dhabi

52.The Rural Development Ministry has signed an agreement with how many banks for personal financing for high-scale enterprises?
(a) 05
(b) 06
(c) 08
(d) 10

53.Which medal did Gurpreet Pal Singh win at the ACO World Chess Championship in Greece?
(a) Gold
(b) Silver
(c) Bronze
(d) None

54.Recently which state government is preparing to declare Sanskrit as a compulsory subject?
(a) Uttarakhand
(b) Uttar Pradesh
(c) Assam
(d) Gujarat

55.Whose name has been recommended as the next Chief Justice of India?
(a) Justice Bhushan Ramakrishna Gavai
(b) Justice Rajkumar Sinha
(c) Justice Sanjiv Khanna
(d) Justice Suryakant

56.Who was recently appointed as the Director of Cricket at JSW Sports?
(a) Ajay Jadeja
(b) Rahul Dravid
(c) Sourav Ganguly
(d) Anil Kumble

57.Who has been appointed the new chairperson of the National Commission for Women?
(a) Smriti Irani
(b) Vijaya Kishore Rahatkar
(c) Neha Sinha
(d) Bansuri Swaraj

58.Who has been appointed the new President of the Indian Chamber of Commerce?
(a) Mukesh Ambani
(b) Adar Poonawala

(c) Kumar Mangalam
(d) Abhyudaya Jindal

59. In which state is the Indian Army organizing 'Swavalamban Shakti Exercise'?
(a) Rajasthan
(b) Haryana
(c) Assam
(d) Uttar Pradesh

60. Who is the bowler who took 300 wickets in the least number of balls in Test cricket?
(a) Kagiso Rabada
(b) Jasprit Bumrah
(c) Tim Southee
(d) Kuldeep Yadav

61. Which country is hosting the BRICS Summit 2024?
(a) India
(b) Russia
(b) China
(d) South Africa

62. In which district of UP a new airport was inaugurated under the UDAN scheme?
(a) Hapur
(b) Saharanpur
(c) Barabanki
(d) Jaunpur

63. Where is the National Para-Swimming Championship 2024 being organized?
(a) Jaipur
(b) Lucknow
(c) Patna
(d) Panaji

64. Which country has named the cyclonic storm 'Dana' that arose in the Bay of Bengal?
(a) Bangladesh
(b) Thailand
(c) Qatar
(d) India

65.Several sports have been dropped from the 2026 edition of the Commonwealth Games, where will it be held?
(a) Gold Coast
(b) Birmingham
(c) Glasgow
(d) New Delhi

66.From when to when is the 'National Learning Week' or 'Karmayogi Saptah' being organised?
(a) October 18 to 24
(b) October 19 to 25
(c) 20 to 26 October
(d) 21 to 27 October

67.Recently Luong Quong has been elected as the new President of which country?
(a) Vietnam
(b) China
(c) Thailand
(d) Malaysia

68.Which country was recently declared malaria free by the World Health Organization?
(a) Kenya
(b) Egypt
(c) South Africa
(d) Morocco

69.Who launched the new logo of Bharat Sanchar Nigam Limited (BSNL)?
(a) Amit Shah
(b) Rajnath Singh
(c) Jayant Chaudhary
(d) Jyotiraditya Scindia

70.The Pravasi Parichay 2024 program is being organized in the Indian Embassy of which country?
(a) Brazil
(a) USA
(b) China
(d) Saudi Arabia

71.Who hosted the Leadership Summit 2024?
(a) IIT Guwahati

(b) IIT Varanasi
(c) IIT Patna
(d) IIT Delhi

72. Who was recently awarded the Global Anti-Racism Championship Award 2024?
(a) Geeta Gopinath
(b) Soumya Swaminathan
(c) Urmila Choudhary
(d) None of these

73. When is the United Nations Day celebrated every year?
(a) 21 October
(b) 22 October
(c) 23 October
(d) 24 October

74. When is the World Development Information Day observed every year?
(a) 22 October
(b) 23 October
(c) 24 October
(d) 25 October

75. With whom has Reliance Industries signed an agreement to set up AI infrastructure in the country?
(a) Meta
(b) Microsoft
(c) Nvidia
(d) Open AI

76. The Government of India has appointed Dr. Neena Malhotra has been appointed as the next Ambassador of India to which country?
(a) France
(b) Argentina
(c) Russia
(d) Sweden

77. Exercise SIMBEX 2024 is organized between India and which country?
(a) Singapore
(b) Sri Lanka
(c) France
(d) Portugal

78.Who flagged off the 'Run for Unity' held in New Delhi?
(a) Rajnath Singh
(b) Amit Shah
(c) Jyotiraditya Scindia
(d) Chirag Paswan

79. Who was recently appointed as the Chairman of Airport Authority of India?
(a) Ramesh Kumar
(b) Vipin Kumar
(c) Anirudh Sinha
(d) Ajay Kumar Alok

80. What is India's rank in the World Justice Project's 2024 Rule of Law Index?
(a) 60
(b) 44
(c) 79
(d) 142

81. In which state was the country's first 'Writers Village' inaugurated?
(a) Assam
(b) Sikkim
(c) Meghalaya
(d) Uttarakhand

82. What are the names of the two indigenous patrol vessels recently launched by the Indian Coast Guard?
(a) 'Ajey' and 'Amrit'
(b) 'Adamya' and 'Akshar'
(c) 'Aakash' and 'Anant'
(d) 'Achal' and 'Abhinav'

83. Who has been recently appointed as the MD and CEO of Punjab National Bank?
(a) Ashok Chandra
(b) Abhay Singh Yadav
(c) Rajkumar Awasthi
(d) Atul Kumar Goyal

84. Matthew Wade has recently announced his retirement from cricket, he is a player of which country?
(a) England
(b) South Africa

(c) Australia
(d) New Zealand

85. In which city of Himachal Pradesh was the state's first digital library inaugurated?
(a) Shimla
(b) Manali
(c) Dharamshala
(d) Bilaspur

86. Who is the female cricketer who has scored the most centuries for India in ODI cricket?
(a) Radha Yadav
(b) Harmanpreet Kaur
(c) Smriti Mandhana
(d) Deepti Sharma

87. When is National Ayurveda Day celebrated every year?
(a) 28 October
(b) 29 October
(c) 30 October
(d) 31 October

88. Which female footballer won the Women's Ballon d'Or Award in 2024?
(a) Alexia Putellus
(b) Lucy Bronze
(c) Aitana Bonmati
(d) Ada Hegerberg

5. Prelims and Mains Notes Preparation Scheme

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1. Current Affairs 2. G.K.MCQs 3. History of India and IndianCulture 4. Geography of India 5. Indian Polity 6. Current National Issues 7. Topic of Social Relevance with special reference to newly added 9 Social Acts 8. India and the World 9. Indian Economy 10. International Affairs and Institutions 11. Development in the field of: (a) Science and Technology (b) Communications and Space	1. Constitutional Law 2. Law of Evidence 3. Criminal Procedure Code 4. Code of Civil Procedure, 5. Indian Panel Code 6. Law of Contract 7. Partnership Act 8. Easements Act 9. Law of Torts 10. Transfer of Property Act 11. Principles of Equity , 12. Law of Trust 13. Specific Relief Act 14. Hindu Law 15. Muslim Law 16. U.P. Revenue Code. 17. U.P. Municipalities Act 1916 18. U.P. Panchayat Raj Act 1947 19. U.P. Consolidation of Holdings Act, 1953 20. U.P. Urban (Planning and Development) Act, 1973
3. CLAT 1. General Knowledge 2. A Guide for CLAT	