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DR. RAJENDRA PRASAD

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About the Journal

Annual Survey of Allahabad Law is an open-access journal published annually by Dr. Rajendra Prasad National Law University, Prayagraj.

The journal provides a structured and academically grounded annual review of the judgments of the Allahabad High Court by critically examining judicial decisions, identifying doctrinal shifts, highlighting emerging legal patterns, and situating these developments within the broader socio-economic context.

The areas of focus include Administrative Law, Civil Procedure Code, Constitutional Law, Corporate Law, Criminal Law and other major areas of law reflecting sustained academic engagement with the Court's decisions during the year under review.

The Annual Survey of Allahabad Law invites contributions that strengthen these themes through careful analysis, doctrinal clarity, and contextual understanding of judicial developments.

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ANNUAL SURVEY OF ALLAHABAD LAW

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Arun Bhansali
Chief Justice
High Court of Judicature at Allahabad

November 25, 2025.

FOREWORD

It gives me great pleasure to commend Dr. Rajendra Prasad National Law University, Prayagraj, for publishing the inaugural volume of the *Annual Survey of Allahabad Law (ASAL)*. This initiative represents an important contribution to institutional legal scholarship.

The Allahabad High Court holds a distinguished place in India's constitutional history. For over a century and a half, landmark judgments of Allahabad High Court indeed have left lasting impact in national legal discourse, strengthening constitutional values, and guided the evolution of civil liberties, procedural fairness, and delivered social justice. Its decisions continue to influence courts across the country and provide clarity to practitioners, scholars, and students.

Annual Survey offers a comprehensive survey of landmark decisions across major areas of law. The analyses presented here move beyond case summaries to examine doctrinal shifts, identify emerging trends, and place judicial reasoning within a broader socio-legal context. This Volume will serve as a reliable reference for legal professionals, academicians, judicial aspirants, and policymakers.

I congratulate the editors, contributors, and the University for this commendable initiative. I am confident that the *Annual Survey of Allahabad Law* will grow into an authoritative annual record, enriching both legal scholarship and practice in the years to come.

(Arun Bhansali)
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Foreword

Professor (Dr). Usha Tandon marks and maps an important juristic contribution by an act of imagination that now results into this inaugural edition of Annual Survey of Allahabad Law [ASAL]. It is important to recall that this venerable institution was initially located at the Accountant General's office within the University of Allahabad complex. It is well-worth remembering that a very close connection thus exists between legal studies, universities, justice, and democratic accontability.

The High Court of Judicature at Allahabad, as is known since 11 March 1919, has a cluster of brilliant Justices, many of whom have adorned the Supreme Court of India, and High Courts in India and made significant normative contributions. The constitutional spirit of secularity is forever in display. As is well known, the Allahabad High Court was constructed by Khan Saheb Nizamuddin of Loha Mundi, Agra, India, who also is reported to have gifted a water fountain to the High Court.

Of course, the Annual Survey of Indian Law [ASIL] published by the Indian Law Institute contains many analyses of Allahabad High Court's judicial and juridical labours. That engagement will, one hopes, continue in its full splendour, if only because it may provide a comparative (India-wide) account of judicial discourse. But as the learned contributions in the first issue demonstrate, in the fullness of their contributions, a specific engagement with Allahabad High Court is normatively nourishing and empirically enriching.

A Survey is always more than a survey! This is so, despite the tendency of many learned authors, to write that 'in this case'... and 'in the other' 'the Court decided this or that'. Such a narrative style fatigues the reader, who in any case is looking for more than the ratio of a case. Important as is to ascertain the outcome of a case or controversy, it is enchanting to pursue the real reasons which are often submerged often in the debris of a long winded judicial discourse.

Professor Karl Lewellyn always taught the first semester course in Chicago Law School and he proverbially began his class by asking his students that they should not 'look at what judges say but what they do with what they say'. Law saying is always performative, and as Professor Julius Stone never tired of reminding us every case has multiple rationes and not a single ratio, thus offering further leeway of choice.

I very much hope that ASAL will illuminate our reading habits and styles and help continue to promote fresh readings of judicial discourse. I must immediately add that such reading is very remote from fast machine reading; a view which I have elaborated many times in my writings. I very much hope that the ASAL will contribute to the virtues of slow reading as against speed reading. As Paul Virilo used to say in his great little book Speed and Politics (1977), dromology (the science of speed) may eventually overcome democracy.

Professor Usha Tandon's exemplary academic leadership in bringing out ASAL reflects her longstanding commitment to legal scholarship. The ASAL model, well started by her should encourage similar strivings for other States and Union Territories. Such a spread will be a just contribution to celebrations of 75+ constitutionalism of India.

Upendra Baxi,
26 November 2025

From the Desk of Editor-in-Chief

It is with immense pleasure that I present the Inaugural Volume of the *Annual Survey of Allahabad Law (ASAL)*, published by Dr. Rajendra Prasad National Law University, Prayagraj. Motivated by the longstanding legacy of the *Annual Survey of Indian Law (ASIL)*, published by the Indian Law Institute, New Delhi, since 1965, I drew inspiration to publish the *ASAL.* The primary objective of *ASAL* is to present a rigorous, authentic and systematic review of legal developments emanating from the Allahabad High Court, one of India's most significant and influential Constitutional Courts. The Allahabad High Court, with its historic legacy and wide jurisdiction, plays an instrumental role in shaping the legal discourse significantly influencing the development of law and justice.

In this digital age, while various digital platforms offer plentiful online case summaries, and case analyses, the reliability of such popular legal material is often questionable. In this scenario, *ASAL aims to* offer a credible and scholarly review of the legal developments flowing from the Allahabad High Court. What distinguishes this survey from other publications is that its academic foundation is provided by eminent legal scholars and experienced academicians having long-standing expertise in their respective areas of specialization. Their analyses do not merely list judgments; they evaluate doctrinal shifts, highlight emerging legal patterns, and contextualize the decisions within broader legislative and policy frameworks. Through their expertise, the survey provides readers with clarity, depth, and a grounded understanding of the judicial trends of Allahabad High Court that shaped the year.

The Inaugural Volume covers eleven key legal fields: Administrative Law, Civil Procedure Code, Constitutional Law, Corporate Law, Criminal Law, Environmental Law, Family Law, Intellectual Property Law, Labour Law, Property Law, and Women and Law. Each Chapter reflects sustained academic engagement with the Allahabad High Court's decisions and provides critical insight into their impact on legal thought and practice. This ensures that the publication meets the needs of a diverse readership that includes researchers, academicians, scholars, practicing lawyers, judicial aspirants, and policymakers etc. The University will gradually expand the horizon of *ASAL* to include other significant branches of law in the years to come.

The preparation of this Inaugural Edition has been a collaborative effort. I extend my sincere gratitude to our distinguished contributors whose scholarship and dedication have shaped the quality of this Volume. I also acknowledge the efforts of the Editorial Team who has worked diligently to bring this annual survey to completion. Dr. Prakash Tripathi and Yash Saxena deserve special mention for their meticulous editing of the final drafts.

I express my deep gratitude to Hon'ble Mr. Justice Arun Bhansali, Chief Justice, Allahabad High Court and Hon'ble Chancellor, RPNLU, Prayagraj for graciously contributing an insightful and inspiring foreword that enriches the intellectual depth of this inaugural edition of the *Annual Survey of Allahabad Law*.

I extend my heartfelt appreciation to Prof. Upendra Baxi, Professor Emeritus University of Warwick and Delhi for being a guiding light whose teaching and mentorship have deeply enriched my academic journey. I am profoundly thankful for his erudite and scholarly foreword, which profoundly elevates the academic rigour and critical vision of this publication.

As we present the first Volume of the *Annual Survey of Allahabad Law*, we reiterate our dedication to quality research and the progression of legal scholarship. It is our hope that this publication will serve as a reliable and authoritative point for all those who seek to understand and engage with the evolving jurisprudence originating from the prominent Allahabad High Court.

We invite valued feedback from our esteemed readers, whose engagement will shape the growth and direction of this publication in the years to come.

Date: 29-11-2025

Sr. Prof. (Dr.) Usha Tandon
Vice-Chancellor
RPNLU, Prayagraj

Administrative Law

*Priti Saxena**

1. Introduction

Administrative Law is a branch of public law that governs the activities of administrative authorities of the government. In principle, it deals with the powers and functions of administrative authorities and the legal remedies available to citizens against the actions or inactions of these authorities. Unlike other branches of law, administrative law is not a codified body of law but has evolved through judicial decisions and legal principles that includes natural justice, fair play in action, rule of law, etc.

The present survey addresses the jurisprudence on administrative law during 2024 on the decisions delivered by the Allahabad High Court in the key areas of natural justice and rule of law only, as there were very few cases in the fields of adjudication, rule-making etc. and that too with no landmark change in the existing literature. As part of this survey, the past year seemed to offer ample opportunities to further shape jurisprudence, ensuring that administrative law functions more effectively and efficiently. However, while reviewing the cases on administrative law, the author could not find any ground breaking decision that offers a new orientation to the existing literature on the subject, one that could have been upheld as a foundational principle and guiding jurisprudence. However, in this survey the cases on Natural justice have been reviewed considering these principles as the central point of administrative actions.

The principles of natural justice apply both to quasi judicial as well as administrative inquiries entailing civil consequences. Administrative law is a sister concern of Constitution of India, also protects the fundamental rights of citizens, as guaranteed by the Constitution of India. In *A.K. Kraipak* v. *Union of India*[1] the court emphasised on "the aim of the rules of natural justice is to secure justice or to put it negatively, to prevent miscarriage of justice and justice, in a society which has accepted socialism as its article of faith in the Constitution is dispensed not only by judicial or quasi-judicial authorities but also by authorities discharging administrative functions." In *Maneka Gandhi* v. *Union of India*[2] also the application of principle of natural justice was extended to the administrative action of the State and its authorities. In *Union of India* v. *Tulsi Ram Patel*[3] to know what is natural justice, the court referred that 'natural justice has been variously defined by different judges,

* Vice-Chancellor, Himachal Pradesh National Law University, Shimla.

[1] (1969) 2 SCC 262.

[2] (1978) 1 SCC 248.

[3] (1985) 3 SCC 398.

a few instances will suffice'.[4] The principles of natural justice (*nemo judex in causa sua*[5] the rule against bias and *audi alteram partem*[6] the right to a fair hearing), ensures fairness and transparency in all administrative processes. Further, recording of reasons is a principle of natural justice and every judicial/quasi-judicial order must be supported by reasons to be recorded in writing. It ensures transparency and fairness in the decision-making process. The person who is adversely affected wants to know as to why his submissions have not been accepted. Giving of reasons ensures that a hearing is not rendered as a meaningless charade.[7]

This legal framework is crucial for a welfare state like India, where the government plays a significant role in the lives of its citizens. Without it, administrative actions could become arbitrary and oppressive, undermining the democratic and constitutional framework of the country. The administrative law provides a mechanism for judicial review, allowing citizens to challenge administrative actions[8] in court. This ensures that a person whose rights have been violated by an administrative decision can seek a remedy. For example, if a government agency unfairly denies a license or permit, the affected individual can challenge that decision in court, and the court will review whether the agency followed the proper legal

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[4] As cited in *Union of India* v. *Tulsi Ram Patel* (1985) 3 SCC 398. In *Drew* v. *Drew and Leburn* [1855] 2 Macq. 1,8, Lord Craworth defined it as "universal justice". In *James Dunbar Smith* v. *Her Majesty The Queen* [1877-78] 3 App. Cas. 614,623 J.C., Sir Robert P. Collier, speaking for the Judicial Committee of the Privy Council, used the phrase "the requirements of substantial Justice", while in *Arthur John Spacmkman* v. *The Plumstead District Board of Works L.R.* [1884-85] 10 App. Case. 229,240, Earl of Selborne, L.C., preferred the phrase "the substantial requirements of justice". In *Vionet and another* v. *Barrett and another* [1885] 55 L.J. Q.B. 39,41, Lord Esher, M.R., defined natural justice as "the natural sense of what is right and wrong". While, however, deciding *Hopkins and another* v. *Smethwick Local Board of Health L.R.* [1890] 24 Q.B.D. 712,716, Lord Esher, M.R., instead of using the definition given earlier by him in *Vionet and another* v. *Barret* and another chose to define natural justice as "fundamental justice". In *Ridge* v. *Baldwin* L.R. [1963] 1. Q.B. 539,578, Harman, L.J., in the Court of Appeal equated natural justice with "fair play of action", a phrase favoured by Bhagwati, J., in *Maneka Gandhi* v. *Union of India* [1978] 2 S.C.R. 621,676. In re. H.K. (An Infant) L.R. [1967] 2 Q.B. 617,630, Lord Parker, C.J., preferred to describe natural justice as a duty to act fairly". In *Fair-mount Investment Ltd.* v. *Secretary of State for the Environment* [1976] 1 W.L.R. 1255,1265-66, Lord Russell of Killowen somewhat picturesquely described natural justice as "a fair crack of the whip". While Geoffrey Lane L.J., in *Regina* v. *Secretary of State for Home Affairs, Ex parte Hosenball* [1977] 1 W.L.R. 766,784, preferred the homely phrase "common fairness".

[5] The first rule is "nemo judex in causa sua" or "nemo debet esse judex in propria causa" as stated in *12 Co. Rep. 114*, that is, no man shall be a judge in his own cause". Coke used the form "aliquis non debet esse judex in propria causa quia non potest esse judex et pars" (Co. Litt. 141a), that is, "no man ought to be a judge in his own cause, because he cannot act as a judge and at the same time be a party". The form "nemo potest esse simul actor et judex", that is, "no one can be at once suitor and judge" is also at times used. Cited in *Union of India* v. *Tulsi Ram Pate*l (1985) 3 SCC 398.

[6] The second rule is "audi alteram partem", that is, "hear the other side". At times and particularly in continental countries the form "audietur et altera pars" is used, meaning very much the same thing.

[7] *D.K. Agrawal* v. *Council of the Institute of Chartered Accountants of India,* (2021) SCC OnLine SC 903.

[8] Lord Diplock in *Council of Civil Service Unions* v. *Minister for the Civil Service*, [1984] 3 All E.R. 935 (H.L.), described the principles of judicial review of administrative action as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community.

procedures and acted fairly. In *Breen* v. *Amalgamated Engineering Union*[9] Lord Denning emphasised that "statutory body is required to act fairly in functions whether administrative or judicial or quasi-judicial."

Further, administrative law holds immense importance in India due to its vast and complex administrative machinery. It covers a vast range of governmental functions like public health and sanitation, trade, taxation, and education etc. It is the law that prevents government bodies from acting arbitrarily and ensures they operate within the bounds of the law. Its primary function is to control and regulate government power. It acts as a check on administrative discretion, preventing potential abuse of power by public officials. By doing so, it upholds the principle of the rule of law, ensuring that everyone, including the government, is subject to the law. Hon'ble Alok Mathur, Judge, The High Court of Allahabad, has quoted the Apex Court observation in *Wasi Ahmad* v. *State of U.P. & Ors.*[10] that "Principles of natural justice are to some minds burdensome but this price - a small price indeed - has to be paid if we desire a society governed by the rule of law."

Prof. Wade in his book[11] has pointed out that:

> The concept of natural justice has existed for many centuries and it has crystallised into two rules: that no man should be judge in his own cause; and that no man should suffer without first being given a fair hearing…. They (the courts) have been developing and extending the principles of natural justice so as to build up a kind of code of fair administrative procedure, to be obeyed by authorities of all kinds. They have done this once again, by assuming that Parliament always intends powers to be exercised fairly.

Justice Krishna Iyer in *Mohinder Singh Gill* v. *Chief Election Commissioner*[12] observed on natural justice that is adequate proof of this statement:

> It has many colours and shades, many forms and shapes and, save where valid law excludes, it applies when people are affected by acts of Authority. It is the bone of healthy government, recognised from earliest times and not a mystic testament of judge-made law. Indeed, from the legendary days of Adam-and of Kautilya's Arthasastra-the rule of law has had this stamp of

[9] [1971] 1 All E.R. 1148 (C.A.).
[10] (2024) 10 ILRA 327.
[11] H.W.R. Wade, *Administrative Law* 10 (Clarendon Press, Oxford, 6th edn., 1988).
[12] (1978) 3 SCC 405.

> natural justice which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case- law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system. The dichotomy between administrative and quasi-judicial functions vis a vis the doctrine of natural justice is presumably obsolescent after Kraipak[13] in India and Schmidt[14] in England.

2. Principles of Natural Justice

The High Court of Allahabad has delivered several judgments where the principles of natural justice, as established by the Supreme Court of India and the English courts, have been followed. In the following cases, it will be seen how the High Court upheld the rights of individuals who were punished or dismissed from service in violation of these principles, without being given a proper notice or an opportunity of hearing.

2.1 Audi Alteram Partem

Sushil Kumar Shukla v. *State of U.P. & Ors.*[15] Petition allowed by Rajesh Singh Chauhan, J. Here the Petitioner challenged the validity of the specific orders. First, the order of major punishment of reversion of the petitioner that was passed by Collector/District Magistrate to the initial/basic pay as a Stenographer without following prescribed procedure. Second, the validity of the order passed by the Appellate Authority. Third, the order passed by opposite party no.2 in the statutory revision filed by the petitioner inasmuch as the orders were mechanically passed in violation of the U.P. Government Servant (Discipline and Appeal) Rules, 1999. Further, these orders were without application of mind and without conducting the departmental inquiry strictly in accordance with law. The court held that:

> The findings of the Inquiry Officer/ inquiry report are liable to be set aside/ quashed inasmuch as the departmental inquiry has been conducted and concluded without fixing date, time and place for oral inquiry and without

[13] *A K Kraipak* v. *Union of India* (1969) 2 SCC 262.

[14] *Schmidt* v. *Home Office* [1969] 2 WLR 337, Lord Denning MR observed that, "An administrative body may, in a proper case, be bound to give a person who is affected by their decision an opportunity of making representations. It all depends on whether he has some right or interest, or, I would add, some legitimate expectation, of which it would not be fair to deprive him without hearing what he has to say."

[15] (2024) 8 ILRA 314; see also, *Sunder Lal* v. *State of Uttar Pradesh*, (2024) 8 ILRA 326.

> affording ample opportunity of hearing to the petitioner. Since the very foundation of the impugned order dated 30.08.2006 passed pursuant to the defective inquiry report is not liable to be sustained in the eyes of law, therefore, the impugned punishment order dated 30.08.2006 is liable to be set aside/ quashed. Consequently, the impugned appellate order and revision order dated 2/6.02.2008 and 28.12.2019 are also liable to be set aside/ quashed and are liable to be declared non est on the basis of maxim "sublato fundamento cadit opus", which means that if the very foundation of any structure goes, the superstructure erected thereon would also fall.

In M/S Devi Dayal Trust & Ors. v. *M/S Rajhans Towers Pvt. Ltd*[16] The matter before the Court was whether under Article 227 of the Constitution of India, High Court can set aside the impugned order passed by the Commercial Court at Gautam Buddh Nagar returning the application filed under Section 34 of the Arbitration and Conciliation Act, 1996 for want of territorial jurisdiction? Allowing the Petition, the Court through Justice Shekhar B Saraf held that:

> Article 227 of the Constitution of India bestows upon the High Courts an extraordinary power of superintendence over all courts and tribunal within their respective jurisdiction. This power is a potent tool for ensuring the proper administration of justice and upholding the rule of law. It serves as a bulwark against judicial error, administrative excess, and procedural irregularity. Power of superintendence under Article 227 is inherent in the High Courts by virtue of their status of superior courts of record. This inherent jurisdiction enables the High Courts to exercise oversight over all subordinate courts and tribunals, irrespective of whether specific statutory provisions provide for such supervision.

The High Court referred the judgment of Apex Court in *Estelia Rubber* v. *Dass Estate (P) Ltd.*,[17] where the Hon'ble Supreme Court reiterated the scope and ambit of Article 227:

> The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not

[16] (2024) 5 ILRA 1242.
[17] (2001) 8 SCC 97.

> vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.

Based on the Apex Court ruling the High Court of Allahabad in exercise of its power under Article 227 of the Constitution of India, sets aside the impugned order dated March 15, 2022 passed by the Commercial Court, Gautam Buddh Nagar that has failed to exercise its jurisdiction.

Awadhesh Kumar Pandey v. *State of U.P. & Ors.*[18] This case is related to the teacher regularization under UP Secondary Education Service Selection Board Act, 1982. However, the rejection order was passed without following the procedure in cyclostyle manner. The Legality of the Order was challenged. The Court quashed the orders of rejection and allowed the writ petition. Hon'ble Shree Prakash Singh, J. based the judgment on the decision of Supreme Court[19] observed that:

> Under the Constitutional Scheme, one of the most important ingredients which is to be taken care of, is the rules of principle of natural justice – Even in administrative proceeding, the application of the rules of 'audi alteram partem', is must – Opportunity of hearing is a substantive obligation, which is based on fundamental principle of natural justice – The petitioners have not been associated while considering their cases for regularisation, u/s 33-G of the Act, 1982, as, neither any notice is issued to the petitioner nor any record was called from the Committee of Management concerned, which, prima facie, is a violation of rules of principle of natural justice.

[18] (2024) 5 ILRA 487.

[19] *State Bank of India* v. *Rajesh Agarwal* (2023) 6 SCC 1.

Rambha Singh v. *State of U.P. & Ors.*,[20] is a special appeal before Ashwani Kumar Mishra, and Syed Qamar Hasan Rizvi, JJ., against the order of dismissal of the writ petition by a single judge on the ground that recruitment process was not transparent and fair. Dismissing the appeal, the court held that:

> In the facts of the case, we find that the process of recruitment has been initiated in undue hot haste without any resolution passed by the managing committee for initiating the process of recruitment on the post of Headmaster. Admittedly the appointing authority is the committee of management and in the absence of its authorisation the process of recruitment would be without authority of law. …The recruitment process does not appear to be fair and transparent, inasmuch as, all persons with higher quality point marks are shown absent and two of the candidates, who had applied for appointment, have not been permitted to take part in the recruitment.

So the court here dismissing the special appeal also observed that:

> In such circumstances, the decision of the District Basic Education Officer to cancel the approval of petitioner's appointment and dismissal of the writ petition by the learned Single Judge would not require any interference in the present appeal.

In *Priyanka Dubey* v. *State of U.P. & Ors.*,[21] the Petitioner, a B.Sc. 3rd-year student, appeared for her examinations in 2009. Her result was withheld due to alleged manipulation of answer sheets. A cryptic show-cause notice was issued without providing copies of the incriminating answer sheets. Despite the petitioner denying the allegations, the University failed to communicate any decision and subsequently cancelled her examination based on presumptions. After a lapse of five years, she was offered the opportunity to reappear for the 2014-15 examinations. Hon'ble Alok Mathur, J. observed that:

> In the aforesaid circumstances, this Court is of the considered view that the proceedings conducted by the respondents were clearly in gross violation of principle of natural justice and such proceedings cannot be sustained. The second aspect of the matter is with regard to the non-communication of the order dated 21.05.2012. Merely passing of the order is not sufficient to hold a person guilty during an inquiry but it is equally essential and

[20] (2024) 5 ILRA 1111.
[21] (2024) 7 ILRA 40.

> mandatory that such an order should in fact be communicated to the delinquent at the conclusion of the enquiry proceedings. Non communication of the order renders the same non-est and non-existing and no action can be taken in furtherance of the order which has not been communicated to the party concerned.

In *Prashant Chandra* v. *Harish Gidwani Deputy Commissioner of Income Tax Range 2*,[22] the Contempt Application, the Court finds that the charges framed on 1.11.2023 are proved against the opposite party. The Court also believes that the opposite party's actions were not only in contempt but also done with malice. He handled the applicant's money despite clear directions of this Court, and there was no valid reason for such conduct.

The High Court through Justice Irshad Ali reminded the importance of rule of law in a democratic state and judiciary as the guardian of the rule of law observed that:

> Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protect at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court's orders are to be followed and complied with.

In *Smt. Shivani Chaurasia & Anr.* v. *State of U.P. & Anr.*,[23] the issue before the court was whether the Collector (Stamp) who acts as a quasi-judicial authority possesses any power, inherent or statutory, to recall/review an order passed under Section 47-A of the Indian Stamp Act, 1899. Upon a perusal of the Act the court through Justice Shekhar B. Saraf, held that no such power seems to be made available to the Collector and observed:

> The distinction between constitutional courts and quasi-judicial authorities is significant, particularly when it comes to the exercise of review or recall powers. Constitutional courts, being courts of record under the Constitution, enjoy inherent powers to review their own orders and correct errors in the

[22] (2024) 8 ILRA 428.
[23] (2024) 5 ILRA 1528.

> interest of justice. This inherent power is derived from the constitutional mandate and is essential for maintaining judicial independence and upholding the rule of law. In contrast, quasi-judicial authorities lack inherent powers and can only exercise those powers which have been expressly conferred upon them by the statutes from which they derive their jurisdiction. The absence of inherent powers means that quasi judicial authorities cannot arbitrarily review or recall their orders unless such power is specifically conferred upon them by their governing statute.

This judgment reinforces the supremacy of the rule of law, where fairness and accountability remain paramount. The quasi-judicial authorities are creatures of statute, and their powers are strictly limited to what the law confers upon them. Their lack of inherent power ensures that they cannot act beyond their mandate, thereby preventing arbitrariness. In essence, the distinction between constitutional courts and quasi judicial bodies, not only preserves judicial integrity but also safeguards democratic governance by ensuring that power is exercised responsibly and within the framework of law to uphold rule of law.

A.K. Construction Company v. *Union of India & Ors.*[24] In this writ petition under Article 226 of the Constitution of India, the petitioner challenged the order dated March 31, 2024, by which the Chief General Manager, NHAI, terminated the contract for operating the Kaithi Fee Plaza and further debarred the petitioner from bidding for six months. The order was preceded by a show cause notice dated May 24, 2024, and a reply submitted by the petitioner on May 27, 2024. The issue before the court was the reasonability of order of blacklisting of the contractor and show cause notice. Shekhar B. Saraf, J. held that:

> The present order passed by the authority concerned suffers from the vice of violation of principles of natural justice as well as it fails on the altar of proportionality." The court observed that: "there seems to be a major lacuna in the impugned order with regard to addressing all the points and the submissions that have been raised by the petitioner in their reply. The nature of the show cause notice also indicates a premeditated mind. A show cause notice cannot be read hyper technically, and it is to be read reasonably. But the person who is subject to it must get the impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence. A quasi-judicial authority must record reasons in support of its conclusions. The ongoing judicial trend in all countries committed to the rule of law and constitutional governance is in

[24] (2024) 7 ILRA 629.

favour of reasoned decisions based on relevant facts. Insistence on reason is a requirement for both judicial accountability and transparency. Reasons in support of decisions must be cogent, clear, and succinct. Therefore, for the development of law, the requirement of giving reasons for the decision is of the essence and is virtually a part of 'due process'. It is also to be noted that any governmental or public authority's decision to blacklist a contractor is open to judicial review, ensuring adherence to natural justice principles, particularly audi alteram partem and the doctrine of proportionality.

In this case Justice Shekhar B. Saraf set aside the impugned order, holding that it violated the principles of natural justice and failed the test of proportionality. The Court emphasized that the order did not adequately deal with the petitioner's submissions and reflected a premeditated approach. It reiterated that a show cause notice must give the recipient a real and effective opportunity to contest allegations, and quasi-judicial authorities are duty-bound to record clear and cogent reasons for their decisions. The Court highlighted that reasoned decisions are essential for judicial accountability, transparency, and the development of law, forming part of due process itself. Importantly, it reaffirmed that blacklisting by a governmental authority is subject to judicial review and must comply with the twin pillars of natural justice—audi alteram partem (the right to be heard) and the doctrine of proportionality.

Vinod Kumar Jain v. *State of U.P. & Ors.*[25] In this case the Petitioner purchased certain plots of land and paid stamp duty. His name recorded as bhumidhar with transferable rights. After three years he received a show-cause notice based on an alleged inspection report that the matter proceeded *ex-parte* and order passed same day imposing deficiency of stamp and penalty with interest. The nature of the land at the time of execution was agricultural. The authorities treated the land as non-agricultural. The spot inspection was conducted without involving property owner. the authorities passed an order on the same day imposing deficiency of stamp and imposed penalty along with interest on the Petitioner. The Petitioner submitted an application on the same day before the authority concerned in order for his reply to be taken on record. However, the authority concerned rejected the said application saying that since the order has been passed, the reply will not be considered. The present petition is to quash the impugned order in the absence of fair procedure. Shekhar B. Saraf, J allowed the writ petition and referred many judgments of the Apex Court. He on the

[25] (2024) 5 ILRA 2097.

basis of common thread that runs across these judgments,[26] quashed and set aside the impugned order and observed that:

> The common thread that runs across these judgments is that although the principle of audi alteram partem can evolve itself given the facts and circumstances of each case, its significance and applicability is universal. Audi alteram partem, which is a part of the doctrine of natural justice, finds its roots primarily in the constitutionally guaranteed ideal of equality. This principle ensures that no one is condemned, penalized, or deprived of their rights without a fair and reasonable opportunity of hearing. It acts as a safeguard against arbitrary decision making, upholding the principle of due process while also providing a crucial foundation for just and equitable legal or administrative proceedings.

Further, the decision in *State of Kerala* v. *K.T. Shaduli Grocery Dealer Etc.*[27] wherein the court examined the principle of natural justice from the judgment of Tucker, L.J. in *Russel* v. *Duke of Norfolk*[28] is also cited wherein Tucker, L.J. observed "……I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case."

In *M/S Mid Town Associates* v. *Additional Commissioner Grade-2(Appeal), Judicial Division IInd, State Tax, Moradabad & Ors.*,[29] the main question is related to the compliance of EWay bill as required under the provisions of the CGST/UPGST Act and related rules. The petitioner contends that compliance was timely achieved, while the respondents argued that the absence of an E-Way bill during transit constituted a violation. Justice Shekhar B. Saraf allowed the petition filed under article 226 of the Constitution of India and held that:

> In the facts and circumstances, it is clear that only violation is a technical one wherein E-Way Bill was not present in the vehicle. However, it is clear that the E-Way Bill had been downloaded prior to the interception of the vehicle. Furthermore, invoice and the E-Way Bill matched with the goods

[26] *Maneka Gandhi* v. *Union of India,* (1978) 1 SCC 248; *S.L. Kapoor* v. *Jagmohan*, (1980) 4 SCC 379; *State Bank of India* v. *Rajesh Agarwal,* (2023) 6 SCC 1; *Madhyamam Broadcasting Limited* v. *Union of India,* (2023) SCC OnLine 366; *A.K. Kraipak* v. *Union of India*, (1969) 2 SCC 262; *Maharashtra State Financial Corporation* v. *Suvarna Board Mills,* (1994) 5 SCC 566; *Dharampal Satyapal Limited* v. *Deputy Commissioner of Central Excise, Gauhati,* (2015) 8 SCC 519; *Ridge* v. *Baldwin* [1964] AC 40 etc.

[27] (1977) 2 SCC 777.

[28] (1949) 1 All ER 109.

[29] (2024) 5 ILRA 837.

> in the vehicle, and accordingly, one can infer that there was no mens rea for the evasion of tax…….from the perusal of the record that the show cause notice and the penalty order both were issued on the same day, which indicates that no opportunity of hearing was given to the petitioner to submit his reply which is a gross violation of the principles of natural justice.

Dhirendra Kumar Chaudhary v. *State of U.P. & Ors.*[30] In the present case the appellant, a peon was dismissed from his service based on the disciplinary proceeding and evidence considered by the inquiry officer were not put to the petitioner's notice.

Hon'ble J.J. Munir, J allowing the petition observed that:

> We do not think that all the technical evidence, that the Disciplinary Authority and the Inquiry Committee took into consideration, was brought to the petitioner's notice with opportunity to him to rebut the same. In the absence of all this being done the findings of the Disciplinary Authority and the Appellate Authority are utterly vitiated for violation of principles of natural justice that have led to demonstrable prejudice to the petitioner. The result would be that all proceedings, beyond the charge sheet, stand vitiated and it would remain open to the respondents to proceed against the petitioner de novo from the stage of the charge-sheet.

Manjeet Singh v. *State of U.P. & Ors*.[31] In this cases Hon'ble Rajesh Singh Chauhan, J. delivered the judgment. The writ petition for issuing Certiorari is related to the departmental inquiry under Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999. Here in absence of legal formality petitioner was asked to appear before disciplinary authority for personal hearing and submit his explanation to inquiry report. He was not given proper opportunity of hearing which should be afforded to the delinquent employee for conducting departmental inquiry. In this case the procedure has not been followed by inquiry officer nor by disciplinary authority as he has not verified fact as to whether inquiry officer has conducted inquiry in accordance with law or not. Hon'ble Rajesh Singh Chauhan, J. quashing the order, remanded the matter back to conclude inquiry by affording an opportunity of personal hearing and to examine witnesses in conformity with the principles of Natural Justice. The court followed the judgments of Apex Court in re: *State of U.P.* v. *Saroj Kumar Sinha*[32] wherein the guidelines and directions have been issued

[30] (2024) 5 ILRA 522.

[31] (2024) 7 ILRA 72; see also, *Smt. Neetu Chaudhary v. State of U.P.* (2024) 11 ILRA 37.

[32] (2010) 2 SCC 772.

by the Apex Court[33] time and again, has not been followed in the present case.

In a similar case of *Uma Shanker Prasad* v. *State of U.P. & Ors.*[34] Here the validity of the inquiry report was challenged wherein no copy of the inquiry report was supplied by disciplinary authority in disciplinary proceeding and major penalty imposed. The disciplinary authority also did not verify the relevant aspect as to whether the Inquiry Officer had fixed date, time and place for conducting the oral inquiry. Hon'ble Rajesh Singh Chauhan, J setting aside the penalty, allowed the writ petition, observed that:

> This is a settled law that for conducting the departmental inquiry, the Inquiry Officer shall fix date, time and place for conducting oral enquiry and after the conclusion of the inquiry by the Inquiry Officer, the copy thereof shall be furnished/submitted before the disciplinary authority, thereafter, the disciplinary authority shall provide the copy of the inquiry report to the delinquent employee seeking explanation thereon. The aforesaid exercise has been indicated in the Rules, 1999 and the same is in conformity with the principles of natural justice. Without providing the copy of the inquiry report, the delinquent employee may not submit his explanation. Even if he is called for personal hearing, that would not suffice the purpose inasmuch as unless and until the delinquent employee receives the copy of the inquiry report, he would not be able to defend himself properly.

Rakesh Chandra Jauhari v. *State of U.P. & Anr* (2024) 12 ILRA 223, is another case wherein major penalty was imposed of reduction to the basic pay scale in perpetuity in a disciplinary proceeding without conducting any enquiry. This was challenged. No witnesses were examined by the establishment and the Inquiry Officer opined merely on the basis of idle papers. The court allowed the petition and relying on the decision of the Supreme Court in *Satyendra Singh* v. *State of U.P. and another*[35] held that:

> There was a fundamental breach of salutary procedure. No evidence whatsoever was produced, particularly, witnesses in support of the charges by the Establishment to prove them. The Inquiry Officer sat with a closed

[33] "When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service."

[34] (2024) 7 ILRA 78; see also *Ravikant Shukla v. State of U.P.* (2024) 11 ILRA 24.

[35] (2024) SCC OnLine SC 3325.

> mind, shuffled through the charge sheet and the petitioner's reply besides idle papers, and cursorily held the charges proved. ….The disciplinary proceedings against an employee shall be conducted by the Inquiry Officer with due observance of the principles of natural justice.

Km. Farha v. *State of U.P. & Ors.*[36] is a case wherein the petitioner challenged the impugned order in which no reasons given as to why the claim of the petitioner for compassionate appointment has been rejected. Abdul Moin, J. quashing the impugned order allowed the writ petition and held that:

> It is settled position of law that every order should be a speaking order in as much as reasons should emerge reflecting application of mind by the competent authority on the disputes which arrive before him. The order impugned dated 02.03.2020 does not indicate as to why the claim of the petitioner for compassionate appointment has been rejected and thus it is apparent that the order impugned is patently nonspeaking.

Anand Kumar Asthana v. *State of U.P. & Anr.*[37] In this case the validity of major punishment imposed, without opportunity of hearing, and without providing the documentary evidence and serving the list of witnesses was challenged under Article 311(2)[38] of Constitution of India and Rule 7 of U.P. Government Servant (Discipline and Appeal) Rules, 1999. The Court through Hon'ble Shree Prakash Singh, J. quashed the impugned punishment, allowed the writ petition and held that:

> It is evident that the charges are not so grave in nature, which could lead to the major punishment, though, it has been pleaded by the opposite parties that on the show cause notice itself, a note was transcribed that 'the work of the petitioner is unsatisfactory', to which petitioner has vehemently controverted and stated that aforesaid noting was never intimated/served upon the petitioner. For the other reasons also, the show cause notice cannot be a proof of any misconduct, unless a decision is taken, while affording the opportunity of hearing to such employee, more so, noting 'unsatisfactory' was also not intimated to the petitioner, as the opposite parties have failed to substantiate it, before this court.

[36] (2024) 11 ILRA 48.

[37] (2024) 5 ILRA 165.

[38] Article 311 is subject to Article 14. Principles of natural justice and the *audi alteram partem* rule are part of Article 14 as observed in *Union of India* v. *Tulsi Ram Patel* (1985) 3 SCC 398.

M/s Khandelwal Brothers v. *Joint Chief Controller of Explosives (Madhyanchal), Agra, PESO & Ors.*[39] *This writ pe*tition by the petitioner Under Article 226 of the Constitution of India,1950 is regarding cancellation of licence of Respondent No.2 that has resulted in the loss of the business of the petitioner. The petitioner was not given the chance to explain the inconsistencies and dispute with regard to the title which was the subject matter that has resulted in the said cancellation. It is also important to mention that the petitioner has been carrying out his retail outlet since 1988 and there have been no complaints against the petitioner. The writ petition is disposed off by Shekhar B. Saraf, J. & Manjive Shukla, J.The Court held that:

> In our view, the principle of audi alteram partem has been bed rocked in the quasi judicial decision taken by the State and/or its instrumentalities acting on behalf of the State. In a situation wherein no opportunity of hearing is granted to the affected parties, there is obviously a breach of principles of natural justice and prejudice is caused to the party who has not been heard. In the present case, the violation of principles of natural justice has directly resulted in prejudice to the petitioner, and accordingly, we are of the view that the action taken by the Respondent No.1 is not correct. A catena of Hon'ble Supreme Court judgments and judgments of this High Court have held that even though the statute/rule do not provide for a specific opportunity of hearing to be granted, when there are civil consequences affecting a party, the right approach is to grant an opportunity of hearing to him.

Rajan Agarwal v. *United India Insurance Co. Ltd.*[40] In this writ petition the Petitioner challenged the major punishment to the petitioner reducing him by three steps in scale, his discharge and the disciplinary actions taken against him in violation of natural justice. The petitioner was not provided a defence assistant despite his mental disorder, and the enquiry was *ex-parte.* Therefore, discharging the petitioner on medical grounds was not legal under Section 47 of the Disabilities Act 1995. The court allowed the writ petition as the order suffers from vices of principles of natural justice due to non-consideration of claim setup by the petitioner.

Ram Dularey Yadav Higher Secondary School & Anr. v. *State of U.P. & Ors.*[41] In the present case the impugned order renewing the registration certificate-at the behest of

[39] (2024) 9 ILRA 879.
[40] (2024) 8 ILRA 926.
[41] (2024) 5 ILRA 1588.

respondent dated 19th December 2023 has been passed by the Deputy Registrar without affording proper opportunity of hearing to the petitioners and that too in illegal and arbitrary manner and against the provision of Act, 1860. The petitioners informed that as per the by-laws, the term of the Committee of Management is prescribed as three years and the election of Committee of Management has regularly been held and time and again the list of the members as well as the office bearers of the society were sent to the office of Deputy Registrar, as prescribed under the provision of the Act, 1860. Hence the same maybe quashed.

The Petition was allowed by Shree Prakash Singh, J., observed that the Hon'ble Apex Court, time and again has held that the 'opportunity of hearing' is one of the major and essential ingredient so as to make a test of any decision of an authority. The decision might be administrative, judicial or quasi judicial, but person affected must be heard before a decision is taken. The courts generally favour interpretation of a statutory provision consistent with the principles of natural justice because it is presumed that the statutory authorities do not intend to contravene fundamental rights.[42] The court took the decision of Apex court in *State Bank of India and Others* v. *Rajesh Agarwal and others*[43] as a guiding star for Natural justice principle and accordingly allowed petition by citing the Apex court decision as under:

> We need to bear in mind that the principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial, and administrative authorities. Two fundamental principles of natural justice are entrenched in Indian jurisprudence: (i) nemo judex in causa sua, which means that no person should be a judge in their own cause; and (ii) audi alteram partem, which means that a person affected by administrative, judicial or quasi-judicial action must be heard before a decision is taken.

In Amity Int. School v. *Presiding Officer Labour Court & Anr.*[44] the petitioner has been terminated after departmental enquiry. Aggrieved by the termination the petitioner moved to challenge the legality and validity of terminating the services for violation of principles of natural justice and fair play during the domestic enquiry. The Court through Dinesh Pathak J. allowed the writ petition observed that:

[42] See also, *Managing Director, ECIL, Hyderabad* v. *B. Karunakar,* (1993) 4 SCC 727; *State Bank of India* v. *Rajesh Agarwal,* (2023) 6 SCC 1.

[43] (2023) 6 SCC 1.

[44] (2024) 5 ILRA 2372.

> Having considered the law laid down by the Hon'ble Supreme Court, and precisely the observations made by the Constitutional Bench of Hon'ble Supreme in the case of Karnataka State Road Transport Corporation,[45] this Court has no doubt in mind that the issue qua violation of principles of natural justice and fair play during the domestic enquiry should be decided first as a preliminary issue. There is no need to discuss the merits of the case or other points inasmuch as matter referred to the labour court is still subjudice, therefore, any observation made by this Court would effect the merits of the case. As such, instant writ petition succeeds and is allowed.

Agmotex Fabrics Pvt. Ltd. v. *State of U.P. & Ors.*[46] In the present case the petitioner challenged the impugned order dated September 12, 2024. Impugned order is only a copy-paste of the reply given by the petitioner to the show cause notice and the explanation provided therein has not been considered in a reasonable manner and rejected. The challenge of the petitioner was that without considering explanation and without granting an opportunity of fair hearing to him, imposing liability upon him is arbitrary and illegal. Shekhar B. Saraf, J. quashing the impugned order dated September 12, 2024 issued direction upon the respondent authorities to examine the fabrics and to provide a copy of the report to the petitioner. Further the court also directed to grant an opportunity of hearing to the petitioner and thereafter pass a reasoned order in the same.

This is a case where neither the reasoned order nor the opportunity of hearing was given by the authority. The court has referred the Apex Court decisions and Allahabad High Court decision[47] for giving directions in this case.

C/M Ram Bharose Maiku Lal Inter College Thru Manager Sri Shree Kant Sahu & Anr v. *State of U.P. & Ors*.[48] This is a case wherein the court found a clear violation of the first principle of natural justice i.e. *nemo judex in causa sua* (no person shall be a judge in their own cause) and procedural lacunae. The court through Alok Mathur J. held that the decision-making authority must provide a fair hearing to the affected party, and the order must be passed by the authority that heard the matter. In this case, the order was passed by the Special Secretary, who neither heard the arguments nor provided the petitioner access to relevant

[45] (2001) 5 SCC 433.

[46] (2024) 11 ILRA 106.

[47] *Maneka Gandhi* v. *Union of India,* (1978) 1 SCC 248; *State Bank of India* v. *Rajesh Agarwal,* (2023) 6 SCC 1; *Singrauli Super Thermal Power Station* v. *Ashwani Kumar Dubey,* Civil Appeal No. 3856 of 2022, decided on July 5, 2023; *S.R. Cold Storage* v. *Union of India*, (2022) SCC OnLine (All) 550.

[48] (2024) 10 ILRA 236.

reports. This has created procedural impropriety and violated natural justice. Further, the Special Secretary acted as both investigator and adjudicator. This dual role breached the principle of *nemo judex in causa sua*(no person shall be a judge in their own cause), rendering the decision void due to apprehension of bias.[49] The court opined that adherence to procedural fairness and impartiality is mandatory. The impugned order is set aside. The court remanded the matter back to the State government for taking a decision afresh in accordance with law and after following the principle of natural justice and affording full opportunity of hearing to the petitioners.

In a similar case *Wasi Ahmad* v. *State of U.P. & Ors*.[50] where the charge sheet issuing authority and punishing authority is the same person was challenged as violation of natural justice. Alok Mathur J. allowed the writ petition held that "failure to observe the principle that no person should adjudicate a dispute which he/she has dealt with in any capacity, creates an apprehension of bias." The observations of Justice P.N. Bhagwati in *Ashok Kumar Yadav* v. *State of Haryana,*[51] was also referred along with other cases[52] decided by the apex court and observed that:

> This Court is of the considered view that entire disciplinary proceedings as well as the appeal has been decided contrary to the settled cannons of settled principles of natural justice and was clearly hit by the principles of bias and entire disciplinary proceedings against the petitioner stands vitiated and are, accordingly, quashed.

Mohammad Aleem @ Abdul Aleem & Anr. v. *State of U.P.*[53] In this case all the appeals involve a common question of law hence decided together. Here the designated court has passed the order "permitted for 45 days only" is challenged as an unreasoned order. The

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[49] Justice Alok Mathur referred *Union of India, Through Its Secretary, Ministry of Railway* v. *Naseem Siddiqui*, (2004) SCC OnLine MP 678 wherein the Court held that one of the fundamental principles of natural justice is that no man shall be a Judge in his own cause and this principle in turn consists of seven well-recognized facets, one of them being 'the adjudicator shall be impartial and free from bias' and 'if any one of these fundamental rules is breached, the inquiry will be vitiated'.

[50] (2024) 10 ILRA 327.

[51] (1985) 4 SCC 417, the Court observed that "One of the fundamental principles of our jurisprudence is that no man can be a judge in his own cause. The question is not whether the judge is actually biased or has in fact decided partially but whether the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. If there is a reasonable likelihood of bias, it is in accordance with natural justice and common sense that the judge likely to be so biased should be incapacitated from sitting. The basic principle underlying this rule is that justice must not only be done but must also appear to be done."

[52] *Rattan Lal Sharma* v. *Managing Committee, Dr. Hari Ram (Coeducation) Higher Secondary School,* (1993) 4 SCC 10; *A.U. Kureshi* v. *High Court of Gujarat*, (2009) 11 SCC 84; *A.K. Kraipak* v. *Union of India* AIR 1970 SC 150; *Mohd. Yunus Khan* v. *State of Uttar Pradesh* (2010) 10 SCC 539.

[53] (2024) 5 ILRA 1341.

Court allowed the appeals held that: "the Special Court has not applied its mind to the grounds for an extension of time for the investigation."

The Court through Manish Kumar Nigam, J. Observed on the third element of Natural Justice principle that: "Recording of reason is a principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and legality in decision-making."

2.2 Duty to Give Reasons

In administrative law the duty to assign reason is, however, a judge made law but in case of judicial authorities who exercise the judicial powers under the various statutes, there is no dispute that their order must contain reasons to support the orders. The judicial order without assigning any reason is not an order in the eye of the law. The court considering the fairness in administrative authorities working, observed that:

> In India, the position is somewhat different but the Courts have shown a good deal of creativity in this area. A very significant reason of the Indian Courts is to develop the idea that natural justice demands that adjudicatory bodies give reasons for their decisions. The Supreme Court has also held that as several constitutional provisions guarantee judicial control of adjudicatory bodies, it is obligatory for such bodies to render reasoned decisions so as to make judicial control effective and meaningful.[54]

3. Conclusion

During the year under review, the Court has, by and large, rendered decisions that are primarily anchored in the precedents already laid down by the Apex Court reflecting a cautious approach by the Allahabad High Court in the field of administrative law. There has been a consistent, and at times, rigid reliance on established jurisprudence of the Apex Court. While this approach provides certainty and stability in the law and ensures consistency and adherence to binding authority, but perhaps it lacks judicial creativity.

The survey is confined to review decisions that involved challenges to administrative actions on the ground of non-compliance with the principles of natural justice. The court has consistently and correctly quashed administrative actions where the principles of natural justice were violated. This includes instances where authorities failed to provide fair opportunity of hearing, or did not issue proper show cause notices, or acted with a pre-determined mind. There are cases of procedural lacunae as well violating the rule

[54] *Ibid.*

against bias. The court has neither explored new dimensions of fairness in the digital age nor laid down novel procedural safeguards to address emerging administrative challenges. Yet, it is significant to note that in all such matters the Court drew heavily on well-established principles derived from earlier judgments of the Supreme Court, such as those requiring tests for fairness, such as the right to be heard (*audi alteram partem*) and the rule against bias (*nemo judex in causa sua*), reasoned decision, speaking orders and prior reasonable notice etc. thereby reinforcing the existing checks on administrative power. Finally, in the opinion of the author, while justice is served on a case-by-case basis, the broader legal landscape on administrative law remains static. The court has acted more as a vigilant custodian of existing law rather than a bold architect of new jurisprudence. So this survey ends by raising an important question - was this judicial restraint necessary to maintain consistency and stability in administrative law, or was it a missed opportunity to shape a richer jurisprudence that could respond to evolving administrative complexities?

Code of Civil Procedure

*Ravinder Kumar**

1. Introduction

The Code of Civil Procedure, 1908 (hereinafter referred to as "C.P.C.") serves as one of the important pillars of the justice delivery system. As a procedural law, it is an essential tool to enforce the legal rights and duties, to redress or prevent legal wrongs and to determine legal defences and for other ancillary purposes. The C.P.C. consists of the substantive provisions laid down under various sections and detailed procedural rules, contained in its orders and rules, intended to be read and applied harmoniously.[1] Even if some inconsistency arises, the statutory sections will prevail over the procedural orders and rules. The C.P.C. is designed in a way to ensure every party to the litigation has an opportunity to be heard, and that mere technicalities cannot be allowed to obstruct the delivery of justice.

In the survey year 2024, the Hon'ble High Court of Judicature at Allahabad, in step with the Supreme Court and other leading High Courts, addressed a wide spectrum of critical issues in civil litigation. The Court examined core questions of jurisdiction, clarifying the forum's competence over subject matter, pecuniary value, and territorial boundaries and reinforced foundational doctrines like *res judicata*, which bars re-litigation of matters finally decided. The application of the C.P.C. to emerging forums such as Family Courts, as well as to arbitral proceedings, came under scrutiny, particularly highlighting the balance between statutory procedure and the need for expeditious, alternative dispute resolution.

Further, the Allahabad High Court issued significant clarifications on the scope and limits of amending pleadings, referencing both the liberal approach prior to the 2002 amendment to Order VI Rule 17 C.P.C. and the stricter "due diligence" framework introduced thereafter. Disputes over the grant and nature of interlocutory orders, including temporary injunctions and orders on interim relief, were addressed, as were important rulings concerning the appointment, powers, and liabilities of receivers, with attention to the court's inherent powers to protect property in dispute. The execution of decrees, and especially the powers and constraints of executing courts under Section 47 C.P.C., continued to be a vital subject, with the court ensuring that parties' rights are not defeated by procedural delays or jurisdictional ambiguities.

Across these areas, the Allahabad High Court demonstrated a consistent commitment to the core objective of civil procedure: not merely to prescribe forms and formalities, but to serve as an effective instrument for the advancement of substantial justice. By interpreting procedural rules with flexibility.[2]

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[1] Mulla, I *The Code of Civil Procedure* (LexisNexis, New Delhi, 20th edn., 2021).

[2] Rajesh Suman, "Programme Report on National Conference for High Court Justices on Civil Law" (National Judicial Academy, Bhopal, 2024).

2. Jurisdiction of Civil Courts and Bar Under Special Statutes

Section 9 of the C.P.C. embodies the general rule that civil courts have jurisdiction to try all suits of a civil nature except those whose cognizance is either expressly or impliedly barred.[3] This provision is grounded in the fundamental maxim *ubi jus ibi remedium* - where there is a legal right, there is a remedy.[4] Civil courts are courts of plenary jurisdiction in respect of civil rights, and their exclusion must either explicitly flow from the statute or be clearly implicit in its scheme.[5] The burden of proving the existence of such a bar lies on the party asserting it, and any provision-curtailing jurisdiction has to be strictly construed.[6]

A suit is expressly barred when a statute in force contains a clear and categorical prohibition on the jurisdiction of civil courts over certain subject-matters. Such legislative exclusion may be made by a competent legislature within the bounds of its legislative competence and is valid so long as it does not contravene constitutional limitations.[7] For example, special enactments like the Rent Control Acts, the Industrial Disputes Act, 1947, and the Armed Forces Tribunal Act, 2007, etc., often contain provisions stating that "no civil court shall entertain" specified classes of disputes. In such cases, the parties must seek relief before the statutory forum created by the special law.[8] However, as the Supreme Court held in *Dhulabhai* v. *State of M.P.*,[9] even where jurisdiction is expressly excluded, civil courts may still examine whether the statutory tribunal has acted within the scope of its authority or whether the statutory requirements have been complied with or not.

A suit is impliedly barred when, though there is no express exclusion, such a bar can be inferred from the statute's language, scheme, and object. This usually occurs when a statute creates rights or liabilities and provides a comprehensive mechanism for enforcement before a special tribunal, indicating that the legislature intended to oust the jurisdiction of civil courts.[10] The bar may also arise on grounds of public policy, such as in matters involving purely political questions or other disputes considered inappropriate for civil adjudication.[11] The principle is that when a statute prescribes a specific remedy, it must be followed, and no

[3] The Code of Civil Procedure, 1908, s. 9.
[4] *Hriday Nath Roy v. Akhil Chandra Roy*, AIR 1921 Cal 34.
[5] *Ibid.*
[6] *Dhulabhai v. State of M.P.,* AIR 1969 SC 78.
[7] *Supra* note 1 at 767.
[8] See, e.g., Industrial Disputes Act, 1947, s. 9; Recovery of Debts Due to Banks and Financial Institutions Act, 1993, s. 18.
[9] AIR 1969 SC 78.
[10] *Rajasthan SRTC* v. *Bal Mukund Bairwa*, (2009) 4 SCC 299.
[11] *Supra* note 1 at 768.

recourse can be had to the general jurisdiction of the civil courts for a different form of remedy.[12] As explained in *Premier Automobiles Ltd.* v. *Kamlekar Shantaram Wadke*,[13] when the dispute falls squarely within the domain of a special law, civil court jurisdiction is impliedly excluded even if the exclusion is not couched in express language.

Thus, Section 9 C.P.C. grants broad jurisdiction to civil courts over civil rights and obligations, subject to statutory bars. The distinction between "express" and "implied" bar is important: the former operates through clear words in the statute; the latter operates by necessary implication from the legislative intent, the statutory remedy provided, or overriding considerations of public policy. In both situations, exclusion clauses are interpreted strictly, and civil courts retain a narrow jurisdiction to ensure that statutory forums act within their lawful mandate and that access to justice is not arbitrarily denied.[14]

In *Harmeet Singh* v. *Desh Deepak Gupta*,[15] Hon'ble Mr. Justice Subhash Vidyarthi tested the scope of the U.P. Regulation of Urban Premises Tenancy Act, 2021. The petitioner tenant sought a perpetual injunction before the civil court to restrain his landlord from eviction except according to law. The trial court and revisional court rejected the suit as barred under Section 38(1) of the Act, which vests exclusive matters with the Rent Authority or Tribunal. The issues were: (1) does the Act oust civil court jurisdiction for all tenancy disputes; (2) does it provide a remedy for tenants apprehending illegal eviction. The High Court found that the Act codifies the landlord's remedies but is silent on the tenant's right to fair process against wrongful eviction. The jurisdictional bar does not apply to such tenant suits for perpetual injunction. Thus, the lower court orders were set aside, and the civil suit was restored for proper adjudication.

3. Res Judicata and Subsequent Causes of Action

The procedural reform embodied in the C.P.C. highlighted the critical role of the doctrine of *res judicata*, which prevents parties from re-litigating matters that have been or could have been adjudicated previously.[16] The expanded scope of permissible issues under code pleading intensifies the application of *res judicata*, ensuring that parties present all grounds in one proceeding, thus fostering finality and judicial efficiency.[17]

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[12] *K.S. Venkataraman & Co.* v. *State of Madras*, AIR 1966 SC 1089.
[13] (1976) 1 SCC 496.
[14] *Secretary of State* v. *Mask & Co.* AIR 1940 PC 105.
[15] 2024: AHC-LKO: 63611.
[16] *Satyadhyan Ghosal v. Deorajin Debi*, AIR 1960 SC 941.
[17] *State of Karnataka v. All India Manufacturers' Organisation,* AIR 2006 SC 1846.

Res judicata operates through two principal aspects: Firstly, it bars the same cause of action from being tried again between the same parties once a final judgment is rendered.[18] Secondly, as elucidated in Section 10 C.P.C., it prevents parallel trials by barring courts of concurrent jurisdiction from trying subsequent suits where the matter in issue is "directly and substantially" the same as in a pending suit involving the same parties litigating under the same title.[19] This section seeks to avoid conflicting judgments and the burden of multiplicity of suits.[20] The "matter in issue" must constitute the entire controversy substantially involved in both proceedings, not merely incidental or collateral matters,[21] and the previously instituted suit must have been pending in a court competent to grant the relief claimed in the subsequent suit.[22]

For Section 10 to be applicable, the essential conditions include the existence of two suits, one previously instituted suit and another subsequent one; the parties must be the same or litigating under the same title; the matter directly and substantially in issue must be identical in both suits; the previous suit must be pending; and the prior court must have the subject matter jurisdiction to try the previous suit.[23] The Supreme Court has highlighted that the decision in the previous suit, once reaching finality, operates as *res judicata* in the subsequent suit, mandating cessation of the later trial.[24] However, Section 10 applies only to suits - not applications or complaints and does not extend to proceedings instituted under other statutes.[25] The court has the discretion to stay or dismiss suits brought in breach of these principles to prevent duplication and harassment.[26]

Section 11 C.P.C. extends the applicability of the *Doctrine of Res Judicata* further by prohibiting not only re-litigation of the same matters but also litigation on matters that could or ought to have been raised in the earlier suit, known as constructive *res judicata*.[27] This principle bars parties from presenting claims or defences that were available but omitted in the initial proceeding, thereby consolidating all possible facets of the dispute in one suit and preventing multiplicity of litigation.[28] The essential elements under Section 11 include the same parties or their privies, the same matter directly and substantially in issue, and a

[18] *Alka Gupta v. Narender Kumar Gupta,* AIR 2011 SC 9.
[19] *National Institute of Mental Health & Neuro Sciences v. C. Parameshwara*, AIR 2005 SC 242.
[20] *Manohar Lal v. Rao Raja Seth Hira Lal,* AIR 1962 SC 527.
[21] *Rajesh Singh v. Manoj Kumar,* AIR 2010 MP 16.
[22] *P.V. Shetty v. B.S. Giridhar,* AIR 1982 SC 83.
[23] *Ibid.*
[24] *Gupte Cardiac Care Centre* v. *Olympic Pharma Care (P) Ltd.,* 2004 AIR SCW 2427.
[25] *Bhola Prasad* v. *Jagpata,* 1954 ALJ 696.
[26] *Pukhraj D. Jain* v. *G. Gopalakrishna,* AIR 2004 SC 3504.
[27] *Forward Construction Co.* v. *Prabhat Mandal,* AIR 1986 SC 391.
[28] *State of U.P.* v. *Nawab Hussain,* AIR 1977 SC 1680.

competent court that has heard and finally decided the issues, including those that might have been raised.[29] The doctrine functions to enforce finality and respect for judicial decisions, based on legal maxims that no one should be subjected to litigation twice for the same cause, that there must be an end to the litigation, and that judicial decisions are to be accepted as conclusive and correct.[30]

Hon'ble Lucknow Bench of the Allahabad High Court, while dealing with the first appeal in the suit between husband and wife, arose after a failed earlier divorce petition for desertion in 2005-2013 and a subsequent petition in 2021, this time alleging both new instances of cruelty and renewed desertion (with allegedly new facts and incidents post-2017). The Family Court dismissed the second suit as *res judicata*, considering the legal grounds already adjudicated. The issues before the High Court were whether presentation of a second matrimonial suit based on new subsequent causes of action (i.e., allegedly fresh incidents of cruelty and subsequent periods of desertion) was maintainable, and whether res judicata applied. The High Court ruled that *res judicata* only bars suits based on identical earlier causes of action. Here, the facts and grounds for divorce (including incidents of cruelty post-dating the prior decision) presented a fresh case. The earlier dismissal thus did not foreclose a new petition founded on subsequent and independent grounds. The Family Court's order was set aside, and remand was made for a merits-based determination.[31]

4. Scope of Section 47 C.P.C. in Arbitration Award Enforcement

Section 47 of the C.P.C. governs the jurisdiction of an executing court to decide "all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree."[32] The settled law is that this power is microscopic in nature: the executing court cannot treat objections under Section 47 as a rehearing of the case on merits or as an appeal in disguise.[33] Its duty is strictly limited to examining whether the decree is executable, whether there is any inherent lack of jurisdiction in the court or tribunal passing it, and whether such a lack is patent.[34] It cannot travel beyond the boundaries of the decree to adjudicate on substantive rights or legal issues unrelated to execution.[35]

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[29] *Ram Gobinda* v. *Bhakta Bala*, AIR 1971 SC 664.
[30] *Supra* note 17.
[31] 2024: AHC-LKO: 76761-DB.
[32] *Supra* note 3, s. 47(1).
[33] *Sunder Dass* v. *Ram Prakash,* AIR 1977 SC 1201.
[34] *Kiran Singh* v. *Chaman Paswan*, AIR 1954 SC 340.
[35] *State of U.P.* v. *Raj Veer Singh*, 2024 SCC OnLine All 1094.

The Supreme Court has held that a decree passed without jurisdiction, whether territorial, pecuniary, or over the subject matter, is *void ab initio* and considered as a nullity, and its invalidity can be challenged at any stage, including enforcement or collateral proceedings.[36] Such an inherent lack of jurisdiction strikes at the competence of the court and cannot be cured by consent or waiver.[37] In *Urban Improvement Trust, Jodhpur* v. *Gokul Narain*, the Court reiterated that a decree suffering from a jurisdictional defect is void and cannot be enforced either during execution or in collateral proceedings.[38] However, apart from such nullities, execution cannot be refused on grounds questioning the correctness of the decree.[39]

The Courts in appropriate cases refused execution of arbitral awards under Section 47 on grounds such as unilateral appointment of a sole arbitrator,[40] patent and *ex facie* lack of jurisdiction of the tribunal,[41] invalid reference to arbitration,[42] *per se* illegality of the award,[43] or violation of natural justice principles including failure to furnish a copy of the award to a party to enable challenge.[44] The overarching principle remains that Section 47 C.P.C. is a safeguard, not a substitute for appeal or review. It protects parties against enforcement of decrees or awards tainted by fundamental jurisdictional defects, while respecting the finality and efficiency of both court judgments and arbitral proceedings.

In the case of *Sanjay Agarwal* v. *Rahul Agarwal and Others*,[45] Hon'ble Mr. Justice Alok Mathur addresses the issue of enforceability of arbitral awards and objections at the stage of execution. The facts show a family settlement styled as an arbitration award, with objections raised at execution that there was no valid arbitration agreement and the so-called award was not a true arbitral award. Further, the award was not challenged under Section 34. The issue was whether such objections could be validly raised at the execution stage under Section 47 C.P.C. The High Court held that the Arbitration and Conciliation Act, 1996, provides an exclusive and exhaustive challenge mechanism for awards: if not challenged within the limitation under Section 34, an award becomes final and enforceable as a decree, and the executing court cannot go behind its merits or jurisdiction.

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[36] *Ibid*.
[37] *Kiran Singh* v. *Chaman Paswan*, AIR 1954 SC 340.
[38] *Urban Improvement Trust, Jodhpur* v. *Gokul Narain*, AIR 1996 SC 1819.
[39] *Sunder Dass* v. *Ram Prakash*, AIR 1977 SC 1201.
[40] *Kotak Mahindra Bank Ltd.* v. *Narendra Kumar Prajapat*, 2023 SCC OnLine Del 3148.
[41] *R.K. Textiles* v. *Sulabh Textiles Pvt. Ltd.*, 2002 SCC OnLine Bom 279.
[42] *Prabartak Commercial Corpn. Ltd.* v. *Chief Administrator, Dandakaranya Project,* (1991) 1 SCC 498.
[43] *Public Works Department* v. *Prakash Constructions,* 2019 SCC OnLine Mad 410.
[44] *J.K. Govindarajulu* v. *Sriram City Finance Ltd.,* 2020 SCC OnLine Mad 4697.
[45] Civil Revision No. 27 of 2019 : AHC-LKO.

5. Section 92 C.P.C.: Jurisdiction and Non-arbitrability of Public Trust Disputes

Section 92 of the C.P.C. is a special jurisdictional provision aimed at addressing the mismanagement and malfunctioning of public trusts established for religious or charitable purposes.[46] In the absence of a comprehensive central law governing public trusts, Section 92 C.P.C. has assumed a *parens patriae* character, enabling civil courts to regulate, protect and, where necessary, reform trust administration.[47] It confers the civil courts with original jurisdiction to entertain representative suits instituted by the Advocate General or by two or more persons having an interest in the trust, with the court's leave.[48] The reliefs available include removal and appointment of trustees, settlement of schemes, and, in exceptional circumstances, alterations in the original purpose of the trust.[49] State amendments, as well as the operation of specific enactments like the Religious Endowments Act, 1863, may qualify or limit its application.[50]

The pre-conditions for invoking Section 92 C.P.C. have been judicially crystallised: (i) the existence of a public trust of a religious or charitable nature; (ii) occurrence of breach of trust; (iii) the suit must seek one or more of the specific or analogous reliefs enumerated in the section; and (iv) it must be filed in a representative capacity for the benefit of the public.[51] Courts distinguish public trusts from private trusts by employing a "multiple factor test" that examines public participation, public benefit, and public funding rather than the founder's intention alone.[52] Once substantial dedication to public purposes is shown, even bodies not formally constituted as trusts - including *constructive public trusts* or cases of *trustee de son tort* - may be brought within the ambit of Section 92.[53] However, registered societies, even if engaged in charitable work, are generally excluded due to their statutory corporate character; such bodies fall under Section 25 of the Societies Registration Act, 1860, though this parallel remedy is narrower in scope.[54]

Until the 1976 amendment, the consent of the Advocate General was mandatory; now, leave of the court suffices, with the object of preventing frivolous or vexatious litigation while not stifling genuine public-interest suits.[55] Courts exercise this jurisdiction

[46] *Supra* note 3, s. 92.
[47] *Board of Commissioners* v. *Veeraraghavacharlu*, (1935) 69 MLJ 466.
[48] *Supra* note 3, s. 92(1).
[49] *Id*., cls. (a)-(h).
[50] See, e.g., Religious Endowments Act, 1863; Bombay Public Trusts Act, 1950.
[51] *Pragdasji Guru Bhagwandasji* v. *Patel Ishwarlalbhai Narsibhai*, AIR 1952 SC 143.
[52] *Deoki Nandan* v. *Murlidhar*, AIR 1957 SC 133.
[53] *Ramakrishnan* v. *M. Subramanian*, AIR 1983 Mad 73.
[54] *Abhaya* v. *Raheem*, 2009 (3) KLT 500.
[55] *Vidyodaya Trust* v. *Mohan Prasad R.*, (2008) 4 SCC 115.

even when parallel administrative remedies exist, particularly in serious allegations like fraud or diversion of trust property.[56] However, in jurisdictions where special state enactments regulate public trusts and contain express exclusion clauses, Section 92 generally yields to such specific legislation unless overridden by a later enactment.[57] Thus, Section 92 C.P.C. remains a vital procedural tool for protecting the integrity of public trusts, balancing the autonomy of trust administration with judicial intervention to safeguard public interest.

The non-arbitrability of public trust disputes in India is firmly grounded in the framework of Section 92 of the C.P.C., which equips civil courts with original jurisdiction over public charitable or religious trusts. This provision offers wide judicial powers, including the alteration of a trust's purpose in exceptional cases, serving as an alternative or supplement to specific statutory laws like the Religious Endowments Act, 1863.[58]

In contrast, arbitration law in India, governed by the Arbitration and Conciliation Act, 1996, offers a private, consensual dispute resolution mechanism designed for expeditious and confidential adjudication of commercial and contractual disputes. However, trust disputes, especially public trusts, have traditionally been regarded as non-arbitrable. The Supreme Court decisively upheld this view in *Shri Vimal Kishor Shah* v. *Jayesh Dinesh Shah*, concluding that the Trusts Act, 1882, contemplates civil court jurisdiction exclusively for remedies relating to trusts and that a trust deed cannot serve as an arbitration agreement, especially since beneficiaries do not express contractual consent.[59]

The divergence between Section 92 C.P.C. and arbitration on this issue is further highlighted by the Indian judiciary's insistence on courts' supervisory jurisdiction over trusts, an inherent feature originating from equity jurisprudence. Unlike arbitration tribunals, courts are empowered to appoint trustees, remove defaulters, and modify trust schemes comprehensively under Section 92, thereby assuming a *parens patriae* role unsuitable for private arbitral forums.[60] The egalitarian and public character of these trusts calls for public law safeguards, making their disputes non-arbitrable irrespective of party consent, distinguishing them from private commercial disputes that are arbitration-amenable.[61]

[56] *Sudhir G. Angur* v. *M. Sanjeev*, (2016) 1 SCC 348.
[57] *R.M. Narayana Chettiar* v. *N. Lakshmanan Chettiar*, (1991) 1 SCC 48.
[58] Ranak Banerji, "Rethinking the Arbitration of Trust Disputes in India" 18 *NUJS Law Review* 3-5 (2025).
[59] *Shri Vimal Kishor Shah & Ors.* v. *Jayesh Dinesh Shah,* 2016 SCC OnLine SC 825.
[60] *Supra* note 58.
[61] *Id.* at 12-16.

While jurisdictions like the UK and Australia have more permissive arbitration regimes for trusts and have adopted measures to alleviate concerns about unascertained beneficiaries and public oversight, India's position remains conservative. The Indian Trusts Act, 1882 and judicial precedent maintain that arbitration cannot substitute statutory and public law remedies for public trust disputes.[62] While discussions on reform exist, until such legislative changes occur, Section 92 C.P.C. stands as the principal procedural mechanism, reinforcing the exclusive role of civil courts in adjudicating and regulating public trust disputes in India.

In *Jyantri Prasad and 9 Others* v. *Shri Ram Janki Lakshman Ji Virajman Mandir, Pratapgarh, through Ram Shiromani Pandey and Others*,[63] Hon'ble Mr. Justice Subhash Vidyarthi dealt with the issues centered on the maintainability of a public trust suit under Section 92 C.P.C. The petitioners sued for declarations and directions concerning the management of a temple, but the Court of Civil Judge dismissed the suit, citing the absence of a written trust deed and holding that only the District Judge (Principal Civil Court) could try such suits. The High Court clarified that Section 92 C.P.C. does not require a written deed; a public charitable or religious trust can be established informally or by conduct. However, the C.P.C. mandates the suit be instituted only before the District Judge or a specially empowered Court, not before the Civil Judge (Senior Division). The High Court set aside the lower court's technical rejection and recognised the petitioners' right to sue, if the essential requirements were fulfilled, and directed the proper forum for future proceedings.[64]

In the case of *Sanjit Singh Salwan and Others* v. *Sardar Inderjit Singh Salwan and Others,*[65] the Allahabad High Court dealt with the issue that whether disputes regarding public charitable trust management, including membership and administration, can be referred to arbitration, and whether arbitral awards in such matters are valid. The facts involve a trust dispute - parties having litigated over management, removal and reinstatement of trustees, eventually referred matters to arbitration (and multiple, conflicting arbitral awards were made). The Commercial Court declared these disputes non-arbitrable under Section 92 C.P.C. and set aside both interim and final arbitral relief. The main issues were: (1) the arbitrability of trust disputes, (2) the jurisdictional exclusivity of Section 92 C.P.C. for such actions, and (3) whether a private arbitration agreement or consent could override public law limits. The High Court, after full analysis of earlier precedents, ruled that such disputes are actions in rem and must be adjudicated as statutory schemes in public

[62] *Id.* at 17-18.
[63] 2024:AHC-LKO:66071.
[64] 2024: AHC-LKO: 66071.
[65] 2024: AHC: 139469-DB.

courts (for public protection and transparency), so arbitral awards thus obtained are nullities in law. Thus, the appeal filed was dismissed, and the commercial court's order was upheld.

6. Amendment of Pleadings: Order VI Rule 17 C.P.C.

Order VI Rule 17 of the C.P.C. empowers the Courts to allow amendments to pleadings, at any stage of the proceedings, provided that such amendments are necessary for determining the real questions in controversy between the parties.[66] Before the 2002 amendment, this provision was interpreted liberally, with Courts allowing amendments even at advanced stages of litigation, so long as they did not fundamentally alter the nature of the case or cause irremediable prejudice.[67] Delay alone was rarely treated as a sufficient reason to refuse an amendment, and there were no statutory constraints linking timing to the party's diligence.[68]

The 2002 amendment introduced a significant restriction in the form of a proviso, which bars amendments to the pleadings after the commencement of trial, unless the court is satisfied that, despite due diligence, the party could not have raised the issue earlier.[69] This change reflects a legislative intent to curb delays and discourage late-stage changes that might derail proceedings.[70] It shifts the focus from mere relevance of the amendment to the procedural conduct of the party, making "due diligence" a mandatory threshold for post-trial-commencement amendments.[71]

Judicial interpretation has clarified that "commencement of trial" occurs when the stage of recording evidence begins with the framing of issues - rather than at earlier procedural milestones.[72] This means that amendments sought before this point remain subject to the earlier liberal principles, while those sought after must meet the strict statutory standard.[73] The due diligence requirement places a positive burden on the applicant to explain convincingly why the new facts, pleas, or grounds could not have been included earlier.[74]

Importantly, the proviso does not apply retrospectively to suits instituted before 1 July 2002. In such pre-amendment cases, courts continue to apply the more liberal pre-2002[75]

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[66] S.S. Upadhyay, "Amendment of Pleadings" 3 (Law Helpline, 2024).
[67] *L.J. Leach and Co. Ltd.* v. *Jardine Skinner and Co.,* AIR 1957 SC 357.
[68] *Pirgonda Hongonda Patil* v. *Kalgonda Shidgonda Patil*, AIR 1957 SC 363.
[69] The Code of Civil Procedure (Amendment) Act, 2002, s. 7.
[70] *Salem Advocate Bar Assn. (II)* v. *Union of India,* (2005) 6 SCC 344.
[71] *Vidyabai* v. *Padmalatha*, (2009) 2 SCC 409.
[72] *Kailash* v. *Nanhku*, (2005) 4 SCC 480.
[73] *Ajendraprasadji N. Pandey* v. *Swami Keshavprakeshdasji N.*, (2006) 12 SCC 1.
[74] *Baldev Singh* v. *Manohar Singh*, (2006) 6 SCC 498.
[75] *State Bank of Hyderabad* v. *Town Municipal Council*, (2007) 1 SCC 765.

standard even if the amendment application itself is filed later.[76] Overall, the post-amendment framework seeks to balance two objectives - ensuring that genuine disputes are fully adjudicated while preserving procedural discipline, efficiency, and the expeditious disposal of cases.[77]

Recently, Hon'ble Allahabad High Court in the case of the *Sinha Development Trust and Another* v. *State of Uttar Pradesh and Others*, dealt with the application of the 2002 amendment to Order VI Rule 17 C.P.C. regarding the conditions and timing for amendment of pleadings. The case arose when the petitioners, who had instituted Original Suit No. 288 of 1991 for the return of land and compensation, moved at the final hearing stage (in 2024) to amend the plaint to specify that land/compensation would vest in the trust, not in private parties. The trial court rejected this amendment, citing delay and lack of due diligence (as required by the proviso to Order VI Rule 17 added after the 2002 amendment). The main issue was whether this 2002 proviso - demanding explanation for delay and due diligence - applied to suits filed before the amendment. The High Court held, with reference to *State Bank of Hyderabad* v. *Town Municipal Council*,[78] that the proviso does not apply retrospectively to pending suits. The Court found the amendment meritorious since it only clarified and did not alter the nature of the claim, and determined that delay alone was not a ground for rejection in such old proceedings. The impugned order refusing the amendment was quashed by the Court, and the amendment was allowed. The Court also gave clear directions for further trial.

In the case of *Indra Bahadur Yadav* v. *Harkhas Aam & Another*,[79] the Allahabad High Court addressed the issue of whether an appeal lies to the order of the rejection of the amendment application in the proceedings of probate. The appellant sought a letter of administration of a will under Section 278 of the Indian Succession Act, 1925. The trial court dismissed the application for amendment of pleadings for a change in the date of the will. The petitioner then filed the appeal under Section 299 of the said act.

While considering the appeal, the High Court clarified that orders passed by the District Judge are appealable under Section 299 of the Indian Succession Act, 1925, subject to the provisions of the C.P.C. The court also highlighted that under Order XLIII Rule 1 are appealable, but the order of rejection of the amendment is not in the list of the appealable orders provided under it. As per Section 295, the proceedings under the Indian Succession Act, 1925, are treated as regular civil proceedings, and orders which are only appealable

[76] *Ibid.*
[77] *Usha Balashaheb Swami* v. *Kiran Appaso Swami*, (2007) 5 SCC 602.
[78] *State Bank of Hyderabad* v. *Town Municipal Council,* (2007) 1 SCC 765.
[79] 2024:AHC-LKO:16291.

under the civil suit are also appealable here. So, the High Court held that an appeal does not lie under Section 299 of the Act. The appropriate remedy is to file the revision under Section 115 of the C.P.C. or a petition under Article 227 of the Constitution of India. The Court held that the right to appeal must be expressly granted by the statute, and it cannot be presumed on its own.

Before the 2002 amendment, Order VI Rule 17 C.P.C. was subject to liberal interpretation, but the approach shifted to the application of strict interpretation after the commencement of the trial. This balances the need for complete adjudication of disputes with promoting procedural discipline, efficiency, and timely disposal of cases.

7. Rejection of Plaint and Limitation: Order VII Rule 11 C.P.C.

Order VII Rule 11 of the C.P.C. lays down specific grounds upon which a plaint can be rejected at the initial stages of the proceedings. These include, inter alia, situations where the plaint does not disclose a cause of action or the relief claimed is undervalued, where insufficient court fees have been paid, or the suit appears to be barred by any law, where the plaint has not been filed in duplicate or is in violation of provisions relating to the filing of suits in paper form.[80] The purpose of this provision is to prevent the continuation of meritless, vexatious, or legally untenable litigation which serves no purpose other than to waste judicial time.[81] Courts have consistently held that if a plaint falls within any of these prescribed categories, it "shall" be rejected, the term indicating a mandatory duty on the judge.[82]

The object of Rule 11 has been emphasised in numerous decisions. The Supreme Court has observed that the provision aimed at filtering out irresponsible and sham litigation at the earliest opportunity so that genuine disputes alone consume valuable court resources.[83] The rule also protects defendants from being compelled to contest a non-maintainable suit through protracted and expensive trials. By summarily ending proceedings that are bound to fail, it upholds procedural efficiency and prevents unnecessary harassment of litigants.[84]

In applying Rule 11, Courts are confined strictly to examining the plaint and the documents annexed thereto. They cannot rely on the contents of the written statement or any defence material at this stage.[85] The test is whether the averments in the plaint, taken as a

[80] *Supra* note 3, O. VII, r. 11(a) - (f).
[81] *V. Bragan Nayagi* v. *R.R. Jeyaprakasam*, 2015 (4) MLJ 538 (Mad).
[82] *Dahiben* v. *Arvinbhai Kalyanji Bhansali*, 2020 SCC OnLine SC 562, para. 12.
[83] *Sopan Sukhdeo Sable* v. *Asstt. Charity Commr.,* (2004) 3 SCC 137.
[84] *Dr. L. Ramachandran* v. *K. Ramesh*, 2015 (4) LW 585 (Mad) (DB).
[85] *Gunaseelan* v. *Valarmathi*, 2009 (5) CTC 693 (Mad).

whole and assumed to be true, would entitle the plaintiff to a decree in law.[86] Clever drafting, which sometimes creates an illusion of a cause of action, must be decisively dealt with at this stage, as per the Supreme Court's well-known dictum in *T. Arivandandam v. T.V. Satyapal*.[87] If, upon a meaningful reading of a plaint, it is discovered to be vexatious and meritless, the court is bound to reject it.

There is no restriction as to the stage at which the power under Order VII Rule 11 can be exercised. It may be invoked at any point before registration of the plaint, after summons has been issued, or even before the conclusion of the trial.[88] The application for rejection of the plaint must be decided before proceeding further with the trial; failure to do so may amount to procedural irregularity affecting jurisdiction.[89] Moreover, the court may even exercise this power *suo motu* - without a formal application by the defendant - if it detects any of the vitiating grounds prescribed in the rule.[90]

In the case of *Shrivatsa Goswami* v. *Anant Prasad Singh and Another*,[91] a seminal question has arisen as regards the legal remedy available against an order passed in an appeal arising out of an order of rejection of the plaint passed under Order VII Rule 11 C.P.C. It has been pointed out that there is considerable obfuscation on the issue, with no clear enunciation of the law on the point. The dispute pertains to a suit instituted by the plaintiff/respondent in 2022 seeking to declare two registered gift deeds from 1968 and 1987, in favour of the defendant/appellant and his predecessor, as null and void. Due to the lapse of time, the defendant moved an application under Order VII Rule 11(d) C.P.C., requesting rejection of the plaint on the ground of limitation. The trial court accepted this application and rejected the plaint. The plaintiff filed an appeal before the Additional District Judge, which set aside the order of rejection, restored the suit, and directed the trial court to proceed with the trial. The defendant/appellant then filed a second appeal under Section 100 C.P.C., challenging the order of the lower appellate court as well as questioning its maintainability, contending that the appellate order was not a decree but an order of remand.

The High Court examined the relevant provisions and clarified that the trial court's order of rejection of the plaint is indeed a decree within the meaning of Section 2(2) C.P.C., thus appealable under Section 96, with a second appeal lying under Section 100 if affirmed. However, when the first appellate court reverses this order and remands the suit for trial, the

[86] *Hardesh Ores (P) Ltd.* v. *Hede & Co.* (2007) 5 SCC 614.
[87] *T. Arivandandam* v. *T.V. Satyapal* AIR 1977 SC 2421.
[88] *Saleem Bhai* v. *State of Maharashtra* AIR 2003 SC 759.
[89] *R.K. Roja* v. *U.S. Rayudu* 2016 SAR (Civil) 930.
[90] *Mani* v. *P. Ramakrishnan* 2018 (4) MLJ 182 (Mad).
[91] 2024 (2) ADJ 763.

appellate order ceases to be a decree and instead becomes an order of remand under Order XLI Rule 23, subject only to appeal under Section 104 read with Order XLIII Rule 1(u) C.P.C., not a second appeal under Section 100. The Court emphasised that such appeals from orders, while not denominated second appeals, are nevertheless heard on substantial questions of law consistent with the criteria applicable to second appeals, following authoritative Supreme Court precedents.

In another case, *Om Prakash Upadhya* v. *Vijay Kumar*,[92] the petitioner challenged the rejection of an application under Order VII Rule 11(d) C.P.C., which contended that the suit filed against him was barred in view of a prior suit dismissed in default under Order IX Rule 9 C.P.C. The Allahabad High Court observed that while the suit was previously dismissed, the averments in the plaint of the current suit did not, on their face, show that the suit was barred by law, since the defence regarding the earlier dismissal could not be considered at the stage of Order VII Rule 11 C.P.C., which requires examination of the plaint alone. The Court also considered submissions regarding possession under Sections 37 and 41 of the Specific Relief Act, 1963, and found no bar to the suit on that ground. The Court held that an application under Order VII Rule 11 can only be entertained if the plaint on its face discloses a cause of action or shows that the suit is barred by law.

In *Dheeraj* v. *Chetna Goswami*,[93] the appeal before the High Court arose under Section 19 of the Family Courts Act, 1984, challenging the judgment and order passed by the Family Court at Ghaziabad in a guardianship petition under Section 25 of the Guardians and Wards Act, 1890. The respondent, Smt. Chetna Goswami had sought custody of her minor son, Master Kunj. The appellant, Dheeraj, contested the petition and argued that the Ghaziabad Family Court lacked territorial jurisdiction because the minor was living and studying in Bhiwani, Haryana. The Ghaziabad Court ruled that the minor's "ordinary residence" was determined by his father's permanent address in Ghaziabad and not his temporary residence in Bhiwani. The decision was challenged in the High Court on the ground that whether lower court made an error in rejecting the appellant's application under Order VII Rule 11(d) C.P.C., by interpreting the provisions of Section 9 of the Guardians and Wards Act, 1890, without a full inquiry into the facts.

The High Court, while upholding the lower court's decision, held that the question of the minor's "ordinary residence" involves a combination of fact and law, which cannot be decided solely based on the allegations in the plaint at the Order VII Rule 11 stage. The court emphasised that the phrase "where the minor ordinarily resides" under Section 9(1) of the

[92] 2024:AHC:123318.
[93] 2024: AHC:87786-DB.

Guardians and Wards Act, 1890, is a key factor in establishing jurisdiction. It does not refer to temporary residence or a place where the minor moved just before filing the application. The court explained that an application under Order VII Rule 11 should be decided solely on the allegations made within the plaint itself. This stage is not meant for examining evidence or resolving disputed questions of fact or law. Since the issue of "ordinary residence" was contested, it could not be settled at this initial stage.

In *Chandra Prakash Mishra* v. *State of U.P.*,[94] the appellants filed a civil suit, but failed to pay the proper *ad valorem* court fees, due to which the trial court rejected the civil suit, invoking Order VII Rule 11(c). The appellant, while appealing, deposited ₹2,27,000 as court fees. The main dispute was whether, once the suit was revived, the appellants would be required to pay the court fees again in the trial court or whether the fee already deposited in the High Court should be treated as sufficient. The High Court decided on two contentions that (a) when a trial court rejects a plaint for non-payment of court fees, but the appellate court reverses that decision and remands the matter, then whether plaintiffs are required to deposit court fees before the trial court and (b) whether the appellants are entitled to a refund or adjustment of the court fees paid at the appellate stage under Section 13 of the Court Fees Act, 1870.

The High Court, while setting aside the trial court's order, held that under Section 13 of the Court Fees Act, 1870, when a plaint is revived in appeal or when a matter is remanded, the litigant cannot be compelled to pay the court fees twice. The court substantiated its decision by referring to *Chandra Bhushan Misra* v. *Jayatri Devi*[95] and its affirmation by the Supreme Court in *State of U.P.* v. *Chandra Bhushan Misra*.[96] The court stressed the point that the court fees cannot be levied more than once in the progress of a suit, even if remanded or retrial. The court directed that the payment of ₹2,27,000 would be treated as sufficient court fees for the suit.

In the case of *Smt. Reeta Devi and Others* v. *Raj Kamal Sahakari Awas Yojna and Another*,[97] the plaintiff, a cooperative housing society, filed a suit seeking a declaration of a sale deed as null and void. The trial court framed an issue regarding valuation and court fees, directing the plaintiff to make good the deficiency. However, the plaintiff failed to comply, resulting in rejection of the plaint under Order VII Rule 11(c) C.P.C. The plaintiff's Secretary died before this order, and the counsel duly informed the court of the death on the same day. The appellate court set aside the rejection order and remanded for trial, noting that the civil

[94] 2024:AHC:197567.
[95] AIR 1969 ALL 142.
[96] 1980 AIR 591.
[97] 2024:AHC:106332.

court retains the power to enlarge the time for compliance under Section 148 C.P.C. The Allahabad High Court upheld the appellate court's decision and observed that rejecting the plaint against a deceased person was improper without following the procedure for substitution or due representation under Order 22 Rule 10A C.P.C.

In *Naveen Chand Jain* v. *Manav Sharma*,[98] the appellant operated a petrol pump on property originally owned by the respondent, asserting an oral agreement and payment of ₹60,00,000 for its sale. The respondent sold the property to a third party but continued to interfere with the appellant's possession and business. The trial court rejected the plaint under Order VII Rule 11 C.P.C. on three grounds: the defendant was no longer the owner, thus no cause of action arose; the appellant failed to pursue the "equally efficacious remedy" of specific performance under Section 41(h) of the Specific Relief Act, 1963; and no privity existed between the plaintiff and defendant. On appeal, the High Court set aside this order, holding that the plaint did disclose a cause of action, and therefore, the rejection of the plaint was not justified. It was further observed that Section 41(h) of the Specific Relief Act, 1963 cannot be invoked at this stage, as the concept of "equally efficacious remedy" doesn't directly apply when the cause of action is based on the defendant's "unwarranted interference" with the plaintiff's right to operate the petrol pump, especially since the defendant is now a stranger to the property.

The cases highlight how courts interpret Order VII Rule 11 C.P.C., confirming its role as a filter for frivolous or technically flawed suits. Order VII Rule 11 C.P.C. serves as a vital procedural checkpoint in civil litigation. By mandating early judicial scrutiny of the maintainability of a suit, it preserves judicial time, protects defendants from needless litigation, and reinforces the principle that courts exist to adjudicate real and substantive disputes rather than to provide a forum for speculative, vexatious, or time-barred claims. Its mandatory nature, limited scope of scrutiny, and flexibility in timing together give it a crucial role in ensuring both fairness and efficiency in civil justice administration.

8. Counter-claim

A counter-claim is an independent and separable claim made by the defendant in a civil suit against the plaintiff, functioning as a cross-action that enables the court to address both the plaintiff's claim and the defendant's counter-claim in a single proceeding, thereby preventing multiplicity of suits and expediting justice.[99] The specific provisions related to

[98] 2024:AHC:191871.

[99] P. Ramanatha Aiyar, *Advanced Law Lexicon* 1093 (LexisNexis, New Delhi, 7th edn., 2024).

counter-claims under Order VIII Rules 6A to 6G C.P.C.[100] were introduced by the 1976 Amendment Act, allowing defendants to assert such claims for rights accruing either before or after the filing of the suit, provided the proceedings have not concluded and the claim is not barred by limitation. The counter-claim retains its legal force and is decided on merits even if the plaintiff's suit is withdrawn, dismissed, or discontinued. This principle was upheld in *Gurbhachan Singh* v. *Bhog Singh*,[101] where the Supreme Court emphasized that counter-claims are to be treated as independent suits and decided on their merits irrespective of the original suit's fate.

In *Ishita Dua* v. *Tarun Kumar Sharma,*[102] was whether the withdrawal of the divorce petition by the wife amounted to the withdrawal of the counter-claim of child custody by the husband as well. The trial court allowed the withdrawal of the divorce petition by the wife but also held that the husband's counter-claim should proceed as a separate suit. The appellant's wife filed the appeal against the Trial Court's order, contending that the divorce petition was 'withdrawn' and not 'dismissed', and thereby Order VIII Rule 6D C.P.C. (which allows counter-claims to be treated separately when the main suit is dismissed/ discontinued) shall not apply. The High Court upheld the Trial Court's decision and held that withdrawal of the divorce petition amounts to discontinuance of the suit under Order VIII Rule 6D and dismissed her appeal at the admission stage, allowing the husband's counter-claim to be treated as a separate suit.

Under C.P.C., a counter-claim is treated as a cross-suit and carries an independent character once filed. The withdrawal or discontinuance of the main suit does not automatically nullify the counter-claim, as it survives for adjudication on its own merits as provided in Order VIII Rule 6D C.P.C.,[103] which specifically safeguards the defendant's rights in the counter-claim, which are not defeated by the plaintiff's withdrawal of proceedings. Thus, a counter-claim may proceed as a separate suit irrespective of the fate of the main suit.

9. Order IX Rule 13 C.P.C.

Order IX Rule 13 C.P.C. provides a remedy to a party against whom an *ex parte* decree has been passed to seek the setting aside of such decree by showing "sufficient cause" for non-appearance. The scope of this rule has been affirmed and clarified by the Supreme

[100] *Supra* note 3, O. VII, rr. 6A-6G.
[101] AIR 1996 SC 1087.
[102] 2024:AHC:79757-DB.
[103] *Supra* note 3, O. VII, r. 6D.
[104] (2000) 3 SCC 54.
[105] (2011) 3 SCC 545.

Court in cases such as *G.P. Srivastava* v. *R.K. Raizada*[104] and *Parimal* v. *Veena*,[105] establishing that the rule embodies the principles of natural justice and the right to be heard. The application must be made within the prescribed limitation period, and the applicant bears the burden to demonstrate genuine reasons for absence. The court exercises its discretion judiciously, while it must not lightly set aside decrees; the principle of fair hearing remains paramount, especially where absence results from valid and bona fide grounds.

A further layer of complexity arises where the cause of non-appearance involves disputed questions of fact; in such situations, the court may need to take evidence. The rejection or acceptance of an Order IX Rule 13 application results in a final order, appealable under Section 96(2) C.P.C., as the Supreme Court observed in *Arjun Singh* v. *Mohindra Kumar.*[106] The process is not intended for routine avoidance of decrees; rather, it is a safeguard to prevent grave injustice due to exceptional circumstances. Moreover, courts have consistently held that the requirement of "sufficient cause" under Rule 13 should be interpreted liberally to advance substantive justice while preventing misuse by litigants seeking to delay proceedings.

Section 10 of the Family Courts Act, 1984, mandates the applicability of the provisions of the C.P.C. to all suits and proceedings before a Family Court.[107] It was clarified in *Manju Singh* v. *Ajay Veer Singh*,[108] that the Family Court shall be deemed to be a Civil Court and have all the powers of such a Court. Further, as per Section 7 of the Act, the Family Courts are empowered to exercise all jurisdiction as by the district court or subordinate civil court in respect of the matrimonial and other family-related disputes enumerated in the explanation to that section.[109] Section 10 empowers a Family Court to lay down its own procedure to arrive at a settlement or to ascertain the truth of the facts alleged, illustrating the special, problem-solving character of these courts.[110] However, it was emphasised by the Supreme Court in *Aman Lodha* v. *Kiran Lohiya*,[111] that Family Courts remain bound by the mandatory procedural norms and principles of fairness codified under the C.P.C.

Hon'ble Allahabad High Court in *Nagendra Sharma* v. *Court of Principal Judge, Family Court, Gonda*, involved a challenge to Family Court jurisdiction over an application under Order IX Rule 13 C.P.C. seeking to set aside an *ex parte* divorce decree. The husband contended that only an appeal, not a recall, was maintainable; the Family Court disagreed.

[106] AIR 1964 SC 993.
[107] The Family Courts Act, 1984, s. 10(1).
[108] (2019) 4 SCC 375
[109] *Supra* note 107, s. 7 and Explanation.
[110] *Id.*, s. 10(3).
[111] (2021) 9 SCC 1.

The issues were: Does the Family Court have the power to entertain recall/setting aside applications under Order IX Rule 13, or are its decrees subject only to statutory appeals? The High Court affirmed the Family Court's powers under Section 10 of the Family Courts Act (which applies all C.P.C. provisions to its proceedings) and declined to issue a writ of prohibition. Thus, the recall applications are held to be maintainable before the Family Courts.[112]

Section 17 of the Provincial Small Causes Courts Act, 1887, adds an additional requirement for tenants seeking to set aside *ex parte* eviction decrees. It mandates that the applicant must deposit the amount due under the decree or obtain the court's leave to furnish security when applying under Order IX Rule 13. The Supreme Court in *Kedarnath* v. *Mohan Lal Kesarwari*[113] has held this requirement to be mandatory, with non-compliance rendering the application unsustainable.

In *Smt. Gayatri Devi and another* v. *Smt. Shanti Devi*,[114] the landlord, filed an eviction suit against the tenant for arrears of rent. The tenant failed to appear, and an ex parte decree was passed. The tenant later filed an application under Order IX Rule 13 C.P.C. to set aside the decree, citing illness as a reason for absence, but initially did not deposit the security amount as required under Section 17 of the Provincial Small Causes Courts Act, 1887. The Trial Court allowed the tenant to deposit the amount later without objection from the landlords. The landlords challenged this in the High Court, claiming non-compliance with Section 17 rendered the application invalid. However, the High Court held that since the deposit was accepted and no objection was raised, the landlords waived their right to object, and the Trial Court's order was upheld.

Dealing with a similar issue in the case of *Om Prakash* v. *B.N. Public School*,[115] wherein the tenant failed to appear during the suit, leading to an ex parte decree. To set aside the decree, he was required to file an application under Order IX Rule 13 C.P.C., with Section 17 of the Provincial Small Causes Courts Act, 1887, but instead, he filed a recall application under Section 151 C.P.C., which was dismissed as not maintainable. Later on, he filed an application under Order IX Rule 13 with Section 17, which was also rejected. The High Court held that Section 151 C.P.C. cannot be used to circumvent the mandatory deposit under Section 17 when a specific remedy under Order IX Rule 13 exists. The tenant's attempt to evade this requirement resulted in confirmation of the ex parte eviction decree.

Order IX Rule 13 C.P.C. allows a defendant to set aside an ex parte decree passed

[112] 2024: AHC-LKO: 70332.
[113] (2002) 2 SCC 16.
[114] 2024: AHC:107190.
[115] 2024: AHC:200122.

against him if sufficient cause for non-appearance is shown. Section 17 of the Provincial Small Causes Courts Act, 1887, deals with the deposit of security, which needs to be strictly complied with as it is essential for the application to be maintainable. Courts may condone initial delays if there is no objection filed in the earlier stage of the proceeding. Remedy under general provisions like Section 151 will not be permitted if there is a direct remedy given under Order IX Rule 13 C.P.C. The rule ensures both fairness to absent defendants and finality to court decrees.

10. Interlocutory Orders and Receivership: Order XL & Section 151/152 C.P.C.

Order XL of the C.P.C. empowers the court to appoint a receiver where it appears to be "just and convenient".[116] Such an appointment may be made before or after the decree, either *suo motu* by the Court or upon an application by a party or an interested third party.[117] The object is primarily to preserve, protect, and manage the property in dispute during the pendency of the suit.[118] The powers conferred on a receiver under clause (1)(d) include bringing and defending suits, realising, managing, and preserving the property, collecting rents and profits, and executing documents as the owner could have done. However, sub-rule (2) safeguards possessory rights by providing that no person in possession whom a party has no present right to remove should be displaced.[119]

Though the appointment of a receiver is a matter of judicial discretion, it needs to be exercised prudently. The Supreme Court in *Krishna Kumar* v. *Grindlays Bank* laid down four guiding principles: (a) the discretion rests with the court; (b) the objective is preservation of the property; (c) the plaintiff must prima facie have an excellent chance of success; and (d) such appointment should only prevent manifest injury or wrong.[120] In *Parmanand Patel v. Sudha A. Chowgule*, it was emphasised that the plaintiff must also show circumstances of emergency, danger, or potential loss demanding immediate action.[121] Since an appointment deprives a party of *de facto* possession, such power is not to be exercised lightly, particularly in cases of bona fide possession, unless cogent reasons exist.[122] The court will consider not only the legal rights but also the conduct of the parties before granting the relief.

A receiver is an officer of the Court and a "public servant" within the meaning of

[116] *Supra* note 3, O. XL, r. 1(1).
[117] *Issar Das Lulla* v. *Hari*, AIR 1962 Mad 458.
[118] *Krishna Kumar* v. *Grindlays Bank*, AIR 1991 SC 889.
[119] *Supra* note 3, O. XL, r. 1(2).
[120] *Krishna Kumar* v. *Grindlays Bank*, AIR 1991 SC 889.
[121] *Parmanand Patel* v. *Sudha A. Chowgule*, AIR 2009 SC 1593
[122] *Issar Das Lulla* v. *Hari*, AIR 1962 Mad 458.
[123] *Hiralal Patni* v. *Loonkaran Sethiya*, AIR 1962 SC 21.

Section 2(17) C.P.C., as held in *Hiralal Patni* v. *Loonkaran Sethiya*.[123] His appointment may be for a defined period or "until judgment"; in the latter case, the appointment normally ends with the judgment unless expressly continued.[124] Even after the final decree, the court has the power to continue the receiver's role if the exigency of the situation demands it.[125] The C.P.C. also prescribes liabilities for breach of duty - under Order XL Rule 4, for failure to render accounts, to pay amounts due, or for causing loss by wilful default or gross negligence, the court may attach and sell the receiver's property to make good the loss.[126] The jurisdiction under Order XL is closely related to the court's inherent powers under Section 151 C.P.C. to issue interlocutory orders for safeguarding the ends of justice.[127]

In the case of *Jaigurudev Dharm Pracharak Sanstha and Others* v. *Pankaj Yadav and Others*,[128] the Hon'ble Allahabad High Court addressed competing claims over the management and properties of the Jaigurudev Sanstha, where both plaintiffs and counter-claimants sought the appointment of a receiver, alleging mismanagement by the current office-bearers. The Court held that appointment of a receiver under Order XL Rule 1 C.P.C. is a discretionary and exceptional remedy, justified only where there is concrete evidence of emergency, danger, or loss, not mere allegations of mismanagement or delay in seeking relief. The Court found there was no substantive material proving funds or property were unsafe in the hands of the respondents, especially as eight years of inaction and lack of urgency undermined the appellants' case. As such, both appeals were dismissed, with all substantial rights left for the trial.

The case of *Committee of Management Anjuman Intezamia Masajid Varanasi* v. *Shailendra Kumar Pathak Vyas and Another*,[129] involved competing claims regarding the right to perform rituals in the "Vyas Ji Tehkhana" a disputed cellar in the Gyanvapi mosque/temple complex. The District Judge initially appointed the District Magistrate as Receiver to maintain the *status quo*, then, by a subsequent order, allowed worship in the cellar - a relief omitted in the original order but later corrected as a clerical mistake under Section 151/152 C.P.C. The main issues revolved around whether the correction was proper, whether a receiver's functions could include sanctioning worship, whether the interim order effectively granted final relief, and whether factual disputes (title, status, and nature of possession) could be resolved at the interlocutory stage. The High Court upheld both orders;

[124] *Ibid.*
[125] *Hindustan Petroleum Corporation Ltd.* v. *Ram Chandra*, AIR 1994 SC 478.
[126] *Supra* note 3, O. XL, r. 4.
[127] *Supra* note 3, s.151; *Rajendra Prasad Gupta* v. *Prakash Chandra Mishra*, AIR 2011 SC 1137.
[128] 2024:AHC:178669.
[129] 2024:AHC:32769.

found the subsequent worship direction was a correction of omission, not new substantive relief, that the District Magistrate was a fit Receiver under the law, and that the trial must decide title/rights. The Court, therefore, rejected the appeal.

In *M/s. M.M.I. Tobacco Pvt. Ltd.* v. *Iftikhar Alam*,[130] the plaintiff obtained a temporary injunction against the defendant for trademark infringement, claiming exclusive rights over "Moosa ka Gul". The appellate court remanded the case to the trial court to reassess the injunction on the merits after the defendant claimed prior use. While the plaintiff's review petition against the appellate court's remand was held maintainable, it was dismissed on the merits as there was no apparent error in the remand order. The fresh injunction granted by the trial court in favour of the defendant is now under appeal. Under the C.P.C., an appeal is a statutory remedy allowing a higher court full reassessment of facts and law, while a review is a limited remedy before the same court to correct only apparent errors on the record and is sparingly granted.[131]

Thus, the appointment of a receiver is an interlocutory measure to preserve the status quo and protect the subject-matter of the suit. It is not granted as a matter of course but as a matter of prudence and necessity, guided by judicial precedents and the particular facts of each case.

11. Execution of Decrees: Resistance During Execution and Personal Liability of Corporate Entities

The concept of the execution of a decree lies at the very heart of the civil justice system. Execution refers to the process by which a decree-holder enforces the rights and remedies conferred by a judgment, decree, or order. The Order XXI and Sections 36 to 74 of the C.P.C. provide an exhaustive framework for execution proceedings.[132] Execution typically begins with the filing of an execution application, invoking Order XXI Rule 11, and proceeds through various judicial processes, including attachment of property, arrest and detention in civil prison, sale of assets, delivery of possession, and appointment of receivers.[133] The primary goal is to ensure that the successful litigant receives the fruits of judgment, transforming the declaration of rights on paper into actual, tangible relief.[134]

[130] 2024:AHC:73463.

[131] *Supra* note 3, O. XLVII, r. 1.

[132] *Id.*, ss. 36-74, O. XXI rr. 1-106; *Supra* note 1 at 2823.

[133] *Supra* note 3, O. XXI, rr. 30-46; B. *Hanumanthappa* v. *H. Basavanthappa*, AIR 2000 SC 3029.

[134] *Swaran Singh* v. *Surinder Kumar*, AIR 1962 SC 1428; R. Prakash, "Execution of Decree - Meaning and Process" 53 *Journal of Indian Law Institute* 249 (2011).

The effectiveness of execution is often considered the ultimate test of a civil justice system's credibility. Delays and failures in execution not only frustrate decree-holders but also undermine public faith in the legal process. The Supreme Court has recognised that procedural remedies meant to prevent injustice are sometimes misused to delay and defeat the enforcement of decrees. In *Rahul S. Shah* v. *Jinendra Kumar Gandhi*, the Court lamented that the prolonged struggle for actual realisation of decreed relief leads successful litigants to lose interest in pursuing execution or, worse, seek gratification from wrongdoers simply to recover, what is lawfully theirs. Such scenarios highlight the imperative for trial courts and executing courts to follow up adjudicated remedies rigorously and ensure their logical and fair conclusion.[135]

Order XXI provides a flexible yet detailed procedure for execution. The C.P.C. empowers courts to issue orders, writs, and warrants for execution, and vests court personnel with responsibilities for attachment, sale, and enforcement actions. Execution is not complicated in theory; effectiveness hinges on strict adherence to procedural requirements and, where necessary, training and skill among court staff.[136]

In *Abdul Hasan* v. *First Additional District Judge, Pratapgarh and Others*,[137] the petitioner challenged the rejection of his objections filed under Order XXI Rule 97 C.P.C. concerning resistance during execution of a decree. The petitioner claimed possession and alleged the decree was collusive and unenforceable. The Court observed that Order XXI Rule 97 confers exclusive jurisdiction on the executing court to adjudicate disputes relating to resistance or obstruction in possession during execution proceedings, thereby preventing multiplicity of litigation. It found the rejection of the petitioner's objections and recall application was arbitrary, as the petitioner had valid reasons, namely, an accident for non-appearance, and deserved an opportunity to present evidence. The Court emphasized the petitioner's right as an interested party to raise objections under Rule 97 at the execution stage. Further, the Court highlighted the complementary roles of Order XXI Rules 99 and 100 C.P.C., which provide remedies for restoration of possession and removal of obstruction, highlighting their relevance in safeguarding lawful possession. Consequently, the Court remitted the matter for fresh adjudication of objections, directing the trial court to expeditiously dispose of the matter with the cooperation of parties, thereby reinforcing the objective of the C.P.C. to adjudicate execution disputes within executing courts and avoid fragmented litigation. The writ petition was allowed accordingly.

[135] (2021) 6 SCC 418, para. 20; *Narayanan* v. *N. Sreekantan*, AIR 2012 SC 166.
[136] *Prem Lata Agarwal* v. *Lakshman Prasad Agarwal*, (2003) 11 SCC 487.
[137] 2024:AHC-LKO:46942.

In the case of *Dhanush Vir Singh* v. *Dr. Ila Sharma and Others*, Hon'ble Ashutosh Srivastava, J., considers whether directors or officers of a company can be arrested in satisfaction of a money decree payable by the company. The facts reveal that, after losing a mesne-profits decree against the company (Benett Coleman & Co. Ltd.), the landlord sought to execute by arrest of the company's Vice President/General Manager. The core issue was whether the company's officers could be detained to recover its debts when there was no fraud or express personal liability. The Court held that under the C.P.C. regime, corporate debts are enforced against company assets; arrest and detention of company officers is impermissible unless the "corporate veil" can be lifted for fraud or unless specific statutes make officers personally liable. The High Court quashed the order authorising arrest and directed execution to proceed against corporate assets.

The journey from judgment to satisfaction of a decree must be swift, fair, and effective. The provisions of the C.P.C. are designed not only to create powers for decree-holders but also to ensure that court orders have practical force in society. The Court's emphasis on accountability, discipline, and training in execution proceedings seeks to transform this phase from a bottleneck into a strong pillar of justice delivery.[138] Execution is the bridge between paper justice and real-world outcomes, and its efficiency is essential for preserving public confidence in the legal system.[139]

12. Second Appeal

The concept of second appeal under Section 100, C.P.C. has undergone considerable evolution aimed at balancing the finality of litigation with the need for legal uniformity. Originally, second appeals could be filed on various grounds, including errors of fact as well as law, but the scope has now been substantially restricted. Under the current legal framework, a second appeal to the High Court is permitted only if the decree passed in the first appeal by a subordinate court raises a "substantial question of law." The memorandum of appeal must clearly specify such substantial question(s), and the High Court is duty-bound to expressly formulate them before proceeding to hear the matter.[140]

Though the term "substantial question of law" is not explicitly defined in the C.P.C. but judicial interpretation has clarified its contours. It is not sufficient for a case to merely present a question of law; such a question must have a genuine impact on the rights of the parties and must not be conclusively settled by binding precedents. The Supreme Court in *Sir Chunilal Mehta* v. *Century Spinning & Manufacturing Co.* held that a substantial

[138] *Id*. at paras. 22-23; *Supra* note 1 at 2871.
[139] *Desh Bandhu Gupta* v. *N.L. Anand & Rajinder Singh*, AIR 1994 SC 104.
[140] *Supra* note 3, s. 100(1)-(5).

question of law is one that either concerns a matter of general public importance or directly and substantially affects the rights of the parties, and has not been definitively settled by the Court.[141] Moreover, the High Court may interfere only if there is perversity in the findings of the lower courts or if vital evidence has been ignored; mere possibility of a different view is not a ground for interference.[142]

One of the key underlying aims of allowing second appeals is to promote uniformity and certainty in the law within each state by ensuring that questions of law are settled by the High Court, whose pronouncements are binding on all subordinate courts. However, the appellate jurisdiction in a second appeal is not so extensive as to permit re-appreciation of evidence or a review of findings of fact, except in exceptional circumstances such as where findings are perverse, based on no evidence, or arrived at by ignoring material evidence.[143] The High Court is thus intended as a 'Court of Law' rather than a 'Court of Facts' at this stage.

The procedural requirements also needed to be strictly enforced. The High Court, at the time of admission, must specifically formulate the substantial question of law that arises, and the appeal is required to be heard only on such question. Any decision in a second appeal without such formulation is a jurisdictional defect, and any judgment so delivered can be set aside on that ground.[144]

In the case of *Shyampati* v. *Ram Karan Pandey and Others*,[145] the appellant filed a suit seeking a permanent injunction to restrain the respondents from disturbing her peaceful possession over a disputed piece of land adjoining her house, which included a courtyard area known as "Sahan" and a storage structure termed "Husk." The appellant claimed possession dating back prior to the abolition of Zamindari under the U.P. Zamindari Abolition and Land Reforms Act, 1950 supported by documentary evidence such as village records and family registers. The respondents denied these claims, asserting their own possession and ownership, stating that the land was part of their ancestral "Sahan" and used by them continuously for agricultural and domestic purposes. The trial court initially ruled in favour of the appellant, granting the injunction. However, the first appellate court reversed the decision and set aside the trial court's judgment, leading the appellant to approach the Allahabad High Court through a second appeal.

The Allahabad High Court examined whether the first appellate court had erred by failing to frame points of determination as required by procedural law and whether its

[141] AIR 1962 SC 1314.
[142] *Gurdev Kaur* v. *Kaki,* AIR 2006 SC 1975.
[143] *State Bank of India* v. *S.N. Goyal,* (2008) 8 SCC 92.
[144] *Kshitish Chandra Purkait* v. *Santosh Kumar Purkait,* AIR 1997 SC 2517.
[145] 2024: AHC-LKO:58701.

findings were legally tenable. It held that though the appellate court did not explicitly formulate points of determination, it had substantially complied with procedural requirements by addressing the issues framed at trial and providing reasons. However, the court found the appellate court's conclusions to be perverse and based on conjecture, as it had disregarded significant evidence presented by the appellant, including possession records, the impact of a 2005 fire affecting the area, and the nature of the construction claimed as part of the disputed land. The court observed that the burden of proof lies with the party asserting ownership and possession, and that evidence must be properly evaluated without bias or omission. Accordingly, the High Court set aside the appellate judgment, remitted the case for fresh adjudication, and directed expeditious disposal to prevent further delay.

13. Conclusion

In conclusion, the guiding philosophy that emerges from both statutory scheme and judicial pronouncements is that procedure is meant to serve as a handmaiden of justice, not its mistress. As aptly noted, "the function of procedural law is to facilitate justice and further its ends." The Courts are thus entrusted with significant discretion and inherent powers to ensure that no litigant suffers for want of strict compliance with technicalities where the cause of justice demands otherwise. Whether through flexible application of time limits, cautious exercise of powers to reject plaints or grant adjournments, or through the correction of procedural defects, the overarching aim remains to secure substantial justice and prevent abuse of process. It is this adaptive, justice-oriented approach that sustains public faith in the legal system and enables the machinery of civil procedure to remain responsive to the evolving needs and circumstances of society.

Constitutional Law

*V. Vijayakumar**

1. Introduction

This annual survey contains the decisions relating to constitutional law issues of the Allahabad High Court during January to December 2024. The decisions that do not fall within the domain of constitutional law are not specifically mentioned in this survey.

2. Writ Jurisdiction

In *Moti Singh Sikarwar* v. *Devendra Singh,*[1] the petitioner sought compensation for defamation as two suits were disposed off by the Additional Civil Judge & Civil Judge Senior Division by granting *ex parte* decree. The case of petitioner/appellant in this case came before a single judge bench of the Allahabad High Court and the petition was dismissed as the judge felt that it does not call for interference by the court.

A division bench of the Allahabad High Court allowed the writ petition filed by the Petitioner, a private limited company, engaged in development of residential and commercial projects, in *M/s Divine Conbuild Private Limited* v. *State of Uttar Pradesh.*[2] The petitioner sought for the writ of *Certiorari* to quash the order passed by the Managing Director of the Uttar Pradesh Small Industries Development Corporation as well as the writ of Mandamus to direct the respondent to provide the necessary link in the form of access road to the site allotted for development. The petitioner also prayed to the court for re-fixing the seven-year period for completion of the project from the date of completion of the sixty-meter-wide 'access road' to be provided by the respondent. The division bench of the Allahabad High Court allowed the writ petition and passed necessary and consequential directions to the respondent in this regard.

However, a division bench of the Lucknow Bench of the High Court dismissed the writ petition in *Mohd. Rehan* v. *Lucknow Development Authority.*[3] In this case, the petitioner by a writ petition, wanted the court to quash the cancellation order issued by the Lucknow Development Authority, including forfeiture of token money deposited. The petitioner did not comply with the notices issued by the Lucknow Development Authority, citing one reason or the other. In the agreement entered between the petitioner and the Lucknow Development Authority, there was no condition requiring the Authority to provide any opportunity of hearing to bidders before terminating their bids or cancelling allotment so made. However, the petitioner was given sufficient notices to comply with. The court held

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[1] AIR 2024 All 1; AIROnline 2023 All 1847.

[2] AIR 2024 All 5; AIROnline 2023 All 1916.

[3] AIR 2024 All 10; AIROnline 2023 All 1920.

that the order of cancellation of allotment and forfeiture of deposits upon default as legal and dismissed the writ petition.

In *Amit Agarwal* v. *Atul Gupta*,[4] the termination of the sole arbitrator due to long delay of eight years was considered by the court. After eight years, the sole arbitrator hurriedly proceeded and made final award under Arbitration and Conciliation Act, 1996. This was done by the sole arbitrator while an application for termination of his mandate was pending before the Competent Court. The High Court dismissed the writ petition and upheld the lower court order terminating the mandate of sole arbitrator in this case.

The Allahabad High Court pressed in to service the doctrine of Acquiescence in *M/s Pandit Damber Lal Bhagirathi Filling Station* v. *Union of India*.[5] A division bench of the High Court allowed the writ petition in this case. The original allottee, a school teacher submitted his resignation after the allotment was made in his favour. However, the District Inspector of Schools rejected his resignation. Therefore, the allottee continued to be in service till his superannuation. All these facts were known to the Indian Oil Corporation Limited from the very beginning. After nine years, the Indian Oil Corporation Limited terminated the order of dealership by an order issued on 12.03.2022. The division bench held that the Indian Oil Corporation Limited cannot terminate the order of dealership after nine years as it is bound by the doctrine of Acquiescence.

The Lucknow bench allowed the writ petition and set aside the order of Additional Civil Judge in *Savithri Devi* v. *Civil Judge Junior Division Court*.[6] The petitioner's application for impleading in a suit for cancelation of a sale deed was rejected by the Additional Civil Judge (Junior Division), Barabanki, by an order dated 15.07.2011. It is about a property on which a suit for cancellation of sale deed dated 28.04.2009 was filed by the respondent No. 2 against respondent no. 3. During the pendency of the suit, respondent no.3 had transferred the property to the petitioner by means of a gift deed dated 10.08.2009 by means of a registered instrument. After the execution of the gift deed, the petitioner had moved an application for impleadment, which was opposed by respondent no. 2 stating that no transfer made during the pendency of the suit would be void in terms of section 53 of the Transfer of Property Act and consequently the petitioner has got any right to become a party in the present litigation. The Trial Court sustained this objection and rejected the application for impleadment by the petitioner. On appeal to the High Court, the order of the Additional Civil Judge (Junior Division) dated 25.07.2011 was set aside and allowed the writ petition.

[4] AIR 2024 All 30; AIROnline 2023 All 2053.
[5] AIR 2024 All 37; AIROnline 2023 All 1940.
[6] AIR 2024 All 55; AIROnline 2024 All 100.

In a writ petition filed under Article 226 of the Constitution of India, the High Court issued directions to the Union of India and others in *Naromattie Devi Ganpat* v. *Union of India*.[7] The petitioner is a U.S. Citizen, born in Guyana, but of Indian origin. Her grandfather Bishnath hailed from Allahabad, Jaunpur and Hania, who was sent from Calcutta by a ship "EMS" to Guyana vide immigration no. 104709. The petitioner is also the great grand daughter of Ganesh and Janki hailing from Jaunpur and Hania respectively. In proof of this, the petitioner got an 'apostille'[8] copy of her grandfather's immigration certificate from the National Archives of Guyana showing that they immigrated by ship 'Delhet' on 10th October 1882 and it also carried the immigration certificate of her grandmother Janki.

The petitioner applied for Ancestry certificate and was issued by the Village Pradhan of Sarigao, Jaunpur District on 3.10.2022. The petitioner claimed to have married Bhavin Dinesh Dholakia on 14.9.2018 in a temple in Mumbai, duly registered on 24.9.2018. She then applied for Overseas Citizen of India (OCI) Card through her spouse and also through her ancestry. It was denied on the ground that her marriage was not verified. The petitioner applied for visa conversion on 20.9.2022, but was rejected again. Her visa expired on 6.2.2023. She filed this Writ Petition seeking Writ of Mandamus directing the respondent to register the petitioner as OCI card holder.

The Respondent Authority pleaded that Allahabad High Court did not have the territorial jurisdiction as the petitioner/applicant was staying in Uttarakhand. The High court rejected this contention since her great grandparents hailed from Jaunpur that fell within the territorial jurisdiction of this Court. The meaning, nature and scope of 'apostille' document, the Hague Convention,1961, and the relevant notification of Government of India were taken together and the Division Bench held that the petitioner has clearly made out a case that her great grandparents migrated from Allahabad to Guyana in 1882 and hence she is entitled to the OCI card and directed the respondents to process the OCI card. The order also directed the respondents to convert the visa of petitioner, so that she is eligible for OCI card. Allowed the Writ petition.

In *Jamal Khan* v. *Siraj Ahmed*,[9] the election of village Pradhan was challenged on 12.7.2021 under section 12C of Uttar Pradesh Panchayat Raj Act, 1947, on the ground that the petitioner belonged to general category but has contested the election as a Backward class category. Election of petitioner was set aside by prescribed Authority on 16.12.2022.

[7] AIR 2024 All 69; AIROnline 2024 All 70.

[8] Apostille is a special certification or stamp that verifies its authenticity and legal origin. This process is governed by the Hague Apostille Convention, 1961, that simplifies the legalization of public documents for use in foreign countries.

[9] AIR 2024 All 80; AIROnline 2024 All 109.

Issuance of backward class certificate was by Tehsildar of another district. He then filed a revision before District judge and was dismissed on 5.5.2023. The court held that the petitioner failed to make out any case for interference of this court, exercising extraordinary jurisdiction under Article 227 of the Constitution of India for setting aside the orders of 16.12.2022 and 5.5.2023. Further, the court held that as the Election Commission had proceeded to notify the election on 16.8.2023, no interference is required for setting aside the said notification. Both writ petitions were accordingly dismissed.

In *Energo Constructions Private Ltd* v. *Uttar Pradesh Rajya Vidyut UT.P.A.dan Nigam Ltd*,[10] the Petitioner is a service provider (operation and maintenance services) to respondent company. Based on a tender, the petitioner was awarded a two-year contract for operation and Maintenance services. One of the unsuccessful bidders pointed out that the petitioner company has been debarred by another state-owned power generating company in Madhya Pradesh. A response was sought on this from the petitioner vide letter dated 15.10.2020 and on clarification, a contract was signed on 15.3.2021. Respondent floated a tender for a period commencing from 1.3.2023. As tender could not be processed, the existing contract with petitioner was extended up to 31.3.2023. Fresh tender was floated again on 22.3.2023, which had two bid modes, technical and financial. Technical bid was opened on 6.4.2023, and few including petitioner were found technically qualified. As the tender could not be completed, the existing contract with petitioner company was further extended up to 31.05.2023. Subsequently, in the financial bid, the petitioner company was L1 but tender was not awarded as respondent No.4 had filed a complaint alleging that petitioner has filed a false affidavit regarding blacklisting/debarment/termination of the contract.

The respondent No.1 had issued letter of intent in favour of respondent No.4 on 28.7.2023. The petitioner moved this court seeking writ of Certiorari to quash the letter of intent dated 28.7.2023 and Mandamus directing respondents 1–3 to award the tender to the petitioner company as it was L1. After this, an email was sent out by respondent No.1 stating that the competent committee did not consider the offer of L1 due to submission of false information on notarised affidavit regarding blacklisting/debarment/termination of contract. After receiving this email, the petitioner moved an amendment application that was allowed by the court on 28.11.2023.

After referring to catena of Supreme Court decisions on similar issues, the court held that the petitioner had submitted a false affidavit and therefore he was disqualified for giving a false declaration. The claim of being L1 is immaterial as only those financial bids

[10] AIR 2024 All 83; AIROnline 2024 All 159.

could be entertained who are technically qualified. The petitioner does not qualify or pass the first hurdle and hence it cannot take a benefit or argue that since its bid was lowest, tender should be awarded to it. The writ petition was accordingly dismissed.

The Lucknow Bench quashed the impugned *ex parte* order dated 21.12.2023, issued by the Sub-Registrar imposing additional stamp duty and penalty, and remitted the matter to the competent Authority (Respondent 1) to pass a fresh order within three months, after the opportunity of hearing to all the parties in accordance with law, in *Sammukh Land Developers and Promoter Private Ltd., Jaunpur* v. *Collector/District Magistrate, Ambedkar Nagar*,[11] The court allowed the writ petition.

The Lucknow bench allowed the petition in *Ritesh Agarwal* v. *Commissioner, Devi Patan Mandal, Gonda and others*.[12] Revision of an *ex parte* order dated 24.8.2023, directing parties to maintain status quo under section 210 of Uttar Pradesh Revenue Code, 2006, is not maintainable. Only appeal under section 207 of the Code of 2006 would lie against the said order. Accordingly, the impugned order dated 24.8.2023 passed in revision No.1201 of 2023, by respondent No.1 Commissioner, Devi Patan Mandal, Gonda was set aside. The petition was allowed.

In *Rakesh K.V. Jaswal* v. *State of Uttar Pradesh and others*,[13] the petitioner sought Writ of Mandamus, directing the respondents to decide the application of petitioner for cancellation of lease and not to realise the royalty in respect of lease area to the petitioner after 15.6.2004. The provisions of Mines and minerals (Development and Regulations) Act, 1957 and the Uttar Pradesh, Minor Minerals (concession) Rules, 1963 were in consideration. Since there was no approach Road to extract sand from lease area, petitioner applied for cancellation of lease. This application was rejected by district magistrate, Maharajganj, by order dated 15.6.2004 on the ground that providing road to the site of mining was responsibility of lease holder. Rule 16 of Rules, 1963 provides the option to the lessee for determination of mining lease after giving a notice in writing of not less than six months. The application by petitioner should have been treated as notice under Rule 16 and held that rejection of the petitioner's application for cancellation of lease was not proper and directed the authority to consider the application of petitioner treating it to be six months' notice as provided under Rule 16 of Rules 1963.

In an Election Petition filed under section 12C of the Uttar Pradesh Panchayat Raj Act, 1947, the High Court in *Shashi Kushwaha* v. *Seema Sahu and others,*[14] dismissed the

[11] AIR 2024 All 106; AIROnline 2024 All 122.
[12] AIR 2024 All 124; AIROnline 2024 All 222.
[13] AIR 2024 All 154; AIR Online 2024 All 451.
[14] AIR 2024 All 158; AIROnline 2024 All 473.

petition filed by the appellant under Article 226 of the Constitution of India. An Election Petition was filed under section 12C of the Act of 1947, with the jurisdictional Revisional Court that can reappreciate evidence, both oral and documentary, to examine material irregularities or any illegality committed by the Prescribed Authority to recount ballot papers. However, after perusing the facts and circumstances of the case, the High Court dismissed the petition as it felt that no interference under Article 226 of the Constitution of India was warranted.

In another writ petition filed under Article 226 of the Constitution of India in *Sheel Mohan Bansal* v. *State of Uttar Pradesh and others,*[15] the High Court allowed petition. In this case, the High Court referred to the previous decision in *Sumit Gupta* v. *State of Uttar Pradesh*,[16] wherein it was held that for levying stamp duty on a gift deed, the provisions of section 47A of the Stamp Act, 1899, would not come into play and that there is no requirement of determination of market value in such gift deeds. Therefore, the authorities cannot take recourse to section 47A (3) of the Stamp Act, 1899 and *suo motu* seek additional stamp duty based on market value of property. The orders of the authorities dated 18.11.2022 and 13.03. 2023 were set aside by the court. Apart from this Justice Shekar B Saraf went on to direct the authorities to be far more cautious in their approach in quasi-judicial functions being carried out by them. The writ petition was allowed and the amount deposited by the petitioner is directed to be refunded to him within a period of 6 weeks from the date of the decision along with an interest at the rate of 5% from the date of deposit.

In *Smt. Shivani Chaurasia* v. *State of Uttar Pradesh and another*,[17] the court distinguished the power to review carried out by the collector as a quasi judicial authority in the absence of such powers in law and inherent powers of constitutional courts to review its own decisions. The impugned order of collector dated 3.2.2023 is quashed and set aside. Writ petition was allowed.

In *Uttar Pradesh power Corporation Limited* v. *Central Electricity Regulatory Commission and another*,[18] Regulation 5A of Central Regulatory Commission Terms and Conditions of Tariff Regulations, 2004, provided for imposing a simple interest of 6% per annum at the time of recovery of a price or charge exceeding tariff. Whereas S.62 (6) of the Electricity Act, 2003, specifically provided for interest rate equivalent to the bank rate. The bank rate is variable and is based upon various considerations. As these two provisions (S.62 (6) of the Act of 2003 and regulations, 5A of Regulations, 2004) are in direct conflict and the

[15] AIR 2024 All 164; AIROnline 2024 All 465.
[16] AIR 2011 All 135.
[17] AIR 2024 All 180; AIROnline 2024 All 564.
[18] AIR 2024 All 185; AIROnline 2024 All 547.

division bench held that regulation 5A of the Regulation, 2004, as unconstitutional and quashed the same. The court further held that the Central Electricity Regulatory Commission did not have any power to provide any different rate of interest in its Regulations. Writ Petition was allowed.

A division bench of the High Court in *Dilip Charan Wahal* v. *Union of India,*[19] decided this case under Article 226 of the Constitution filed for writ of Certiorari and Mandamus. A lease deed was executed on behalf of Central government on 15.5.1934, in respect of premises described as 'Carter House, 236, M. G. Road, Lucknow Cantonment' in favour of Shri. Shiv Charan for a period of 30 years with effect from 25.10.1933, which was renewable up to 90 years. The petitioners were in actual possession of the property and in *de jure* possession of the rest of the property (Carter house) which is in occupation of the respondents, as it was let out to the Governor General in council at a monthly rent of ₹ 220/- by lease deed dated 21.11.1941 On 10.3.2017, the central government framed a policy providing for an extension of expired/expiring leases. By virtue of this, the lease of the property in question was extended initially up to 31.12.2019 and again on 15.2.21 up to 30.12.2021 or till finalisation of a new policy, whichever is earlier. This was further extended up to 31.12.2023. The lease dated 15.5.1934, in favour of the petitioner had expired on 24.10.2023, yet the petitioners have been allowed to occupy the property till date. The respondent no.3, by a demand notice dated 8.12.2023 directed the petitioners to pay ₹ 77, 05, 669 per annum. Another demand notice dated 19.2.2024, in pursuance of an interim policy dated 30.1.2024, demanding a total of ₹ 91, 63, 857 to be paid within a period of 90 days for the purpose of processing the issue of execution of lease deed up to 31.12.2024, failing which the petitioners would be deemed to be unauthorised occupants and would be liable for eviction under provisions of Public Premises (Eviction of Unauthorised Occupant) Act, 1971, and that the petitioner would be entitled to an extension of lease up to 30.12.2024. The petitioner contended that on extension of lease, rent cannot be increased and it can be done only on renewal. The increase of rent from ₹ 50 per annum to ₹ 77, 05, 669 per annum is arbitrary and contrary to the principles established in Article 14 of the Constitution of India. The court dismissed the petition as it didn't find any violation of Article 14 and that the lessees are free to accept or reject the offer made by the respondents.

An Election Petition, on appeal was taken up in *Shahnawaz Ali* v. Election *Tribunal, District Judge, Muzaffarnagar and others*.[20] Election petition was filed well within prescribed period, but could not be admitted and registered due to summer vacation. The plea that election petition was barred by limitation (30 days from declaration of results) was not

[19] AIR 2024 All 202; AIROnline 2024 All 495.
[20] AIR 2024 All 214; AIROnline 2024 All 781.

tenable. The High Court affirmed the order of District judge (Election Tribunal) dated 3.7.2023, as there is no illegality, perversity, or irregularity in the order and dismissed the Writ petition.

The High Court considered the election procedure on appeal in *Committee of Management, Arya Kanya Pathsala Samiti and others* v. *State of Uttar Pradesh and others*[21] The petitioner challenged the order of Assistant Registrar, Firms, Societies and Chits, Jhansi region, dated 19.9.2023, declaring the election proceedings dated 30.10.2021 and 10.6.2023 to be invalid. The order dated 19.9.2023, also declared the Committee of Management of the society as time barred in the exercise of powers under section 25 (2) of the Societies Registration Act, 1860 and further for elections of the Committee of Management of the society has proceeded to determine valid members of the society, that is, the electoral college under section 4B of the Act of 1860.

Preliminary objection was raised by respondent regarding maintainability of this writ petition. Further, raised objection to the petitioner number one (AKPS), as it is represented through deputy manager under the bylaws of the society and is not authorised to file any writ petition on behalf of the Committee of Management. On behalf of petitioner, it was contended that only Prescribed Authority can, on reference made under section 25 (1) of the Societies Registration Act, 1860, and the Assistant Registrar does not have any jurisdiction to adjudicate in this matter. The order dated 19.9.2023 passed by Assistant Registrar and consequential order dated 5.4.2024, along with consequential election proceedings, if any, were set aside. The court remitted this matter to Assistant Registrar for appropriate orders in accordance with law and after providing hearing to all parties. Writ petition was allowed.

In a writ petition filed under Article 226 of the Constitution of India in *A. K. Construction Co.* v. *Union of India and others*,[22] the petitioner assailed the order dated 31.5.2024 passed by Chief General Manager, Commercial Operations, National Highways Authority of India. This order was passed pursuant to the show cause notice issued to the petitioner dated 24.5.2024 and the petitioner gave the reply 27.5.2024. This impugned order terminated petitioner's contract with the NHAI for running Kaithi Fee Plaza and further debarred from the list of prequalified bidders for a period of six months. Petitioner contended that on perusal of the impugned show cause notice, it is clear that reeks of premeditation and *fait accompli* by itself. The authorities have blatantly erred in law in not considering the reply by the petitioner, point by point, yet passed the impugned order in

[21] AIR 2024 All 238; AIROnline 2024 All 690.
[22] AIR 2024 All 246; AIROnline 2024 All 946.

gross violation of the principles of natural justice. The petitioner submitted that the quantum of damages/ the termination and debarment is against the principle of proportionality and also amounts to double jeopardy. The petitioner has already paid the penalty of ₹ 8,00,000 for the technical breaches committed by it.

The division bench of the High Court, after hearing both the parties and referring to a catena of judicial decisions, held that in not giving any opportunity to the petitioner to show cause against the proposed termination of contract and there being no sufficient reason to justify the impugned action, the NHAI has acted unfairly, unreasonably, in an arbitrary manner and in violation of principle of natural justice, thereby infringing the petitioner's right guaranteed by Article 14 of the Constitution of India. The action of NHAI amounted to double jeopardy. The division bench also reiterated, based on judicial decisions, four specific principles: (i) the principle of proportionality, which dictates that any decision to blacklist must be reasonably fair and commensurate with the gravity of the alleged offence or breach; (ii) general principles of natural justice that include audi alteram partem, nemo judex in causa sua (no one can be a judge in their own cause), and the right to a reasoned decision; (iii) principles of non-arbitrariness and non-discrimination that would prevent arbitrary state actions and ensure that decisions are made based on lawful and relevant grounds, promoting fairness and equality under Article 14 of the Constitution of India; and (iv) the rule of law, which requires that every action of the state should comply with legal standards and be informed by reasons.

Accordingly, the division bench quashed the impugned order dated May 31, 2024 with the direction to the authority concerned to issue a fresh show cause notice to the petitioner. On receipt of reply, an opportunity of hearing should be granted to the petitioner and thereafter reasoned order be passed by the authority concerned. The High Court allowed the writ petition.

A Division Bench at Lucknow partly allowed the appeal in *M/s Shyam Lalith Dubey and another* v. *Union of India and another*.[23] In an appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996, filed by the Petitioner, whereby the Commercial Court had set aside an entire Award relating to Claim pertaining to Epoxy Grouting and interest was set aside by the High Court and the rest of the Award was upheld.

In Punjab National Bank, earlier *Oriental Bank of Commerce* v. *Sanjeevani Shiksha Samiti*[24] the High Court considered the issues of mesne profit under section 106 of the Transfer of Property Act, 1882. The enhancement of Mesne profits at admitted market rate

[23] AIR 2024 All 256; AIR Online 2024 All 907.
[24] AIR 2024 All 270; AIROnline 2024 All 900.

of 15% was held to be proper under the Uttar Pradesh Regulations of Urban Premises Tenancy Act, 2021. The court dismissed the petition affirming the judgment of trial court in so far it relates to payment of Mesne profit at 15%.

In *Somesh Prakash and others* v. *State of Uttar Pradesh and others*,[25] petitioners, nine of the joint owners, divided the property. Notice was issued under Indian Stamp Act, 1899. Not satisfied with the reply, penalty was also levied. The court held that in view of the family settlement, the orders do not refer to any reason for justifying levy of the penalty and quashed the same. By allowing the writ petition the court observed that any amount deposited by the petitioners shall be refunded along with an interest at 4% till the actual payment is made, within a month. The court also observed that it is a settled law that reason is the heartbeat of every conclusion. An order without valid reasons cannot be sustained. To give reasons is the rule of natural justice and it is well settled that not only the judicial order, but also administrative order must be supported by reasons recorded in it.

In a writ petition filed under Article 226 of the Constitution of India, in *Dynamic Infracon Private Limited* v. *State of Uttar Pradesh and others,*[26] the division bench dismissed the petition. In this case, the petitioner is a private limited company engaged in a business of supply of sal wood sleepers and edgings, and has previous experience in the supply of the same at the earlier Kumbh Mela held in Prayagraj. On 28.5.2024, The Sal Sleeper Purchase Committee through the office of the Chief Engineer, Public Works Department, Prayagraj, issued an e–bid document for the supply of Sal wood sleepers and edging for construction of pontoon bridges in the Maha Kumbh Mela, 2025. The last date for submission of bidding documents was fixed as June 11, 2024, subsequently, the last date was duly extended up to June 12, 2024. The process consisted of two stages, namely, technical bid and financial bid. The financial bid would be opened for only those bidders who were successful in the technical bid. Out of 12 bids, 11 were found to be qualified for financial bid, which was opened on June 15, 2024. Contract was granted in favour of five bidders, L – 1 to L – 5, because L – 2 to L – 5 agreed to supply the materials at the same rate quoted by L-1 (₹ 1, 58, 000 per cubic meter). The petitioner was placed at L – 10 at ₹ 2, 26, 900 per cubic meter. On June 28, 2024, letter of award was granted in favour of the five bidders (L – 1 to L – 5).

The Division Bench observed that it is clear that this court is not required to find fault of the authorities with a magnifying glass, rather the court should examine the decision-making process and leave room for interpretation of the contract by the authorities. The petitioner failed to establish that the action of authorities was contrary to public interest and within the realm of discrimination and unreasonableness and dismissed the writ petition.

[25] AIR 2024 All 308; AIROnline 2024 All 1156.
[26] AIR 2024 All 328; AIR online 2024 All 1121.

3. Appellate Jurisdiction

A Division Bench had to decide on jurisdictional issue as well as the Award issued by the Facilitation Council, Kanpur, under the Arbitration and Conciliation Act, 1996, in *Marsons Electrical Industries* v. *Chairman, Madhya Pradesh Electricity Board,*[27] The award passed by the Facilitation Council, Kanpur, dated 02.07.2009 and signed on 07.09.2011, and final award passed on 03.02.2012 was appealed against before the Commercial Court which set aside the arbitral award by holding that only the courts in Jabalpur would have jurisdiction. The division bench set aside the decision of the Commercial Court and upheld the award passed by the Facilitation Council, Kanpur, dated 02.07.2009, signed on 07.09.2011, and final award passed on 03.02.2012 was restored and affirmed.

In *Anita Devi Chaurasiya* v. *State of Uttar Pradesh*,[28] an election petition filed under section 26G of the Uttar Pradesh Panchayat Raj Act, 1947, on the ground that 49 voters had their names listed in multiple village panchayats, leading to double voting. The prescribed Authority declared the election null and void on 27.12.2022. However, the Revisional court set aside the order of prescribed Authority on the requirement of specific pleading on 24.05.2023. The election petitioner has to state grounds and concise summary of facts while has materially affected result of election. There was only an averment regarding double voting but no averment specifying which voters from other village panchayat had double voted and how it materially affected election result. The HC upheld the order of Revisional court (District Judge) in this case.

A Division Bench of the High Court allowed an appeal in *Dr. Rajeev Sinha* v. *Union of India and others*.[29] The petitioner had purchased a part of land measuring 0.230 hectares/2300 square metres in Koncha, Bhanvar village Pargana in District of Jhansi and got it registered as deeds on 27.3.1993 and 4.2.1994. The Union government acquired the land for a highway project and the Special Land Acquisition Officer assessed the market value of the land at ₹ 15,00,000 per hectare. The petitioner approached the competent authority under section 3G (5) g of the National Highways Act, 1956. The collector/District magistrate as the arbitrator declared his award on 15.9.2017 on the lines of assessment by Special Land Acquisition Officer. The petitioner assailed this award before the district judge, Jhansi, section 34 of the Arbitration and Conciliation Act, 1996. The district judge set aside the award dated 15.9.2017 and remanded the matter to the Arbitrator for fresh consideration in the light of observations made in his judgment dated 27.4.2022 and by affording

[27] AIR 2024 All 19; AIROnline 2023 All 2023.
[28] AIR 2024 All 60; AIROnline 2024 All 16.
[29] AIR 2024 All 97; AIROnline 2024 All 152.

opportunity of hearing to the parties. The District Magistrate on remand however, rejected the reference and by order dated 28.7.2023 by holding that the compensation awarded earlier on 30.9.2010 was according to law and the petitioner is not entitled to any further compensation. This order of the Arbitrator dated 28.7.2023 was challenged by the petitioner in this writ petition. The division bench after hearing the parties and perusing the records held that the court was fully satisfied that the Arbitrator/Collector, Jhansi, has acted in defiance of fundamental principles of judicial procedure, particularly by not following the directions of the district judge. The bench quashed the order of Arbitrator/District magistrate and ordered for fresh exercise to be carried out by the Arbitrator/Collector Jhansi, strictly in accordance with the law and based upon material on record. The division bench allowed the writ petition so filed by the petitioner.

In *Pankaj Rastogi* v. *Mohd,Sazid and another,*[30] the trial court has rightly held the mandatory provisions under section 12 A of Commercial Courts Act 2016. With a view to meet ends of Justice, the order rejecting the plaint was set aside and appellant was directed to approach the mediation Centre in accordance with section 12 A of the Commercial Courts Act, 2016. The court by referring to the judicial pronouncements, held that it can be conclusively inferred that the invocation of urgent relief should not serve as a pretext circumvent. Section 12 A of the Commercial Courts Act 2016.

The Lucknow bench of the High Court dismissed an appeal in *Smt. Renu Singh* v. *Shubhang Chauhan and another*.[31] The trial court has decided a suit without following due procedure of law and therefore cannot be sustained in law. The first appellate court was right in setting aside the decree and remanding the matter. Appeal was dismissed as it is misconceived. However, keeping the feet that the matter is an old one, the trial court shall make its earnest endeavour to decide the suit expeditiously and preferably within one year in accordance with law.

A Division Bench of the High court dismissed the special appeal in *Indian Oil Corporation Limited* v. *Modern Service Station*.[32] The respondent/petitioner. M/S modern service station is a dealer to dispense HSD/petrol and agreement was signed between the service station and Indian Oil Corporation on 11.4.2011. The Retail Outlet (RO) had two dispensing units, manufactured by M/S Gilbarco Veeder Root (GVR). As per the rules, the dispensing units have to be periodically stamped by GVR and by Weights and Measures Department. On 23.3.2019 and 19.4.2019, the Weights and Measures Department had given

[30] AIR 2024 All 109; AIROnline 2024 All 158.
[31] AIR 2024 All 114; AIROnline 2024 All 252.
[32] AIR 2024 All 129; AIROnline 2024 All 230.

its report stating that 'Dispensing Unit is okay' so no need for calibration. The sales officers inspected and reported 'no variation in stocks' on 14.1.2020. Because of Covid pandemic, the government of India, by order extended the validity of the last existing 'stamping' till 30.9.2020. Therefore, the service station requested the Weights and measures department on 13.9.2020 to grant permission to the GVR engineer to break open the seal for stamping/software upgradation, which was last done a year back. Based on verbal directions from Indian Oil Corporation office representative, who visited the RO, the service station stopped dispensation of diesel with effect from 15.9.2020.

On 16.9.20, Mr. Girendra, the authorised service engineer of M/S GVR informed the RO that he had obtained permission from Weights, and Measures Department for breaking open the seal of the two dispensing units for software upgradation and stamping. Mr. Girendra, after opening the seal, prepared and inspection report wherein he had stated that both CPU cards had defects and two new cards were required for software upgradation. On 17.9.2020, a joint inspection team visited the RO and reported that both motherboards had been taken out from the dispensing units in the presence of Mr. Raja Babu Bansal (Dealers representative) and they had sealed and taken away the same. On 21.9.2020, RO received written instructions from the Assistant Manager, retail sales, Mathura I, of Indian Oil Corporation to stop sales from both dispensing units. Further, on 8.10.2020, the RO received a fact-finding letter indicating that irregularities were found in both the dispensing units, terming at as "critical irregularities". The RO replied on 12.10.2020 that after Mr. Girendra's visit in opening both the units on 16.09.20, the RO had no control over the dispensing units. It was also contended that the views and the independent opinion of the Original Equipment Manufacturer (OEM) had to be obtained before taking any decision. The RO filed a Writ Petition (C) No.23158/2020 (M/s Modern Service Station v. Union of India and others) which was disposed of by this Court on 18.12.2020 directing the respondents to conclude the pending enquiry expeditiously, preferably within four weeks. A joint inspection team that had conducted the inspection earlier on 17.9.2020, conducted the inspection again on 19.12.2020 in the presence of the authorised representative of RO, collected relevant parts of both units for further testing.

On 21.3.2021, a show cause notice was issued to the RO by Indian Oil Corporation, seeking an explanation within 15 days. In its detailed reply, the RO had observed unblemished track record, and in para 17 observed that everything irregular as found by Indian Oil Corporation was done by the engineer of GVR, Mr. Girendra. However, the dealership of RO/petitioner was terminated by Indian Oil Corporation by its order dated 5.10. 2021. This order was appealed under section 8.9 of the marketing discipline guidelines, 2012,

and same was dismissed on 7.4.2022. The RO filed Writ petition (C) No. 13514 of 2022 which was allowed on 18.5.2023. Thereafter, the instant special appeal was filed by Indian Oil Corporation.

After hearing the parties, the division bench was of the view that the single judge had come to the right conclusion that when a particular defence which was taken by the petitioner was not considered by the Indian Oil Corporation, violate the principle of natural justice. The division bench further observed that when the main defence of the petitioner (RO) that the tampering was in fact, result of the act of Original Equipment Manufacturer and that the petitioner had no hand in it, it was not considered by Indian Oil Corporation, then definitely the petitioner's interest was prejudiced. The division bench dismissed the special appeal.

In *Amrendra Pratap Singh* v. *Anoop Kumar and others,*[33] the Lucknow Bench, set aside the order of the appellate court in granting temporary injunction dated 25.11.2023 as it cannot be granted against owner of land on the basis of registered sale deed executed after full consideration having been paid for the same. The order of the trial court was affirmed by the High Court.

A Division Bench of Lucknow bench in *M/S Docket Care Systems* v. *M/S Hariwill Electronics India Private Limited,*[34] heard an appeal under section 37 of the Arbitration and Conciliation Act, 1996, against the order passed by Commercial Court, Court No. 2, Lucknow. The appellant aggrieved of the award dated 07.10.2023 passed by the Micro, Small and Medium Enterprises (MSME) Council, filed petition under section 34 of the Arbitration and Conciliation Act, 1996, before the Commercial Court, Lucknow. Along with this an application seeking waiver of pre-deposit as required under section 19 of the MSME Act, 2006 was also filed. The application seeking waiver was dismissed by an order dated 19.02.2024. The Commercial Court directed the appellant to deposit 75% of the award amount within 3 weeks, failing which the Miscellaneous case shall stand dismissed by itself. When the matter came up before the Commercial Court on 12.03.2024, an application was attempted to be filed by the appellant seeking additional time to deposit the amount in compliance of the order dated 19.02.2024. The appellant had applied for loan from a bank which was under process and therefore 4 weeks' time may be granted. This application was neither received/entertained by the Commercial Court and by order dated 12.03.2024, dismissed the petition for non-payment of 75% of the award amount. While passing this order, the Commercial Court had deprived itself to exercise powers under section 19 of the

[33] AIR 2024 All 138; AIR Online 2024 All 149.
[34] AIR 2024 All 156; AIR Online 2024 All 494.

MSME Act, 2006. The High Court, after considering all the facts and circumstances, allowed the petition and the effective portion of the order of the Commercial Court was set aside. Accordingly, the appellant was directed to deposit the 75% of the award amount by 29th April 2024, if not done, the Commercial Court would be free to pass appropriate order in accordance with law.

In a case involving territorial jurisdiction of the Family court in *Dheeraj* v. *Smt. Chetna Goswami*,[35] particularly in a Custody case, the High Court upheld the order of the lower court in rejecting the petition and he held that there is no necessity to interfere in the orders of the lower court. Appeal was dismissed. In M/S Amit Engineering, v. Superintending engineer,[36] the prayer for setting aside of arbitral award by filing an application under section 11 of the Arbitration and Conciliation Act, 1996, at Allahabad was considered. The High Court found no illegality in the impugned order dated 7.3.2024 passed by the Consumer Court No.2, Lucknow, in arbitration case No. 126 of 2023 and rejected the petitioner's objections regarding lack of territorial jurisdiction at Lucknow and dismissed the appeal.

In *Bharatiya Rashtriya Raj Marg Pradhikaran* v. *Neeraj Sharma and others.*[37] Rejection of an application challenging the Arbitral award came before the court. In this, the appellant was not served a signed copy of arbitral award, but appellant, was aware of the award. Application by the petitioner for setting aside arbitral award given by the District judge, Mathura, dated 16.11.2019, was rejected as the arbitral award dated 28.7.2016 has attained finality and cannot be questioned at this stage and the High Court dismissed the appeal.

In an appeal under Article 227 of the Constitution of India in *Pramila Tiwari* v. *Anil Kumar Mishra and others*,[38] the necessity of registering wills was considered by a division bench. The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1951, as amended in 2004 came into conflict with the Registration Act, 1908. The court considered Articles 251 and 254 of the Constitution of India to resolve the conflict. The provision for compulsory registration of will under section 169 (3) of the state Act was repugnant to section17, read with section 40 of the Registration Act, 1908 of the Union. The amendment in section 169 (3) of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1951, was declared void to that extent. Wills in Uttar Pradesh are not required to be registered and a will for its non-registration will not be void whether before or after the Uttar Pradesh Amendment Act, 2004.

[35] AIR 2024 All 188; AIROnline 2024 All 633.
[36] AIR 2024 All 195; AIROnline 2024 All 592.
[37] AIR 2024 All 221; AIROnline 2024 All 635.
[38] AIR 2024 All 227; AIROnline 2024 All 696.

The Lucknow bench of the High Court, on appeal, set aside the order passed by the Controller in *Ibney Haasan* v. *Special Judge, E.C Act, Faizabad, and others*.[39] The Controller had no jurisdiction under section 57A of Uttar Pradesh Muslim Waqf Act, 1960. This Act was repealed with effect from 1.1.1996, and after a new enactment, the Waqf Act, 1995. The order passed by controller on 26.3.1996 under section 57A of Uttar Pradesh Muslim Waqf Act, 1960, and consequent requisition was set aside. Writ petition was allowed.

In an Appeal under Article 227 of the Constitution the right to use the passage in question to reach the peripheral road was considered by the Court in *Lajja Ram Memorial Shiksha Samiti* v. *Managing Director, J. P. Infratech Limited and another.*[40] The right to use passage to reach peripheral road was rejected by the Trial Court by an Order dated 17.01.2018 which was also affirmed by the District Judge. There was an alternative road provided by the Authorities which is wide enough, be it is little longer route as the petition lacks merit the High Court dismissed the Appeal.

In a special appeal, the High Court dismissed the Appeal in *Master Arjeet Pratap Singh* v. *State of Uttar Pradesh*, through its Principal Secretary, Department of Basic Education and others.[41] The judgment of High Court in Writ (C) No. 9514 of 2024 (AIR Online 2024 All 721) Whereby the order of Block Education Officer, Muradabad, denying admission of the petitioner in pre-nursery class in Aryan International School for the academic session 2024–25 was set aside. However, this order directed the school to consider the application of petitioner (appellant) after considering all applications of ward no.16. The school is purportedly to be under provisions of Right to Education Act, 2009. A lottery for allotment of the school was conducted on 26.2.2024 and request of petitioner was rejected by the District Education Officer on the ground, 'wrong ward'.

The petitioner's pleadings were deficit and has not disclosed other schools available in his neighbourhood (in the same word no.15) or whether he has applied for admission under RTE Act in those neighbourhood schools or not. However, the applicant – writ petitioner also contended that the classification made by the respondent on the basis of 'ward' is violative of Article 21A of the Constitution of India. The district board, after considering the contentions of both the parties did not find any illegality or infirmity in the order of the single judge of the High Court and as the appeal stands devoid of merits and dismissed the special appeal.

[39] AIR 2024 All 235; AIROnline 2024 All 805.
[40] AIR 2024 All 262; AIR Online 2024 All 847.
[41] AIR 2024 All 266; AIR Online 2024 All 759.

In *Uttar Pradesh Rajya Bhandaran Nigam Ltd, Lucknow and others,* v. *Uttar Pradesh, Purva Sainik Kalyan Nigam Ltd*.,[42] An appeal against the judgement and decree dated 16.9.2023 passed in regular suit no. 17 of 2011, by District judge, Lucknow, and to set aside the award dated 16.1.2011 passed by the sole arbitrator in case no.28 of 2008. The High Court held that considering the facts and circumstances of the case, it does not call for any interference with the judgment dated 16.9.2013 by the District Judge, Lucknow dismissing the objection of appellant against the award dated 16.1.2011 passed by sole arbitrator in case no. 28 of 2008 and dismissed the appeal.

In *State of Uttar Pradesh and others,* v. *M/S Harish Chandra India Ltd*,[43] an appeal under section 37 of Arbitration and Conciliation Act, 1996, was filed after a delay of 224 days. The time limit under section 37 is 90 days and delays can be condoned up to 30 days. Appeal filed after 120 days (90+30), no matter how sufficient cause for delay is, cannot be allowed. Appeal dismissed as time barred. A direction was also issued to Principal Secretary (Law), government of Uttar Pradesh to make necessary steps in order to avoid the filing of appeals beyond the statutory time limits by the government.

In an appeal pertaining to election petition in *Mamta* v. *Krisha Devi and others,*[44] writ petition was allowed. In this case, the petitioner was elected as Pradhan of Gram Panchayat, held on 26.4.2021. Respondent no.1 filed an election petition on 30.6.2021 Uttar Pradesh Panchayat Raj Act, 1947, read with rule 3 (1) of Rules, 1994. The prescribed authority rejected the objection raised by the petitioner by order dated 5.8.2022. Hence this appeal by the appellant before the High Court. The petitioner also contended that the election petition was not filed in person by the respondent no.1 and was not accompanied by treasury challan for ₹50, both conditions being mandatory to file an election petition. After considering all the facts and circumstances, the High Court, held that the order dated 5.8.2022, rejecting petitioners' objections (dated 8.7.2022) as well as the order dated 2.7.2021 entertaining the election petition by Prescribed Authority were set aside. The objection filed by the petitioner dated 8.7.2022 is allowed and election petition filed by respondent no.1 was dismissed.

4. Conclusion

The Allahabad High Court during 2024 decided many cases covering diverse aspects of the Constitution of India under Articles 226 and 227. Its approach in the matter of Overseas Indian Citizenship card and appeals on government contracts needs to be appreciated. In doing so, the High Court systematically followed its own precedents, the precedents set up by the Supreme Court as well as referring to the decisions of other High Courts as well.

[42] AIR 2024 All 280; AIROnline 2024 All 1020.
[43] AIR 2024 All 301; AIROnline 2024 All 949.
[44] AIR 2024, All 312; AIR online 2024 All 1150.

However, no ground breaking decision could be found that offers a new orientation to the existing literature on the subject, one that could have been upheld as a foundational principle and guiding jurisprudence. And hence, no new law is developed; No new jurisprudence in the field has been enriched; and no new landmark ruling that might reorient the doctrinal foundations of constitutional law emerged.

Corporate Law

*Harpreet Kaur**

1. Introduction

The Hon'ble High Court of Allahabad [hereinafter referred to as "Court"] occupies a significant position in the legal landscape of the country in shaping the law of the nation. This survey aims at analysing the prominent and predominant judgements rendered by the court in the realm of corporate law in the year 2024. The survey aims to analyse thematic trends in the rulings of the court during the year 2024 and will critically examine themes such as Regulatory Overreach by Administrative power, Piercing the Corporate Veil, Primacy of the Insolvency Regime and Quasi Corporate realms such as the S.A.R.F.A.E.S.I. Act.

The survey provides an analysis of a few landmark judgements under each of the above themes, examining the key observations by the court and discussing their broader implications for the commercial legal environment and the society at large. It is pertinent to note that some judgements filed in 2024 were delivered in early 2025. For the purpose of this review, these cases are considered part of the 2024 legal developments, as their genesis and substantive arguments are rooted in the year under review. Furthermore, owing to the fact that the Allahabad High Court does not have a system of providing a monthly or yearly statement of cases dealt by the Court, random selection based on the social impact of judgements was used to select the aforementioned areas of law to be analysed.

The first four sections of the survey aim at analysing the abovementioned 4 themes that the Court delved into during the year 2024. Finally, the survey provides a holistic analysis of the trend of the Court in the realm of corporate law, and the way forward.

2. The Primacy of the Insolvency Regime

In July 2024, the Court delivered a significant judgement in a matter involving the intersection between the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "I.B.C."] and the UP Goods and Services Tax Act, 2017 [hereinafter referred to as "U.P. G.S.T. Act"], in the case of *M/S BGR Energy Systems Ltd* v. *State of U.P. and Another.*[1] This judgement provided a significant amount of clarity on the jurisdictional conflict between the I.B.C. and the G.S.T. Act. Briefly stated, the petitioner company, M/s BGR Energy Systems Ltd, was undergoing the Corporate Insolvency Resolution Process under the I.B.C. when the Tax Authority passed an order against it under Section 73 of the U.P. G.S.T. Act. The petitioner was, prior to the passing of the impugned order, issued a show cause notice by the tax authority, whereupon in its reply to the same, the company clearly highlighted the fact

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[1] *M/s BGR Energy Systems Ltd.* v. *State of U.P.*, Writ Tax No. 1026 of 2024.

that it was in the process of C.I.R.P. before the Interim Resolution Professional ["I.R.P."] who had been appointed for the same, and thus sought time to seek permission of the IRP to participate in the proceedings in respect of the tax authority. However, no further notice was issued to the petitioner or date fixed in the adjudication proceedings by the tax authority and they directly proceeded to pass the impugned order, which was challenged before the Court.

The central legal question before the division bench, comprising of Hon'ble Justices Saumitra Dayal Singh and Donadi Ramesh, was thus, whether the tax authority could pursue independent recovery proceedings against a company during the C.I.R.P. moratorium. The Court, while observing that in the instant case although the C.I.R.P. proceedings had been set aside by the concerned Tribunal and could not be communicated to the tax authority in time, the impugned order could not have been passed under Section 73 of the U.P. G.S.T. Act, and thus, set aside the same. The Court's reasoning was based strongly on the umbrella/moratorium that the I.B.C. imposes under Section 14.[2]

The Court's decision in BGR Energy reinforces strongly the supremacy of the I.B.C.'s legislative intent. The I.B.C., a specialized statute, enacted by the legislature with the purpose of providing a comprehensive and time – bound manner for corporate resolution, has at its cornerstone, the moratorium imposed under Section 14. The ruling of the court ensures that this framework is not undermined by the piecemeal and fragmented actions or recovery proceedings undertaken by various other authorities such as in the instant case, tax authorities. Thus, the decision reinforces the judicial trend in the country of encouraging active and robust participation in the CIRP process.[3] From the social and economic angle, this judgement, by indirectly ensuring that companies are more incentivised to go through the CIRP process in the event of bankruptcy, acts as a catalyst to economic revitalisation of the macro economy of the nation while also, on the private front, preserving the value of the company's assets.

3. Piercing the Corporate Veil

The doctrine of corporate veil, refers to the legal distinction between a company, as an independent legal entity and its officers, and forms a significant cornerstone of modern corporate law. The doctrine thus, ensures that it is the company itself, rather than its officers, that is held accountable and liable for activities undertaken in respect of the operations of the company. The principle of corporate veil can be jurisprudentially and internationally traced back to the decision rendered in the case of *Salomon* v. *Salomon & Co. Ltd.* where the House

[2] Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 14.

[3] *Sundaresh Bhatt* v. *Central Board of Indirect Taxes and Customs*, (2022) 7 SCC 321.

of Lords affirmed the principle that a company, upon its incorporation possesses a separate legal personality that is distinct from its shareholders.[4]

The crux of the principle of separate legal personality can be illustrated through the following observations of Lord Halsbury in the case of Salomon:

> …[a] limited company was to be viewed like any other independent person with its rights and liabilities appropriate to itself …either the limited company was a legal entity or it was not. If it was, the business belonged to it and not to Mr. Salomon. If it was not, there was no person and no thing to be an agent at all; and it is impossible to say at the same time that there is a company and there is not.

This principle has thereafter been adopted and adapted in multiple jurisdictions, including in Indian Law.

The aforementioned principle has been codified under section 9 of the Companies Act. It provides, "From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name."[5] The corporate veil, therefore, protects shareholders and officers from personal liability for the company's debts, except in specific, narrowly defined circumstances.

The Supreme Court of India [hereinafter referred to as "SC"] recognized the aforesaid principle in the year 1950 in *Chiranjit Lal Chowdhuri* v. *The Union of Indi*a,[6] and thereafter, reaffirmed the same at length in *Bacha F. Guzdar* v. *CIT, Bombay* in 1954. In both the instances, the Court observed that the identity of the company was separate from that of its shareholders.[7] Over the years, Indian courts have articulated that while the corporate veil is generally sacrosanct, it is not inviolable. In the State *of U.P.* v. *Renusagar Power Co. Ltd.* (1988), the Supreme Court recognized that although a company is distinct, the veil may be pierced where misuse, fraud, or statutory violation occurs.[8] Similarly, in *Life Insurance*

[4] *Salomon* v. *A. Salomon & Co. Ltd.*, [1896] UKHL 1.
[5] Companies Act, 2013 (Act 18 of 2013), s. 9.
[6] *Chiranjit Lal Chowdhuri* v. *Union of India*, [1950] S.C.R. 869.
[7] *Bacha F. Guzdar* v. *Commissioner of Income Tax, Bombay*, 1954 INSC 102.
[8] *State of Uttar Pradesh* v. *Renusagar Power Co. Ltd.*, AIR 1988 SC 1737.

Corporation of India v. *Escorts Ltd.* (1986), the Court emphasized that the doctrine protects business actors while simultaneously allowing judicial scrutiny to prevent misuse.[9]

The foregoing discussion has established that while the doctrine of separate corporate personality is firmly entrenched in Indian law, it is not absolute. Moreover, the above situations are not the only ones where the corporate veil may be lifted by courts. Judicial rulings have established, as stated above, certain conclusive exceptions to the doctrine of corporate veil, where the same may be lifted, such as fraud or improper conduct, sham companies, when a company functions as an agency or instrumentality of its officers or members, and where a company has been formed solely to evade legal duties and obligations. In the year 2024, the Allahabad High Court handled a case that raised an important question about a particular exception. The case of Dhanush Vir Singh v. Dr. Ila Sharma and Others serves as a clear example of how the Indian judiciary has applied the doctrine of corporate veil in recent times.[10] In this case, the court examined whether the directors or authorized representatives of a company could be arrested or detained to enforce a money decree against the company.

The court, in the case of Dhanush Vir Singh dealt with a factual matrix where the Revisionist, who was acting as the General Manager and Branch Head of M/s Benett Coleman and Co. Ltd., had been authorized to enter into a lease agreement for a period of nine years. The lessee had the right to terminate the lease by giving a notice of three months. The lease was terminated by the lessor on 22 April 2016, which led to a request for the company to vacate the premises and hand over vacant possession within 30 days. The lessor also claimed mesne profits at the rate of Rs. 2,500 per day until the possession was actually handed over. The company failed to vacate the premises, prompting the lessor to file a suit seeking eviction and recovery of mesne profits. The company later claimed that it was ready to hand over the possession but the lessor refused to accept it. Despite this, possession was eventually handed over to the lessor on 1 October 2019, and the suit was proceeded with ex parte, resulting in a decree on 5 August 2021. The decree mandated the company to pay mesne profits at the rate of Rs. 2,500 per day from the date of the suit until possession was delivered. Following this, an execution petition was filed by the lessor, and the Revisionist was included in the suit as he was the signatory to the lease agreement. An arrest warrant was then issued against the Revisionist by the decree holder, which was challenged before the High Court of Allahabad in this case. The central question before the Court was whether the directors or authorized representatives of a limited company could be arrested and detained

[9] *Life Insurance Corporation of India* v. *Escorts Ltd.*, AIR 1986 SC 1370.
[10] *Dhanush Vir Singh* v. *Dr. Ila Sharma and Others*, 2024:AHC:113931.

in civil prison for the execution of a monetary decree against the company, or whether such representatives are legally bound to act on behalf of the company in executing the decree.

The Court, while allowing the revision petition, first held that the provisions of the Code of Civil Procedure, 1908 (C.P.C.) relating to the execution of a decree and attachment of property were applicable only to the judgment debtor, which in this case was the company, and not the Revisionist. The Court emphasized that the C.P.C. does not provide for the execution of a decree against a company through its employees, representatives, or directors, and at most allows such proceedings against a firm from the assets of its partners, or the oral examination of an officer of a corporation to ascertain its assets.

Citing the case of *Tata Engineering and Locomotive Co. Ltd.* v. *State of Bihar*, where the Supreme Court held that the corporate veil can be lifted only when there is a dual relationship between the company and its members or shareholders, the Court concluded that since the company, and not the Revisionist, was the judgment debtor, and the Revisionist was merely the General Manager and Branch Head and later Vice President of the company, he could not be arrested.

This judgment reinforces the principle of corporate entity as a separate entity in civil enforcement proceedings, and clearly outlines the distinction between a corporate judgment debtor and its officers and affirms the high legal standard required for courts to disregard the corporate personality. From a social perspective, the recognition of a company as a separate legal entity allows for the concentration of economic power, encourages capital accumulation, and supports entrepreneurship. However, these benefits come with the cost of diluted responsibility, enabling individuals within corporations to externalize harm caused by their operations onto weaker sections of society. This can be observed in cases like the Bhopal Gas Tragedy and in other corporate law cases such as *Tata Consultancy Services Limited* v. *Cyrus Investments Pvt Ltd*, where the Supreme Court pierced the corporate veil due to significant shareholder interests being affected. The doctrine has also been argued to contribute to growing economic inequality, as corporations can engage in questionable ventures with limited personal liability. Where the corporate veil remains intact, due to inconsistent judicial approaches, corporations may evade labour law obligations, environmental responsibilities, taxation duties, and other legal duties.

4. Regulatory Overreach Through Administrative Power

In the year 2024, the Court also addressed the critical issue of administrative power and its limits, as expounded upon in its judgement in *M/s Marion Biotech Private Limited* v.

State of UP and Ors.[11] The Court dealt with a serious public health matter involving the deaths of children in Uzbekistan which were purportedly linked to a cough syrup manufactured by the petitioner company. While the company's license was initially suspended, it was subsequently revived on appeal before the concerned authority. Thereafter however, the appellate authority initiated a review of its own order reviving the license of the company, suspended its license again and directed the petitioner company to provide certified copies of orders passed by foreign courts in this regard. Thus, the issue presented before the Court was whether the appellate authority under the Drugs and Cosmetics Act, 1940 and the corresponding Rules of 1945 possessed a power to review its own final order. The analysis of the Court was centred on the paramount and well settled principle or doctrine of *functus officio*, which is a principle rooted in the foundation of administrative law, and provides that a "Court ceases to exercise its jurisdiction once any appeal or application is disposed of".[12] The Court applying the doctrine of functus officio, allowed the writ petition, quashed the review order, and held that the appellate authority had acted beyond the powers of its jurisdiction.

The judgement of the Court in the case of *Marion Biotech*, by reiterating the principle that administrative authorities must act strictly within their statutory powers, from a commercial point of view, reinforces the principle that public bodies, even under the garb of public interest, cannot act on their whims and fancies. The judgement thus provides companies a predictable legal framework, to safely and predictably undertake their day-to-day operations. A regulatory environment that is over – emphasized on a broad interpretation of "public interest" would discourage business activity. On the other hand, a regime centered on the principle reiterated by the Court in the decision of *Marion Biotech* reduces risks for companies and encourages long-term investment.

Yet another principle laid down by the Court in this decision was its observation that "Indian laws relating to drugs are exhaustive and self-sufficient" and do not require "validation of the judgement passed by a foreign court". Thus, the court asserted and laid down strongly, the autonomy and sufficiency of the current Indian domestic legal system. Thus, the judgement also has the implication that Indian companies in disputes involving more than one jurisdiction do not have to contend with potentially conflicting decisions of various courts.

[11] *M/s Marion Biotech Private Limited* v. *State of Uttar Pradesh*, 2025:AHC:86264.
[12] *Mahanth Ramdas* v. *Gangadas*, AIR 1961 SC 882.

5. Corporate Liability Under The Negotiable Instruments Act

Another theme or the aspect that the Court delved into in 2024 was corporate liability under the Negotiable Instruments Act, 1881 [hereinafter referred to as "N.I. Act"] in the case of *Kishore Shankar Signapurkar* v. *State of U.P. & Anr.*[13] This case involved the director of a company, the applicant in the case who was accused of an offence under Section 138 of the N.I. Act in lieu of cheques issued by the company he was a director of. The applicant approached the court, challenging the summons issued to him on the ground that the company itself had not been independently and separately summoned.

Before Hon'ble Justice Anish Kumar Gupta, the primary question of law was thus whether a summons only to a director is legal pre-service when the company is also an accused person in a prosecution. The question was decided with reference to the fact that a company is a juristic person that can only act or be served with processes by a natural person such as its director or person in charge of its affairs. Reference was made to the key Supreme Court precedents like *Aneeta Hada* v. *Godfather Travels* which emphasized that the company must be an accused by name in order for a prosecution to be maintainable under 141,[14] therefore, the Court held the summons to the director did not invalidate service because they were the signatory to the cheque on behalf of the company.

This judgement thus clarifies that where a company is already named as an accused in a complaint under Section 138 of the N.I. Act, service of summons to the director who is also the person in charge and signatory of the cheque in question, is a legal and valid service of summons on the company itself. The Court thus dismissed the application under Section 482 of the Code of Criminal Procedure, 1973 to quash the proceedings and ensured that a technical procedural ground cannot be used to evade substantive liability and responsibility. Furthermore, citing with reference, the case of *K.K. Ahuja* v. *V.K. Vora*, the Court observed that where the director who was arraigned as an accused was the signatory to the cheque in question, no requirement existed of specific averments to be made in respect of day – to – day control exercised by him, and that liability against him was presumed.[15]

The ruling of the Court in the case of *Kishore Shankar Signapurkar* reinforces and reiterates the principle that directors of a company cannot and shall not be permitted to

[13] *Kishore Shankar Singnapurkar* v. *State of Uttar Pradesh*, Application under Section 482 Cr.P.C. No. 4898 of 2019 (All. HC).

[14] *Aneeta Hada* v. *M/s Godfather Travels and Tours Pvt. Ltd.*, (2012) 5 SCC 661.

[15] *KK Ahuja* v. *KK Vora*, (2009) 10 SCC 48.

exploit technical and procedural formalities in order to prolong, derail or delay prosecutions for the dishonour of cheques. On the social front, the decision reinforces commercial trust in proceedings under the N.I. Act and ensures that accountability of directors and officers of a company cannot be diluted or evaded through trivial objections.

6. S.A.R.F.A.E.S.I. Proceedings Vis – A – Vis Proceedings Before Civil Courts

In addition to the aforementioned cases, other rulings of the Court in 2024 as well contributed significantly to the development of corporate jurisprudence. In *Omnarayansri Agrifarmer Pvt. Ltd.* v. *Punjab National Bank and Ors*., the Court's decision affirmed the principle that a civil suit against the classification of a bank account as a Non – Performing Asset ["NPA"] under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (S.A.R.F.A.E.S.I.) Act, 2002 was barred in accordance with Section 34.[16] This decision not only reinforces the fundamental nature of the S.A.R.F.A.E.S.I. Act as a specialised, non – judicial statute but also strengthens the rights and powers vested with Non – Banking Financial Companies under the S.A.R.F.A.E.S.I. Act to carry out procedures of recovery of NPAs. Furthermore, on the commercial and economic fronts, the decision reiterates the legislative intent behind the enactment of the S.A.R.F.A.E.S.I. Act, (i.e) to provide for a swift and efficient mechanism for faster and more swift debt recovery, thus enhancing the stability and predictability of the financial sector of the economy.

7. Conclusion

The foregoing discussion indicates that during the year 2024, the Court has dealt with a wide range of areas affecting corporate and quasi – corporate realms of the law, ranging from the fundamental principle of corporate law of piercing the veil to quasi – corporate areas such as the S.A.R.F.A.E.S.I. Act. Furthermore, it also indicates that the judgements rendered by the Court have followed the traditionally laid down precedents in respect of the questions of law before the Court and have deep and pervasive socio – economic implications. However, one pertinent lacuna in the corporate law jurisprudence in India can be seen in the form of inconsistent rulings and approaches taken by the courts to the principle of piercing the corporate veil. Additionally, from a social context, individual shareholders, marginalized sectors of the society and small-time creditors often stand at a disadvantageous position in respect of the principle of piercing the corporate veil.

With respect to the practices of the Allahabad High Court, a pertinent finding and recommendation is that the Court should consider implementing a system of releasing a

[16] *Omnarayansri Agrifarmer Pvt. Ltd.* v. *Punjab National Bank*, 2024 AHC 166816.

monthly statement of cases dealt with under various realms of law, to aid better in analysing and assessing the sectoral functioning of the Court. Such a measure would go a long way in aiding academicians and policy makers, to arrive at better solutions for judicial efficiency, in the era of rising pendency of cases as well.

Criminal Law and Criminal Procedure

*R. Venkata Rao**

1. Introduction

The Allahabad High Court had the opportunity to examine, expand, and apply established principles of substantive and procedural criminal law in a plethora of cases that came before its consideration, mostly through criminal revision petitions. This survey examines how the Court has interpreted and applied statutory provisions and established jurisprudence to these cases.

2. Procedural Criminal Law

In *Rakesh Kumar Awasthi*,[1] the Court was faced with a petition by Rakesh Kumar Awasthi, addressing the Magistrate's power to order further investigation in a criminal case. specifically, the question was whether the power can be exercised after the police have submitted a final report. The question was whether a Magistrate can reject the final report and direct additional investigation, especially if a formal "protest petition" wasn't filed. The court clarified that a "miscellaneous application" labelled as 'narazgi yachika' seeking rejection of the final report and further investigation effectively functions as a protest petition under Section 173(8) of the Code of Criminal Procedure (Cr.P.C.). The judgment reiterated the settled position that the Magistrate possesses broad powers, including the authority under Section 156(3) read with Section 173(8) Cr.P.C., to order further investigation at all stages of criminal proceedings until the trial commences, ensuring a fair and just investigation. The Court stated:

> The question as to whether the Magistrate has the power to order further investigation, after a police report has been forwarded to him under Section 173 was considered in Vinubhai Haribhai Malaviya and others v. State of Gujarat and another[2] and it was held that the Magistrate's power under Section 156(3) Cr.P.C. is very wide, and in order to ensure that a 'proper investigation' takes place in the sense of a fair and just investigation by the police, Article 21 of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, would include an order for further investigation after a report is received by him under Section 173(2), and which power would continue in the Magistrate at all stages of the criminal proceedings until the trial itself commences.[3]

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[1] *Rakesh Kumar Awasthi* v. *State of Uttar Pradesh*, 2024 AHC 23003.

[2] (2019) 17 SCC 1.

[3] *Supra* note 1 at para. 13.

In a maintenance petition[4] filed by Smt. Hema and another petitioner against the State of U.P. and Dhirendra Pratap Singh, the Allahabad High Court had to look into the ability of a court to recall or restore a maintenance case that was previously dismissed for non-prosecution. The principal question, which falls for consideration, is as to whether, in proceedings under Section 125 Cr.P.C., upon an order having been made, the court concerned can be held to be *functus officio* for the purposes of entertaining an application seeking recall, and that any application which has been moved for recall of an order rejecting the maintenance petition for non- prosecution, would amount to alteration of the judgment so as to be barred by Section 362 Cr.P.C. The case concerned specifically with Sections 125, 127, and 362, pertaining to maintenance orders, alteration of allowances, and the court's power to alter judgments. The Court emphasized the social justice objective of maintenance laws, and called for a liberal and purposive interpretation to ensure the welfare of vulnerable parties. The Court ordered that the embargo on altering judgments (Section 362 Cr.P.C.) is relaxed in maintenance proceedings, allowing for recall applications to be considered. To arrive at this, the Court stated:

> Para. 25 – The scope of the legislation relating to maintenance under Section 125 Cr.P.C. and its social objective was examined in Badshah v. Urmila Badshah Godse[5] and applying the principle of purposive interpretation, it was held that in the context of a 'social justice legislation', the Court must give effect to that construction, which would be responsible for smooth functioning of the system for which the statute had been enacted.

In *Gaurav Mehta* v. *Anamika Chopra,*[6] the Court was faced with a criminal revision against a family court order granting maintenance to wife u/s 125 Cr.P.C. The case was peculiar to the effect that the parties had been granted mutual divorce by a family court in 2007. One of the conditions agreed to by the wife was that she would not claim any maintenance from the husband. However, the wife filed a claim u/s 125 against the former husband in 2020 for maintenance to the tune of 50000/- per month, citing the expenditures he incurred for educating their son in an international University in Canada, and since her own financial situation had changed for the worse over the past years. Citing the changed circumstances, the family court allowed a maintenance of 25000/- per month. The HC set aside the decision of the family court considering that the couple were living separately by mutual consent since the divorce, bringing the matter u/s 125 (4) and also since the wife had earlier waived any maintenance in the family court's decree granting divorce.

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[4] *Hema* v. *State of Uttar Pradesh and Others*, 2024 AHC 89029.

[5] (2014) 1 SCC 188.

[6] 2024 AHC 40372.

In *Anil Kumar Agarwal* v. *State of UP and Anr*,[7] the Court considered the right of a victim to appeal an acquittal in criminal cases, specifically focusing on whether such an appeal lies with the Sessions Judge or the High Court. The dispute in Court was on harmonizing Section 372 (victims right to appeal against acquittal, lesser conviction, or inadequate compensation without requiring leave) and Section 378(4) & (5) of the Criminal Procedure Code (Cr.P.C.) (procedure for complainants to appeal acquittals in complaint cases with special leave to the High Court). When victims and complainants, particularly in complaint-initiated cases, might pursue appeals in different forums, leading to multiplicity of cases. At the same time, the legislative intent of 372 (amended to empower victims) was to aid victims, particularly in "police cases" where they previously lacked a voice. The Court ruled that in complaint-initiated cases, whether the victim is also the complainant or not, the appeal against acquittal must be filed with the High Court under Section 372 read with Section 378(4) & (5) Cr.P.C., without needing special leave. The petitioner had contended that the victim or the complainant has been given unfettered right of appeal in terms of proviso to Section 372 Cr.P.C to challenge the acquittal of an accused by preferring an appeal before the Court of Session if the order of acquittal is passed by the Court of Magistrate or before the High Court if order of acquittal is passed by the Court of Session and for preferring such appeal there is no need to obtain leave/special leave from such Courts after insertion of the proviso to Section 372 Cr.P.C. by Act 5 of 2009 w.e.f. 31.12.2009.[8] The State had argued that the complainant in a complaint case, who is a victim also is entitled to prefer appeal before the High Court against the order of acquittal whether it is passed by a Magistrate or Sessions Judge and appeal would lie again before the High Court even when the victim and complainant both are different persons in a case arising from the same judgment and order of acquittal in a complaint case.[9] The Court in its Order, quoted from several Supreme Court decisions and enumerated the law as follows:

> (b) Supreme Court in Mallikarjun Kodagali (Dead) Represented through Legal Representative v. State of Karnataka and Others (2019) 2 SCC 752, has held that: '…the proviso to Section 372 of the Cr.P.C. must also be given a meaning that is realistic, liberal, progressive and beneficial to the victim of an offence'. The Court further held that it is not mandatory for victim to obtain special leave to appeal from High Court to file appeal under the said proviso.

[7] 2020 AHC 119834-DB.
[8] *Id.* at para. 5.
[9] *Id.* at para. 6.

> (c) Section 378 (4) and (5) Cr.P.C. provides that an order of acquittal passed in a case instituted upon complaint can be challenged before High Court on grant of an application for special leave to appeal and no such application shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.[10]

The Court concluded that "the forum that is prescribed under section 378(4) Cr.P.C. is High Court to file appeal by the complainant, therefore considering the principles of statutory interpretation even victim has to file appeal against acquittal in a case constituted upon complaint, before High Court only. This will not only avoid uncertainty but will also serve the purpose of the enactment."[11] It also directed for the Order to be circulated amongst all the judicial officers in the State for their guidance on the matter.

In *Kailash Nath Dwivedi* v. *State of UP and Ors,*[12] the appellant sought to overturn lower court decisions that converted his police investigation request into a complaint case, by an application u/s 482. The High Court had to decide on the Magistrate's discretionary power under Section 156(3) of the Code of Criminal Procedure, specifically addressing whether a Magistrate "must" or "may" order a police investigation for cognizable offenses. The High Court ruled that a Magistrate has the discretion to either direct a police investigation or treat the matter as a complaint case, requiring the complainant to present evidence. It hence upheld the lower courts' decisions, noting the existence of ongoing litigation between the parties and the applicant's possession of material evidence, which justified proceeding with a complaint case rather than a police investigation. The Court referred to the an earlier ruling of its in *Gulab Chand Upadhyaya* v. *State of U.P. and others*[13] Considering the question whether the Magistrate was justified in directing that an application under Section 156(3) of the Code seeking for registration of an F.I.R. and investigation, be registered as complaint, guidelines were formulated for exercise of discretion by the Magistrate in regard to such cases.[14]

In *Ramadas Tureha* v. *State of UP,*[15] the challenge was u/s 482, against dismissal of an application filed by Ramdas Tureha, who had sought to introduce additional witnesses u/s 391 and evidence during an ongoing appeal in the Sessions Court. Tureha was previously

[10] *Id.* at para. 48.
[11] *Id.* at para. 51.
[12] 2021 AHC 67561.
[13] 2002 Cri LJ 2907 (All.).
[14] *Id.* at para. 26.
[15] 2021 AHC 94320.

convicted by the Additional Civil Judge and Judicial Magistrate for misrepresenting his caste in election documents under sections 419 and 420 I.P.C., but since the applicant did not utilize the caste certificate the charges under sections 467, 468 and 471 I.P.C. were not proved and he was acquitted of the said charges. The appellant was not able to point out any material error or illegality in the order passed by the court below refusing to entertain the application for summoning of witnesses at the stage of appeal.[16] The State, in response, submitted that the powers under section 391 of the Code for taking further evidence are to be exercised sparingly and it is not open to the applicant to seek invocation of the same as a matter of right.[17] The High Court referred to *Rambhau and Another* v. *State of Maharashtra*[18] where the Supreme Court held that the powers under the section being in the nature of an exception shall always have to be exercised with caution and circumspection so as to meet the ends of justice. The High Court upheld the lower appellate court's decision, emphasizing that the power to admit new evidence at the appeal stage, under Section 391 of the Code of Criminal Procedure, is discretionary and used sparingly. The Court also noted that "since the trial court had acquitted the applicant of the charges under sections 467, 468 and 471 I.P.C. after recording a finding that though the applicant had misrepresented his caste while contesting the panchayat elections but he had not utilized the caste certificate since the same had not been appended along with the nomination form, the application filed under section 391 seeking to summon the persons who are stated to have issued the caste certificate, as witnesses, may not have any material bearing on the outcome of the pending appeal."[19]

In *Rajitram Shukla* v. *State of UP,*[20] the applicant sought to quash charges and summoning order issued by the trial court in a case under Sections 323, 504, 506 I.P.C. and 3 (1) 10 S.C./S.T. Act, on the ground that the proceedings would be barred by limitation in view of the provisions contained under Section 468 Cr.P.C. The core contention revolves around Section 468 Cr.P.C., which establishes a limitation period for taking cognizance of certain offenses. The applicant argues that the extended time between the incident (May 2015), the police report (December 2015), and the summoning order (November 2020) made the prosecution time-barred.[21] The State argued that the question as to what would be the relevant date for the purposes of computing the period of limitation under Section 468 Cr.P.C. was decided by a Constitution Bench in the case of *Sarah Mathew* v. *The Institute of*

[16] *Id.* at para. 6.
[17] *Id.* at para. 7.
[18] (2001) 4 SCC 759.
[19] *Supra* note 23 at para. 14.
[20] Application u/s 482 No. 8723 of 2021.
[21] *Id*. at para. 4.

Cardio Vascular Diseases and Ors.[22] The Court referred to the recommendations made by 42nd Law Commission Report, and the report of the Joint Parliamentary Committee accepting the recommendations of the Law Commission.[23] The Court also considered the term 'cognizance' in the context of the provisions of the Code, and held that 'taking cognizance' is entirely an act of the Magistrate and that the same may be delayed because of several reasons including systematic reasons.[24] The Court held that the relevant date for calculating limitation is the date of filing the complaint or initiating the prosecution, not the date when the Magistrate takes formal cognizance of the offense. This distinction is crucial because the complainant or prosecuting agency has no control over when a magistrate decides to take cognizance. Therefore, the application to dismiss the case based on this specific limitation argument is rejected, allowing other aspects of the challenge to be heard later.

In *Saleem Ahmad* v. *State of U.P. and Ors.,*[25] the Court had to decide on the nature of proceedings under the Protection of Women from Domestic Violence Act, 2005 (D.V. Act), particularly addressing whether the proceedings are civil or criminal. The specific issue was whether amendments are permissible in applications filed under D.V. Act. The petitioner argued that they are criminal and thus not amendable, while the respondent claimed they are civil. An application was moved by the wife seeking an amendment in the relief clause of an earlier application filed under Section 12 of the D.V. Act. The application seeking amendment sought deletion of a part of the relief clause, stating that due to an inadvertent typographical error, maintenance had been sought for 'the minor son', whereas the applicant did not have any minor son.[26] The Lower Courts permitted the amendments to be made, and hence the matter was brought before the HC. The court affirmed that D.V. Act proceedings, stating that "the contention sought to be raised on behalf of the petitioner that the Magistrate before whom the application under Section 12 of the D.V. Act, was pending, did not have the jurisdiction or the power to allow the application seeking amendment in the relief clause of the original application, cannot be legally sustained."[27] Amendments to correct minor errors or avoid multiple lawsuits, aligning with the Act's purpose to provide effective civil remedies for domestic violence can be permitted. To this end, the Court stated: "The scheme of the Act envisages that the order to be passed by the Magistrate, and a complaint by the aggrieved

[22] *Id.* at para. 5.
[23] *Id.* at para. 8.
[24] *Id.* at para. 10.
[25] 2024 AHC 89128.
[26] *Id.* at para. *3.*
[27] *Id.* at para. 41.

person, would be of a civil nature, and if the said order is violated, it would assume the character of criminality."[28]

In *Kailash and Anr* v. *State of UP,*[29] the petitioner challenged a summons issued by the Magistrate in a criminal complaint case (Anar Singh v. Kailash and others). Kailash and the co-accused sought to overturn an order that summoned them based on a complaint alleging serious offenses, including attempted murder. The Court ruled that "the object of section 202 is to enable the Magistrate to form an opinion as to whether the process is to be issued or not. The purpose of the investigation to be directed under this section is to help the Magistrate in arriving at a decision as to the issuance of process."[30] The Court referred to the Supreme Court's decision in *S.W. Palanitkar and Others* v. *State of Bihar and Another*[31] and it was held that test which was required to be applied was whether there is "sufficient ground for proceeding" and not whether there is "sufficient ground for conviction".[32] The Court reasoned that "the broad-based inquiry by the Magistrate, as contemplated under this section, is with a view to enable him to arrive at a decision as to whether he should dismiss the complaint or whether he should proceed to issue process upon the complaint."[33] Referring to several Supreme Court decisions, the Court ruled that the Summoning Order could not be interfered with. The Order of the HC stated:

> The allegations in the complaint have been found to be supported in the statement made on oath by the complainant during the course of examination under section 200 and also by the statements of the witnesses recorded during the course of inquiry made by the Magistrate under section 202. The order summoning the accused petitioners passed by the trial court indicates that the same has been passed taking due consideration of the material available on record.

This is in line with the Court's earlier decision in *Sanjay Singh* v. *State of UP,*[34] where the appellants had filed an application u/s 482 to quash a summoning order issued by the Magistrate in a criminal complaint case. The matter pertained to sections 323, 504 and 506 Indian Penal Code and sections 3(1) (r) and 3(1) (s) Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. The appellant's counsel argued that the complainant's

[28] *Id.* at para. 16.
[29] 2024 AHC 80897.
[30] *Id.* at para. 8.
[31] (2002) 1 SCC 241.
[32] *Supra* note 17 at para. 9.
[33] *Supra* note 17 at para. 8.
[34] 2021 AHC 88404.

initial sworn statement did not conform to the allegations in the complaint. However, on a specific query as to what are the contradictions between the statement under section 200 of the Code and the complaint, apart from referring to certain factual details, counsel for the applicants has not been able to point out anything specific.[35] The court found that the complainant's statements under Section 200 and the witness inquiries under Section 202 of the Code of Criminal Procedure corroborated the complaint, establishing a prima facie case for proceeding.

The principle reiterated is in line with the jurisprudence laid down by the Court in earlier cases as well. In *Kamlendra Bahadur Mishra* v. *State of UP and Anr,*[36] an application under Section 482 Cr.P.C. was filed seeking to quash the proceedings of a Special Session Trial under Ss. Sections 323, 342, 504, 506 I.P.C. read with 3 (2) (va) of S.C./S.T. Act. The ground for the challenge was that the learned Special Judge before proceeding to frame charges against the applicants did not provide opportunity to move a discharge application under Section 227 of the Code of Criminal Procedure.[37] The State argued that the applicants were granted sufficient time by the court below before framing of charges and in the event the applicants desired, they could have moved an appropriate discharge application in the interregnum. It was also pointed out that subsequent to framing of charges, several dates have been fixed and the trial was at the stage of evidence and as such the claim sought to be raised by the accused applicants with regard to discharge cannot be entertained at this stage.[38] The appeal was dismissed by the Court, stating that it was after hearing the counsel for the accused-applicants that charge was framed in their presence and the same was read and explained to the accused applicants.[39] The Court referred to several precedents including *M.E. Shivalingamurthy* v. *Central Bureau of Investigation, Bengaluru*[40] and held, reiterating the role of the Courts at the charging stage:

> Para. 21- The ambit and scope of exercise of power under Sections 227 and 228 of the Code, are fairly well settled. It has been consistently held that the standard of test and judgment which is to be finally applied before recording of finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of framing of charge. *The test to be applied at this stage would be whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction.* The Court has clearly to sift the

[35] *Id.* at para 4.
[36] 2021 AHC 172308.
[37] *Id.* at para. 3.
[38] *Id.* at para. 6.
[39] *Id*. at para. 29.
[40] (2020) 2 SCC 768.

> elements in order to find out whether or not there is sufficient ground for proceeding against the accused and if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 of the Code, if not, he will discharge the accused. *At the stage of framing of charge or considering discharge of the accused, no mini trial is contemplated and only probative value of material has to be gone into, to see if there is a prima facie case for proceeding against the accused.*
>
> [Emphasis by author, not Court]

In *Sudesh Kumar* v. *State of UP and another,*[41] the petitioner, via a criminal revision petition, sought to set aside an Order passed in a Complaint Case under Section 138 of the Negotiable Instruments Act, 1881, regarding dishonour of a cheque issued by the petitioner-accused. The challenge was based on the computation of limitation period. The petitioner argued that since the complaint was filed later than one month after the notice was served to him regarding dishonour of his cheque, the case was barred by limitation. The respondent argued that the time for computation is from the date after the expiry of 15-days window given to the drawer to make the payment after receiving the notice, and the complaint was in fact filed within this period. The Court, looking at the limitation period prescribed for taking cognizance as under the N.I. Act as opposed to the Cr.P.C., held that "only upon a cumulative satisfaction of the three conditions as enumerated under the proviso to Section 138, as clauses (a), (b) and (c), thereof that an offence under Section 138, can be said to have been committed by the person issuing the cheque."[42] Hence, it follows that the cause of action arose only after the drawer failed to make the payment within 15 days of receiving the Notice, and hence the complaint was not barred by limitation.

Krishna v. *State of UP*[43] was a criminal miscellaneous anticipatory bail application where the accused sought anticipatory bail in a criminal complaint case u/s 363, 376(3) I.P.C. and Section 3/4 of P.O.C.S.O. Act, 2012. At the outset, the State raised preliminary objection on the maintainability of the petition on the ground that Section 438(4) of Cr.P.C explicitly excludes the application of the provision relating to pre-arrest bail in relation to any case involving the arrest of any person on accusation of having committed an offence under Section 376(3) I.P.C.[44] In response, the applicant submitted that the new section (438 Cr.P.C.) inserted in the State of Uttar Pradesh vide Uttar Pradesh Act No. 4 of 2019 does not exclude the person seeking pre- arrest bail for an offence committed under Section 376 (3) I.P.C.[45] The

[41] 2024 AHC 38337.
[42] *Id.* at para. 11.
[43] 2024 AHC 85825.
[44] *Id.* at para. 3.
[45] *Id.* at para 4.

HC then had to decide on the question of a legal conflict between central and state laws, specifically whether the State amendment to Section 438 of the Criminal Procedure Code (Cr.P.C.), which received Presidential assent, overrides the Central amendment that explicitly excludes bail for these specific offenses. The facts alleged were that the minor daughter (16 years old) of the complainant was lured by the accused (also a minor, 17 years old) from her school and was sexually abused and molested in a private room he rented. The initial complaint to police ended in a closure report, with the police stating that no offence had been revealed from the victim-witness's statements under Ss. 161 and 164. Later, in consequence to a protest petition by the complainant, the incident was Ordered to be registered as a private complaint. At this stage, after nine months of the incident, the victim-witness gave her statement under Section 202 Cr.P.C. stating that she was raped by the applicant. The High Court ordered for the applicant to be released on bail, considering the nature of accusations and antecedents of the applicant, and in view of the judgment of Supreme Court in the case of *Sushila Aggarwal* v. *State (NCT of Delhi)*.[46] In *Aggarwal,* the Apex Court had reiterated the importance of anticipatory bail – "the provision for pe-arrest bail was specifically enacted as a measure of protection against arbitrary arrests and humiliation by the police, which Parliament itself recognised as a widespread malaise on the part of the police and inasmuch as the denial of bail would amount to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of Section 438 Cr.P.C."[47] The bail was granted on conditions of sureties, an undertaking to not seek adjournments on the dates posted for evidence, not to leave the country, and not intimidate witnesses. On the important legal question of repugnancy between State and Union laws on a matter of the Concurrent list, the Court cited *Hoechst Pharmaceuticals Ltd* v. *State of Bihar*[48] and held:

> Article 254 of the Constitution makes provision first, as to what would happen in the case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent List, and secondly, for resolving such conflict. Article 254(1) enunciates the normal rule that in the event of a conflict between a Union and a State law in the concurrent field, the former prevails over the latter. Cl. (1) lays down that if a State law relating to a concurrent subject is 'repugnant' to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void. To

[46] (2020) 5 SCC 1.
[47] *Id*. at para. 13.
[48] 1983 4 SCC 45.

> the general rule laid down in cl. (1), cl. (2) engrafts an exception, viz., that if the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject. In such a case, the Central Act will give way to the State Act only to the extent of inconsistency between the two, and no more. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of the State law may however be taken away if Parliament legislates under the proviso to cl. (2). The proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the 'same matter'. Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made.

In another case seeking anticipatory bail, *Anil Kumar* v. *State of UP,*[49] the Court refused anticipatory bail to the applicant-accused who had been avoiding summons and warrants since 2020. The applicant is the Director of a company implicated under the Drugs and Cosmetics Act, and the records revealed that the applicant had been avoiding summons since 2020. In 2021, bailable warrant was issued, and thereafter non bailable warrant, despite of which he did not appear. Subsequently, proceedings under Section 82 and 83 Cr.P.C. had been initiated. The Court refused to grant bail, citing the Supreme Court decision in *State of Haryana* v. *Dharamraj*[50] where it was held that no anticipatory bail application should be granted when proceedings under Section 82 and 83 have been initiated.

Amit Kumar v. *State of UP*[51] was a revision criminal revision challenging an order passed by Addl Sessions Judge in a trial under Section 307 I.P.C., whereby an application under Section 319 Cr.P.C. filed by the prosecution was rejected. Applicant Amit Kumar was the informant in the crime concerned, for which he had registered an FIR u/s 307 and 506 of the I.P.C. against two persons, namely Gaurav and Saurabh on the allegation that they fired at Harendra Singh (brother of the first informant), on account of which he sustained fire arm

[49] 2024 AHC 199667.
[50] 2023 SCC OnLine SC 1085.
[51] 2024 AHC 72944.

injury. After investigation, chargesheet was filed only against Gaurav and trial commenced for the case titled *State* v. *Gaurav* in the Sessions Court. Pursuant to the chief and cross examination of some witnesses, the prosecution filed an application u/s 319 Cr.P.C. for the addition of the other accused named in the FIR but not in the Chargesheet, to the trial. The Court after perusing the 319 application and referring to the Five Judges Bench judgement of Supreme Court in *Hardeep Singh* v. *State of Punjab*[52] came to the conclusion that no good ground for summoning of the prospective accused i.e. Saurabh (named but not charge sheeted accused) is made out to summon the prospective accused. The same was challenged in appeal in the current case in the HC. The Court examined the settled law on addition of accused under 319 powers, and observed that "summoning of a non-charge-sheeted accused in exercise of power under Section 319 Cr.P.C. cannot be done in a 'casual and cavalier manner'. Power under Section 319 Cr.P.C. is 'an extraordinary discretionary power which should be exercised sparingly'."[53]

The Court upheld the Sessions Court's Order and dismissed the revision application. The Court here, in refusing to entertain the application under 319, was not speaking of the interpretation of 319 powers, but was rather unconvinced by the statements of PWs in relation to the role of the Saurabh in the offence. It stated that:

> PW-1 who is the first informant, in his deposition before Court below has departed from the basic prosecution story as unfolded in the FIR. It is well settled that though FIR is not the encyclopaedia of the prosecution case, but it must disclose the basic prosecution case. Once it is the basic prosecution case that both the named accused had fired shots at the injured which fact is found to be untruthful in the course of investigation, therefore, the somersault taken by PW-1 in his deposition before Court below to the effect that the injured was caught hold by named accused Saurabh whereas another named accused Gaurav fired the gun shot amounts to going beyond the prosecution story itself. No explanation has come forward from PW-1 regarding the aforesaid departure. Furthermore, PW-2 Harendra Singh, who is the injured has only implicated Gaurav in the crime in question. The Apex Court in the case of Manjeet Singh (Supra) has already held that the evidence of an injured witness is far more credible than an ordinary witness. When the depositions of PW-1 and PW-2 are examined in the light of above, the balance tilts in favour of the deposition given by PW-2. Since neither

[52] (2014) 3 SCC 92.

[53] *Manjeet Singh* v. *Haryana* AIR 2021 SC 4274.

any strong and cogent evidence has emerged against the prospective accused Saurabh.[54]

The Allahabad HC has, earlier, used the power under 319 to add accused to the trail, if the evidence revealed in trial permitted so. In *Adesh Tyagi* v. *State of UP,*[55] an application was filed under Section 482 of the Code of Criminal Procedure, seeking to quash an order that summoned Adesh Tyagi, the applicant, for trial. Tyagi was accused of involvement in a counterfeit currency (S. 489B I.P.C.) case based on an FIR and the testimony of bank witnesses, even though the initial police investigation did not charge him. The case was that A-1 had presented some notes to the Bank, and when these turned out to be counterfeit, he was questioned by the Bank authorities upon which he names A-2 Adesh Tyagi, the appellant herein. Despite his name figuring in the FIR, it was not included in the Final report by the Police. Both PWs who were Bank employees testified mentioning the role of A-2 as stated by A-1 to them. Based on this, upon an application by the Prosecution, the trial Court added A-2 to the case. The Court had used its power under Section 319 of the Code, which allows a court to summon individuals for trial if evidence emerges during an inquiry or trial indicating their complicity, even if they were not initially charged. This was challenged in the appeal. The Court referred to the Constitution Bench decision in *Hardeep Singh and Ors* v. *State of Punjab.*[56] *Hardeep* examined the degree of satisfaction required for invoking the powers under Section 319 of the Code, and held that the test to be applied is to see "a level of satisfaction which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction."[57] The law according to *Hardeep* is that "a person whose name does not appear even in the FIR or in the chargesheet or whose name appears in the FIR and not in the chargesheet, can still be summoned by the court provided the conditions under the Section are fulfilled."[58] The HC hence upheld the lower Court's Order, and stated that the evidence recorded by the court during trial is to be accorded primacy, and for the purpose of exercise of power under Section 319 of the Code, it would have to be given weight over the material which was collected during the course of investigation.[59]

Considering that the facts and evidence that emerged from *Amit Kumar* are different from that in earlier decisions of the HC such as in *Adesh,* the HC's legal position on 319 powers remains the same as laid down in *Hardeep.*

[54] *Supra* note 48 at para. 39.
[55] 2021 AHC 88320.
[56] (2014) 3 SCC 92.
[57] *Id.* at para. 11.
[58] *Adesh Tyagi* v. *State of Uttar Pradesh*, 2021 AHC 88320, para. 12, referring to *Hardeep*.
[59] *Id.* at para. 25.

This view is also supported by the HC decision in *Arunendra Alias Daddu Yadav* v. *State of U.P.*[60], which was a criminal revision against the trial Court's exercise of powers u/s 319 Cr.P.C. The case was initiated as a complaint case by the Magistrate, on the accusation that the several people belonging to a rival faction had accosted the complainant woman's family at their house, and had set fire to the belongings, the house, and opened fire at family members. This was stated to be in retaliation of the earlier murder of one the members of the accused faction (Daddu's side), who was also the father of the revisionist Daddu herein, in which the complainant woman's husband was the main accused. Daddu was not implicated in the original trial, and his name was sought to be added by the complainant's petition, just prior to the delivery of judgment in the trial. The complainant's contention was that name of the revisionist Arunendra @ Daddu Yadav and allegation against him with regard to the incident were mentioned in paragraph no. 4 of the complaint itself, but due to omission, his name was not mentioned at first page of the complaint in the list of accused. The witness's and complainants' statements also referred to the role of Daddu in the incident constituting the offence. The question before the HC was whether application under Section 319 Cr.P.C. of the complainant which was filed before delivery of judgement was maintainable or not and what would be degree of satisfaction for invoking the provisions of Section 319Cr.P.C. The HC referred to *Sukhpal Singh Khaira* v. *State of Punjab*[61] where the stages of invoking 319 was discussed so:

> Para. 23 -A close perusal of Section 319 of Cr.P.C. indicates that the power bestowed on the court to summon any person who is not an accused in the case is, when in the course of the trial it appears from the evidence that such person has a role in committing the offence. Therefore, it would be open for the Court to summon such a person so that he could be tried together with the accused and such power is exclusively of the Court. Obviously, when such power is to summon the additional accused and try such a person with the already charged accused against whom the trial is proceeding, it will have to be exercised before the conclusion of trial. The connotation 'conclusion of trial' in the present case cannot be reckoned as the stage till the evidence is recorded, but, is to be understood as the stage before pronouncement of the judgment as already held in Hardeep Singh since on judgment being pronounced the trial comes to a conclusion since until such time the accused is being tried by the Court.

[60] 2024 AHC 40191.
[61] (2023) 1 SCC 289.

> Para. 33 - …if the Court finds from the evidence recorded in the process of trial that any other person is involved, such power to summon the accused under Section 319 of Cr.P.C. can be exercised by passing an order to that effect before the sentence is imposed and the judgment is complete in all respects bringing the trial to a conclusion.

Considering this case, and the rules laid down in *Hardeep* referred above, the Court upheld the trial Court's exercise of power under 319 adding Daddu to the trial before the pronouncement of the judgment.

Similarly, in *Dr. Ashok Kumar Handa* v. *State of UP,*[62] the Court heard a case where the revisionist was added to a trial under s. 306 I.P.C. for the death of a woman in which her father (informant) had filed an FIR u/s 302 I.P.C. After investigation, the IO had submitted chargesheet against another named accused Suman u/s 306 I.P.C. instead, and thus trial in case titled *Suman* v. *State of UP* commenced. After examination in chief of some PWs, the prosecution filed an application under 319 Cr.P.C. for addition of several more accused to face trial. The trial Court, after perusing the evidence, allowed the application only in respect of the revisionist Dr. Handa. Hence, this revision came to be, before the HC. The revisionist argued that from evidence "up to this stage what has emerged against revisionist is his mere complicity in the crime in question and not such strong and cogent evidence so as to establish something more than the complicity of revisionist in the crime in question." The Court, examining *Hardeep* and *Manjeet,* upheld the order of the trial Court in adding the revisionist to the trial, since evidence from the witnesses so far attributed role to the revisionist in the crime as well. The Court also stated that:

> …Section 216 Cr.P.C. enables the Court to alter the charge at any stage of the proceedings in the light of the evidence that may emerge during the course of trial. Therefore, even if, the trial of the charge sheeted accused is under Section 306 I.P.C. i.e. suicidal death and the evidence of PW-5 and PW-6 shows that the deceased was murdered, that cannot be a ground to conclude that the evidence which has emerged on record is insufficient to summon the accused-revisionist to face trial in aforementioned case, which is under Section 306 I.P.C. and the accused- revisionist has not been summoned under Section 302 I.P.C.

That is, even though the original allegation of the informant-father was that of murder of his daughter, once the complicity of accused is instead established for the offence

[62] 2024 AHC 58600.

of abetment to suicide, the evidence could be used to summon him in the case, since the Court have the power to alter charges too.

In *Buddhan And Another* v. *State of U.P.,*[63] the Court was concerned with a criminal revision filed by applicants in a case under Sections 363, 366 I.P.C. and Sections 7/8 P.O.C.S.O. Act, where application under Section 319 Cr.P.C. filed by the prosecution was allowed and the revisionists were summoned by Court to face trial. The FIR registered by the prosecutrix's father named the main accused Ali Hussain, his mother, and the revisionist herein Budhan.

The IO, after investigation, filed chargesheet against Ali and another accused who was not named in the FIR. The trial commenced under *State* v. *Ali Husain and Others*, and after the statement-in-chief of PWs 1 and 2, the prosecution moved a 319 application. The trial court came to the conclusion that since complicity of the prospective accused (named but not chargesheeted) was also established in the crime in question, and therefore allowed the same. The HC, in revision, opined that "a prospective accused is not required to be heard before an order under Section 319 Cr.P.C. is passed against him vide Yashodhan Singh and Others."[64] However, referring to the law in *Hardeep,* the Court found that the facts revealed do not constitute grounds for adding the revisionist to the trial. The facts and evidence revealed that the father (PW-1) was not an eye-witness to the incident, and the prosecutrix (all three daughters) had stated that they had "willingly accompanied the chargesheeted accused inasmuch as, neither any force was exerted upon them nor any stupefying substance was administered to abduct or kidnap the prosecutrix." The HC thus set aside the trial court's order and allowed the revision.

In *Budh Priya Maurya @ Virendra Kumar* v. *State of U.P.,*[65] the applicant had filed a second anticipatory bail application in relation to an F.I.R. registered against him under Sections 420, 467, 468, 471 of I.P.C. for a fraudulent land sale transaction for which the victims had paid money to the accused, and the transaction was not made. In the previous anticipatory bail application filed in 2022, the applicants' counsel had requested for it to be dismissed as withdrawn with liberty to file a regular bail application. The applicant argued that he was neither the beneficiary nor the signatory to the sale-deed. He is stated to be only present at the time when the said cheques were handed over to the co-accused persons by the informant and his brothers. The State argued that there is no provision of filing second anticipatory bail application under law, and that he applicant had filed a petition u/s 482

[63] 2024 AHC 74657.
[64] 2017 (7) SCC 706.
[65] 2024 AHC 150206.

Cr.P.C. before the HC and it failed as it was dismissed. The State alleged that the applicant did not care to surrender after the said order either, and was rather forum shopping. The Court ruled that "the filing of second anticipatory bail application is nothing but a misuse of precious time of the Court." The Court noted that the earlier anticipatory bail application had been withdrawn with liberty be granted to him to file regular bail application which was to be decided keeping in view the guidelines laid down by the Supreme Court passed in *Satendra Kumar Antil*.[66] The Court dismissed the application and stated:

> The said act of the applicant stands deprecated. It is onerous duty of the counsel not to act on the dictats of the litigant, but to give him proper advice and should cooperate in the court proceedings instead of stalling them by filing such frivolous applications.

The Court also referred to *Pratibha Manchanda and another* v. *State of Haryana*,[67] and reiterated the Supreme Court's opinion that:

> …the relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest.

In *Inam* v. *State of UP,*[68] the accused-applicants sought default bail u/s 167(2)(a)(i) of Cr.P.C., citing the reason that although the chargesheet had been filed in time, it was not accompanied with the report of ballistics examiner, and therefore the chargesheet was incomplete and in effect the applicant was entitled for default bail. The case pertained to charges of murder, wherein the accused-applicant was alleged of having fired shots at the deceased, due to which the deceased died of injuries sustained. The Court, looking at precedents laid down by SC, held that not sending of weapon, cartridge and pellets to ballistic expert for examination would not be fatal to the case of prosecution if the ocular testimony is found credible and cogent.[69] As such, since ocular evidence supported the prosecution case and the same was included in the chargesheet, it cannot be said to have been incomplete and thus enabling the applicant to claim default bail for the reason that FSL/ballistics report was not included.

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[66] *Satender Kumar Antil* v. *Central Bureau of Investigation*, (2022) 10 SCC 51.
[67] (2023) 8 SCC 181.
[68] 2024 AHC 185845.
[69] *Maqbool* v. *State of Uttar Pradesh*, AIR 2011 SC 184.

Nitin Tiwari v. *State of UP*[70] was an application u/s 482 Cr.P.C. where the applicant sought to quash orders passed by the Asst Sessions Judge and the Sessions Judge in case under Sections- 147, 148, 149, 302, 307, 504, 506, 34, 120-B I.P.C. Some of the accused were mentioned in the first chargesheet that was prepared by the police, but were not included in the subsequent (third, in fact) chargesheet that was filed pursuant to orders of further investigation by the Spdt of Police. The first was, though dated earlier, not actually submitted earlier, but was submitted along with a supplementary chargesheet, containing the names of the accused. The third and final one was the one without names of the applicants. The applicants moved a Discharge application dated u/s 227 Cr.P.C. on the ground that in the subsequent police report, the applicants were exonerated; therefore, there is no evidence against them, and on considering the subsequent police report, they may be discharged. The learned Sessions rejected this discharge application. Thereafter, charges were also framed against the applicants by the learned Sessions Judge u/s 228 Cr.P.C. The application was thus made before the HC u/s 482, thus. The HC referred to *Vinay Tyagi* v. *Irshad Ali @ Deepak & Ors,*[71] where the Supreme Court held that Court concerned in case of two different reports must have due regard to both the reports and thereafter form his opinion in accordance with law. The HC thus dismissed the application u/s 482, and held:

> …it is clear that while framing charges, the Court must consider all the police reports, and the same were duly considered in the impugned order … and merely making reference of the first chargesheet …, which was earlier not filed in Court but subsequently filed along with the supplementary chargesheet … will not make the impugned order perverse. Therefore, this Court holds that there is sufficient compliance with the direction of Hon'ble Supreme in Vinay Tyagi.

Rajiv Jindal v. *State of UP*[72] concerned with application for bail by the accused in respect of offence u/s Sections 420, 467, 468, 471 I.P.C. on the allegations that the accused obtained fake GST registrations and registered businesses under the name of and using the details of the informant, but without his knowledge or consent. The GST registrations were obtained in the Punjab and Maharashtra. Similarly, several informant-victims came to realize that their details had been used to obtain fake GST registrations. The Court noted that after registration of the FIR when forgery had been done by using the Aadhaar Card and PAN Card of the informant, fake GST firms were registered, Investigating Officer proceeded on

[70] 2024 AHC-LKO 3587.
[71] AIR 2013 SC (Cri) 292.
[72] 2024 AHC 146622.

the information as provided by a secret informer and arrested two accused who disclosed about the office where work of the firm was being done. On the aforesaid information of the arrested accused persons, the Investigating Officer reached the office premises, wherein he found other persons working for the firm of the arrested accused persons. Laptops, mobiles, SIM Cards, fake invoices were recovered, thus, discovering such fact which connected them with the main accused who had got registered the fake firms and the consequential forgery or theft of GST was found.[73] Considering the serious nature of offences, the Court stated:

> Para. 127 - While, the general rule favours granting bail, there are several exceptions where courts may deny bail due to specific circumstances. *These exceptions are based on factors that indicate a potential risk to society, the judicial process, or the investigation. Some points that should be kept in mind while granting bail are;* the nature and gravity of the offence, likelihood of flight risk, risk of tampering with the evidence of witnesses, repeated offenders or habitual criminals, danger to society or the victim, possibility of committing another offence while on bail, interference with justice, specific statutory provisions like the Narcotic Drugs and Psychotropic Substances Act, 1985, Unlawful Activities (Prevention) Act (U.A.P.A.) and the Prevention of Money Laundering Act, 2002 (P.M.L.A.), *lastly economic offence and white collar crimes.*
>
> Para. 128 - *The present case relates to economic offences, such as large-scale fraud, money laundering and corruption, are often viewed seriously because they affect the economic fabric of the society. The Courts may deny bail in such cases especially if the accused holds a position of influence or power. In the present case, money trail of crores, which affects the society at large scale, is involved which started from registration of fake firms by using Aadhaar and PAN Cards of the informant who had not applied for such registration.*
>
> [Emphasis by author, not Court]

Considering the same, the Court refused to grant bail to the applicants. As regards the challenge against jurisdiction, the Court observed:

> …under the GST Regime ITC (Input Tax Credit) follows supply chain not only in intra-state but also inter-state supply. Thus, on the ground of jurisdiction as argued by learned counsel for the applicant, this Court is of

[73] *Id.* at para. 126.

> the view that though registration of fake firms were at Punjab and Maharasthra, the complainant is resident of New Delhi and the FIR has been lodged at Gautam Buddh Nagar, the genuineness of complaint questioning the territorial jurisdiction cannot be raised on the basis of occurrence as the same cannot be said to be at one place where the GST firm was registered but its connections with other fake firms are also required to be seen.

3. Substantive Criminal Law

In *Parvez* v. *State of U.P,*[74] the accused was charged u/s 363, 366, 376 I.P.C. and 3/4 P.O.C.S.O. Act on allegations that he enticed away the minor daughter of the informant. Statements of the victim-daughter u/s 164 and a part of the FIR itself, however, implied that the daughter had accompanied the accused on her own free will and consent. On the basis of this, the accused had sought bail on the promise of cooperating with trial. Considering the Supreme Court's precedent in *Satender Kumar* and the intent of bail provisions, the Court granted bail to the accused on the conditions of cooperating with the trial and not tampering with evidence. The Court reiterated the importance of bail and stated:

> The well-known principle of "Presumption of Innocence Unless Proven Guilty," gives rise to the concept of bail as a rule and imprisonment as an exception. A person's right to life and liberty, guaranteed by Article 21 of the Indian Constitution, cannot be taken away simply because he or she is accused of committing an offence until the guilt is established beyond a reasonable doubt. Article 21 of the Indian Constitution states that no one's life or personal liberty may be taken away unless the procedure established by law is followed, and the procedure must be just and reasonable… It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial.

In *Dharmendra @ Bheema and Another* v. *State of UP,*[75] the applicants had filed a criminal writ petition challenging an FIR filed under the Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Act, 1986. The petitioners sought to quash the FIR and prevent coercive action, arguing that authorities violated established rules by including incorrect and incomplete information in their "gang-chart" and failing to follow proper approval procedures. Particularly, the appellants claimed that while preparing the gang-chart, the respondents violated the Uttar Pradesh Gangster and Anti-Social Activities

[74] 2024 AHC 111764.

[75] Criminal Misc. Writ Petition No. 1049 of 2024.

(Prevention) Rules, 2021 since incorrect and incomplete information was furnished before the Authorities by the Station House Officer concerned; that the gang-chart has been approved by the Competent Authority without application of mind; and that the details of criminal history of accused on dossier do not reflect any discussion of District Magistrate and the Senior Superintendent of Police in a joint meeting which is contrary to Rule 5(3)(a) of the Rules.[76] The Court looked at the legislative intent and implications of special legislations, especially stringent legislations. The Court referred to major Supreme Court decisions including *Girdhari Lal & Sons* v. *Balbir Nath Mathur*[77] and stated:

> The primary and foremost task of a Court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the Court must then strive to so interpret the statute as to promote and advance the object and purpose of the enactment. For this purpose, where necessary the Court may even depart from the rule that plain words should be interpreted according to their plain meaning and there need no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing the written word if necessary.

The Court also referred to *Swedish Match AB & Anr. Securities & Exchange Board, India & Anr*[78] and stated:

> The more stringent the Law, the less is the discretion of the Court. Stringent laws are made for the purpose to achieve its objectives. This being the intendment of the legislature, the duty of the court is to see that the intention of the legislature is not frustrated.

Another question before the Court was regarding validity of an F.I.R. under section 3 of the Act only, without mentioning any other offences described it section 2(b) thereof. On this, the Court respectfully disagreed with the judgment of Co-ordinate Bench in *Asim @ Hassim* v. *State of U.P. and another,*[79] reiterating that:

> First Information Report is always lodged under the provision inflicting penalty of imprisonment and/or fine against the accused and not under the

[76] *Id.* at para. 4.
[77] 1986(2) SCC 237.
[78] (2004) 11 SCC 641.
[79] Criminal Misc. Writ Petition No. 18729 of 2023.

> provision where the offence itself is defined…. [That is], 'criminal breach of trust' is defined under Section 405 but FIR is registered under Section 406 I.P.C.; 'forgery' is defined under Section 463 I.P.C. but F.I.R. is lodged under Section 465/467/468/471 I.P.C., murder is defined under Section 300 but F.I.R. is lodged under Section 302, so on and so forth… Admittedly, Section 3 is the penal provision under the Act, 1986 in relation to the offences described under various sub-sections of Section 2 of the Act and, hence, this Court is of the view that it is not necessary to mention any one or the other clause of Section 2 while registering F.I.R. under the Act of 1986, for which, mentioning of Section 3 is sufficient.[80]

However, referring to the Supreme Court decision in *Shraddha Gupta* v. *State of U.P,*.[81] the Court noted that the SC mandated that:

> …for framing a charge for the offence under the Gangsters Act and for continuing the prosecution of the accused under the above provisions, the prosecution would be required to clearly state that the appellants are being prosecuted for any one or more offences covered by anti-social activities as defined under Section 2(b).

The HC thus came to the opinion that the prosecution would be under an obligation to clearly state that the accused persons are being prosecuted for any one of the offences covered by anti- social activities as defined under Section 2(b) - however, that stage would come while framing the charge for the offence under the Gangster Act. No such requirement comes at the time of bare registration of F.I.R. and, therefore, mentioning Section 3 of the Act, 1860 only would suffice at that stage.[82] Considering the importance of the legal questions involved, the Court referred two legal questions to be placed before Hon'ble the Chief Justice for constituting Larger Bench:

> (A) Whether, in the light of Rule 60 of the Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Rules, 2021 the words "certified copy of the charge-sheet" used in Rule 10(1) mean certified copy issued from the trial Court after submission of police report by the Investigating Agency before the trial Court and after the Court takes cognizance thereupon, or a certification made on the charge sheet by the police officer involved in investigation prior to its submission before the trial Court is sufficient as per

[80] *Id.* at paras. 48 and 49.
[81] 2022 SCC OnLine SC 514.
[82] *Id.* at para. 51.

section 76 of the Evidence Act, 1872, where the offences are not covered by those specified under Rule 22(2)?

(B) Whether in view of the scheme of penal law covered by Indian Penal Code, 1860 and/or the Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Act, 1986, is it necessary at all to mention in the F.I.R. any one or more of the offences described under Section 2(b) of the Act?

In *Dharamveer* v. *State of UP,*[83] the Court was concerned with an appeal that had been pending for around four decades. The case was based on an occurrence of armed attack in 1984, where the appellant accused, along with others, were convicted u/s 324/34 I.P.C. The incident related to attack using swords and country pistols, where the victims suffered injuries to legs and torso. Despite the appeal assailing the conviction itself, the HC in appeal found that the witnesses and prosecution narrative was properly proven and there thus was no reason to interfere in the conviction itself. However, in respect of the sentence, the Court noted that the criminal machinery came into motion about 4 decades ago and the present appeal has been pending for a long period of 38 years. It found that the accused-appellants alone cannot be held responsible for long delay in disposal of this *appeal* and noted that all accused were of either old age, in their 60s, or deceased pending appeal. The sentence was reduced to period already undergone, and the appellants who were already on bail were permitted not to surrender and their sureties were accordingly discharged. In respect of sentencing discretion, the Court stated:

> Awarding sentence in a matter is always a difficult task which requires balancing of various considerations. The principle of law is well settled that the principle of proportionality between the punishment and crime cannot be brushed aside and the sentence must be just and proper. No doubt the concept of proportionality permits of discretion to the Court but the same has to be guided by certain principles. Hon'ble Supreme Court in Sumer Singh v. Surajbhan Singh and others[84] has observed that neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. There can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a Court. The real requisite is to weigh the circumstances in which the crime has been committed. The discretion

[83] 2024 AHC 193097.
[84] (2014) 7 SCC 323.

> should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment. A Court while imposing sentence has to keep in view the various complex matters in mind. In respect of certain offences, sentence can be reduced by giving adequate special reasons but the special reasons have to rest on real special circumstances.

In *Dhruvjeet Singh* v. *State of UP*,[85] five accused persons including Dhruvjeet Singh the father and his four sons were attributed role of causing murder of deceased Ajay Singh, who was brother of the informant by creating riot by forming unlawful assembly having armed with firearms at the deceased person's house. This was proved at trial on the basis of evidence on record that deceased received three firearm shots at the time of incident. The motive was stated to be enmity between the deceased and accused. Accused Dhruvjeet Singh, the father of other accused persons, was attributed role of exhorting co-accused, who are his sons, to kill informant's side and co-accused persons were alleged to have acted upon this and opened indiscriminate fires on informant's side. This resulted in causing of fatal injuries to the deceased, with whom Dhruvjeet Singh had picked up quarrel in the local market earlier on the same day. The Court found that it was admitted fact that Dhruvjeet Singh was bare arm and was not wielding any weapon in his hand when his sons were armed with firearms. The Court opined that the question of exhorting his sons to kill the informant's side loses its significance as some of the co-accused were already prepared to kill the deceased. Considering this, the Court felt that the accused could not be said to have abetted the commission of offence. It referred to the Supreme Court decision in Jainul Haque v. State of Bihar:[86]

> The evidence of exhortation is, in the very nature of things, a weak piece of evidence. There is quite often a tendency to implicate some person, in addition to the actual assailant by attributing to that person an exhortation to the assailant to assault the victim. *Unless the evidence in this respect be clear, cogent and reliable, no conviction for abetment can be recorded against the person alleged to have exhorted the actual assailant.*
>
> [Emphasis by author, not Court]

Similarly, in respect of conviction read with s. 34, the Court referred to *Suresh and another* v. *State of U.P.*[87] and quoted:

[85] 2024 AHC 94290-DB.
[86] AIR 1974 SC 1651.
[87] 2001 3 SCC 673.

> …the accused who is to be fastened with liability on the strength of Section 34, I.P.C. should have done some act which has nexus with the offence. Such act need not be very substantial; it is enough that the act is only for guarding the scene for facilitating the crime. The act need not necessarily be overt, even if it is only a covert act it is enough, provided such a covert act is proved to have been done by the co-accused in furtherance of the common intention….*But if no such act is done by a person, even if he has common intention with the others for the accomplishment of the crime, Section 34, I.P.C. cannot be invoked for convicting that person. In other words, the accused who only keeps the common intention in his mind, but does not do any act at the scene, cannot be convicted with the aid of Section 34, I.P.C.*
>
> [Emphasis by author, not Court]

Similarly, referring to *Surendra Chauhan* v. *State of M.P.*,[88] the Court cited that "…the essence of Section 34 is simultaneous consensus of the minds of persons participating in the criminal action to bring about a particular result." The Court thus acquitted appellant Dhruvjeet Singh stating that his complicity in the offence by allegation that "…he exhorted his sons to kill the informants does not inspire confidence and his involvement in the offence appears to be doubtful. He deserves to be accorded benefit of doubt, in respect of all charges. This is also noteworthy that except alleged exhortation, no overt act has been attributed to him in the evidence of witnesses of fact." Conviction of the accused sons who fired the shots was upheld by the Court.

In *Jhande Yadav @ Jhundu* v. *State of UP,*[89] several accused persons were tried for the offence of murder for shooting to death, the deceased person with whom they had prior enmity. The charges were u/s 302/149, and some accused gave confessional statements to the Magistrate u/s 164 Cr.P.C. However, the HC found that the "accused were not warned by the concerned Magistrate prior to recording of their statements. They were even not made to understand before recording of their statements that the same can be read against them and were not given time to think over and then depose. The reading of the statement goes to show that the statements were recorded in a mechanical manner and then the Magistrate concerned made a note therein that he had warned the accused and had made him to understand the consequences but they volunteered to give their statements." Also, the case rested on the testimony of a single witness. The Court, in that regard, found:

[88] 2000 4 SCC 110.
[89] 2024 AHC 153656-DB.

> …case as it rests on the testimony of a single witness the same has to be wholly reliable. The testimony of PW-1 Babu Yadav cannot be in any manner said to be of sterling quality and he cannot be treated to be a witness wholly reliable. There has been falsehood stated by him, improvements in his statement and also variations which go to the root of the matter and in any event, he cannot be trusted as a wholly reliable witness.

Considering the fault in the confessional statements and the unreliability of the single witness, the HC set aside the conviction and acquitted the accused.

In *Shyamveer* v. *State of UP,*[90] the HC decided on a conviction for rape and house trespass with intent to hurt, long with charges under the S.C./S.T. Act (ss. 376, 452 I.P.C. and s. 3(2)(v) of the S.C./S.T. Act) and was sentenced to life imprisonment. The facts of the case were that the victim- witness woman had been dragged from her house and raped in an adjacent building by the accused who was also a resident of the same village. Her son intervened during the act, upon which the accused ran. FIR was lodged two days later, and by the time of medical examination, no forensic evidence of the assault was left on her body. However, the witnesses had been reliable in their evidence, and nothing was adduced to show that the victim-witness has any reason to falsely implicate the accused. Considering these, the Court upheld the conviction but reduced the sentence to 7 years instead of life imprisonment. Important jurisprudence laid down by the Court was with respect to the evidence of physical injuries on the victim, which earlier rape law jurisprudence required and later developments have ruled against. The Court stated that the lack of medical evidence of injuries could be attributed to the passing of around 40 hours between the incident and medical examination, and reiterated that "…In a case of rape, any force used by the perpetrator to drag the victim or push her on the ground to commit rape necessarily need not cause such serious injury that it would leave a scar even after two days." [91] This is in line with the rape law that does not place any onus on the woman to sustain physical injuries to prove that the rape has occurred. Since the victim's testimony was consistent throughout and the witness testimony of her son corroborated this, the Court was satisfied by the evidence, and sustained the conviction, despite the lack of medical evidence. However, the Court also stated that "…no lady would otherwise make a false accusation against her own dignity merely for getting some money as compensation"[92] while rejecting the appellant's suggestion that the case was falsely instituted to collect compensation from the State. Although the Court's intention seems to have been genuine, the statement reveals the

[90] 2024 AHC 77384-DB.
[91] *Id.* at para. 18.
[92] *Id.* at para. 19.

persisting perception that rape is an offence against a woman's dignity and that the victim thereby loses a part of it when the offence is perpetrated against her. The notion is antithetical to the efforts of the criminal law, and undermines the possibility of more victims proactively reporting incidents of sexual offences, fearing the stigma attached to the same.

The Court had the opportunity to clarify the powers of a revisional Court hearing a revision against acquittal, in *Smt. Kamla Devi* v. *State of UP*.[93] It was s 498-A matter (along with charges under ss. 3/4 of Dowry Prohibition Act) filed by the mother of the daughter-in-law (victim), where the conviction by Chief Judicial Magistrate was reversed and the parties were acquitted by the Additional Sessions Judge (*State of UP* v. *Krishna Kumar,* and *Krishna Kumar* v. *State of UP* respectively). Looking at the facts of the case, the HC conceded with the Addtl Session Judge's conclusion that the informant was not able to prove the gravamen of the offence as alleged in the FIR – that is, that any harassment in terms of dowry had been perpetrated by the accused husband or mother-in-law. Particularly, the allegation was that the in-laws harassed her seeking transfer of her property to their names. But the Court noted that no documentary evidence was presented showing her right, title and interest in the alleged plot. In the absence of any documentary evidence to show that first informant was in possession of plot, the allegations made in the first information report were held to be baseless. Having said that, the HC also examined the more important question of law – the powers of the revisional court in respect of examining an order of acquittal. Regarding that, the Court referred to the Supreme Court's decision in *K. Chinnaswamy Reddy* v. *State of Andhra Pradesh*[94] and stated:

> Revisional jurisdiction should be exercised by the High Court in exceptional cases only when there is some glaring defect in the procedure or a manifest error on a point of law resulting in flagrant miscarriage of justice. However, this was also a case in which revisional jurisdiction was invoked against an order of acquittal. If the Court lacks jurisdiction or has excluded evidence which was admissible or relied on inadmissible evidence or material evidence has been overlooked etc., then only this Court would be justified in exercising revisional power and not otherwise.

Similarly, the Court cited *Ram Briksh Singh and others* v. *Ambika Yadav*[95] and noted so, regarding the use of revisional powers, especially against acquittal:

[93] 2024 AHC 85145.
[94] AIR 1962 SC 1788.
[95] 2004(7) SCC 665.

Sections 397 to 401 of the Code are group of sections conferring higher and superior courts a sort of supervisory jurisdiction. These powers are required to be exercised sparingly. Though the jurisdiction under Section 401 cannot be invoked to only correct wrong appreciation of evidence and the High Court is not required to act as a court of appeal but at the same time, it is the duty of the court to correct manifest illegality resulting in gross miscarriage of justice.

4. Conclusion

The High Court has mostly applied jurisprudence established by the Supreme Court to the cases that were brought before it, to interpret procedural and substantive laws within the bounds of the established principles. Particularly, in several cases, the Court upheld the trial Court's powers to add accused to the trial using powers under procedural laws, to uphold the ends of justice.

Environmental Law

*S. Shanthakumar**

1. Introduction

Environmental law plays a vital role in today's society. The judiciary has been highly active in safeguarding the environment, and environmental jurisprudence has significantly evolved through the proactive measures undertaken by the Indian courts. The Hon'ble Allahabad High Court also including the Lucknow Bench, particularly in the year 2024, played a significant role in shaping up environmental governance in the State of Uttar Pradesh. The Hon'ble Court has addressed a wide range of matters pertaining to environmental law. The cases ranged a wide variety involving matters concerning municipal actions, public-health hazards, environment infrastructure, tree-felling, environmental compensation and interface between State environmental regulatory bodies and the National environmental regulatory bodies like National Green Tribunal and the Supreme Court. Also, evaluating the regulatory actions undertaken by pollution control authorities, encroachment of water bodies.

Some of the interesting findings which the article identified while researching on the study, revealed a pattern wherein Allahabad High Court was rigorous on procedural aspects undertaken by Uttar Pradesh Pollution Control Board. It minutely evaluated the inspection report and ensured the same was properly documented.[1] Also, provided tailored remedial directions to the local actions which hampered environmental protection for e.g. compulsory afforestation, ensuring directions from court are accomplished within the stipulated time frame. Additionally, tension due to overlapping of powers is found between environmental Tribunals and State Pollution Control Boards.[2]

Relevant judgements have been taken from the Legalix portal of the Allahabad High Court, various national reportings and digests which are dedicated in summarising High Court activities. It also includes various filings and replies in various environmental tribunals which showcases parallel litigation to that of the high court, for example, National Green Tribunal and State Pollution Control Board. Additionally, the survey covers several environmental law orders delivered in early 2025, as they represent legal outcomes

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[1] M/s Krasa International Pvt Ltd v. State of Uttar Pradesh and Others (Writ-C No. 7517 of 2024), [2024] AHC 45958-DB (Allahabad High Court, 14 March 2024), *available at:* https://elegalix.allahabadhighcourt.in/elegalix/WebDownloadOriginalHCJudgmentDocument.do?translatedJudgmentID=3677 (last visited on Sept. 16, 2025).

[2] Shailesh Singh v. Uttar Pradesh Pollution Control Board, Original Application No. 17/2025 (National Green Tribunal, Principal Bench, New Delhi, 23 January 2025), *available at:* https://www.casemine.com/judgement/in/67ba2606c5ab8f78e92049e5 (last visited on Sept. 16, 2025).

stemming from the actions undertaken by the Hon'ble judges in 2024. In this process the author have critically examined the observations and recommendations provided by the honourable court, various regulators and civil societies functioning in the State of Uttar Pradesh.

2. The Analysis

The Allahabad High Court has been extremely prompt in responding to matters related to public-health and environmental hazards by taking *suo-moto* cognizance and accepting PILs. For example on January 17, 2024, the honourable court took up a *suo-moto* cognizance for rodent-infestation and hospital hygiene at the Swaroop Rani Nehru Hospital.[3] The Allahabad High Court looked into this matter after it was reported in the newspaper and also provided with directions and steps that the hospital need to compliance with to ensure a proper environmental health at the hospital. The author believes that such kind of action by the hon'ble court reflects its proactiveness in ensuring appropriate public health.

The Allahabad High Court has been extremely mindful in maintaining sustainability between infrastructural development and tree-felling or loss of green-cover. In June, 2024 a PIL was filed before the Allahabad High Court by Mr. Anand Malviya and Others requesting the judiciary to look into the extreme deforestation aimed to be done due to road-widening in Prayagraj. The Allahabad High Court immediately took up the matter and mentioned that urban trees are important to withstand the heat and urged the government to ensure compensatory actions for deforestation. Hence the government assured they would not only delay their process of widening of the road but also mentioned that compensatory afforestation is being undertaken.[4] The Allahabad High Court went a step forward to ask the appropriate authorities to file an affidavit and specify the steps undertaken as well as the ones proposed. This incident highlighted the efficiency of the Allahabad High Court in tactfully using the PIL procedure in ensuring minimum deforestation.

The Allahabad High Court has consistently upheld fairness in the procedures adopted for the protection of the environment. During 2024, several administrative actions of the Uttar Pradesh Pollution Control Board and other authorities has been challenged before the Allahabad High Court on multiple grounds like: lack of transparency, proper inspection, non-production of appropriate documents etc. For example in the matter, WRIT -

[3] Down to Earth Staff, "Daily Court Digest: Major Environment Orders (January 18, 2024)" *Down To Earth* (18 January 2024), *available at*: https://www.downtoearth.org.in/environment/daily-court-digest-major-environment-orders-january-18-2024--93963 (last visited on Sept. 16, 2025).

[4] Ashutosh Acharya, "Tree Felling in Prayagraj After Compensatory Afforestation, UP Government Tells Court" India Today (4 June 2024), *available at*: https://www.indiatoday.in/law/story/prayagraj-uttar-pradesh-road-widening-project-allahabad-high-court-compensatory-afforestation-2548682-2024-06-04 (last visited on Sept. 16, 2025).

C No. - 10963 of 2024, which was addressed by the Allahabad High Court in 2024 and concluded in 2025 quashed the closing orders on the matter related to disobeying the principle of natural justice.[5] This showcased how tactfully the Allahabad High Court has created a balance between environmental enforcement achievements and the procedural duties of the regulating bodies by creating a bridge between statutory power and procedural due process.[6]

There has been several circumstances wherein there has been an interplay between parallel forms and it welcomes coordination issues. There has been several cases which are addressed before the National Green Tribunal but the Allahabad High Court has intervened on those matters which require the involvement of local municipal, for reference, the matter that looks into the illegal discharge of wastes in river Gomti etc. Another example is the on-going litigation for discharging of sewage and industrial wastes into the River Ganga where cross-reference and coordination challenges persists. The author believes that these gaps can be addressed only with stronger mechanisms which can be aimed in the upcoming years.[7] This year has been exemplary as the Allahabad High Court coordinated with both National Green Tribunal and Central Pollution Control Board in order to address critical issues like the untreated wastewater and municipal waste discharge.[8] Also, mentioning the boundaries of the statutory environmental regulatory bodies prevalent across the State.[9] The author believe this to be an excellent move of the honourable court to be central for local matters and focusing on remedial measures.

The judgements and the directions from the Allahabad High Court during 2024 clearly showcases wide interpretation of environmental laws for the benefit of public-health. This exhibits an excellent environmental governance and a long-standing trust on the judiciary. This year the judiciary has done a phenomenal job by issuing directions for

[5] *M/s Satya Narayan Singh Construction Pvt Ltd* v. *State of Uttar Pradesh and Others* (Writ-C No. 10963 of 2024), [2025] AHC-LKO 804-DB (Allahabad High Court, 6 January 2025).

[6] *M/s Krasa International Pvt Ltd* v. *State of Uttar Pradesh and Others* (Writ-C No. 7517 of 2024), [2024] AHC 45958-DB (Allahabad High Court, 14 March 2024), *available at:* https://elegalix.allahabadhighcourt.in/elegalix/WebDownloadOriginalHCJudgmentDocument.do?translatedJudgmentID=3677 (last visited on Sept. 17, 2025).

[7] Reply of Prayagraj Development Authority in IA No. 372 of 2024 in OA No. 515 of 2023 (*Ganga Pollution* v. *State of Uttar Pradesh and Others*), National Green Tribunal, 12 November 2024, *available at*: https://www.greentribunal.gov.in/sites/default/files/news_updates/Reply%20of%20Prayagraj%20Development%20Authority%20in%20IA%20No.%20372%20of%202024%20IN%20OA%20NO%20515%20of%202023%20%28Ganga%20Pollution%20v.%20State%20of%20UP%20%26%20Ors.%29.pdf (last visited on Sept. 16, 2025).

[8] *Sewage Treatment Plant Through Narendra Kumar* v. *State of Uttar Pradesh* (13 May 2024, National Green Tribunal), *available at*: https://indiankanoon.org/doc/65038981 (last visited on Sept. 16, 2025).

[9] *Shailesh Singh* v. *Uttar Pradesh Pollution Control Board*, Original Application No. 17/2025 (Principal Bench, National Green Tribunal, 23 January 2025), *available at:* https://www.casemine.com/judgement/in/67ba2606c5ab8f78e92049e5 (last visited on Sept. 17, 2025).

producing inspection reports, ensuring compliance of due process etc. which ensures procedural regularity and rules out arbitrariness. Additionally, the Allahabad High Court has taken up several *suo motu* actions based on reporting by several civil societies and media houses. Such steps ensures accountability but challenges court to handle technical environmental issues.

It has been noticed that due to insufficient coordination in parallel litigation there has been an increase trend of forum-shopping and inconsistency in orders. The orders and documents during 2024 showcased repetitive directions and cross-references, which calls for an improved procedural system amongst the forums.[10] The Allahabad High Court has provided some excellent directions like compensatory afforestation but it too depends on regular administrative follow ups.

3. Conclusion

The Hon'ble Allahabad High Court has showcased proactiveness in matters pertaining to environmental law by being a check on the State of Uttar Pradesh. It has upheld environmental jurisprudence by ensuring immediate relief, maintain procedural fairness and also not ignoring urban ecological services. Additionally, established the fact that lower courts and tribunals cannot be surpassed under the pretext of quick enforcement. However, the 2024 judgments of the Allahabad High Court reflected both strengths and systemic gaps. The strengths lay in its concern and promptness in delivering judgments for the benefit of the environment, while the gaps were evident in administrative documentation and inter-agency coordination. Thus, although environmental governance in the State of Uttar Pradesh is progressing well, there remains significant scope for improvement through enhanced administrative capacity and stronger institutional collaboration. It is a matter of great achievement that in 2024, the Allahabad High Court has set the stage for looking into high-stake matters for the upcoming years pertaining to subjects like: environmental compensation, pollution control and green protection.

[10] *Supra* note 7.

Family Law

*Shaiwal Satyarthi**

1. Introduction

India (Bharat) is a country of immense diversity, where multiple religious and cultural traditions converge. Among the oldest components of its legal system are the personal laws applicable to Hindus and Muslims. Hindu personal law, over time, has undergone extensive statutory reform and codification. This legislative evolution underscores the principle that jurisprudence must grow alongside societal transformation, reflecting not only internal social change but also an engagement with comparative legal traditions worldwide. Muslim personal law, by contrast, has largely retained its classical, uncodified character, remaining relatively insulated from legislative reform.

Family Law occupies a central place within this broader framework of personal laws, embodying the constitutional commitment to substantive equality and justice enshrined in the Preamble. Although rooted in theology, personal law has gradually moved from theology to cosmology, from priestly interpretation to judicial reasoning. Modern legislative reforms have recast it within the domain of the state, blending tradition with rationalist ideals. Family law governs intimate aspects of life—marriage, divorce, maintenance, guardianship, adoption, and succession—areas where the tension between individual rights and social norms is most palpable.

At the heart of this Annual Survey's inquiry lies not a mere mimetic exercise in adjudicatory form or a routine catalogue of Family law jurisprudence, but an evolving conception of Family law that recognizes the performing dimension of judgments.

The Allahabad High Court, one of the nation's oldest constitutional courts, has played a pivotal role in interpreting and developing these principles. In the year 2024 it addressed significant questions concerning matrimonial disputes, child custody, women's rights within marriage, maintenance obligations, and the interplay of codified statutes with uncodified personal law. Its judgments not only resolved individual conflicts but also advanced the discourse on gender justice, the protection of vulnerable family members, and the harmonization of personal laws with constitutional mandates. The Allahabad High Court has likewise tackled procedural complexities, clarified jurisdictional boundaries under family law enactments, and mediated conflicts between statutory and customary regimes.

Family Law disputes are profoundly personal, shaped by the singular narratives of marriages irretrievably broken and children caught in custody battles. In these cases, factual

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complexity often outweighs abstract principle; the normative and the factual are inextricably entwined. Each judgment emerges at the point where lived pain, fractured intimacies, and irretrievable facts are transfigured into the language of law's normativity, and thus into jurisprudence itself. The Survey does not merely list cases; it illuminates how facts disclose norms—the fragment of a broken marriage, the silence of desertion, the tears of a child in custody,[1] the loneliness of a widow in succession; showing that these are not incidental details but the very substance through which jurisprudence breathes and law finds its voice.

This Annual Survey of Family Law therefore examines the constitutive aspects of the Allahabad High Court's decisions across five key themes: Matrimonial Disputes, addressing grounds such as mental cruelty, desertion, and jurisdictional issues; Custody and Guardianship, emphasizing the paramount interest of the child; Maintenance and Financial Relief, affirming the social obligation to support dependents as shaped by statutory interventions; Succession and Property Rights, exploring inheritance and coparcenary claims; and Muslim Personal Law, tracing the continuing vitality of classical doctrine alongside constitutional values.

2. Matrimonial Disputes

Matrimonial disputes in India cover a broad spectrum of issues, including divorce, maintenance, child custody, domestic violence, and division of property. The governing legal framework blends religion-based personal laws with secular statutes such as the Hindu Marriage Act, 1955, the Special Marriage Act, 1954, and the Protection of Women from Domestic Violence Act, 2005 etc.

A significant segment of the Court's docket in 2024 was shaped by matrimonial disputes arising under the Hindu Marriage Act, 1955, the Special Marriage Act, 1954, and allied legislations. The Court's pronouncements reveal a jurisprudential concern that the juridical apparatus should not allow the disintegration of conjugal bonds to harden into interminable conflict. By emphasizing mediation and reconciliation, the Court situated itself within a broader philosophy of adjudication that recognizes marriage as not only a legal institution but also an existential relation implicating affective ties, human dignity, and the ethical responsibilities of care.[2]

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[1] *Somprabha Rana* v. *State of Madhya Pradesh*, 2024 INSC 664 (holding that in child custody disputes "the only paramount consideration is the welfare of the minor" and criticizing high courts for disturbing custody without considering the emotional impact).

[2] Editor, "SC Grants Divorce Decree After Wife Resiled from Settlement Agreed in Mediation" *SCC Online Blog*, June 19, 2024, *available at:* https://www.scconline.com/blog/post/2024/06/19/sc-grants-divorce-decree-after-wife-resiled-from-settlement-agreed-in-mediation/ (last visited on Sept. 19, 2025).

In this sense, the Court's orientation resists the reduction of marital breakdown to mere procedural issue; instead it aspires to preserve, where possible, the fragile domain of interpersonal responsibility within the law's formal structures. At the same time, in cases where irretrievable breakdown was evident, the Court granted relief with sensitivity, acknowledging the right of individuals to live with dignity. This Survey would then refer to the judgments that emphasized the importance of dignity in marital ties and revoking it when it was burdened by cruelty and other form of indignities that happens in matrimonial life.

2.1 Hindu Marriage Laws

The judiciary has played a pivotal role in safeguarding the institution of marriage. In the early years, while interpreting the Hindu Marriage Act, 1955, courts often relied on ancient Hindu law and, where relevant precedents were lacking, turned to English principles to fill the gaps. Even today, courts affirm that marriage is a sacrament and cannot be dissolved at the mere whims of the parties. Yet, with changing social norms, many couples now enter relationships without formal marriage ceremonies. The judiciary has consequently addressed issues arising from such arrangements, carefully distinguishing relationships "in the nature of marriage" from those lacking legal sanctity, such as adultery, or purely transient live-in relationships.[3]

The Hindu Marriage Act mentions about cruelty being one of the grounds for divorce and as such it became necessary for understanding the phenomenal aspects of cruelty through definitional criteria. Allahabad High Court, in *Pawan Kumar Pandey v Sudha,*[4] While hearing an appeal under Section 19(1) of the Family Courts Act, 1984, challenging the dismissal of a divorce petition under Section 13 of the Hindu Marriage Act, 1955, the Court considered a case in which the appellant had approached the Family Court in 2011 seeking dissolution of marriage on the grounds of cruelty, desertion, and mental disorder, alleging that his wife suffered from schizophrenia.

The Allahabad High Court shaped the analytical discourse of cruelty by relying upon the decision of Hon'ble Supreme Court in *Rakesh Raman v Kavita*,[5] where it held that "Cruelty has not been defined under the Act. All the same, the context where it has been used, which is as a ground for dissolution of a marriage would show that it has to be seen as a 'human conduct' and 'behavior'' in a matrimonial relationship… Cruelty can be physical as well as mental, if it is physical; it is a question of fact and degree. If it is mental, the enquiry

[3] *Indra Sarma* v. *V.K.V. Sarma*, (2013) 15 SCC 755 (laying down factors to determine whether a live-in relationship is a "relationship in the nature of marriage" under the Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005).

[4] 2024 SCC OnLine All 6778.

[5] 2023 SCC OnLine SC 497.

must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse".[6] It also reiterated the decision of Supreme Court in *Debananda Tamuli* v. *Kakumoni Kataky*[7] in relation to the concept of desertion in which "the deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be *animus deserendi* on the part of the deserting spouse."

The crux of the decision lay in determining whether schizophrenia constitutes a condition sufficient to justify the grant of divorce. The relevant legal provision under Section 13 is set out below:

> (1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-
>
> (iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.[8]

Allahabad High Court while relying upon the decision of Supreme Court in *Ram Narain Gupta* v. *Smt. Rameshwari Gupta*[9] held that "the ground of a spouse suffering from schizophrenia, by itself is not sufficient for grant of a decree of divorce under Section 13(1)(iii) of the Hindu Marriage Act, 1955 as it may involve various degree of mental illness. The law provides that a spouse in order to prove a ground of divorce on the ground of mental illness, ought to prove that the spouse is suffering from a serious case of schizophrenia which must also be supported by medical reports and proved by cogent evidence before Court that disease is of such a kind and degree that husband cannot reasonably be expected to live with wife". Hence, it served a very pivotal moment wherein the Allahabad High Court observed that:

> Section 13 (1) (iii) of H.M. Act does not make mere existence of a mental disorder of any degree sufficient in law to justify dissolution of a marriage. The contest in which the ideas of unsoundness of mind and mental disorder

[6] *Ibid.*
[7] (2022) 5 SCC 459.
[8] Hindu Marriage Act, 1955, s. 13 (1) (iii).
[9] 1988 4 SCC 247.

> occur in section as ground for dissolution of a marriage, require assessment of degree of mental disorder and its degree must be such that spouse seeking relief cannot reasonably be expected to live with the other.[10]

In another matrimonial decision of *Dr. Bijoy Kundu* v. *Smt. Piu Kundu*,[11] where the husband filed a suit[12] before Family Court seeking divorce under Section 13(1)(i-a) and (ib) of the H.M.A., citing cruelty and desertion. The wife filed Regular Suit No. 29 of 2013 for restitution of conjugal rights under Section 9. The Family Court dismissed the divorce suit and decreed restitution. The husband appealed to the Allahabad High Court, which framed the key issue: whether the alleged cruelty proved against the wife entitled the husband to a divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. After examining various Supreme Court precedents and discussing the relevant amendments to the Act, the High Court observed that:

> Clause (i-a) of sub section (1) of section 13 of the Act, 1955 declares that a decree of divorce may be based by a court on the ground that after solemnization of marriage, the opposite party has treated the petitioner with cruelty subject to the State amendments to Section 13 (1) (i-a) in this regard. There are other grounds also mentioned in the said sub section (i) of section 13 of Hindu Marriage Act and each of these grounds are independent of each other. It has to be understood that each of these grounds are mutually exclusive to each other which is evident by use of the disjunctive 'or' to separate each ground from the other and there is no reason to read 'or' conjunctively as it will lead to absurdity. Thus, cruelty can by itself be a ground for dissolution of marriage.[13]

Therefore, the decree of divorce was granted and Section 13(1)(i-a), as amended by the U.P. Act No. 13 of 1962, treated cruelty as a standalone ground for divorce. It is not only in the sphere of interpretation of Section 13 of the Hindu Marriage Act the Court has rendered important pronouncements but also in cases of waiver of cooling period the Allahabad High Court has enunciated important decision.

In *Layak Singh* v. *Ekta Kumari*,[14] the court while emphasizing upon the "sacramental union of a man and a woman for life" which is given an "inherent respect" by the Hindu Marriage Act stressed that "there may be circumstances in which it may not

[10] *Supra* note 1.
[11] 2024 SCC OnLine All 2456.
[12] Regular Suit No. 886 of 2012.
[13] *Ibid.*
[14] 2024:AHC:54496.

reasonably be possible for the parties to the marriage to live together as husband and wife".[15] The parties were married in June 2020 and had been living separately since October 2020. They jointly sought divorce by mutual consent[16] and requested that the statutory cooling period be waived. The Family Court declined to waive the mandatory cooling-off period, observing that such power lay beyond its jurisdiction and was vested exclusively in the Supreme Court.[17] The parties challenged this order. The Court referred the history of Sec 13B (2) of the Hindu Marriage Act, 1955 which "provide for a cooling period of six months from the date of filing of the divorce petition under Section 13B (1), in case the parties should change their mind and resolve their differences".[18] In the Court's opinion, the intent to which this provision was infused was "to save the institution of marriage, by preventing hasty dissolution of marriage". "With passage of time", the Court continued, "tempers cool down and anger dissipates. The waiting period gives the spouse time to forgive and forget. If they have children, they may, after some time, think of the consequences of divorce on their children, and reconsider their decision to separate. Even otherwise, the cooling period gives the couple time to think and reflect and take a considered decision as to whether they should really put an end to the marriage for all time to come".[19]

But the crucial question before the court apart from its legislative intention, was to decide the nature of the cooling period and it relied upon the decision of Supreme Court in *Amardeep Singh* v. *Harveen Kaur*,[20] *Amit Kumar* v. *Suman Beniwal*[21] in which it was held that "the period mentioned in Section 13B (2) of the Hindu Marriage Act, 1955 is not mandatory but directory" and any construction shall be avoided which seems to confer it "pedantic rigidity". Further, relying upon the precedent of Allahabad High Court, it observed that "the

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[15] Dolly Rani v. Manish Kumar Chanchal, 2024 SCC OnLine SC 754 (observing that a Hindu marriage is a "samskara" and must be performed in accordance with s. 7(1) of the Hindu Marriage Act, 1955 (Act 25 of 1955).

[16] *Supra* note 8, s. 13B, it provides:

"Divorce by mutual consent.- (1)Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnised and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree"

[17] *Amardeep Singh* v. *Harveen Kaur*, AIR 2017 SC 4417.

[18] *Supra* note 8.

[19] *Ibid.*

[20] 2017 (8) SCC 746.

[21] 2021 SCC Online SC 1270.

amendment was inspired by a thought that forcible perpetuation of status of matrimony between unwilling partners did not serve any purpose. The object of cooling off the period was to safeguard against a hurried decision if there was otherwise possibility of differences being reconciled". Therefore, after taking consideration of facts of the case that there is no possibility of reconciliation, the marriage has broken down irretrievably and Exercising its powers under Articles 226 and 227 of the Constitution, as affirmed in *Hari Vishnu Kamath* v. *Syed Ahmad Ishaque*[22] and *ICICI Ltd.* v. *Grapco Industries Ltd.*[23] the Allahabad High Court allowed the waiver application and directed the Family Court to decide the mutual divorce petition expeditiously.

Further, in *Mahendra Kumar Singh* v. *Rani Singh*,[24] the appellant-husband instituted proceedings for divorce under Section 13 of the Hindu Marriage Act, 1955, before the Family Court at Varanasi, alleging cruelty by the respondent-wife. The grounds that were invoked by the appellant included verbal abuse, physical assault, obstruction in the performance of his mother's last rites, and the party also asserted irretrievable breakdown of the marriage owing to the parties' separation since 1999. The Family Court dismissed the petition, which led to the filling of the appeal.

The Allahabad High Court, upon review, held that the allegations of abuse, assault, and denial of information concerning the mother's death were imprecise, unsubstantiated, and lacked corroboration from independent evidence. On the contrary, the high court noted that the respondent-wife had remained committed to the marital relationship and had cared for the appellant's mother, who, in acknowledgment, had executed a testamentary disposition. Reiterating the settled principle that separation, by itself, does not constitute proof of an irretrievable breakdown of marriage, as affirmed in by the Supreme Court in *Naveen Kohli* v. *Neelu Kohli*[25] and subsequent authorities the Allahabad High Court found no infirmity in the Family Court's decision and accordingly dismissed the appeal.

The Case of *Col. Manoj Kumar Gupta* v. *Sangeeta*,[26] remain another important decision of the High Court that reiterated the contextual nature of cruelty. In this case, the appellant, an Army officer, married the respondent, a senior doctor, on 21.11.2007 after the dissolution of his first marriage. The respondent, a widow with two children, was alleged to have deserted the appellant, refused marital cohabitation for over six years, subjected him and his adopted daughter to mental cruelty, and maligned his character. The respondent denied all allegations, asserting cordial relations and regular visits.

[22] 1954 (2) SCC 881.
[23] (1999) 4 SCC 710.
[24] 2024 SCC OnLine All 3402.
[25] AIR 2006 SC 1675.
[26] 2024 SCC OnLine All 496.

The Allahabad High Court observed that "the interpretation of the word "cruelty" is that it has to be construed and interpreted considering the type of life the parties are accustomed to; or their economic and social conditions and their culture and human values to which they attach importance".

The Allahabad High Court relied upon the various pronouncements of the Supreme Court, in relation of establishing mental cruelty as a part of irretrievable breakdown of marriage. Further, it expressed its concern and angst on the need of including the irretrievable breakdown of marriage and in this regard observed that:

> On one hand, the law recognises desertion of a petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition as one of the grounds for grant of divorce, whereas on the other hand, it is not understandable as to why the ground of irretrievable break down is not being recognized as one of the grounds, when the parties are living separately for so many years and in some cases, for decades together.
>
> In so many cases, the matrimonial life between the parties is only for the namesake, whereas factually the marriage has become totally unworkable and emotionally dead, even if respondent is insisting upon carrying on with such emotionally dead relationship. It is only for this reason recognizing ground realities of such dead relationship, it is being consistently felt by the Hon'ble Apex Court that continuance of such unworkable matrimonial ties is nothing but mental cruelty on the parties and at least on the petitioner, even when the divorce petition is being opposed by the other side. To our mind, irretrievable break down is an assessment of circumstances prevailing in lives of the parties to the marriage and if proved, would amount to mental cruelty.[27]

Upon reviewing the evidence and precedents, including *Sukhendu Das* v. *Rita Mukherjee*[28] *Shilpa Shailesh* v. *Varun Sreenivasan*,[29] *Shashi Bala* v. *Rajendrapal Singh*[30] and the principles laid down in *Naveen Kohli* v. *Neelu Kohli*[31] and *Samar Ghosh* v. *Jaya Ghosh*,[32] the Court held that prolonged separation, lack of emotional intimacy, and sustained

[27] *Ibid.*
[28] AIR 2017 SC 5092.
[29] 2023 SCC OnLine SC 544.
[30] 2019 SCC OnLine All 7636.
[31] AIR 2006 SC 1675.
[32] (2007) 4 SCC 511.

allegations amounted to "mental cruelty" and "desertion" under Sections 13(1) (ia) and (ib) of the Act.

In *Abhilasha Shroti* v. *Rajendra Prasad Shroti*,[33] wherein the judgment of the Court relied upon an evolving jurisprudence of matrimonial cruelty articulated by Hon'ble Supreme Court in *N.G. Dastane* v. *S. Dastane*,[34] *Parveen Mehta* v. *Inderjit Mehta*,[35] *Jaydeep Majumdar* v. *Bharti Jaiswal Majumdar*,[36] *Samar Ghosh* v. *Jaya Ghosh*,[37] *Roopa Soni* v. *Kamalnarayan Soni*,[38] among other precedents. Collectively, these decisions articulate a normative vision in which cruelty is not limited to physical or overtly abusive acts, but extends to conduct that negates companionship, undermines the integrity of the marital bond, and erodes the sacramental conception of marriage within the Hindu tradition.

The fact of the case was that the marriage, solemnised on 10 March 1989, produced a child in 1991, but the parties experienced repeated separations and failed attempts at reconciliation, ultimately living apart for over two decades. The Family Court found that the appellant-wife voluntarily withdrew from cohabitation without just cause, thereby causing mental cruelty to the respondent-husband. Allegations of dowry demands and domestic violence made by the appellant were unsubstantiated. The Court treated long period of desertion as a mental cruelty and observed that:

> Thus, subjective and inherently varied, individual human behaviour in the context of matrimonial relationship may be construed as cruelty to one's spouse, depending on facts of each case and its proven effect on the other spouse. The complete denial of company to one's spouse, without any justifiable reason, may itself amount to cruelty. It is not cohabitation or physical intimacy that may dictate the definition of cruelty.
>
> At the same time, any person who enters into matrimonial relationship does undertake a social and personal obligation to enjoy and share his / her company with their chosen spouse. A spouse who out of choice completely deprives the other of his / her company, for no rhyme or reason may be seen to have committed cruelty when that conduct (continuous and unabated over years) is seen through the eyes of other spouse. A Hindu marriage is a

[33] 2024 SCC OnLine All 4390.
[34] 1975 2 SCC 326.
[35] (2002) 5 SCC 706.
[36] (2021) 3 SCC 742.
[37] (2007) 4 SCC 511.
[38] 2023 SCC OnLine SC 1127.

> sacrament and not just a social contract where one partner abandons the other without reason or just cause or existing or valid circumstance necessitating that conduct, the sacrament loses its soul and spirit, though it may continue to hold its external form and body.
>
> That death of the spirit and soul of a Hindu marriage may constitute cruelty to the spouse who may be thus left alone devoid of not only physical company completely deprived of company of their spouse, at all planes of human existence.[39]

The Allahabad High Court's judgment is a jurisprudential commitment to preserving the ethical core of marriage as an institution is not as a mere contractual arrangement reducible to rights and duties, but as a site of relational responsibility, whose violation, whether through abandonment or neglect through large period of desertion, constitutes cruelty in a legally cognizable sense.

The acts of cruelty also remain embedded in the social discourse and also takes different forms where it transcend its unique factual existence and move to the intersectional discrimination aspect of our social and cultural life. In *Saurabh Sachan* v. *Garima Sachan*[40] appellant alleged that the respondent-wife repeatedly humiliated him due to caste differences, insulted him publicly, left the matrimonial home in 2011, established her own business ventures, and deprived him of marital companionship and access to their son. The respondent, despite service of summons, remained absent before both the Family Court and the High Court, and the matter was heard ex parte. The Allahabad High Court, while relying upon the judicial concept of *animus deserendi*[41] to assess the mental cruelty, held that the the respondent's continuous separation since 2011, her refusal to resume cohabitation in 2015, and her failure to contest the pleadings or offer justification for living apart demonstrated both cruelty and desertion. It further emphasized that reconciliation efforts are not a precondition for divorce, and inferences could be drawn from uncontroverted evidence since civil cases are decided on a preponderance of probabilities. Thus, where the ethical essence of companionship has been eroded by sustained withdrawal, the juridical form of marriage ceases to embody its purpose. In this way, the high court judgment affirms a philosophical movement in matrimonial jurisprudence which recognizes that the dissolution of marriage may sometimes represent not the destruction of a sacramental union, but the acknowledgement that the bond, in its lived reality, no longer subsists.

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[39] *Supra* note 28.

[40] 2024:AHC-LKO:57079-DB.

[41] *Parveen Mehta* v. *Inderjit Mehta*, (2002) 5 SCC 706; *Debananda Tamuli* v. *Kakumoni Kataky*, (2022) 5 SCC 459.

In *Mahendra Prasad* v. *Bindu Devi*,[42] the Allahabad High Court delivered an important judgment underscoring the concept of cruelty in relation to a spouse's independent nature. Among the allegations of cruelty, the petitioner claimed that the respondent was "a free-willed person who would go out on her own to the market and other places and did not observe *parda*." The Court scrutinized this contention and observed that:

> Difference of perception towards life may give rise to different behaviours by individuals. Such difference of perception and behaviour may be described as cruel by the others by observing the behaviour of another. At the same time, such perceptions are neither absolute nor such as may themselves give rise to allegations of cruelty unless observed and proven facts are such as may be recognized in law to be acts of cruelty. The act of of the respondent being free-willed or a person, who would travel on her own or meet up with other members of the civil society without forming any illegal or immoral relationship, may not be described as an act of cruelty committed, in these facts.[43]

Further, the appellant argued that the respondent subjected him to mental cruelty and wilful desertion. The record showed that the parties had lived together for a very short period and had been living separately since at least 2001 and all attempts at reconciliation failed, and the respondent opposed the divorce despite admitting the long period of separation.

The Court founded that the allegations of cruelty based on the respondent's independent conduct and unsubstantiated claims of adultery were not proved. However, relying on *Samar Ghosh* v. *Jaya Ghosh*[44] and *Rakesh Raman* v. *Kavita*[45] the Court held that the prolonged separation of over twenty-three years and the respondent's refusal to resume cohabitation amounted to mental cruelty and wilful desertion, thereby granted the appellant the decree of divorce and the same law was reiterated in *Arti Tiwari* v. *Sanjay Kumar Tiwari*,[46] wherein the Family Court found that the respondent's testimony and supporting evidence established a clear case of desertion, as the appellant demonstrated no intent to resume cohabitation. While the specific allegations of cruelty regarding false accusations were not proved in the court, the long period of desertion, coupled with hostile conduct,

[42] 2024 SCC OnLine All 7729.
[43] *Ibid.*
[44] (2007) 4 SCC 511.
[45] 2023 SCC OnLine SC 497.
[46] 2024:AHC:143726-DB.

threats, and the pursuit of criminal litigation after the divorce petition was held to amount to mental cruelty. The High Court observed that the marriage had irretrievably broken down, with more than two decades of separation, and upheld the decree of divorce.

It is not only the substantive reading of the legislative intentions which matters before the Court, the matrimonial proceedings being a proceeding of civil nature, that deals with rights and liabilities of the parties are also bound by the procedure that govern the admission and rejection of evidence in the suit, which constitute relevant facts in the suit.

In this sense, one of the matrimonial suits namely *Pooja Gautam* v. *Neeraj Gautam*,[47] the appeal under Section 19 of the Family Courts Act, 1984, challenged the order dated 25 July 2024 of the Principal Judge, Family Court, Hathras, which directed the medical examination of the appellant in the course of a divorce petition. The appellant contended that a similar application had earlier been deferred to the stage of final disposal, and that revisiting it at the stage of evidence was premature. The appellant further argued that the observations contained in the impugned order carried the risk of prejudicing the outcome, and sought instead the constitution of a medical board under the Chief Medical Officer (CMO).

The Allahabad High Court observed that the trial court had initially sought a report from Aligarh Muslim University, a non-government facility, and held that in judicial proceedings, evidentiary reliability demanded recourse to a formally constituted medical board under the CMO, Hathras. The Court clarified that the trial court's observations were merely tentative and would bear no weight on the final adjudication of the divorce petition. It further noted that the earlier order postponing consideration of the application was interlocutory in nature and did not foreclose the trial court's obligation to secure expert evidence at the appropriate stage.

At a deeper level, the decision refers to a vital jurisprudential truth which is that procedural law is not a secondary or technical dimension of adjudication but the architecture through which justice becomes possible. Particularly in matrimonial disputes, where questions of mental health implicate dignity, autonomy, and capacity for relationship, relates to the decision of rights and liabilities in suits, the law cannot proceed on speculation or assumption.

It requires the discipline of evidence, which is objective, authoritative, and procedurally secured in order to safeguard both parties against conjecture and prejudice. The insistence on a CMO constituted medical board reflects the idea that the justice rests not merely on the substantive norms of family law but on the integrity of the procedures that give

[47] 2024 SCC OnLine All 5237.

those norms life. The judgment of the High Court affirmed that evidence is not an accessory to adjudication but its foundation, and that procedural safeguards are themselves an ethical demand of justice.

Jurisdiction is a key concern in Family Court proceedings, which, by their very nature, are civil in character. In *Vinay Kumar* v. *Suman,*[48] the issue centred on territorial jurisdiction. Citing the inconvenience caused by the parties living in different locations and their frequent non-appearance, the Court dismissed the divorce petition, granting liberty to re-file in a jurisdiction more convenient to both parties. Under the Hindu Marriage Act,[49] territorial jurisdiction is generally confined to the district court where the marriage was solemnized, the respondent resides at the time of filing, or the parties last resided together, among other specified grounds.

Since the parties' marriage was solemnized in Chandauli and their last residence was there, the Family Court at Chandauli had proper jurisdiction. The Allahabad High Court criticized the trial court's casual and laconic approach, noting that the proceedings had been pending for three years, during which pleadings were exchanged, mediation was conducted, and interim maintenance was awarded to the respondent.

The Allahabad High Court also observed that neither party raised jurisdictional objections, nor was a transfer application filed. The dismissal, made on grounds not pleaded by either party, undermined judicial responsibility, disregarded procedural justice, and effectively nullified prior orders. The Allahabad High Court emphasized that procedural law is a “handmaid of justice” and that courts have 'no lis' of their own. Finding the trial court's reasoning unsustainable, the appellate court set aside the order and remitted the matter to the Family Court, Chandauli, directing expedited adjudication

The Allahabad High Court in its pronouncement highlighted the delay in the adjudication in matrimonial suit, and in this vein it went on to observe cautiously that:

> All judicial proceedings especially matrimonial case may be dealt with in a time bound frame and undue adjournment may not be granted as a rule or a regular practice. At the same time, as an appeal court, we may not loose sight of the reality that exists and in the environment in which Family Courts function. Long pendency of cases, shortage of judicial officers, less

[48] 2024:AHC:123536-DB.

[49] *Supra* note 8, s. 19. It provides that every petition under the Act shall be presented to the district court within the local limits of whose ordinary civil jurisdiction (i) the marriage was solemnised, or (ii) the respondent, at the time of presentation of the petition, resides, or (iii) the parties last resided together, or (iv) the petitioner resides if the respondent is outside India or not heard of for seven years, etc.

than efficient Bar and also at times hardship and approach of the parties along-with other factors cumulatively contribute to delays.

With long time that passes in completion of the proceeding of the Court and the judgment on issues by the Court remain in state of abeyance, and if one of the party to the suit suffers death, and the party is survived by his parents, then the question arises that whether a party could be substituted for completion of the suit. In the case of *Shatakshi Mishra* v. *Deepak Mahendra Pandey (Deceased) And 2 Others*,[50] the husband, Deepak Mahendra Pandey died during the pendency of proceedings and his parents sought substitution under Order 22 Rule 3 of the Code of Civil Procedure (C.P.C.) to continue the petition. The Family Court allowed substitution, which was assailed in this appeal. The Law that governs the provision relating to the substitution of the parties in a civil proceeding is Order 22, Rule 3 of C.P.C. Rule 3[51] deals with the procedure in case of death of one of several plaintiffs or of sole plaintiff.

The Allahabad High Court framed two key issues which were in relation to the applicability of the provisions of Order 22, Civil Procedure Code, 1908 apply to Family Court proceedings under Section 11 of the Act and whether legal representatives of a deceased spouse can be substituted to pursue a petition under Section 11. The High Court while expounding the law in relation to Sec 10 observed that "a bare reading of the provisions quoted above would clearly reflect that the provisions of C.P.C. other than the proceedings under Chapter IX of the Cr.P.C. would be applicable in all proceedings pending before the Family Court and that for the purpose of the said provision of the Code, a family court shall be deemed to be a Civil Court"[52] and the "provisions of Order 22 C.P.C. are applicable in the proceedings pending before the Family court under Section 11 of the Act".[53] On the second issue, the Allahabad High Court expounded the term "either party thereto" in affirmation of the precedent of the Allahabad High Court in *Garima Singh* v. *Pratima Singh*,[54] where the term was given purposive and expansive interpretation for the family court act being a social welfare legislation and the high court observed that:

[50] 2024 SCC OnLine All 4863.

[51] Civil Procedure Code, 1908, O.22, r. 3. It states that:
"(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.
(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff."

[52] *Ibid.*

[53] *Ibid.*

> In Garima Singh (supra) the Court was mainly considering the terms "either party thereto" and it was held that the narrow interpretation given to the phrase "either party thereto" should not apply in cases where provisions of social welfare legislation are invoked. It was also observed that if the first wife is deprived of seeking a remedy under Section 11 of the Act, it would defeat the very purpose and intent of the Act. The protection offered to legally wedded wives under Sections 5, 11 and 12 of the Act would become insignificant in such a scenario. It was also observed that the Court should lean towards an interpretation that serves the interprets of justice and aligns with the broader objectives of the law and by doing so, the Court can ensure that the remedies available under Section 11 are not unduly limited and the individuals seeking relief are not unjustly deprived of their rights.[55]

The Allahabad High Court went on to held that, "the Legal Representative who is not either of the parties and was not one of the spouse to the marriage in question can pursue the petition filed under Section 11 of the Act that marriage should be declared void and therefore, their application filed under Order 22 Rule 3 C.P.C. would be maintainable."[56] Further, the personal law's protective mantle extends from the status of marriage to the well-being of children, and protecting their best interest, which embodies a shift from questions of conjugal validity to the lived realities of nurture, care, and responsibility.

2.2 Muslim Marriage Laws

In *Smt Hasina Bano* v. *Mohammad Ehsan*[57] an appeal under Section 19 of the Family Courts Act, 1984 challenged judgments by which the Family Court, Jhansi dismissed a joint suit seeking a declaration that the parties were divorced under Muslim personal law by *mubara'at* (mutual consent).

The parties married, separated, and mutually dissolved the marriage; recording the divorce in a notarised *Talaqnama Tehreer*. The Family Court dismissed the suit for non-production of the original *Talaqnama* at filing and for a 20-year delay in seeking declaratory relief.

Allowing the appeal, the Allahabad High Court held that dismissal on these technical grounds was untenable. Citing Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937,[58] it reiterated that *mubara'at* is a recognised extra-judicial divorce

[54] 2023 (9) ADJ 101 (DB).
[55] *Supra* note 41.
[56] *Ibid.*
[57] 2024 SCC OnLine All 519458.

effective upon mutual agreement, without need for judicial intervention, and may be oral or written.

Relying on *Shayara Bano* v. *Union of India*[59] and *Asbi K.N.* v. *Hashim M.U.*[60] (Kerala HC), the Court affirmed that Family Courts have jurisdiction under Section 7 of the 1984 Act to formally record such divorces through summary proceedings.

The Court further observed that a declaratory decree merely provides a public record and does not create new rights, so strict evidentiary requirements are inappropriate. Invoking Section 58 of the Indian Evidence Act, 1872,[61] it noted that facts admitted by both parties including execution of the Talaqnama need not be re-proved, particularly since the original document was later produced without objection.

On limitation, the Court found no statutory bar, noting that neither the Family Courts Act, 1984 nor the Limitation Act, 1963 prescribes a period for suits seeking matrimonial declarations, with Section 29(3) of the Limitation Act, 1963[62] explicitly excluding its application to marriage and divorce matters.

Citing *Ajaib Singh* v. *Sirhind Cooperative Society*,[63] the Court underscored that courts cannot impose limitation where the legislature has consciously omitted it, and even where none is prescribed, the only requirement is that parties approach the court within a "reasonable time" as explained in *State of Punjab* v. *Bhatinda District Cooperative Milk Producers Union*[64] and *North Eastern Chemicals Industries* v. *Ashok Paper Mill*.[65] Considering that the divorce was undisputed and of continuing effect, the delay was held not to bar relief and insisting on limitation in such uncontested matrimonial matters would undermine the welfare nature of the legislation.

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[58] Muslim Personal Law (Shariat) Application Act, 1937, s.2: Application of personal law to Muslims.—Notwithstanding any custom or usage to the contrary, in all questions regarding intestate succession, special property of females including personal property inherited or obtained under contract or gift or any other provision of personal laws, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties and wakfs (other than charities and charitable institutions and charitable and religious endowments), the rules of decision in cases where the parties are Muslims, shall be the Muslim Personal Law (Shariat).

[59] (2017) 9 SCC 1.

[60] 2021 SCC OnLine Ker 3945.

[61] Indian Evidence Act, 1872, s.58: Facts admitted need not be proved: No fact need not be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings.

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

[62] The Limitation Act, 1963, s.29(3): Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

[63] (1999) 6 SCC 82.

Allowing the appeal, the Court set aside the Family Court's orders this decision clarifies that Family Courts possess declaratory jurisdiction over extra-judicial divorces, that technical procedural lapses cannot defeat uncontested matrimonial declarations, and that limitation principles do not rigidly apply to recognition of marital status under Muslim law, reinforcing a jurisprudence prioritizing substantive justice over procedural formalism.

Matrimonial jurisprudence in India balances the preservation of marriage with the protection of individual dignity and rights. Courts recognize that cruelty, desertion, or prolonged separation can justify divorce, while procedural safeguards ensure fair and reliable adjudication. The law accommodates diverse personal and religious frameworks, emphasizing both reconciliation and the practical realities of irretrievable breakdown, always aiming to uphold justice, fairness, and the ethical core of marital relationships.

3. Children's Best Interest and their Legal Custody

The "best interest of the child" is a central principle guiding decisions on custody, guardianship, and adoption. Enshrined in Article 3(1) of the United Nations Convention on the Rights of the Child (C.R.C.), it obliges decision-makers to prioritize the child's welfare over parental rights. In India, this principle has evolved through statutes such as the Guardians and Wards Act, 1890, and the Hindu Minority and Guardianship Act, 1956, as well as through judicial rulings tailored to the specific facts of each case.[66]

The concept of visitation rights, though having not seen an evolutionary jurisprudence in Indian Courts but the Supreme Court has held the rights of visitation in relation to the Child and his best interest. The Supreme Court seems to concern that "child has a human right to have the love and affection of both the parents",[67] for "a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right".[68] Therefore, "the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child".[69]

In the connection to visitation rights, the Allahabad High Court in *Priyanka Agarwal* v. *Abhishek Agarwal*,[70] the Family Court granted the respondent-father visitation rights to meet his minor child once a month for three hours at a public place and the order was

[64] (2007) 11 SCC 363.

[65] AIR 2024 SC 436.

[66] Samparna Tripathy and Amit Sama, "The Best Interest of the Child in Custody Disputes" 6 *Journal on the Rights of the Child of National Law University of Odisha* 124 (2025).

[67] *Yashita Sahu* v. *The State of Rajasthan*, AIR 2020 SC 577.

[68] *Ibid.*

challenged because of jurisdictional issue. The High Court rejected this argument, emphasizing that a child's natural right to know and meet both parents is of near-absolute significance. Relying on the principle of welfare of the child as paramount consideration the Court observed that visitation arrangements, when limited and supervised, do not alter the custody status and are designed to serve the best interests of the child and the high court dismissed the appeal on illegality or jurisdictional error.

Further, in *Dheeraj* v. *Chetna Goswami*[71] the question of the best interest of the child was related to the place of ordinary residence of the child and the competent court in relation to the Guardians and Wards Act, 1890. In this case, appeal was made as the family court dismissed the appellant-father's application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (C.P.C.) seeking rejection of the respondent-mother's guardianship petition under Section 25 of the Guardians and Wards Act, 1890 (G.W.A.). Rule 11 of Order VII of the Code of Civil Procedure, 1908 states about the conditions relating to the rejection of plaint.

The appellant also argued that the Family Court lacked territorial jurisdiction under Section 9(1) of the GWA because the child was residing in Bhiwani, Haryana, and therefore was not "ordinarily residing" within Ghaziabad's jurisdiction. The High Court examined the statutory scheme of Section 9(1) of the G.W.A., which mandates that a guardianship petition must be filed in the district where the minor "ordinarily resides."

The Allahabad High Court reiterated that, as consistently interpreted, the term "ordinary residence" refers to the child's habitual place of abode, determined by settled intention and surrounding circumstances, and cannot be altered by temporary or strategic relocations. It further underscored that Section 17 of the Guardians and Wards Act, 1890 makes the welfare of the child the paramount consideration, in harmony with the constitutional mandate of Article 39(f).

In addressing the plea for rejection under Order VII Rule 11 C.P.C., the Court relied on precedents such as *Srihari Hanumandas Totala* v. *Hemant Vithal Kamat*,[72] *Saleem Bhai* v. *State of Maharashtra*[73] and *Kamla* v. *K.T. Eshwara Sa and others*[74] which clarify that rejection of a plaint is permissible only where the bar to maintainability is evident on the face of the plaint, without recourse to extraneous facts. Since the mother's petition disclosed a cause of action and determination of jurisdiction required evidence, summary rejection was unwarranted.

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[69] *Ibid.*
[70] 2024:AHC:107425-DB.
[71] 2024 SCC OnLine All 1610.
[72] (2021) 9 SCC 99.
[73] (2003) 1 SCC 557.

The Court further referred to *Ruchi Majoo* v. *Sanjeev Majoo*,[75] *Jagdish Chandra Gupta* v. *Vimla Gupta*[76] and *Prashant Chanana* v. *Seema*[77] to reiterate that "ordinary residence" must reflect a child's settled home environment rather than transient stays. The appellant's jurisdictional objection therefore, could only be adjudicated at trial after consideration of evidence and not at the preliminary stage of considering a Rule 11 application. The High Court dismissed the appeal, affirming that the Family Court acted within jurisdiction in refusing to reject the petition. It emphasized that technical objections must yield to the welfare principle embedded in Sections 9, 17, and 25 of the G.W.A., and that a child's best interests cannot be undermined by procedural challenges.

The question relating to the custody of child has also came to be raised before the high court in relation to writ of habeas corpus which extends to cases of wrongful custody of a minor and may be issued under Article 226 of the Constitution to secure the welfare of the child. In this legal paradigm, in the case of *Ayra Khan and another respondent* v. *State of U.P*,[78] the writ petition of habeas corpus was filed by the biological mother of a minor girl, who was two and half years of age and the mother was seeking custody from her paternal grandmother, after she was ousted from her matrimonial home. The Court relied upon Sec. 17 of the Guardians and Wards Act and the principles of *parens patriae* jurisdiction, and emphasised that the welfare of the child is paramount in custody determinations.

The Family Law being a personal law, that goes along with the person and the parties were of muslim faith, the court quoted the authority on the guardianship under the Principles of Mahomedan Law, wherein the "mother is entitled to the custody (hizanat) of her male child until he has completed the age of seven years and of her female child until she has attained puberty.[79] The right continues though she is divorced by the father of the child (e), unless she marries a second husband in which case the custody belongs to the father." The Court stressed that the remedy under *Habeas corpus* proceeding is "in the nature of an extraordinary remedy", and "habeas corpus would be issued where it is demonstrated that the detention of minor child, is illegal or without any authority of law."[80] The High Court held that the detention of the minor by her grandmother was held prima facie illegal. Given the tender age

[74] (2008) 12 SCC 661.
[75] (2011) 6 SCC 479.
[76] AIR 2003 All 317.
[77] AIR 2010 P&H 99.
[78] 2024 SCC OnLine All 2426.
[79] Mulla, *Principles of Mahomedan Law* 352 (LexisNexis, New Delhi, 22nd edn., 2022) (stating that under Muslim law the mother is entitled to the custody (hizanat) of her male child until he completes seven years of age and of her female child until she attains puberty).

of the child and the absence of the father, the Court held that continuing custody with the biological mother would serve the child's best interests.

The doctrinal position on the issuance of habeas corpus to be issued in the cases of minor custody was reaffirmed by the Allahabad High Court in *Mithilesh Maurya* v. *State of U.P.*[81] relying on settled jurisprudence, the Court reiterated that habeas corpus, though a writ of right, is not a writ of usual course and is issued only upon proof of unlawful detention as discussed in *Mohammad Ikram Hussain* v. *State of U.P.*[82] and *Kanu Sanyal* v. *District Magistrate, Darjeeling*.[83] As the legal authority established through judgements in *Nithya Anand Raghavan* v. *State (NCT of Delhi)*[84] and *Tejaswini Gaud* v. *Shekhar Jagdish Prasad Tewari*,[85] in custody matters, the scope of writ is limited to assessing whether the child is illegally detained and whether welfare demands a change in custody.

The High Court referred the Supreme Court observation in *Nithya Anand Raghvan* v. *State*,[86] where the Court observed that "the paramount consideration must be about the welfare of the child" in the issuance of the writ. And referred to the the role of the "High Court in examining the cases of custody of a minor, on the touchstone of principle of *parens patriae* jurisdiction."[87]

These 2024 rulings reaffirm that the welfare of the child remains the paramount consideration[88] in all custody, guardianship, and visitation matters. Courts consistently prioritize the child's best interests over procedural or technical objections, ensuring that decisions reflect the child's settled environment, emotional needs, and right to maintain meaningful contact with both parents.

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[80] *Ibid.*

[81] 2024:AHC:66116.

[82] AIR 1964 SC 1625.

[83] 1973) 2 SCC 674.

[84] (2017) 8 SCC 454.

[85] (2019) 7 SCC 42.

[86] SLP (Crl.) No.5751 of 2016.

[87] In this wake the High Court observed that: "It is therefore seen that in an application seeking a writ of habeas corpus for custody of a minor child, as is the case herein, the principal consideration for the court would be to ascertain whether the custody of the child can be said to be unlawful and illegal and whether the welfare of the child requires that the present custody should be changed and the child should be handed over in the care and custody of somebody else other than in whose custody the child presently is. It is well settled that in matters of custody the welfare of child would be of a paramount consideration and the role of the court in examining the cases of custody of a minor is on the touchstone of 'principle of parens patriae jurisdiction."

[88] *Shazia Aman Khan and Ors.* v. *State of Orissa and Ors.*, 2024 SCC OnLine SC 225 (holding that in child custody disputes the "welfare of the child is of paramount consideration and not personal law or statute").

4. Maintenance and Financial Reliefs

Maintenance is the legal obligation to provide financial support for a dependent spouse or child to meet basic living expenses such as food, shelter, clothing, and medical care. In this context, "financial relief" often refers to interim support or alimony granted during or after divorce or separation. Indian law offers multiple avenues for a wife to claim maintenance, with the appropriate remedy depending on her marital status, religion, and the specific circumstances of separation or dispute. Each statute addresses distinct situations, enabling a wife to seek the most suitable form of relief.

In 2024, the Allahabad High Court reaffirmed that the right to maintenance arises from a husband's or father's social obligation to support his dependents, irrespective of personal law. When determining the quantum, the Court considered the respondent's earning capacity, the family's standard of living, and the claimant's legitimate needs. Significantly, it clarified that even an unemployed husband cannot escape liability by citing lack of income; instead, the focus must be on his capacity to earn.[89]

The Allahabad High Court further addressed overlapping claims under Section 125 Cr.P.C., the Domestic Violence Act, and the Hindu Adoptions and Maintenance Act, holding that these remedies are complementary, not mutually exclusive.

In *Kamal* v. *State of U.P. through Secretary, Home, Lucknow & Anr.*, a criminal revision under Section 19(4) of the Family Courts Act, 1984 challenged the order of the Principal Judge, Family Court, Unnao, directing the revisionist-husband to pay ₹2,000 per month as maintenance to his wife under Section 125 of the Code of Criminal Procedure, 1973, from the date of her application, with arrears payable in five quarterly instalments. The husband contended that his wife had left the matrimonial home without justification, was self-sufficient as a schoolteacher, and that a restitution petition under Section 9 of the Hindu Marriage Act, 1955 was pending. Invoking Section 125(4) of the Code of Criminal Procedure, 1973, he further argued that she was disentitled to maintenance because she was living separately without sufficient cause and was allegedly in an adulterous relationship.

The Allahabad High Court, after examining the evidence found no proof of the wife's independent income or of any adultery. The husband's plea of ill health and lack of income was also rejected, as he was a healthy adult capable of earning wages with access to agricultural income. The Court relied on the principle affirmed by the Supreme Court in *Anju*

[89] Maintenance disputes; particularly under Section 125 of the Code of Criminal Procedure, 1973, and the Protection of Women from Domestic Violence Act, 2005 received careful judicial scrutiny. The Court emphasized that maintenance is preventive rather than punitive, intended to ensure that dependents are not left destitute.

Garg v. *Deepak Kumar Garg*[90] that a husband's duty to maintain his wife is absolute, even if he earns by manual labour and that poverty or unemployment does not absolve him of this responsibility. It held that the wife was entitled to maintenance under Section 125 of the Code of Criminal Procedure, 1973 which is a measure of social justice aimed at preventing destitution, as laid down in *Bhuwan Mohan Singh* v. *Meena*.[91]

Finding no illegality or perversity in the Family Court's decision, and noting the modest amount awarded, the revision was dismissed. The order of maintenance was upheld and the trial court was directed to take coercive steps to secure recovery. The judgment reiterates that Section 125 of the Code of Criminal Procedure, 1973 is a beneficial provision ensuring sustenance of wives and allegations of adultery or self-sufficiency must be strictly proved to deny relief.

In *Rana Pratap Singh* v. *Neetu Singh & Others*[92] a criminal revision under Section 19(4) of the Family Courts Act, 1984 challenged the judgment of the Principal Judge, Family Court, Unnao. That order directed the revisionist-husband to pay maintenance of ₹15,000 per month to his wife and ₹5,000 per month to each of their two minor children under Section 125 of the Code of Criminal Procedure, 1973, effective from the date of the maintenance application.

The husband argued that his wife had left the matrimonial home without sufficient cause, was living in adultery, and was gainfully employed with substantial income. He also relied on an ex parte decree of restitution of conjugal rights obtained under Section 9 of the Hindu Marriage Act, 1955, contending that it barred maintenance under Section 125(4) of the Code of Criminal Procedure, 1973.

The Allahabad High Court rejected these arguments, noting that the restitution decree had been set aside by the Lok Adalat, rendering Section 125(4) inapplicable. Allegations of adultery were dismissed for lack of credible evidence, no FIRs, corroborating testimony, or documentary proof were produced. Likewise, the claim of the wife's independent income was unsubstantiated, as no salary slips, employment records, or other materials were provided to counter her assertion of financial dependence.

These 2024 rulings underscore that maintenance is a fundamental social obligation; ensuring dependents are not left destitute regardless of the husband's employment status or personal law. Courts emphasized that ability to earn, not current income, determines liability, and that overlapping statutory remedies remain complementary. Allegations of

[90] (2022) SC 805.
[91] (2015) 6 SCC 353.
[92] AIR 1978 Cal 525.

adultery or self-sufficiency must be strictly proven; absent such proof, the right to maintenance stands as a measure of social justice and dignity.

5. Succession and Property Rights

Succession refers to the inheritance of property or title from one's ancestors. Succession laws apply when property is transferred by operation of law, typically in cases of intestate succession when a person dies without leaving a will or other legal instrument such as a gift or settlement.

In India, inheritance is governed by distinct personal laws: Hindu succession law for Hindus, Muslim law for Muslims, and the Indian Succession Act, 1925 for others. If the deceased leaves a valid will, the property is distributed according to that will; otherwise, intestate succession rules determine the heirs and their shares.[93]

Succession disputes before the Allahabad High Court in 2024 primarily revolved around the interpretation and application of the Hindu Succession Act, 1956, and the Indian Succession Act, 1925.

In *Phagoo* v. *Gokaran and others*[94] the dispute arose from a partition suit concerning the estate of late Tirath Ram. The plaintiff sought a one-third share based on a sale deed executed in his favour by Jashoda, the deceased's mother. The defendants contested the claim, asserting that Lakhraji, Tirath Ram's widow, was the absolute owner under Section 14 of the Hindu Succession Act, 1956, and that the sale deeds executed by her were valid. The Trial Court dismissed the suit, holding that Lakhraji became full owner of her husband's estate under Section 14 and that the plaintiff's deed was invalid. On appeal, the Lower Appellate Court reversed the decision, relying on *Sankar Prasad Khan* v. *Smt. Ushabala Dasi*[95] and *Gangadhar Charan Naga Goswami* v. *Sm. Saraswati Bewa*[96] and awarded one-third share to the plaintiff and the remaining two-thirds to Tirath Ram's daughters, reasoning that Lakhraji had remarried and thus lost her rights.

In second appeal, the Allahabad High Court initially reinstated the Trial Court's dismissal. The Supreme Court, however, remanded the case for determination of substantial questions regarding jurisdiction, the effect of dismissal of a prior partition suit, and the interplay between Section 14 of the Hindu Succession Act, 1956, and Section 2 of the Hindu Widows' Remarriage Act, 1856.

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[93] 2024 SCC OnLine All 905.

[94] *Gurupad Khandappa Magdum* v. *Hirabai Khandappa Magdum*, AIR 1978 SC 1239 (affirming that, absent a valid will, property devolves according to the applicable personal law of the deceased).

[95] 2024 SCC OnLine All 4654.

[96] AIR 1962 Ori 190.

On remand, the Allahabad High Court held that the District Judge had proper pecuniary jurisdiction, that dismissal of the earlier suit did not operate as res judicata, and that because succession opened after 1956, Lakhraji's rights vested absolutely under Section 14 of the Hindu Succession Act. It further ruled that these rights could not be divested by remarriage or custom. The decree was modified to allot one-fourth share each to the plaintiff, Lakhraji (through her transferees), and the two daughters, affirming the overriding effect of the Hindu Succession Act, 1956 on the succession rights of widows after its commencement.

In *Rajni Rani* v. *State of U.P. & Others*,[97] the Allahabad High Court dismissed a writ petition seeking release of the retiral benefits of late Sri Bhojraj Singh, a retired Assistant Teacher who died on 02.10.2021. The petitioner, Rajni Rani—named as nominee in the service book and claiming to have lived with the deceased as his wife—argued that the legally wedded wife, Usha Devi (Respondent No. 10), had long separated, allegedly remarried, and compromised maintenance proceedings under Section 125 Cr.P.C., thereby forfeiting her rights.

The Court rejected these contentions, holding that nomination does not confer beneficial ownership but merely authorizes receipt of dues, which must ultimately devolve upon legal heirs under succession law. Relying on *Shipra Sengupta* v. *Mridul Sengupta*[98] and *Suneeta* v. *Union of India (All HC, 2022)*, it reiterated that a nominee is only a custodian and statutory benefits must pass to lawful heirs. As Usha Devi remained the undisputed legally wedded wife and no divorce had occurred during the deceased's lifetime, she retained her succession rights despite the maintenance compromise. The writ petition was accordingly dismissed.

In *Mukti Nath Giri and another* v. *State of U.P. and others*[99] (decided 12 April 2024), the Allahabad High Court dismissed a writ petition seeking retiral dues and compassionate appointment following the death in harness of Constable Smt. Durgawati Giri in 1991. The petitioners, her alleged husband Mukti Nath and their son relied on service records naming Mukti Nath as husband. However, benefits had already been disbursed to Rakesh Bihari Srivastava, whom the deceased had nominated shortly before her death, on the basis of a 1995 succession certificate. Although the petitioners later secured a 1999 succession certificate declaring Mukti Nath as husband and heir, the Court held that Section 372 of the Indian Succession Act, 1925 is confined to authorising collection of debts and securities and does not determine ownership or marital status. Citing *Shipra Sengupta v. Mridul*

[97] 2024 SCC OnLine All 94.
[98] (2009) 10 SCC 680.
[99] 2024 SCC OnLine All 4691.

Sengupta,[100] it reiterated that neither nomination nor a succession certificate confers beneficial entitlement; both merely enable receipt of dues to be distributed per succession law.

Because the dispute involved contested questions; such as whether Durgawati was divorced or had a valid subsequent marriage, the Court ruled that such issues require adjudication in a civil suit, not a writ petition. Given the decades-long delay and prior disbursal under a valid certificate, the petition was dismissed without costs, underscoring the limited scope of Section 372 proceedings and the necessity of civil remedies for declaratory relief in succession and marital-status disputes.

The succession rulings of 2024 reaffirm that inheritance in India is governed by clear statutory principles rather than personal arrangements or administrative designations. The Hindu Succession Act, 1956 ensures that a widow's absolute rights, once vested, cannot be curtailed by remarriage or custom. Nomination or a succession certificate merely authorizes receipt of dues and does not create ownership; the property must ultimately pass to the lawful heirs under the applicable personal law. Disputes over marital status or heirship require adjudication through proper civil proceedings, not summary writ petitions. These principles collectively reinforce the primacy of succession law, the protection of legitimate heirs, and the need for careful judicial process in settling inheritance matters.

6. Conclusion

The 2024 decisions of the Allahabad High Court reaffirm that family law in India is not a static inheritance but a living, adaptive system. Through its nuanced engagement with matrimonial disputes, child custody, maintenance, succession, and Muslim personal law, the Court has demonstrated how constitutional values of equality, dignity, and justice can animate long-standing personal law traditions without erasing their distinctiveness.

Each judgment reflects a dialogue between fact and norm, showing that jurisprudence grows from lived realities, the fractures of relationships, the needs of children and the vulnerabilities of dependents rather than from abstract doctrine alone. Transformative constitutionalism, these decisions suggest, is not achieved through the wholesale rejection of tradition but through its continuous reinterpretation in light of contemporary social change.

This Annual Survey traces the Court's careful movement across terrains where procedure becomes an ethic of fairness and where the concrete pain of lived life enters the

[100] (2009) 10 SCC 680.

domain of judgment. In these rulings, jurisprudence emerges not merely as an interpretive science but as an existential act; a passage through suffering toward the affirmation of dignity. Law appears not simply as an instrument of governance but as a fragile bridge between the ethical and the juridical, between the intimate singularities of life and the abstractions of normative order.

Thus, the jurisprudential task of family law is not to secure finalities but to remain attentive to the unfinished: the interstitial spaces where law and life touch without ever fully coinciding. To write this survey, therefore, is not merely to record cases but to testify to the quiet transcendence that dwells within the most ordinary disputes where, through law, human beings seek not only remedies but meaning.

Intellectual Property Rights

*Lisa P. Lukose**

1. Introduction

This survey presents a synthesis of the Allahabad High Court's reported decisions from 2024 concerning diverse aspects of intellectual property rights (IPR)**.** The selected judgments are examined thematically and doctrinally, analyzing the courts' reasoning on key legal issues, procedural developments and administrative trends. Although the Allahabad High Court contributes fewer IPR decisions compared to other major high courts such as Delhi, Bombay, and Madras, the cases from the review period reflect significant judicial engagement with core and peripheral intellectual property (IP) questions. The survey encompasses disputes directly implicating IPRs as well as cases that touch upon them tangentially. Significantly, the survey period did not record any judgments concerning patents, plant varieties, geographical indications, or protection of confidential information. However, few trademark-related decisions merit particular attention for their discussion on complex questions of law, including the relationship between prior user and registered proprietor, the distinctiveness of packaging and trade dress, passing off, get-up, and the likelihood of consumer confusion or deception. Some cases also made incidental references to copyright and design law, illustrating the expanding contours of IP jurisprudence within the high court's docket. An interesting feature of the survey year is the court's engagement with issues at the intersection of IP and allied domains such as taxation, criminal liability, procedural compliance, and the duty to provide reasoned judicial orders. Furthermore, the court's interventions extended to adjacent areas with implications for IP enforcement, particularly in curbing the misuse of criminal proceedings arising from commercial disputes and interpreting exceptions to pre-litigation mediation requirements under the Commercial Courts Act, 2015. Collectively, these decisions illustrate the evolving landscape of commercial and IP adjudication in the Allahabad High Court, amply reflecting an emerging jurisprudential coherence and an increasing judicial sensitivity to the complex interplay between IP norms and broader legal frameworks.

2. Interface Between IPR and Taxation

Dismissing a revision petition preferred by the Commercial Tax Department U.P. against M/s Pan Parag India Ltd., a Single Bench of Shekhar B. Saraf, J. in *Commissioner Commercial Tax, U.P. at Lucknow* v. *Pan Parag India Ltd.,*[1] held that franchise agreements are principally licensing agreements, rather than sales of goods and hence, payments

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[1] MANU/UP/1923/2024; 2024: AHC: 94356: (2024) ILR 5 All 1083.

received by Pan Parag India Ltd. under a trademark franchise agreement were subject to service tax, not value added tax. The court further observed that such agreements, granting non-exclusive licenses, do not constitute a 'transfer of the right to use goods' for VAT purposes and a transaction already subject to service tax cannot be simultaneously subjected to VAT. Holding this, the court observed thus: [2]

> Franchise agreements have become a ubiquitous feature of modern commerce, facilitating the expansion of businesses across diverse industries and geographies. However, the tax treatment of franchise agreements poses intricate challenges, with implications for both franchisors and franchisees. Transfer of the right to use a trademark does not necessitate the physical handover or control of the trademark. Instead, it can be affected by authorizing the transferee to use the trademark in accordance with the law. This underscores the intangible nature of trademark rights and their transferability without the need for physical possession. Franchise agreements primarily grant a representational right rather than an exclusive right to sell or manufacture goods, thereby categorizing such transactions as services rather than sales of goods. Franchise agreements are fundamentally licensing agreements rather than sales of goods. At first glance, franchise agreements may appear analogous to sales of goods, as they involve the transfer of rights and benefits from one party to another in exchange for monetary consideration. However, a deeper examination reveals crucial distinctions that warrant disparate tax treatment. Unlike conventional sales transactions, which involve the transfer of tangible property, franchise agreements primarily entail the licensing of intangible assets, such as trademarks, trade secrets, and proprietary knowhow. One of the central aspects of franchise agreements is the grant of intellectual property rights from the franchisor to the franchisee. These rights include trademarks, trade names, logos, and proprietary business methods. Unlike tangible goods, which can be bought and sold outright, intellectual property rights are licensed for use under specific terms and conditions. Another key factor that distinguishes franchise agreements from sales transactions is their non-exclusive nature. Franchise agreements typically grant franchisees the right to operate a business using the franchisor's brand and system within a defined territory. However, this right is not exclusive, as the franchisor may grant similar

[2] Paras. 24 and 25 of MANU/UP/1923/2024.

rights to other franchisees within the same or overlapping territories. Franchise agreements also entail an ongoing relationship between the franchisor and franchisee, characterized by training, support, and ongoing assistance. Unlike a one-time sale of goods, which concludes once the transaction is complete, franchise agreements involve continuous interaction and collaboration between the parties. The financial aspects of franchise agreements further underscore their distinction from sales transactions. Franchise fees and royalties are payments made by the franchisee to the franchisor in exchange for the right to use the franchisor's brand and system. These payments are not for the purchase of goods but rather for the ongoing support and benefits provided by the franchiser.

The court's observations on intricacies involved in the taxation treatment of IPR franchise agreement and the need to develop nuanced tax policies are noteworthy. In the opinion of the court,[3] "the taxation of franchise agreements and sales of goods represents a complex and multifaceted issue that defies easy categorization. While both involve commercial transactions, they embody distinct economic realities and legal considerations that necessitate differential tax treatment. By recognizing the unique characteristics of franchise agreements, including the prevalence of intangible assets and the importance of intellectual property, tax authorities can develop nuanced tax policies that promote fairness, efficiency, and compliance. Ultimately, a balanced approach that takes into account the economic substance of franchise transactions and the need to prevent tax arbitrage and avoidance will ensure the integrity and effectiveness of the tax system."

3. Criminal Proceedings and Inherent Jurisdiction of High Courts

In *Mohd. Abdul Momin* v. *The State of U.P. & Ors.*[4] a petition was filed under section 482 of the Code of Criminal Procedure, invoking the inherent jurisdiction of the high court to quash criminal proceedings arising from allegations intertwined with an IP and commercial dispute. The petitioners contended that the underlying controversy was essentially civil and commercial in nature, and that the initiation of criminal proceedings constituted an abuse of the legal process - an attempt by the complainants to exert pressure through penal prosecution. They accordingly sought quashing of the charge sheet and further proceedings instituted under sections 103 and 104 of the Trade Marks Act, 1999**,** and sections 64 and 65 of the Copyright Act, 1957**,** asserting that continuation of such

[3] *Id*. at para. 26.

[4] MANU/UP/3366/2024: 2024:AHC-LKO:61632.

proceedings would be illegitimate, vexatious, and serve no meaningful purpose. The court examined whether the continuation of the criminal case would serve any legitimate public interest, or whether the matter was better confined to the realm of civil adjudication. It noted that the commercial dispute between the parties concerning the trademark *Kaveri* had already been settled through a settlement deed executed in 2016 in *Prem Mehandi Center through its Proprietor* v. *Mohd. Abdul Momin Mohd. Hakeen*. In that settlement, the defendant had undertaken, *inter alia*, not to adopt any trademark, logo, packaging, trade dress, or copyright that was identical or deceptively similar to the plaintiff's existing IP, including its essential features and get-up. Upon considering the nature of the allegations and the existence of the prior settlement, the court concluded that the continuation of criminal proceedings would amount to misuse of the penal process in the context of a civil and commercial controversy. Consequently, it allowed the petition under section 482 Cr.P.C., observing: "The present application is liable to be allowed as chances of ultimate conviction are extremely bleak and hence no useful purpose would be served by allowing the criminal proceedings.[5] The judgment reaffirms a well-established judicial principle that criminal law must not be employed as a tool to coerce or pressure parties in civil or intellectual property disputes. It underscores that criminal sanctions are justified only when public interest warrants their invocation, and that disputes grounded primarily in private rights - whether commercial, contractual, or IPR related - should appropriately be resolved before civil courts. Nevertheless, the judgment must be contextually applied. In cases involving IP, copyright, or trademark violations, certain acts, *viz*., counterfeiting or wilful infringement may legitimately attract criminal liability. An overly broad or mechanical application of this precedent could risk prematurely quashing prosecutions that genuinely warrant penal adjudication.

4. Reasoned Orders and Review Jurisdiction

The trademark dispute in M.*M.I. Tobacco Pvt. Ltd. & Another* v. *Iftikhar Alam*[6] highlights the judicial emphasis on reasoned orders in interlocutory proceedings. The Allahabad High Court reaffirmed that when a trial court grants a temporary injunction without adequately recording its reasoning on the three essential ingredients - prima facie case, balance of convenience, and irreparable harm - the appellate court is justified in remanding the matter for reconsideration. Such remand, the court emphasized, is not for deciding the matter on merits but to ensure that judicial orders meet the standards of reasoned adjudication. The plaintiffs, M.M.I. Tobacco Pvt. Ltd., filed a suit in 2022 against Iftikhar Alam seeking relief under sections 29, 134, and 135 of the Trade Marks Act, 1999,

[5] *Id*. at para. 11.

[6] MANU/UP/1283/2024: 2024:AHC:73463.

and section 62 of the Copyright Act, 1957. The dispute concerned the mark *Musa-Ka-Gul*, used for tooth powder, alleging infringement by the defendant's mark *Asli Musa-Ka-Gul*. The plaintiffs claimed long and continuous prior use of the mark since 1974, asserting proprietary rights and goodwill in the brand name *Musa-Ka-Gul.* They sought an interim injunction restraining the defendant from manufacturing, selling, or distributing goods bearing a confusingly similar mark or trade dress.

The trial court granted a temporary injunction restraining the defendant from using *Asli Musa-Ka-Gul* and related logos, wrappers, containers, and packaging for tooth powder and allied goods. The defendant, however, challenged this order before the Allahabad High Court in 2023. The high court allowed the appeal and remanded the matter to the trial court for fresh consideration, holding that the trial court's order was cryptic and failed to properly apply the three legal tests governing interim injunctions - *prima facie* case, balance of convenience, and irreparable injury. Upon remand, the trial court reconsidered the injunction application and, in 2024, rejected the plaintiffs' prayer for interim relief. The plaintiffs thereafter filed an appeal against this rejection and also moved a review under section 114 C.P.C., challenging the earlier remand order dated 07.08.2023. They argued that the high court's remand order had impermissibly considered the issue of prior user - a defense the defendant had not explicitly pleaded; thereby exceeding the permissible scope of appellate scrutiny at the interlocutory stage. The plaintiffs further contended that the defendant had suppressed material facts concerning earlier trademark proceedings, such as rectification and appeal cases, and that this concealment ought to vitiate the remand order.

On the question of maintainability, the high court held that a review application against a remand order was indeed maintainable, even though the trial court had already acted upon that remand and delivered a fresh decision. The court clarified that the mere implementation of a remand order does not extinguish the right to seek its review. However, upon examining the merits, the court found no error apparent on the face of the record to justify interference. It reiterated that the trial court's initial order lacked detailed findings on the essential injunction parameters, thereby warranting the remand for clearer reasoning. The high court further clarified that alleged errors in the trial court's fresh order dated 30.01.2024 - such as failure to consider documents or misinterpretation of evidence - should be challenged through the regular appellate route, not by seeking review of the remand order itself. Consequently, the review petition was dismissed, leaving all substantive issues, including prior user, assignment, withdrawal, and proprietary trademark rights *etc*., open to be adjudicated in the pending appeal. In the subsequent appeal against the trial court's 2024 order, the plaintiffs ultimately succeeded. The Allahabad High Court set aside the rejection of interim relief and granted an injunction restraining the defendant from further use of *Asli*

Musa-Ka-Gul or any deceptively similar name, label, or packaging during the pendency of the suit.

From an IPR standpoint, this verdict demonstrates the interplay between procedural rigor and substantive justice in IP matters and especially in trademark disputes. The court's approach reflects a steadfast commitment to ensuring transparency from the very stage of interlocutory adjudication, particularly in commercial and IPR matters. The court's insistence on a reasoned analysis of the three injunction tests serves to prevent frivolous litigations imposing arbitrary restraint of trade. The decision also provides insights into the true scope and limitation of high court's review jurisdiction in IPR litigation. The power of judicial review is to be invoked only when there is an error apparent on the face of the record. It is not a tool for re-evaluating evidence or reconsidering the merits of an appellate order. Any grievance arising from the trial court's subsequent decision must be pursued through 'appeal' rather than through a 'collateral review'. The demarcation demonstrated by the court between two judicial processes, review and appeal, ensures procedural integrity and precludes parties from treating review petitions to bypass settled hierarchical appellate procedures.

The verdict also demonstrates the delicate balance between protection and overprotection in IP disputes including trademark litigations. While the court safeguards the plaintiffs' long-standing goodwill in *Musa-Ka-Gul*, it also highlights the potential risk of overbroad interlocutory orders in cases where counterarguments, namely, legitimate prior use or honest concurrent use, are under-tested at the interlocutory stage of a trademark litigation. Nevertheless, the court's determination to keep substantive questions open for trial ensures that adjudication remains truly evidence-based. *M.M.I. Tobacco Pvt. Ltd*. thus reinforces underlying principles of judicial process such as well reasoned adjudication, procedural clarity, and the calibrated exercise of jurisdiction in IP disputes. The court's remarkable handling of remand, review, and appeal reflects a steady maturing IPR jurisprudence in India streamlining systematic and ordered IPR enforcement within the legal framework of due process and judicial accountability.

5. Misuse of Criminal Law and Abuse of Process

Sanjay Gupta v. *State of U.P.*[7] has a relatively peripheral IPR relevance, though its core lies in criminal jurisprudence. The case involves allegations of extortion under section 387 I.P.C.**,** but the petitioner contended that the proceedings were motivated by pressure in a separate trademark and copyright dispute between the parties. Both the parties are in litigation on the issue of trade mark and copyright with regard to packaging of Supari which

[7] MANU/UP/2343/2024: 2024(3)ACR744, 2024:AHC:105492.

is pending before appropriate court. It was alleged that the complainant has initiated the present proceedings only to put pressure on him to compromise in the case. This implies that while the criminal case itself does not directly concern IPRs, it is interlinked with an underlying IPR dispute, possibly as a strategy to influence or coerce the petitioner in a civil IPR matter. The court noted that the criminal proceedings appeared to be initiated to pressure the petitioner in a separate civil dispute relating to trademarks and copyrights**.**

The court observed that, to establish an offence under section 387 I.P.C., pertaining to extortion by threat of death or grievous hurt, two essential ingredients must be satisfied: There must be a threat to cause death or grievous hurt, and such threat must result in the delivery of property or security by the victim. In the present case, the complainant had not alleged that any property or security was delivered to the petitioner. Consequently, one of the key elements necessary to constitute the offence of extortion was missing. On this basis, the court held that no *prima facie* case was made out against the petitioner under section 387 I.P.C. Accordingly, exercising its powers under section 482 Cr.P.C., the court quashed the proceedings, preventing any further action against the petitioner under section 387 I.P.C. The decision emphasizes that criminal provisions cannot be misused to coerce parties in unrelated civil or IPR disputes and that courts must ensure that all essential elements of an offence are present before allowing proceedings to continue. The case is relevant in examining how IPR disputes can intersect with criminal proceedings, particularly in situations where alleged criminal complaints may be used to influence or intimidate parties in commercial or IP litigation. It highlights the potential misuse of criminal law in the context of ongoing IPR enforcement or disputes**,** making it relevant for discussions on IPR litigation trends and strategy and abuse of process.

6. Real and Immediate Necessity of Pre-litigation Mediation

The Allahabad High Court in *Pankaj Rastogi* v. *Mohd. Sazid and Ors.*[8] upheld the trial court's decision, thereby reinforcing the necessity of pre-litigation mediation in commercial disputes. The primary issue before the court was whether a prayer for urgent interim relief could justify bypassing the mandatory pre-litigation mediation requirement under section 12A of the Commercial Courts Act, 2015. The court emphasized that section 12A mandates statutory pre-institution mediation unless the suit showcases a claim for urgent interim relief. Any suit instituted in violation of section 12A is liable to be rejected. Pretentious claim of illusory urgency unsupported by facts is insufficient and cannot be

[8] 2024:AHC:15223.

considered as a justifiable ground to bypass the statutory mandate. There has to be a real and immediate necessity as established by the evidence in the pleading to evade Section 12 A.

The court referred to *Odisha Slurry Pipeline India Ltd.* v. *M/s Gangavaram Port Ltd.*, a Calcutta High Court, where it was held that "in the absence of a prayer for urgent interim relief, a suit cannot be instituted without complying with section 12A; and merely filing an application for urgent relief is not enough." Moving away from the adversarial character of traditional litigation, the prerequisite of pre litigation mediation as stipulated under section 12A clarifies the legislative intent to promote alternative dispute resolution mechanisms, particularly mediation, as a preferred mode for resolving commercial disputes. It confirms to the broader global trend toward consensual and collaborative approaches to conflict resolution. Section 12A is thus a legislative attempt to institutionalizes a shift toward a mediation-friendly litigation landscape, fostering a culture of amicable settlement.

The decision also demonstrates judicial gatekeeping, with the verdict highlighting court's role in examining the genuineness of claims of urgency. The true test, as underscored by the Court, is whether the facts and pleadings reveal an immediate and substantive need for judicial intervention or not. The Supreme Court in *Patil Automation Pvt. Ltd.* v. *Rakheja Engineers Pvt. Ltd.*[9] had earlier affirmed that any suit filed in contravention of section 12A must be rejected. In *Pankaj Rastogi*, since the appellant's claim of urgency was unsubstantiated and no specific interim relief had been sought, the Allahabad High Court directed him to approach the designated mediation centre in compliance with section 12A, reaffirming the importance of adhering to statutory procedures. The decision thus reinforces the legislative intent behind section 12A - to promote alternative dispute resolution, reduce judicial burden, and cultivate a culture of mediation in commercial jurisprudence.

7. Preventing Consumer Confusion

In the case of *M/s Sai Chemicals* v. *M/s Jai Chemical Works*,[10] the Allahabad High Court addressed a trademark dispute concerning the use of the mark *HARA PATTA* by the plaintiff, M/s Jai Chemical Works, and the defendant's use of a similar mark. Both plaintiff and defendant are in the same business of manufacturing and selling detergent washing powder. The plaintiff had got his trade mark registered in the year 2002 though, he claimed to be in the business since 1996. The defendant got his trade mark registered in the name of *TAZZA PATTA* in the year 2019, and under the Copyright Act in the year 2017. The commercial court had granted a temporary injunction in favour of the plaintiff, restraining

[9] 2022 SCC OnLine SC 1028.

[10] MANU/UP/0130/2024: 2024:AHC:7630.

the defendant from using the disputed mark. The defendant appealed this decision, challenging the injunction. The high court upheld the trial court's decision, emphasizing the importance of protecting registered trademarks and preventing consumer confusion. The court found that the plaintiff had established a *prima facie* case of infringement and that the balance of convenience favoured granting the injunction to prevent irreparable harm to the plaintiff's business reputation. The court observed thus: "Submission that PATTA being commonly used trade name, no exclusive right could be granted, cannot be accepted as the registration of trade mark which does not suffer from any of the handicaps envisaged by section 9, or section 11 cannot therefore be recorded as *publici juris*, and at the *prima facie* stage at least its validity would be entitled to be presumed in view of section 31(1). The defendant-appellant is not seeking that *HARA PATTA* mark which the plaintiff is ascertaining in the present case, is *publici juris.* The *publici juris* character is being attributed only to the latter *PATTA*, part of plaintiff's mark. In view of the said fact, the defendant's *TAZZA PATTA* mark is deceptively similar to the plaintiff's *HARA PATTA* mark."[11]

This decision underscores the judiciary's commitment to enforcing IPRs and ensuring fair competition in the marketplace. It illustrates the courts' proactive stance in safeguarding IP and the significance of maintaining distinctiveness in branding to avoid legal disputes.

8. Conclusion

The body of judgments examined from Allahabad High Court's 2024 jurisprudence on IPRs, though quantitatively limited, reveals a court gradually attuning itself to the complexities of modern commercial and IP conflicts. The landscape is not yet mature or deeply specialized, but it is gradually evolving. It must be acknowledged that the absence of decisions on patents, geographical indications, plant varieties, or confidential information signals structural and institutional gaps and the lacuna reveals that certain branches of IP remain under-engaged in the region. Trademark domain has proved to be fertile ground for doctrinal development. The court's grappling with competing claims of prior user and registered proprietor, the distinctions drawn around deceptive similarity and confusion, prior user and registered user and the threshold for consumer deception reflect a maturing sensitivity to commercial realities and branding strategies. These decisions cumulatively map the high court's genuine efforts in evolving approaches to IPR jurisprudence.

The survey year's judgments reflect the high court's efforts to transcend doctrinal silos and engage with various IP laws in intersectional ways. In the contemporary world of

[11] *Id.* at para. 29.

international trade and commerce, where commercial litigation inevitably involves multiple issues of contract, taxation,[12] criminal proceedings[14] procedural compliance,[15] regulatory and criminal dimensions, the decisions discussed above underscore the court's endeavours in not treating IPR matters in isolation but as interwoven with broader legal domains. In *Pankaj Rastogi* v. *Mohd. Sazid,*[15] the court could act as a gatekeeper against tactical misuse of penal law to pressure IP litigants for compromise. *M/s Sai Chemicals* v. *M/s Jai Chemical Works*,[16] signals an uncompromisable practice across high courts that procedural regimes must be adapted to the exigencies of IP litigation.

Certain patterns that emerge from the collective reading of the verdicts are: (i) the high court is watchful in ensuring that no relief is grounded on speculative claims;[17] (ii) pleadings must establish sufficient factual muster;[18] trial courts must fully appreciate and state reasoning on the three essential legal tests of interim injunctions;[19] the litigants must be careful about the *inter se* difference, scope and limitation of remand, review and appeal when seeking a certain relief as courts do not compromise on procedural integrity;[20] and (iii) courts will not tolerate illusory claims to short-circuit statutory mandates.[21]

Nevertheless, if not applied prudentially, these approaches may prove as obstacles in fast-moving commercial and digital markets where rights to be protected promptly and delay becomes fatal in IPR enforcement. The scrutiny also provides directions for both practice and reform: Litigants should be fully prepared to sharply plead factual matrices, *viz*., prior user, goodwill, market reputation, consumer confusion, deceptive similarity and so on; and avoid reliance on sweeping or illusory assertions.[22] Allahabad High Court through its IPR verdicts of 2024 demonstrates that it is not indifferent to its role of IPR enforcement in India's economic and commercial ecosystem, but a sensible and meaningful forum in crafting a robust IPR jurisprudential architecture for *Viksit Bharat*.

[12] *Supra* note 1.
[13] *Supra* notes 4 and 7.
[14] *Supra* notes 4 and 6.
[15] *Supra* note 8.
[16] *Supra* note 10.
[17] *Supra* note 8.
[18] *Ibid*.
[19] *Supra* note 6.
[20] *Ibid.*
[21] *Ibid*.
[22] *Supra* note 8.

Labour Law

*J. S. Mann**

1. Introduction

The character of labour law in India was originally considered as an essential branch of welfare legislation that was developed to protect the vulnerable sections of the working class from the structural bias of industrial capitalism. Statutes were enacted with the clear objective of securing minimum conditions of social and economic security to workmen. Some of these were: Industrial Disputes Act, 1947; the Maternity Benefit Act, 1961; and the Payment of Gratuity Act, 1972; which were meant to protect workers who were otherwise placed at a structural disadvantage in the industrial relationship. The workers are also protected under the constitutional concept of effective social and economic justice as reflected in Articles 14, 19, 21 and 23 of the Constitution. However, there is a widening gap between "law on the books" and "law in action". It shows a gap between legislative promises and practical enforcement. Despite the existence of normative framework, many hurdles (such as procedural delay, administrative resistance and restrictive interpretations) have often rendered these rights illusory in practice. In India, the real challenge is particularly frustrating. It's not that workers lack entitlements; it's that those rights are buried under a mountain of procedural hurdles.

It is within this context that the 2024 jurisprudence of the Allahabad High Court stand out here as it showed how constitutional commitments to labour welfare can be realised through consistent judicial intervention. Being one of the country's largest and oldest High Courts, its decisions have impact over not only lacs of individual workers but also the government departments and corporations responsible for running social security schemes across the most populated state. The Court dealt with a wide range of labour issues from job classification to pension calculation. In each case it consciously tried to look beyond the technical provisions of the labour laws. This paper argues that the Allahabad High Court has addressed these issues in three ways. *Firstly*, by giving access to entitlements to more people through liberal interpretation. *Secondly*, by being gender responsive and interpreting welfare schemes through the lens of dependency rather than marital status. *Thirdly*, the Court worked towards improving institutional efficacy and procedural fairness in the adjudicating mechanism. Throughout the cases we can see that the Allahabad HC has used the Constitution to inform its judgments rather than seeing a labour dispute as a one-sided battle. The following chapters will examine this judicial trajectory across three themes: a) entitlement expansion, b) gender responsive implementation, c) procedural enforcement. They will show how the 2024 judgments provide a judicial way to transform labour law from text to justice.

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2. Expansion of Entitlements: Adopting Liberal Interpretation of Welfare Statutes

The effectiveness of India's labour law mechanism is affected by a gap between the "law on the books" and the "law in action". Statutory entitlements often get stuck in administrative hurdles. These were originally designed to be *'redistributive tools'*. They were made to ensure constitutional promises of social and economic justice that are rooted in Articles 14, 21, and 42. With its 2024 decisions, the Allahabad High Court might fill the enforcement gap with the supremacist judiciary and undertake a systemic approach to the actual *'constitutionalisation'* of labour law. Therefore, it is argued that the Court converted those welfare measures, previously restrictive and discretionary benefits, into enforceable rights that are non-negotiable and generally inclusive. What changed the picture? The Court adopted a liberal approach in the case of welfare statutes so as to change their application in the substantive aspect. The judiciary took two critical considerations while delivering judgements: *Firstly*, the Court broadly interpreted the scope of protective statutes that would ensure the widest possible application. *Secondly*, it introduced welfare entitlements with constitutional considerations. The next four sections analyse this transition, with the High Court having, a) expanded the protective reach of industrial law; b) redefined retirement benefits; c) enforced payment liability, and d) affirmed the supremacy of beneficial legislation.

2.1 Expanding the Scope of Industrial Protection

The core issue of industrial cases hinges on the fact that how we define "industry" under the Industrial Disputes Act, 1947 (IDA) and its state versions (like the Uttar Pradesh Industrial Disputes Act, 1947 (UPID Act)). Why? Because classifying an activity as an 'industry' is the starting point to get protective labour benefits. Those entitlements can range from conciliation/adjudication to statutory retrenchment benefits. The ruling in *Prabhagiiya Nideshak Van* v. *State of U.P.* became a significant statement that the sovereign function doctrine can no longer shield the state from labour law.[1] The case asked a simple question: Did the State government's social forestry operations count as an "industry" under the UPID Act? The State as an employer pushed the familiar argument of sovereign function. It stated that establishing and maintaining forests done by a government department for public welfare would be counted as one. Activities considered *'sovereign'* are typically exempt from the IDA's purview, thus denying employees the status of 'workman' and the corresponding statutory safeguards. The Allahabad High Court unequivocally dismissed this contention.

[1] *Prabhagiya Nideshak Van* v. *Van.Evam Sangik Vanki Karmachari* 2024 LiveLaw (AB) 37.

Drawing strictly from the Supreme Court's landmark *Bangalore Water Supply and Sewerage Board* v. *A. Rajappa* case,[2] the Court restated that the test for 'industry' is functional and systematic that involves mutual cooperation between employer and employee for the production and distribution of goods and services. The Court held that social forestry was essentially an administrative and developmental activity, as different from core sovereign functions like policing, legislation, etc. and developmental activities can't claim sovereign immunity on the fact that the government sponsors them even if conducted by the State.

The significance of this ruling is twofold: *Firstly*, it weakens sovereign immunity. By classifying social forestry as a systematic 'industry,' the Court reaffirmed that the State must operate as an employer bound by labour protections. They cannot do it in the garb of activities similar to those done by commercial or developmental entities. This effectively closes a major loophole State agencies often use to label non-core functions as 'sovereign' to bypass obligations *Secondly*, it promotes universal labour protections. The Court guaranteed Social Forestry workers the same benefits under the UPID Act; the same rights, and access to dispute resolution mechanisms as workers in conventional industrial undertakings. This judicial stance prevents job classification from becoming a technical barrier that erodes those benefits especially in growing environmental sectors. It clearly signifies the Court's dedication to a liberal and inclusive reading of the 'industry'. It not only ensures the labour welfare but also the constitutional promises.

2.2 Recognizing Pension and Increments as Deferred Wages

The Court's commitment to enforcing entitlements can easily be seen when it comes to retirement benefits. Retirement benefits are frequently subject to varied technical interpretations that significantly disadvantage the retiring employees. The concept that 'pension is a deferred wage' is key essential to ensure dignity in retirement. It should not be a gratuitous payment or a mere reward for past service. The decision in *Yashpal Singh* v. *State of U.P.* showed application of this idea to resolve dispute concerning annual increments that often end up getting arbitrarily resolved.[3] The case centred on employees who were set to retire on July 1st. The annual increment was earned by completing one year of service but it technically became payable precisely on July 1st. The State, in this way, often argued that the employee cannot claim increment because the retirement occurred on July 1st. This meant their post-retirement pension and other benefits were calculated based on the lower pay scale of the preceding year. This seemingly minor timing technicality caused a lifelong reduction in the employee's pension benefits. Then, Allahabad High Court mandated that the notional

[2] *Bangalore Water-Supply & Sewerage Board, Etc.* v. *R. Rajappa & Ors* [1978] AIR 548.
[3] *Yashpal Singh* v. *State of U.P.* 2024:AHC:145987.

annual increment must be taken into account for calculating the post-retirement pension. The Court anchored its reasoning in the Supreme Court's foundational ruling in *D.S. Nakara* v. *Union of India*,[4] which definitively established that pension isn't a bounty but an earned right, a deferred wage, which an employee accepts in place of a higher immediate salary during their years of service. The Court emphasized that a narrow interpretation that denies this earned benefit is arbitrary and unreasonable. The judicial interpretation in *Yashpal Singh* is distinctly liberal because it acknowledges the inherent earned nature of the increment; the work was already completed. It simply doesn't matter that the formal mechanism for drawing the increment coincides with the moment of superannuation. The Court effectively expanded the temporal boundary of employment to prevent an arbitrary financial loss right at the very end of an employee's career. By granting the employee the notional increment, the Court affirmed that the service period culminating on June 30th was complete and that the right to the higher emolument was fully accrued and vested, ensuring the continuity of entitlement beyond the official date of superannuation.

The consequence of this ruling is significant: it stops the government from using a self-serving strict interpretation of administrative calendars to undercut statutorily guaranteed retirement benefits as an employer. The decision ensures that the definition of deferred wage is applied holistically. It secures the employee's financial future by fixing the pension at the incrementally right level. This judicial intervention smoothly upholds the employee's earned right over administrative convenience, demonstrating a clear preference for substantive justice in interpreting financial benefits.

2.3 Enforcing Entitlements Through Interest Liability

Whereas the previous sections focused on the concept and value of entitlements, delayed payment judgments in *Dr. Himanshu Shekhar Tripathi* v. *State of U.P.*[5] and *Dr. Vinod Chandra Jain* v. *State of U.P.*[6] pertain to the absolutely basic essential of enforcement. The Court laid down a basic principle: delay in payment of retirement dues including gratuity cannot be a procedural error but an "economic violence" when done to an aged employee. Hence mandatory punitive interest is required. The first case *Dr. Himanshu Shekhar Tripathi* exposed an administrative trick: initiating disciplinary proceedings after retirement just to build a flimsy excuse to deny gratuity. The State misused the guise of disciplinary proceedings to arbitrarily deprive the employee of a statutory benefit. The High Court put an end to it by saying "retirement brings service to an end". Disciplinary actions cannot be

[4] *D.S. Nakara and Ors.* v. *Union of India* (1983) 1 SCC 305.
[5] *Dr. Himanshu Shekhar Tripathi* v. *State of U.P* 2011:AHC-LKO:14587-DB.
[6] *Dr. Vinod Chandra Jain* v. *State of U.P* (2024) 9 ILRA 543.

initiated for denying due gratuity benefits once an employee leaves the job; once the retirement is done, it means that the service is ended hence no locus. The Court ordered immediate payment of gratuity with 12% interest as penalty. The second case *Dr. Vinod Chandra Jain* also showed another common administrative problem: unjustified delay in payment of retirement dues even after the legal deadline without any pending disciplinary issues. The Court ordered late payment to include 6% interest. This sets a clear rule: if the government fails to pay an employee's benefits by the deadline, interest is mandatory. Interest for that matter cannot be something that is left upto the discretion of departments.

These judgments fundamentally change the retirement dues. It's not a gift that the government can delay or withhold on its whims. Forcing the State to pay interest on late dues serves three purposes: 1) it punishes the government for treating the worker's money as a free loan; 2) it compensates the employee for the loss of value of money due to inflation; and 3) it gives the employee's statutory right real power by attaching a mandatory financial cost to the delay. This ensures the system delivers justice on time rather than frustrating it.

2.4 Affirming Beneficial Legislation Override

One more stage where Court's strategy showed affirming the 'unqualified supremacy of beneficial laws over restrictive executive rules.' This doctrine was robustly clearly upheld with respect to maternity rights by two decisions of *Sufiya Khatoon* v. *State of U.P.*[7] and *Vinita* v. *State of U.P.*[8]. These cases fought against administrative restrictions placed on women seeking maternity relief in light of constitutional shield of the right to motherhood and physical integrity.

The main issue in *Sufiya Khatoon* was a face-to-face conflict between the Maternity Benefit Act, 1961, an important social welfare legislation, and a restrictive rule in the State's Financial Handbook, which mandated a mandatory gap of two years between successive maternity leaves. The petitioner sought to be granted a second maternity leave during the restricted period, and the denial had been granted under that subordinate executive rule.

The High Court struck down the administrative restriction decisively: “The Maternity Benefit Act is a beneficial legislation with overriding force. Executive service rules cannot curtail a statutory right conferred on a woman employee.” This is perhaps the most explicit judicial expression of the beneficial override doctrine. The Court accepted that the right to maternity leave is not merely a work condition but is vital to the dignity and physical integrity of a woman worker, rooted in the Directive Principles in Article 42, and

[7] *Sufiya Khatoon* v. *State of U.P. Thru. Prin. Secy. Basic Education Lko.* [Writ - A No. - 7479 of 2024].
[8] *Vinita* v. *State of U.P.* [Writ - A No. - 14222 of 2024].

further protected under Article 15(3). In *Vinita* v. *State of U.P.,* the Court, offering a parallel unqualified reaffirmation of the above-mentioned principle, rejected temporal barriers that any rule would have sought to impose on a fundamental decision that a woman makes regarding motherhood. Such administrative rules would, therefore, be considered repugnant to the constitutional vision of protection and dignity.

These cases set up a non-negotiable hierarchy of laws under which conflicts between the departmental circulars, service rules, or administrative handbooks, on the one hand, and the Maternity Benefit Act, 1961 on the other, are entirely to be resolved in favour of the beneficial statutory provision. This approach of the court would do away with bureaucracies in two way: a) by establishing the legislative supremacy over the general or restricting executive rules; and, b) by treating the right as somewhat of an offspring of fundamental rights to life an dignity under Article 21 so as to render it immune from any attempt by an administrative authority to constrict it. As such, the Court by virtue of the "override" took care to ensure that protection during maternity operates as an absolute. This statutory right of working women would not be a matter of privileges subject to departmental varied interpretations.

The jurisprudence analysed in the chapter marks a decisive tilt in favour of welfare entitlements. From restrictive eligibility to inclusive entitlement. Across the four main doctrinal themes: the scope of industrial protection, the value of retirement benefits, the enforceability of dues, and priority of beneficial legislation, the common thread is that the court rejects conditionality and administrative discretion. Under Part 2.1, the *Prabhagiiya Nideshak Van* ruling expanded the scope of protection by touching areas on behalf of which the government once protected itself under the shield of the 'sovereign function' argument and now has protected the industrial rights of developmental workers. Part 2.2, through the *Yashpal Singh judgment*, improved the Value of the pension entitlement by applying the doctrine of deferred wages to get over technical calendars and to protect the retirement income from erosion. Part 2.3, by *Dr. Himanshu case* and *Dr. Vinod Chandra Jain* v. *Union of India*, strengthened Enforceability–thereby making the payment of delayed gratuity to be an amount payable with interest and post-retirement deductions to be economic violence. Lastly, 2.4 reasserted the priority of constitutional rights by protecting the Maternity Benefit Act from the restrictive service rules. The High Court recognised the vision of social security as the key element when talking about the industrial workers. It could be seen through the 'constitutional' method adopted by the court showing the liberal construction. This proactive approach to the entitlements lays the foundation for the next phase in the Court's judicial activism, which is the equally vital struggle for procedural integrity or the constitution: enforcement of the dispute resolution process itself.

3. Gendered Constitutionalism: Embedding Social Justice Through Equality in Dependency

Allahabad HC firmly established Constitutional Feminism in the year 2024. The last part of this research was on statutory discipline and procedural fairness; this part is on substantive social justice and how existing welfare schemes do not take into account the fluid and gendered realities of Indian families today. Constitutional Feminism here means the judicial philosophy which seeks to dismantle systemic gender-based barriers in administrative laws. It can be done by asserting gender equity in fundamental rights under Articles 14 (Equality), 15 (Non-Discrimination), 21 (Dignity) and 42 (Maternity Relief).

The deeper approach of this Court refused to retain two historical restrictions on welfare schemes: *firstly*, those which treated marital status as a proxy for dependency especially in compassionate appointment schemes; and *secondly*, those which treated maternity protection as a conditional concession on grounds of administrative convenience rather than constitutional entitlement. In a landmark manner the Court delivered a "gender responsive labour jurisprudence" by considering welfare schemes on the basis of dependency and vulnerability rather than marital status (the conventional patriarchal standard). These decisions make it clear the Court wasn't just operating on sympathy or hiding behind rigid formalities. The Court definitely ensured that government institutions must now act as a 'corrective force'. It actively upheld a woman's constitutional right to her economic independence and reproductive freedom thereby directly challenging unfair red tape and arbitrary bureaucratic hurdles.

3.1 Equality in Dependency: No Bar in Marriage/Widowhood

Compassionate appointment rule exists as an exception to the constitutional promise of equal opportunity in public employment. The very purpose of such an exception is that it gives immediate financial relief in cases where destitution becomes contingent on a death of the major breadwinner; that too without being used as means to confer a hereditary right to employment. Earlier, these schemes were clearly marked by gender bias. The court targeted the completely outdated presumption that the responsibility for financially supporting married daughter rests entirely with the husband's family once a woman gets married. The 2024 verdict has done away this old with status-based rigidity and replaced it with a realistic standard of financial need.

3.1.1 *Punita Bhatt and the Rejection of Marital Status as a Disqualification*

In *Punita Bhatt* v. *BSNL,*[9] the administrative authorities rejected the application filed by a widowed daughter solely on the basis of her marital status. The State took an arbitrary

position that her had permanently severed her financial ties to her deceased father's family, regardless of her subsequent life circumstances or current economic vulnerability. The High Court here definitively overturned this exclusion and held clear judicial principle that "Marriage or widowhood is not a disqualification." The very essence of the judgment was that economic realities of the applicant would be preferred before institutional presumption. By making actual financial dependency on the deceased the central test, the Court injected the principles of non-arbitrariness (equality) and non-discrimination (gender equity) into the scheme of rules for compassionate appointment. The Court abandoned the outdated assumption in these rules that marriage of the daughter was the end of her dependency on her natal family and turned toward the present social reality; the 'realisation' that daughters, after marriage or especially after widowhood, do continue to remain or become dependent on their natal family in case of economic distress or non-recognition of their right to inheritance. Quite humanly, the Court has transformed what was previously a purely mechanistic administrative scheme into an instrument of social justice thereby declaring that exclusion based on a woman's life status-marriage or widowhood-is abhorrent to the constitutional vision of gender equality.

3.1.2 *Akhtari Khatoon and the Objective Standard of Financial Distress*

Crucially, the Court's progressive stance on gender and dependency was carefully balanced with a clear mandate against the misuse of the scheme. In the case *Akhtari Khatoon* v. *State of U.P.,*[10] it was held that widowed or divorced daughters cannot be excluded but a claim cannot be granted without proof of actual financial dependency and want. The counter judgment is denying the claim of a divorced daughter whose evidence of dependency or destitution has not been proved. This is important for the doctrine. It prevents the constitutional exception from being misused to get away from gender bias. It prevents the constitutional exception from being exploited in the movement away from gender bias. Compassionate appointment is a refuge for 'vulnerability' that must be proven with evidence of financial distress. The amalgamation of *Punita Bhatt* and *Akhtari Khatoon* made way for a fresh, modern doctrine: a) Marital Status is Irrelevant (Marriage or widowhood cannot be a basis for exclusion) and b) Dependency is Mandatory (Proven financial distress and dependence are the only valid basis for inclusion). The sole meaning of this legal position is that the exception will accomplish its narrow purpose—relieving a pressing financial crisis of a family—while finally discarding a particularly antiquated and patriarchal standard through which claims made by female applicants were earlier judged. The Court condemned administrative authorities to look beyond the mere surface of the relationship status of a woman and consider her concrete economic reality.

[9] *Punita Bhatt Alias Punita Dhawan* v. *Bharat Sanchar Nigam Ltd.* 2024:AHC-LKO:77237-DB.

[10] *Akhtari Khatoon* v. *State of U.P.* [Writ - A No. - 13833 of 2023].

3.2 Maternity as a Constitutional Right

The second pillar of this Court's constitutional feminist approach involved a radical elevation of the status of maternity protection. In the past, Maternity Benefits Act, 1961 awards were typically regarded as returns of administrative benevolence or a "leave policy" concession, ever ready for being clipped by departmental rules. The Allahabad High Court finally put an end to this notion by treating reproductive protection as a right that cannot be bargained because it flows directly from the fundamental right of dignity along with the directive principles of policy (provision for just and humane conditions of work and maternity relief).

3.2.1 *Sufiya Khatoon & Vinita: Striking Down the Two-Year Gap Rule*

The conflict between statutory right and administrative regulation was shown visibly in the two parallel decisions in *Sufiya Khatoon* v. *State of U.P.* and *Vinita* v. *State of U.P.*. These cases directly attacked the arbitrary enforcement of executive rules, the State's two-year mandatory gap rule between successive maternity leaves as prescribed in the Financial Handbook. When the petitioner was refused a second maternity leave within the restricted time in *Sufiya Khatoon*, the Court did not merely sympathise with her interpretation of the law; instead, it exercised its constitutional powers to reject such a denial. As the court declared: "The Maternity Benefit Act is a beneficial legislation with overriding force. Executive service rules cannot curtail a statutory right conferred upon a woman employee." This conclusive pronouncement brought to light the primacy of a beneficial social welfare statute over any executive circular or departmental rule conflicting therewith. In furtherance, the ruling in *Vinita* v. *State of U.P.* acted as a parallel reaffirmation that any rule that places temporal impediments on motherhood is fundamentally repugnant to the constitutional vision of dignity and protection.

3.2.2 *Anchoring Protection in Article 21 and Article 42*

The very significance of these rulings extends far beyond mere administrative convenience of a leave period. Rather, it shows how the Court placed emphasis on the essence of reproductive justice: motherhood. These rulings recognise that motherhood is an intimate, fundamental choice linked to a woman's dignity and bodily autonomy. By striking down the two-year waiting period, the Court ensured a woman isn't therefore forced to choose between her health and her economic security. Maternity protection is now seen as a constitutional right, not just an optional workplace perk. It therefore also prevents the government from imposing arbitrary time limits on the biological reality of childbirth and childcare.

3.3 The 'Constitutionalisation' of Welfare Rights

The courts' approach to compassionate appointment and maternity relief shows a common judicial technique: 'constitutionalising welfare rights'. So in gendered labour jurisprudence, welfare schemes were interpreted on the basis of dependency not marital status. In *Punita Bhatt,* the Court held that a widowed daughter cannot be excluded from compassionate appointment just because of her marital status. In *Akhtari Khatoon,* the Court held that benefits cannot be claimed without establishing actual financial dependence. Furthering the maternity benefit judgments the Court took a constitutional feminist approach by recognising reproductive protection as a right flowing from dignity and equality guarantees not as a 'conditional administrative concession'. In all these cases the Court refused to sentimentalise sympathy or reduce justice to an empty formality; it instead localised gender equity within the objective standard of vulnerability.

Thus, there is a clear philosophical touch in the High Court's perception of social security mandates (as also seen in the chain of argument where gratuity and pension were treated as deferred wages with mandatory interest). This shift in the Court's thinking fills a huge moral hole in how administrative rules treat women workers. The judges did this by redefining vulnerability in two key ways. For compassionate appointments, the law has moved entirely from a woman's marital status to her verifiable economic vulnerability. The law now rightly focuses on whether she is really financially dependent or destitute, recognising that economic insecurity can persist or return even for women with existing or past marital ties. Simultaneously, for maternity relief, the Court has acknowledged the biological reality of motherhood and the State's fundamental constitutional duty over administrative discretion, effectively banning bureaucratic power from imposing arbitrary time limits on a woman's decision about her children.

By linking both compassionate appointments and maternity benefits to the constitutional principles of equality and dignity, the Allahabad High Court has elevated these provisions from policy guidelines to enforceable fundamental rights. This deliberate constitutional feminist approach turns the procedural realm of welfare law into a powerful tool for achieving substantive gender equality so as to make social justice visible in the discourse.

4. Institutional Efficacy & Procedural Justice: Making Labour Law Work in Reality

Social and economic justice is only as good as its implementation. It's easy to have a right in a law (“the law on the books”) but the real battle is to have a procedural system that ensures that right is achieved quickly and fairly (“the law in action”). Historically speaking,

Indian labour courts have had one major institutional flaw: endless procedural delays and jurisdictional hurdles that employers use to delay justice indefinitely. Allahabad High Court's 2024 jurisprudence tackled this head on by acting as the protector of procedural integrity. The Court systematically rejected the tactics of delay and evasion by weaving in the constitutional demands of speed and fairness into the very fabric of labour adjudication. This chapter will look at the Court's work on procedure and accountability and show how it wants to turn the legal system from a system that wears people out into a machine that produces justice.

4.1 Clearing Jurisdictional Roadblocks: The Gatekeeper of Discipline

Jurisdictional obstacles are the most frequent and most effective strategy to delay justice. By imposing preliminary battles about the proper government or the boundaries of the power of the Labour Court, employers can avoid the real merits of a case indefinitely. The Allahabad High Court enacted stringent checks to prevent this type of maddening litigation, ensuring procedural procedures are clear and final.

4.1.1 *Finality of Reference Power*

In the *Jagran Prakashan* case,[11] the High Court adopted the old gambit of attempting to perpetually re-litigate the issue of the "appropriate government" (Is it the Central government or the State?). The employer, having already acquiesced in the State's jurisdiction in previous proceedings, attempted to change its stance, challenging the validity of the existing reference. The Court put an end to this, definitively enunciating the principle that jurisdictional orders needed to be final. The judges realised that if the question of "appropriate government" can be appealed *ad infinitum*, it completely negates the inherent objective of labour law: speedy resolution of disputes. It is not just a technical impediment; it arises from the constitutional promise of speedy justice. If employers are in a position to keep raising queries on where the case should be tried, the employee's recourse becomes an illusory scenario. The Court ruling keeps technicalities of jurisdiction from being employed to sink a worker's chance of having access to real justice.

4.1.2 *Section 33-C(2) Restraint: Maintaining Adjudicatory Discipline*

The Court was equally strict with the Labour Court itself. In *Executive Engineer* v. *Mahesh Chandra*,[12] the Allahabad High Court clearly defined the limits of Section 33-C(2) which is all about calculating benefits already due. The question was whether Labour Court can award a new right like interest on delayed payments using this section. The High Court

[11] *Jagran Prakashan Ltd.* v. *Krishna Mohan Trivedi* (2024) 5 ILRA 2450.

[12] *Executive Engineer Electricity Transmission Division* v. *Mahesh Chandra And other* 2024 LiveLaw (AB) 257.

said no. This is absolutely crucial for maintaining adjudicatory discipline. This section is an execution provision; it's a tool to calculate existing rights established by law or prior order. It cannot and should not create a new right. By not allowing Labour Courts to hear new claims in execution, the High Court maintained the distinction between merely computing a debt and deciding a dispute. The Court acted as a jurisdictional gatekeeper to protect the structural integrity of the system from procedural shortcuts.

4.2 Mandating Speedy Justice: The Constitutional Imperative Against Delay

The Allahabad HC said delay in labour cases is not a mere inconvenience but a huge injustice to the worker. A worker who largely depends on his earnings can't wait for years for justice; delay takes away his right to livelihood. The Court's direction was clear and categorical against the practice of splitting the proceedings.

The *Amity International School* judgment is the strongest condemnation of procedural delay.[13] The Labour Court was following the normal practice of bifurcation of the dispute: resolving a preliminary issue (like jurisdiction) before ever addressing the real merits of the dismissal. The High Court disapproved of this practice and called it a delaying tactic. The Court directed the Labour Courts to decide all matters at once both the questions of jurisdiction and the facts of the case and pass one single order. This is more than a rule of court management, it's a constitutional policy direction. The Court's reasoning was that this artificial procedural bifurcation completely nullifies the purpose of labour law which is for speedy disposal. Protracted litigation is literally an instrument of oppression used by the deep pockets party. Amity International is the final nail in the coffin of procedural delay as a litigation strategy.

4.3 Demanding Reasoned Decision-making & Preventing Arbitrary Dismissals

Justice should never be sacrificed for speed. Additionally, the High Court reaffirmed the importance of substantive procedural fairness. This action focused on maintaining the non-negotiable element of natural justice in every termination hearing and demanding reasoned awards.

4.3.1 *Non-reasoned Awards is Denial of Justice*

Findings must be supported by careful consideration and sound reasoning in order for the process to be fair. This was particularly highlighted in the case of *M/S Omrao Industrial Corporation*,[14] where the High Court invalidated a Labour Court award without providing any justification because it had taken the worker's affidavit at face value in an ex parte proceeding without using any of his judicial judgment. The High Court ruled that the

[13] *Amity International School* v. *Presiding Officer, Labour Court* 2024:AHC:8960.

[14] *M/S Omrao Industrial Corporation Pvt. Ltd.* v. *State of U.P. and Others* [WRIT - C No. - 28075 of 2025].

Labour Court has an essential, non-derogable judicial duty to weigh the evidence and provide justifications, even in situations where the employer does not show up or reply. Without valid justification, an award isn't really an award. Three strong institutional norms were established by the Omrao ruling: Judicial Accountability (Labour Courts must use their judgment and not merely serve as clerical rubber stamps), Prevention of Arbitrariness (reason prevents irrational judgments), and Rejection of Automatic Victory (a no-show does not win automatically; the claim must be established).

4.3.2 *No Dismissal Without Hearing*

Fairness in disciplinary action was elevated when the High Court promptly reversed dismissals that did not meet the absolute, unbreakable standard of natural justice. The sanctity of the *audi alteram partem* (listen to the other side) principle serves as the cornerstone of this idea. A number of employees were fired in *Harvendra Kumar* v. *State of U.P.* without being given an opportunity to respond to the charges.[15] The High Court immediately revoked the dismissal, establishing the rule that a dismissal without notice or hearing is null and void from the start. The right to be heard is not just a formality; it is a basic legal requirement.

This principle was applied even where the procedural defect was gradual but substantial. In *Ram Raksha Misra* v. *Regional Manager, LIC*,[16] the employer had conducted an inquiry but the notice was either served wrongly or irregularly and failed to inform the workman properly. The Court held that even a technical error of communication which disables the workman to participate meaningfully in the defence nullifies the whole inquiry.

4.4 Curtailing Abuse of Litigation Machinery: Institutional Accountability

The last support of institutional effectiveness addresses the cause of systemic delay: manipulation of the legal process by large, publicly funded organizations. The Allahabad High Court took a rare and notable step, calling for institutional responsibility on the part of the State itself and requiring the government to perform as a good litigant.

The High Court targeted the curbing of excessive and frivolous litigation by public corporations. In one representative case (of a minor claim for overtime payment of under ₹50,000), the concerned public corporation indulged in a long chain of appeals. This behaviour demonstrated a systemic desire to harass employees through the exercise of procedural rights, using judicial time completely out of proportion to the insubstantial nature of the claim.[17] The Court issued a strong warning against the abuse of procedural rights and

[15] *Harvendra Kumar* v. *State of U.P. and Others* [Writ - A No. - 1491 of 2019].
[16] *Ram Raksha Misra* v. *Regional Manager*, LIC 2024:AHC:120379.
[17] *U.P. Road Transport Corpn.* v. *Presiding Officer, Labour Court* 2024:AHC-LKO:18189.

strongly condemned such behaviour. More significantly, the Court mandated that all publicly traded companies have suitable litigation policies. The State's traditional role as a litigious adversary in the courts is essentially replaced by this requirement, which demands that it be restrained. Companies are required by this policy to litigate responsibly, which includes exercising prudent restraint before bringing a lawsuit as well as pursuing internal disputes that are best resolved there. The need for a litigation policy is an much-needed change that recognises that the greatest obstacle to justice is usually the State's inertia itself.

These decisions are a balance of values, between procedure and expedition. Allahabad High Court did not approve of slowness (*Amity International*) while at the same time rejected speediness that compromises fairness (*Omrao Industrial*). The Court has constitutionalized the entire industrial adjudicatory process. The *Jagran Prakashan and Mahesh Chandra* cases have laid down the limits of jurisdictional challenge and brought in certainty and discipline in the system. The *Amity International* rule guarantees procedural expediency based on the right to livelihood. The *Harvendra/Ram Raksha* and *Omrao Industrial* rulings enforce procedural depth, ensuring that all institutional action is rational and not capricious. Lastly, the litigation policy mandate also creates systemic accountability by requiring the State to alter its own behaviour and become a model litigant. In addition to being legally compliant with the incorporation of these new regulations, the Allahabad High Court guarantees that industrial adjudication respects the constitutional principles of fairness, transparency, and promptness. This new procedural architecture is essential to bridging the fundamental divide between theoretical and actual rights because it will allow labour law to function in the worker's everyday life.

5. Conclusion

These 2024 judgments of the Allahabad High Court are not mere judgments; they are a profound shift in the judicial thinking. The Court is engaged in an ongoing project to transform labour law from a set of dry collection of prescriptive rules into enforceable social rights. The primary goal has been to actualise the lofty promises of the Constitution in the forms of justiciable entitlements. Fulfilling these guarantees are essential for the most vulnerable members of the labour force who rely on job security and are yet to receive such benefits. The judicial commitment, thus, provides the mechanism to actualise those of the Constitution into beneficial economic security for those who depend on income.

First, the court has consistently supported a simple and common-sense interpretation that prioritises the worker in relation to welfare laws. For instance, to reject the narrow doctrine of 'sovereign functions' (*Prabhagiiya Nideshak Van* case), the judges rejected the defence by government departments to avoid a statutory responsibility for

providing protection simply because of administrative nomenclature. In a scenario akin to recognising pensions and gratuities as 'deferred wages', wages already earned by the worker-withone stroke in Yashpal Singh, Dr. Himanshu Shekhar Tripathi, and Dr. Vinod Chandra Jain cases, the Court put an end to the very idea that social security is a favour extended at the discretion of the State; rather, it is a part of the worker's earned income. The same logic was extended to granting maternity benefits in Sufiya Khatoon and Vinita, practically guaranteeing that a major piece of worker-friendly legislation (Maternity Benefit Act) would always trump small, restrictive departmental manuals. In other words, welfare is now regarded as a constitutional guarantee.

Second, the Court, within the domain of labour law, actively constitutionalised gender justice. It systematically demolished stereotypical, patriarchal notions that had been embedded in administrative rules. This is seen most evidently in compassionate appointments (*Punita Bhatt, Akhtari Khatoon*), where the Court gave primacy to economic dependence over the woman's marital status (whether married or widowed). The Court acknowledged that an economically precarious situation continues or arises regardless of the marital relationship. It also raised maternity protection from a mere workplace policy and found it to be rooted in the fundamental rights of women to dignity and bodily autonomy. These seemingly strong interpretations redeveloped welfare rights as a provision of real structural equality, which changed the old language of sympathetic treatment of women by law to an absolute right.

Third, the Court looked at the processes of justice delivery and how they can be modified. It clarified jurisdictional issues by resolving the delay tactic of employers who would remove cases by continuously questioning the venue (*Jagran Prakashan*) and by defining the jurisdiction and powers (*Executive Engineer*) of a Labour Court. The *Amity International School* case was a landmark decision that brought in a constitutional promise of speedy justice in the labour jurisdiction by removing the delay tactic of endless preliminary skirmishes and multiple trials. In *M/S Omrao Industrial Corporation*, the court said “expeditious means in makes it reasonable” which means to act fast but not all speed without substance. Overall, the Court changed the nature of just calling upon public corporations to have a Litigation Policy to be not an abuser of the system but a model litigant. These changes mark the beginning of a voluntary shift from just replying to individual grievances to substantive procedural changes.

This jurisprudence's success in reaffirming the constitutional foundation of labour laws is what gives it its fundamental significance. These rulings clearly demonstrate that the right to a livelihood encompasses much more than simply the freedom to look for employment; it also includes the right to decent working conditions, prompt compensation,

and strong social security. The Court's unyielding position has restored confidence in the judiciary as the last arbiter of the social compact between the State and its employees. The judges have finally closed the huge gap between the theoretical "law on the books" and the actual "law in action", bringing constitutional morality into the workplace through their liberal interpretation of statutes and rigorous adherence to procedure. However, the commitments made in these decisions now need to be formalized. The government must formally codify these new judicial standards (such as mandatory interest on delayed payments and maternity leave rules) into a single set of service rules in order to make the rules official. This judicial momentum necessitates tangible action. Additionally, the social security system needs to be expanded to include workers in the gig and informal economies, extending the idea that welfare is a component of citizenship. Social welfare will eventually become a systemic and long-lasting practice if this momentum is maintained.

Property Law

*Kiran Gupta**

1. Introduction

Property and law are born together and die together, before laws were made there was no property; and if the laws were taken away property would cease.[1] The term 'property' is interpreted in its widest sense to encompass not only tangible property but also an intangible property. The concept of property, traditionally understood as the absolute control over a "thing" has been somewhat altered by extending legal protections to "similar" or "quasi-proprietary" rights, including copyrights and patents, thereby granting them the same legal protection as property.[2] A wide definition of property would encompasses dominion, possession and right to enjoy and disposal of one's acquisition, without any control or diminution, except in accordance of the laws of the land. The T.P.A. (hereinafter 'T.P.A.) serves as the primary legislation governing the transfer of immovable property in a general context. However, the T.P.A. does not constitute a comprehensive code for property transfer. Its provisions are more effectively comprehended when considered alongside relevant sections of other legal frameworks, including the Indian Contract Act, 1872, the Registration Act, 1908, the SERFAESI Act, 2002, as well as local land and tenancy laws. In the year under survey, a number of decisions on different aspects of transfer of property have been handed down by the High Court of Allahabad, more important of which are analyzed here. This survey highlights how the Court reinforced statutory formalities, clarified the scope of equitable doctrines like *lis pendens*, part performance, notice, and so forth, and balanced general principles with special legislative mandates to ensure certainty and fairness in property transactions.

2. Application of the T.P.A.

The character of property was notably impacted by the enforcement of contract law. The general principles of contract are applicable to T.P.A. and it recognizes only five modes of transfer i.e. sale, gift, lease, mortgage and exchange. The property may transfer in two principal ways i.e. (i) by act of the parties and (ii) by operation of law. The preamble explicitly states that it pertains solely to transfers executed *inter vivos* by 'act of parties'. In contrast, transfer through 'operation of law' occurs automatically by the virtue of the

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[1] Jeremy Bentham, *Theory of Legislation, available at*: https://dn790004.ca.archive.org/0/items/legislation00bentuoft/legislation00bentuoft.pdf (last visited on Aug. 15, 2025).

[2] J. Lakshamiah, "The Social and Economic Conditions", in G.S. Sharma (ed.), *Property Relations in Independent India: Constitutional and Legal Implications* 80 (ILI, New Delhi, 1967).

principle of *res nullius*. The T.P.A. does not apply in situations where the transfer occurs by 'operation of law' such as sale on insolvency or in execution of court decree or order. Moreover, it does not deal with the matters related to interstate and testamentary succession. Consequently, this method of transfer is excluded from the purview of T.P.A., with the exception of section 57 and chapter IV, which address the discharge of encumbrances that can only be accomplished through either a sale or a court order.[3]

In *Dindyal* v. *Board of Revenue*[4] plaintiffs filed a suit under section 175 of U.P. Tenancy Act, 1939 claiming themselves to be occupancy tenant and defendants as sub-tenants. The trial court found that lands were given to the plaintiffs as *Nazul* land and it was a land given on grant under Crown Grants Act, 1895 (Government Grants Act, 1950). The trial court held that the provisions of the tenancy Acts (U.P. Tenancy Act, 1939 and Agra Tenancy Act, 1926) are not applicable and dismissed the suits. Appeals before the board of revenue filed by plaintiffs were allowed holding that the plaintiffs were given the occupancy rights by the grant and therefore the tenancy Acts requiring registered deed would not be applicable. However, it was held that other provision of the tenancy Acts are applicable and plaintiffs are entitled to file a suit for ejectment/eviction against the defendants as they were sub-tenants. The defendants came in appeal to the High Court, the High Court decided that as Govt. Grants (U.P. Amendment Act, 1960) specifically provides that U.P. Tenancy laws would not be applicable to property given in grant by the government, application of some provisions of tenancy Acts by the board of revenue is wrong. The High Court expressed the opinion that findings of board of revenue are perverse, contrary to law as well as self-contradictory.

3. General Principles

Chapter II of the T.P.A. sets out the general principles governing transfer of property by the 'act of parties'. These principles provide the foundational rules governing transfer of property and are relevant to the specific modes of transfer. However, these general principles are not absolute, the T.P.A. explicitly saves the operation of Muslim personal law where a settled rule covers the subject; in such a situation the personal law rule will prevail.[5]

3.1 Doctrine of Constructive Notice

The term 'notice' as defined in section 3 of T.P.A., stipulates that it is not limited to actual knowledge; rather it also includes constructive notice arising where a person deliberately avoids inquiry or is grossly negligent in failing to make enquiries that a reasonable person would have made.

[3] *Laxmi Devi* v. *Mukund Kanwar*, AIR 1965 SC 834.
[4] 2024:AHC:196923.
[5] *T. Ravi* v. *B. Chinna Narasimha* (2017) 7 SCC 342.

In *Jayshree Kailash Wani* v. *Official Liquidator*[6] the High Court held that the T.P.A., envisages the doctrine of constructive notice. It is the duty of the seller to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover. This is, however, subject to the presence of contract to contrary between the parties. In this case, the property was purchased in e-auction and the purchaser has paid the earnest money. The purchaser was required to deposit the bid amount within 60 days from the date of acceptance of the bid. The purchaser applied for an extension of time to deposit the bid amount taking a stand that since the e-auction notice did not disclose the facts that there exist a drain, pond and a sub-station of the electricity department, thus the appellant was kept in dark and the appellant is agreeable to make the payment of the entire bid amount subject to removal of the obstructions from the auction land. However, the e-auction notice itself provided for an opportunity to the appellant to make an inspection of the site in question much before the date of the submission of the earnest money. The appellant had not made physical inspection of the property in question before auction. The court opined that for the inaction or lethargy on the part of the appellant, the respondent cannot be held to be responsible. The terms and the conditions of the e-auction contained a stipulation that the auction was "as is where is and whatever there is basis". The phrase "as is where is" finds its root in the common law doctrine of "Caveat Emptor" which means "let the buyer beware". This doctrine puts the duty on the purchaser to carry out all necessary inspection of the property before entering into an agreement. If the purchaser fails to conduct such an inspection, then later, on identification of defects in the property may not be a ground to revoke or claim damages under the contract. In such cases it is presumed that the purchaser had the notice of defects, if any. The Court held that there are two types of defects namely latent defects and patent defects. Latent defects are such type of defects which are unlikely to be discovered by a purchaser during investigation. On the other hand, the second category is patent defects which are discoverable if the buyer would have carried out inspection. In the instant case the defects falls under the second category, being patent defects and could have been easily discovered by inspection of the property. Consequently, the claim of the appellant was rejected.

3.2 Transfer Compared with Will

Section 5 of the T.P.A. define 'transfer of property' as an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons. The concept of transfer by a living person is entirely foreign to the concept of a Will. When a person creates a Will, he provides for testamentary succession without transferring any property. In contrast, a transfer is

[6] 2024: AHC:172092-DB.

irrevocable and takes effect either immediately or upon the occurrence of a specified event. A Will, however, is revocable and only becomes effective after the death of the testator.

In *I.R. Constructions Pvt. Ltd*. v. *Yashpal Khullar*[7] the pertinent issue before the High Court was whether the letter of allotment creates any transferable right in favour of the allottee which can be transferred through a Will or not? The Court held that once it is admitted that ownership in the disputed immovable property never vested in testator during his lifetime, mere execution of the Will mentioning that ownership would devolve upon the plaintiff after death of the testator would not make the plaintiff as owner of the disputed plot after death of testator. Even if the rights conferred by testator are treated to be lawfully bequeathed upon the plaintiff under the Will, the plaintiff would, at the most, succeed rights of testator as an allottee. The court deliberated upon the scope of Will under the T.P.A. and determined that a Will is not an instrument of transfer of property. As per section 3 an "instrument" means non-testamentary instrument. The Will being a testamentary instrument excluded by the provisions of T.P.A. A Will comes into effect after the death of the testator is certainly not an instrument of transfer of property by one living person to other as per section 5 of the T.P.A.

3.3 Adoption Deed and Transfer of Property

In *Munder* v. *Deputy Director of Consolidation*[8] the child was adopted by the adoption deed. The deed was neither registered nor stamped. On the death of his adopted father, adopted child's cousin claimed right in the property his adopted father. The cousin (petitioner) raised objection regarding the validity of the adoption deed on two accounts: i) that the adoption deed was not registered; ii) that the adoption deed was not stamped. The said objections were rejected by the consolidation authority and also by the court. Against that the petitioner filed the present writ petition. The High Court held that the adoption is a devolution and not a transfer of the property to the adoptee. On adoption for all purposes from the date of adoption, all the ties of the adopted child in family of his or her birth shall be deemed to be severed. Moreover, on adoption, the adoptee gets transplanted in the family in which he is adopted with same rights as that of a natural born child.

It is to be noted that adoption neither result in transfer of property nor devolution of property to the adoptee. Adoption means "the process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are attached to a biological child".

[7] 2024:AHC:120823.

[8] 2024:AHC-LKO:39156.

4. Oral Transfer

Before the enactment of T.P.A., the mere transfer of possession sufficed for the transfer of title. As per section 9 of T.P.A. "a transfer of property may be made without writing in every case in which a writing is not expressly required by law". However, where it is specifically provided that an instrument has to be in writing and registered, an oral or un-registered document is not sufficient to convey the property.

In *Prem Kumar* v. *Gurdev Singh*[9] the respondent contended that law recognises both oral transfer and oral understanding regarding transaction of sale. Therefore, registration or non-registration of the agreement would be irrelevant for claiming specific performance for an unregistered agreement for sale in relation to an immovable property situated in U.P. The Court determined that the plea of oral transfer, as outlined in Section 9 is not available to the respondent since in the State of U.P. the requirement of law under U.P. Civil Laws (Reforms and Amendment) Act, 1976 is that there has to be a written and duly registered agreement for sale in order to obtain a decree for specific performance. Hence, the contention of respondent relying on oral contract has no substance.

4.1 Doctrine of Feeding the Grant By Estoppel

The doctrine embodies in section 43 stipulates the equitable rule that one who induces reliance must make good the contract when able. If the transferor lacked title at the time of the conveyance but subsequently acquires the title or power, that later acquisition may 'feed' the earlier grant, validating it to the extent of the interest acquired. The transferor is estopped from later denying that representation.

In *Malka Parvez Shams Ara Begum* v. *Sardar Mohan Singh Since Deceased*[10] the High Court determined that it is very much clear from the language of section 43 that even if the action of the appellant is treated as fraudulent or erroneous whereby she, on the date of execution of the agreement, represented herself to be authorized to transfer immovable property, such transfer at the option of plaintiff-respondents would operate for the entire period during which the contract subsists. In a suit for specific performance of the agreement, so long as the decree is not drawn either way, the contract would be deemed to subsist and the alleged voidness pressed by the appellant would not defeat the rights of the purchaser or proposed transferee. This position stands further clarified by the subsequent part of section 43 of T.P.A. which starts with non-obstante clause and reads in favour of a transferee who has acted in good faith for consideration without notice of the existence of the said option. The

[9] 2024:AHC:193613.
[10] 2024:AHC:153371.

Court also referred section 22 of the Indian Contract Act, 1872 which states "contract caused by mistake of one party as to matter of fact- a contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact". The Court clarified that the aforesaid provision has been referred to in connection with the argument advanced by the appellant side that the defendant was under mistake of fact as to the ceiling proceedings and she bonafidely executed the agreement. The provision makes it clear that the contract would not become voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

4.2 Priority of Rights

Section 48 embodies the equitable maxim *qui prior est tempore potior est jure* i.e. first in time is first in right and rests on the corollary *nemo dat quod non habet* i.e. one cannot give a better title than one has. Section 48 protects the earlier transferee's equitable priority unless displaced by a special contract, express reservation, or other overriding statutory/ equitable doctrine.

A question involving such priority arose in the case of *Ram Keval* v. *Deputy Director of Consolidation*.[11] It was held that the earlier sale deed would prevail over the subsequent sale deed. The transferor/vendor cannot prejudice the rights of the transferee/vendee by any subsequent dealing with the property. This proposition is expressed in the equitable maxim "qui prior est tempore potior est jure". This means that "the first in time prevails over the others" and in other words "he who is earlier in time is stronger in law". It would also be apt to indicate the principle "nemo dat quod non habet" which means "no one can give what they do not have" in other words "no man convey a title than what he has". When a man in possession of a property has created an interest in favour of someone, he cannot later deviate from it and create another interest without being free from previous transfer. If there are successive transfers of the same property, the later transfer is subject to the prior transfer. Further, section 48 of the T.P.A. embodies this principle in legislation. Section 48 is founded upon the above said principles including that no man can convey a title than what he has. If a person has already affected a transfer, he cannot derogate from his grant and deal with the property free from the rights created under the earlier transaction. Section 48 is absolute in its terms. It determines the priority when there are succeeding transfers. It says that where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exist or be exercised to their fullest extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created. The court therefore held that the said

[11] 2024:AHC-LKO:2591.

provision contemplates that where a person has created different rights in or over the same property, such rights cannot be exercised to their full extent together, then each later created right shall be subject to the rights previously created. The exception is if special contract or reservation binding the earlier transferee is executed.

4.3 Transfer Pendente Lite

The principle of *lis pendens* is founded on the premise that for the effective administration of justice, the outcome of a court case should be relevant not only to the parties involved in the litigation but also to those who hold a title that is subject to the ongoing proceedings. The stipulation in section 52 does not, invalidate the conveyance or transfer in other respects, but rather ensures that it is subservient to the rights of the parties engaged in the litigation.[12] This section comes into operation from the point of the institution of the suit and continues to survive till the satisfaction of the decree.[13]

In *Ashok Kumar* v. *Bijendra Singh*[14] the transferees of the transferee *pendente lite* claimed that they are bonafide purchasers for value without notice. Refuting their claim the court held that any transaction *pendente lite* between parties to the suit would bind their transferees in the same manner as the parties. The transferees would not have any right independent of their transferor or transferors, who are parties to the pending action. The only exception to the principle is if a purchaser *pendente lite* or his vendor effect the transfer with permission of the Court. Similarly, in *Bharath* v. *Mirchi*[15] *Devi* it was held that sale of property during the pendency of the case in which stay is granted to the party would be dependent on the operation of section 52. However, no disobedience of the order of the Court can be imputed to the party. Also, in *Doober* v. *Addl. Commissioner III, Devi Patan Mandal, Gonda*[16] the High Court expressed the opinion that section 52 is an enabling provision, which only recognizes a fact that during the pendency of any proceedings if a property is transferred, it does not adjudge the transaction to be valid or invalid. It only binds the party who has purchased the property during the litigation and prevents him to take a different stand than his transferor and that the transferee is bound by the outcome of the litigation. The High Court referred the decision of the Apex Court in the case of *Jitendra Singh* v. *State of M.P.*[17] wherein it has been held that the writ petitions against orders arising out of summary

[12] *Thomason Press (India) Ltd* v. *Nanak Builders and Investors Pvt. Ltd.*, AIR 2013 SC 2389.
[13] *Aziz* v. *District judge*, AIR 1994 All 167.
[14] 2024:AHC:125647.
[15] 2024:AHC:143460.
[16] 2024:AHC-LKO:52394.
[17] 2021 SCC OnLine SC 802.

proceedings are not maintainable as the mutation proceedings are of fiscal nature and do not decide the right, title or interest.

4.4 Gift During Pendency of Suit

In *Ajay Chauhan* v. *Smt. Kewala Devi*[18] while entertaining the writ petition for hearing, under section 12 of the U.P Consolidation of Holding Act, 1953. The Court passed an interim order directing the parties to maintain status quo with respect to the nature and possession of the land in question. Further, directed that in the meantime, no third party rights shall be created over the property in question. Respondent has executed a gift deed of the land in dispute in favour of her daughters. Appellant stated that the aforesaid gift deed is in violation of the interim order passed by this Court and therefore, the respondent is liable to be summoned and prosecuted for having committed contempt of this Court. The High Court held that the validity of the gift deed executed by respondent would be governed by Section 52 of the T.P.A. and is dependent on the decision of the writ petition pending before this Court and also of the consolidation authority. The execution of the gift deed does not by itself change the nature and possession of the suit property though it creates third party rights in the same. Even though the gift deed is in violation of the restrain order passed by this Court, the execution of the gift deed does not substantially interfere in the process of justice and therefore, in light of Section 13(a) of the Contempt of Courts Act, 1971, it is not a case to institute proceedings under the Contempt of Courts Act, 1971.

In *Savitri Devi* v. *Civil Judge Junior Divion Court No. 22*[19] the prominent issue before the High Court was: i) whether the petitioner has sufficient interest in the pending suit proceedings to be made party?; ii) whether merely on account of the fact that gift deed was executed during the pendency of the proceedings, such an instrument can be held to be void by the trial court while deciding the application for impleadment? The Court held that the principle underlying section 52 of the T.P.A., is based on justice and equity. The operation of the bar under section 52 is subject to the power of the court to exempt the suit property from the operation of Section 52, subject to such conditions it may impose. That means that the court in which the suit is pending, has the power, in appropriate cases, to permit a party to transfer the property which is the subject-matter of the suit without being subjected to the rights of any party to the suit, by imposing such terms as it deems fit. Having regard to the facts and circumstances, the High Court held that this is a fit case where the suit property should be exempted from the operation of Section 52 of the T.P.A., subject to a condition relating to reasonable security, so that the defendants will have the liberty to deal with the

[18] 2024:AHC:154087.
[19] 2024:AHC-LKO:7477.

property in any manner they may deem fit, in spite of the pendency of the suit. It further held that the discretion to make subsequent transferee as a party is discretion of the court and the court has to look into the fact as to whether the transferee has substantial right in the suit proceedings and the subject matter related therein. Transfer *pendente lite* is neither illegal nor void ab initio but remains subservient to rights eventually determined by court in pending litigation. The transfer in favour of purchaser *pendente lite* is effective in transferring title subject to certain obligations as decision of Court in a suit is binding not only on litigating parties but also on those who derive title *pendente lite*.

4.5 No Contempt for Transfer of Property During Pendency of Suit

In *Gokul Prasad* v. *Diwakar Prasad*[20] the High Court held that a mere execution of sale deeds of the disputed plots are not by itself sufficient to institute proceedings under the Contempt of Courts Act, 1971. The validity of the sale deeds would be dependent on the decision of the writ petition in light of section 52 of the T.P.A. and also on the determination of the rights of the parties as adjudicated in different proceedings. Similarly, in *Deoki Nandan Sharma* v. *Sri Pradeep Sharma*[21] the High Court held that mere execution of sale deed of disputed property is not by itself sufficient to institute proceedings under the Contempt of Court Act, 1971. The validity of the sale deed would be dependent on the decision of the court in the light of section 52 of T.P.A. and also on the determination of the rights of the parties as adjudicated in different proceedings. Also, in *Anuj Kumar Goswami* v. *Anjan Kumar Goswami*[22] the High Court held that the validity of the sale deed is dependent on the operation of section 52 and it does not by itself substantially interfere with the course of justice. It is not a case for proceeding under Contempt of Court Act, 1971 in view of section 13 (a).

4.6 Statutory Bar Prevail Over Lis Pendens

In *Gur Lal Singh* v. *State of U.P.*[23] the petitioners relied on section 52, T.P.A. to defend a sale deed executed during pending ceiling proceedings. The High Court clarified that *lis pendens* ordinarily renders a transfer *pendente lite* subservient to the outcome of the suit, but it does not render the transfer void. However, a special statute may expressly declares such transfers void. Section 5(8) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960, declares such transfer void and therefore overrides the general doctrine of *lis pendens*. Consequently, a purchaser under a document hit by Section 5(8) cannot claim

[20] 2024:AHC:186688.
[21] 2024:AHC:193606.
[22] 2024:AHC:188511.
[23] 2024:AHC-LKO:74350.

protection under section 52 of T.P.A., nor acquire locus to challenge ceiling orders. The Court held that *lis pendens* does not save or validate a transfer that the governing statute has already rendered void; statutory bar prevails over the general equitable doctrine.

4.7 Transfer of Property During Revision Petition

In *Govind* v. *Deputy Director of Consolidation Bahraich*[24] the petitioner purchased the disputed property by a registered sale deed during the pendency of revision petition. The High Court held that the said sale is hit by section 52 of T.P.A. as in the revision the said property was directly and specifically the subject matter of revision.

4.8 Transfer of Property During Execution Proceeding

In *Shankar Lal Gupta* v. *Ashok Kumar Gupta*[25] the decree-holder obtained a decree for possession of immovable property. After decree the petitioner claims to have been given possession by the erstwhile tenant and moved an application under Order XXI Rule 97 C.P.C. to resist execution. Thereafter, the petitioner produced an unregistered agreement and tax receipts only; no registered transfer or other conclusive evidence of title was produced. The executing court rejected petitioner's application; petitioner moved the High Court under Article 227. The pertinent legal issues in the present case were: i) whether a transferee who took possession during the pendency of proceedings can resist execution under Order XXI?; ii) what is the interplay of Order XXI Rule 102 of C.P.C. with section 52, T.P.A. pertaining to prohibition on transfer during pendency? The High Court held that a person who acquires possession after the decree or during the pendency of the suit, such a *pendente-lite* transferee or a transferee who stepped into the tenant's shoes after the decree cannot resist execution of the decree for possession. It was held that such a transferee is ordinarily a trespasser and is not entitled to obstruct delivery of possession; the executing court and revisional court were correct to reject the application under Order XXI Rule 97 C.P.C. where the objector produced only an unregistered document and tax receipts and failed to make out a genuine transferable right. Also, the High Court held that Order XXI, Rule 102 of C.P.C. bars a *pendente-lite* transferee from resisting execution of a decree for possession; this rule must be read together with Section 52, T.P.A., which makes transfers during pendency ineffective as against other parties to the suit. The Court explicitly reproduced Rule 102 and Section 52 and held that even the defence of being a bona-fide purchaser "with consideration and without notice" is not available to a *pendente-lite* transferee.

[24] 2024:AHC-LKO:41758.
[25] 2024:AHC:93170.

4.9 Fraudulent Transfer

The proposition of law in connection with a fraudulent transfer is enunciated in section 53 of the T.P.A. It renders voidable any transfer of immovable property made with the intent to defeat or delay creditors or to defraud subsequent transferees. Concurrently, it protect bona-fide purchasers for value without notice.

In *Hemlata Sharma* v. *State of Uttar Pradesh* [26] while the suit for partition is pending the property was transferred, the court determined that since the share of the parties is yet to be determined therefore, it cannot be said that Prahlad kumar pandey executed the sale deed exceeding his share. Further, it was concluded that the dispute is of civil nature. Therefore, it is to be taken into consideration if any property is alienated during pendency of the civil suit the transaction will be covered under Section 53 of T.P.A.

4.10 Doctrine of Part-performance

Section 53-A of T.P.A. embodies the equitable doctrine of part-performance. The transferor is estopped from insisting on rights inconsistent with the terms of the contract. However, the protection is purely defensive in nature pertaining to possession but does not confer title on the transferee, nor it defeat the rights of a subsequent bona-fide transferee for value without notice. Following the amendment in Registration Act, 1908 and other related laws concerning transfer of property, any contract intended to be relied upon for protection under Section 53-A is required to be mandatorily registered under the Registration Act.

In *Irfan Qureshi* v. *UP State Industrial Development*[27] the High Court held that appellant's claim for relief of mandatory injunction based upon oral understanding requires to be dealt with in the light of law of the land. That an agreement to sell concerning immovable property situated in State of U.P. required compulsory registration. Section 17 of Act, 1908 read with Section 54 of Act, 1882, as applicable in U.P., makes it very clear that a contract of sale, as defined in Section 54, can be made only by a registered instrument. By omission of explanation to sub-section (2) of Section 17 of Act, 1908, the legislature has made it very clear that in State of U.P., an agreement to sell immovable property would require compulsory registration so as to create any right, title or interest in immovable property. Moreover, the Court held that in order to take shelter behind the above provision, one has to satisfy the following conditions, as are evident from bare reading of Section 53-A: the contract should have been in writing, signed by or on behalf of the transferor; the transferee should have got possession of the immovable property covered by the contract as a

[26] 2024:AHC:64261.
[27] 2024:AHC:166060.

part-performance of the contract; if the transferee is already in possession and he continues in possession in part-performance of the contract, he further should have done some act in furtherance of the contract; and the transferee has either performed his part of the contract or is willing to perform his part of the contract.

The High Court held that all the postulates of Section 53-A are sine qua non and a party cannot derive benefit by fulfilling only one or more conditions. It must satisfy all the conditions altogether. Furthermore, except an alleged oral understanding between the appellant and the father of the respondent, there is no written contract or even any other document by which it can be inferred that the property was agreed to be sold by the father of the respondent, except certain photostat copies of the bank drafts on which some notings were made. The High Court without expressing any opinion as regards oral and documentary evidence to be led in the original suit or its maintainability, held that while analysing the claim for injunction based upon a plea under Section 53-A of T.P.A. and in absence of any written registered or unregistered agreement for sale, it is not inclined to accept the appellant's claim for injunction.

5. Specific Transfers

Chapter III to VIII of T.P.A. deals with the specific transfers of property. It signifies the conveyance of property through the specific modes of sale, mortgage, lease, exchange, gift, and assignment of actionable claims. Each of these chapters elaborates the distinctive legal incidents, formal requirements, and rights and obligations that arise in that particular mode of transfer. The specific transfers of property will operate in harmony with the general principles of transfer of property contained in chapter II, except where a special provision displaces the general rule. This reflects the maxim *generalia specialibus non derogant* i.e. the special law overrides the general law.

5.1 Sale

Section 54 lays down the concept of sale. The term 'sale' means a transfer of ownership in exchange for a price pertaining to immovable property. A sale necessarily results in the conveyance of an absolute proprietary interest from the transferor to the transferee. A valid sale generally involves three sequential elements: i) an agreement to sell establishing the terms of transfer, ii) execution of a sale deed as the formal instrument of conveyance, and iii) registration of the sale deed when the property's value is rupees 100 or more, which is mandatory under the Registration Act.

5.2 Registration of Sale Deed

In *Munder* v. *Deputy Director of Consolidation*[28] the petitioner submitted that the adoption deed is mandatorily required to be registered for the reason that by the said adoption deed, the immovable property was going to be transferred in favour of respondent which is of the value of more than 100 Rupees, as required under Section 54 of the T.P.A. in which it has been provided that in the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Here, the transaction by the adoption deed is more than hundred rupees. Moreover, it is submitted that as per Section 17(b) of the Registration Act, 1908, which provides that documents of which registration is compulsory and sub-section 1(b) of Section 17, provides that other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent to or in immovable property and Sub-Section provides any other instrument required by law for the time being in force, to be registered and the effect of non-registration has been provided under Section 49 of the Registration Act, 1908, that document will not be admissible in evidence. Furthermore, it is submitted that Section 35 provides that the instruments not duly stamped are inadmissible in evidence and in the present case, the adoption deed was neither registered nor stamped as per the provisions of the Act, hence it could not be admissible evidence and on the basis of which any judgment and order passed in favour of respondent is a nullity and liable to be quashed. The learned counsel for respondent have submitted that the submission made by learned counsel for petitioner relying upon provisions of different Acts are not applicable in the present case as the adoption deed was executed on 15.05.1931. At that time, the registration was not mandatory and it had come by amendment in the year 1977, in the Hindu Adoption and Maintenance Act, 1956. The learned Counsel has further submitted that it is a devolution of property and not the transfer of property.

The Court in the instant case held that on the perusal of Section 54 of the T.P.A., it is very clear and there is no ambiguity in defining the word 'sale' i.e. transfer of ownership in exchange for a price paid or promised. The adoption deed is not the sale. Hence Section 54 of the T.P.A. and provisions of Registration Act, 1908, relied upon by learned counsel for petitioner are not applicable in the present case as the adoption deed is not a transaction or declaration of any transfer of property.

[28] 2024:AHC-LKO:39156.

5.3 Consideration of Sale Deed

In *Rajvir Singh* v. *Randhir Singh*[29] the legal issue before the High Court was: whether, both the courts below have erred in applying the provisions of Section 54 of the T.P.A. to the present case inasmuch as the sale deed itself clearly recorded that the entire sale consideration has been paid in advance and there was no question of any payment or part payment of sale consideration after registration of sale deed? The Court relied upon the decision of Supreme Court in *Kewal Krishan*, wherein after interpreting the provisions of section 54 of T.P.A. it was held that a sale of an immovable property has to be for a price that may be paid or payable in future and such payment is an essential part of sale and if a sale deed is executed without payment of price, it is no sale in the eyes of law. The Court in the instant case held that it was a concluded sale as per Section 54 of T.P.A. with no infirmity and payment of sale consideration is found to have reached to the vendor. Since it was not a case of part-paid or part-promised, question is answered in favour of defendant-respondent attaching validity to the transaction of sale.

5.4 Effect of Non-registration of Sale Deed

In *Ashok* v. *Smt Kusum Devi*[30] the High Court determined that it is admitted on record that title in the property vested in plaintiff-respondent by virtue of registered sale deed executed by Malkhan Singh. There is no other sale deed conferring title upon the defendant-appellant. The entire case of the defendant is based upon the matter written on the back-side of the registered sale deed. There is no dispute about the fact that such writing was not made in the presence of sub-registrar or at the time when the registered sale deed was executed. This writing was made two years after the execution of the registered sale deed. The same cannot be treated to be a registered sale deed or even a registered agreement. The two witnesses of the said writing were also not produced before the courts for leading evidence. Further, in so far as provisions regarding sale are concerned, it is observed that in U.P., U.P. Civil Laws (Reforms and Amendment) Act, 1976, has been enforced, w.e.f. 1.1.1977. By virtue of Section 30 of this Act, section 54 of T.P.A. has been amended. Similarly, by Section 32 of this Act, Section 17 of the Registration Act has been amended and Clause (f) has been inserted in it. These amendments clearly suggests that an agreement to sell of the immovable property is a compulsorily registrable document in U.P. and no un-registered agreement to sell can be executed nor it can be taken in evidence in view of Section 49 of the Registration Act. The Court eventually held that in so far as the submission that the document does not require registration, this Court is not in a position to accept the same and proviso to Section

[29] 2024:AHC:167782.
[30] 2024:AHC:108473.

49, as applicable in the State of U.P., does not come for the rescue of the defendant-appellant as transfer of property and also delivery of possession cannot be treated as a collateral transaction not required to be effected by registered document.

In *Azmat Ali* v. *Puttan*[31] the appellant purchased khandhar along with land in dispute for a consideration of rupees 600 in regard to which the sale deed was executed but was not registered. The appellant was in the possession of the property and constructed the house thereon and residing in the same. The court held that the appellant acquired no right or interest in the disputed property as the sale deed was unregistered. Also, in *Chhail Bihari Sahu* v. *Prakash Chandra*[32] the property worth less than 100 rupees was transferred by executing unregistered sale deed. In the sale deeds neither the number of the property nor its location nor its boundaries were described. Only this much was written that there being good relations between the vendor and vendee, the property measuring 35 x 32 feet is being given for a sum of Rs.80/- to the vendee and its possession has been delivered. The court held that a vaguely written instrument which is completely short of requirements of valid sale deed, though being unregistered considering the value of the property, rightly or wrongly shown therein, would not confer title upon the vendee.

5.5 Contract For Sale Does Not Confer Title

In *Ashok Kumar Kureel* v. *State of U.P.*[33] the High Court accepted the plea of the petitioner that mere execution of an agreement of sale does not amounts to passing of any right, title or interest in the property in dispute as per section 54 of T.P.A. A contract for sale of immovable property by itself does not creates any interest in or charge on such property. Therefore, as yet no title of the land in dispute has passed in favour of the third party. Also, in *Prem kumar* v. *Gurdev Singh*[34] the dispute arises from a suit for specific performance of an unregistered Agreement for sale (hereinafter 'AFS') in relation to an immovable property situation in district Meerut. The appellant/defendant executed AFS in favour of respondent/plaintiff at Jalandhar, sum of Rs.55,000/- was received by the defendants in advance as part of sale consideration and he agreed to pay the balance amount before the competent registering authority at the time of registration of sale deed. The date fixed for execution of the sale deed was pleaded as 15.07.1977, on which the respondent was required to pay the balance sale price beside the cost of stamp and registration expenses. Respondent waited for the appellants in registrar's office at Meerut but appellants did not appear. The suit

[31] 2024:AHC-LKO:31043.
[32] 2024:AHC:152804.
[33] 2024:AHC:127186-DB.
[34] 2024:AHC:193613.

for specific performance of contract was filed by the Respondent at Jalandhar. The said plaint was returned due to lack of territorial jurisdiction of Punjab court. Subsequently, the suit was presented before the trial court at Meerut. Trial court decreed the suit and the first appellate court upheld the decree of trial court of Meerut. Appellants filed an appeal to the High Court. The main issue before the High Court was: whether a decree for specific performance based upon an unregistered agreement for sale is at all sustainable? As regards requirement of registration of an AFS, it is noted by the High Court that the U.P. Civil Laws (Reforms and Amendment) Act, 1976 amended the Registration Act 1908 as well as the T.P.A., besides several other enactments as applicable to the State of U.P. This amendment introduced a change in section 54 of T.P.A. making it mandatory to make a contract for sale only by a registered instrument. Further, the Court analyzed the implication of the U.P. 1976 Act on section 17 of the Registration Act, 1908 and held that a combined reading of Sections 3, 4 and 54 of the T.P.A. of 1882 and, Section 17 and 49 of the Registration Act of 1908, as applicable to the State of U.P., as amended by U.P. Act 57 of 1976, it is clear that every contract of sale of an immovable property situated in any district of U.P. shall be made only by a registered instrument. Even though a contract for sale of immovable property does not by itself create any interest in or charge on such property and only creates a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest, nonetheless, the said contract for sale of an immovable property is required to be registered in the State of U.P. and an unregistered agreement cannot be enforced in a suit for specific performance of a contract nor can it be read in evidence in the state of U.P. after the U.P. 1976 Act.

5.6 Mortgage

The term 'mortgage' as provided under Chapter IV of the T.P.A. defines it as the transfer of an interest in specific immovable property for the purpose of securing payment of a debt or performance of an obligation. Unlike a sale, a mortgage does not convey absolute ownership but only a limited interest sufficient to serve as security, while ownership remains with the mortgagor subject to redemption. The T.P.A. recognizes several forms of mortgages each with distinctive features and legal consequences. The essential incidents of mortgage include the mortgagor's right of redemption, the mortgagee's remedies for enforcement, and the priority of mortgages inter se.

5.7 Identification of Substance for Stamp Duty

In *Ajij Khan* v. *State of U.P. Thru Secy. Tax And Registration*[35] the High Court observed that where an instrument creates a right or interest in specific property to secure

[35] 2024:AHC-LKO:82274.

repayment of a debt and provides the creditor with enforcement mechanisms such as attachment and sale, it is a mortgage deed for the purpose of stamp duty under Article 40 of Schedule 1-B of the Indian Stamp Act. The nomenclature of the document is irrelevant; the court must assess its substance and legal effect rather than its form. In the instant case, the petitioner executed a document described as a guarantee deed for obtaining a loan of Rupees 10,00,000/-. Under the document, the creditor was given explicit rights to recover the loan amount through attachment and auction of movable and immovable properties of the debtor in case of default. The revenue authorities treated the instrument as a mortgage deed and assessed stamp duty under Article 40 of Schedule 1-B of the Indian Stamp Act, 1899. The petitioner contended that it was merely a guarantee or security bond, which would fall under Article 57, attracting lesser duty. The initial order under Section 33 of the Stamp Act and the appellate order under Section 56 both upheld the higher duty, prompting the present writ petition. The two prominent legal issues in the present case were: i) whether the instrument, though labeled a guarantee deed in substance amounted to a mortgage deed under Article 40 of Schedule 1-B of the Stamp Act?, ii) whether nomenclature of the document is decisive for stamp-duty classification or whether substance and legal effect determine its true nature? It was observed that the substance of the transaction prevails over the form or nomenclature of the document. That under section 58(a) of the T.P.A., a mortgage involves the creation of an interest in specific immovable property for securing payment of a debt. Whereas, section 2(5) of the Indian Stamp Act, a "bond" or "security bond" signifies only a personal obligation, without transferring proprietary rights. The document in question gave the creditor the right to recover the debt by sale of specified property, thereby creating a proprietary interest, which is a core attribute of a mortgage. The court held that the instrument contained all essential ingredients of a mortgage, despite being titled a guarantee deed.

5.8 Sale or Mortgage by Conditional Sale

In *Ram Shanker* v. *Mohd. Ibrahim*[36] the High Court observed that merely because a condition of repurchase is incorporated in a sale deed does not automatically make it a mortgage by conditional sale. Proof of a debtor-creditor relationship and intention to treat the transfer as security for a debt is essential for it to be called a mortgage. Absence of such proof renders the transaction a sale with a repurchase clause, where the seller's rights lapse if the option is not exercised within the stipulated period. In the instant case, original plaintiff Mohd. Azeem filed suit seeking a decree for declaration and possession over property. The said property initially belonged to Bhagwandeen, who, by registered sale deed transferred it

[36] 2024:AHC-LKO:46924.

to Mohd. Azeem for a consideration of Rupees 150. The deed contained a repurchase clause, permitting Bhagwandeen to repurchase the property within 10 years by repaying the same amount. Bhagwandeen neither exercised his right of repurchase nor repaid the amount and died in November 1962. After his death, his widow, Smt. Indrani, sold the property to Ram Shanker, who was a tenant in the premises. Mohd. Azeem challenged this transfer, claiming Smt. Indrani had no title, as Bhagwandeen's right to repurchase had lapsed. Trial Court held that the deed was a sale deed with a repurchase clause, not a mortgage by conditional sale, and decreed the suit in favor of Mohd. Azeem. First Appellate Court affirmed the Trial Court's decision. The Defendants Ram Shanker and others filed the present second appeal, contending the document was a mortgage by conditional sale, granting them a right of redemption. The main legal issues in the instant case is: Whether the instrument was a mortgage by conditional sale under Section 58(c), T.P.A., or merely a sale deed with a repurchase clause. The High Court observed that for a document to be treated as a mortgage by conditional sale under section 58(c) T.P.A., two conditions must be met: a) The repurchase condition must be embodied in the same document; b) There must be proof of a debtor-creditor relationship and that the property was transferred as security for a debt. That the said document explicitly stated that the property was free from encumbrances and was sold because Bhagwandeen needed money. Further, no evidence was produced to prove a debtor-creditor relationship between Bhagwandeen and Mohd. Azeem. The sale consideration was rupees 150, reflecting fair value, and there was no clause regarding interest or repayment terms, which are typical of a mortgage. Therefore, the document was not a mortgage by conditional sale, but a sale with an option of repurchase, which Bhagwandeen failed to exercise within the stipulated period. Also, the High Court observed that even assuming it was a mortgage, Smt. Indrani could not transfer the property to Ram Shanker without redeeming the mortgage first. And no proof of repayment of the alleged mortgage money was produced. The original deed remained with Mohd. Azeem, indicating no redemption occurred. The Court held that the document was a sale deed with a repurchase clause, not a mortgage by conditional sale under Section 58(c) T.P.A.

5.9 Lease

A lease constitutes a mutual agreement wherein a landlord provides a tenant with a time-limited right to the exclusive use of immovable property in exchange for rent or a premium, thereby establishing a restricted proprietary interest for the tenant, while the reversionary interest is retained by the landlord. Chapter V of the T.P.A. relates to leases of immovable property. Section 105 define lease. Section 106 deals with duration of leases in absence of written contract or local law or usage to the contrary. It also make provision for

termination of lease by giving notice. A lease may either be for a fixed term or for perpetual duration. Leases from year to year, for a term exceeding one year, or reserving yearly rent must be effected by a registered instrument. In contrast, a lease of shorter duration may be oral with delivery of possession. Thus, a lease strikes a balance between the lessee's right of enjoyment and the lessor's continuing ownership, with formal requirements ensuring legal certainty.

5.10 Notice for Termination of Lease

In the case of *Jitendra Kumar Rajput* v. *Pranveer Singh*[37] the issue before the Court was that in case of issuance of more than one notice for termination of tenancy and based upon last notice, a suit is instituted, what would be the fate of earlier notice. It was determined by the Court that section 113 of the T.P.A. is relevant for this issue, which deals with the waiver of notice to quit. Further, it is apparently clear that in case lessor gives notice to lessee to vacate the property leased and lessee remains in possession and thereafter, lessor gives second notice to lessee to quit, the first notice is waived of. The legislation is very much clear on this point. If no action has been taken upon the issuance of earlier notice and there is no change of status of lessor and lessee, the earlier notice would be waived off after issuance of latter notice. Also, in *Dharmveer Singh* v. *Rohit Kumar*[38] the trial court decreed the suit for recovery of arrears of rent and eviction on determination of tenancy/lease by serving a notice under section 106 of T.P.A. Tenant challenge this order before the High Court as voilative of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The court found that it was admitted by the tenant/petitioner that the building was constructed in 1996 and first assessment of the building was done in the year 2008 by the concerned municipality, therefore the Act of 1972 would not be applicable. The notice issued under section 106 of T.P.A. determining the lease of tenancy would be sufficient to maintain the suit for eviction.

5.11 Form of Notice

In *Engineer Prabhu Dayal Agrawal* v. *Joint Registrar Co-Operative Society*[39] the landlord gave a notice for determination of tenancy under section 106 of T.P.A. The trial court found that the tenancy law was not applicable but said that notice terminating tenancy was not valid. The landlord submitted that once it is determined that Tenancy Act of 1972 is not applicable the court was neither to see the default in payment of arrears of rent nor could have seen into the niceties with which the notice as was claimed to have been issued and served. He submitted that the lease is terminated by mere giving of the notice in advance. The

[37] 2024:AHC:95277.
[38] 2024:AHC:197299.
[39] 2024:AHC:178788.

court held that except where the immovable property is leased out for agricultural or manufacturing purposes, in the absence of any contract between the parties or any local law or usage to the contrary what is prescribed under Sub-section 1 of Section 106, the tenancy is terminable upon notice by the landlord in 15 days' advance. The intendment of the legislature therefore, appears to be very clear that notice is a must to determine the tenancy and once the tenancy has been determined, tenant is liable to be evicted at the instance of the landlord by instituting the suit. It would have been a different case altogether, had the tenant-respondent took up the plea of deposit made in time to seek benefit under Section 114 of the T.P.A. but neither any such pleading had been raised, nor any such issue was framed. Where the question of termination of tenancy arose and the issue was whether the default part in the conduct of the tenant has to be seen or not and it was held that this question could not have been gone into. Looking to the intendment of the legislature under Section 106 of the T.P.A., once the tenancy has stood terminated by the issuance of notice as the landlord inclined himself to terminate it, the question of default can of course, rightly should not have been gone into.

5.12 Unregistered Lease

In *Trilok Chand Fabrication Pvt. Ltd.* v. *State of U.P*[40] the High Court observed that the appellant has claimed that it was a lease for manufacturing purpose, admittedly there was no registered written lease. Therefore, rule of construction as envisaged in Section 106 would not be applicable as the statutory requirement of Section 107 of the Act has not been satisfied. The plea of the appellant that 15 days' notice terminating the present tendency is bad in law would not be sustainable. Further, under no circumstances an unregistered instrument can create a valid lease beyond a period of one year. Furthermore, an oral agreement cannot create a valid lease from year to year. Registration Act, 1908 also compulsorily requires lease of an immovable property created for a term exceeding one year to be registered. In absence of such registration, courts cannot take such a lease into consideration as the same would attract the bar contained under Section 49 of the Act, 1908. Therefore, the Court held that in absence of a registered instrument executed in its favour, a tenant, cannot be permitted to claim possession of a secured asset for a term beyond one year from the date on which the lease is claimed to have come into effect. If a tenant intends to safeguard his possession of the secured asset, presence of a registered lease deed executed in his favour is the sine qua non for the same. As mandated by Section 107 of the T.P.A. 1882 and Section 17 of the Act, 1908, the lease of an immovable property, beyond the period of one year can only be created by a registered instrument. An oral agreement, accompanied by

[40] 2024:AHC:5811-DB.

the delivery of possession cannot create a lease beyond the prescribed period under Section 107 of the T.P.A. 1882. An unregistered lease, cannot be taken into consideration by the courts, given the bar placed under Section 49 of the IRA, 1908.

In *Mridula Singh* v. *Lucknow Development Authority Gomti Nagar*[41] the petitioner, was granted a plot on garden lease by Lucknow Development Authority for gardening purposes. Lease executed for 10 years, expressly prohibiting construction. Renewal claimed for 30 years, but deed remained unregistered. Lucknow Development Authority cancelled allotment alleging construction of boundary wall and default in rent and later letters directed petitioner to vacate. The principal issues in the present case were: i) whether the unregistered lease deed conferred any legal right on the petitioner to retain possession?; ii) whether acceptance of rent by Lucknow Development Authority amounts to waiver or creates tenancy by holding over?. The High Court held that a lease of immovable property exceeding one year or reserving yearly rent requires compulsory registration under Section 107, T.P.A. and Section 17(1)(d) of the Registration Act, 1908. An unregistered lease deed confers no right, title, or interest in the property under section 49, Registration Act. Further, it was held that there can be no estoppel against the provisions of a Statute. When Section 17(1)(d) of the Registration Act and 107 of the T.P.A. clearly provides that a lease for a term exceeding one year or reserving a yearly rent can be made by a registered instrument only, and Section 49 of the Registration Act provides that an unregistered lease deed confers no right, title or interest in the property upon the petitioner and it will not be admissible in evidence of the transaction of lease between Lucknow Development Authority and the petitioner, there can be no estoppel against the plea of invalidity of an unregistered lease deed. Further, mere acceptance of rent by lessor does not amount to waiver of termination nor create tenancy by holding over unless statutory requirements are fulfilled.

In *Satyanarayan* v. *State of U.P*[42] the petitioners are tenants of shops in a building; claim tenancy for over 60 years under oral agreements. The owners mortgaged the property to Punjab National Bank for loan facilities and outstanding was due. Thereafter, the borrowers defaulted; bank issued recovery notice under Section 13(2) S.A.R.F.A.E.S.I. and thereafter applied under Section 14 for physical possession. Additional District Magistrate (Finance & Revenue), passed order permitting possession; Sub-Divisional Magistrate passed consequential order nominating Naib-Tehsildar to take possession. Petitioners applied asking that, being tenants, they should be given symbolic/notional possession instead of physical dispossession; that application remained undecided when writ was filed. The main issues in the present case were: i) whether tenants under oral/unregistered tenancy

[41] 2024:AHC-LKO:38201.

[42] 2024:AHC-LKO:83140-DB.

can resist physical taking of possession under Section 14 S.A.R.F.A.E.S.I.?; ii) whether the petitioners' failure to produce a registered lease or to regularize tenancy under the U.P. Tenancy Act, 2021 precludes protection of possession? The High Court delve into the application of Section 107 of the T.P.A. in the context of S.A.R.F.A.E.S.I. proceedings and held that a lease of immovable property for more than one year, or reserving a yearly rent, can only be created through a registered instrument; an oral or unregistered agreement cannot confer legally enforceable tenancy rights beyond a year. Consequently, occupants claiming tenancy on the basis of long-standing oral arrangements cannot resist possession proceedings under the S.A.R.F.A.E.S.I. Act unless they demonstrate a valid, registered lease executed prior to the mortgage, or compliance with statutory tenancy laws. Further, if a valid lease existed before mortgage, tenant's right must be determined by Section 111 T.P. Act and such tenancy can protect tenant from bank's taking of possession and therefore the secured creditor cannot take possession until the lease is legally determined.

5.13 Exchange of Properties

The term 'exchange' refers to statutory form of barter. Chapter VI comprising of sections 118 to 121 of T.P.A. deals with transfer of property by exchange. It signifies mutual conveyance of ownership wherein a property is transferred in lieu of another property. In exchange, the title is conveyed by following the same formalities that regulates a sale as a method of transfer of property. Thus, exchange is a mutual conveyance of ownership, operating as a transfer of property, but distinguished by the nature of the consideration being property in lieu of property rather than money.

In *The Catholic Diocese of Gorakhpur* v. *Bhola (Deceased)*[43] the High Court determined that a transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale. Therefore, if two persons mutually transfer ownership of an immovable property, in order to the transaction being termed as "exchange", it has to be only in the manner provided for transfer of such property by sale. Therefore, "exchange" is permissible only when it has ingredients of a "sale" covered by section 54 of the Act. In the present case, such ingredients are completely missing and, therefore, alleged handing over possession by the plaintiff to the State/District Magistrate cannot be termed as "exchange" of plots. Moreover, it was held that if transfer of immovable property by a citizen to the State or inter-se two citizens is permitted through exchange of letters or affidavits, it would lay down an unprecedented and unique but absolutely illegal mode of transfer of property and immovable property would, then, become capable of being

[43] 2024:AHC:146911.

transferred completely dehors the provisions of the T.P.A., Registration Act or any other law governing creation of rights in immovable property.

5.14 Gift

The term 'gift' is voluntary transfer of property, made without consideration, by donor to donee and accepted by or on behalf of the donee. The essence of a gift lies in its gratuitous nature and the requirement of acceptance during the donor's lifetime while he is still capable of giving. A valid gift of immovable property must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses, while movable property may be gifted by mere delivery. Once accepted, a gift is generally irrevocable, save for grounds such as fraud, undue influence, or conditions expressly reserved by the donor in conformity with law.

5.15 Gift Compared with License

In *Shyam Pathak* v. *State of U.P*[44] and in *Nisar Ahmad* v. *State of U.P*[45] the dispute arose from an affidavit, where the deponent allowed the petitioner to enter his land for excavation of mud for brick manufacturing. Authorities treated the affidavit as a gift deed**,** imposed stamp duty under Article 33 read with Article 23 of Schedule 1(B) of the Indian Stamp Act. Petitioner contended that the authorities have erred in treating the affidavit to be a gift and therefore imposed with stamp duty as conveyance whereas in fact the said affidavit created only a licence, not a transfer of ownership, and therefore come within Article 5(c) of Schedule 1(B) of the Indian Stamp Act. The two prominent legal issues in the present case were: i) whether the affidavit considered as a gift of transfer of ownership under section 122 of T.P.A. or merely a licence for permission under section 52 Easements Act?; ii) whether stamp duty under Article 33 read with Article 23 of Schedule 1(B) was rightly imposed or whether Article 5(c) should be applicable? The court observed that Gift under Section 122 T.P.A. involves voluntary, consideration-free transfer of ownership and possession, which is irrevocable. Whereas, licence under section 52 Easements Act merely allows lawful use of property, without creating any interest or ownership rights. The basic difference between a gift and licence would be transfer of interest in the immovable property. The affidavit only allowed excavation of mud, did not transfer ownership or exclusive possession of land. Further, Article 33 of Stamp Act does not define “gift” and therefore interpretation must be taken from section 122 T.P.A. The High Court held that the said affidavit does not amount to a gift deed but a licence under section 52 of the Easements Act.

[44] 2024:AHC-LKO:82705.

5.16 Gift under Muslim Law

Section 129 of T.P.A. protect the Muslim law of gifts from the contrary provisions of the Act. It provides that nothing in this Chapter shall be deemed to affect any rule of Muslim law. For a valid gift under the Muslim law, there are three essential requirements i.e., declaration of the gift by the donor, acceptance of the gift expressed or implied by or on behalf of the donee and delivery of possession of the subject of the gift by the donor to the donee and if all the three requirements are fulfilled, the oral gift would be valid and it cannot be ignored on the ground that a gift made by a Muslim is not in accordance with Section 123 of the T.P.A.

In *Nisha Gupta* v. *Inam Ahmed And Others*[46] the High Court held that in view of the provision under section 129 of the T.P.A., the provision of section 123 of the T.P.A. shall not affect the validity of the gift under any rule of Muslim Law, so if an oral gift is there and the aforesaid three requirements are fulfilled, it cannot be ignored on the ground that a gift made by a Muslim is not in accordance with section 123 of the T.P.A. However, if a gift is made by a Muslim by executing a gift deed, it is not exempt from registration in accordance with the provision under section 17 of the Registration Act. Section 129 of the T.P.A. does not exempt the written gift deed executed by a Muslim.

In *Sahas Degree College* v. *State of U.P*[47] the High Court referred to Mulla, Principles of Mahommedan Law, which states the legal position of gift under the Muslim law. It provides three essential requisites to make a gift valid i) declaration of the gift by the donor ii) acceptance of the gift by the donee expressly or impliedly and iii) delivery of possession to and taking possession thereof by the donee actually or constructively. No written document is required in such a case. Section 129 T.P.A., excludes the rule of Muslim law from the purview of section 123 which mandates that the gift of immovable property must be effected by a registered instrument as stated therein. But it cannot be taken as a sine qua non in all cases that whenever there is a writing about a Muslim gift of immovable property there must be registration thereof. Whether the writing requires registration or not depends on the facts and circumstances of each case. The Court eventually determined that merely because the gift is reduced to writing by a Muslim instead of it having been made orally, such writing does not become a formal document or instrument of gift. When a gift could be made by Muslim orally, its nature and character is not changed because of it having been made by a written document. What is important for a valid gift under Muslim Law is

[45] 2024:AHC-LKO:86422.
[46] 2024:AHC-LKO:17547.
[47] 2024:AHC:129076.

that three essential requisites must be fulfilled. The form is immaterial. If all the three essential requisites are satisfied constituting valid gift, the transaction of gift would not be rendered invalid because it has been written on a plain piece of paper. The distinction that if a written deed of gift recites the factum of prior gift then such deed is not required to be registered but when the writing is contemporaneous with the making of the gift, it must be registered, is inappropriate and does not seem to us to be in conformity with the rule of gifts in Muslim Law.

6. Conclusion

The decisions of the High Court of Allahabad in 2024 underscore the enduring centrality of the T.P.A. as the governing framework for immovable property transactions, while also reaffirming that its principles must be applied in conjunction with other statutory laws, statutory amendments, personal laws, and equitable doctrines. The Court consistently emphasized that formal statutory compliance such as compulsory registration under Sections 54, 107 of T.P.A., and 17 of the Registration Act, 1908 cannot be bypassed by oral arrangements, mutation entries, or equitable pleas, thereby reinforcing the maxim that there can be no estoppel against statute.

Equally, the Court highlighted the nuanced role of general doctrines such as notice, *lis pendens*, fraudulent transfer, and part performance. These remain vital equitable safeguards but operate only within the limits of statutory prohibitions. In particular, rulings on Section 52 clarified that while *pendente lite* transfers are ordinarily subservient, they become void where a special law like the Urbun Land Ceiling Act expressly declares them so. Similarly, the application of Section 53 and Section 53-A are closely tied to questions of good faith, registration, and the transferee's diligence. At the same time, the Court refined the contours of specific transfers i.e. sale, mortgage, lease, gift, and exchange by stressing compliance with statutory form, the balance between contractual autonomy and legislative safeguards, and the protection of bona fide transferees. The survey shows how the Court's jurisprudence continues to harmonize equitable doctrines with legislative imperatives, advancing both transactional certainty and fairness.

It is essential for the Court to deliver a definitive ruling regarding the necessity of registering gift deeds executed by Muslims, rather than differentiating between a written deed of gift that acknowledges a prior gift, which does not require registration, and a gift made through a deed that necessitates registration. Moreover, there is a pressing need to reassess the legal provisions that mandate the registration of property transfer documents valued at Rupees 100/-.

Women and Law

*Vageshwari Deswal**

1. Introduction

The judicial stance towards women's rights in India has evolved significantly over time, reflecting broader social, constitutional, and international commitments to gender equality. The judiciary has often acted as a progressive force, expanding women's rights even when legislative or executive action lagged. Guided by constitutional morality, the stance has been largely egalitarian and transformative, However, one cannot deny that the judiciary has occasionally been constrained by societal attitudes and gender stereotypes.

In this article, some of the significant judicial pronouncements of the Allahabad High Court related to women's rights, which were delivered during the last year have been examined through the prism of gender justice. This is an attempt to critically analyse the ongoing discourse regarding contested positions on women's empowerment in India. While the judiciary has excelled in its role as the guarantor of justice by rendering positive judgements on the rights, recognition, and protection of women, it is imperative to note that our legal justice system has also rendered conflicting and sometimes misogynistic remarks especially in cases related to sexual abuse.

2. Women's Rights

2.1 Right to Guardianship and Custody

Section 6 of the Hindu Minority and Guardianship Act, 1956 traditionally recognized the father as the natural guardian of a minor, with the mother succeeding only after the father. The provision reflected a patriarchal bias. On the other hand we have a secular law governing custody and guardianship for all communities known as Guardians and Wards Act (G.W.A.), 1890. This Act defines guardian as a person instead of male or female. Section 7 of the legislation is the hallmark of this statute which emphasizes upon the 'welfare of the minor' as the main consideration while making orders under this Act. The judicial approach towards custody and guardianship rights of women in India reflects the courts' evolving interpretation of family law in the light of constitutional principles of gender equality and the welfare of the child. While traditional laws often privileged the father as the "natural guardian" the judiciary has played a crucial role in redefining these norms to promote both the best interests of the child and women's equal parental rights.

It has been twenty-six years since the Supreme Court by the tool of interpretation had extended the right to natural guardianship to mothers as well under the Hindu Minority

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and Guardianship Act, 1956.[1] Despite this the legislature has not amended the statute yet and this requires the court to time and again reaffirm its stand.

Upholding the mothers right to natural guardianship and custody of her minor child, a division bench of justice Ashwani Kumar Mishra and Justice Donadi Ramesh observed that various physical, emotional and psychological needs of a four-year-old girl would be better protected in the care and custody of her mother even though the daughter was happily residing with her father.[2]

In this case, Amit Dhama (appellant-husband) and Smt. Pooja (respondent-wife) were married on 23.05.2010, and two children were born from their union - a son on 02.04.2013 and a daughter on 29.09.2020. After differences arose between the parties, they began living separately. The husband instituted divorce proceedings under Section 13 of the Hindu Marriage Act, 1955, which were pending. During this period, the wife filed a petition for custody of their minor daughter (aged 4 years and 3 months) under Sections 7 and 12 of the Guardians and Wards Act, 1890. The Family Court passed an *ex- parte* order on 31.08.2024 awarding custody of the daughter to the mother. The son was studying in a boarding school at Faridabad with fees paid by the father, while the daughter was living with the father at the time of the custody proceedings. The central issue was whether custody of a minor daughter below 5 years of age should be granted to the mother who is the natural guardian under Section 6(a) of the Hindu Minority and Guardianship Act, 1956, or whether the father's care and existing arrangement should continue, particularly when the Court must balance the welfare principle against the disruption that might be caused by transferring custody.

The husband contended that he was taking due care of his minor daughter and possessed sufficient resources to continue her care. He argued that the daughter was happily living with him and would be traumatized if custody was transferred to the mother. He maintained there was no valid reason for custody to be handed over to the respondent-wife, especially since he had been the primary caregiver during the separation period. The wife's counsel argued that by virtue of Section 6(a) of the Hindu Minority and Guardianship Act, 1956, the mother is the natural guardian of a minor child below 5 years of age. They emphasized that the mother was a graduate and was living with her parents in a stable environment. The counsel contended that no circumstances had been pointed out that would justify denying custody of the minor daughter to her natural guardian, especially when she was completely deprived of both children's company.

[1] *Geeta Hariharan* v. *Reserve Bank of India* (1999) 2 SCC 228.
[2] *Amit Dhama* v. *State of UP* 2025, AHC 5962 DB.

The High Court dismissed the appeal and upheld the Family Court's order granting custody of the 4-year-old daughter to the mother, while maintaining fortnightly visitation rights for both parents. The Court applied well-established principles of child custody law, acknowledging that the mother is ordinarily the natural guardian of a minor child below 5 years of age and would normally be allowed custody unless specific circumstances warrant a different course. The Court emphasized that in child custody matters, the primary concern is always the welfare and well-being of the child, not the convenience of parents. The Court while testing the conflicting interests maintained a delicate balance, recognizing that while transfer of custody might cause some psychological stress to the child, the larger welfare considerations supported custody with the mother. The Court noted that the mother was educated, living in a stable family environment with her parents, and had been completely deprived of both children's company since separation.

The judgment is reflective of the judicial approach which has categorically ruled from time to time that mother cannot be denied the status of natural guardian. Earlier in 2022, a Supreme Court bench of Justice Dinesh Maheshwari and Justice Krishna Murari held that a mother, as the natural guardian of her child, has the sole right to decide the child's surname and even give the child up for adoption. The child was two and a half months old when his father expired and an year later his mother married another man to whom she subsequently gave her son in adoption. The paternal grandparents filed a petition under the Guardians and Wards Act, 1890 praying to the courts for appointing them as the natural guardians of the boy. This petition was rejected by the trial court but the High Court in 2014 while upholding the mothers right to natural guardianship, issued directions for restoration of the biological father's surname. Setting aside the Andhra Pradesh High Court order the Supreme Court observed that Surname is not only indicative of lineage and should not be understood just in context of history, culture and lineage but more importantly the role it plays is with regard to the social reality along with a sense of being for children. Thus, the High Court's direction was held to be cruel by disregarding the impact that such a step would have on the mental health and self-esteem of the child, hindering a smooth and natural relationship of the child with his parents by continuously reminding about this adoption.[3]

In another case,[4] a habeas corpus petition was filed on behalf of Vanya Mishra, a minor aged approximately 6 years, by her father (petitioner no. 2). The child's father and respondent no. 4 (Smt. Jyoti Singh) were husband and wife who initially lived together lovingly and had a daughter. Due to subsequent differences, Smt. Jyoti Singh was residing at her maternal home and had taken the daughter with her. When the father went to meet his

[3] *Mrs.Akella Lalitha* v. *Sri Konda Hanumantha Rao and Others* (2022) SC.

daughter at the maternal home of respondent no. 4, respondents no. 4, 5, and 6 prevented him from meeting the child and forcibly ejected him from the house. Despite repeated attempts by the father to meet his daughter, the respondents continued to prevent such meetings and drive him away. The father contended that respondent no. 4 was living separately from him and was not allowing him to meet his daughter, thus keeping the child under illegal custody

The primary legal issue was whether a *habeas corpus* petition is the appropriate remedy for child custody disputes, or whether such matters should be adjudicated through detailed proceedings under the Guardians and Wards Act, 1890. The Court also had to determine what constitutes "illegal detention" in the context of family disputes over child custody and whether summary proceedings under Article 226 are suitable for determining complex custody rights.

The petitioner's counsel argued that innocent children being kept away from their father and being deprived of meeting him could not be compensated in any other manner. The act done by the respondents was indicative of cruelty and harshness towards minor children. As the father of the minor child, he was the actual guardian responsible for her proper care and education, and therefore the child should be released from the respondents and handed over to his custody.

The learned Additional Government Advocate opposed the arguments and drew the Court's attention to legal principles established in Supreme Court cases including *Syed Saleemuddin* v. *Dr. Rukhsana*[5] and *Tejaswini Gaud* v. *Shekhar Jagdish Prasad Tewari*,[6] emphasizing that ordinary remedies lie under specific enactments but, the welfare of child is paramount in custody matters.[7]

The Allahabad High Court dismissed the *habeas corpus* petition as not maintainable, and directed the petitioner to file a proper suit under the Guardians and Wards Act while granting interim visitation rights to the father. The Court extensively analysed Supreme Court precedents, particularly *Syed Saleemuddin* v. *Dr. Rukhsana*,[8] which established that in habeas corpus applications for custody of minor children, the principal consideration is whether custody is unlawful or illegal and whether child welfare requires change of custody. The Court also relied on *Tejaswini Gaud* v. *Shekhar Jagdish Prasad*

[4] *Vanya Mishra (Minor Corpus) and another* v. *State of UP and another, Habeas Corpus* Writ Petition No. 523 of 2025, Allahabad HC (2025 AHC 98816).

[5] (2001) 5 SCC 247.

[6] (2019) 7 SCC 42.

[7] Also see, *Javeriya Fatma* v. *State of UP* (2024); *Master Mahib Sajjad Masood* v. *State of UP* (2024); *Shiv Singh (Minor)* v. *State of UP* (2024).

[8] *Supra* note 5.

Tewari,[9] which held that ordinary remedy lies under the Hindu Minority and Guardianship Act or Guardians and Wards Act, and writ courts should exercise extraordinary jurisdiction only in exceptional cases. The Court emphasized that in child custody matters, there are significant differences between inquiry under the Guardians and Wards Act and exercise of powers by writ courts, which are summary in nature. Writ courts determine rights only on affidavit basis, whereas proper custody determination requires detailed inquiry with evidence. Where detailed inquiry is required, courts should direct parties to approach civil courts rather than exercise extraordinary jurisdiction.

However, in another case[10] involving a minor muslim girl, the court refused to apply secular principles. A habeas corpus petition was filed on behalf of Abdia Arif, a minor aged about seven years. The child's father, Mohammad Shan, died in a road accident on 16.07.2020. Subsequently, on 11.09.2022, the mother, Zubairiya Shan, solemnized a second marriage with Mohammad Siraj. At the relevant time, the petitioner-corpus was in custody of respondents no. 4 and 5 (the paternal grandmother and paternal uncle of the child, respectively). The mother had been assured by the paternal relatives that custody would be handed over to her in due course. However, when the mother's second marriage was solemnized, she voluntarily left the child in the custody of the paternal relatives. The mother subsequently filed Case No. 92 of 2023 under Sections 25 of the Guardians and Wards Act and Section 7 of the Family Courts Act seeking custody, which was pending. Simultaneously, the paternal relatives had also filed Case No. 250 of 2022 under Sections 7/10 of the Guardians and Wards Act, and the Family Court had granted the mother interim visitation rights.

The central legal issue was whether a mother who has voluntarily left her child with paternal relatives upon her second marriage can claim custody through habeas corpus proceedings, particularly when the child's rights are governed by Muslim personal law, which provides specific provisions regarding custody rights of mothers who remarry. The case also raised questions about the application of personal law provisions within the framework of the Guardians and Wards Act.

The mother contended that custody of the child was illegally withheld by the paternal relatives and that she was entitled to custody as the natural mother. The petition sought relief through habeas corpus on the ground that the child was being illegally detained by respondents no. 4 and 5. The paternal relatives argued that custody proceedings were already pending in the proper forum and that interim visitation rights had been granted to the

[9] S*upra* note 6.

[10] *Abdia Arif* v. *State of UP*, 2024 Supreme (All) 477.

mother. They contended that the mother had voluntarily left the child with them and that the custody arrangement was not illegal.

The *habeas corpus* petition was dismissed as not entertainable, with the Court holding that the material on record did not suggest illegal detention of the child by the respondents. The Court conducted a detailed analysis of Muslim personal law regarding custody rights, particularly referencing Mulla's Principles of Mahomedan Law. The Court noted that under Section 352, the mother is entitled to custody (*hizanat*) of her male child until he completes seven years and female child until puberty. However, Section 354 provides specific disqualifications, including that a mother loses custody rights if she marries a person not related to the child within prohibited degrees (i.e., a stranger), though the right revives upon dissolution of the marriage. The Court emphasized that Section 17 of the Guardians and Wards Act requires courts to decide guardianship questions consistently with the personal law to which the minor is subject, while keeping the welfare of the minor as paramount. The Court noted that applications for guardianship must be made under the Guardians and Wards Act as per Section 349 of Mulla's Principles of Mahomedan Law.

The judgment is a stark reminder of the intense scrutiny that women's rights are subjected to in the garb of religion and the problem is further compounded by the reluctance of courts to intervene in personal matters. Such cases should be reasons to expedite implementation of Uniform Civil Code across the country so that rights are no longer subjected to religious practices in a rights-based country.

2.2 Maintenance

The judicial approach towards wife's right to claim maintenance has over the years evolved into one that strongly upholds financial security, dignity, and equality of women, consistent with the constitutional mandate under Articles 14, 15(3), and 21. Courts have repeatedly emphasized that maintenance is not a charity but a right, essential for ensuring social justice and preventing destitution.[11] Maintenance ensures dignity and sustenance and that is the reason why proceedings for maintenance should not be prolonged unnecessarily.[12]

2.3 Delay in Maintenance Payments Defeats the Purpose of the Law

Interim maintenance should be granted swiftly to avoid hardship.[13] Indian laws have several provisions providing for maintenance such as Section 125 Cr.P.C. (S. 144 B.N.S.S.) providing a summary remedy to wives, children and parents unable to maintain themselves.

[11] *Chaturbhuj* v. *Sita Bai* (2008) 2 SCC 316.
[12] *Bhuwan Mohan Singh* v. *Meena* (2015) 6 SCC 353.
[13] *Puneet Kaur* v. *Inderjit Singh Sawhney*, ILR (2012)I Del 73.

Then there is protection of women from Domestic Violence Act, 2005 which provides monetary relief including maintenance under Section 20. Personal laws such as the Hindu Marriage Act,1955 Hindu adoption and Maintenance Act, 1956 and also the Muslim Women Protection of Rights on Divorce Act, 1986 contain provisions providing for alimony. It has been held in *Shamima Farooqui* v. *Shahid Khan*[14] that a woman can claim maintenance under both Section 125 Cr.P.C. and personal laws, as these operate in distinct spheres. While avoiding double maintenance courts have to ensure that women are protected effectively. Maintenance under the Domestic violence Act and the Cr.P.C./ B.N.S.S. can co-exist but the amounts should be mindfully adjusted to avoid duplication. Such judgments reflect a pro-woman yet balanced approach. Upholding right to maintenance as a fundamental facet of equality, the judiciary has favoured fair maintenance for divorced as well as separated wives too. In the case of *Badshah* v. *Urmila Badshah Godse*[15] the Supreme Court while prioritizing social justice over technical legalities granted maintenance to a woman in a relationship resembling marriage when she was deceived into believing it was valid. Similarly courts have also upheld maintenance rights of second wives deceived into marriage, considering equity and the protection of women's dignity.

However, in order to maintain fairness courts have denied or reduced maintenance when the wife is financially independent or conceals her income. There is a need to distinguish between a wife who is gainfully employed and self-sufficient, and one who earns inadequately. The Supreme Court in *Rani Sethi* v. *Sunil Sethi*[16] held that a wife with independent, adequate income is not entitled to maintenance. But we have other rulings [17] wherein courts have held that mere employability does not disentitle a wife, what matters is financial capacity to sustain a similar lifestyle.

2.4 What Constitutes 'During the Proceedings'

"The doctrine of alimony and the maintenance allowance due to the wife from her husband finds its root in the economic and social conditions under which normally most of the married woman have to live and depend upon the income of their husband, who holds the position like that of a guardian of his wife. The provision for allowance is intended to secure justice to the wife who has no independent income sufficient for her support and necessary expenses of the proceeding while prosecuting or defending any proceedings under the matrimonial law. It is on this principle that the law relating to the matrimonial causes provides for rules for payment of maintenance *pendente lite* and expenses of the proceedings

[14] (2015) 5 SCC 705.
[15] (2014) 1 SCC 188.
[16] 179 (2011) DLT 414.
[17] *Kanchan* v. *Kamalendra* AIR 1993 Bom 493.

by the husband to the wife. These are the principles which have been incorporated in Section 24 of the Act which further lays down that any order for *pendente lite* maintenance and expenses for the proceedings can be made not only in favour of the wife but also in favour of the husband who has no independent income sufficient for his/her support and necessary expenses of the proceedings".[18]

In the case of *Ankit Suman* v. *State of UP*,[19] the court was faced with the predicament of analysing, the correct Interpretation of what constitutes 'during the proceedings' under the Hindu Marriage Act. Ankit Suman (petitioner-husband) filed a divorce petition against his wife Neeraj Saini (respondent-2) under Section 13 of the Hindu Marriage Act, 1955 on 20.07.2018. During the pendency of the divorce proceedings, the wife filed an application under Section 24 of the Hindu Marriage Act for interim maintenance on 26.03.2019. The family court initially dismissed this application on 30.10.2020, but the Allahabad High Court allowed the appeal on 18.11.2021, awarding Rs. 10,000/- per month to the wife and Rs. 10,000/- to the minor daughter. The Supreme Court later modified this to Rs. 10,000/- for wife and Rs. 5,000/- for minor daughter on 29.11.2022. The wife subsequently filed an execution case claiming Rs. 2,50,000/- as arrears till 26.08.2024. Meanwhile, the wife had also filed a transfer petition to move the divorce case from Pilibhit to Bareilly, which resulted in the High Court staying the divorce proceedings on 18.09.2023.

The main issue in this case was**,** whether maintenance under Section 24 of the Hindu Marriage Act continues to be payable when the main matrimonial proceedings are stayed by the court due to a transfer petition filed by the maintenance recipient. The Petitioner argued that Section 24 maintenance is only payable "pendente lite" (during pending proceedings). Once the High Court stayed the divorce proceedings due to the wife's transfer petition, the proceedings cannot be considered "pending". The wife cannot claim maintenance for the period when proceedings are stayed, especially when she herself caused the stay by filing the transfer petition. It is contradictory for the wife to get proceedings stayed and simultaneously claim maintenance for the stayed period.The respondent's counsel could not effectively contradict the legal position but maintained that the wife was in need of financial support

The Court extensively analyzed the scope of Section 24 of the Hindu Marriage Act. The Court relied on multiple precedents including *Amrit Lal Nehru* v. *Usha Nehru*[20] *and Vinod Kumar Kejriwal* v. *Usha Kumar Kejriwal*[21] cases to establish that "proceedings under the Act" should be given a wide interpretation covering all stages from filing to final disposal.

[18] *Ankit Suman* v. *State of UP* at para. 7.
[19] 2025: AHC:133601.
[20] AIR 1982 J&K 98.
[21] 1993(1) CCC 69.

Citing *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association*,[22] the Court distinguished between "quashing" and "staying" an order. Stay does not wipe out the order from existence but merely prevents its operation during the stay period. The Court held that even transfer proceedings constitute "proceedings under the Hindu Marriage Act" and therefore maintenance remains payable during such proceedings. The Court cited numerous cases showing that Section 24 applications are maintainable even during appeal proceedings, revision proceedings, restoration applications, and jurisdiction challenge proceedings.

2.5 Able Bodied Husband Liable to Maintain His Wife Who is Unable to Maintain Herself

In the case of *Gaurav Sharma@Indramohan* v. *State of UP and another*,[23] Gaurav Sharma (revisionist-husband) challenged a Family Court order dated 13.08.2024 in Case No. 198 of 2021 under Section 125 Cr.P.C., where his wife Smt. Payal (opposite party no. 2) was awarded Rs. 4,000/- per month from the date of filing the application on 27.04.2021 to the date of judgment, and Rs. 8,000/- per month from the date of judgment onwards. The marriage was solemnized on 24.06.2019, and the wife alleged that her husband and in-laws demanded additional dowry in the form of a big television and Rs. 2 lakh cash. When she expressed inability to fulfil their demand, she was subjected to torture and cruelty. On 21.06.2020, her husband allegedly beat her, causing the death of her unborn child, and denied her medical treatment. In July 2020, her in-laws left her at the border of her parental village with a warning never to return without fulfilling the dowry demand. She subsequently filed Case Crime No. 38 of 2021 under Sections 498A, 323, 504, 506 I.P.C. and Section 3/4 Dowry Prohibition Act. The primary legal issue was whether maintenance under Section 125 Cr.P.C. should be awarded when there are contradictory statements regarding the husband's income and employment, and what factors should be considered while determining the quantum of maintenance when the husband's actual income cannot be precisely established but the wife is living separately due to matrimonial cruelty. The husband argued that the trial court failed to examine all documents and illegally passed the impugned order. He contended that the wife had left her matrimonial home without sufficient cause and on her own free will. The wife and her father had given false assertions that he worked in ICICI Bank as a cashier, with contradictory statements where the wife said he worked in ICICI Bank Delhi while her father said Bank of Baroda, Salempur Branch. He submitted that he derived his earnings from agricultural activities and had filed an income certificate from Tehsildar showing monthly income of Rs. 4,000/-. He also filed an affidavit

[22] (1992) 3 SCC1.
[23] 2025 AHC 95480.

under the Supreme Court's *Rajnish* v. *Neha* guidelines[24] stating he had a 1/5th share in 1.096 hectare agricultural land. He argued that the trial court imposed heavy maintenance liability without properly estimating his income.

The wife's counsel submitted that the trial court had framed four points of determination based on the parties' pleadings and decided all points after due appreciation of evidence. The findings recorded by the trial court were not perverse and need not be interfered with in the revision. The wife maintained that she was subjected to cruelty, harassment, and torture by her husband and in-laws due to dowry demands.

Allowing the revision partly, the Court affirmed the maintenance amount of Rs. 4,000/- per month from the date of filing the application to the date of judgment but reduced the future maintenance from Rs. 8,000/- to Rs. 5,000/- per month from the date of judgment. The Court conducted a comprehensive analysis of maintenance jurisprudence under Section 125 Cr.P.C. and held that the findings of the trial court were based on evidence and need not be interfered with. However, it found that the quantum of future maintenance fixed as Rs. 8,000/- per month appeared somewhat excessive and deserved reduction since it was not proved that the revisionist worked as a cashier in a bank. The Court applied the Supreme Court guidelines from *Rajnesh* v. *Neha*[25] regarding factors for determining maintenance, including status of parties, reasonable wants of the claimant, independent income and property of the claimant, age and employment of parties, maintenance of minor children, wife's earning capacity, serious disability or ill health, and right to residence. The Court also held that an able-bodied husband cannot shirk his responsibility to maintain his wife who cannot maintain herself, even if his earnings cannot be proved precisely.

2.6 Deductions from Maintenance Amount

In the case of *Rana Pratap Singh* v. *Neetu Singh and others*, the husband challenged the order of family court that required him to pay Rs. 15000 per month to his wife and Rs. 5000 each to his two children till they attain the age of majority. He argued that his wife was staying away from him without sufficient cause and despite a decree of restitution of conjugal rights being passed in his favour by the family court. On grounds of other expenditure such as loan instalments and LIC premium, he pleaded the court to reduce the amount of maintenance. The court refused to entertain his plea and observed that only compulsory statutory deductions such as income tax can be reduced from the gross salary of the husband while fixing maintenance.[26]

[24] Cr. Appeal No. 730 of 2020 (Arising out of SLP Cr. No. 9503 of 2018.
[25] *Ibid.*
[26] 2024 LiveLaw (AB) 203 Criminal Revision No. 1762 of 2023.

2.7 Living in Matrimonial Home After Husband's Death Whether Mandatory to Claim Maintenance from Father-in-law

In the case of *Shree Rajpati* v. *Smt. Bhuri Devi*[27] the respondent's husband (son of the appellant) was a daily-wage employee in the Irrigation Department and was murdered on 20 November 1999. She did not remarry and sought maintenance from her father-in-law under Section 19 of the Hindu Adoptions and Maintenance Act, 1956 . The father in law argued that since she had left her matrimonial home to reside with her parental family and that she had some deposit in her name. The Family Court in Agra disregarded his arguments and awarded maintenance of Rs 3,000 per month to the respondent. Hence this appeal. The main issue in this case was whether living in the matrimonial home is a mandatory precondition to claim maintenance? The court held that the obligation under Section 19 H.A.M.A. is to ensure the widow's maintenance when she cannot sustain herself and the father-in-law has means. This obligation does not hinge on co-residence in the matrimonial home. The court further observed that in our society many widows may choose to live with their parental family for varied reasons, and such a choice cannot automatically disqualify them from claiming maintenance. This judgment reinforces the protective and welfare-oriented purpose of Section 19 H.A.M.A., while underscoring the genuineness of dependency, means and circumstances of both parties matter more than formal residence status when awarding maintenance.

2.8 Family Dispute Between Mother and Daughter

Sangeeta Kumari v. *State of UP* was a peculiar case between mother and daughter. Sangeeta Kumari (applicant-daughter) filed an application under Section 482 Cr.P.C. seeking to quash criminal proceedings initiated against her by none other than her own mother over a family dispute between mother and daughter. The mother was admitted to Ispat Hospital, Ranchi, Jharkhand, during the proceedings. The Court attempted reconciliation by encouraging the daughter to visit her hospitalized mother and discharge her responsibilities, including paying medical expenses. The issue before the court was whether criminal proceedings between mother and daughter can be quashed when the complainant-mother passes away during the pendency of the Section 482 application. The case involved a family dispute requiring resolution. Mother needed medical care and financial support from her daughter. The petitioner initially sought quashing of the case on merits, but later expressed willingness to settle given the family relationship. The Court noted the family relationship and encouraged settlement, providing interim protection on deposit of Rs. 50,000/-. When informed of the mother's hospitalization, the Court encouraged the daughter

[27] 2024 AHC 140720 DB.

to visit her mother as a daughter, not as an opponent. Additionally, the Court directed the payment of 25% of the medical expenses and quoted Sanskrit principles emphasizing respect for elders and proper conduct. After the mother's death, the applicant argued that the application had become infructuous.

The court dismissed the application under Section 482 Cr.P.C. Upon production of complainant- mother's death certificate, the proceedings were dismissed as infructuous.

2.9 Right of Adult Daughter to Claim Maintenance

The Allahabad High Court while dealing with a case related to maintenance delved deep into the question of rights, of daughters to claim maintenance from parents after attaining majority and what would be the correct law to proceed with such applications. Whether she can claim under Section 125 of the Cr.P.C. Or under Section 20 (3) of the Hindu Minority and Guardianship Act, 1956? In the case of *Anurag Pandey* v. *State of UP* and another, the revisionist Anurag Pandey (father) challenged the Family Court order dated 30.07.2024 which granted maintenance to his major daughter Kumari Neha Pandey (respondent-2) under Section 125 Cr.P.C. The daughter was admittedly major at the time of filing the maintenance application, which was disclosed in the application itself. The Family Court, while acknowledging that major daughters are not entitled to maintenance under Section 125 Cr.P.C., nevertheless granted maintenance by applying Section 20(3) of the Hindu Adoption and Maintenance Act, 1956, within the same Section 125 proceedings.

The issue before the court was whether a Family Court can grant maintenance to a major daughter under Section 20(3) of the Hindu Adoption and Maintenance Act, 1956 in proceedings initiated under Section 125 Cr.P.C., and what is the correct procedure for such cases?

The petitioner stated that Section 125 Cr.P.C. only provides maintenance for minor children (except physically/mentally disabled major children).It was argued that if major daughter's maintenance is to be considered under Section 20(3) of Hindu Adoption and Maintenance Act, 1956, the proceedings should be converted to a civil suit with proper trial. The Family Court wrongly interpreted the Supreme Court judgment in *Abhilasha* v. *Parkash*.[28] On the other hand the argument on behalf of the daughter were that she was in need of financial support.

The Court clarified that Section 125 Cr.P.C. provides maintenance only for: Minor legitimate/illegitimate children (clause b) and Major children with physical/mental disability preventing self-maintenance (clause c).

[28] AIR 2020 SC 4355.

Thus, the court categorically stated that major daughters (not suffering from any disability)are excluded from the coverage of Section 125 Cr.P.C. Setting aside the order of family court, the high court allowed the revision. The court also remitted the matter back to the family court and directed the respondent number 2 to move an application for converting the application under S. 125 Cr.P.C. into a suit under Section 20(3) of the Hindu Adoptions and Maintenance Act, 1956.

2.10 Constitutional Rights

2.10.1 *Right to Marry a Partner of One's Choice*

In the case of *Naziya Ansari and another* v. *State of UP and others*,[29] an adult couple married on their own volition and against the wishes of their family members. The issue was whether an adult woman has the right to choose her spouse and live with him/her without being forced to return into the custody of her natal family? Declaring that held an adult has the fundamental right under Article 21 of the Constitution of India to go wherever she likes, live with the person of her choice, or marry according to her will, the Allahabad High Court quashed the FIR lodged by the girls uncle and relatives against her husband. The court further directed that the woman be allowed to live with her husband and that the police ensure her protection against any interference by her family. Criticizing the Magistrate's decision to send the adult woman back to family custody despite her clear statement of fear the court held that it was the duty of state machinery to protect life and liberty, especially in potential "honour killing" or family-revenge situations.

2.10.2 *Freedom to Abort Pregnancy Even at Advanced Stage*

In this case a 15 year girl who was kidnapped was recovered when she was 29 weeks pregnant. When she put up a plea before the Allahabad High court for termination of her pregnancy at 32 weeks, the court held that the decision has to be taken by the woman herself. Three teams of doctors examined her and concluded that though continuation of pregnancy would impact her physical and mental well- being, medical termination of pregnancy at this stage would pose a threat to her life. Despite the risks involved the girl's parents were willing to terminate the pregnancy. However the court counselled them to continue with the pregnancy and issued directions to the State to bear all expenses for the delivery and also to ensure that if the petitioner decides to put up the child for adoption after its birth, the State should carry it out as privately as possible.[30]

[29] 2024 AHC 102679-DB.

[30] *X (Minor Victim)* v. *State of UP* Writ C No. 21956 of 2024.

2.10.3 *Maternity Benefits*

In furtherance of India's international obligations under CEDAW and ILO and in accordance with the constitutional guarantees of maternity relief and the provisions of the Maternity Benefit Act, 1961 (as amended in 2017) our judiciary has by adopting a welfare oriented approach, repeatedly interpreted these statutory and constitutional provisions to expand rather than restrict women's rights related to maternity, employment, and health. Denial of maternity leave has been held to amount to indirect discrimination against women.[31] Denial of maternity leave even to ad-hoc employees is arbitrary, illegal and unconstitutional.[32] The law doesn't distinguish based on the nature of employment and even contractual employees are entitled to maternity leave as per the Maternity Benefits Act, 1961.[33] In the case of *Deepika Singh* v. *Central Administrative Tribuna*l,[34] reinforcing that maternity benefit is a social welfare measure, not restricted by technical employment categories the Supreme Court expanded the concept of "family" to include non-traditional relationships and held that maternity leave should not be denied merely because the child is not biological (e.g., adopted or step-children).

In the case of *Charu Gaur* v. *State of UP and 2 others*,[35] Charu Gaur (petitioner) was employed as a teacher under the Basic Education Department of Uttar Pradesh. She had availed her first maternity leave and gave birth to a male child on 04.01.2021. Subsequently, she became pregnant again and applied for maternity leave on 11.06.2022. However, the Basic *Shiksha Adhikari*, Kasganj (respondent no. 3) rejected her application for second maternity leave vide order dated 25.06.2021, simply stating "Anumanya Nahi" (not permissible). The rejection was based on Rule 153(1) of the U.P. Financial Handbook Volume II to IV, which contained a restriction that second maternity leave could not be granted where there was a difference of less than two years between the end of the first maternity leave and the grant of second maternity leave. The petitioner challenged this denial, arguing that the Maternity Benefits Act, 1961 did not contain any such two-year gap restriction. The central legal issue was whether Rule 153(1) of the U.P. Financial Handbook, which imposed a mandatory two-year gap between first and second maternity leaves, could prevail over the provisions of the Maternity Benefits Act, 1961, which contained no such restriction, and whether the State Government's adoption of the central legislation through various government orders made the parliamentary act applicable with full force to state employees.

[31] *Anuradha Bhatia* v. *State of J&K*, 2022.
[32] *Dr. Kavita Yadav* v. *Secretary, Ministry of Health & Family Welfare* (2021) Delhi HC.
[33] *Shalini Singh* v. *State of Bihar* (2023)Pat HC.
[34] (2022) 7 SCC 491.
[35] 2024 AHC 195989- DB.

The petitioner's counsel argued that Rule 153 of the U.P. Fundamental Rules was *ultra vires* the Constitution of India, particularly Articles 42, 21, 14, and 16, as well as Section 5 of the Maternity Benefits Act. They contended that the State of Uttar Pradesh had already adopted the provisions of the Maternity Benefits Act, 1961 through government orders dated 08.12.2008, 24.03.2009, and 11.04.2011, and therefore the restrictive provisions of the Financial Handbook should not apply. They relied on previous single bench decisions in Anupam Yadav and Satakshi Mishra cases which had attained finality.

Initially, the State had opposed the petition by arguing that Rule 153 provided that a two-year gap was mandatory between first and second pregnancy for the benefit of maternity leave. However, during the proceedings, the learned Additional Chief Standing Counsel indicated that the State Government was in the process of reconciling the discrepancy between Fundamental Rule 101 subsidiary Rule 153 and the provisions of the Maternity Benefits Act, 1961, and that appropriate decisions would be taken after consultation with the Medical and Health Department.

The Division Bench allowed the writ petition, set aside the impugned order dated 25.06.2021, and directed the Basic Shiksha Adhikari to pass a fresh order in accordance with law within two months, ensuring all amounts payable to the petitioner were paid within the same timeframe. The Court extensively analysed the hierarchy between parliamentary legislation and executive instructions, holding that the Maternity Benefits Act, 1961, being enacted by Parliament under Entry 24 of List-III of the Seventh Schedule, would prevail over the Financial Handbook provisions which were merely executive instructions. The Court emphasized that in case of any inconsistency, the statutory enactment framed by Parliament would prevail.

2.10.4 *Eligibility of Daughter for Compassionate Appointment*

In the case of *Punita Bhatt* v. *BSNL New Delhi*[36] the widowed daughter of an employee of BSNL was living with her father along with her minor son after her husband's death in 2009. In 2016 she applied for a compassionate appointment under BSNL's scheme (adopting the Government of India Department of Personnel & Training's OM dated 09.10.1998) as a dependent family member of the deceased employee. BSNL and subsequently the CAT rejected her claim on the ground that a "widowed daughter" is not eligible under the scheme, i.e., that the category of dependent family member did not include a "widowed daughter" (or a married daughter).

[36] 2024 AHC-LKO 77237-DB.

The central issue in this case for determination was whether a widowed daughter of a deceased employee can be regarded as a "daughter" under the definition of "Dependent Family Member" in the compassionate appointment scheme (OM 09.10.1998) and thereby be eligible for consideration for a compassionate appointment, subject to dependency on the employee. The Bench held that the scheme's definition of "daughter (including adopted daughter)" is not preceded by the word "unmarried", and thus there is no express exclusion of married or widowed daughters under the scheme. Neither marriage nor widowhood of a daughter should automatically disqualify her from being a "daughter" under the scheme, if dependency is proved. The Court also reiterated that past jurisprudence has taken a purposive and expansive interpretation of "family" and "dependent family member" in compassionate appointment schemes, including married daughters. The Court further held that if a scheme excludes married or widowed daughters while including sons, that classification lacks a reasonable basis and violates equality guarantees under Articles 14, 15 and 16. Hence, the Court quashed the CAT's order and directed BSNL to reconsider the petitioner's application under the weightage/points system applicable in BSNL, without rejecting it simply on the ground that she was a widowed daughter. The decision is to be taken within two months.

This decision has reinforced that dependency, not the marital status of the daughter, is the key criterion for consideration under such welfare-schemes and adds to the jurisprudence of inclusive interpretation of "dependent family member" in compassionate appointment frameworks across public sector / government employment contexts.

In the case of *Akhtari Khatoon* v. *State of UP and others*[37] The petitioner, Akhtari Khatoon, whose had father died in harness while serving as a Centrifugal Mechanic, claimed to be his only dependant and sough appointment on compassionate grounds. She was divorced from her husband and had been residing with her father since 2008. She sought compassionate appointment under the employer's Dying-in-Harness rules as well as the release of family pension and retiral dues.

The authorities rejected her request on the ground that she was a married/divorced daughter and not a "dependent family member" under the U.P. State Electricity Board Recruitment of Dependants of Board's Servants Dying in Harness Rules, 1975 (as amended in 2012). The court dismissed her petition as she had failed to establish financial dependency on the deceased at the time of his death. Further she was also beyond the permissible age of appointment as she was 50 years old. Her claim for family pension, was also rejected as the petitioner had not cited any statutory provision entitling her to such benefit as a divorced

[37] 2024 AHC 55977.

daughter under the relevant pension regulations. Earlier in 2023 in the case of *Vimla Srivastav* v. *State of UP*[38] the Allahabad High Court had struck down the word "unmarried" in Rule 2(c)(iii) of the U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 as being discriminatory and unconstitutional. The court had directed that the term "daughter" in the Rules must include all daughters, irrespective of marital status, provided dependency on the deceased government servant is proved. After this judgment, married daughters are eligible to be considered for compassionate appointment under the 1974 Rules, subject to proof of dependency and fulfilment of other conditions.

The decision in *Akhtari Khatoon's* case re-emphasizes judicial restraint in expanding compassionate appointment schemes beyond their statutory boundaries. While, *Punita Bhatt v. BSNL*, 2024 and *Vimla Srivastava v. State of U.P*(2023) have treated married/widowed daughters as dependents where the term "daughter" is unqualified, *Akhtari Khatoon* clarifies that each scheme must be interpreted in its own textual and regulatory context.

3. Divorce

3.1 Irretrievable Breakdown

In Divorce cases, the judiciary's approach has become progressively pro-woman, especially in safeguarding women's dignity, financial security, and autonomy, though courts now also strive for gender-neutral fairness in matrimonial disputes. By invoking the right to equality and dignity enshrined under articles 14 and 21 coupled with special provisions for women under Article 15(3), the judiciary has infused gender justice and constitutional morality into matrimonial jurisprudence by stepping in areas where statutes were patriarchal or silent. In the case of Naveen *Kohli* v. *Neelu Kohli*[39] the Apex Court observed that marriages "dead emotionally and practically" should not trap women; it recommended introducing irretrievable breakdown of marriage as a ground for divorce. This paved the way judiciary's gradual acceptance of no-fault divorce, making it easier for both spouses particularly for women in dead marriages to exit oppressive relationships. In Indian society the fear of stigma makes women cling onto their dead marriages and oppose divorce to continue in marriages where they are neither loved nor respected. Introduction of breakdown theory will enable the courts to set them free. In the case of *Shilpa Sailesh* v. *Varun Sreenivasan*[40] a Constitution Bench held that the Supreme Court can dissolve marriages under Article 142 on the ground of irretrievable breakdown even if one spouse opposes it, when reconciliation is impossible. This doctrine has often benefited women trapped in long,

[38] 2023 AHC 26379.
[39] (2006) 4 SCC 558.
[40] (2 SCC 4082023).

bitter litigations, as courts can now grant final relief without forcing them into lifelong litigation.

In the case of *X* v. *Y*,[41] the court observed that, "Under the Hindu law, marriage is a sacrament, a holy union for the performance of religious duties. It is not merely for physical gratification, but for spiritual and social obligations. However, while it remains a sacrament, the Hindu Marriage Act, 1955 has conferred statutory recognition to the right of dissolution in specific circumstances."[42] When the bond has been destroyed by persistent cruelty or total separation i.e. when the relationship has perished in substance, insistence on preserving the shell of marriage would do no good to either of the parties. Hence, while reaffirming marriage as a sacrament, the Court recognized that its sanctity cannot survive cruelty or long-term estrangement. The judgment bridges the gap between traditional Hindu philosophy and problems faced by modern couples in a rights based society.

3.2 Divorce Granted Where Breakdown of Matrimonial Bond is Beyond Repair

In *Apoorva Gupta* v. *Vandana Gupta*,[43] Apoorva Gupta (appellant-husband) married Vandana Gupta (respondent-wife) on 14.04.2012 at Hardoi. The husband filed a divorce petition on 06.08.2016 before the Family Court, Hardoi, alleging that the wife refused to live in Mallawan town and insisted on living in Delhi. Initially, he kept her in Delhi but later brought her to Mallawan with his parents when proper arrangements could not be made in Delhi. The wife did not cooperate in household chores and left for her parental home with her belongings. She lodged an FIR on 24.06.2013 under Sections 498A, 323, 324, 504, 506 I.P.C. and Sections 3/4 Dowry Prohibition Act against the husband and his family members, in which all were acquitted on 18.02.2014. The parties resumed cohabitation briefly but separated again on 09.05.2014. The wife delivered a daughter on 12.07.2014, but during the husband's visit to the nursing home, he was assaulted by her family members and was not allowed to participate in the child's ceremonies. The wife refused maintenance money orders sent by the husband and prevented him from meeting his daughter. The central legal issue was whether divorce should be granted on grounds of cruelty and desertion when there had been prolonged separation for over a decade with complete breakdown of matrimonial relationship, cross-criminal cases, and the wife's refusal to participate in appeal proceedings despite proper service of notice.

The appellant(husband) contended that the wife treated him cruelly by filing false criminal cases and creating disturbances in his family life. She deserted him without

[41] 2024 AHC 137694-DB.
[42] *Id.* at para. 27.
[43] 2024 AHC-LKO 59093- DB.

reasonable cause and had been living separately for over four years before filing the suit. He argued that she refused to cooperate in household responsibilities, indulged in daily quarrels and beatings, and got him threatened by her brothers. The wife's refusal to let him meet his daughter and her threat to entangle him in false cases constituted mental cruelty.

The wife denied all allegations in her written statement and claimed she was harassed for dowry demands. She alleged that the husband left her at her father's residence on 09.05.2014 and never inquired about her well-being thereafter. She maintained that she was willing to perform her conjugal obligations and resume marital life with the husband.

In the light of allegations and counter-allegations, the court noted that it was impossible for the parties to live together. "The long period of continuous separation of a decade establishes that the matrimonial bond is beyond repair. The marriage between the parties has become a fiction, though supported by a legal tie. By refusing to sever the tie between the plaintiff and the respondent, the family court has not served the sanctity of the marriage; on the contrary, it has shown disregard for the feelings and emotions of the parties which are not affectionate towards each other."[44]

Setting aside the Family Court's judgment dismissing the divorce suit, the High Court allowed the appeal, and granted a decree of divorce. Relying heavily on the Supreme Court judgment in *Rakesh Raman* v. *Kavita*.[45] The Court observed that cruelty includes both physical and mental elements, and where there has been prolonged separation exceeding a decade, it creates acute mental pain and suffering making cohabitation impossible, which falls within the parameters of mental cruelty. The Court noted that the absence of intention to inflict cruelty is irrelevant, as intention is not a necessary element for establishing cruelty.

In another case involving a medico couple,[46] the husband Dr. Prabhat Kumar Singh (appellant) married Dr. Sudha Singh (respondent-wife) on 14.12.1985 according to Hindu rites at Fatehpur. Both were medical professionals - the husband worked as a consultant in Iran initially and later joined SGPGI Lucknow, while the wife completed her MBBS and eventually opened her own nursing home "Paurush Hospital and Diagnostic Centre" in 2003. They had a son (born 26.04.1990) and daughter (born 16.08.1997), but tragically lost their son in a road accident on 03.08.2002. The husband alleged that since 2008-09, the wife became rude and intolerant, started living in a separate room in the same house, maintained complete independence with separate ingress and egress, and was extremely cruel to his elderly mother (aged 83 years), even attacking her with a kitchen knife on 15.11.2012. He

[44] 2024 AHC-LKO 59093- DB at para. 21.
[45] 2023 SCC OnLine SC 497.
[46] *Dr. Prabhat Singh* v. *Dr. Sudha Singh* 2025 AHC-LKO 13912-DB.

also alleged that the wife practiced occultism and involved herself with supernatural forces, maintaining close relationships with a tantrik from District Barabanki against whom police had found criminal cases. Since 2017, the husband left Lucknow and took a job in Patna to distance himself from the wife. The wife denied all allegations and claimed they had been living peacefully for 32 years. She counter-alleged that the husband was having an illicit relationship with one Geeta Vashist, a lady working in SGPGI Lucknow, since 2008, and that he filed the divorce suit to marry her. She claimed the husband forcefully shifted her to a separate room since July 2013 and left for Patna in 2017 specifically to abandon her. She maintained that Geeta Vashist was the root cause of all differences between the parties and alleged that the husband and Geeta Vashist were often found in compromising positions.

The primary legal issue was whether divorce should be granted on grounds of cruelty and desertion when both spouses were living separately in the same house from 2008-09, and in different cities from 2017, with allegations of the wife's involvement in occult practices, domestic violence against the elderly mother-in-law, and counter-allegations by the wife of the husband's extramarital relationship. Relying on judgments delivered by Supreme Court in *Satish Sitole* v. *Ganga*,[47] and *Vikas Kanaujia* v. *Sarita*[48] the court noted that since 2013 the parties have been living separately, they have financially independent lives, they have neither attempted to live together nor even visited each other. Thus, there are no chances of living together again.[49] The court held this to be a case of irretrievable breakdown of the marriage.

While the above cases point towards implementation of the breakdown theory by the court, there is another decision of Allahabad High Court in the case of *Pawan Kumar Pandey* v. *Sudha*[50] wherein the court, while acknowledging the possibility of relief in cases of breakdown of marital ties, has insisted on procedural fairness and evidence In this case, the husband filed a suit for divorce under Section 13 of the Hindu Marriage Act, 1955 alleging his wife is suffering from a continuous and incurable mental disorder (schizophrenia), is incapable of performing marital duties, and that the parties had been separated for a long period. The wife denied the husband's claims and alleged instead that she was harassed by the husband's family for dowry, that she never had a mental illness, and that she had been forced to leave the matrimonial home. After the Family Court dismissed the husband's suit on 29 April 2023, he approached the High Court in appeal. Denying relief, the High Court held that

[47] (2008) 7 SCC 734.
[48] 2024 SCC OnLine SC 1699.
[49] *Id.* at para. 32.
[50] 2024 AHC-LKO 71619-DB.

the husband had failed to establish mental illness in his wife so as to entitle him to divorce on that ground.

3.3 Divorce by Mutual Consent

In the case of *Angad Soni* v. *Arpita Yadav*[51] the appellant married Arpita Yadav (respondent-wife) on 05.08.2024 as per Hindu rites and rituals, with a written notarial marriage deed executed on 12.08.2024. The parties solemnized their marriage a second time on 03.09.2024 as per Hindu rites. However, hostility developed quickly between them. On 10.09.2024, the husband applied through IGRS Portal to the Superintendent of Police, Ambedkar Nagar, stating he was under threat of false complaints from the wife. In retaliation, the wife lodged FIR No. 96 of 2024 under Sections 115(2), 352, and 351(3) of Bharatiya Nyaya Sanhita on 11.09.2024. The wife later applied on 24.09.2024 to withdraw this FIR, stating a compromise had been reached. However, relations deteriorated further, and on 29.11.2024, the wife lodged another FIR No. 261 of 2024 under Sections 376, 506 I.P.C. and Section 3/4 P.O.C.S.O. Act. The husband then filed a Criminal Misc. Writ Petition seeking to quash the FIR, which resulted in a High Court interim order staying his arrest on 12.12.2024, referring the matter to mediation, and directing him to pay Rs. 50,000/- to the wife. Given the continuing hostility, both parties jointly filed a petition under Section 13-B (mutual consent divorce) along with an application under Section 14 of the Hindu Marriage Act seeking permission to file divorce before completion of one year of marriage.

The central legal issue was whether an application under Section 14 of the Hindu Marriage Act, 1955 can be allowed to waive the mandatory one-year waiting period for filing divorce petitions under Section 13-B (mutual consent divorce), particularly when both parties mutually agree to dissolution due to exceptional circumstances arising immediately after marriage.

The appellant's counsel argued that the opening phrase of Section 13-B "subject to the provisions of this Act" clearly establishes that provisions of Section 13-B are subject to other provisions of the Act, including Section 14. He contended that Section 14 was part of the original enactment (1955) while Section 13-B was subsequently inserted by Act No. 68 of 1976, suggesting that the original provision should have precedence. The counsel cited multiple High Court precedents from Delhi, Karnataka, Kerala, and Punjab & Haryana High Courts where similar applications were allowed, arguing that various High Courts had recognized that parties with mutual agreement for dissolution should be permitted to file divorce petitions under Section 13-B before the one-year period in exceptional circumstances.

[51] 2025 AHC-LKO 32543 DB.

Notably, the respondent's counsel supported the appellant's submissions and agreed that the one-year period should be relaxed since both parties wanted divorce as soon as possible to lead separate lives. This unanimous position of both parties strengthened the case for exceptional circumstances requiring judicial intervention.

The High Court allowed the appeal, set aside the Family Court's order rejecting the Section 14 application, and granted permission to file the mutual consent divorce petition before completion of one year of marriage. The Court directed that the divorce petition under Section 13-B would be treated as filed on 26.03.2025, enabling the parties to make the required motion under Section 13-B(2) after six months from that date.

The Court conducted a detailed analysis of the interplay between Sections 13-B and 14 of the Hindu Marriage Act. The Court noted that Section 14(1) creates a general bar against entertaining divorce petitions before one year of marriage, but the proviso allows exceptions in cases of "exceptional hardship to the petitioner or exceptional depravity on the part of the respondent." The Court interpreted this proviso as applicable to all divorce petitions under the Act, including mutual consent divorces under Section 13-B.

4. Crimes Against Women

4.1 Cruelty

Section 498A of the I.P.C. (Section 85 B.N.S., 2023) is largely viewed with great scepticism amidst narratives surrounding its misuse. However, the judiciary had adopted a balanced approach indicating the strong reaffirmation of its validity and the requirement of heightened scrutiny on its misuse. Recently, while dismissing a writ petition challenging the constitutionality of Section 498A of the I.P.C. the supreme court emphasised that the possibility of misuse alone doesn't render a provision invalid.[52] However, the law must be applied cautiously to avoid its weaponization for personal vendettas. Frequent remarks by the SC highlight concern over misuse of Section 498A for settling matrimonial score rather than addressing genuine cruelty.

In *Sanjay D. Jain* v. *State of Maharashtra*, the SC quashed proceedings against in-laws in a 498A case because the allegations were vague, omnibus and without specific acts of cruelty attributable to them.[53] Commenting on the trend of naming all and sundry in F.I.R.'s registered under Section 498A, a Nagpur bench of the Bombay High Court clarifies that the word 'relative' used under this section implies a status conferred by blood, marriage or adoption. A husband's *friend* cannot be treated as his “relative” under Section 498A merely

[52] *Janshruti (People's Voice)* v. *UOI and others*, 2025 INSC 536.
[53] 2025 INSC 1168.

because he visited and gave advice. It was alleged that the petitioner (Friend of husband) would frequently visit the house and encourage the husband to demand car and plot of land from the wife's family and send her back to her parents' home unless the demands were fulfilled.[54] In another case the Supreme court had held that even a woman or girlfriend in a romantic relationship with a man is not his relative and cannot be prosecuted as his relative under Section 498-A.[55]

4.2 Husbands Extramarital Affair Constitutes Cruelty and Abetment of Suicide

In the case of *Rishi Kumar Verma* v. *State of UP and another*[56] the accused Rishi Kumar Verma challenged the dismissal of his discharge application under Section 227 Cr.P.C. in a case where he was charged under Sections 498A, 306 I.P.C. for allegedly abetting his wife Priti Singh's suicide. The marriage took place on 25.06.2014, and informant Smt. Malti Singh (mother-in-law) alleged that Rishi Verma was a vagrant and drunkard who used to beat and torture her daughter. She alleged that for the last five months before the incident, the accused was having an extramarital affair with Diksha Sharma, who would visit their home in the wife's (deceased) absence. When the deceased objected, her husband threatened to divorce her and marry Diksha Sharma. On 19.06.2023, the mother found her daughter hanging from the ceiling fan by a towel noose. The investigation revealed extensive WhatsApp communications, CCTV footage, and CDR evidence showing frequent contact between the husband and Diksha Sharma from 08.02.2022 to 19.06.2023. The issue herein was whether sufficient grounds existed for framing charges under Section 306 I.P.C. (abetment of suicide) based on allegations of extramarital relationship, domestic violence, and dowry harassment, particularly when supported by digital evidence including WhatsApp chats, CCTV footage, and call detail records showing the husband's relationship with the co-accused.

The accused argued that there was no injury report supporting allegations of assault, no prior complaints were filed regarding dowry demand or matrimonial cruelty, the deceased was short-tempered and committed suicide under heat of passion, no evidence of abetment existed, he was falsely implicated by persons inimical to him as a forest department official, no ante-mortem injuries were found except ligature marks, and the magistrate dismissed his discharge application without proper consideration of grounds taken. On the other hand the prosecution contended that a prima facie case of abetment to suicide was established through the FIR version and investigation evidence. The extramarital relationship with Diksha Sharma was corroborated by CDR data showing frequent communication, CCTV footage

[54] Bom HC order dated 29th July, 2025.
[55] *Dechamma IM* v. *State of Karnataka* SC 2024.
[56] 2025 AHC 10847.

from the deceased's flat, hotel bills showing the accused and Diksha Sharma staying together, and the deceased's WhatsApp communications. The deceased was subjected to harassment and cruelty, and the husband's conduct created a situation compelling her to commit suicide in utter frustration.

The court dismissed the criminal revision filed by the accused and the discharge application rejection was upheld. The Court held that sufficient grounds existed to proceed with trial against the accused for charges under Section 306 I.P.C. The Court extensively analysed the law of discharge under Section 227 Cr.P.C., citing the landmark *Amit Kapoor* v. *Ramesh Chander case*[57] and establishing that at the discharge stage, the court must only determine whether there is ground for presuming that the accused has committed an offense, not whether the trial will end in conviction. The Court conducted detailed analysis of abetment of suicide jurisprudence, particularly citing Supreme Court cases including *M. Arjunan* v. *State*,[58] *Ude Singh* v. *State of Haryana*,[59] and *Nipun Aneja* v. *State of Uttar Pradesh*.[60] The Court noted that for Section 306 I.P.C., there must be proof of direct or indirect acts of incitement to suicide, and the accused's conduct must create a situation where the deceased perceives no other option except suicide. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide.[61]

4.3 Dowry Deaths and Bride Burning

In *Sunil Kumar* v. *State*[62] several connected criminal appeals arose from a dowry death case where Smt. Gayatri Devi (deceased) was allegedly set ablaze by her husband Sunil Kumar and in-laws on 13.05.1988. The deceased's marriage was arranged on 04.06.1987 through mediator Manohar Lal. The accused persons demanded additional dowry in the form of a big television, and when the deceased's father expressed inability to fulfil the demand, she was subjected to cruelty and torture. On the night of 13-14.05.1988, the informant received information that his daughter was set ablaze and admitted to Government Hospital Jaunpur in serious condition. She died on 14.05.1988 at 6:30 AM. The prosecution relied heavily on the deceased's dying declaration recorded by Executive Magistrate and evidence from family members. The trial court convicted Sunil Kumar under Section 302/149 and Section 498A I.P.C., while Bal Kishun and Smt. Paro Devi were convicted under Section 304B I.P.C.

[57] (2012) 9 SCC 460.
[58] (2019) 3 SCC 315.
[59] (2019) 17 SCC 301.
[60] Cr. Appeal No. 654 of 2017.
[61] *Ude Singh* v. *State of Haryana* (2019) 17 SCC 301 at para. 16.1.
[62] 2024 AHC 36087.

The main issue herein was whether the conviction under Section 302 I.P.C. was sustainable based on a dying declaration that contained certain inconsistencies and contradictions regarding who admitted the deceased to the hospital, and whether the case established ingredients for dowry death under Section 304B I.P.C. with the statutory presumption under Section 113B of the Evidence Act.

The appellants argued that the dying declaration was shrouded with suspicious circumstances as it lacked the deceased's signature or thumb impression and the certifying doctor was not produced in court. They contended that prosecution witnesses wrongly stated the deceased was admitted by locality people when hospital records showed she was admitted by her husband. The allegations of dowry demand were unnatural and concocted with no prior complaints. The postmortem doctor admitted that injuries could occur if a person's saree catches fire while igniting a hearth. The victim might have been in a hypnotic condition due to extensive burns affecting her mental state. The prosecution maintained that the case was proved beyond reasonable doubt based on witnesses' evidence and the dying declaration recorded by Executive Magistrate. The dying declaration specifically attributed the role of sprinkling kerosene oil and igniting match stick to accused Sunil Kumar. All ingredients of Section 304B I.P.C. were present, and the statutory presumption under Section 113B Evidence Act applied since the deceased died within one year of marriage after being subjected to dowry-related cruelty.

Allowing the appeals partially, the court set aside Sunil Kumar's conviction under Section 302 I.P.C. and modified it to Section 304B I.P.C. with 10 years rigorous imprisonment. The conviction under Section 304B I.P.C. for Bal Kishun and Smt. Paro Devi was affirmed but sentence was reduced from 10 years to 7 years considering their age (over 70 years) and the passage of time since the 1988 incident. The Court conducted extensive analysis of dying declaration jurisprudence, particularly relying on Supreme Court cases *Irfan @ Naka* v. *State of U.P.*,[63] *Laxman* v. *State of Maharashtra*,[64] and *State of Gujarat* v. *Jayrajbhai Puniabhai Varu*[65] The Court established that dying declarations must be wholly reliable and inspire confidence, and where suspicions arise regarding veracity, additional corroborative evidence may be required. The Court found a significant contradiction between the prosecution's claim that the deceased was admitted to hospital by locality people (as stated in the FIR and dying declaration) versus hospital records showing she was admitted by her husband. This false statement in both the informant's evidence and the dying declaration created doubt about the reliability of the prosecution's case.

[63] 2023 LiveLaw (SC) 698.
[64] (2002) 6 SCC 710.
[65] AIR 2016 SC 3218.

4.4 Safeguarding Women in Live-in-relationships Against Crimes of Cruelty and Dowry Death

In the case of *Adarsh Yadav @ Aditya Yadav & 3 Others* v. *State of U.P. & 3 Others* the deceased woman was living with the applicant (Adarsh Yadav) in a live-in relationship. The applicant argued that since there was no legally wedded wife relationship, the offences under Section 304-B (dowry death) and Section 498A (cruelty) of the Indian Penal Code (I.P.C.) were not attracted. The trial court had refused to discharge the applicant so the applicant approached the High Court under Section 482 Cr.P.C. for quashing/discharge. The High Court considered whether the legal relationship required for those offences existed and held that held that even assuming a live-in relationship rather than formal marriage, the records reflected that the two were residing together as husband and wife at the material time, which is sufficient to invoke Sections 498A and 304-B in the facts. Thus the High court refused to quash the charges while reinforcing the objective behind enactment of women specific provisions such as S. 498A and S. 304-B of the I.P.C. Protection meant for wives will not be denied to women in spouse-like relationships where the circumstances indicate a cohabitation similar to marital relationships.

4.5 Mediation Whether Permissible in Criminal Proceedings Involving Matrimonial Disputes?

In matrimonial matters, courts have leaned in favour of mediation. Courts have encouraged settlement/mediation, or quashing proceedings when the parties have reconciled and continuing prosecution would serve no purpose.

In *Dinesh Singh and others* v. *State of UP and another*[66] an application was filed under Section 482 Cr.P.C. seeking to quash charge-sheet no. 01 dated 20.04.2024 and summoning order dated 15.06.2024 in Case Crime No. 69 of 2024 under Sections 498-A, 323, 504, 506, 376 I.P.C. and Section 3 and 4 of Dowry Prohibition Act at Police Station Cholapur, District Varanasi. The applicants contended that since the matter was matrimonial in nature, it should be referred to mediation. The main issue in this case was whether criminal proceedings in matrimonial disputes under Section 498-A I.P.C. and Dowry Prohibition Act can be referred to mediation, and if so, under what conditions. The petitioner vehemently argued that proceedings arising out of matrimonial disputes are suitable for mediation and amicable settlement. Applying well-established principles regarding client-counsel relationship the court directed the applicants to deposit Rs. 25,000/- within two weeks - Rs. 20,000/- to opposite party no. 2 and Rs. 5,000/- for mediation centre expenses. Memo of

[66] 2024 AHC198691.

parties with contact details was directed to be provided. The court also instructed that there would be no coercive action if deposit receipt is produced before trial court. Directions were given to file amendment application to convert the application under Section 528 of B.N.S.S.

4.6 Filing False Cases of Cruelty by Wives Amount to Mental Cruelty

In the case of *Smt. Shikha Trivedi* v. *Saurabh Shukla*,[67] the appellant Shikha Trivedi (wife) married Saurabh Shukla (respondent-husband) on 09.12.2012. The husband filed a divorce petition on grounds of cruelty and desertion under Section 13 of the Hindu Marriage Act, 1955. The husband alleged that the wife had an illicit relationship with her colleague Raj Bahadur, lived separately from July 2013 to March 2014, and again from 25.05.2016 onwards. Cross FIRs were filed - the mother-in-law lodged FIR No. 459/2016 against the wife for theft and misbehaviour, while the wife lodged FIR No. 460/2016 against the husband's family for domestic violence under Sections 307, 354, 323, 504, 506 I.P.C. The wife's allegations included sexual harassment by her brother-in-law and domestic violence. The Family Court granted a divorce on 14.10.2022 on the grounds of cruelty and desertion. The main issue for consideration before the court was whether divorce should be granted on grounds of cruelty and desertion when there are conflicting allegations of domestic violence and extramarital relationships, and whether the doctrine of res judicata applies to successive divorce petitions.

The petitioner argued that the husband had illicit relationships with different women. She faced harassment and sexual advances from her brother-in-law and she was subjected to domestic violence at the hands of her husband and the mother-in-law. Earlier divorce suits in 2017 and 2018 were dismissed, so the present suit was barred by *res judicata*. It was also alleged that the Family Court had failed to consider the entire evidence properly. The husband levelled counter allegations and argued that the wife had a pre-marital and post-marital relationship with Raj Bahadur, as admitted in his police statement. Wife deserted the matrimonial home and lived separately for prolonged periods. Wife filed false criminal cases, causing mental cruelty. Earlier suits were dismissed on procedural grounds, not on the merits, so *res judicata* doesn't apply.

The Court held that res judicata doesn't apply when previous suits were dismissed on procedural grounds rather than on merits, citing *Prem Kishore* v. *Brahm Prakash*[68] and *Satyadhyan Ghosal* v. *Deorajin Debi*.[69]

But, the Court found cruelty proven on account of filing of false FIR No. 460/2016

[67] 2025 AHC-LKO 13910-DB.
[68] 2023 INSC 316.
[69] AIR 1960 SC 941.

which was subsequently quashed by the High Court in 2023. The quashing order had specifically found material contradictions and absence of evidence for dowry demand and domestic violence allegations. Quoting the Supreme Court precedents in *K. Srinivas Rao* v. *D.A. Deepa*[70] and *Narasimha Sastry* v. *Suneela Rani*[71] the court ruled that that filing of false criminal cases constitutes mental cruelty. The Court applied the *Lachman Utamchand Kirpalani* v. *Meena*[72] test requiring *factum* of separation which was admitted as they were living separately since 25.05.2016.

The *Animus deserendi* (intention to desert) was established through a pre-marital relationship with Raj Bahadur that continuing post-marriage as evidenced by his police statement. Citing Samar Ghosh v. Jaya Ghosh, the Court noted a prolonged separation of over 8 years, with cross-criminal cases indicates a complete matrimonial breakdown

The alleged misuse of 498A of the I.P.C. (Section 85 of B.N.S.) concerning the protection of married women from violence and harassment at the hands of her husband and his relatives, especially in connection with dowry demands is a thorny issue. To prove charges under this provision it is crucial to establish a prima facie case against the accused. This is essential too in order to prevent the misuse of law and the legal process. The implications of levelling frivolous, omnibus and general allegations may even be counter-productive for the complainant." In *Arnesh Kumar* v. *the State of Bihar*[73] the Supreme Court had established stringent guidelines so that arrests are the exception, not the norm, in cases relating to Section 498A of the I.P.C., 1860. Still, certain sections of society have called for the repeal of 498A so that false accusations do not occur. False accusations, as per NCRB data 2022, show that the number of cases found to be false is sufficient to repeal the law. We have precedents where women were fined and even jailed for false accusations of crime. There are numerous false cases in other criminal proceedings as well. What is intriguing is however, the absence of calls to repeal laws relating to assault or murder despite proven record of false accusations.

5. Sexual Offences

5.1 Whether Compromise is Permissible in P.O.C.S.O. Cases?

In 2023, the Allahabad High Court decision in the case of *Ajay Diwakar* v. *State of UP*[74] of granting bail to a man accused under P.O.C.S.O. on condition of his marrying the victim was criticised as equating marriage with justice by using it as a means to legitimise the

[70] (2013) 5 SCC 226.
[71] 2017 SCC OnLine Hyd 714.
[72] 1964 AIR 40.
[73] AIR 2014 SC 2756.
[74] Cr. Misc Bail Application No. 1777 of 2023. Order dated 3/5/23.

crime thereby obscuring the purpose and objective of P.O.C.S.O. The court relied on victim's statements recorded under Sections 161 and 164 of Cr.P.C. that not only they have solemnised marriage but stayed together as husband and wife. The court noted that there is presumption that they had physical relationship also. So, considering that age of victim according to ossification report being about 19 years and there being no objection from the victim's father to the marriage, the court granted bail.[75] In 2024, the court cautioned against mechanical application of P.O.C.S.O. and advocated a nuanced approach in *Satish Alias Chand* v. *State of UP*[76] while discussing potential misuse of P.O.C.S.O. in consensual romantic cases involving teenagers. However at the same time the court affirmed that in child sexual abuse / P.O.C.S.O. cases, compromise between parties is not by itself sufficient to extinguish prosecution, especially where the offence is severe and protected interest is high. While deciding the quashing of a case under P.O.C.S.O. for sodomising a child, the court in *Ram Bihari* v. *State of UP and another*[77] refused to quash the case despite a compromise, on the ground of the severity of the crime, the accused's prior bad record, the victim's age and compelling societal interest to safeguard children against sexual abuse.

5.2 Denial of Bail in P.O.C.S.O. Cases

Ruling that, in P.O.C.S.O. cases, long detention alone is not a sufficient ground for bail the court emphasised that in the specific case, the presence of incriminating medical evidence along with the statement of victim under Section 164 Cr.P.C. and statutory presumptions under P.O.C.S.O. tilt the balance against bail.[78] The judgment demonstrates the threshold interplay. Thus, while the trial serves to determine guilt, bail decisions cannot ignore gravity of offences and statutory safeguards for minors. In cases under P.O.C.S.O., even if detention has been prolonged, the Court will scrutinize the available material and may lean against bail unless strong mitigating factors exist.

5.3 Consent Given Under Fear or Misconception is No Defence to Charge of Rape

In *Raghav Kumar* v. *State of UP*[79] the court ruled that if consent to physical intimacy was given by the woman under fear or misconception then such sexual activity with tainted consent would amount to rape. The court quoted the Supreme Court judgment in *Kaini Rajan* v. *State of Kerala*,[80] that "Consent requires voluntary participation not only after the exercise of intelligence based on knowledge of the significance of the morality, quality of the act but

[75] *Id.* at paras. 26 (ix) and (x).
[76] 2024 AHC 108011.
[77] 2024 AHC 117945.
[78] *Pradum Singh* v. *State of U.P. & Ors*. 2024:AHC-LKO:41454.
[79] 2024 AHC 146503.
[80] (2013) 9 SCC 113.

only after fully exercising the choice between resistance and assent whether there was consent or not is to be ascertained only after a careful study of the relevant circumstances".

5.4 Permissibility of Preliminary Enquiry in Sexual Offences

In the case of *X* v. *State of U.P.*[81] the victim alleged that the respondent abused her in filthy language, attempted to molest her and threatened her husband when he came to help. The Magistrate directed a preliminary police inquiry and relied on a police report favouring the accused to dismiss the application. Setting aside the order of the magistrate the High Court held that "In cases like the present one, directing preliminary investigation to police into allegations made by the victim in application under Section 156(3) Cr.P.C. and placing reliance on police report submitted in favour of the proposed accused is neither desirable nor lawful." By clarifying that in cases related to sexual offences a Magistrate should not routinely direct a preliminary police inquiry this decision reinforces the principle from *Lalita Kumari* v. *Government of U.P. & others* that the Magistrate must apply mind and decide on merits, not treat the police report as determinant. Sounding a caution in discrimination between different types of cases, the Court observed that preliminary inquiries may be justifiable in certain categories like family disputes; commercial offences or in cases where there is excessive delay in registration of FIR, but it should not be allowed as a routine for serious offences like sexual assault.

5.5 Husband Can Be Held Guilty Under S. 377 Of I.P.C. Despite 2013 Amendments

In the case of *Imran Khan alias Ashok Ratna* v. *State of UP and anr*.,[82] the petitioner sought to quash criminal proceedings arising from Case Crime No. 41 of 2023 under Sections 498-A, 323, 504, 506, 377 I.P.C. and 3/4 Dowry Prohibition Act, Police Station Shivkuti, District Prayagraj. The complainant-wife had lodged an FIR on 23.02.2023, though the alleged incidents dated back to 2019, representing a delay of approximately four years. The police submitted a charge-sheet on 28.06.2023, and the Magistrate took cognizance on 10.08.2023. The case involved allegations of domestic violence, dowry harassment, and most significantly, unnatural sexual intercourse under Section 377 I.P.C. between the husband and wife. The principal legal issue was whether carnal intercourse by a husband with his wife against her wishes constitutes an offense under Section 377 I.P.C., particularly in light of the 2013 amendments to Section 375 I.P.C. (rape) and the Supreme Court's decision in *Navtej Singh Johar*[83] case regarding consensual sexual acts. The case also addressed questions of delay in FIR filing, medical examination refusal, and witness support.

[81] 2024:AHC:164363.
[82] 2025 LiveLaw (AB) 164.
[83] AIR 2018 SC 4321.

The petitioner's counsel raised multiple contentions. First, there was considerable delay in filing the FIR (Incident occurred in 2019 but FIR was filed in 2023) without explanation, relying on Supreme Court precedent in *Shivendra Pratap Singh Thakur@ Banti* v. *State of Chhatisgarh and others*[84] Second, no offense under Section 377 I.P.C. was made out since the parties were husband and wife, citing Madhya Pradesh High Court decisions in *Manish Sahu*[85] and *Shashank Harsh*[86] cases which held that unnatural sex by husband with wife above 18 years doesn't constitute offense. Third, the wife refused medical examination, which was fatal to her case *per* decision in *State of Himachal Pradesh* v. *Rajesh Kumar.*[87] Fourth, independent witnesses didn't support the wife's version, and no specific dowry demand was established.

The wife's counsel opposed the application, arguing there was no proof of the applicant's legal divorce from his earlier wife at the time of their marriage. The affidavit given during police investigation was allegedly made under the applicant's pressure to save the marriage. From the bare perusal of FIR and statements under Sections 161 and 164 Cr.P.C., prima facie offenses were established sufficient for trial.

Rejecting the application under Section 528 B.N.S.S. the Court held that unnatural sexual intercourse by a husband with his wife without her consent, even if she is above 18 years, would be punishable under Section 377 I.P.C., though it may not constitute rape under Section 375 I.P.C. This judgment represents a significant departure from recent Madhya Pradesh High Court decisions and establishes important precedent regarding marital sexual autonomy. The Court conducted an exhaustive analysis of Section 377 I.P.C., tracing its evolution through the *Navtej Singh Johar*[88] case and the 2013 amendments to rape laws.

The Court grounded its decision in fundamental constitutional principles, particularly citing *K.S. Puttaswamy*[89] case regarding privacy rights and *Navtej Singh Johar*[90] case regarding dignity. The Court held that a wife, despite being married, retains individual rights to sexual orientation and dignity, and her fundamental right to refuse consent for unnatural sex cannot be taken away merely because of her marital status.

[84] Cr. Appeal No. 2588 of 2024 SC.
[85] Misc Cr. Case No. 8388 of 2023, MP HC.
[86] Misc Cr. Case No. 40044 of 2023, MP HC.
[87] 2025 INSC 331.
[88] AIR 2018 SC 4321.
[89] AIR 2017 SC 4161.
[90] AIR 2018 SC 4321.

6. Conclusion

The year 2024 will go down in the history of Indian women as one that brought about a major shift in the way law perceives crimes against women. The introduction of a special chapter in the Bharatiya Nyaya Sanhita, 2023 dedicated to women and children indicates the prioritisation of women's safety and security.

The Judiciary especially the Prayagraj and Lucknow benches of the Allahabad High Court have displayed a mixed approach towards women's rights. While supporting women's autonomy in certain domains e.g., bodily decision-making such as abortion; maintenance rights; recognising coercion in sexual consent, it gave way to social norms under personal law matters. It rendered monumental judgments emphasising protection of women's socio-economic rights such as maintenance and prompt disposal of such cases to prevent destitution of women. This indicates judicial sensitivity towards women's rights. However, the reasoning sometimes invokes personal law or moral or social commentary, which may lead to debates about the intersection of women's rights, secular law and cultural norms. While many decisions advance women's rights, some others raise concerns from a women's rights perspective by overlooking the social implications of divorce for a woman while disregarding her wishes and granting divorce on basis of breakdown theory. In P.O.C.S.O. cases, the courts remarks though seemingly controversial reflect genuine social implications.

High Court judgments do not have a binding effect on other high courts but they do have a persuasive value and may influence similar cases and judicial attitudes. Therefore it is pertinent that the court's remarks must be seen in context of fact patterns; each case involves specifics, so we need to safeguard against generalisation. The intersection of personal liberties and social moralities in a gendered world continues to raise complex socio-legal questions. In such a scenario, engendering judicial approaches is a continuous work in motion.

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