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FROM THE DESK OF CHIEF EDITOR

Does the Constitution contain the Will of the people? This is a fundamental question. Repeatedly raised. From the beginning of the Constitution. It has been asked even after 70 years of working of the Indian Constitution. This question came up before the top court in the first week of June, 2021. The bench comprised of Justices L.Nageswara Rao, Hemant Gupta and Ravindra Bhat. This bench was hearing the Madras Bar Association's challenge to the Tribunals Reforms (Rationalization and Conditions of Service) Ordinance, 2021. The Central Government had legislatively overruled the consistent stand of the Supreme Court on how Tribunals shall be constituted right from 2010. The Attorney General K.K.Venugopal categorically argued: "Court may pass many judgments, but Parliament can say we would not accept because it is not in the interest of people". The Supreme Court bench countered by saying "if the Union of India losing a case can become the subject matter of legislation, that will become the order of the day!" The Supreme Court asked, "how the Government could have knocked down" the basis of its order by bringing in an Ordinance. This interaction focuses the question whether the Constitution contains the Will of the people or not? The judgment is awaited.

In a system which is governed by a written Constitution, neither of the three organs is supreme. The Parliament, the Executive and the Judiciary, they are to function under the Constitution. The three organs are to play their respective roles as assigned under the Constitution and as per the Constitution itself. No organ can bypass the Constitution. Nor ignore the Constitution. Each action is tested on the touchstone of the Constitution. Therefore, it is the Constitution which is supreme. The Constitution binds each organ.

This background would help us in dealing with the fundamental question. The Parliament is to legislate. The executive is to govern and the judiciary is to oversee whether they have acted as per the Constitution or not. The Preamble to the Indian Constitution begins with the words: **We, The People of India..... Adopt, Enact and Give to Ourselves This Constitution.** This leaves nothing to doubt. It is the people of India who resolved to constitute India into a **Sovereign Socialist Secular Democratic Republic.** It was further resolved to secure to all its citizens: **Justice, Liberty, Equality and Fraternity.** Thus, the Preamble contains the basic

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structure of the Constitution which in turn is reflective of the **Will of the people**. It is in this context that it is not open to the Parliament to change, damage or destroy the basic structure of the Constitution. The basic structure which is beyond the touch-ability is only to ensure that the **Will** of the people must be retained and kept intact. Leaving aside the basic structure of the Constitution, the Parliament can amend the Constitution. In fact, the whole of the Constitution contains the Will of the People. What exactly is the meaning and the scope of different provisions of the Constitution, the same is interpreted by the constitutional courts from time to time. The Parliament enacts various laws. Those laws are required to be in consonance with the Constitution. The Constitution is not a static document. It grows through the legislative and judicial processes. **Therefore, the Will of the people continues to grow within the parameters of the Constitution.**

The Parliament enacts the law. It is challenged on the basis of the Constitution. The constitutional courts examine the constitutionality of the legislation. The legality of many legislations is upheld. In some cases, the legislations are found to be in conflict with the Constitution. Accordingly, they are declared unconstitutional. Of-course, the constitutional courts assign reasons as to why a particular legislation is found to be in conflict with some provision/provisions of the Constitution. In such a situation, can the Parliament enact the law overruling the judgment of the apex Court. **Can the Parliament take shelter behind the Will of the People!** The Parliament (Both Houses) is an elective collegiate body of more than 800 members. Does it mean that the Parliament represents the **Will** of the people or what is in the **interest** of the people. This needs a serious consideration. The Parliament changes every five years. Will the 'Will of the people' change with the change of the Parliament. If this is accepted, the Constitution would be rendered nugatory. The Ministers and Members of Parliament take oath to bear true faith and allegiance to the Constitution of India as by law established. It is precisely because of this reason that the people of India have given a written Constitution for the country's governance. There should not be any conflict between the Will of the people as contained in the Constitution and as conceived by the Government of the day. The political executive controls the Parliament. Whatever the political executive considers and feels, as to what is in the interest of the people, it acts accordingly. But it must also blend with the Constitution. It is a matter of common knowledge that no Government (without exception) likes to have extra checks, controls and limitations on itself. The reason being, it is required to follow the discipline of the Constitution. The Institution of Ombudsman took more than 50 years to become part of the system. Even after it has come into operation, it is hardly heard of. Can it be said that this institution is not reflective of the Will of the

people. The success of any such institution depends upon the political environment more than the legal environment. No system can function without checks and balances. **It is time to realize that the Constitution and Rule of Law are supreme. Because they contain the Will of the people. Precisely, because of this reason the Constitution and Rule of Law are binding on one and all.** Therefore, it is not open to the Parliament to say that the Will of the people changes with the change of the Government.

Rule of Law itself is the sum total of **Will** of the people or what is **in the interest of the people**. Rule of Law includes Principles of Natural Justice. Fairness. Fair Trial. What is reasonable, just and fair. Rule of Law is to ensure: No arbitrariness. No abuse of discretionary power. Rule of Law is to make possible – The Good Governance. Let us test the rationale of the Parliament. If every legislation is actually the reflection of the **Will** of the people, why people challenge before the Constitutional Courts? Why people have trust and confidence in the Judiciary? The last resort of the People is: the Courts. It is true, not only for India. It is the same, for other jurisdictions also. The judicial process across the globe is the same. The courts are independent bodies. They are neutral. They examine and consider cases with open and objective minds. The petitions are filed. The pleadings are completed. The cases are argued at length. Each aspect is examined independently. The best of lawyers on both sides assist the court. The cases are decided impartially. From the single judge, the appeal is preferred before the division bench. The appeal is again argued at length. All aspects are considered and decided. Still further, the matter goes before the Supreme Court. The two or three Judge bench considers impartially and decides. Some matters of Constitutional importance are referred to Constitutional benches of five judges. Sometimes, even larger benches. These cases are again argued at length. By the best of legal minds. The earlier precedents are considered. In some cases, they are accepted. In some, they are not. But not, without reasoning and meaningful consideration. It is not a game only of numbers. This is how the law grows. The Jurisprudence develops.

In the ultimate analysis, it is the human agency which man's different constitutional and statutory bodies. Therefore, it is the human fabric which makes all the difference. It is this human fabric which needs to be weaved with the Constitutional threads. Why? Because, it is the fundamental duty to abide by the Constitution. The Constitution is the holy book. It binds one and all. The Parliament has amended the Constitution 104 times. These amendments are part integral of the Constitution. Let us pledge to follow the Constitution. It is the Constitution which contains the **Will** of the people.

LATEST CASES: CIVIL

" A person aggrieved is an expression which has expanded with the larger urgencies and felt necessities of our times."

- *V.R. Krishna Iyer, J. in Maharaj Singh Vs. State of U.P., (1977)1SCC155, para 19*

Uttar Pradesh Power Transmission Corporation Ltd v. CG Power and Industrial Solutions Limited:2021 SCC OnLine SC 383- When can High Court entertain a writ petition, notwithstanding the availability of an alternative remedy?- HELD- that the existence of an arbitration clause does not debar the court from entertaining a writ petition.

Stating that the availability of an alternative remedy does not prohibit the High Court from entertaining a writ petition in an appropriate case, the Court highlighted that the High Court may entertain a writ petition, notwithstanding the availability of an alternative remedy, particularly

- (i) where the writ petition seeks enforcement of a fundamental right;
- (ii) where there is failure of principles of natural justice or
- (iii) where the impugned orders or proceedings are wholly without jurisdiction or
- (iv) the vires of an Act is under challenge.

The Court was hearing a dispute between Uttar Pradesh Power Transmission Corporation Ltd. (UPPTCL) and CG Power and Industrial Solutions Limited arising out of a Framework Agreement with UPPTCL for construction of 765/400 KV Substations, at Unnao, Uttar Pradesh. UPPTCL had directed CG Power to remit Labour Cess amounting to Rs.2,60,68,814/-, computed at 1% of the contract value, under Sections 3 sub-section (1) and (2) of the Building and Other Construction Workers' Welfare Cess Act, 1996, hereinafter referred to as the "Cess Act", read with Rules 3 and Rule 4 (1), (2) (3) and (4) of the Building and Other Construction Workers Welfare Cess Rules, 1998, hereinafter referred to as the "Cess Rules" and also Section 2 (1)(d), (g) and (i) of the Building and Other Construction Workers (Regulation of Employment and Condition of Service) Act, 1996.

This direction had come after, in the Audit Report, the Accountant General pointed out the lapse on the part of UPPTCL, in not deducting labour cess from the bills of the contractor, that is Respondent No.1, in respect inter alia of the First Contract, observing that every employer was required to levy and collect cess at a rate not exceeding 2% and not less than 1% of the cost of construction incurred by an employer and

to deposit the same with the Building and Other Construction Workers Welfare Board.

When CG Power filed a writ petition before the Allahabad High Court challenging the same, UPPTCL did not oppose the writ petition on the ground of existence of an arbitration clause. Nor was there any whisper of any arbitration agreement in the Counter Affidavit filed by UPPTCL to the writ petition in the High Court.

In such circumstances, the Supreme Court held that the existence of an arbitration clause does not debar the court from entertaining a writ petition and that relief under Article 226 of the Constitution of India may be granted in a case arising out of contract. However, the writ jurisdiction under Article 226, being discretionary, the High Courts usually refrain from entertaining a writ petition which involves adjudication of disputed questions of fact which may require analysis of evidence of witnesses.

[Link to read the Judgment:](#)

In Re Contagion Of Covid 19 Virus In Children Protection Homes: Smw (C) No.4 Of 2020- Stop Illegal Adoption Of Children Orphaned By COVID; Public Advertisements For Adoptions Unlawful: SC -HELD- The order was passed by a bench comprising **Justices L Nageswara Rao and Aniruddha Bose** in the suo moto case initiated by the court to deal with the problems of children affected by COVID (*In Re Contagion of COVID Virus In Children Protection Homes*).

Expressing concerns about the illegal adoption of children orphaned by COVID-19, the Supreme Court has directed State Governments and Union Territories to act against NGOs which are indulging in illegal adoption.

"No adoption of affected children should be permitted contrary to the provisions of the JJ Act, 2015. Invitation to persons for adoption of orphans is contrary to law as no adoption of a child can be permitted without the involvement of CARA. Stringent action shall be taken by the State Governments/Union Territories against agencies/individuals who are responsible for indulging in this illegal activity", the Court ordered.

"The State Governments/Union Territories are directed to prevent any NGO from collecting funds in the names of the affected children by

disclosing their identity and inviting interested persons to adopt them", the bench added.

The Court's directions are:

- The State Governments/Union Territories are directed to take action against those NGOs/individuals who are indulging in illegal adoptions.
- Wide publicity should be given to the provisions of the JJ Act, 2015 and the prevailing schemes of the Union of India and the State Governments/Union Territories which would benefit the affected children.

[Link to read judgment:](#)

Bangalore Electricity Supply Company Limited (BESCOM) v. E.S. Solar Power Pvt. Ltd: 2021 SCC OnLine SC 358- Interpretation of Contracts: Not our duty to delve deep into the intricacies of human mind: Supreme Court - HELD- The bench has shed light on how Courts should proceed while interpreting contracts.

Referring to various authorities, here is what the Court concluded:

- The duty of the Court is not to delve deep into the intricacies of human mind to explore the undisclosed intention, but only to take the meaning of words used i.e. to say expressed intentions. (Kamala Devi v. Seth Takhatmal, 1964 (2) SCR 152)
- In seeking to construe a clause in a Contract, there is no scope for adopting either a liberal or a narrow approach, whatever that may mean. The exercise which has to be undertaken is to determine what the words used mean. It can happen that in doing so one is driven to the conclusion that clause is ambiguous, and that it has two possible meanings. In those circumstances, the Court has to prefer one above the other in accordance with the settled principles. If one meaning is more in accord with what the Court considers to be the underlined purpose and intent of the contract, or part of it, than the other, then the court will choose former or rather than the later. (Ashville Investment v. Elmer Contractors, 1988 (2) All ER 577)
- The intention of the parties must be understood from the language they have

used, considered in the light of the surrounding circumstances and object of the contract. (Bank of India and Anr. v. K. Mohan Das, (2009) 5 SCC 313)

- Every contract is to be considered with reference to its object and the whole of its terms and accordingly the whole context must be considered in endeavoring to collect the intention of the parties, even though the immediate object of inquiry is the meaning of an isolated clause (Bihar State Electricity Board v. Green Rubber Industries, (1990) 1 SCC 731)

[Link to read the Judgment:](#)

Sarina Sarkar and others vs State of Haryana and others: Civil Appeal No.3159 Of 2004 – 'No Compromise On Forests' : Supreme Court Directs Removal Of Encroachments In Faridabad Khori Gaon Within 6 Weeks-HELD-

The Supreme Court directed the removal of all encroachments on forest land within 6 weeks in a plea seeking a stay on the demolition of 10,000 houses that has been planned by the Municipal Corporation of Faridabad at Khori Gaon in Faridabad, Haryana.

A SC Bench heard the plea which has been filed by 10,000 families living in the Khori Gaon who had challenged the Haryana Shehri Vikas Pradhikaran Rehabilitation Policy to the extent that it limited the cut-off for rehabilitation to 2003, and directed for a report of compliance under the signature of the Chief Secretary and Secretary of Haryana Forest Department to be provided.

"After the certificates are provided, we will determine our own factual position. We make it clear that MCF will proceed as stated in February 2020 order and State will give necessary logistical support to enable corporation to fully evict the occupants on forest land and clear the encroachments", directed the Court.

The Supreme Court further directed the DCP of Faridabad to provide police protection to the corporation officials. It did, however, note that the relief claimed by the Petitioners could be considered de hors the compliance given in the earlier February 2020 order.

[Link to read the judgment:](#)

LATEST CASES: CRIMINAL

"The legislature does not always say everything on the subject. When it enacts a law, every conceivable eventuality which may arise in the future may not be present to the mind of the lawmaker. Legislative silences create spaces for creativity. Between interstices of legislative spaces and silences, the law is shaped by the robust application of common sense."

- *Dr D.Y. Chandrachud, J. in Union of India v. G.S. Chatha Rice Mills, (2021) 2 SCC 209, para 57*

Sunil Kumar @ Sudhir Kumar Vs. State Of Uttar Pradesh : 2021 SCC OnLine SC 413: Trial Courts Have To Clearly Specify Whether Sentences Would Run Concurrently Or Consecutively:-HELD-The Supreme Court reiterated what was expounded in the case of *Nagaraja Rao v. Central Bureau of Investigation : (2015) 4 SCC 302*, that it is legally obligatory upon the Court of first instance, while awarding multiple punishments of imprisonment, to specify in clear terms as to whether the sentences would run concurrently or consecutively.

The Hon'ble Court emphasized that it needs hardly an emphasis that any omission to carry out this obligation by the Court of first instance causes unnecessary and avoidable prejudice to the parties, be it the accused or be it the prosecution.

[Link to read the Judgment:](#)

Vinod Dua vs. Union of India : 2021 SCC OnLine SC 414: Supreme Court Rejects Plea To Constitute Committees To Hold Preliminary Inquiries Before Lodging Sedition Cases Against Senior Journalists - HELD- The Supreme Court rejected the prayer to not register an FIR against a person belonging to media with at least 10 years of standing unless cleared by the Committee as suggested, being asking for the constitution of the Committee completely outside the scope of the statutory framework. The Court, however, clarified that every Journalist will be entitled to protection in terms of *Kedar Nath Singh v. State of Bihar 1962 Supp (2) SCR 769*, as every prosecution under Sections 124A and 505 of the IPC must be in strict conformity with the scope and ambit of said Sections as explained in, and completely in tune with the law laid down in *Kedar Nath Singh (supra)*.

[Link to read the Judgment:](#)

Neeharika Infrastructure Pvt. Ltd v. State of Maharashtra, 2021 SCC OnLine SC 315: Whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India? -HELD- The final conclusions on the principal/core issue are as under:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;
- ii) Courts would not thwart any investigation into the cognizable offences;
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

- vi) Criminal proceedings ought not to be scuttled at the initial stage;
- vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;
- ix) The functions of the judiciary and the police are complementary, not overlapping;
- x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;
- xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;
- xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;
- xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;
- xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;
- xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;
- xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.
- xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the

higher forum can consider what was weighed with the High Court while passing such an interim order.

- xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.

[Link to read the Judgment:](#)

Satbir Singh & Another Vs. State Of Haryana : 2021 SCC OnLine SC 404: Summarized the law under Section 304-B, IPC read with Section 113-B -HELD- At the cost of repetition, the law under Section 304-B, IPC read with Section 113-B, Evidence Act can be summarized below:

- i) Section 304-B, IPC must be interpreted keeping in mind the legislative intent to curb the social evil of bride burning and dowry demand.
- ii) The prosecution must at first establish the existence of the necessary ingredients for constituting an offence under Section 304-B, IPC. Once these ingredients are satisfied, the rebuttable presumption of causality, provided under Section 113-B, Evidence Act operates against the accused.
- iii) The phrase “soon before” as appearing in Section 304-B, IPC cannot be construed to mean ‘immediately before’. The prosecution must establish existence of “proximate and live link” between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives.
- iv) Section 304-B, IPC does not take a pigeonhole approach in categorizing death as homicidal or suicidal or accidental. The reason for such non categorization is due to the fact that death occurring “otherwise than under normal circumstances” can, in cases, be homicidal or suicidal or accidental.
- v) Due to the precarious nature of Section 304-B, IPC read with 113-B, Evidence Act, Judges, prosecution and defence should be careful during conduction of trial.
- vi) It is a matter of grave concern that, often, Trial Courts record the statement under Section 313, CrPC in a very

casual and cursory manner, without specifically questioning the accused as to his defense. It ought to be noted that the examination of an accused under Section 313, CrPC cannot be treated as a mere procedural formality, as it based on the fundamental principle of fairness. This aforesaid provision incorporates the valuable principle of natural justice “audi alteram partem” as it enables the accused to offer an explanation for the incriminatory material appearing against him. Therefore, it imposes an obligation on the court to question the accused fairly, with care and caution.

- vii) The Court must put incriminating circumstances before the accused and seek his response. A duty is also cast on the counsel of the accused to prepare his defense since the inception of the Trial with due caution, keeping in consideration the peculiarities of Section 304-B, IPC read with Section 113-B, Evidence Act.
- viii) Section 232, CrPC provides that, “If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal”. Such discretion must be utilized by the Trial Courts as an obligation of best efforts.
- ix) Once the Trial Court decides that the accused is not eligible to be acquitted as per the provisions of Section 232, CrPC, it must move on and fix hearings specifically for ‘defence evidence’, calling upon the accused to present his defense as per the procedure provided under Section 233, CrPC, which is also an invaluable right provided to the accused.
- x) In the same breath, Trial Courts need to balance other important considerations such as the right to a speedy trial. In this regard, we may caution that the above provisions should not be allowed to be misused as delay tactics.
- xi) Apart from the above, the presiding Judge should follow the guidelines laid down by this Court while sentencing and imposing appropriate punishment.

- xii) Undoubtedly, as discussed above, the menace of dowry death is increasing day by day. However, it is also observed that sometimes family members of the husband are roped in, even though they have no active role in commission of the offence and are residing at distant places. In these cases, the Court need to be cautious in its approach.

[Link to read the Judgment:](#)

Nathu Singh vs. State of Uttar Pradesh: 2021 SCC OnLine SC 402: while dismissing the anticipatory bail application of the respondents-accused, granting them 90 days to surrender before the Trial Court to seek regular bail and granting them protection from coercive action for the said period- Whether justified -HELD-

The Court observed that The Constitution Bench in Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1 has authoritatively held that when a Court grants anticipatory bail under Section 438, Cr.P.C., the same is ordinarily not limited to a fixed period and would subsist till the end of the trial. However, it was clarified by the Court that if the facts and circumstances so warranted, the Court could impose special conditions, including limiting the relief to a certain period.

It is therefore clear that a Court, be it a Sessions Court or a High Court, in certain special facts and circumstances may decide to grant anticipatory bail for a limited period of time. The Court must indicate its reasons for doing so, which would be assailable before a superior Court.

If the High Court had therefore decided to allow the anticipatory bail application of the respondents-accused herein, albeit for a limited period of 90 days, the task before this Court would have been somewhat easier. We would only have had to assess the reasons assigned by the Court, if any, for the imposition of such special condition in terms of the judgment in Sushila Aggarwal (supra).

The Supreme Court held that However, such discretionary power cannot be exercised in an untrammelled manner. The Court must take

into account the statutory scheme under Section 438, Cr.P.C., particularly, the proviso to Section 438(1), Cr.P.C., and balance the concerns of the investigating agency, complainant and the society at large with the concerns/interest of the applicant. Therefore, such an order must necessarily be narrowly tailored to protect the interests of the applicant while taking into consideration the concerns of the investigating authority. Such an order must be a reasoned one.

The impugned orders passed by the High Court, in the present appeals, do not meet any of the standards as laid out above. We say so for the following reasons: firstly, after the dismissal of the anticipatory bail application, on the basis of the nature and gravity of the offence, the High Court has granted the impugned relief to the respondents without assigning any reasons. Secondly, in granting the relief for a period of 90 days, the Court has seemingly not considered the concerns of the investigating agency, complainant or the proviso under Section 438(1), Cr.P.C., which necessitates that the Court pass such an exceptional discretionary protection order for the shortest duration that is reasonably required. A period of 90 days, or three months, cannot in any way be considered to be a reasonable one in the present facts and circumstances.

The impugned orders therefore do not withstand legal scrutiny. The resultant effect of the High Court's orders is that neither are the respondents found entitled to pre-arrest bail, nor can they be arrested for a long duration. During the said duration they can roam freely without being apprehensive of coercive action. We are thus of the view that the High Court committed a grave error in passing such protection to the respondents-accused. Such a direction by the High Court exceeds its judicial discretion and amounts to judicial largesse, which the Courts do not possess.

[Link to read the Judgment:](#)

LATEST CASES: POCSO ACT

"Parliament has not thought it appropriate to curtail the power or discretion of the courts, in granting pre-arrest or anticipatory bail, especially regarding the duration, or till charge-sheet is filed, or in serious crimes. Therefore, it would not be in the larger interests of society if the Court, by judicial interpretation, limits the exercise of that power: the danger of such an exercise would be that in fractions, little by little, the discretion, advisedly kept wide, would shrink to a very narrow and unrecognisably tiny portion, thus frustrating the objective behind the provision, which has stood the test of time, these 46 years."

— *S. Ravindra Bhat, J. in Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1, para 87.*

Attorney General for India v. Satish: 2021 SCC OnLine SC 42- No sexual assault if no 'skin to skin' contact? Supreme Court stays Bombay High Court's "dangerous precedent" on POCSO Act-HELD- The High Court had acquitted the accused under Section 8 of the POCSO Act, 2012 on the ground that the accused had no sexual intent in committing the offence under POCSO Act because there was no direct physical contact, i.e., skin to skin.

The Supreme Court bench has stayed the controversial Bombay High Court judgment wherein the High Court had acquitted the accused under Section 8 of the POCSO Act, 2012 on the ground that the accused had no sexual intent in committing the offence under POCSO Act because there was no direct physical contact, i.e., skin to skin.

The said order came after Attorney General for India K. K. Venugopal brought to the Court's notice that the Nagpur Bench of Bombay High Court has passed a judgment dated 19.01.2021 is likely to set "a dangerous precedent".

The Court, hence, permitted the Attorney General to file an appropriate petition against the said judgment and in the meantime, stayed the acquittal of the accused in the case in question.

The bench, further, issued notice to the accused and the State of Maharashtra returnable two weeks. In judgment dated 19.01.2021, Pushpa V. Ganediwala, J., of Bombay High Court's Nagpur Bench, expressed that since there was no direct physical contact i.e. skin to skin with sexual intent without penetration, the said would not amount to 'sexual assault'.

The Bench expressed that the act of pressing of the breast of the child aged 12 years, in the absence of any specific detail as to whether the top was removed or whether he inserted

his hand inside top and pressed her breast, would not fall in the definition of 'sexual assault'.

Sunil Raikwar v. State:2021 SCC OnLine Del 258-Offences under S. 377 IPC & S. 4 POCSO Act committed on a child aged 7 years, father of victim sought quashing of FIR-HELD-A petition under Section 482 CrPC for quashing FIR No. 389/2019 dated 22.11.2019 registered at Police Station Patel Nagar for offences under Section 377 IPC read with Section 4 of the Protection of Children from Sexual Offences Act (POCSO Act).

The respondent No. 2/complainant filed the instant FIR stating that he is a resident of H. No. 26/70 1st floor, West Patel Nagar, Central Delhi working as a mason and stays with his son aged seven years. He stated that on 20.11.2019, he returned after finishing his work at 8.00 p.m., and found his son crying. When he enquired from his son, his son told him after he left for work at 2.00 p.m., the accused who stays in the same building had come and sodomised him. It is stated in the complaint that the underwear of the child was wet with blood. The FIR was lodged on 21.11.2019 and on completing investigation, the final report has also been filed stating that there is enough material to proceed against the petitioner for offences under Section 377 IPC and Section 4 POCSO Act.

The Delhi High court held that Section 377 IPC and Section 4 of the POCSO Act are non-compoundable offences and while exercising powers under Section 482 CrPC to quash criminal proceedings for non-compoundable offences on the basis of compromise, the High Court should scan the entire facts to find out the thrust of allegations and the crux of the

settlement. While stating the above position, Court referred to the decision of Supreme Court in *State of Maharashtra v. Vikram Anantrao Doshi*, (2014) 15 SCC 29.

Bench also referred to the following decisions of the Supreme Court:

- *Narinder Singh v. State of Punjab*, (2014) 6 SCC 466
- *Parbatbhai Aahir v. State of Gujarat*, (2017) 9 SCC 641
- *Shiji v. Radhika*, (2011) 10 SCC 705

The offence in the instant case was of grave nature.

POCSO Act was enacted only because sexual offences against children were not being adequately addressed by the existing laws and the purpose of the Act was to provide protection to children from sexual assault and sexual harassment and for safeguarding the interest and well being of children.

While noting the above stated objective of the POCSO Act, Bench stated that permitting such offences to be compromised and quashing FIRs would not secure the interest of justice.

Calling out the impact of such offences to be a serious one, Court also stated that, an offence under Section 377 IPC committed on a child of 7 years or an offence under Section 4 of the POCSO Act shows the mental depravity of the offender and cannot be said to be private in nature.

Hence, Court opined that the father of the victim cannot be permitted to settle the dispute and the Bench cannot lose sight of the fact that the accused was being prosecuted for an offence that shocks the value system of a society.

Deterrence to others committing similar offence is a must and they cannot get a signal that anything and everything can be compromised.

Vijayalakshmi v. State :2021 SCC OnLine Mad 317-High time to amend POCSO Act considering cases where adolescents in grip of their hormones involve in romantic relationship'-HELD-Madras High Court quashes proceedings paving way for accused and victim to settle in life This petition that has been filed by the Defacto Complainant and the victim girl, jointly seeking for quashing the proceedings pending against the 2nd Respondent who is facing trial before the Court below for offences under Section 366 of the Indian Penal Code, 1806, Section 6 of the Prevention of Child from Sexual Offences,

2012 (hereinafter referred to as "POCSO Act" or "the Act") and Section 9 of the Prohibition of the Child Marriage Act, 2006.

While addressing a matter revolving around the POCSO Act expressed that:

"What came to be a law to protect and render justice to victims and survivors of child abuse, can, become a tool in the hands of certain sections of the society to abuse the process of law."

The scheme of the POCSO Act clearly shows that it did not intend to bring within its scope or ambit, cases of nature where adolescents or teenagers involved in romantic relationships are concerned.

While addressing the present matter, Court was instantaneously reminded of an earlier order passed by this Court in *Sabari v. Inspector of Police*, 2019 (3) MLJ CrI 110, wherein the Bench had discussed in detail about the cases in which persons of the age group of 16 to 18 years were involved in love affairs and how in some cases ultimately end up in a criminal case booked for an offence under the POCSO Act.

Bench stated that it is imperative for this Court to draw the thin line that demarcates the nature of acts that should not be made to fall within the scope of the Act, for such is the severity of the sentences provided under the Act, justifiably so, that if the acted upon hastily or irresponsibly, it could lead to irreparable damage to the reputation and livelihood of youth whose actions would have been only innocuous.

Further, the Court stated that as rightly recognized in the above-cited case of *Sabari v. Inspector of Police*, 2019 (3) MLJ CrI 110, "incidences, where teenagers and young adults fall victim to offences under the POCSO Act being slapped against them without understanding the implication of the severity of the enactment, is an issue that brings much concern to the conscience of this Court."

POCSO Act was brought into force to protect children from offences of sexual assault, sexual harassment and pornography, pursuant to Article 15 of the Constitution of India and the Convention on the Rights of the Child.

A large array of cases filed under the POCSO Act seems to be those arising on the basis of complaints registered by the families of adolescents and teenagers who are involved in romantic relationships with each other.

Court expressed that it is not turning a blind eye to cases where the victim or survivor may, under the effect of trauma that they have

undergone, studies on which show that they might tend to reconcile with the same by blaming themselves or convincing themselves that the element of consent was in fact present. Nor is this Court scientifically justifying in toto, the genuineness or predicament of the accused in every case where it appears that the accused and victim child have been in a romantic relationship. That will depend on the facts and circumstances of each and every case.

In the instant matter, Bench noted that the 2nd petitioner clearly stated that she was the one who insisted that 2nd Respondent take her away from her home and marry her, due to the pressure exerted by her parents.

In light of the above-said incidents, parents or family lodge a complaint, the police registers FIRs for offences of kidnapping and various offences under the POCSO Act. Several cases under the POCSO Act fall under this category. As a consequence of such an FIR being registered, invariably the boy gets arrested and thereafter, his youthful life comes to a grinding halt.

Hence, due to the stringent nature of the POCSO Act, the acts of the boy would be called as an offence.

The objective of the POCSO Act was never punishing an adolescent boy as an offender who enters into a relationship with a minor girl. An adolescent boy and girl who are in the grips of their hormones and biological changes and whose decision-making ability is yet to fully develop, should essentially receive the support and guidance of their parents and the society at large. These incidents should never be perceived from an adult's point of view and such an understanding will in fact lead to lack of empathy.

Therefore, it is high time that the legislature takes into consideration cases of the present nature involving adolescents involved in relationships and swiftly bring in necessary amendments under the Act.

Court in view of the above opined that the legislature has to keep pace with the changing societal needs and bring about necessary changes in law and more particularly in a stringent law such as the POCSO Act.

Main Issue to be addressed:

Whether this Court can quash the criminal proceedings involving non-compoundable offences pending against the second respondent?

Bench relied on the Supreme Court decision in Parbathbhai Aahir v. State of Gujrat, (2017) 9

SCC 641 and in State of Madhya Pradesh v. Dhruv Gurjar (2019) 2 MLJ CrI 10, wherein sufficient guidelines have been given that must be taken into consideration by this Court while exercising its jurisdiction under Section 482 CrPC to quash non-compoundable offences.

Supreme Court held that offences against the society with overriding public interest even if it gets settled between the parties cannot be quashed by this Court.

After examining the above, Court noted that the offences in question in regard to the present matter are purely individual in nature. Hence, Quashing the proceedings, will not affect any overriding public interest in this case and it will in fact pave way for the 2nd Petitioner and the 2nd Respondent to settle down in their life and look for better future prospects.

High Court quashed the criminal proceedings.

Lopsong Lama Yolmo v. State of Sikkim: Bail Appln. No.06 of 2021, decided on 16-04-2021: Court rejects bail of accused of offences under S. 354 IPC, S. 8 POCSO and S. 25 Juvenile Justice Act-HELD-A bail application wherein the Petitioner, Principal of a School, aged about 58 years, was accused of the offence under Section 354 of the Indian Penal Code, 1860, Section 8 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act") and Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015. He was arrested on 03-03-2021. • The Sikkim High Court considered several factors before deciding on this matter of bail which were:

- existence of prima facie case against the accused,
- the nature and gravity of the accusations,
- the penalty likely to be imposed,
- chances of the accused absconding on being enlarged on bail,
- the antecedents and standing of the accused in society;
- likelihood of repetition of the offence,
- reasonable apprehension of evidence being tampered with and witnesses being influenced; and
- the course of justice being defeated by grant of bail.

The Court considered the FIR and the medical documents on record and observed that there was no imminent threat to the life of the

petitioner. The Court further held that the gravity of the offence was necessary to be taken into consideration and the acts of the Petitioner were indeed heinous having been perpetrated on a minor under his care and guidance.

The Court while rejecting the plea for bail held that there is a prima facie case against the Petitioner although elaborate examination of evidence has not been embarked upon nor were the merits of the case being touched upon, to avoid any prejudice to the petitioner.

Libnus v. State of Maharashtra: 2021 SCC OnLine Bom 66-“Opening zip of pants”, Does it NOT “fit in the definition of sexual assault” under POCSO Act?-HELD- The appellant who was accused of sexually assaulting a minor child by partly quashing his conviction for the offence of sexual assault and aggravated sexual assault punishable under Sections 8 and 10 of POCSO Act, respectively.

The instant appeal challenged the judgment wherein the appellant/accused was convicted for the offence under Sections 354-A(1)(i) and 448 of the Penal Code, 1860 and Sections 8, 10 and 12 read with 9(m) and 11(i) of the Protection of Children from Sexual Offences Act, 2012.

The Bombay High Court Bench noted that the appellant/accused was convicted by the trial court for the commission of offence of ‘aggravated sexual assault’, punishable under Section 10 of POCSO Act. However, to decide whether the alleged act of appellant/accused would fit into the definition of ‘aggravated sexual assault’, Court looked into the definition of ‘sexual assault’, according to which the offence involved the following ingredients:

(i) Act must have been committed with sexual intention.

(ii) Act involves touching the vagina, penis, anus, or breast of the child.

or

makes the child touch the vagina, penis, anus or breast of such person or any other person.

or

does any other act with sexual intent which involves physical contact without penetration.

Further, the Court added that the acts of ‘holding the hands of the prosecutrix’, or ‘opened zip of the pant’ as had been allegedly witnessed by PW-1, which in the opinion of this Court did not fit in the definition of ‘sexual assault’.

Considering the nature of the offence and the sentence prescribed, Court opined that the aforesaid acts were not sufficient for fixing the criminal liability on the appellant/accused of the alleged offence of ‘aggravated sexual assault’.

“At the most, the minor offence punishable under Section 354-A(1)(i) of the IPC r/w Section 12 of the POCSO Act is proved against the appellant.”

Another point noted by the Bench was that as per the definition of ‘sexual assault’, a ‘physical contact with sexual intent without penetration’ is an essential ingredient for the offence.

The definition starts with the words – “Whoever with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person or does any other act with sexual intent.....’ The words ‘any other act’ encompasses within itself, the nature of the acts which are similar to the acts which have been specifically mentioned in the definition on the premise of the principle of ‘ejusdem generis.’ The act should be of the same nature or closure to that.

Bench expressed that the prosecution could establish that the appellant/accused entered into the house of the prosecutrix with the intention to outrage her modesty or sexual harassment as defined under Section 11 of the POCSO Act.

Hence, the conviction of the appellant/accused of the offence punishable under Sections 448 and 354-A(1)(i) of the IPC read with Section 12 of the POCSO Act was maintained. The criminal appeal was partly allowed and the conviction of the appellant/accused of the offence punishable under Sections 8 and 10 of the POCSO Act, was quashed and set aside.

NOTIFICATION

Central Motor Vehicles (Thirteenth Amendment) Rules, 2021: On June 14, 2021, the Ministry of Road Transport and Highways (MORTH) has issued the Central Motor Vehicles (Thirteenth Amendment) Rules, 2021 to further amend the Central Motor Vehicles Rules, 1989.

The following amendments have been made:

- Rule 115 (1), which specifies the motor vehicles complying with standards, has been modified and instead of the words ‘other than motorcycles of engine capacity not exceeding 70 cc’, the words ‘other than battery operated vehicles , namely:

Every motor vehicle, other than battery operated vehicles and those manufactured prior to the first day of March 1990, shall be maintained in such condition and shall be so driven so as to comply with the standards prescribed in these rules.

- Rule 116 (1) (2) and (3) which specifies test for smoke emission level and carbon monoxide level for motor vehicles, has been substituted, namely:

(1) Notwithstanding anything contained in sub-rule (7) of Rule 115 any officer not below the rank of Sub-Inspector of Police or the Inspector of Motor Vehicles who has reason to believe that a motor vehicle is not complying with the provisions of sub-rule (2) of Rule 115, to communicate in writing or through electronic modes to direct the driver or any person incharge of the vehicle to submit the vehicle for conducting the test to measure the standards of emission in any one of the authorized Pollution Under Control testing stations.

(2) If the driver or person in-charge of the vehicles fails to submit the vehicle for compliance or the vehicle fails to comply with sub-rule (2) of 115 within the stipulated period of seven (07) days, the owner of the vehicle shall be liable for penalty prescribed under sub-section (2) of section 190 of the Act.

Provided that, If the owner fails to comply, the registering authority shall, for reasons to be recorded in writing, suspend the certificate of registration of the vehicle and any permit granted, until such time a valid “Pollution under Control “certificate is generated.”

(3) The measurement for compliance to the provisions of sub-rule (2) of rule 115 shall be carried out using the instrument type approved in accordance with AIS 137, as amended from time to time, by any agency referred to in rule 126 or by the National Environmental Engineering Research Institute, Nagpur-440 001.

- Form 58, which specifies the pollution under control certificate, has been inserted.¹

¹ <https://egazette.nic.in/WriteReadData/2021/227170.pdf>

EVENTS

- Hon'ble Mr. Justice Arun Kumar Tyagi, Judge, Punjab & Haryana High Court gave a Webinar on "Securing Presence and Examination of Witnesses" on June 12, 2021 to the District Judiciary of Punjab, Haryana and UT Chandigarh including Trainee Judicial Officers.
- The foundation training for 50 Judicial Officers, HCS – 25 officers (M – 09, F – 16) and PCS 25 officers (M – 06, F – 19) online culminated on June 30, 2021. The valedictory function online was organized in the afternoon of June 30, 2021 itself. It was chaired by Hon'ble Mr. Justice Ravi Shanker Jha, Chief Justice, Punjab & Haryana High Court and Patron-in-Chief of Chandigarh Judicial Academy and co-chaired by Hon'ble Mr. Justice G.S.Sandhawalia, Judge, Punjab & Haryana High Court and President, BoG, Chandigarh Judicial Academy. The other members of BoG also joined. Hon'ble the Chief Justice in his address urged the young judicial officers to be prepared to make sacrifices. A judge has to conduct himself or herself in court and outside the court. The different skills are to be learnt in managing the court. Judicial communication is equally important. A judge speaks through his/her judgments. Therefore, the judges have to restrain themselves in different ways. Judges live the lives of austerity. Hon'ble the Chief Justice encouraged the judicial officers to perform their functions with commitment and dedication. The judicial officers were wished the best of judicial journey. HMJ G.S.Sandhawalia also asked the judicial officers to be ready to make sacrifices. The journey of a judicial officer is a disciplined journey throughout. The judicial officers were reminded that they are not the engines of power. In fact, humility and compassion are their lifelong companions. The work of the judicial officer is demanding. Therefore, the judges need to spend some time on their physical fitness. They were urged to do yoga on daily and regular basis. They were also wished to be the future judges which would make the nation proud of them. Dr.Balram K Gupta, Director (Academics) in his welcome address motivated the judicial officers to nurture happy minds. To enjoy their work. To feel satisfied with the work they were doing. The judicial officers were advised to have no ego, no arrogance, only elegance. Ms.Shalini Singh Nagpal, Director (Administration) gave the expression of gratitude to Hon'ble the Chief Justice, the President and the Members of the BoG, CJA. She also thanked all others who were engaged in the foundation training of the judicial officers. She also blessed these young judicial officers.