J B NAGAR CPE Study Circle of WIRC of ICAI

INTERESTING CASES IN ALLIED LAWS : USEFUL IN DAY-TO-DAY LIFE

PRESENTED ON 2nd JUNE 2024

CA RAJESH SANGHVI
98210 12159

AADHAR

CARD

AADHAR

THE AADHAAR (TARGETED DELIVERY OF FINANCIAL & OTHER SUBSIDIES, BENEFITS AND SERVICES) ACT, 2016
25th *March*, 2016

Sec. 2 (*k*) "**Demographic information**" includes information relating to the name, date of birth, address and other relevant information of an individual, as may be specified by regulations for the purpose of issuing an Aadhaar number, but shall **not** include race, religion, caste, tribe, ethnicity, language, records of entitlement, income or medical history

2 (*v*) "**Resident**" means an individual who has resided in India for a period/s amounting in all to 182 days or more in the 12 months **immediately preceding the date of application for enrolment**

Sec. 3 - Every **resident** shall be entitled to obtain an Aadhaar number by submitting his demographic information and biometric information by undergoing the process of enrolment **:**
Provided that the Central Government may, from time to time, notify such other category of individuals who may be entitled to obtain an Aadhaar number.

AADHAR

Sec. 31 - In case any demographic information of an Aadhaar number holder is found incorrect or **changes subsequently**, the Aadhaar number holder shall request the Authority to alter such demographic information in his record in the Central Identities Data Repository in such manner as may be specified by regulations.

Sec. 57. Nothing contained in this Act shall prevent the use of Aadhaar number for establishing the identity of an individual for any purpose, whether by the State or any body corporate or person, pursuant to any law, for the time being in force, or **any contract to this effect** :

डा० अजय भूषण पांडे, भा.प्र.से.
मुख्य कार्यकारी अधिकारी
Dr. Ajay Bhushan Pandey, IAS
Chief Executive Officer

भारत सरकार
Government of India
भारतीय विशिष्ट पहचान प्राधिकरण
Unique Identification Authority of India (UIDAI)
तीसरी मंजिल, टॉवर II, जीवन भारती भवन,
कनॉट सर्कस, नई दिल्ली-110001
3rd Floor, Tower II, Jeevan Bharati Building,
Connaught Circus, New Delhi-110001

No.6-1/2016-UIDAI (DBT)

Dated: 15th November 2017

CIRCULAR

Subject: Applicability of Aadhaar as an identity document for Non-Resident Indians (NRIs)/ Person of Indian Origin (PIOs) and Overseas Citizen of India (OCIs) – Regarding

In the recent past several representations have been received from individuals such as Non-Resident Indians (NRIs), Person of Indian Origin (PIOs) and Overseas Citizen of India (OCIs) informing about difficulties being faced by them on demand of Aadhaar by respective Authorities in respect of various services/benefits etc. An illustrative list of such cases wherein NRIs/PIOs/OCIs are reported to have been asked to submit or link Aadhaar in order to avail the services/benefits/schemes has been compiled and is placed as ***Annexure***.

2. It has been brought to notice that some of the Ministries/Departments/Implementing Agencies concerned are insisting the NRIs/OCIs/PIOs to submit or link their Aadhaar for availing the services/ benefits etc. that are directly or indirectly connected with NRIs/OCIs/PIOs, regardless of the fact they may not be entitled for Aadhaar as per the Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016 (Aadhaar Act, 2016)

3. In this regard, attention is invited to Section 3(1) of the Aadhaar Act, 2016, which *inter-alia*, lays down that "*every* ***resident*** *shall be entitled to obtain an Aadhaar number by submitting his demographic information and biometric information by undergoing the process of enrolment.*" Further Section 2(v) of the Aadhaar Act defines 'resident' as *an individual who has resided in India for a period or periods amounting in all to one hundred and eighty-two days or more in the twelve months immediately preceding the date of application for enrolment.*

4. The laws regarding submitting/linking of Aadhaar for availing the services/benefits applies to the resident as per the Aadhaar Act, 2016. In view of the foregoing, most of the *NRIs/PIOs/OCIs may not be eligible* for Aadhaar enrolment as per the Aadhaar Act, 2016. However, the implementing agency may devise a mechanism to ascertain the genuineness of status of such NRIs/PIOs/OCIs.

..Contd/-

5. Further, Section 7 of the Aadhaar Act, *inter-alia*, provides that *"if an Aadhaar number is not assigned to an individual, the individual shall be offered alternate and viable means of identification for delivery of subsidy, benefit or service"*.

6. Further, it has been recapitulated through various notifications/ circulars that the requirement of getting Aadhaar is only in respect of those individuals who are entitled for it as per the Aadhaar Act, 2016. In this regard, reference may be drawn to Prevention of Money-laundering (Maintenance of Records) Rules, 2017 and Section 139AA of the Income Tax Act, 1961 which clearly stipulate that the linking of Bank Accounts and PAN respectively, is for those persons ***who are eligible to enrol for Aadhaar*** as per the Aadhaar Act, 2016.

7. In view of the above, it is suggested that all Central Ministries/ Departments/State Governments and other implementing agencies may keep in consideration the following while seeking Aadhaar as a proof of identity:

a) Aadhaar as an identity document may be sought ***only*** *from those who are eligible for it as per the Aadhaar Act, 2016; and*

b) most of NRIs/PIOs/OCIs may not be eligible for Aadhaar enrolment as per the Aadhaar Act, 2016.

8. The Ministries/Departments are requested to issue appropriate directions to the State Governments/implementing agencies concerned on the above and also give it wide publicity.

(Dr. Ajay Bhushan Pandey)
Chief Executive Officer

To:

Secretaries, All Ministries/Departments, Government of India

Chief Secretaries, All State Governments/UT Administrations

Annexure:

Illustrative list of services that are directly or indirectly connected with NRIs and/or NRI Pensioners

1) Linking PAN and Bank Accounts with Aadhaar
2) Linking Service Pension with Aadhaar
3) Aadhaar based *e*-KYC
4) Applying for new mobile phone connections in India
5) Maintaining the existing NRE & NRO bank accounts in India
6) Registering with Jeevan Pramaan/Digital Life Certificate for pension
7) Registering with *Kendriya Sainik* Board Secretariat (for retired Defence personnel)
8) Maintaining Ex-Servicemen Contributory Health Scheme (ECHS)
9) Various Scholarships introduced for children of Ex-Servicemen
10) Applying for Defence Canteen Smart Card
11) Applying for LPG connection
12) Registering with *e*-District service for obtaining various services from State Governments
13) Issuance of fresh or renewal of driving license
14) Appearing by students in different entrance examinations in India
15) Issuance of certificates by Universities/Boards to students under different public examinations
16) Applying for registration of property, etc.

F.No. 4(4)/57/272/2015/E&U-UIDAI
Government of India
Ministry of Electronics & IT (MeitY)
Unique Identification Authority of India (UIDAI)
(Enrolment & Update-I)

सत्यमेव जयते

AADHAAR

UIDAI Hqrs. Building
Bangla Sahib Road, N.D.-01
Dated : 4th Nov,2019

Circular

Sub: Guidelines for Aadhaar Enrolment/updation in r/o NRI - reg.

In pursuance to Government Notification No. 3119 dated 20th September 2019 and furtherance to this office circular No. 4(4)/272/2015/E&U-UIDAI dated 23rd September 2019, following guidelines have been devised in connection with the Aadhaar Enrolment and Updation process of NRIs:

1) Whenever an individual select resident status as NRI for enrolment or update, he/she has to submit **valid Indian Passport** as POI document. No other POI documents will be accepted for NRI Enrolment.
2) Only Indian Address shall be captured at the time of Enrolment/update.
3) Any valid Proof of Address (POA) or Date of Birth (DOB) documents available for Residents as per notification No. 314 dated 5th September 2019 will be applicable to NRIs also.
4) Providing Email ID shall be mandatory for NRIs.
5) UIDAI will create provision to capture foreign mobile number, if Indian mobile number is not available.
6) NRI can act as HoF for Aadhaar Enrolment/Update of his/her family members residing in India.
7) Introducer based enrolment will not be available to NRIs.
8) UIDAI shall make required modifications in the Appointment portal to make the same accessible from outside the country. Thus, NRI shall be allowed to take advance appointment for enrolment or Update on the appointment portal and get enrolled during their visit to India.

9) Aadhaar letter, e-Aadhaar, QR Code and Offline Aadhaar of NRIs will be identical as that of residents.

10) E-Aadhaar portal shall be made available outside India with facility of OTP on email with demographic auth on name and DOB. Facility of Face auth also shall be used.

11) Enrolment Packet Structure shall be modified and a flag will be added to identify NRI in the demographic field.

2. Required changes in the portal will be made by UIDAI in due course.

3. This issues with the approval of CEO, UIDAI.

(Prabhakaran C R)
DD (E&U-1)

To,

1. All Registrar/Enrolment agencies.
2. Regional Offices of UIDAI
3. Tech Centre of UIDAI.

MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY

NOTIFICATION

New Delhi the 20th September 2019

S.O. 3425(E)— In exercise of the powers conferred by proviso to sub-section (1) of section 3 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016), the Central Government hereby notifies that a Non Resident Indian, after his arrival in India, shall be entitled to obtain an Aadhaar number.

Explanation—For the purposes of this notification, "Non Resident Indian" means a person who is a citizen of India holding a valid Indian Passport but not a resident as defined under clause (v) of section 2 of the said Act.

2. This notification shall come into force from the date of publication in the official Gazette.

[F. No. 10(22)/2017-EG-II]

SANJAY KUMAR RAKESH, Jt. Secy.

AADHAAR ENROLMENT/CORRECTION/UPDATE FORM

I confirm that I have been residing in India for atleast 182 days in the preceding 12 months / **I am Non resident Indian** and the information including biometrics provided by me to the UIDAI is my own and is true correct and accurate….

SUPREME COURT OF INDIA / CIVIL ORIGINAL JURISDICTION / WRIT PETITION (CIVIL) NO. 494 OF 2012

JUSTICE K.S. PUTTASWAMY (RETD) AND ANOTHER .....PETITIONER(S)

vs

UNION OF INDIA AND OTHERS .....RESPONDENT(S)

567 pages Judgement –

The petitioners in these petitions belong to the latter category who apprehend the totalitarian state if Aadhaar project is allowed to continue

Parties took four months for the parties to finish their arguments in these cases, and the Court witnessed highly skilled, suave, brilliant and intellectual advocacy

It is technically possible to use fingerprint to authenticate a resident in 98.13% of the population. The accuracy of 96.5% can be achieved using one best finger & 99.3% can be achieved using two fingers

IRIS capture, it is capable of providing coverage for 99.67% of population with authentication accuracy of above 99.5%

The following demographic information may also additionally be collected during enrolment, at the option of the individual undergoing enrolment:

(i) Mobile number

(ii) Email address

JUSTICE K.S. PUTTASWAMY (RETD) AND ANOTHER .....PETITIONER(S)

Pg 77 - Please confirm : (Qts asked by counsels in SC)

(a) At the stage of enrolment, there is no verification as to whether a person is an illegal immigrant.

(b) At the stage of enrolment, there is no verification about a person being resident in India for 182 days or more in the past 12 months.

(c) Foreign nationals may enroll and are issued Aadhaar numbers.

(d) Persons retain their Aadhaar number even after they cease to be resident. This is true of foreign nationals as well.

Ans : By Govt Dept

(a) At the time of enrolment, verification is done based upon documents provided by the resident. In case any violation of prescribed guidelines comes to light, the concerned Aadhaar is omitted/deactivated.

(b) This has been included through the enrolment form where resident undertakes and signs the disclosure.

(c) Aadhaar numbers may be issued to foreign nationals who are resident in India. A foreign national fulfilling the above criteria is eligible for Aadhaar, provided he submits the acceptable POI/POA document as per the UIDAI valid list of documents.

JUSTICE K.S. PUTTASWAMY (RETD) AND ANOTHER .....PETITIONER(S)

Pg 77 -
Ineligibility of a person to retain an Aadhaar number owing to become non-resident may be treated as a ground for deactivation of Aadhaar number and Regulation 28(I)(f) of the Aadhaar Enrolment Regulations. This is in keeping with Section 31(1) and (3) of the Aadhaar Act wherein it is an obligation on an Aadhaar number holder to inform the UIDAI of changes in demographic information and for the Authority to make the necessary alteration

Pg 84 - It is emphasised that an individual can manipulate the system by having more than one or even number of PAN cards, passports, ration cards etc. When it comes to obtaining Aadhaar card, there is no possibility of obtaining duplicate card
According to them, no democratic society has adopted a programme that is similar in its command and sweep
Petitioners claims is by the very scheme of the Act and the way it operates, it has propensity to cause '**civil death**' of an individual by simply switching off Aadhaar of that person
Pg 93 - By disabling Aadhaar the State can cause civil death of the person.

Pg 283 - We do not find any reason for archiving the authentication transaction data for a period of five years. Retention of this data for a period of six months is more than sufficient after which it needs to be deleted except when such authentication transaction data are required to be maintained by a Court or in connection with any pending dispute. Regulations 26 and 27 shall, therefore, be amended accordingly.

Pg 294 - That portion of Section 57 of the Aadhaar Act which enables Body corporate and individual to seek authentication is held to be unconstitutional

Pg 513 - Therefore, for checking this possible malice (PMLA-Bank), there cannot be a mandatory provision for linking of every bank account. *(para 433, 434)*

Pg 521 - It is to be borne in mind that every individual/resident subscribing to a SIM card does not enjoy the subsidy benefit or services mentioned in Section 7 of the Act. We, therefore, have no hesitation in declaring the Circular dated March 23, 2017 as unconstitutional

Pg 524 to 567 is the conclusions – Read this part

AADHAR IS MEANT FOR IDENTITY

& ADDRESS PROOF

NOT AS AGE PROOF

BOMBAY HIGH COURT ORDER

DATED 28-7-2023

WRIT PETITION No. 3002 OF 2022

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3002 OF 2022

State of Maharashtra ...Petitioner

Versus

1. Unique Identification Authority of India
2. Electronics and Information Technology Dept.
3. Sandeep Alias Ghungro Lalji Kumar ...Respondents

Mrs. P. P. Shinde APP for the Petitioner-State
Mr. S. K. Halwasia a/w Mr. D. P. Singh for Respondent nos. 1 and 2

CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.

DATE : 28th JULY 2023.

P.C. :

1. Heard learned counsel for the parties.

2. At the outset, learned APP seeks leave to amend to correct the serial numbers of the respondents in the cause title. Leave granted. Amendment to be carried out forthwith.

person, and that the burden of proof would lie with the Aadhar card holder, who states his/her date of birth.

12. Considering the aforesaid, we do not find any merit in the petition filed by the petitioner seeking a direction to the respondent no. 1- UIDAI as stated aforesaid in paragraph 1.

13. It is always open for the prosecution to make an endeavor to obtain the birth certificate of respondent no. 3 from the appropriate forum/authority to prove his date of birth, since Aadhar card is not used as proof of date of birth of any individual. Infact, there is an office memorandum dated **20th December 2018** issued by the Government of India, Ministry of Electronics & Information Technology Unique Identification Authority of India. In the said office memorandum, it is stated in **paragraph 6** as under.

> *"6. In view of the above, it is suggested that all Central Ministries/ Departments/ State Governments and other implementing agencies may keep in consideration the following :-*

(a) An Aadhaar number can be used for establishing identity of an individual subject to authentication and thereby, ***per se its not a proof of date of birth.***

(b) the usage of Aadhaar for delivery of welfare services, benefits or subsidies pursuant to Section 7 of the Aadhaar Act, 2016 or for any other purpose as may be required under any applicable law and the extent to which Aadhaar is to be used is to be determined by the implementing agencies such as State Government/ Central Ministries and other agencies.

(c) Aadhaar which includes Aadhaar card, physical copy of e-aadhaar, masked Aadhaar, offline Aadhaar XML, and QR code embedded on the Aadhaar card, may be used as a proof of identity / proof of address along with other acceptable documents (subject to such terms and conditions as may be imposed by the Authority from time to time), ***however, same may not be used as a proof of date of birth."***

(Emphasis supplied).

14. In view of the aforesaid, there is no merit in the petition. Petition stands dismissed.

CITIZENSHIP ACT 1955

The Citizenship Act, 1955 was amended extensively in 2003 with the latest amendment coming in 2019. Citizenship is a matter dealt with by Ministry of Home Affairs (MHA) in the Government of India. As per the Indian Citizenship Act of 1955 (amended in 2019), an individual can obtain Indian citizenship by one or more of the following means :

Sec 3 – Citizenship by Birth :

Every person born in India **(i) on or after 26.1.1950 but before 1.7.1987 ; (ii) on or after 1.7.1987 but before the commencement of the Citizenship (Amendment) Act, 2003** & either of whose parents is a citizen of India at the time of his birth, **(iii) on or after the commencement of Citizenship (Amendment) Act, 2003**, where **both** the parents are citizens of India or one of whose parents is a citizen of India and the other is not an "illegal migrant" at the time of birth, shall be a citizen of India by birth.

A person shall not be citizen of India by virtue of this Section if :

(a) either of his parent possesses such **immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power** accredited to the President of India and he or she is not a citizen of India; or

(b) his father or mother is an **enemy alien** and the birth occurs in a place then under occupation by the enemy.

Sec 4 – <u>Citizenship by Descent</u>

A person born outside India shall be a citizen of India by descent –

(a) **on or after 26-1-1950 but before 10-12-1992**, if his father is a citizen of India at the time of his birth; or
(b) **on or after 10-12-1992**, if either of his parents is a citizen of India at the time of his birth :

Sec 5 - <u>Citizenship by Registration</u>

MHA may, on an application made in this behalf, register as a citizen of India any person, not being an "illegal migrant", if he/she belongs to any categories viz.,

1. A person of Indian origin **who is resident in India for 7 years**, before making the application ;
2. Person of Indian origin **who is ordinarily resident in any country or place outside undivided India.**
3. A person **who is married to an Indian citizen** & is **ordinarily resident in India for 7 years** before making the application.

A person of full age and capacity **who has been registered as an Overseas Citizen of India for 5 years, and who has been residing in India for two years before making the application.**

Sec 6 – <u>Citizenship by Naturalization</u>

Where an application is made in the prescribed manner by any person of full age and capacity (not being an illegal migrant) for the grant of a certificate of naturalization to him, the Central Government may, if satisfied that the applicant is qualified for naturalization under the provisions of the Third Schedule, grant to him a certificate of naturalization.

OVERSEAS CITIZEN OF INDIA

‘**Overseas Citizen of India (OCI)** means an individual resident outside India who is registered as an OCI Cardholder **u/s 7(A) of the Citizenship Act, 1955**. Eligibility for Registration of Overseas Citizen of India Cardholder -

(a) any person of full age and capacity -

(i) who is a citizen of another country, but was a citizen of India at the time of, or at any time after the commencement of the Constitution ; or

(ii) who is a citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution ; or

(iii) who is a citizen of another country, but belonged to a territory that became part of India after the 15th day of August,1947 ; or

(iv) who is a child or a grandchild or a great grandchild of such a citizen ; or

(b) a person, who is a minor child of a person mentioned in clause (a); or

(c) a person, **who is a minor child, and whose both parents are citizens of India or one of the parents is a citizen of India;or**

(d) **spouse of foreign origin of a citizen of India or spouse of foreign origin of an Overseas Citizen of India Cardholder registered u/s 7A** and whose **marriage has been registered** and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application under this section:

Provided that for the eligibility for registration as an Overseas Citizen of India Cardholder, such spouse shall be subjected to prior security clearance by a competent authority in India:

Provided further that no person, who or either of **whose parents or grandparents or great grandparents is or had been a citizen of Pakistan, Bangladesh or such other country** as the Central Government may, by notification in the Official Gazette, specify, shall be eligible for registration as an Overseas Citizen of India Cardholder under this sub-section.

PERSON OF INDIAN ORIGIN

A Person of Indian Origin (PIO) means a foreign citizen *(except a national of Pakistan, Afghanistan Bangladesh, China, Iran, Bhutan, Sri Lanka and Nepal)* who at any time held an Indian passport

Or

who or either of their parents/ grand parents/ great grand parents was born and permanently resident in India as defined in Government of India Act, 1935 and other territories that became part of India thereafter provided neither was at any time a citizen of any of the aforesaid countries (as referred above) ;

Or

Who is a spouse of a citizen of India or a PIO

PIO will not be accepted for entry in India after 31-12-22

India Consulate - PIO are merged in OCI w.e.f 9-1-2015

The Ministry of Home Affairs vide its notification **F. No. 26011/01/2014-IC dt 9-1-2015** published in the official gazette stated as follows :

"In exercise of the powers conferred by sub section (2) of Sec 7A of the Citizenship Act, 1955 (57 of 1955), the Central Govt hereby specifies that on and from the date of publication of this notification in the Official Gazette, all the existing Persons of Indian Origin cardholders registered as such under notification of the Govt of India in the Ministry of Home Affairs number 26011/4/98-F.I, dated 19-8-2002, shall be deemed to be Overseas Citizens of India cardholders."

रजिस्ट्री सं० डी० एल०-33004/99 REGD. NO. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

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गृह मंत्रालय

अधिसूचना

नई दिल्ली, 9 जनवरी, 2015

फा. सं. 25024/9/2014-एफ-1.—केंद्रीय सरकार, भारत के राजपत्र, असाधारण, भाग I, खंड 1, तारीख 19 अगस्त, 2002 में प्रकाशित भारत सरकार, गृह मंत्रालय की अधिसूचना सं. 26011/4/98-एफ-1 तारीख 19 अगस्त, 2002 को राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से विखंडित करती है।

जी. के. द्विवेदी, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 9th January, 2015

F. No. 25024/9/2014-F. I.—The Central Government hereby rescinds the notification of the Government of India in the Ministry of Home Affairs number 26011/4/98-F. I dated the 19th August, 2002, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 19th August, 2002 with effect from the date of publication of this notification in the Official Gazette.

G. K. DWIVEDI, Jt. Secy.

अधिसूचना

नई दिल्ली, 9 जनवरी, 2015

फा. सं. 26011/01/2014-आईसी-1.—केंद्रीय सरकार, नागरिकता अधिनियम, 1955 (1955 का 57) की धारा 7क की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह विर्निदिष्ट करती है कि राजपत्र में इस

अधिसूचना के प्रकाशन की तारीख से भारतीय मूल के सभी विद्यमान कार्डधारक व्यक्ति जो भारत सरकार, गृह मंत्रालय की अधिसूचना सं. 26011/4/98-एफ-1, तारीख 19 अगस्त, 2002 के अधीन उस रूप में रजिस्ट्रीकृत हैं, वे भारतीय विदेशी नागरिक कार्डधारक के रूप में समझे जाएंगे ।

जी. के. द्विवेदी, संयुक्त सचिव

NOTIFICATION

New Delhi, the 9th January, 2015

F. No. 26011/01/2014-IC. I.—In exercise of the powers conferred by sub-section (2) of Section 7A of the Citizenship Act, 1955 (57 of 1955), the Central Government hereby specifies that on and from the date of publication of this notification in the Official Gazette, all the existing Persons of Indian Origin cardholders registered as such under notification of the Government of India in the Ministry of Home Affairs number 26011/4/98- F. I, dated the 19th August, 2002, shall be deemed to be Overseas Citizens of India cardholders.

G. K. DWIVEDI, Jt. Secy.

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CHEQUE BOUNCING

SECTION 138 OF THE

NEGOTIABLE INSTRUMENTS

ACT

SEC 138 OF THE NI ACT

Dishonour of cheque for insufficiency, etc, of funds in the account - Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part **of any debt or other liability** is returned by the bank unpaid , either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence & shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to 2 years, or with fine which may extend to twice the amount of the cheque, or with both.

Explanation For the purposes of this section , "debt or other liability" means a **legally enforceable debt or other liability**

SUPREME COURT

Criminal Appeal No. 830 of 2014 – Arising Out of SLP (Crl) No. 9752 of 2010

Indus Airways Pvt Ltd & Ors vs Magnum Aviation Pvt Ltd & Anr

Decided on 7-4-2014

Facts : The Appellant (Purchaser-Cheque issuer) placed two purchase orders for supply on 19-2-07 & 26-2-07 & issued two post-dated cheques dt. 15-3-07 for a sum of Rs. 34,57,164/- & 20-3-07 for a sum of Rs. 15,91,820 to the Respondent (Supplier). Thereafter cancellation of contracts was communicated by the Purchaser to the Supplier on 22-3-07 i.e 7 days after the date of the first cheque & 2 days after the date of the second cheque & much after the dates of the contracts.

Order : Hon'ble SC overruled the decision of the Delhi HC and took the **view that cheques issued as advance pursuant to contracts cannot be called as cheque issued against any legally enforceable debt or liability.**

Held that the supplier has remedies against Purchaser under civil laws. However, criminal liability cannot be fastened in this case on the Purchaser who issued or drew cheque, towards advance payment.

DELHI HIGH COURT

CRL REV. PET. 1246/2019 & CRL.M.(BAIL) 2090/2019

GUDDO DEVI @ GUDDI ..... Petitioner vs BHUPENDER KUMAR ……Respondent

Decided on 11-2-20

Argument of Accused - Guddi : Petitioner Guddi stated that she had obtained a loan in cash of 5,00,000/- from the Complainant (Respondent-Bhupender-Lender) on interest at the rate of 5% p.a & consequently she (Guddi) had issued the said cheque in question. The Lender was not registered with Punjab Registration of Money Lenders Act, 1938, which states that all money-lenders are required to be registered under this Act. Hence Guddi argues that loan was illegal and was not an enforceable debt - Further giving loans in cash is violation of Sec. 269SS Income Tax Act, 1961.

Both these arguments rejected by HC.

Section 269SS of the Income Tax Act, 1961 prohibits taking/~~making~~ of any payment in cash above a sum of Rs. 20,000/-. Thus, any person violating the same would attract imposition of penalties under the said Act. However, the same does not render the said debt un-enforceable or excludes the lender from recovering the same. The decision of the Bombay High Court in **Sanjay Mishra** (2009*(4) Mah.L.J.155*) is inapplicable in the facts of this case. In Sanjay Mishra case, the Bom HC had proceeded to observe the fact that if a loan has **not been reflected** in the Income Tax returns or books, it would be sufficient to rebut the presumption under Sec. 139 of the NI Act which states that "*it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.*"

Merely because the respondent had lent money to 3 or 4 persons, did not lead to the inference that the respondent had been carrying out the activity of money lending as a business. The respondent had also expressly denied that he had given any loan on interest to public persons.

Bombay High Court

CRA NO. 394 OF 2015 Mrs. Monica Sunit Ujjain case : 2-8-22

6). Sessions Judge has committed an error in holding that the cheques were given by way of security & thus out of purview of Negotiable Instruments Act ….. held that in cases of money lending business without the license, the proceedings was not maintainable in law.

10). HC observations - In cases of money lending business without license, the provisions under Section 138 of Negotiable Instruments Act are **not attracted**…. As per MOU it can be gathered that the transactions was without license. Post dated cheques were given by way of security

Cheque Holder's Failure To Record Loan In Books Not Ground To Dismiss Complaint u/s 138 NI Act

BOM HC : Prakash Madhukarrao Desa v. Dattatraya Sheshrao Desai / Citation: 2023 LiveLaw (Bom) 382

The Bom HC held that failure of the cheque holder to record a loan given to a record a loan given to a cheque drawer in books/Income Tax Returns will not by itself render the loan unenforceable u/s 138 of the NI Act - The court further held that violation of section 269-SS of the Income Tax Act, 1961 which prohibits the receipt of more than Rs. 20,000/- in cash would not make the transaction unenforceable in NI Act

ANIMAL RIGHTS

ANIMAL RIGHTS

PUNJAB & HARYANA HIGH COURT – CRR 533/2013

Karnail Singh & Ors ….. Petitioners vs State of Haryana ….. Respondent

Decided on 31-5-2019

Facts : The Petitioners (Karnail singh) were drivers & conductors of two trucks exporting a total of 29 cows from Haryana to Uttar Pradesh, which were seized by the Police in 2004. The drivers/conductors were convicted & sentenced by the Trial Court to jail for 2 years - Offence under Punjab Prohibition of Cow Slaughter Act.

The P & H High Court has held that there is nothing inherent in the concept of legal personality preventing its extension to animals and issued certain mandatory directions for the welfare of the animal kingdom.

Direction of the HC - The entire animal kingdom including avian & aquatic were declared as legal entities having a distinct persona with corresponding rights, duties and liabilities of a living person. All the citizens throughout the state of Haryana were declared persons in *loco parentis* as the human face for the welfare/protection of animals.

The Hon'ble HC issued mandatory directions to the State Govt to ensure that the draught animals do not carry load while driving vehicles more than prescribed as under :

I	II	III
Small Bullock or Small Buffalo	Two wheeled vehicle- (a) If fitted with ball bearings (b) If fitted with pneumatic tyres (c) If not fitted with pneumatic tyres	 750 Kgs 500 Kgs 350 Kgs
Medium Bullock or Medium Buffalo	Two wheeled vehicle- (a) If fitted with ball bearings (b) If fitted with pneumatic tyres (c) If not fitted with pneumatic tyres	 1000 Kgs 750 Kgs 500 Kgs
Large Bullock or Large Buffalo	Two wheeled vehicle- (a) If fitted with ball bearings (b) If fitted with pneumatic tyres (c) If not fitted with pneumatic tyres	 1400 Kgs 1000 Kgs 600 Kgs
Horse or Mule	Two wheeled vehicle- (b) If fitted with pneumatic tyres (c) If not fitted with pneumatic tyres	 500 Kgs 300 Kgs
Pony	Two wheeled vehicle- (b) If fitted with pneumatic tyres (c) If not fitted with pneumatic tyres	 350 Kgs 250 Kgs
Camel	Two wheeled vehicle	250 Kgs

The Hon'ble HC issued mandatory directions to the State Govt to ensure that no animal shall carry weight or load in excess of the weight prescribed as under :

	I	II
1	Small Bullock or Buffalo	75 Kgs
2	Medium Bullock or Buffalo	100 Kgs
3	Large Bullock or Buffalo	125 Kgs
4	Pony	50 Kgs
5	Mule	150 Kgs
6	Donkey	35 Kgs
7	Camel	200 Kgs

Further Directions by HC

In any area where the temperature exceeds 37°C during the period between 11 am & 4 pm in summers & when the temperature is below 5°C between 5 am to 7 am & between 10 pm to 5 am in winter season - No person is permitted to keep or cause to be kept in harness any animal used for the purpose of drawing vehicles.

Animals can be transported on foot only when the temperature is between 12°C to 30°C & they should be provided water every 2 hours & food in every 4 hours. The animals should not be made to walk more than 2 hours at a stretch.

ANIMAL WELFARE BOARD'S DIRECTIONS TO RESIDENTIAL SOCIETIES ACTING IN VIOLATION OF LAW AND COURT JUDGEMENTS

The Animal Welfare Board of India – a statutory body established in terms of Sec. 4 of Prevention of Cruelty to Animals Act, 1960 – issued directions to residential societies vide its letter dt 30-6-2015 to the District & Deputy Registrar of Co-operative Societies to protect animals from being subjected to unnecessary pain or suffering due to societies acting in violation of law & court judgements.

Attention was brought to clauses (h) & (i) of Sec.11(1) and Sec. 3 of the PCA -

11. Treating Animals Cruelly.- (1) If any person –

(h) being the owner of any animal, fails to provide such animal with sufficient food, drink or shelter

(i) without reasonable cause, abandons any animal in circumstances which render it likely that it will suffer pain by reason of starvation or thirst…

3. Duties of persons having charge of animals -

The AWB urged the Registrar of Co-operative Societies to **issue directions to all Co-operative Societies registered with their office to desist from making any bye-laws at variance with the laws of the land, prohibiting the keeping of pets in their flats or apartments and prohibiting the use of common areas by pets even when properly leashed and prohibiting the feeding of street animals etc**. Doing so impels and abets violation of law since residents abandon their pet animals, leading to untold misery for the animals and such conduct on the part of societies is also violative of the rights of individual residents.

GRAM: JIVABANDHU

Phone : 04424571025
04424571024
Fax : 04424571016

50 YEARS IN THE SERVICE OF ANIMALS (1962 - 2012)

ANIMAL WELFARE BOARD OF INDIA

(Ministry of Environment and Forests, Govt. of India)
Post Box No. 8672
13/1, Third Seaward Road, Valmiki Nagar, Thiruvanmiyur, Chennai - 600 041
Email : awbi@md3.vsnl.net.in Website: www.awbi.org

No.9-1/2015-16 PCA

30-6-2015

The District Registrar of
Co-operative Societies
Wardet Mansion,
Sivaji Path,
Thane W,
Mumbai-400 601

Deputy Registrar
Co-operative Societies
Johny Cross Lane,
Dam Talav,
Vasai West, Palghar
Pin-401 202

Subject : Urgent directions to be issued to residential societies registered with your office, that are acting in violation of law and Court judgments

Sir,

I write to you on behalf of the Animal Welfare Board of India, which is a statutory body established in terms of Section 4 of the Prevention of Cruelty to AnimalsAct, 1960, (i.e. the PCA) for the promotion of animal welfare generally, and for protecting animals from being subjected to unnecessary pain or suffering, in particular.

The Board is presently working under the aegis of the Ministry of Environment, Forest and Climate Change, Government of India. I may also inform you, that under Section 9 of the PCA, it is a part of the function of the Board to keep the law in force in India for the prevention of cruelty to animals under constant study, and to advise the Government on the amendments to be undertaken in any such law from time to time. The Board has also been statutorily entrusted with the duty of advising the Central Government on making Rules under the PCA with a view to preventing unnecessary pain or suffering to animals. Additionally, it is also a part of the function of the Board to impart education in relation to the humane treatment of animals and to encourage the formation of public opinion against the infliction of unnecessary pain or suffering to animals. In fact, the Board is the body constituted under Indian law to advise the Government

on any matter connected with animal welfare, and for the prevention of infliction of unnecessary pain and suffering on animals.

I also take this opportunity to invite your attention to clauses (h) and (i) of Section 11 (1), and Section 3 of the PCA. The same read as under :

11 Treating animals cruelly. – (1) If any person –

.....

(h) being the owner of any animal, fails to provide such animal with sufficient food, drink, or shelter

(i) without reasonable cause, abandons any animal in circumstances which render it likely that it will suffer pain by reason of starvation or thirst

Section 3 Duties of persons having charge of animals. –

It shall be the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering.

From a perusal of the above you will see that pet owners and care-givers are duty bound to treat their pets in accordance with law and without cruelty. The well-being of animals in their care and custody is something that all citizens of India are duty bound to ensure. Moreover, the Constitution of India makes it a fundamental duty of every citizen of India, and every agency and instrumentality of government, to show compassion for all living creatures vide its Article 51A (g). Unfortunately, however, several RWAs, apartment owners' associations, etc., are acting in a manner that is impelling violations of animal protection laws.

The Board has been receiving a lot of complaints to the effect that residential societies have either been framing bye-laws prohibiting residents living within their precincts, from keeping pets in their flats or apartments, or simply putting up circulars or notices to the said effect. They are also stated to be issuing "directions" prohibit the feeding and care of stray and ownerless animals.

As you know, bye-laws, regulations, etc., that are at variance with central and state enactments, cannot be framed. In fact, nothing at all can be done that is not in consonance with the laws framed by Parliament or by the legislatures of states. Therefore, these bye-laws that various residential societies are framing, and the oppressive circulars and notices that they are issuing, are illegal, and often tantamount to criminal intimidation.

It will also interest you to know that even the Hon'ble Supreme Court of India, in a detailed judgment pronounced last year in the matter titled "Animal Welfare Board of India Vs. A. Nagaraja and Others", has emphasized that 'animal rights' is an issue of 'seminal importance'. An extract of the directions issued and declarations made by the Supreme Court vide this judgment is enclosed for your reference. Likewise, many Courts of law, including the Hon'ble High Court of Delhi, have specifically held that street dogs should be fed since doing so reduces mistrust, and facilitates their catching for canine birth control.

The Animal Welfare Board of India has issued guidelines for the lawful treatment of Pet Dogs and Street Dogs in the form of a Circular dtd.26-2-2015 issued by the Chairman, AWBI, and the same is enclosed herewith for your reference.

In the above backdrop, you are urged by the Animal Welfare Board of India to do the following :

Please issue directions to all the residential societies registered with your office to desist from making any bye-laws at variance with the laws of the land, prohibiting the keeping of pets in their flats or apartments, and prohibiting the use of common areas by pets even when properly leashed, and prohibiting the feeding of street animals, etc. You may advise them that doing so impels and abets violations of law, since residents then abandon their pet animals, leading to untold misery for the animals. Moreover, such conduct on the part of these societies is also violative of the rights of individual residents.

Please therefore do the needful.

A copy of the circular/directions that you issue may kindly be sent to our office as well, by post and by email at the earliest.

Yours faithfully,

(S.Vinod Kumaar)
Assistant Secretary

Encl: as above

Copy to

1) The Chief Secretary, Govt. of Maharashtra
2) Chairman, AWBI
3) Vice-Chairman, AWBI

Animal Birth Control Rules, 2023 (10-3-23) - U/s 38 of the Prevention of Cruelty to Animals Act, 1960.

Rule (20) - Feeding of Community Animals –

It shall be responsibility of the Resident Welfare Association or Apartment Owner Association or Local Body's representative of that area to make necessary arrangement for feeding of community animals residing in the premises or that area involving the person residing in that area or premises as the case may be, who feeds those animals or intends to feed those animals and provides care to street animals as a compassionate gesture

Rule (8) - Responsibility for Vaccination and Sterilisation -

In case of pet animals, the owner of the animal shall be responsible for the deworming, immunisation and sterilisation

Bombay HC – Writ Petition No. 9513 of 2021

Seawoods Estate Ltd : 20-3-23

Relied on Animal Welfare Board of India vs A Nagaraja & Ors, the Supreme Court considered inter alia the ambit of the PCA Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right guaranteed to the animals under Article 51-A(g) of the Constitution. Every species has an inherent right to live and protection under the law. The right to dignity & fair treatment is, therefore, not confined to human beings alone, but to animals as well. The World Charter for Nature says that “every form of life is unique, warranting respect regardless of its worth to man”.

Bombay HC – Writ Petition No. 9513 of 2021

World Health Organisation of Animal Health (OIE), of which India is a member, acts as the international reference organisation for animal health and animal welfare. OIE has been recognised as a reference organisation by World Trade Organisation (WTO)

Chapter 7.1.2 of the Guidelines of OIE, recognizes 5 internationally recognized freedoms for animals **:**

(i) freedom from hunger, thirst & malnutrition ; **(ii)** freedom from fear & distress **(iii)** freedom from physical & thermal discomfort ; **(iv)** freedom from pain, injury & disease ; & **(v)** freedom to express normal patterns of behaviour

Bombay HC – Writ Petition No. 9513 of 2021

These 5 freedoms for animals are like the Fundamental rights guaranteed to the citizens of this country under Part III of the Constitution of India.

Rights guaranteed to the animals under Sections 3, 11, etc are only statutory rights. The same have to be elevated to the status of fundamental rights,

Article 51-A(g) of the Constitution therefore, enjoins that it was a fundamental duty of every citizen “to have compassion for living creatures”, which means concern for

suffering, sympathy, kindliness, etc., which has to be

read along with Sections 3, 11(1)(a) and (m), 22, etc. of

the PCA Act.

ANIMAL WELFARE BOARD OF INDIA
Ministry of Fisheries, Animal Husbandry and Dairying, Govt. of India
(Department of Animal Husbandry and Dairying)
NIAW Campus, 42 Mile Stone, Delhi-Agra Highway
NH-2, Ballabhgarh, Haryana-121004
Email: animalwelfareboard@gmail.com : Website: www.awbi.in

No.9-10/2022-23/PCA

Date: 26.08.2022

To,

1. The Member Secretary,
   Maharashtra Animal Welfare Board
   Commissionerate of Animal Husbandry,
   Maharashtra, Oppsite Spicer College Rd,
   Aundh Pune-411067, Email: cah.addcomm@gmail.com
2. The Commissioner of Police,
   Near Kalawa Bridge, Thane,
   Maharashtra 400601, Email: cp.thane@mahapolice.gov.in
3. The Commissioner of police,
   Dr. Dadabai Naorji Rd, Lohar chawl Kalbadevi,
   Mumbai, Maharashtra-400001, Email: cp.mumbai@mahapolice.gov.in

Subject: Alleged complaint regarding cruelty being inflicted to chickens at Agripada, Mumbai-11-regarding.

Sir,

With reference to the above cited subject, it is stated that the Board has received an email from Mrs. Aarti Gupta and Mr. Sattar Khatri R/o Mumbai stating that the illegal activities of hanging alive chickens at St. Joseph Girls Schools, Opp. Patharwali MPS School. Agripada, Mumbai-11. A copy of the complaint is attached, which is self-explanatory.

2. The Cruelty to animals is an offense under Section 3 and Section 11(1) of the Prevention of Cruelty to Animals Act, 1960.

3. The Supreme Court has in the cast of AWBI v/s Nagaraja & Ors interalia held the following: We declare that the five freedoms [viz. i) freedom from hunger, thirst and malnutrition; ii) freedom from fear and distress iii) freedom from physical and thermal discomfort iv) freedom from pain, injury and disease; and v) freedom to express normal patterns of behavior], referred to earlier be read into section 3 and 11 of Prevention of Cruelty to Animals Act, 1960, be protected and safe guarded by the State and Central Government, Union Territories (in short "Governments"), MoEF and AWBI. The copies of the same is attached herewith for your information.

4. In view of the above, it is requested to kindly direct the concerned authorities to investigate the matter and to remove the nylon net and a copy of the action taken report be forwarded to the Board for information and further action.

"Kindly treat this matter as urgent."

Yours sincerely,

(Dr. S.K. Dutta)
Secretary

Encl: as above.

Copy to: for information and further appropriate action.

1. Mrs. Aarti Gupta, Email: aartiaggarwalgupta@gmail.com
2. Mr. Sattar Khatri, Email: sattar_eds@yahoo.com

OPTIONAL CLAUSE

IN

ARBITRATION

ARBITRATION : OPTIONAL CLAUSE

Indian Courts are presently of the conclusive view that an arbitration agreement is to follow the well settled principles of specific & direct expression of intent of the parties to refer to arbitration proceedings – By way of clear & precise from the language and terms of the clause in the agreement. An arbitration agreement would be a valid & binding agreement if the words disclose a determination and obligation to go for such arbitration proceedings. Whereas any agreement or clause in an agreement is requiring or contemplating a further consent or consensus, it is **NOT** an arbitration agreement, but an agreement to enter into an arbitration agreement in future. Such agreements would not be a valid agreement. Hon'ble Supreme Court has held time and again in cases such as ***K.K. Modi v. K.N. Modi [(1998) 3 SCC 573] ; Bharat Bhushan Bansal vs U.P. Small Industries Corpn. Ltd. [(1999) 2 SCC 166] ; Bihar State Mineral Development Corpn. vs. Encon Builders (I) (P) Ltd [(2003) 7 SCC 418] ; & State of Orissa vs Damodar Das [(1996) 2 SCC 216]*** that a clause in a contract can be construed as an "arbitration agreement" only if an agreement to refer disputes or differences to arbitration is **expressly or impliedly** spelt out from the clause and that **the intention of the parties to enter into an arbitration agreement shall have to be gathered from the terms of the agreement.**

SUPREME COURT
(2007) 5 SCC 719
Jagdish Chander vs Ramesh Chander & Ors
Order dated 26-4-2007

Hon'ble SC laid down certain fundamental guidelines & principles relating to a valid arbitration agreement stating that **:**
Where the clause provides that if the disputes arising between the parties **shall** be referred to arbitration, it is an arbitration agreement. But if the clause contains **words which specifically exclude any of the attributes of the arbitration agreement or contains anything that detracts from an arbitration agreement**, it will not be an arbitration agreement.
Recent judgements such as *Linde Heavy Truck Division Ltd V. Container Corporation Of India Ltd & Anr.(2012) [195(2012) DLT366], Wellington Associates Ltd. v. Kirit Mehta (2004) 4 SCC 272, B.Gopal Das v. Kota Straw Board [1970 WLN 572], Jyoti Brothers v. Shree Durga Mining Co [AIR 1956 Calcutta 280], M/S Castrol India Ltd. v. M/S. Apex Tooling Solutions [2014(2) ARBLR 481(Madras)* , the decisions of the Courts once again highlight the need to carefully draft the arbitration clauses in the agreements, as at times use of a loose word like **"MAY", "CAN" & "SHALL HAVE THE RIGHT"** may be fatal to the real intent of the parties to the agreement.

December 2023, the Supreme Court - 7 judge Bench - ruled that arbitration clauses in unstamped or inadequately stamped agreements were enforceable. SC held that insufficiency of stamping does not make the agreement void or unenforceable but makes it inadmissible in evidence

In doing so, the Court overruled the judgment rendered by a 5-judge bench in April 2023 in **M/s. N.N. Global Mercantile** Pvt. Ltd. v. M/s. Indo Unique Flame Ltd which had by a 3:2 majority held that unstamped arbitration agreements are not enforceable.

SUGGESTIONS

- DECIDE IF YOU WANT OR DON'T WANT ANY ARBITRATION CLAUSE
- IF YES THEN THE ARBITRATION CLAUSE SHOULD HAVE CLEAR DIRECTION BEING MANDATORY & NOT OPTIONAL
- DECIDE THE SEAT OF ARBITRATION & LANGUAGE NOW ITSELF
- IF POSSIBLE DECIDE THE ARBITRATOR NOW ITSELF

MANY COMPANIES FOLLOW THE UNCITRAL MODEL FOR ARBITRATION OR EVEN REFER TO MCIA RULES 2017 FOR ARBITRATION PROCEEDINGS.

UNCITRAL (UNITED NATION COMMISSION ON INTERNATIONAL TRADE LAW) ARBITRATION RULES

The UNCITRAL Arbitration Rules provide a comprehensive set of procedural rules upon which parties may agree for the conduct of arbitral proceedings arising out of their commercial relationship and are **widely used in ad hoc arbitrations as well as administered arbitrations**.

At present, there exist different versions of the Arbitration Rules: (i) the 1976 version; (ii) the **2010 revised version**; and (iii) the **2013 version which incorporates the UNCITRAL Rules on Transparency for Treaty-based Investor-State Arbitration** and (iv) the **2021 version which incorporates the UNCITRAL Expedited Arbitration Rules**

UNCITRAL Rules on Transparency for Treaty-based Investor-State Arb : These rules which came into effect in 2014, comprise a set of procedural rules that provide for transparency and accessibility to the public of treaty-based investor-State arbitration.

UNCITRAL Expedited Arbitration Rules : The UNCITRAL Expedited Arbitration Rules which came into effect in 2021, provide a set of rules which parties may agree for expedited arbitration which is a streamlined and simplified procedure with a shortened time frame, which makes it possible for the parties to reach a final resolution of the dispute in a cost and time effective manner.

As per **Art. 1** of the UNCITRAL Arbitration Rules as adopted in 2013, where **parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the UNCITRAL Arbitration Rules**, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree.

These Rules shall govern the arbitration except that where any of these Rules is in **conflict with a provision of the law** applicable to the arbitration from which the parties cannot derogate, that **provision shall prevail**.

NUMBER OF ARBITRATORS :

As per **Art. 7**, if the parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, **three arbitrators** shall be appointed.

PLACE OF ARBITRATION :

As per **Art. 18**, if the parties have **not previously agreed on the place of arbitration**, the place of arbitration shall be determined by the arbitral tribunal having regard to **the circumstances of the case**. The award shall be **deemed to have been made at the place of arbitration**.

APPLICABLE LAW & AMIABLE COMPOSITEUR :

As per **Art. 35**, (i) the Arbitral Tribunal shall apply the rules of **law designated by the parties** as applicable to the **substance of the dispute**. **Failing such designation** by the parties, the arbitral tribunal shall **apply the law which it determines to be appropriate**.

(ii) An **amiable compositeur** or **ex aequo et bono** only if the parties have expressly authorized the Tribunal to do so.

(iii) The Arbitral Tribunal shall decide all cases in accordance with the **terms of the contract**, if any, and shall take into account any **usage of trade applicable** to the transaction

MUMBAI CENTRE FOR INTERNATIONAL ARBITRATION

(1) The MCIA is an **independent arbitral institution & not-for-profit charitable entity** registered in India where disputes can be referred by any person/parties who have agreed to arbitration under the MCIA Rules 2017.

(2) MCIA can generally **also administer any arbitration where the seat of arbitration is not Mumbai** & where the **governing law of the parties' contract is a law other than Indian law**.

(3) Parties can **nominate their own arbitrators** (subject to provisions to the contrary in their arbitration clause), but nominations shall in all cases be **subject to confirmation by the MCIA Council**.

(4) MCIA can also appoint an arbitrator in an ***ad hoc* arbitration** upon payment of the appointment fee.

(5) MCIA Council has the power to **consolidate two or more arbitration proceedings after consultation with parties and appointed arbitrators** and provided all claims in the arbitration are made under the same arbitration agreement.

ADVANTAGES OF ARBITRATION ADMINISTERED UNDER MCIA RULES :

(1) Enables the parties to take advantage of a sophisticated set of **institutional arbitration rules** which incorporate **international best practices** for the efficient conduct of arbitration proceedings.

(2) Provide for special procedures such as the **consolidation of proceedings and appointment of an emergency arbitrator** – mechanisms not available in *ad hoc proceedings.*

(3) Appointment of arbitrators who are **best suited for a particular case** based on their **expertise**.

(4) Provision of **efficient procedure for the appointment of the arbitral tribunal**.

(5) Provision of **administrative assistance by MCIA** and **supervision of arbitral process by MCIA Secretariat** which helps facilitate expeditious completion of the arbitration proceedings.

(6) Provision of a **schedule of costs leads to cost-efficient and transparent arbitration process**.

(7) Scrutiny of arbitral awards by MCIA Registrar helps to **reduce the scope for administrative errors** in the award and makes enforcement problems less likely.

MCIA MODEL CLAUSE

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in accordance with the Arbitration Rules of the Mumbai Centre for International Arbitration ("MCIA Rules"), which rules are deemed to be incorporated by reference in this clause.

The seat of the arbitration shall be _____.

The Tribunal shall consist of [one/three] arbitrator(s).

The language of the arbitration shall be _____.

The law governing this arbitration agreement shall be _____.

The law governing the contract shall be_____.

UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

Address : UNCITRAL secretariat, Vienna International Centre, P.O. Box 500, 1400, Vienna, Austria.

Internet : www.uncitral.org

E-mail : uncitral@uncitral.org

MUMBAI CENTRE FOR INTERNATIONAL ARBITRATION

Address : 20th Floor, Express Towers, Nariman Point, Mumbai - 400021.

Internet : www.mcia.org.in

E-mail : registrar@mcia.org.in

RESTRICTIONS

ON

HAWKING

NO HAWKING ZONE

The Municipal Corporation of Greater Mumbai (MCGM) vide Circular No. AA/OD/51/ANI dated 1-10-2018 declared the following areas as no hawker zone as per the directions of the Hon'ble Bombay High Court vide WP order No. 652/2017 **:**

(1) Railway Station & BMC Market : Hawkers are prohibited till 150 mtrs of area from the premises

(2) Schools under BMC Area, whose strength size is more than 250 : Hawkers are prohibited till 100 mtrs of area from the premises

(3) Government Hospitals, Private Hospitals & Hospitals run by Trusts whose bed size are more than 100 : Hawkers are prohibited till 100 mtrs of area from the premises

(4) All Religious Places which are crowded by devotees : Hawkers are prohibited till 100 mtrs of area from the premises

MUNICIPAL CORPORATION OF GREATER MUMBAI

LICENSE DEPARTMENT

NO.- AA/OD/51/ANI Dated: 1.10.2018

Subject: Declaring areas near Education Institution, religious places, Hospitals, Mahanagar palika's market as no hawker zone by Hon'ble High Court vide order no. 652/2017.

As per the Directions of Hon'ble High Court, Mumbai it is hereby directed that hawkers are not permitted to do any business within the premise of 150mt. from Railway station and Mahanagar Palika's market and within the premise of 100 mt. from Education institution, religious places and hospitals.

As per the above order, the area to extent of the 150 meters from railway stations under Mumbai Municipal Corporation has already been declared as no hawkers Zone. Similarly, in the radius of 150 meters from all railway stations are marked in white color and the boards stating non-hawker area have been affixed.

As per the Directions of Hon'ble High Court, Mumbai vide order no. 652/2017 dated 01.11.2017, it is hereby declared that the area near the hospitals, educational institutions, religious places and BMC Markets has also been declared as non-hawkers area, Accordingly on 9.05.2018, under the supervision of Municipal Corporation Commissioner and President, City Hawker's Committee, at their meeting for discussing the above proposals which were subsequently approved unanimously.

For the information of citizens List of non-hawkers area has been published on 07.03.2018 on the MCGM notice board.

Frequent discussions are going on regarding the concern of President of City Hawker's Committee for setting the criteria for declaring the area near Education Institutions, Hospitals, Religious places etc as no hawker's area.

Therefore, to declare the areas near by Education Institutions, Hospitals, Religious places, BMC markets of MCGB as No Hawker's area, following criteria has been proposed for acceptance to Deputy Commissioner(F.Ni)

1) Schools under BMC area, whose strength size is more than 250, there hawkers are prohibited till 100 meters of area from the school premises.
2) Government Hospitals, Private Hospitals and Hospitals run by Trusts whose Bed size are more than 100, there the hawkers are prohibited till 100 meters of area from Hospitals.

3) All Religious places which are crowded by devotes, there the hawkers are prohibited till 100 meters from that religious places.

Above criteria for no hawkers area are included in the by laws for No Hawker's Area. For kind consideration of Deputy Commissioner (F. Ni) /Additional Commissioner (City)

(Nila V. Patange)

Deputy License Superintendent

(Sharad Bande)

License Superintendent

(Nidhi Chaudhary)

Deputy Commissioner (F.Ni)

(A.L.H - Haad)

Additional Commissioner (City)

BOMBAY HIGH COURT

PIL No. 78 of 2013 with Notice of Motion No. 255 of 2013

Mrs. S.G.P. Barnes Vs Commissioner of BMC & Ors

Order dated 3-5-2019

Facts : BMC had accepted the fact that illegal encroachments were made on the footpath & temporary structures were erected. BMC filed an affidavit stating that the encroachments which were removed. The petitioner responded by filing an affidavit & stating that encroachers had returned and had once again occupied the footpath. This was a regular occurrence with the encroachers returning a few days after they were removed.

Order : The Bombay HC held that **SHO of the concerned police station** within the jurisdiction where the road is situated has to ensure that **once the footpaths are cleared of temporary structures by demolishing the same, no temporary structure can be re-erected**. The HC directed the Commissioner of Police, Mumbai to issue orders to **Beat Marshalls** provided with motorcycles to keep an eye on the pavements in the area of their beat and if any encroachment is noted, **information be immediately given for police assistance** so that the encroachee is not able to re-erect the temporary structures. **BMC was directed to ensure once again that temporary structures erected by the encroachees on the pavement on the road in question are demolished**.

BOMBAY HIGH COURT – ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition No. 31751 of 2022

Pankaj Kumar H Agarwal & Anr (Petitioner) vs The State of Maharashtra & Anr (Respondents)

Order dt 18-11-2022

Facts : **Issue of illegal hawking** – Hawkers had set up stalls in front of Petitioner's shop – Hawkers were evicted & site was cleared only for the stalls to return.

Order : The HC observed that the question here was not only about unauthorised hawking stalls in non-hawking zones, but also about the obligations of the MCGM to provide continuous, seamless & usable sidewalks and footpaths for pedestrians, to ensure the safety & convenience of pedestrians, to encourage pedestrianisation and to make suitable provision for the use of footpaths & sidewalks for the physically disabled & those in wheelchairs.

In a strong statement, the HC held that **it did not propose to dispose of the WP & that they were fully aware that "removals" of hawking zones of any kind had a habit of returning at very short notice the moment the Petition is disposed of. The HC held that the Petition would be listed every month & more often if required to ensure that encroachment on public pedestrian access ways, sidewalks & footpaths does not recur**.

Further, the Hon'ble HC directed the Registry to obtain approval from the Hon'ble Chief Justice of India to register a suo-moto PIL to be tentatively captioned – ***"In Re: Pedestrian Access, Safety and Footpaths in Mumbai"*** – to address the questions and issues noted above.

BOMBAY HIGH COURT

ORDERS ON USE OF

A4 SIZE PAPERS

USE OF A4 SIZE PAPER - HC ORDERS

Refer Hon'ble Bombay High Court vide circular No. Rule/P.1604/2021 dt 14-07-21

Stated that considering the difficulties being faced by members of the Bar/parties-in-person with regard to use of A4 size paper and with a view to bring uniformity about use of paper in day-to-day working on the administrative side, to minimize consumption of paper and consequently to save the Environment the Registry shall henceforth **use A4 size paper having not less than 75 GSM and except for the judgements of the Court, printing may be done on both sides** for internal communications and official purposes at all levels in the Registry of the High Court and its benches at Nagpur, Aurangabad and Panaji (Goa) and Subordinate Courts in the State of Maharashtra also.

The specifications for all the pleadings, petitions, affidavits or other documents, etc filed in the Registry, on Judicial side for the purpose of filing in the High Court and its Benches at Nagpur, Aurangabad and Panaji (Goa) and all other courts in the State of Maharashtra were also clarified as below :

Superior quality A4 size paper having not less than 75 GSM with printing on the both sides of the paper with Font – Times New Roman or Georgia, Font size 14 with inner margin of 5 cms (2 inches) & outer margin 3 cms (1.20 inches)

No.Rule/P.1604/2021
Date: 14th July, 2021.

HIGH COURT OF JUDICATURE AT BOMBAY

CIRCULAR

It is notified for the information of all concerned that considering the difficulties being faced by the members of the Bar/ parties-in-person with regard to use of A4 size paper and with a view to bring uniformity about use of paper in day-to-day working on the administrative side, to minimize consumption of paper and consequently to save the Environment, Hon'ble the Chief Justice and the Judges of the Bombay High Court has been pleased to direct that henceforth, the Registry shall use A4 size paper (on both sides) for internal communications at all levels in the Registry.

It is, however, clarified that all the pleadings, petitions, affidavits or other documents, etc. filed in the Registry, on Judicial side for the purpose of filing in the High Court and its Benches at Nagpur, Aurangabad and Panaji (Goa) and all other Courts in the State of Maharashtra, the following specifications of paper type would be applicable:

"Superior quality A4 size paper having not less than 75 GSM with printing on the both sides of the paper with Font – Times New Roman or Georgia, Font size 14 with inner margin of 5 cms and outer margin 3 cms."

...2/-

RIGHTS OF A KARTA

SALE OF HUF

PROPERTY

CAN KARTA SELL HUF PROPERTY ?

SUPREME COURT
Civil Appeal No. 7037 of 2021
Arising out of Special Leave Petition (Civil) No. 13853 of 2021
Beereddy Dasaratharami Reddy (Appellant) vs V. Manjunath & Anr (Respondent)
Order dated 13-12-2021

The legal issue which arose for contention was whether the Karta had legal authority to sell the joint Hindu family property ?

SC held that the right of the Karta to sell a Joint Hindu Family property is settled & is beyond cavil vide several judgements of SC including ***Shri Narayan Bal & Ors. Vs Sridhar Sutar & Ors***, wherein it has been held that an HUF is capable of acting through its Karta or adult member of the family in management of its property. The decision of the Karta to alienate such property for value **either for legal necessity or benefit of the estate** binds the interest of all undivided members of the family even when they are minors or widows. A coparcener **cannot** seek injunction against the Karta from dealing with or entering into a transaction from sale of such property, **albeit post alienation has a right to challenge the alienation if the same is not for legal necessity or for betterment of the estate**.

LEGAL NECESSITY UNDER HINDU LAW

(a) Payment of Govt. revenue & debts payable out of HUF Property

(b) Maintenance of coparceners and family members

(c) Marriage expenses of male coparceners & daughters of coparceners

(d) Performance of necessary funeral or family ceremonies

(e) Cost of necessary litigation in recovering or preserving the estate

(f) Cost of defending the Head of HUF or any other member against a serious criminal charge

(g) Payment of debts incurred for family business or other necessary purpose. *In case of a manager other than a father it is not enough to show merely that the debt is a pre-existing debt*

Since the Hindu Succession (Amendment) Act, 2005 has come into force, the **daughters as '*coparceners*' can ask for '*partition*' or make a '*will of her share'* in the Joint property**.

5 States in India have amended the law relating to coparcenary property namely **Kerala, Maharashtra, Andhra Pradesh, Tamil Nadu and Karnataka**. Out of these 4 States, viz, **Maharashtra, Andhra Pradesh, Tamil Nadu and Karnataka**, adopt a common pattern & have conferred upon daughters a birth-right in coparcenary property on **prospective basis**.

The Maharashtra Amendment operates retrospectively from 22-6-1994. **A daughter married before the date of operation of the Act (HSA 1955) is excluded from these benefits.**

BALANCE SHEET – CONFIRMATORY STATEMENT FOR LIMITATION PURPOSE

BALANCE SHEET : CONFIRMATORY STATEMENT FOR LIMITATION PURPOSE

SUPREME COURT
Civil Appeal No. 323 of 2021
Asset Reconstruction Company (India) Limited vs Bishal Jaiswal & Anr
Decided 15-4-2021

Hon'ble SC held that ***"a Balance Sheet may be a written confirmatory statement for limitation purposes under the Limitation Act, 1963".***

An entry or disclosure in financial statements of a company (which include balance sheet) & related disclosures in other cases amounts to confirmation in writing of liabilities stated, mentioned or disclosed in the balance sheet and accompanying documents which are part and parcel of financial statements of a company.

Therefore, **if a liability is stated in the balance sheet which is signed by appropriate functionaries of a company or entity the limitation period gets extended from the date of such signing of balance sheet**.

MORE ISSUES ABOUT DISCLOSED LIABILITY

It is advisable to obtain **regular confirmation letters** from debtors stating that the same will amount to confirmation **unless any objection is raised in writing and delivered in writing to the creditor or his auditor or other agent within a reasonable time**. This is due to the fact that **a letter sent with statement of account for confirmation (including a letter sent by Auditors of Creditor), which is received and not refuted by the Debtor can in some circumstances amount to confirmation.**

The Hon'ble Supreme Court, vide order dated 10/01/2022, passed in M.A. no.21 of 2022, in M.A. no.665 of 2021, in Suo-Motu Writ Petition (Civil) no.3 of 2020,

directed that the period from 15/03/2020 till 28/02/2022, shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial and quasi judicial proceedings

ARTICLE STAFF

IS AN

APPRENTICE

WHETHER AN ARTICLE IS AN APPRENTICE ?

YES

Hon'ble SC has held on several occasions that an **apprentice or a trainee is excluded from the said definition of "employee" & such trainees are not employees in terms of Section 2 (f) of the Employees Provident Funds & Miscellaneous Provisions Act, 1952**.

In the case of *Surya Dev Rai vs Ram Chander Rai (2003) 6 SCC 675,* the SC also took notice of the fact that the trainees were paid stipend during the period of training, & had no right of employment, nor any obligation to accept the employment, if offered by the employer. In such circumstances, the Supreme Court held that **the trainees were apprentices engaged under the Standing Orders of the establishment and were excluded from the definition of an employee**.

(Apprentices Act, 1961)

In the case of *Employees' State Insurance Corporation & Anr vs. TELCO Limited & Anr, 1976 1 LLJ 81*, the SC after considering the meaning of the word '**apprentice**' and the legislative history of India on the subject, noticed that from the terms of agreement it was very clear that the **apprentices were mere trainees for a particular period for a distinct purpose & the employer was not bound to employ them in the works after the period of training was over.**

In the case of *The Provident Fund Inspector, Guntur vs T.S. Hariharan, AIR 1971 SC 1519,* the SC **took the view that the word 'employment' should be construed as 'employment in the regular course of business of the establishment' and would not include employment of a few persons for a short period on account of some passing necessity or some temporary emergency beyond the control of the company.**

Under the newly formed

Code on Wages Act 2019 &

Industrial Relations Code 2020

The definiitons of “**Employee**“ does not

include **Apprentice**

Labour Laws update

Code on Wages Act 2019

Industrial Relations Code 2020

Occupational Safety, Health & Working Conditions Code 2020

Code on Social Security 2020

Old laws Repealed like Payment of Wages Act 1936 ; Minimum Wages Act 1948 ; Payment of Bonus Act 1965 ; Trade Unions Act 1926, Industrial Disputes Act 1947 ; Factories Act 1948, Contract Labour Act 1970 ; Building/Construction Workers Act 1996 ; ESI Act 1948 ; Employeees PF Act 1952 ; Maternity Benefit Act 1961 ; Gratuity Act 1972 etc

CO-OPERATIVE HOUSING SOCIETIES

CO-OPERATIVE HOUSING SOCIETIES : ISSUES

1). DONATION TO CHS ABOVE PERMISSIBLE LIMIT :

BOMBAY HIGH COURT WP No. 4457 of 2014

Alankar Sahkari Griha Rachana Sanstha Maryadit, through Chairman SK (Petitioner)

vs Atul Mahadev Bhagat & Anr (Respondent)

Order passed on 31-8-2018

Facts : The Resp (Atul Bhagat) had a flat in the CHS. Thereafter, the Resp in dire need of money decided to sell the flat to third party and agreed to pay transfer fees of Rs. 25,000/- to the CHS. However **the CHS alleged demanded Rs. 5,00,000/- for regularizing the transfer which was paid by the Resp by way of two DDs "under pressure"**. After selling the plot the Resp Atul sent a letter of demand on 4-7-2005 (demanding back the sum of Rs. 5 lacs taken forcibly) which was replied by the CHS denying such liability and so the Resp filed a dispute before the Co-operative Court for recovery of Rs. 6,98,740/- along with interest. The Co-op Court passed an order dated 1-10-2007 directing the CHS to pay the Resp amount of Rs. 5,00,000/- along with interest @11% from 29-12-2005 till realization of the amount, which was marginally reduced by the Maharashtra State Co-op Appellate Court to Rs. 4,75,000/-.

Order : The Petitioner-CHS filed a WP in the Bombay HC & the Hon'ble HC held **that the amount which is accepted above the permissible limit** fixed as Rs. 25,000/-, as per a Govt. circular issued on 9-8-2001 in respect of transfer fee of immovable property within the Corporation limit as well as the bye-laws of the CHS, is **illegal or taxable**.

The Hon'ble HC also dismissed the Society's argument that the **donation was voluntary** since a person facing financial crisis (Atul) will not donate an amount of Rs. 5,00,000/- to the CHS and that different ways were invented by the CHS to earn money other than legally permissible like the maintenance charges or trf fees under the bye-laws. The CHS is in an advantageous & dominant position & incoming/outgoing members have a subordinate position.

The Hon'ble HC held that the CHS is **not expected to indulge into profiteering business from the members and if such amt is earned, then it is taxable under law**. There is **no bar for any member to pay donation to the Society**, however, it should be **voluntary without any compulsion or coercion** and the transfer fees cannot be charged under the pretext of donation. The Writ Petition was accordingly dismissed.

2). INVASION OF FLAT OWNER'S PRIVACY :

BOMBAY HIGH COURT – Notice of Motion (L) No. 1033 OF 2018 in Suit (L) No. 548 of 2018

Farhad Ginwalla & Ors (Plaintiffs) vs Zenobia R. Poonawala (nee Ginwalla & Anr.) (Defendants)

Order passed on 1-6-2018

Facts : The Defendants had placed CCTV cameras over the main entrance doors to Plaintiffs Flat Nos. 4,5,6 & 8 on the 1st, 2nd & 3rd floors of Rutton Manor in which the Plaintiffs were residing, without their consent and Def were monitoring as to who was coming in and out of those flats, thereby invading the Plaintiffs privacy.

Order : The Hon'ble HC held that **since the Plaintiffs were residing in the aforementioned flats, no one had a right to invade their privacy** and that the Defendants **could not be allowed to continue with the CCTV cameras installed** over the main entrance door to Flat Nos. 4,5,6 & 8 on the 1st, 2nd & 3rd floors of Rutton Manor on the ground that someone had allegedly tried to enter the Defendant's flat on the 4th floor of the same building.

3). INSTALLATION OF MOBILE TOWERS ON TOP OF HOUSES :

PUNJAB & HARYANA HIGH COURT
CM-3471-CWP-2021 & CWP-4424-2021

Simarjeet Singh (Petitioner) vs State of Punjab & Ors (Respondent)

Order passed on 3-3-2021

In this **Notice of Motion**, the P&H High Court held that the installation of towers in a haphazard manner on residential buildings may endanger lives and property of the people and would **violate their rights under Article 21 of the Constitution**.

The Hon'ble HC passed an **interim measure** directing the State of Punjab **shall not allow installation of mobile towers on residential buildings** till further orders.

4). TERRACE UNDER LOCK AND KEY :

The Mumbai Fire Brigade issued a notice MFB/MFPLSM/ADFO/MYM/44 dated 6-1-2021 u/s 5(1) of the Maharashtra Fire Prevention and Life Safety Measure Act 2006 regarding inadequacy or contravention of fire prevention and life safety measures noticed during inspection to Kent Garden CHS, Jambhali Galli, Borivali (W), Mumbai 92.

Among other things it was stated that the ***"terrace found under lock and key shall be kept open at all times and used as refuge/shelter in case of emergency"*** and if the CHS failed to comply with the necessary conditions during the stipulated period of 30 days the Premises would be declared **"UNSAFE BUILDING/PREMISES"** and electric and water supply will be disconnected and legal action will be taken against the party.

BRIHANMUMBAI MAHANAGAR PALIKA
MUMBAI FIRE BRIGADE

No: - MFB/MFPLSM/ADFO/MYM/44
Date: - 06.01.2021

FORM – J

[See section 6 and rule 9 (1)]

Notice regarding inadequacies or contraventions regarding fire prevention and life safety measures noticed during inspection.

To,

1) Mr. D.S.Prabhu, Chairman (9892110706)
   Kent Garden CHS, Jambhali Galli, Borivali West, Mumbai 92
2) Mr. Haresh Doshi, Secretary (9821220707)
   Kent Garden CHS, Jambhali Galli, Borivali West, Mumbai 92
3) Kent Garden CHS, Jambhali Galli, Borivali West, Mumbai 92
   UID No. RC0801890280000

WHEREAS, notice served under MFB/MFPLSM/ADFO/MYM/44 dated 06.01.2021 under sub section (1) of section 5 of the Maharashtra Fire Prevention and Life Safety Measure Act 2006 (Mah. III of 2007) the nomination officer has inspected on 06.01.2021 at about 1600 hrs. the following building or premises, namely: Kent Garden CHS, Jambhali Galli, Borivali West, Mumbai 92 and the following deviation from or contraventions of the requirements with regard to the fire prevention and life safety measures or inadequacies or non compliances to the height of the building or the nature of activities carried on in such building or premises or part thereof have been reported by me -

1. **Electric duct not sealed at each floor level, same shall be sealed immediately.**
2. **Sprinkler heads and its connection in common lift lobby found missing / tampered on various floors, same shall be repaired / replaced immediately.**
3. **Terrace found under lock & key, shall be kept opened all the time and use as refuge / shelter in case of emergency.**
4. **Staircase found obstructed by keeping scrap on various floors, same shall be removed immediately.**
5. **Riser duct found under lock & key, same shall not keep under lock & key.**
6. **Form B of current period i.e. July 2021 to Dec 2021 not produced, same shall be produced immediately.**

NOW, THEREFORE, in exercise of the powers conferred by section 6 of the said Act, I hereby direct you to undertake the following mentioned measures within **30 days** after receipt of this notice by you –

All the above Inadequacy, contravention, deficiencies shall be rectified/repaired/maintained/removed & compiled immediately & shall be kept in working condition all the time.

I hereby further direct you to report the compliance in this regard immediately to the undersigned / Dy.Chief Fire Officer, Borivali Regional Command Centre, New Link Road, Borivali West, Mumbai.

Note:- Compliance of above notice is mandatory, if party has failed to complied the above said notice in stipulated period then premises will be declared **UNSAFE BUILDING/PREMISES** and electric & water supply will be disconnected, legal action will be taken against party

ADFO 6/1/22
A.D.F.O. M.Y.Mithbaonkar
Mumbai Fire Brigade

DFO 6/1/2022
D.F.O. S.B.Karade
Mumbai Fire Brigade

7/1/2022
Dy.C.F.O. A.V.Bangar
Mumbai Fire Brigade

5). WHETHER OWNER OF A FLAT (MEMBER) IS A TENANT OF THE CHS ?
NO

SUPREME COURT Civil Appeal No. 2990-2991 of 2005
Anita Enterprises & Anr Vs Belfer Co-op Housing Society Ltd. & Ors.
Order dated 14-11-2007

The SC observed that while the **ownership of the land and building both vests in the co-op society, the member has, for all practical purposes, right of occupation in perpetuity after the full value of the land and building and interest accrued thereon have been paid by him**. Although de jure he is not owner of the flat allotted to him, but, in fact, he enjoys almost all the rights which an owner enjoys, which includes right to transfer provided he fulfills two conditions :

1). He occupies the property for a period of **one year**
2). The transfer is made in favour of a person who is **already a member** or a person whose **application for membership has been accepted by the society** or whose **appeal u/s 23 of the Maharashtra Co-operative Societies Act 1960 has been allowed by the Registrar** or to a person who is **deemed to be a member u/s 23(1A) of the MCS Act**.

SC Order

The SC held that a member of a CHS has more than a mere right to occupy the flat, meaning thereby higher than tenant, which is not so in the case of a tenant within the meaning of Section 5(11) of the Bombay Rent Control Act. **This being the position, the SC had no difficulty in coming to the conclusion that the status of a member in the case of tenant co-partnership housing society (TC) CANNOT be said to be that of a tenant within the meaning of Section 5(11) of the Rent Act, as such there was no relationship of landlord and tenant between the Society and the member.**

6). APARTMENT OWNERS CONDOMINIUM CAN FILE A COMPLAINT WITH THE REGISTRAR OF CO-OPERATIVE SOCIETIES : MAHARASHTRA

The Maharashtra Ownership (Amendment) Act, 2020 inserted **Sec. 16A & 16B** in the Principal Act of 1970.

U/s 16A it was stated that **the Aggrieved Apt. Owner or Association of Apt. owners, may file a complaint with the Registrar, for any violation or contravention of the provisions of this Act or the rules made thereunder against any Apt owner/ sole owner/ owners of the property** and every such complaint as far as possible, shall be disposed of by the Registrar within a period of 30 days (if complaint not disposed off within the time limit reasons for the delay shall be recorded).

U/s. 16B it was stated that any person aggrieved by the direction/ order/ decision of the Registrar may prefer an **appeal to the Co-operative Court** within a period of 60 days (it can be entertained beyond 60 days if there was sufficient cause for not filing it within that period). The Appellate Authority shall as expeditiously as possible, endeavor to dispose of the appeal within a period of 90 days after giving the parties a reasonable opportunity of being heard.

7). SEC 79A ON REDEVELOPMENT IS NOT MANDATORY :

Sec 79A of the Maharashtra Co-operative Societies Act, 1960 :

"**79A.** Government's power to give direction in the public interest, etc. (1) If the State Government, on receipt of a report from the Registrar or otherwise, is satisfied that in the public interest ……., it is necessary to issue directions to any class of societies generally or to any society or societies in particular the State Government may issue directions to them from time to time, and all societies or the societies concerned, as the case may be, shall be bound to comply with the directions. ……."

On 3-1-2009, the Govt issued a resolution containing elaborate provisions for the process of redevelopment of a CHS including issue of a public notice, floating of tender, calling for competitive bids etc so as to ensure transparency and collective benefit for housing society.

BOMBAY HIGH COURT WP NO. 6701 of 2013

Kamgar Swa Sadan Co-op Hsg. Scoiety Ltd. Vs Divisional Joint Registrar, Co-operative Societies, Mumbai Division & Ors.

Order passed on 28-6-2018

Facts : The petitioner CHS received a notice dt 17-4-2013 issued by the Resp Divisional Joint Registrar purportedly exercising suo-motto powers u/s 154 of the MCS Act *(which refers to the revisionary powers of state govt. & registrar)* on the basis of a complaint regarding redevelopment process made by the Resp. Nos. 4 to 12 (FLAT OWNERS) . The Divisional Joint Registrar had held that the letters issued by the Asst. Registrar, Co-op Societies instructing the Petitioner to proceed with the re-development of the project were contrary to the **provisions of the Govt directive dated 3-1-2009 issued under sec. 79A of the MCS Act**. Hence this writ petition was filed.

Order : The Bom HC held that the said govt. resolution issued under Sec. 79A is **not mandatory but rather directory in nature and therefore there are no consequences for non-compliance**. Even the Asst. Registrar has no power to issue any directions to the Petitioner u/s 154 of the MCS Act to execute the Development Agreement in favor of the Developer or to take any further steps under any of the provisions of the MCS or under the said govt. resolution and thus the instructions issued to the Petitioner through the letters were not in the nature of directions or orders. The order passed by the Divisional Joint Registrar was thus **declared illegal, non est and set aside**.

8). BMC TAXES WILL BE CHARGED ON SOCIETY ONLY AFTER OC IS PROVIDED

SUPREME COURT - CIVIL APPEAL NO. 4000 of 2019

Samruddhi Co-op Hsg Soc Ltd (Appellant) Vs Mumbai Mahalaxmi Construction Pvt Ltd (Respondent)

Order dated 11-1-2022

Facts : The Resp entered into agreements with individual purchasers (*who became members of the Appellant CHS and were granted possession in 1997*) in accordance with the MOFA Act 1963. However, **the Resp failed to take steps to obtain the OC from the Municipal authorities & therefore the Appellant had to pay property tax @ 25% higher than normal rate and water charges @ 50% higher than the normal charge**.

The Appellant filed a complaint with the NCDRC seeking Rs. 2,60,73,475/- as reimbursement of excess charges & tax paid by its members and Rs. 2,00,000/- towards the mental agony and inconvenience caused, which was dismissed by the NCDRC as being barred by limitation and as being not maintainable under the Consumer Protection Act 1986.

Matter travelled to SC.

SC Order :

The Hon'ble SC held that **u/s 3 & 6 of the MOFA Act**, the promoter had an obligation to provide OC to the flat owners & pay for the relevant charges till the OC had been provided. The continuous failure to obtain an OC was held to be a breach of the obligations imposed on the Resp under MOFA & amounted to a continuing wrong. The SC held that the Appellants were therefore entitled to damages arising out of this continuing wrong & further their complaint was NOT barred by limitation.

The SC therefore allowed the appeal against the order of the NCDRC dated 3-12-2018 and held that the Complaint is maintainable. The SC directed the NCDRC to **decide the merits of the dispute having regard to the observations contained in the present judgment**

9). NO CHARGES FOR PARKING ALLOTMENT :

The Maharashtra State Co-operative Appellate Court
A.O. No. 29 of 2020
Sandhya Potnis/ Maithilee Sule (Appellants) vs Nakshatra Residency Co-op Soc (Resp)

Facts :

The Resps (Nakshatra Residency) in their society AGM meeting passed a resolution that the members who have not purchased the parking space (also known as PS) from the builders will be allotted a PS & such members have to deposit a sum of Rs. 3,00,000/- to the corpus fund of the society. The Applt were denied to park within the society & challenged the resolution. Their case got rejected and the court said that the resolution is valid. The Applt filed an appeal with The Maharashtra State Co-operative Appellate Court, Mumbai.

Order by The Maharashtra State Co-operative Appellate Court -

1) The appeal was allowed

2) Set aside the order of the lower court

3) The court granted the temporary injunction against the society & held that such action of society is illegal to pass resolution which is prejudicial to the rights of the members to park their vehicle within the society premise.

4) The bye-laws of the society nowhere permits the society to levy charges under any head like corpus fund for allotting the parking space.

10.) REGISTRATION OF NOMINEE AS PROVISIONAL MEMBER OF A CHS :

BOMBAY HIGH COURT – CIVIL APPELLATE JURISDICTION

Writ Petition No. 12468 of 2022

Karan Vishnu Khandelwal (Petitioner) vs The Hon'ble Chairman, Vaikuntha CHS & Ors (Respondents)

Order dt 9-11-2022

Facts : One late Mr. Mannalal Khandelwal, owner of a flat no. 1 in the Resp Society & the corresponding share certificate no. 7, registered a nomination during his lifetime in the name of the Petitioner – his grandson.

The late Mannalal died intestate on 20-1-2011 leaving behind legal heirs – Rajendra Khandelwal (Son – Resp No. 2), Krishnakumar Khandelwal (Son) & the Petitioner – Karan (grandson/son of predeceased son).

Rajendra - Resp No. 2 made an application to Resp Society seeking trf of membership & share certificate for 2/3rd share in the said flat in his name alongwith the submission of a "no objection cum declaration" submitted by Krishnakumar Khandelwal (the other surviving son).

The Divisional Joint Registrar passed an order in favour of Rajendra - Resp No. 2 & upheld his claim. Hence, this Petition by Karan.

Order : The HC observed that in terms of **Sec. 154B-13 of the Maharashtra Co-operative Societies Act, 1960**, as inserted wef 9-3-2019, the society is empowered to transfer share, right, title & interest of the deceased member in the society to a person, on the basis of (i) **testamentary documents** or (ii) **succession certificate** or (iii) **legal heir-ship certificate** or (iv) **document of family arrangement executed by persons, who are entitled to inherit the property of deceased member** or (v) to **a person duly nominated in accordance with the Rules**. However, the first proviso appended thereto, clarifies that a **nominee** shall be admitted, only as a **provisional member**, within the meaning of **Section 154B -1 (18) (c) of the MCS Act** till legal heir or heirs or a person entitled to the flat and shares in accordance with Succession Law or under Will or testamentary document or admitted as member in place of such deceased member.

The HC thus held that since the Petitioner is a person duly nominated in accordance with Rules & the same was duly acknowledged by the society and recorded in the register, **the society shall admit the petitioner as a provisional member of the society** in terms of Clause (c) of Section 154-B-1 (18) of the MCS Act, as amended and may call upon the Resp No.2 to produce succession certificate or a legal heir-ship certificate or testamentary document as the case may, claiming the right in the flat and membership of the deceased but till then the Petitioner shall be a **provisional member** of the Society.

NOTARIES

ACT 1952

NOTARIES ACT

Functions of Notaries - Sec. 8

A notary may do all or any of the following acts by virtue of his office, namely:-

1) Verify, authenticate, certify or attest the execution of any instrument;

2) Present any promissory note, *hundi* or bill of exchange for acceptance or payment or demand better security;

3) Note or protest the dishonor by non-acceptance or non-payment of any promissory note, *hundi* or bill of exchange or protest for better security or prepare acts of honour under the Negotiable Instruments Act, 1881 (XXVI of 1881), or serve notice of such note or protest;

4) Note and draw up ship's protest, boat's protest or protest relating to demurrage and other commercial matters ; administer oath to, or take **affidavit from any person**;

5) Prepare bottomry and respondentia bonds, charter parties and other mercantile documents; prepare, **attest or authenticate any instrument intended to take effect in any country or place outside India in such form and language as may conform to the law of the place where such deed is entitled to operate**;

6) Translate, and verify the translation of, any document, from one language into another;

7) **Act as a Commissioner to record evidence in any civil or criminal trial** if so directed by any court or authority;

8) Act as an **arbitrator, mediator or conciliator**, if so required ; & any other acts which may be prescribed.

Reciprocal arrangements for recognition of notarial acts done by foreign notaries -

Sec. 14 - If the Central Government is satisfied that by the law or practice of any country or place outside India, the notarial acts done by notaries within India are recognized for all or any limited purposes in that country or place, the Central Government may, by notification in the Official Gazette, declare that the notarial acts lawfully done by notaries within such country or place shall be recognized with India for all purposes or, as the case may be, for such limited purposes as may be specified in the notification.

Currently, the following are recognized as reciprocating countries for the purpose of recognition and enforcement of notarial acts :
United Kingdom, the Isle of Man and Channel Islands comprising Guernsey and Jersey
Hungary
Belgium
New Zealand
Ireland

NOTARY - APOSTILLING

NOTARY - APOSTILLING

Hague Convention in 1961 - Many countries joined together to create a simplified method of **"legalizing"** documents for universal recognition. Apostille is done for personal documents like birth/death/marriage certificates, Affidavits, Power of Attorney, etc & educational documents like degree, diploma, matriculation and secondary level certificates etc.

India - Apostille Certificates are issued by **Ministry of External Affairs (MEA),** Government of India on birth certificates, death, power attorney, marriage certificates, educational certificates and affidavits. Before getting apostilled all the concerned documents must be authenticated by regional offices located in every state.

Need for Apostillization

Sometimes just a simple notarisation is not enough, one might be asked to get one's documents apostilled, it is known as **'super-legalisation'** or legalization of documents for overseas use. Once this is done, document is recognized worldwide, such as travel document. Those countries which are signatory to Hague Convention can only issue apostille.

NOTARY - APOSTILLING

VFS Global Services, Attestation-Collection Centre, S-2 Level (Upper Ground Floor), Block-E, International Trade Tower, Nehru Place, New Delhi-110019
(Phone No.011-40548204).

SCO 186-187, Ground Floor (Back Side), Sector 8C, Madhya Marg, Chandigarh
TalvinderS@vfsglobal.com

2nd Floor, Aurum House, Dadyseth Lane, Adjacent to Babulnath Temple, Babulnath, Mumbai - Contact: Ms. Neeyati Khokhani
NeeyatiK@vfsglobal.com

Prestige Atrium, No. 1, Central Street, Bangalore (Contact: Mr. Aravindh Mohan AravindhM@vfsglobal.com)

VEXATIOUS LITIGATION ACT 1971

VEXATIOUS LITIGATION ACT

It is an Act to prevent the institution or continuance of vexatious proceedings in court

Sec. 2 - If on any application made by the Advocate General, the High Court is satisfied that any person has habitually and without any reasonable ground instituted vexatious proceedings, civil or criminal, in any court or courts, whether against the same person or against the different persons, the High court may, after hearing that person or giving him an opportunity of being heard order that no proceedings, civil or criminal shall be instituted by him in any court.

PRIORITY TO BE GIVEN TO SENIOR CITIZEN CASES IN COURT CASES

SENIOR CITIZENS CASE TO BE TAKEN ON PRIORITY

With reference to the High Court circular No.P-1615/91 dated 12-08-99 in the matter of giving preference to cases involving parties over the age of 65.

After reconsidering the issue, the Hon'ble Chief Justice and Judges of the High Court have now directed that if either party is 60 years or older, they can give a written request to the court for giving priority to the case, and the courts will give priority and have final hearing and disposal of the case as soon as possible.

No. Rule / P-1615 / 91

CIRCULAR

This has reference to the High Court Circular No. P.1615/91, dated 12.08.1999 in the matter of giving preference to the cases wherein one of the parties is of advanced age who has crossed 65 years of age.

The Hon'ble the Chief Justice and Judges after reconsidering the issue, have now directed that precedence be given by the Courts for hearing and final disposal of the cases wherein one of the parties has attained the age of sixty years or above . However, the Courts may grant such indulgence on written request made in that behalf.

This circular shall be applicable to the High Court and its Benches as well as Courts subordinate to it.

HIGH COURT, APPELLATE SIDE.

Date: 3rd **August, 2009.**

REGISTRAR GENERAL.

HUF NOT

ALLOWED AS

PARTNER IN LLP

HUF CANNOT BE PARTNER IN LLP

According to the General circular No. 13/2013 with the approval of MCA. It has come to the notice of the Ministry that some Hindu Undivided Families (HUFs)/Kartas of such families are applying to become partner/ Designated partner (DP) in LLPs (Limited Liability Partnership) and a question has arisen whether a 'HUF' or a karta can be allowed to do so. The matter has been examined in consultation with Ministry of Law.

As per **section 5 of LLP Act, 2008** only an individual or body corporate may be a partner in a Limited Liability Partnership. A HUF cannot be treated as a body corporate for the purposes of LLP Act, 2008.

Therefore, a HUF or its Karta <u>CANNOT</u> become partner in LLP

General Circular No. 13/2013

F.No. 1/13/2012-CL-V
Government of India
Ministry of Corporate Affairs
5th Floor, A Wing, Shastri Bhavan
Dr. R.P. Road, New Delhi-110 001.
Dated 29th July,2013

All the Regional Directors,

All the Registrar of Companies / Official Liquidators,

All Stakeholders,

Sub: Whether Hindu Undivided Family (HUF) / its Karta can become partner/Designated Partner (DP) in Limited Liability Partnership (LLP).

Sir,

It has come to the notice of the Ministry that some Hindu Undivided Families (HUFs) / Kartas of such families are applying to become partner/ Designated partner (DP) in LLPs and a question has arisen whether a 'HUF' or a karta can be allowed to do so. The matter has been examined in consultation with Ministry of Law.

2. As per section 5 of LLP Act, 2008 only an individual or body corporate may be a partner in a Limited Liability Partnership. A HUF cannot be treated as a body corporate for the purposes of LLP Act, 2008. Therefore, a HUF or its karta can not become designated partner in LLP.

3. This issues with the approval of Secretary, MCA

Yours faithfully,

(J N Tikku)
Joint Director

Copy to:
1. All Concerned.
2. PS to CAM.
3. PPS to Secretary, Additional Secretary, Joint Secretaries

BENAMI : NO

PAYMENT NO SALE

RECOGNIZED

IF NO PAYMENT NO SALE RECOGNIZED
BENAMI , POA & SHARE

SC - CIVIL APPEAL NOS. 6989-6992 of 2021
KEWAL KRISHAN …… APPELLANT vs RAJESH KUMAR & ORS etc RESPONDENTS

FACTS :

The Appellant (KK) executed a POA in the favour of one of the Resp namely Sudarshan on 28-3-1980. Two sale deeds were executed by the Sudarshan on the basis of POA on 10-4-1981. One deed was where he sold a part of properties to his two minor sons & in one Deed to his wife. The appellant-KK prayed for an injunction restraining the Resps from claiming possession of the suit premises and from alienating the premises. Furthermore, the appellant also pleaded that the POA & the subsequent sale deeds must be declared null & void.

According to the case of the Resp (Sudarshan), Appellant was a benamidar.

Trial Court held that as Sudarshan was the only owner of the suit properties. Therefore, an appeal was filed before the District Court & as there was no proper evidence by the Resps (Sudarshan) that they paid entirely for the suit premises, the appellant (KK) was treated as the joint owner of the property. Hence, the sale deeds were set aside. The judgment of the District Court was upheld by the HC. HC held the POA to be valid and directed the Resps (Sudarshan) to pay the appellant (KK) his share of the sale deeds. Subsequently, an appeal was filed before the SC.

ORDER OF SC :

The Court held that **the sale deeds were sham transactions** and the wife and sons of Sudarshan would have no title, interest, or right to the suit properties. The Court has rightly interpreted **Section 54** of the TP Act and has provided correct interpretation regarding the intention of the legislation behind this statute. **The necessity of payment of a price to constitute a sale of immovable property helps in keeping a check on exploitative practices as it did in the present case.**

ORDERS OF FOREIGN COURTS ENFORCEABLE IN INDIA U/S 44A OF CPC

CPC 1908 - Sec 44A – ISSUE OF ORDERS OF FOREIGN COURT ENFORCEABLE IN INDIA

Sec 44A - Execution of decrees passed by Courts in reciprocating territory.-- (1) Where a certified copy of a decree of any of the superior Courts of any reciprocating territory has been filed in a District Court, the decree may be executed in as if it had been passed by the District Court.

Expl No.1 - **“Reciprocating territory"** means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and superior Courts, with reference to any such territory, means such Courts as may be specified in the said notification.

Expl No. 2 - **"Decree"** with reference to a superior Court means any decree or judgment of such Court under which **a sum of money is payable**, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, **but shall in no case include an arbitration award**, even if such an award is enforceable as a decree or judgment.

MINISTRY OF LAW AND JUSTICE

(Department of Legal Affairs)

NOTIFICATION

New Delhi, the 17th January, 2020

G.S.R. 38(E).—In exercise of the powers conferred by Explanation 1 to section 44A of the Code of Civil Procedure, 1908 (5 of 1908), the Central Government hereby declares, United Arab Emirates to be a reciprocating territory for the purposes of the said section and the following Courts in United Arab Emirates to be superior Courts of that territory, namely:-

(1) **Federal Court**-

(a) Federal Supreme Court;

(b) Federal, First Instance and Appeals Courts in the Emirates of Abu Dhabi, Sharjah, Ajman, Umm Al Quwain and Fujairah;

(2) **Local Courts**-

(a) Abu Dhabi Judicial Department;

(b) Dubai Courts;

(c) Ras Al Khaimah Judicial Department;

(d) Courts of Abu Dhabi Global Markets;

(e) Courts of Dubai International Financial Center.

[F. No. J-14014/1/2015-Judl.]

RAJVEER SINGH VERMA, Addl. Secy.

CPC 1908 - Sec 44A – ISSUE OF ORDERS OF FOREIGN COURT ENFORCEABLE IN INDIA

UK, Hong Kong, New Zealand, the Cook Islands (including Niue) & the Trust Territories of Western Samoa, Singapore, Fiji, Malaysia, Trinidad & Tobago, Papua & New Guinea, Bangladesh have been notified as reciprocating territories

OBTAINING SIGNATURE ON WIDELY WORDED CONSENT FORM / AGREEMENTS FROM DOCTOR / INSURANCE

OBTAINING SIGNATURE ON WIDELY WORDED CONSENT FORM

FROM DOCTOR AMOUNTS TO SIGNING ON DOTTED LINES

IN THE CASE OF BHUSHAN RAINA vs DR. S.K JAIN (EYE SURGEON), DR. SUDEEP JAIN (EYE & RETINAL SURGEON)

APPEAL NO. 231/2008 (State Consumer Court – Delhi)

FACTS OF THE CASE :

Complainant (Patient) was 60 years old, he was healthy and never had any serious health problems. In march 2008, he started having difficulties in his right vision & consulted Resp 1 (Dr. S.K Jain).

The Resps (Dr) diagnosed cataract symptoms and suggested to wait for 3-4 months and take medications but the surgery was unavoidable. Resp 1 suggested that the complainant could go for surgery immediately if he agrees to get operated by the Resps. Complainant (Patient) agreed, **signed a consent form** & went into surgery. After a few follow-ups Resp 1 (Dr) proclaimed of blood clot and asked Resp 2 (Dr) for further examination and it was concluded by the Resp 2 (Dr) that the complainant (Patient) has retinal detachment.

The resp 2 (Dr) wanted a second opinion (Dr. Sanjeev Gupta) and they took it and confirmed the retinal detachment. Before operation it was warned by the Dr. that this will be a major surgery and it has no guarantee . The complainant got treated at other eye centre but his vision was not likely to be restored. Complainant got compensated for the loss of his vision.

ARGUMENTS –

Resps (Dr) argument : Resps filed a WS pleading that cataract surgery consent form was signed by the complainant, it was also witnessed by his wife. It was well established with the various articles published in journals or websites that in some patients after the cataract surgery there is an increase chance of retinal detachment. They (patient) denied that Resp1 told them to go to the surgery immediately. The Resps submitted that in the case of mature cataract it is difficult to examine the retina before hand. **Counsel of the Resp also relied upon the consent form.**

Complainants argument : The consent has to be informed as per the decision in Vaidya Nath vs Chandi Bhattacharjee. Informed consent means that the patients has been explained in the layman‘s language so that he can take their decision wisely. Merely writing **Informed consent** on the top of the form does not mean informed consent. Obtaining signature on such printed forms amounts to obtaining signature on the dotted lines. Such consent is no consent in the eyes of law.

ORDER : A person is almost dead without an eyesight and the Complainant stayed in that state for 8 years the resps are directed to pay 1 lakh per year for 8 years to the complainant‘s.

SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 8249 of 2022 [Arising out of SLP (Civil) No. 25457 of 2019] Dated : 9-11-22 - **TATA AIG General Insurance case**

The appellant secured a Standard Fire & Special Perils policy from the respondent on 28.07.2012. The policy was effective from 28.07.2012 to 27.07.2013. It was meant to cover a shop situated in the basement of the building. However, the exclusion clause of the contract specifies that it does not cover the basement.

"**Adhesion Contract**" : A standard-form contract prepared by one party, to be signed by the party in a weaker position, usually a consumer, who has little choice about the terms.

These contracts are prepared by the insurer having a standard format upon which a consumer is made to sign. He has very little option or choice to negotiate the terms of the contract, except to sign on the dotted lines. The insurer who, being the dominant party dictates its own terms, leaving it upon the consumer, either to take it or leave it. Such contracts are obviously one sided, grossly in favour of the insurer due to the weak bargaining power of the consumer

Uberrimae fidei - It is observed that insurance contracts are special contracts based on the general principles of full disclosure in as much as a person seeking insurance is bound to disclose all material facts relating to the risk involved. **Law demands a higher standard of good faith in matters of insurance contracts which is expressed in the legal maxim uberrimae fidei**

Insurer and his agent are duty bound to provide all material information in respect of a policy to the insured to enable him to decide on the best cover that would be in his interest. Further, sub-clause (iv) of Clause 3 mandates that if proposal form is not filled by the insured, a certificate has to be incorporated at the end of the said form that all the contents of the form and documents have been fully explained to the insured and made him to understand. Similarly, Clause 4 enjoins a duty upon the insurer to furnish a copy of the proposal form within thirty days of the acceptance, free of charge. Any non-compliance, obviously would lead to the irresistible conclusion that the offending clause, be it an exclusion clause, cannot be pressed into service by the insurer against the insured as he may not be in knowhow of the same.

Blue pencil doctrine (test) — A judicial standard for deciding whether to invalidate the whole contract or only the offending words. Under this standard, only the offending words are invalidated if it would be possible to delete them simply by running a blue pencil through them, as opposed to changing, adding, or rearranging words

Once an act of fraud, coercion or misrepresentation is proved, the agreement being a contract becomes voidable {Sec. 2(i)} at the option of the party against whom it was done.

A dispute before the Consumer Commission is to be seen primarily from the point of view of the consumer as against the civil suit. The aforesaid view of ours is fortified by Regulation 26 of the Consumer Protection Regulations, 2005 which cautions the Commission to avoid the cumbersome procedure contemplated under the Code of Civil Procedure. Clearly, the object is to make the Commission as consumer friendly as possible.

Consumer Protection Act, 2019

2(46) "**unfair contract**" means a contract between a manufacturer or trader or service provider on one hand, and a consumer on the other, having such terms which cause significant change in the rights of such consumer, **including** the following, namely :-

(i) requiring manifestly excessive security deposits to be given by a consumer for the performance of contractual obligations; or (ii) imposing any penalty on the consumer, for the breach of contract thereof which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract; or (iii) refusing to accept early repayment of debts on payment of applicable penalty; or (iv) entitling a party to the contract to terminate such contract unilaterally, without reasonable cause; or (v) permitting or has the effect of permitting one party to assign the contract to the detriment of the other party who is a consumer, without his consent; or (vi) imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage ;

Before we part with this case, we would like to extend a word of caution to all the insurance companies on the mandatory compliance of Clause (3) and (4) of the IRDA Regulation, 2002.

Any non-compliance on the part of the insurance companies would take away their right to plead repudiation of contract by placing reliance upon any of the terms and conditions included thereunder

राम विलास पासवान
RAM VILAS PASWAN

सत्यमेव जयते

उपभोक्ता मामले,
खाद्य और सार्वजनिक वितरण
मंत्री
भारत सरकार
नई दिल्ली - 110 001
MINISTER
FOR CONSUMER AFFAIRS,
FOOD & PUBLIC DISTRIBUTION
GOVERNMENT OF INDIA
NEW DELHI-110 001

D.O. No. J-24/18/2020-CPU/1717

17 MAR 2020

Dear Shri. K.C. Mittal Ji,

Please refer to your letter No.514/SF/2020 dated 09/03/2020 regarding inclusion of lawyers within the definition of service under the Consumer Protection Act, 2019 or the rules.

2. In this context, I would like to inform you that there is no proposal to include legal service in the rules being framed under the Consumer Protection Act, 2019. Further, at present, there is no proposal to amend the provision relating to definition of "services" in the Consumer Protection Act, 2019.

With regards,

Yours sincerely

(Ram Vilas Paswan)

Shri. K.C. Mittal
Chairman,
Bar Council of Delhi,
2/6, Siri Fort Institutional Area,
Khel Gaon Marg,
New Delhi-110049.

IRDA LATEST GUIDELINE ON MEDICAL INSURANCE

IRDA : Circular 29-5-24

Insurers are required to make available products/add-ons/riders to provide wider choice to the policyholders/prospects catering to All ages ; All types of existing medical conditions ; All pre-existing diseases and chronic conditions ; All systems of medicine and treatments including Allopathy, AYUSH & other systems of medicine.

A period of 30 days (from the date of receipt of the policy document) is available to the policyholder to **review the terms & conditions** of the policy. If he/she is not satisfied with any of the terms and conditions, he/she has the option to cancel his/her policy. This option is available in case of policies with a term of one year or more.

Cancellation – Grace period to pay Premium – Portability

No policy and claim of health insurance shall be contestable on any grounds of non-disclosure and/or misrepresentation except for established fraud, after the completion of the Moratorium Period, i.e 60 months of continuous coverage

IRDA : Circular 29-5-24

Every insurer shall strive to achieve 100% cashless claim settlement in a time bound manner. The insurers shall endeavor to ensure that the instances of claims being settled through reimbursement are at bare minimum and only in exceptional circumstances. Insurer shall decide on the request for cashless authorization immediately but not more than **ONE** hour of receipt of request. Necessary systems and procedures shall be put in place by the Insurer immediately and not later than 31-7-24.

Insurer shall grant final authorization within **3 hours** of the receipt of discharge authorization request from the hospital. In no case, the policyholder shall be made to wait to be discharged from the Hospital.

If there is any delay beyond 3 hours, the additional amount if any charged by the hospital shall be borne by the insurer from shareholder's fund

LINEAL

DESCENDANCY

What is the difference between a 'descendant' and a 'lineal descendant'.

Lineal Ascendancy / Descendancy
Indian Succession Act 1925

Sec. 25 – Lineal Co-sanguinity
*Descended in direct line from the other various degrees (*Where the descent is by lineal consanguinity, one may call it a lineal descent & the person so descending is a lineal descendant.)

Sec. 26 – Collateral Co-sanguinity
Descended from common stock of ancestors – Not direct line
(But where the relationship is by **collateral consanguinity**, one may be descendant of the other, but he cannot be said to be **lineally descended**.)

In this view of the matter, **Will a son will be a lineal descendant of the mother as well as of his grand-mother -** Irrespective of whether the mother or the grand-mother can form a line of succession under the Hindu Law.

LINEAL DESENDANCY ISSUES

Rajasthan High Court
Commissioner Of Income-Tax vs Dhannalal Devilal on 23-8-1955

FACTS -
The assessee M/s Dhannalal filed a return for the A.Y 1951-52, and claimed the benefit of the higher exemption limit**.**

The firm at that time was owned by two minors named Sita Ram & Madhav who were members of an undivided Hindu family. The family had two other members the **widowed mother and the widowed grandmother of the minors**.

The question arose whether is **view of the existence of these ladies**, and particularly the widowed mother, the assessee could claim the higher exemption limit of Rs. 7,200/-. The Income-tax Officer held that they could not.

The Appellate Asst Comm, however, held that they could. Thereupon, there was an appeal before the Tribunal which agreed with the Appellate Assistant Commissioner.

The hearing went to the Division bench & the question before the HC was **"whether a son or a grand-son can be said to be lineal descendant of his mother or grand-mother respectively"**

They require three conditions to be fulfilled before a higher exemption limit can be claimed, namely –

1. That the Hindu undivided family should have **at least two members** entitled to claim partition

2. Neither of the two members should be a lineal descendant of the other

3. Both of them should not be lineally descended from any other living member of the family. So far as the first two conditions are concerned, they are satisfied in this case. The dispute is about the third condition, namely, whether the two members, who are entitled to claim partition, are lineally descended from any other living member of the family. The two members in this case are two minor brothers, and the question is whether they are lineally descended from any other living member of the family.

It has been already held that widows of male members are members of a Hindu undivided family. Therefore the mother of the two minors is a member of the undivided family and is living. These two minors are her sons. Can they be said to be lineally descended from her or not? If they can be said to be lineally descended from her, the third condition is not satisfied, and the assessee would not be entitled to the higher limit of exemption.

The ITAT held that **the minors were not lineal descendants of their mother** because a son may be descendent of mother but **a female under Hindu Law cannot form a line of succession**. The privilege is given only to a male. The two minor sons cannot be said to be lineal descendants of the mother or the grand-mother, although they might be mere descendants' of the mother or the grand-mother.“

What is the difference between a 'descendant' and a 'lineal descendant'.

Lineal Ascendancy / Descendancy
Indian Succession Act 1925

Sec. 25 – Lineal Co-sanguinity
*Descended in direct line from the other various degrees (*Where the descent is by lineal consanguinity, one may call it a lineal descent & the person so descending is a lineal descendant.)

Sec. 26 – Collateral Co-sanguinity
Descended from common stock of ancestors – Not direct line
(But where the relationship is by **collateral consanguinity**, one may be descendant of the other, but he cannot be said to be **lineally descended**.)

In this view of the matter, **a son will be a lineal descendant of the mother as well as of his grand-mother**. Irrespective of whether the mother or the grand-mother can form a line of succession under the Hindu Law.

A son may be a descendant of the mother. A female under the Hindu Law cannot form a line of succession : The privilege is given only to a male. The two minor sons cannot be said to be lineal descendants of the mother or the grand-mother, although they might be mere descendants of the mother or the grand-mother. The emphasis by the ITAT seems to have been on the word 'lineal', and the reason why the son is not a lineal descendant of the mother is said to be the inability of the female under the Hindu Law to form a line of succession.

HC observed - Our answer, therefore, to the question put to us by the Division Bench is that **a son or a grand-son can be said to be a lineal descendant of his mother or grand-mother** respectively within the meaning of condition (b) of Clause (i) of part 1 (A) of Schedule 1 of the Indian Finance Act which prescribes Rs. 7,200/- as an exemption limit in the case of Hindu undivided family.

CORRUPTION OR HUMAN RIGHTS CANNOT BE MAIN OBJECTS OF AN NGO

CORRUPTION OR HUMAN RIGHTS CANNOT BE THE MAIN OBJECT OF THE NGO

According to the Charity Comm Maharashtra **corrected circular dated 4-7-18** , all the officials in the state are instructed that many NGO are registered under the name of Anti-Corruption Federation, Anti-Corruption Movement or Corruption Free India etc. Eliminating corruption is the job of the Govt & Govt has the power to take action against it. However, **some of the NGO's under the disguise of the anti-corruption** take actions against the authorities on the ground that they have authority, they being an NGO having main objects of anti-corruption or human rights. As a result ordinary people are deceived and these org are misused. **According to the HC, eliminating corruption cannot be the main objective of the org.**

The Govt has set up a human rights office to seek redress or to take notice of human rights violation. Many Trusts/NGOs have the word **human rights** but people misuse the name of it. Chairman in charge of Human Rights Commission, Maharashtra has sent a letter to the officer instructing to take action against such NGO. Elimination of corruption and human rights cannot be the goal of the NGO. Acc to the Maharashtra Public Trust Act, these objectives cannot be used for social, religious or educational purposes. Thus, the trustees of such registered NGO should be asked to **remove the word corruption and human rights from their NGO.**

... 3964/2018

धर्मादाय आयुक्त भवन,
३रा मजला, ८३, डॉ. ॲनी बेझंट रोड,
वरळी, मुंबई ४०० ०१८.
दूरध्वनी क्रमांक २४९३५४३४ २४९३५४९०

04 JUL 2018

सुधारीत परिपत्रक क्र. ५७३ दिनांक ०४/०७/२०१८

राज्यातील सर्व अधिकाऱ्यांना असे निर्देशित करण्यात येते की, राज्यात अनेक संस्था या भ्रष्टाचार निर्मुलन महासंघ, भ्रष्टाचार विरोधी आंदोलन अथवा भ्रष्टाचार मुक्त भारत या व इतर तत्सम नावाने नोंदविलेल्या आहेत. वास्तविकत: भ्रष्टाचार निर्मुलन हे शासनाचे काम असून भ्रष्टाचार विरोधात कारवाई करण्याचे अधिकार शासकीय यंत्रणेस आहेत. परंतु काही संस्था भ्रष्टाचार विरोधी नाव त्यांच्या संस्थेस असल्यामुळे, अधिकाऱ्यांविरुध्द किंवा व्यक्तींविरुध्द असलेल्या भ्रष्टाचाराच्या तक्रारीबाबत कारवाई करण्याचे अधिकार त्यांना आहेत अथवा त्याचे संस्थेस आहेत असे समजून कार्यवाही करतात. त्यामुळे सर्वसामान्य लोकांची फसवणुक केली जाते व या संस्थांच्या नावाचा गैरवापर केला जातो. मा.उच्च न्यायालयाच्या निर्णयानुसार भ्रष्टाचार निर्मुलन हा कुठल्याही संस्थेचा सामाजिक उद्देश असु शकत नाही.

मानवाधिकार अधिकारांचे उल्लंघन झाले तर त्याबाबत दाद मागण्यासाठी अथवा त्याची दखल घेण्यासाठी शासनाने मानवाधिकार कार्यालयाची स्थापना केली आहे. अनेक संस्थांच्या नावामध्ये "मानवाधिकार" हा शब्द असून या संस्थांच्या नावामुळे लोकांची फसवणुक केली जाते अथवा या नावाचा गैरवापर केला जातो. या अधिकारीणीस प्रभारी अध्यक्ष मानवाधिकार आयोग महाराष्ट्र यांनी पत्र पाठवले असुन या पत्रामध्ये अशा नावाच्या संस्थाबाबत कार्यवाही करण्याबाबत सुचना केली आहे. भ्रष्टाचार निर्मुलन, वा मानवाधिकार हे कुठल्याही संस्थेचे उद्देश असु शकत नाहीत अथवा संस्थेच्या नावात याचा वापर करता येत नाही. महाराष्ट्र सार्वजनिक विश्वस्त कायद्यान्वये हे उद्देश सामाजिक, धार्मिक

अथवा शैक्षणिक उद्देश होऊ शकत नाहीत. वास्तविकत: भ्रष्टाचार निर्मुलन अथवा मानवाधिकाराच्या उल्लंघनाबाबत कार्यवाही करण्याचे अधिकार शासकीय यत्रंणेस आहेत. त्यामुळे अशा नोंदणीकृत असलेल्या संस्थांच्या विश्वस्तांना नोटीस काढून त्यांच्या संस्थेच्या नावातील भ्रष्टाचार निर्मुलन अथवा भ्रष्टाचार आणि मानवाधिकार हे शब्द वगळण्यास सांगावेत, जर विश्वस्तांनी ऐकण्यास नकार दिला तर त्यांच्यावर महाराष्ट्र सार्वजनिक विश्वस्त व्यवस्था कायद्यान्वये योग्य ती कारवाई करावी.

(शि.ग.[illegible])
धर्मादाय आयुक्त,
महाराष्ट्र राज्य, मुंबई

प्रत :

१. परिपत्रक धारिणी
२. सर्व धर्मादाय सह आयुक्त
३. सर्व धर्मादाय उप आयुक्त
४. सर्व सहायक धर्मादाय आयुक्त
५. संगणक शाखा, मुख्यालय (प्रत वेबसाईटवर अपलोड करण्यासाठी)

CAN A

COMPANY BE TITLED

AS “M/s” ?

COMPANY CANNOT BE TITLED AS M/s

According to the Hon'ble Shri Justice G.S Patel in one of his hearing that companies which are both public & Pvt, professionals are habituated for using abbreviation of "**M/s**" before the name of the entity, which should not be done.

Company is not a firm, prefix is only used for firm and in title of legal proceedings.

No other prefixes can be used not even the prefixes Mr. Ms. And Mrs, as these incorrect descriptions are not carry forward to the orders, so it becomes difficult to issue the certified copies.

A circular has been passed by Bom HC on 3-4-17, that the concerned officer while **lodging the proceedings** and **scrutinizing the pleadings** shall verify the compliance of the aforementioned directions

G-/ 176/2017

CIRCULAR

IT IS OBSERVED by the Hon'ble Shri Justice G. S. Patel while hearing Chamber Summons No. 89 of 2017 in Execution Application (L) No. 198 of 2017 in Arbitration Case No. 1 of 2014, on 8th March, 2017, that for companies, both private limited and public – practitioners are habituated to affixing the abbreviation "M/s" before the name of the entity, which is completely incorrect. It is further observed that a company is not a firm, and the prefix is only ever used for a firm and that in the title of legal proceedings, no prefixes are ever to be permitted, and, for the matter, the prefixes "Mr/Ms/Mrs" are also not to be used.

It is further observed that this is necessary because where these incorrect description are not carried forward into orders, then issuance of certified copies becomes difficult.

IT IS FURTHER ORDERED that concerned Section Officer and clerk of Centralized filing and Lodging department while lodging the Proceeding and scrutinizing officers while scrutinizing the pleadings shall verify the compliance of the aforementioned directions scrupulously

HIGH COURT OF BOMBAY)
This 3rd day of April, 2017)

By Order,

sd/-
(R.M. Joshi)
Registrar (Judl.-I)
High Court, Appellate Side,
Bombay.

sd/-
(D.V. Sawant)
Prothonotary & Senior Master
High Court, Original Side,
Bombay.

COMPULSORY INSTALLATION OF CCTV CAMERAS IN POLICE STATION

CCTV CAMERA IN POLICE STATION

BOMBAY HIGH COURT WP No. 2110 of 2014

Leonard Xavier Valdaris & Ors. (Petitioners) Vs Officer-in-charge, Wadala Railway Police Station, Mumbai & Ors (Respondents)

Order dated 13-8-2014

The Bom HC observed that the number of custodial deaths in Maharashtra is alarmingly high and constitute almost **23.48%** of the total custodial deaths in the country and comparatively there is **no conviction of police officers who are accused in such cases**.

The HC directed the State Govt to immediately **install & maintain CCTV with rotating cameras in every corridor, room & lock-up of each police station so that every part of police station is covered 24 hrs of the day & tapes of the CCTV shall be preserved for a minimum period of 1 yr & responsibility of ensuring CCTV is kept operational shall be on senior police Officer-in-charge of the police station**.

BOMBAY HIGH COURT - NAGPUR
CRIMINAL APPLICATION (APL) NOS.74/201 WITH 133/2021
CRIMINAL APPLICATION (APL) NO. 74 OF 2021 Dt 23-3-21

Video recording from Mobile in Police Station

From the affidavit filed by the Commissioner of Police, it is clear that there is no material in relation to Sections 3 & 4 of the Official Secrets Act, 1923

From the allegations in the FIR , it appears that the applicants have not obstructed or created hindrance to the public officer in performance of his duty. There is no allegation that the applicants have either assaulted or in any manner used force or violence used against the non-applicant no.2. Therefore, we are satisfied that the continuance of the proceedings against the applicants would amount to abuse of process of Court

BOMBAY HIGH COURT
CRIMINAL WRIT PETITION NO.3894 OF 2022
Zishan Mukhtar Hussain Siddique
28-11-22

Para # 9 - '*Prohibited place*' as defined in section 2(8) of the Official Secrets Act, is an exhaustive definition, which does not specifically include 'Police Station' as one of the places or establishments.

Police Stations are places, where people are free to go/walk in, to lodge a complaint/FIR, to redress the wrong/injustice done to them. It is always open for the police to put up a board prohibiting photography but if one does take a photo/video, certainly, the said act would not come within the ambit of the Official Secrets Act

SC - SPECIAL LEAVE PETITION (CRIMINAL) NO.3543 of 2020
PARAMVIR SINGH SAINI …PETITIONER vs
BALJIT SINGH & OTHERS ...RESPONDENTS
2-12-20

Para # 20 - It shall further mention that CCTV footage is preserved for a certain minimum time period, which shall not be less than six months, and the victim has a right to have the same secured in the event of violation of his human rights

Para # 19 - To install CCTV cameras and recording equipment in the offices of: (i) Central Bureau of Investigation (CBI) (ii) National Investigation Agency (NIA) (iii) Enforcement Directorate (ED) (iv) Narcotics Control Bureau (NCB) (v) Department of Revenue Intelligence (DRI) (vi) Serious Fraud Investigation Office (SFIO) (vii) Any other agency which carries out interrogations and has the power of arrest.
As most of these agencies carry out interrogation in their office(s), CCTVs shall be compulsorily installed in all offices where such interrogation and holding of accused takes place in the same manner as it would in a police station.

Para # 14 - The duty and responsibility for the working, maintenance and recording of CCTVs shall be that of the SHO of the police station concerned.

ROUTINE

ADJOURNMENTS

GIVING ADJOURNMENTS ROUTINELY

SUPREME COURT SLP (Civil) Nos. 14117-14118 of 2021

Ishwarlal Mali Rathod (Petitioner) Vs Gopal & Ors. (Respondent)

Order dated 20-9-2021

Facts : The Resp (Org Plaintiffs) filed a suit for eviction, arrears of rent & mesne profits & despite repeated adjournments sought & granted by the Court (including 2 adjournments granted as last opportunity) & cost imposed, the Petitioner (Org Defendant) failed to cross examine the Resp-Plaintiff's witness.

Order : The SC observed that the task of adjournment is used to kill justice & as such any effort which weakens the system & shakes the faith of the common man in justice dispensation has to be discouraged. It was thus held that **the Courts shall not grant adjournments in routine manner & mechanically & shall not be party to cause for delay in dispensing justice**.

The SC further observed that in this example such as a suit for eviction, if the Plaintiff seeking eviction decree is not getting timely justice & ultimately gets the decree after 10-15 yrs, **the cause for getting eviction decree on the ground of personal bonafide requirement may be defeated with the litigant losing confidence in the justice system & may instead resort to other modes which have no backing of the law ultimately affecting the rule of the law**.

IS A WIFE ELIGIBLE TO KNOW HER HUSBAND'S SALARY ?

RIGHT OF A WIFE TO KNOW HUSBAND'S SALARY UNDER RTI

MADHYA PRADESH HIGH COURT

Smt. Sunita Jain *Vs*. Pawan Kumar Jain & Ors. **W.A. NO. 168/2015** &
Smt. Sunita Jain *Vs*. Bharat Sanchar Nigam Ltd. & Ors. **W.A. NO. 170/2015**
Order dated 15-5-2018

Facts : The Appellant (Wife) & Resp No. 1 (Husband) were estranged & wife was getting a sum of Rs. 7,000/- as maintenance from her husband , who was allegedly drawing a salary of more than Rs. 2,25,000/- pm working with BSNL. The Central Information Commission vide order dated 26-12-2007 passed order u/s 4(1)(b)(x) of the RTI Act, 2005 to make the info available on public domain was challenged in a Writ Petition by the Resp. heard before a Single Judge of the HC. This WP was allowed & therefore the present Writ Appeal was filed.
The controversy involved was whether the info sought **is exempt u/s 8(1)(j) of the Act or it is covered u/s 4(1)(b)(x)** which obliges the public authorities to display on public domain the monthly remn received by each of its officers & employees.

Order : The HC allowed the Appeal & held that ***"while dealing with Sec. 8(1)(j) of the Act, we cannot loose sight of the fact that the Appellant & Resp. No. 1 are husband & wife and as a wife she is entitled to know what remuneration Resp. No. 1 is getting."***

For reference, **Secs. 4(1)(b)(x) & 8(1)(j) of the RTI Act, 2005** are read as under :

"4. Obligations of public authorities.- (1) Every public authority shall-
(b). publish within one hundred and twenty days from the enactment of this Act.-
(x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations."

*"8. **Exemption** from disclosure of information.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen*
(j) Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information."

ARREST BY POLICE OFFICERS - ARNESH CASE

ARREST BY POLICE OFFICERS

SUPREME COURT CRIMINAL APPEAL NO. 1277 of 2014
SLP (CRL) NO. 9127 of 2013

Arnesh Kumar (Appellant) vs State of Bihar (Respondents)

Order passed 2-7-2014

SC Order : The SC observed that their endeavor was to ensure that police officers do not arrest accused unnecessarily & magistrates do not authorize detention casually & mechanically - Directing all the state Govts. to instruct its police officers **not to automatically arrest when a case u/s 498A of IPC is registered but to satisfy themselves about the necessity for arrest under parameters laid down flowing from Sec. 41 of Cr.P.C.**

The SC directed all police officers to be provided with the check list containing specified clauses under ***Section 41(1)(b)(ii).***

It was held that **notice of appearance in terms of Sec. 41A** of Cr.PC should be **served on Accused within 2 weeks from date of institution of case**, which may be **extended** by SP of District for reasons to be recorded in writing.

Failure to comply with the directions aforesaid shall apart from **rendering the police officers concerned liable for departmental action, also make them liable to be punished for contempt of court before High Court having territorial jurisdiction**.

These directions shall not only apply to the cases under Section 498-A of the IPC or Section 4 of the Dowry Prohibition Act, the case in hand, **but also such cases where offence is punishable with imprisonment for a term which may be less than 7 years or which may extend to 7 years**

Appeal was allowed & order dated 31-10-2013 granting provisional bail to the Appellant was made absolute.

The relevant **Sec. 41(1)(b)(ii)** of Cr.P.C for reference :

"41. When police may arrest without warrant.-(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person (b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term ***which may be less than seven years or which may extend to seven years*** *whether with or without fine, if the following conditions are satisfied, namely :- (ii) the police officer is satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the offence; or to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing."*

DIRECTIONS TO RECOVER STOLEN PROPERTY FROM JEWELLERS

RECOVERY OF STOLEN PROPERTY FROM GOLDSMITHS

The DGP through a circular dated 18-8-2009 & under the directions of the Bombay High Court issued certain guidelines for the investigating police authorities wrt investigation of suspected stolen property from jewellers/goldsmiths to prevent irregularities :

(1) Cause **minimum inconvenience** & **provide info regarding property** to be seized to the goldsmith.

(2) **Record the answer of the goldsmith** in the shop & **do not arrest** unless there is **sufficient evidence** & arrest is necessary for investigation.

(3) Conduct a **panchnama** on the spot, **search the place lawfully & seize the relevant documents** as evidence.

(4) **Sign the Register** & mention the **reason of coming** to the shop along with info about the **crime under investigation**.

(5) Presence of **authorized persons or two local witnesses** during search should be allowed.

(6) **Date & exact time of arrest** should be mentioned. The goldsmith must not be handcuffed & **use of physical force should be avoided unless necessary**.

(7) **No person other than a police officer** on legal duty may be involved in such proceedings.

(8) The **seized property should be mentioned in the FIR** if possible. However, there is **no obligation** to seize such **property** if it forms a **part of another cognizable offence**.

(9) Copy of **panchnama/seizure panchnama** should be immediately given to the goldsmith in his shop.

(10) The Police Officer should preferably carry out his investigation between **9 am - 7.30 pm** but as per **Sec. 27** of the **Indian Evidence Act** there should **no time constraint on the confiscation** to be made after statement of the Accused. Appropriate precautions to be taken while prosecuting goldsmiths u/s **411 of IPC** & if the **stolen property was not taken by a goldsmith** for any purpose he should be used as a **witness against the Accused**.

(11) Goldsmiths being **picked up illegally by police officers** from their shops under the pretext of appearing before their supervisors & **illegal demands** from police officers such as forcing goldsmiths to provide them with pure gold should be avoided.

(12) Police officers who wish to **investigate the goldsmith outside the police station** should do so only after **informing the local police station** about their intention and **involve local police officers** in their investigation.

(13) In case of jewellery being sold through the use of **bogus credit cards** and **fake receipts** to unsuspecting goldsmiths, such **goldsmiths** should be **presumed innocent** and used as a **witness in the confiscation proceedings** against the accused.

क्र. पोमसं/२३/५४/सराफ तक्रारी/९२७/२००९ मुंबई. दि. १८/०८/२००९

विषय :- सराफ व्यावसायिकांकडून संशयित चोरीची मालमत्ता जप्त करताना तपासी अधिकाऱ्यांनी पाठावयाची मार्गदर्शक तत्वे.

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परिपत्रक :

मुंबई उच्च न्यायालयाच्या असे निदर्शनास आणण्यात आले आहे की, मालमत्तेसंबंधीच्या गुन्हयांच्या तपासाच्या अनुषंगाने, सराफ व्यावसायिकांकडून संशयित चोरीची मालमत्ता जप्त करताना पोलीस अधिकाऱ्यांकडून काही अनियमितता होते. अशा प्रकारच्या गुन्हयांचा तपास करताना तपासामधील अनियमितता टाळण्यासाठी खालील मार्गदर्शक तत्वे तपासी अधिकाऱ्यांनी कसोशिने पाळावीत.

१) सराफ व्यावसायिकांकडे संशयित चोरीची मालमत्ता हस्तगत करण्याकरिता गेल्यानंतर त्यांना कमीत कमी त्रास होईल हे पाहताना, तपासी अधिकाऱ्याने त्यांना प्रथम तसेच आरोपीताकडन हस्तगत केलेल्या मालमत्तेसंबंधीची छायांकीत प्रत/माहिती द्यावी.

२) सराफ व्यावसायिकांच्या दुकानात प्रवेश करताक्षणीच उपरोक्त माहिती, पोलीस अधिकाऱ्याने त्यांना द्यावी. त्यामुळे सराफ व्यावसायिकांना त्यांचेकडील अभिलेख पडताळून संबंधीत सविस्तर माहिती पुरविणे सोयीचे ठरेल.

३) पोलीस अधिकाऱ्याने सराफ व्यावसायिकाचा जबाब शक्यतो त्यांच्या दुकानात नोंदवावा. तसेच त्यांना पोलीस पथकासमवेत येण्याची जबरदस्ती करु नये. अटकेचे अधिकार सरसकट वापरु नयेत. गुन्हयामध्ये सराफ व्यावसायिकाचा सहभाग असल्याचा पुरेसा पुरावा उपलब्ध झाल्यानंतर व तपास कामात अटक मदतीची असेल तर त्यांना अटक करण्यात यावे.

४) पोलीस अधिकाऱ्याने जागीच पंचनामा करुन सनदशीर मार्गाने जागेची झडती घ्यावी. शक्यतो मुद्येमालासंबंधीची कागदपत्रे जागेवर पडताळून, फक्त संबंधीत मुळ कागदपत्र पुरावा म्हणून जप्त करावीत.

५) सर्व सराफ व्यावसायिकांकडे ठेवण्यात आलेल्या नोंदवहीमध्ये पोलीस अधिकाऱ्याने त्या दुकानात येण्याचे त्याचे प्रयोजन तसेच संबंधीत तपासाधीन गुन्हयाबाबतची माहिती नोंदवून सही करावी.

६) सराफ व्यावसायिकांच्या संघटनेने प्राधिकृत केलेल्या व्यक्तींना किंवा दोन स्थानिक साक्षीदारांना झाडतीच्या वेळेस हजर ठेवण्याची मुभा द्यावी.

७) अटकेची अचूक तारीख आणि वेळ अटक करताना नमूद करावी. पोलीस अधिकाऱ्याने आरोपीत सराफ व्यावसायिकास बेडया घालू नये. आवश्यकतेशिवाय शारिरीक बळाचा वापर करु नये. अशा प्रसंगामध्ये पोलीस अधिकाऱ्याने उच्च प्रतीचा व्यावसायिकपणा दाखविणे आवश्यक आहे.

८) कायदेशिर कर्तव्यावर असलेल्या पोलीस अंमलदाराखेरीज इतर व्यक्ती अशा कार्यवाहीमध्ये सहभागी असू शकत नाही.

९) प्रथम खबरीमध्ये निर्देशित केलेली चोरीची मालमत्ता हस्तगत करणेकामी शक्यतो प्रयत्न करावेत. तथापि अशा कार्यवाहीमध्ये दुसऱ्या एखाद्या दखलपात्र गुन्हयातील संबंधीत अथवा चोरीची मालमत्ता असल्याचा संशय निर्माण झाल्यास ती मालमत्ता हस्तगत करण्यास बंधन नाही.

१०) पंचनामा/जप्ती पंचनाम्याची प्रत सराफ व्यावसायिकास त्याच्या दुकानातच ताल्काळ द्यावी.

११) पोलीस अधिकाऱ्याने शक्यतो सकाळी ०९. ०० वा. ते संध्याकाही १९.३० वा. चे दरम्यान सराफ व्यावसायिकाचे दुकानी कार्यवाहीकरिता जोव. परंतु भारतीय पुरावा अधिनियमाच्या कलम २७ अनुसार आरोपीने निवेदन केल्यानंतर करावयाच्या जप्तीबाबत वेळेचे बंधन नसावे. सराफ व्यावसायिकांविरुध्द कलम ४११ भारतीय दंड संहितेनुसार कार्यवाही करताना योग्य ती खबरदारी घ्यावी. एखाद्या सराफ व्यावसायिकाने चोरीची मालमत्ता कोणत्याही गैरहेतूने घेतली नसल्याचे निष्पन्न झाल्यास त्याचा आरोपीविरुध्द साक्षीदार म्हणून उपयोग करावा.

१२) सराफ व्यावसायिकांना त्यांच्या दुकानातून बेमुर्वतखोरपणाने उचलून वरिष्ठांपुढे हजर ठेवण्याच्या बाहण्याने बेकायदेशिररित्या डांबले जात असल्याबाबतच्या तक्रारी करण्यात येत आहेत. तपासी अधिकारी अशा सराफ व्यावसायिकांना भितीच्या लाथेखाली ठेवत असल्याबाबतच्या तक्रारीही प्राप्त होत आहेत.

१३) पोलीस अधिकारी सराफ व्यावसायिकांकडे शुध्द सोन्याची मागणी करुन त्यांना प्रथम खबरीतील वर्णनानुसार दागिने बनवून देण्यास भाग पाडतात. अशा स्वरुपाच्या तक्रारी करण्यात येतात. अशी गैरकायदेशिर मागणी टाळण्यात यावी.

१४) पोलीस ठाणे हद्दीबाहेर तपास करावयाचा असल्यास तो फौजदारी प्रक्रिया सहिंतेतील तरतुदीनुसार करण्यात यावा. अधिकाऱ्याने स्थानिक पोलीस ठाण्यामध्ये जाऊन त्यांच्या तेथे येणाऱ्या प्रयोजनाबाबत त्यांना अवगत करावे. स्थानिक पोलीसांना कार्यवाहीमध्ये सहभागी करुन घ्यावे.

१५) बोगस क्रेडिट कार्डाचा उपयोग करुन दागिने खरेदी केले जात असल्याच्या काही घटना आढळून आल्या आहेत. असे भामटे ते दागिने खरेदीची पावती दाखवून दुसऱ्या संशयित नसलेल्या सराफ व्यावसायिकास विकतात. त्या दागिन्यांच्या खरेदीमध्ये सराफ व्यावसायिकांचा कोणताही गैरहेतू नाही असे समजून जप्तीच्या कार्यवाहीत त्या सराफ व्यावसायिकास साक्षीदार करण्यात यावे.

तपासी अधिकाऱ्यांनी उपरोक्त मार्गदर्शक सूचनांचे कसोशिने पालन करावे. कसुर करणाऱ्यांविरुध्द कठोर खातेनिहाय कारवाई केली जाईल.

सदरचे परिपत्रक हे सलग ३ दिवस कवायतीवर अधिकारी व अंमलदारांना वाचून दाखविण्यात यावे. तसेच सदरचे परिपत्रक हे सलग ७ दिवस पोलीस ठाणेच्या सूचना फलकावर प्रदर्शित करावे.

सही/-
(रश्मि शुक्ला)
पोलीस उपमहानिरीक्षक (का. व सु.),
पोलीस महासंचालक यांचेकरिता.

प्रति,
सर्व पोलीस आयुक्त (लोहमार्ग सहीत)(बृहन्मुंबई वगळून)
सर्व पोलीस अधिक्षक (लोहमार्ग सहीत)

प्रत,
अपर पोलीस महासंचालक, रा.गु.अ.वि., म.रा. पूणे
अपर पोलीस महासंचालक, लोहमार्ग, म.रा., मुंबई.
परिक्षेत्रीय सर्व विशेष पोलीस महानिरीक्षक.

MANDATORY FILING

OF FIR U/S

154 OF CrPC

SUPREME COURT OF INDIA

Lalita Kumari (Petitioner) vs Govt. of U.P & Ors (Resp)

WRIT PETITION (CRIMINAL) NO. 68 OF 2008

Order passed on 12-11-13

FACTS-

The petitioner, a minor girl was kidnapped by local goons. Her father, Bhola Kamat went to police station to lodge an FIR which police refused. The father further went to the SP & under his direction a FIR was registered. But even then, investigation was not started and the police did not take any measure to capture the accused or recover the minor girl either. Hence, a WP was filed under **article 32** before the SC.

Judgement by SC/ Conclusion-

In view of the aforesaid discussion,

i) Registration of FIR is **mandatory u/s 154 of the CrPC**, if the information discloses commission of a cognizable offence **and no preliminary inquiry is permissible in such a situation**.

ii) If the information received does not disclose a cognizable offence but indicates **the necessity for an inquiry, a preliminary inquiry may be conducted** only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer **cannot avoid his duty of registering offence if cognizable offence is disclosed**. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The **scope of preliminary inquiry is not to verify the veracity** or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under **:**

a) Matrimonial disputes/ family disputes
b) Commercial offences
c) Medical negligence cases
d) Corruption cases
e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case **it should not exceed 7 days**. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

EVIDENTIARY

VALUE OF

WHATSAPP &

MESSAGES

SERVICE VIA WHATSAPP : EVIDENCE

BOMBAY HIGH COURT

Notice of Motion (L) No. 572 of 2017 In Suit No. 162 of 2017

Kross Television India Pvt. Ltd. & Anr Vs Vikhyat Chitra Productions & Ors

Order passed on 23-3-2017

Facts : The Plaintiff served copies of the plaint, notice of motion & an order dated 17-3-2017 on the Defendants by **Whatsapp** which were received & one of the Defendants even sent a reply. The Plaintiff had tried to serve the Defendants at the relevant addresses by courier & hand delivery and were told that the address of the Defendant had changed solely with an intention to evade or avoid service. The Defendant's mobile no. was obtained via truecaller and the Plaintiff's Advoate made an attempt to contact the Defendant along with the Whatsapp messages exchanged.

Order : The Bom HC held that the purpose of service is to put the other party to notice & give him a copy of the papers and the mode is irrelevant. The HC also stated that **email & other modes have not been approved as acceptable simply because there are inherent limitations to providing service. Where an alternative mode is used & service is shown to be effected, and is acknowledged, it CANNOT be suggested that the Defendants had "no notice".**

The **Delhi HC** in the case of *Tata Sons Ltd. & Ors. Vs John Doe(s) & Ors. decided on 27-4-2017* held that the Plaintiffs were permitted to serve the Defendant No. 9 by text message as well as through Whatsapp as well as by email and to file affidavit of service.

The **Bombay HC** in the case of *SBI Cards & Payment Services Pvt. Ltd. Vs. Rohidas Yadav decided on 11-6-2018* held that after sending a message through Whatsapp, if a blue tick appears, then the informing application is viewed as factual verification that the receiver has got the notice.

The **Supreme Court** in the case of *Ambalal Sarabhai Enterprise Ltd. Vs. KS Infraspace LLP Ltd. decided on 6-6-2020* has held that the WhatsApp messages which are virtual verbal communications are matters of evidence with regard to their meaning and its contents to be proved during trial by evidence-in-chief and cross examination..

Several cases such as the ones mentioned have come to lime light regarding the evidentiary value of electronic communications. With the growth of time & substantial importance of cyber laws, several platforms providing electronic media services came under the purview of legal clutches – Whatsapp being one such platform. ***Whatsapp chat such as texts and pictures or videos sent and received on the Whatsapp chat were accepted as evidence on criminal and civil issues***.

Sec. 2(1)(t) of the **Information Technology Act, 2000**, which defines electronic record, as amended up-to-date became the basis for insertion of **Secs. 65A & 65B** in the **Indian Evidence Act,1872**, thus enlarging the scope for admitting e-evidence within the meaning of **Sec. 3** of the **Evidence Act.**

The main objective of Secs. 65A & 65B is to **clarify the admissibility of the electronic record as evidence**. According to Section 65A, the content of electronic records can be proved by the procedure given under Section 65B.

SUPREME COURT

Transfer Petition(s)(Civil) No(s). 1859/2022

HEMLATA Petitioner vs HEMANT KUMAR Resp

Date : 15-02-2023

"……The notice is served on the sole respondent through 'whatsapp', **which is not a valid mode of service as per rules**….."

SUPREME COURT

Writ Petition - Civil No : 611 of 2020

HARDEV RAM DHAKA - Petitioner(s)

vs UOI - Respondent(s) - Date : 13-01-2023

“…. notice was served upon respondent Nos.2 and 3 through e-mail, **which is not valid service, as per rules**…”

SENDING OBSCENE MESSAGES ON WHATSAPP

BOMBAY HIGH COURT

Criminal Writ Petition No. 557 of 2018

Nivrutti Hariram Gaikwad vs The State of Maharashtra & Anr

Order dated 11-3-2020

Facts : The Petitioner (husband) sent obscene Whatsapp messages to Resp No. 2 (wife) calling her a Prostitute and that she earns money by doing business of prostitution. The wife had filed an FIR u/s 294, 500, 506 & 507 of the IPC which were registered against the Petitioner. Hence the WP.

Order : The HC held that there was **no utterance of words in any public place** but the alleged obscene messages were sent on social media i.e. **Whatsapp** which **cannot be a public place if messages are exchanged on personal accounts of two persons**. If these messages had been posted on a **Whatsapp Group**, the same could have been called as a **public place** because **all the members of the group will have access to those messages**.

However, the HC also held that **to call a woman, even if she is one's own wife a prostitute & to tell her that she earns money by indulging in prostitution amounts to insulting the modesty of a woman**. Therefore, there is prima-facie evidence to indicate that the **offence falls u/s 509 of the I.P.C**.

The **FIR was thus quashed to the extent of Sec. 294 of I.P.C**. However, the prosecution was given **liberty to carry out investigation** to ascertain whether the **offence under Sec. 509 of the I.P.C**. is made out.

The relevant **Sections 294 & 509 of IPC** have been mentioned below for reference :

"294. Obscene acts and songs.— Whoever, to the annoyance of others,
(a) does any obscene act in any public place,
Shall be punished with imprisonment of either description for a term which may extend to 3 months, or with fine, or with both."

"509. Word, gesture or act intended to insult the modesty of a woman.
Whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, [shall be punished with simple imprisonment for a term which may extend to 3 years, & also with fine].

Javed Ahmed Hajam vs State of Maharashtra

Citation : 2023 LiveLaw (Bom) 195

The Bombay High Court refused to quash an FIR against a young Kashmiri professor booked for his **WhatsApp status** terming the abrogation of Article 370 a “black day” for Jammu and Kashmir - Whatsapp status was posted “without giving any reason and without making any critical analysis of the step taken by the Central Government towards abrogation of Artl 370”

Sec. 153A of IPC applied – Cognizable, Non bailable

MESSAGES SHARED ON SOCIAL MEDIA PLATFORMS

MADRAS HIGH COURT

CRL. OP No. 12229 of 2018

S.Ve Shekhar (Petitioner) vs The Inspector of Police, Cybercrime Cell, Central Crime Branch, Chennai City Police (Respondent)

Order dated 10-5-2018

Facts : The Petitioner (Accused), who was a politician, was found forwarding **derogatory messages about women on the social media platform Facebook** and was charged under **section 504, 505 and 509 of the IPC** read with **section 4 of the Tamil Nadu Prohibition of Women Harassment Act**. The Petitioner had approached the court apprehending arrest and consequently sought **anticipatory bail.**

HC Order : The HC held that **forwarding a message is equal to accepting & endorsing the message**. What is said is important, but who has said it, is very important in a society because people respect persons for their social status.

The HC observed that talking is different from typing. Typing becomes a document & one cannot go back saying that "I have not done it". These messages are deleted & not erased. **People should not go with a feeling that "We can air anything and get away with a word *sorry*".**

The HC held that the forwarded message had **shaken the entire society in which women hold an equal citizenship with all rights without a gender disparity and thus refused to grant anticipatory bail to the Petitioner**.

WHERE IS IT

WRITTEN THAT

YOU CANNOT ??

SUPREME COURT OF INDIA

Civil Appeal No. 984 of 2006

RAJENDRA PRASAD GUPTA vs PRAKASH CHANDRA MISHRA & ORS.

Order passed on 12-1-2011

Facts :

Withdrawal of suit – change of mind – appellant filed Suit No. 1301 of 1997 before the Court of Civil Judge - **He filed an application to withdraw the suit** – Subsequently, he changed his mind and before an order could be passed in the withdrawal application he filed an application praying for withdrawal of the earlier withdrawal application – Held that : - **Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle prohibition cannot be presumed - the application praying for withdrawal of the withdrawal application was maintainable.**

FILING OF FIR

AGAINST BUILDERS

CHEATING

The DGP, Mumbai issued a circular dated 1-7-2016 relating to **offences in the construction business** on the basis of the **MOFA Act 1963 & MRTP Act 1966**.

As per the provisions of the MOFA Act, the **police authorities have the power to file charges against builders** for certain offences as mentioned below which can result in imprisonment ranging from **1yr to 3 yr to 5 yrs** – Offences due to which Police action can be taken :

(1) Builder does not provide **possession** of the flat on the due date
(2) Does not provide **OC before possession**
(3) Does not **display BMC approved maps** at the construction site
(4) Does not sign a **sale agreement even after accepting an advance of less than 20%** from the purchasers
(5) Does not open a **separate account** for money received from purchasers
(6)Does not carry out **construction as per the approved plan** or **constructs more floors than permissible**
(7) Does not apply for **registration of CHS within 4 mths** of completion of the project
(8) Does not **transfer lands & building to CHS within 4 mths** of registration

क्र.पोमसं/२२/फसवणुक /बांधकाम व्यवसाय/बिल्डर्स/२५३/२०१६ मुंबई दिनांक :- ०१/०७/२०१६

विषय : बांधकाम व्यवसायातील दखलपात्र अपराधाबाबत.

...

<u>प रि प त्र क</u> :-

महाराष्ट्र शासनाने महाराष्ट्र ओनरशिप फलॅटस् रेग्युलेशन ऑफ प्रमोशन ऑफ कन्स्ट्रक्शन, सेल, मॅनेजमेंट ॲन्ड ट्रान्सफर ॲक्ट-१९६३ [The Maharashtra Owenership Flat Act-1963 MOFA] हा कायदा तसेच महाराष्ट्र प्रादेशिक व नगररचना कायदा १९६६ [M.R.T.P. Act.] मंजुर केलेला आहे. कृपया त्याचे अवलोकन करावे.

महाराष्ट्र ओनरशिप फलॅटस् ॲक्ट मधील कलम-३, बिल्डरने फलॅटचा ताबा ठरलेल्या तारखेला दिला नाही, ताबा देण्यापुर्वी भोगवटापत्र प्राप्त करुन दिले नाही, महानगर पालिकेचे मान्य नकाशे बांधकाम ठिकाणी प्रदर्शित केले नाही. कलम-४, फलॅटच्या किंमतीच्या २०% पेक्षा कमी आगाऊ रक्कम स्विकारल्यावर बिल्डरने लेखी करार करुन दिला नाही, करार नोंदणी कायदयाप्रमाणे नोंदणी करुन दिला नाही, कलम-५, फलॅट खरेदीदारांकडुन घेतलेल्या आगाऊ रक्कमा बॅंकेत स्वतंत्र खाते उघडुन त्यात ठेवल्या नाहीत. कलम-७, मान्य नकाशाप्रमाणे बांधकाम केले नाही, मान्य नकाशापेक्षा जास्त मजले बांधले. कलम-१० बिल्डरने ४ महिन्यात सहकारी सोसायटी [गृहसंस्था] नोंदण्यास अर्ज केला नाही. कलम-११ सोसायटी नोंदणीपासुन ४ महिन्यात संपुर्ण जमीन व इमारती सोसायटीला हस्तांतरीत [Conveyance] केल्या नाहीत. इत्यादींकरीता सदर कायदयामध्ये ३ वर्षे, ५ वर्षे, १ वर्ष शिक्षेचे प्रावधान आहे. त्यानुसार गुन्हा दाखल करण्याचे पोलीसांना अधिकार आहेत. अनधिकृत बांधकाम करुन फसवणुक करणे, ग्राहकांचा विश्वासघात करणे, गृहसंस्था नोंदणी करुन न देणे, कन्व्हेयन्स डिड करुन न देणे या बाबी वरील प्रमाणे दखलपात्र अपराध आहेत.

तरी सदरहु प्रकरणी पोलीस आयुक्त / पोलीस अधीक्षक यांनी त्यांच्या कार्यक्षेत्रात अशा तक्रारी प्राप्त झाल्यास उपरोक्त कायदयातील तरतुदींनुसार आवश्यक ती कायदेशीर कारवाई करावी.

(प्रभात कुमार)
विशेष पोलीस महानिरीक्षक (का.व सु.)
पोलीस महासंचालक, महाराष्ट्र राज्य, मुंबई यांचेकरीता.

प्रति,

सर्व पोलीस आयुक्त
सर्व पोलीस अधीक्षक [जिल्हे / लोहमार्ग]

<u>प्रत आवश्यक त्या कार्यवाहीकरीता :-</u>

अपर पोलीस महासंचालक राज्य गुन्हे अन्वेषण विभाग पुणे
सर्व परिक्षेत्रीय विशेष पोलीस महानिरीक्षक

...

DCP Zone / DCP Crime / All Sr PIs

2/7/16

HOW MUCH

LIQUOR CAN BE

KEPT ?

HOME DEPARTMENT

Madam Cama Marg, Hutatma Rajguru Chowk,
Mantralaya, Mumbai 400 032, dated 19th September 2019.

Order

MAHARASHTRA PROHIBITION ACT, 1949.

No. MIS. 0919/CR 333/Exc-3.—In exercise of the powers conferred by clause (34A) of section 2 of the Maharashtra Prohibition Act, 1949 (XXV of 1949), the Government of Maharashtra hereby declares the limit for,—

(*a*) Possession of quantity of type of liquor specified in column (3) of the Schedule appended hereto, for the types of liquors as specified in column (2) thereof ; or

(*b*) Possession of the liquor specified in column (2) of the Schedule upto the value of rupees ten thousand,

as a prescribed limit for the purposes of the said Act.

Schedule

Serial No. (1)	Type of Liquors (2)	Prescribed Limit (Quantity) (3)
1	Country Liquor	2 Units.
2	Spirits (IMFL and Imported Liquor etc)	12 Units.
3	Beer	12 Units.
4	Wine	12 Units.
5	Toddy	12 Units.
6	Liquids containing Alcohol	12 Units.

Explanation—

(1) It is hereby clarified that, the quantity of the liquors in possession of more than one type of liquor specified in column 2 of the Schedule shall not be more than 12 units at a time.

(2) For the purposes of this Notification, one unit means,—

(*a*) For Country Liquor : 1000 ml
(*b*) For Spirits (IMFL and Imported Liquor etc) : 1000 ml
(*c*) For Beer : 2600 ml
(*d*) For Wine : 2600 ml
(*e*) For Toddy : 1000 ml
(*f*) For Liquids containing Alcohol : 1000 ml

By order and in the name of the Governor of Maharashtra,

P. H. WAGDE
Joint Secretary to Government.

ON BEHALF OF GOVERNMENT PRINTING, STATIONERY AND PUBLICATION, PRINTED AND PUBLISHED BY DIRECTOR DR. NAMDEO KONDAJI BHOSALE, PRINTED AT GOVERNMENT CENTRAL PRESS, 21-A, NETAJI SUBHASH ROAD, CHARNI ROAD, MUMBAI 400 004 AND PUBLISHED AT DIRECTORATE OF GOVERNMENT PRINTING, STATIONERY AND PUBLICATIONS, 21-A, NETAJI SUBHASH ROAD, CHARNI ROAD, MUMBAI 400 004 EDITOR : DIRECTOR DR. NAMDEO KONDAJI BHOSALE.

NO ARREST IS

REQUIRED IF

ATTENDED BEFORE

POLICE

Sec 41-A of Code of Criminal Procedure :

41-A. Notice of Appearance before Police Officer.

(1) The Police Officer shall in all cases where the arrest of a person is not required under provisions of sub-section (1) of Sec 41, ***issue a notice directing the person against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence to appear before him or at such other place as may be specified in the notice****.*

(2) Where such a notice is issued to any person, it shall be the ***duty of that person to comply with the terms of the notice****.*

(3) Where such ***person complies*** *and continues to comply with the notice, he shall* ***not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested****.*

(4) Where such person, at any time, ***fails to comply*** *with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by the competent Court in this behalf,* ***arrest him for the offence mentioned in the notice****.*

TELANGANA HIGH COURT

Criminal Petition No. 824 of 2022

Syed Inayatullah vs State of Telangana

Order dt 7-2-2022

Facts :

The Petition was filed u/s 438 of CrPC seeking pre-arrest bail. Petitioner's Argument – He was issued notice u/s 41-A of CrPC & has appeared before Police on 2 occasions – No receipt or acknowledgement provided by Police

Order :

The Hon'ble HC observed that it is appropriate to mention that after issuance of notice u/s 41A of CrPC, if the Police feels that the Accused has to be arrested without obtaining the permission from the Magistrate concerned, they cannot arrest the Accused.

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No.824 of 2022

ORDER

This petition is filed under Section 438 of the Code of Criminal Procedure, 1973, seeking bail to the petitioner/A.1 in the event of his arrest in connection with Crime No.109 of 2021 of Central Crime Station, WCO Team-V, Hyderabad, registered for the offences punishable under Sections 406, 420 read with Section 34 IPC.

2. The case of prosecution is that the *de facto* complainant lodged a complaint stating that in September, 2020, he came into contact with A1 through his friend Ibrahim and that A1 has introduced himself as Doctor in Virinchi Hospital and running a clinic at Narayanaguda. In January, 2021, A1 has requested the de-facto complainant to provide a sum of Rs. 45,00,000/- and assured to repay the same with good interest on or before 01.03.2021, and on believing his words, he paid an amount of Rs.25,00,000/- on 16.01.2021 and Rs.20,00,000/- on 21.01.2021 by procuring the said amounts from his friends. But, on completion of the said period, A1 and his father/A2 dodged the matter and on several requests, A1 has issued a cheque for a sum of Rs.10,00,000/-, but the same was bounced on its presentation before the Bank, thereby cheated him.

3. Learned Counsel for the petitioner Mr.Rajender Khanna, submits that earlier in Crl.P.No.8721 of 2021 filed by petitioner for pre-arrest bail, this Court has directed the police concerned to follow the procedure under Section 41-A Cr.P.C., and the guidelines formulated by the Hon'ble Supreme Court in **Arnesh Kumar v. State of Bihar**[1]. Learned counsel submits that after disposal of the said petition, petitioner was issued notice under Section

[1] (2014) 8 SCC 273

41-A Cr.P.C., and he has appeared before the police on two occasions, and whenever he appeared before them, there was no receipt of acknowledgment from the police and he was constrained to sent all the relevant material to the Director General of Police as well as Commissioner of Police. He further submits that in all the cases where notice under Section 41-A Cr.P.C., was issued, the police are not issuing any acknowledgment and some times, they are coming up saying that the accused is not cooperating with the investigation and taking steps to arrest the accused, and hence, the petitioner's case may be considered for grant of pre-arrest bail.

4. On the other hand, learned Assistant Public Prosecutor submits the police have issued notice under Section 41-A Cr.P.C., and they are already following the guidelines formulated by the Apex Court in **Arnesh Kumar's** case (supra). He further submits that the police are going to file a report before this Court in another case about the procedure to be adopted.

5. This Court has already directed the Director General of Police to frame guidelines with regard to issuance of acknowledgment in the cases where accused appears before the police under Section 41-A Cr.P.C., and the same cannot be at the whims and fancies of the police. If the accused feels that the police failed to follow the procedure under Section 41-A Cr.P.C. or the guidelines of the Apex Court in **Arnesh Kumar's** case (supra), they could as well come before this Court by filing contempt petition against the concerned police officer with relevant material to substantiate their allegations, but on this basis, they cannot seek anticipatory bail. It is appropriate to mention that after issuance of notice under Section 41-A Cr.P.C., if the police feels that the accused has to be arrested, without obtaining the permission from the Magistrate concerned, they cannot arrest the accused.

6. Accordingly, the Criminal Petition is disposed of, directing the police concerned to follow the procedure as contemplated under Section 41-A Cr.P.C., and the guidelines formulated by the Apex Court in Arnesh Kumar's case (supra).

7. Consequently, miscellaneous applications pending, if any, shall stand closed.

LALITHA KANNEGANTI, J

7th February, 2022.

sj

WASTING COURT'S TIME DUE TO ADJOURNMENTS

JSN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
NOTICE OF MOTION NO. 143 OF 2016
IN
SUIT NO. 305 OF 2016

Gillette India Ltd ...Plaintiff
Versus
Reckitt Benckiser (India) Pvt Ltd ...Defendant

Mr Nimay Dave, *i/b Mustafa Motiwala, for the Plantiff.*
Mr Sumit Raghani, *with Hardik Sanghavi i/b Agrud Partners for Defendant.*

CORAM: G.S. PATEL, J
DATED: 22nd February 2017

PC:-

1. Mr Dave for the Plaintiffs seeks several weeks' time to file a Rejoinder.

2. Far be it for me to come between Mr Dave and his filings. since Mr Dave says that there is a substantial Reply and his Rejoinder is likely to be equally substantial, the Rejoinder is to be filed and served in the Registry on or before 15th April 2017. I have no doubt that a Sur-Rejoinder will also then be necessary. Rather

than wasting time in an application for adjournment: Affidavit in Sur-Rejoinder to be filed and served on or before 15th June 2017 and this will be followed by a month's time until 20th July 2017 for an Affidavit in Sur-Sur-Rejoinder.

3. At this point all filings will stop. By then the record should have crossed at least 2000 pages. It will take any Court some time to read all this material. Hence, list the matter for direction very low on board on 3rd November 2020.

4. There is not the slightest urgency, and this is evident from the delay thus far and the application for three weeks' time for an Affidavit in Rejoinder. Parties are in the meantime free to advertise, counter-advertise and re-advertise their respective products with such a statements as they believe are permissible or as their in-house legal counsel thinks fit.

5. No application for priority hearing will be entertained; at least not until the Plaintiffs deposit in advance an amount of not less than Rs.10 lakhs to cover a potential order of costs for this attempt to consume scarce judicial time in a battle over advertisements of rival depilation products for women.

(G. S. PATEL, J.)

READY RECKONER

VALUE VIS-À-VIS

COURT AUCTION

SUPREME COURT OF INDIA - CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8281 of 2022 [ARISING OUT OF S.L.P.(C) NO 21405 OF 2010]

REGISTRAR OF ASSURANCES & ANR. …APPELLANTS

Versus

ASL VYAPAR PRIVATE LTD. & ANR. …RESPONDENTS

Dated : 10-11-22

Sale of property by court and by liquidator – Below RR value – Not accepted by Stamp duty authorities…. When a property is sold in a private sale, the registering officer has the power to determine the actual value of the property. As legal fictions are limited for the purpose for which they are created and cannot be widened by Rules made under the Act and no such fiction is required to be provided for determining the price of the property when it is sold in the open market. Thus, the definition of “Market Value” as under Section 2(16B) of the Act would not apply to the property if actually sold in the open market.

Advertisements published in the daily newspapers having wide circulation in the city or town where the property is situated is an open market sale. The court may be well advised to get the valuation of the property made by a registered valuer for the purposes of fixing the Reserve Price before issuing the advertisement in newspapers. However, this cannot be a pre-requisite as it is not always possible to get bids above the reserve price or even matching the reserve price, as was seen in the company matter. The whole basis of holding that a Court sale is an open market sale is the sanctity with which the proceedings of the sale are conducted by the court and its officers.

On the conspectus of the matter, we have not the slightest hesitation in upholding the view that the provision of Section 47A of the Act cannot be said to have any application to a public auction carried out through court process/receiver as that is the most transparent manner of obtaining the correct market value of the property… **An auction of a property is possibly one of the most transparent methods by which the property can be sold**

It is trite to say that the mere existence of tenancy results in a considerable decline in the market value of the property as they may have their statutory rights and even otherwise, the purchaser would be acquiring the property hardly in an ideal scenario and would be left with the burden to take legal processes for the eviction. In such a scenario, there is actually a great depression in the market value of the property as even if a fair transaction without an auction takes place with full reflection of price, the transacted value would be half or less of a vacant property. The tenancy aspect can hardly be said to be an aspect which could be ignored in the determination of the price.

DEFAMATION

Sec. 499 / 500 of IPC

Punishment upto 2 years of fine or both

Bombay High Court – Writ Petition No. 1204 of 2023

Dt : 9-5-24 : Naresh Rajwani vs Madhukar Thaval (ACP)

Naresh told ACP in front of others after ACP retired - *"……**Even if you are exonerated by the ACB, you are a cheater and corrupt**…"*

18). …..the prosecution has to prove the imputations, verbal or written, made by the accused, but it also has to prove that the accused made such defamatory imputations with intention of defaming, ridiculing or undermining the reputation of the person complaining of the defamation…….**the abuses by themselves may not be sufficient to constitute an offence of defamation punishable under S. 500, I.P.C….**

23). ….. To utter that a public servant was cheater and corrupt can hardly be said to be a form of abuse. Instead, if made recklessly and sans good faith such imputation, prima facie, constitutes defamation…

PERMISSION FOR RENEWAL OF PASSPORT IN CASE OF PENDING CRIMINAL PROCEEDINGS

BOMBAY HIGH COURT – ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition No. 384 of 2019

Abbas Hatimbhai Kagalwala (Petitioner) vs The State of Maharashtra & Anr (Respondents)

Order dt 23-8-2022

Facts : The Petitioner had applied for renewal of his Passport & the said Application was not entertained on the grounds, that the Petitioner should obtain permission from the Court where a criminal case was pending against the Petitioner. Hence, this WP.

The Ld Counsel for the Petitioner relied upon an SC Order passed in **Criminal Appeal No. 1342/2017 dt 27-9-21 (Vangala Kasturi Rangacharyulu vs CBI)** & argued that if a criminal case is pending, the only limitation would be that the Petitioner cannot travel abroad without permission of the Court where such case is pending.
The Ld Counsel for the Resp relied upon **Notification dt 25-8-1993 & Sec. 6.2(f) of the Passport Act, 1967** to conclude that the Petitioner has to obtain permission of the Court where criminal case is pending against Petitioner for issuance of Passport.

Order : The HC observed that the Resp's argument was based upon a **case of issuance of passport & not renewal**. The HC held that the Resp shall process the application of the Petitioner for renewal of Passport without insisting for permission of the Court, where a criminal case is pending against the Petitioner but if the Petitioner were travelling abroad, he would be required to seek permission from the Court where the criminal case is pending.

NO EXORBITANT FEES

TO BE CHARGED

FOR PROVIDING

EDUCATION

SUPREME COURT OF INDIA – CIVIL APPELLATE JURISDICTION

Civil Appeal arising out of SLP (Civil) Nos. 2969-2970 of 2021

Narayana Medical College (Appellant) vs The State of Andhra Pradesh & Ors (Respondents)

Facts : The State of Andhra Pradesh framed rules called the Andhra Pradesh Admission & Fee Regulatory Committee - State Govt enhanced the fees of MBBS Students at an exorbitant rate of Rs. 24 lakhs p.a i.e almost 7 times the tuition fee notified for the previous block period. This led to the Writ.

SC Order : The SC observed that enhancement of subject tuition fee was **wholly impermissible & most arbitrary & only with a view to favour and/or oblige the private medical colleges & the same was rightly set side by the Hon'ble HC**. Any enhancement of tuition fee without the recommendations of the AFRC would be contrary to the decision of this Court as held in the case of P.A. Inamdar & Ors vs State of Maharashtra & Ors (2005) 6 SCC 537 and the Rules, 2006. The Hon'ble SC therefore, upheld the order of the HC to quash & set aside G.O. dt 6-9-2017.

The SC observed that **education is not a business to earn profit & tuition fees shall always be affordable & held that determination of fee/review of fee shall be within the parameters of the fixation rules and shall have direct nexus on the factors mentioned in Rule 4 of the Rules, 2006**, namely :

(a) the **location** of the professional institution;
(b) the **nature** of the professional course;
(c) The **cost** of available infrastructure;
(d) the **expenditure** on administration and maintenance;
(e) a **reasonable surplus** required for growth and development of the professional Institution;
(f) the **revenue foregone on account of waiver of fee**, if any, in respect of students belonging to the reserved category and other Economically Weaker Sections of the society.

The SC held that the respective medical colleges cannot be permitted to retain the amount collected illegally pursuant to G.O. dated 06.09.2017 and therefore the Appeals were dismissed.

SC INTERPRETATION OF EDUCATION U/S 2(15) CHARITABLE PURPOSE

New Noble Educational Society

Civil Appeal 3795 / 2014 Dt : 19-10-22

Issue : Appellants claim for registration - Education object rejected /

Loka Shikshana Trust (1976) 1 SCC 254 –

Education imparting formal scholastic learning is what IT Act provides u/s 2(15)

(Read para 33)

New Noble Educational Society

Civil Appeal 3795 / 2014 Dt : 19-10-22

Conclusions in Para # 76

Our Constitution reflects a value which equates educations with charity – This is to be treated as neither business, trade nor commerce – T.M.A Pai Foundation case 2002 – (8) SCC 481

Also read para # 48, 60, 63

DEATH – EXECUTOR

PAN RELATED

ISSUES

On Death of a person (say Mohan Desai), the Executor should apply for PAN in the name of "Executors of the Estate of Mohan Desai"

Status for PAN : Artificial Juridical Person/AOP

Sec. 168 – If one Executor then assessed as Individual / If more than one, the AOP

Residency as per Deceased

Separate assessment from Individual capacity of executor - Executor to be taxed from date of death till distribution

Sec. 168

Income of the estate of a deceased person shall be chargeable to tax in the hands of the executor

If there is only ONE executor, then as if the executor were an Individual

If there are more than One executors, then as if the executor were an AOP

Executor shall be deemed resident or NR according as the deceased was .. Res or NR during the PY when the death took place - Assessment will be made separately .. That may be made on him of his own income

PRESS RELEASE

RESERVE BANK OF INDIA
www.rbi.org.in
www.rbi.org.in\hindi
e-mail: helpprd@rbi.org.in

PRESS RELATIONS DIVISION, Central Office, Post Box 406, Mumbai 400001
Phone: 2266 0502 Fax: 2266 0358, 2270 3279

June 9, 2005

Deceased Depositors' Accounts: Avoid Inconvenience and Hardships in Settlement of Claims: RBI tells Banks

In order to facilitate expeditious and hassle-free settlement of claims on the death of a depositor the Reserve Bank of India has asked the banks to follow a simple procedure with minimum documentation for release of the balance in deceased account holders' accounts which operate under 'Either or Survivor' clause or in accounts which have a nomination. The Reserve Bank has advised banks to release the balance amounts in the deceased depositors' accounts to the "Survivor(s)"/named in the Either or Survivor clause or Nominee without insisting on production of succession certificate, letter of administration, probate or obtaining any bond of indemnity or surety from the "Survivor(s)" or nominee irrespective of the amount standing to the credit of the deceased account holder. Since this will alleviate hardships faced by people, banks have been advised to give wide publicity and guidance to account holders about the benefit of operating the account under an "Either or Survivor" clause or appointing a nominee.

For accounts which do not have 'Either or Survivor' clause nor have a nomination, the Reserve Bank has asked banks to fix a minimum threshold limit upto which they could release the balance amount lying in the deceased account holders' account after obtaining a letter of indemnity and without insisting upon production of any other documents.

What else has the Reserve Bank said?

The Reserve Bank of India's instructions also cover term deposit accounts, treatment of flows and access to safe deposit lockers.

For Term Deposit Accounts:

In the case of term deposits of the deceased depositors, the Reserve Bank of India has asked banks to allow premature termination without any penal charge in the event of the death of the term deposit holder. The Reserve Bank has asked banks to incorporate such a clause in the term deposit account opening form itself.

For Income flows received after the death of a depositor:

For pipeline flows, that is, any income, such as, interest or dividend warrants, that may continue to be received for credit to the deceased depositors' accounts, the Reserve Bank has suggested some courses of action which banks may consider taking only after being authorized to do so by the legal heirs. The banks may open an account styled as "Estate of Shri _____, the Deceased" in which all such payments could be credited provided no withdrawals are made from such accounts. Alternatively, the banks could return such payment advices to the remitter with the remark "account holder deceased" and intimate the survivor/nominee/legal heir of

such return so that the survivor/nominee/legal heir could take the necessary action to get the payment made to the appropriate beneficiary.

For allowing Access to Locker:

The Reserve Bank has asked banks to generally follow the same procedure while allowing access to safe deposit lockers or safe custody articles to the 'survivor' or nominee of the deceased depositor.

Time limit for Settlement of Claims:

The Reserve Bank has further asked banks to settle the claims and release the payments to the "Survivor" under the Either or Survivor clause or nominee in respect of the deceased depositors accounts within 15 days from the date of receipt of the claim on production of proof of death of the depositor and suitable and satisfactory identification of the claimant. Banks have been advised that any unwarranted inconvenience or hardships to such claimants would invite serious supervisory disapproval.

What more do the banks need to do?

The banks are required to report, at regular intervals, the number of claims received pertaining to the deceased depositors and locker-hirer accounts and pending beyond 15 days to their Customer Service Committee of their Boards along with the reasons for which they are pending. The Reserve Bank has further asked the Indian Banks' Association to formulate, on the basis of RBI instructions, a model operational procedure for settlement of claims of the deceased constituents under various instances for adoption by banks. The banks have also been asked to publicise and guide the deposit account holders about the benefits of nomination facility and survivorship clause.

Alpana Killawala
Chief General Manager

Press Release: 2004-2005/1298

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 243 OF 2017
IN
TESTAMENTARY PETITION NO. 1546 OF 2013

Ramchandra Bhikaji Ravte & Anr ...Applicants
In the matter between
Ramchandra Bhikaji Ravte & Anr ...Petitioners
Versus
The Saraswat Co-operative Bank Ltd ...Respondent

Mr Aniket Ramsubhei, i/b Ajay Basutkar, *for the Applicants.*
Mr Bhupesh V Samant, *a/w SV Ghaisas, for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 23rd January 2018

PC:-

1. The Petitioners are executors appointed under the last Will and Testament dated 12th October 2010 of one Shivraj Arjun Keer. Probate was granted on 30th December 2016. The deceased had a bank account and a fixed deposit with the Saraswat Co-operative Bank Ltd, Dadar (West) Branch, the Respondent. The executors asked the bank to transfer the amount lying in that account to their names. The bank insisted that the Petitioners open a separate bank account showing their names as 'executors of the estate of Shivraj Arjun Keer' and that they obtain a PAN card in such capacity, i.e.,

as executors. The Petitioners say that other banks have not made this demand.

2. It is irrelevant what other banks have done. What the Respondent bank has asked for is completely correct and is in strict conformity with statutory provisions. There is no question of allowing the Petitioners to intermingle estate funds with their own. These have to be in a separate account and a separate PAN card has to be obtained.

3. The Notice of Motion is dismissed. No costs.

(G. S. PATEL, J)

ATTRACTION OF

PMLA FOR

INTENTION TO BRIBE

SUPREME COURT OF INDIA – CRIMINAL APPELLATE JURISDICTION

Criminal Appeal arising out of SLP (Crl) No. 2668 of 2022

Directorate of Enforcement (Appellants) vs Padmanabhan Kishore (Respondents)

Order dt 31-10-2022

Facts :

The Resp had allegedly handed over a sum of Rs. 50 lakhs to a public servant, which transaction & the surrounding circumstances were projected in FIR dt 29-8-2011, leading to registration of crime under Section 120B of IPC & Secs. 7, 12, 13(1)(d) read with Sec.13(2) of the Prevention of Corruption Act, 1988. Later, a case was registered by the ED against the accused including the Resp u/s **3 & 4 of PMLA**.

The Hon'ble HC quashed the proceedings under PMLA & accepted the Resp's submission that the amt in question, as long as it was in the hands of Resp, could not be said to be tainted money - that it assumed such character only after it was received by the public servant and as such the Resp could not be said to be connected with proceeds of crime.

Hence, this Appeal.

SC Order :

The SC observed that while it is true that the amt would be untainted money as long it is in the hands of bribe giver & till it does not get impressed with the requisite intent & is actually handed over as bribe, **the crucial part is the requisite intent to hand over the amount as bribe & normally such intent must necessarily be antecedent or prior to the moment the amt is handed over**.

Such requisite intent would always be at the core before the amt is handed over & in case of such an intent being entertained, the person concerned would certainly be involved in the process or activity connected with *"proceeds of crime"*, including inter alia, the aspects of possession or acquisition thereof.

By handing over money with the intent of giving bribe, such person will be assisting or will knowingly be a party to an activity connected to the proceeds of crime & the relevant expressions from **Sec 3 of PMLA** are wide enough to cover the role played by such a person.

Appeal allowed & HC Judgement set aside. PMLA applied on bribe giver

GENERAL CLAUSES

ACT 1897

(10 OF 1897)

Sec. 2(56) – Sign : With its grammatical variations and cognate expressions, shall , with reference to a person who is unable to write his name, include “mark” with its grammatical variations and cognate expressions.

{ Grammatical variations and cognate expressions refer to different forms of words or phrases that are related in meaning and derived from the same root }

Sec. 5 – When an Act comes into operation

Sec. 9 – When stated commencement “from” .... Means starting from the next day - And “to” includes the day mentioned

Sec. 27 – Service by post means when the letter is delivered in the ordinary course with a properly address on it.

Sec. 28 – Citation of enactment .. Like 10 of 1897

RIGHT OF CHILDREN TO FREE & COMPULSORY EDUCATION ACT 2009

Sec. 17 – No child shall be subjected to physical punishment or mental harassment – Else disciplinary action under service rules

SCHOOOL TEACHER BEATING STUDENTS

Physical Force Used Only To Correct Schoolchild Is Not An Offence : BOM HC acquits Teacher In Corporal Punishment Case

Rekha @ Vidhila Faldessai vs State - 2023 LiveLaw (Bom) 73

In a corporal punishment case, the Bom HC held that use of some physical for force by school teacher, with no mala fide intention, only to correct the child does not constitute an offence under Section 324 of the IPC - Observed that teachers are the backbone of our education system & it would be difficult to maintain discipline in school if they are constantly under the fear of trivial allegations

CAN INSURANCE BE DENIED TO VEHICLES NOT HOLDING A PUC CERTIFICATE ?

PRESS RELEASE REGARDING VALID PUC CERTIFICATE AT THE TIME OF RENEWAL OF MOTOR VEHICLE INSURANCE

The Insurance & Regulatory Development Authority (IRDA) issued a press release dt 26-8-2020 (Ref. No. 2020) referring to a circular dt 6-7-2018, conveying the directive of the Hon'ble Supreme Court in *WP(C) No. 13029 of 1985 (M.C. Mehta vs Union of India)* to all General Insurance Companies to ensure that the vehicle must have a valid PUC certificate at the time of renewal of motor vehicle insurance. This was reiterated through another circular issued on 20-8-2020.

The IRDA clarified through this press release, that contrary to misleading media reports, NOT holding a valid PUC certificate is not a valid reason for denying any claim under a motor insurance policy.

Print Document

Press Release

Ref: 2020 **Date:** 26-08-2020

Press Release regarding valid PUC certificate at the time of renewal of motor vehicle insurance

सन्दर्भ सं / Ref. No:2020 दिनांक / Date:26-08-2020

मोटर वाहन बीमा के नवीकरण के समय विधिमान्य पीयूसी प्रमाणपत्र के संबंध में प्रेस प्रकाशनी

Press Release regarding valid PUC certificate at the time of renewal of motor vehicle insurance

1. प्राधिकरण ने सभी साधारण बीमा कंपनियों को 1985 के डब्ल्यूपी (सी) सं. 13029 (एम.सी. मेहता बनाम भारतीय संघ) में माननीय सर्वोच्च न्यायालय के निर्देश को सूचित करते हुए यह सुनिश्चित करने के लिए कि मोटर वाहन बीमा के नवीकरण के समय विधिमान्य पीयूसी प्रमाणपत्र अनिवार्यत: होना चाहिए, एक परिपत्र 6 जुलाई 2018 को जारी किया था। यह बात 20 अगस्त 2020 को एक अन्य परिपत्र के द्वारा दोहराई गई है।

The Authority had issued a circular on 6th July, 2018 conveying the directive of the Hon'ble Supreme Court in WP(C) No.13029 of 1985 (M.C. Mehta Vs Union of India) to all General Insurance companies to ensure that the vehicle must have a valid PUC certificate at the time of renewal of motor vehicle insurance. This has been reiterated through another circular on 20th August, 2020.

2. तथापि, इस आशय की कुछ भ्रामक मीडिया रिपोर्टें हैं कि यदि दुर्घटना के समय विधिमान्य पीयूसी प्रमाणपत्र नहीं है, तो मोटर बीमा पालिसी के अंतर्गत दावा देय नहीं है।

However, there are some misleading media reports to the effect that if there is no valid PUC certificate at the time of accident, claim under a motor insurance policy is not payable.

3. इसके द्वारा यह स्पष्ट किया जाता है कि विधिमान्य पीयूसी प्रमाणपत्र धारण न करना किसी मोटर बीमा पालिसी के अंतर्गत किसी दावे को अस्वीकार करने के लिए युक्तियुक्त कारण नहीं है।

It is hereby clarified that not holding a valid PUC certificate is not a valid reason for denying any claim under a motor insurance policy.

REGISTRATION ACT

1908

REFUSAL OF DOCS

Sec. 17(1) – Compulsory registration of documents

Gifts / any document which creates, declares, assign , limit, extinguish (CDALE) in right / title / interest immovable property of more than Rs. 100/-

Leases for more than 1 year

Sec. 17(1-A) – Any transfer for consideration of immovable property u/s 53-A of TOPA 1882

Sec. 18 – Optional registration of documents

Wills or any Instruments which purport to CDALE any right, title or interest in movable

Sec. 20 Registration officer can refuse registration of any docs containing blanks, erasures or alterations

Sec. 21 - Proper description of Subject property & maps or layout/plans

Se. 23/25 - Within 4 months of extended period of 4 months (on fine of upto 10 times of Regn fee)

Sec. 12/34 – Document executed by several persons at different times – Registration 4 months from each such execution

Sec. 26 - Document executed outside India, may be registered within 4 months of parties from arrival n India

Sec. 33 – POA should be registered / Abroad then Notary or Consulate

Sec. 33(2) – If Registrar satisfied that POA is voluntarily executed by Principal, he may attest without physical presence

Sec. 49 – Non registration – Not to be received as evidence – Not affect any Immovable property – confer any power

Sec. 52 – Duties of registration officer – Check the parties identity (Not title)

Sec. 40 / 41 – Will can be registered even after the death of the Person ?? Fulfil conditions !!

Sec. 47 – A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration

Part XII – Sec. 71 to 77 Refusal to register

Sec. 71 – Regn can be refused – record reasons in Book No. 2 and put stamp "registration refused" on the document

And give copy of such reasons on demand

Sec. 72 - Appeal against this to Registrar – 30 days –

Against this Suit before Civil Court u/s 77

Bom HC : WRIT PETITION NO. 1966 OF 2012

Deep Apts case Order dt : 10-10-12

Refusing to register - order of refusal sets out various provisions of various legislations which are claimed not to have been complied

It may be mentioned that the registration of a document shows nothing other than the fact that the document which is executed is admitted to have been executed or is executed before the Registering Authority. It does not prove the contents of the document. It is settled law that even certified copies issued by the Registering Authority do not prove the truth of the contents of the documents. They only prove the fact that the document was indeed registered as per procedure

Gopal s/o Dwarkaprasad Pandey Vs. District Collector, Bhandara & Anr. 2003(3) Mh.L.J. 883 and in **Mrs. Ashwini Ashok Kshirsagar Vs. The State of Maharashtra [Criminal Application No. 821 of 2010]** that the Registering Authority cannot refuse to register on the ground of absence of the title of the
executants or on the ground of defect of his title to the property. It is observed that such a requirement would be opposed to public policy

Bom HC : WRIT PETITION NO. 1966 OF 2012

Deep Apts case : Order dt : 10-10-12 / Refusing to register

It is only the Civil Court which would consider the title. There is nothing in the Registration Act or the Registration Manual to empower the Registrar in seeing or satisfying himself about the title of the vendor. Hence registration entails nothing more than the factum that the executants or their agents attended before the Registrar and admitted the execution of the document.

It was argued on behalf of the respondents that there are many instances where the parties without any title seek to transfer such purported title which they do not have and legitimize the illegal act by the process of registration. That may be the ground reality. The Registering Authority , being conscious of such a fact, may consider himself obliged to prevent transfers by such illegal acts. However the jurisprudential rule that none can transfer a better title than what he has is indeed as elementary as it is basic. The Registering Authority, therefore, need not be take open itself the duty of a Civil Court which alone would go into question of title upon it being challenged. The law in that behalf is clear.

What do you mean by Execution of a document

Is only signing enough

Supreme Court – Civil Appeal No. 2929 of 2022

Dated 10-5-22

Veena Singh vs District Registrar

Execution cannot be equated with merely signing a document. Hence, even if a person‘s signature on the document admitted, they can still deny its execution if they did not agree to or understand the contents of the document while signing it.

Witnesses play a major major role

What do you mean by Execution of a document

Is only signing enough

Supreme Court – Civil Appeal No. 2929 of 2022 Dated 10-5-22

Veena Singh vs District Registrar

Stamp Act 1899 - Section 2(12) defines —executed and execution in the following terms:

Executed and execution.— Executed and execution, used with reference to instruments, mean signed and signature and includes attribution of electronic record within the meaning of Section 11 of the Information Technology Act, 2000

NOW SOMETHING NEW IN THIS LAW

Hafeeza Bibi & Ors. vs
Shaikh Farid (Dead) by LRs. & Ors.
Supreme Court of India

Appeal Number : Civil Appeal No. 1714 of 2005
Date of Judgement/Order : 05/05/2011

A gift of immovable property made by a Muslim is valid even if it is not registered under the Transfer of Property Act or the Stamps and Registration Act, the Supreme Court today ruled. The apex court said though the TP Act mandates registration of a gift, the same would not apply to a Muslim donor as the community has been exempted from the provision.

UCC ??

PARTNERSHIP ACT

RELATED

Supreme Court

Civil Appeal No. 4729 of 2024 / 05.04.2024
Annapurna B. Uppin Vs. Malsiddappa and Ors

Para # 8

The law is well settled that legal heirs of a deceased partner do not become liable for any liability of the firm upon the death of the partner.

INHERITANCE

OF TENANCY

RIGHTS

Sec 7(15)(d) of the Maharashtra Rent Control Act reads as under :

“in relation to any premises, when the tenant dies, whether the death occurred before or after the commencement of this Act, any member of the tenant's family, who,-

(i) where they are let for residence, is residing, or
(ii) where they are let for education, business, trade or storage, is using the premises for any such purpose,

with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided, in the absence of agreement, by the court.”

BOMBAY HIGH COURT – CIVIL APPELLATE JURISDICTION

Writ Petition No. 2371 of 1997

Vasant Sadashiv Joshi & Ors (Petitioners) vs Yeshwant Shankar Barve, since deceased through his legal heirs & Ors (Respondents)

Order dt 3-1-2020

Facts : The Petitioner (tenant) had suffered eviction from the suit premises, which had the Resp as landlords, at the instance of the lower appellate Court under its order dt 1-11-1997. One of the questions before the Hon'ble Bom HC was whether more than one member of the deceased tenant's family could claim an independent right in respect of the tenancy in light of **Sec 5(11)(c)** of the Bombay Rent Control Act – now **Sec 7(15)(d)** of the Maharashtra Rent Control Act, 1999?

According to **Section 7(15)(d) of MRCA** and **Section 5(11)(c) of the Bombay Rent Act (now no longer in existence)**, upon the death of a tenant, the tenancy **passes on to a member of tenant's family** who has been residing with the deceased tenant or operating the premises for commercial purposes at the time of his death.

Order : The Hon'ble HC held that the tenancy rights cannot be inherited by a Joint Hindu Family as a unit & further held that a person cannot claim an independent right or inheritance of tenancy in a premise simply by virtue of him/her being a member of the deceased tenant's family.

Some Citations provided by the Hon'ble Bom HC :

In ***Vimlabai Keshav Gokhale vs Avinash Krishnaji Binjewale & Ors (WP No. 2311 of 1991) Order dt 19-6-2003***, the contention of the Resp therein that Sec 5(11)(c) of the Bombay Rent Act would enable each & every member of the tenant's family to claim an independent right in respect of the tenancy, was rejected by the Bom HC & it was held that any member would mean *"any one member"*.

In ***Smt Parvatibai w/o Bandu Marathe vs Smt Radhabai Chaggan Bhandarkar decd by her legal heirs (WP No. 4969 of 1998) Order dt 2-6-2017***, a single judge of the Bom HC held that it is only one member of the family who can be recognized as a tenant by the Court & not all members residing in the premises at the time of demise of the Org tenant.

In ***Shamkant Tukaram Naik vs Dayanabai Shamsan Dighodkar (Contempt Petition No. 89 of 1986) Order dt 21-2-1989***, a learned Single Judge of the Bom HC held that the words "any member of tenant's family residing with the tenant at the time of his death" as used in Section 5(11)(c) would not enable each & every member of the tenant's family to claim independent right in tenancy, in respect of tenanted premises & it was held that any member would mean only one member.

In ***Zahid Ahmed Ali Mazgaonwalla & Anr vs Smt Gulshan Pyarali Mazgaonwalla (First Appeal No. 46 of 2000 in LC Suit No. 1743 of 1992) Order dt 11-7-2006***, the HC held that tenancy could not have been bequeathed on the basis of a will.

CONTRADICTORY CLAUSES IN AN AGREEMENT

Supreme Court

Criminal Appeal No. 523 of 2024 / Dt : 31-1-24

Bharat Singh vs State of Bihar

Para # 30

"….the earlier clause(s) would prevail over the later clause(s), when construing a Deed or a Contract. Reference for such proposition is traceable to Forbes v Git, [1922] 1 AC 2564, as approvingly taken note of by a 3-Judge Bench of this Court in Radha Sundar Dutta vs Mohd. Jahadur Rahim, AIR 1959 SC 24…"

If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the later clause is to be rejected as repugnant and the earlier clause prevails

RIGHT TO BE FORGOTTEN

Bombay High Court
Writ Petition – 3499/21
ABC : 28-2-22

Masking the name of the petitioner in

Physical records

Right to Privacy/Forgotten/Right to be left

alone Putuswamy case – Aadhar

Criminal case under IT Act

Each case on independent merits

AND NOW A

JUDGEMENT OF BOMBAY

HIGH COURT ON A

LIGHTER NOTE IN 2013

Bombay High Court
Criminal Writ Petition – 1627
Vijay Lahu Patil – 6-9-13

Held – We were unaware that the law required anyone to give an explanation for having tea, whether in the morning, noon or night. One might take tea in a variety of ways, not all of them always elegant or delicate, some of them perhaps even noisy. But we know of no way to drink tea ‘suspiciously’. The ingestion of a cup that cheers demands no explanation. And while cutting chai is permissible, now even fashionable, cutting corners with the law is not.

ONE MORE PIECE OF INFORMATION

File No.T-11014/12/2016-General-I

T-11014/12/2016-General-I
Government of India
Ministry of Health & Family Welfare
Department of Health & Family Welfare
General-I Section

NirmanBhawan, New Delhi,
Dated the 30/09/2022

OFFICE MEMORANDUM

Subject: - Personal/private vehicles owned by Government employee.

In terms of Department of Expenditure's OM No.18(23)/E-Coord.2021 dated 01.09.2022 on the subject mentioned above, private/personal vehicles owned by the Government Employees shall not be permitted to mention "**Government of India**" on their vehicles.

2. All Officers/staffs of the Ministry may please note the above direction for strict compliance.

Digitally Signed by K Venkatesan
Date: 30-09-2022 11:34:27
Reason: Approved
(K Venkatesan)
Under Secretary to the Govt. of India

To

All Government Employee of MoHFW (through eoffice)

THANK YOU

CA RAJESH SANGHVI

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