

SUMMARY

Of Papers of Judicial Officers in Wardha District

for Workshop on

Law of Precedents and Res Judicata

for Workshop on

Sentencing Policy and Victim Compensation

INDEX

Sr. No	Topic	Pages
1.	Law of Precedents and Res Judicata	3-16
2.	Sentencing Policy and Victim Compensation Scheme	17-29

LAW OF PRECEDENT

What do you mean by the word “Precedent”?

1. According to Dias, a precedent is a previous instance or case which furnishes an example or rule for subsequent conduct and a pattern upon which subsequent conduct is based.
2. ‘Judicial precedent’ means a judgment of a Court of law cited as an authority for deciding a similar set of facts; a case which serves as authority for the legal principle embodied in its decision. A judicial precedent is a decision of the Court used as a source for future decision making.
3. A precedent means anything said or done by a Court, which furnishes a rule for subsequent conduct. Salmond says, “*Precedents are judicial decisions followed in subsequent cases*”. Our judicial system is a three-tier system under the Constitution of India. Apex Court is the Supreme Court, below it there are High Courts of each State and below the High Court there are subordinate courts in that state.

Foundation of Precedents : Stare Decisis –

4. The law of precedent is founded on the principle of “***Stare Decisis***”. It is an abbreviation of the Latin maxim “*Stare Decisis Et Non Quieta Movere*” which literally mean “*Do not move settled things*”. The doctrine thus means, “To stand by decided thing or to uphold previous ruling or recognize precedents”. It also represents a principle of law settled by the courts long ago and followed by series of the decisions for a long period where the facts are substantially the same. It is binding in nature and should be strictly adhered to by the Courts.
5. The authority of the Supreme Court as precedent is found in Article 141 of the Constitution of India. It provides that law declared by the Supreme Court shall be binding on all Courts within territory of India. In order to know exact meaning of the precedent, it is necessary to know as to what is meant by “the law declared by the Supreme Court” appearing in Article 141.
6. Spate of decisions of the Supreme Court have clarified that there is vast difference between the expressions “the law declared by the Supreme Court” and “the law enacted by the Legislature”. To declare the law means to interpret the law. This interpretation of law is binding on all the Courts in India. This is called as precedent. **Thus, what binding is the ratio of the decision and not any finding of**

fact. The law declared by the Supreme Court is essential for proper administration of justice. The main object of doctrine of precedent is that the law of the land should be clear, certain & consistent so that the Courts shall follow it without any hesitation In *Union of India Vs. Raghubir Singh*¹, it has been held as under.

“The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a Court.”

Ratio decidendi

7. Jurist Goodhart in chapter “Determining the ratio decidendi of a case” [Essays in Jurisprudence and the Common Law] has observed that the *ratio decidendi* of a case can be defined as the material facts of the case plus the decision thereon. The same learned writer who advanced this definition went on to suggest a helpful formula. Suppose that in a certain case facts A, B and C exist; and suppose that the court finds that facts B and C are material and fact A immaterial, and then reaches conclusion X (e.g. Judgment for the plaintiff, or judgment for the defendant). Then the doctrine of precedent enables us to say that in any future case in which facts B and C exist, or in which facts A and B and C exist, the conclusion must be X. If in a future case, facts A, B, C and D exist, and fact D is held to be material, the first case will not be a direct authority, though it may be of value as an analogy.

8. *Ratio decidendi* means the reason or the principle upon which the case has been decided by the higher Courts and only this much is binding on the subordinate courts while applying the earlier decision. The *ratio decidendi* can be ascertained by an analysis of facts. **There is a difference between the *ratio decidendi* or the basis of reasons or the principles underlying a decision and the ultimate relief granted or manner of disposal adopted in a given case.**² In another case *Krishna Kumar vs. Union of India and others*,³ it has been observed that:

¹ AIR 1989 SC 1933

² Executive Engineer vs. N.C. Budharaj, (2001) 2 SCC 72

³ (1990) 4 SCC 207

“In other words, the enunciation of the reason or principle upon which a question before a court has been decided is alone binding as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it.”

In case of ***Rajiv Singh Dalal (Dr.) Vs. Chaudhari Devlal University, Sirsa and another***,⁴ Honourable Supreme Court, after referring to its earlier decisions, has observed that:

The decision of a court is a precedent, if it lays down some principle of law supported by reasons. Mere casual observations or directions without laying down any principle of law and without giving reasons do not amount to a precedent.

OBITER DICTUM

9. In contrast with the *ratio decidendi* is the *obiter dictum*. The latter is a mere saying by the way, a chance remark, which is not binding upon future courts, though it may be respected according to the reputation of the judge, the eminence of the court, and the circumstances in which it came to be pronounced. An example would be a rule of law stated merely by way of analogy or illustration, or a suggested rule upon which the decision is not finally rested. The reason for not regarding an *obiter dictum* as binding is that it was probably made without a full consideration of the cases on the point, and that, if very broad in its terms, it was probably made without a full consideration of all the consequences that may follow from it; or the judge may not have expressed a concluded opinion. It is frequently said that a ruling based upon hypothetical facts is obiter. This is often true. Thus, if the judge says: *“I decide for the defendant; but if the facts had been properly pleaded I should have found for the plaintiff”*, the latter part of the statement is obiter.”

⁴ (2008) 9 SCC 284

10. Thus an *obiter dictum* means an observation made on a legal point in a decision but not arising in such manner as to require decision. Such obiter has no binding precedent but the observations made by the Apex Court will have considerable weight.⁵ But, mere casual expressions carry no weight at all and cannot be treated as an *ex cathedra* statement having the weight of authority. Statements which are not part of the *ratio decidendi* are distinguished as *obiter dicta* and are not authoritative.⁶

11. Honourable Supreme Court explained inter relationship in fundamental rights and doctrine of *Res Judicata*, *stare decisis* and *merger* in case of ***Union of India and Others-Vs- Major S.P.Sharma And Others***.⁷ It is held that,

“Fundamental rights guaranteed under the Constitution have to be protected, but at the same time, it is the duty of the court to ensure that the decisions rendered by the court are not overturned frequently, that too, when challenged collaterally as that directly affects the basic structure of the Constitution incorporating the power of judicial review of the Supreme Court. There is no doubt that the Court has an extensive power to correct an error or to review its decision but that cannot be done at the cost of doctrine of finality. An issue of law can be overruled later on, but a question of fact, as in the present case, the dispute with regard to the termination of services cannot be re-opened once it has been finally sealed in proceeding inter se between the parties up to the Supreme Court way back in 1980.”

12. It is pertinent to note here that under Article 141 of the Constitution, the law declared by the Supreme Court is binding on all Courts and, therefore, even the principles enunciated by that Court, including the *obiter dicta*, when they are stated in clear terms, have a binding force. The *obiter dicta* of a Judge of Honourable Supreme Court, even in a dissenting judgment, are entitled to high respect, especially if there is no direct decision to conclude the question under another enactment.

SUB SILENTIO

13. If a decision would otherwise be a binding authority, it does not lose that status, merely because the point was not argued by counsel (this will be important only as a way of attacking a decision that is of merely persuasive

⁵ Director of Settlements, A.P. and others vs. M.R. Apparao and another, (2002) 4 SCC 638

⁶ (2003) 7 SCC 197

⁷ (2014) 6 Supreme Court Cases 351

authority). But what is called a decision *sub silentio* is not binding: that is to say, one in which the existence of the particular point was not perceived by the court, so that it was not discussed in the judgment. This is so, at least, where the precedent case is that of the same court.

WHETHER JUDGMENTS OF HIGH COURT ARE BINDING AS PRECEDENTS

14. Like Article 141 empowering the Supreme Court to declare the law and making its precedents binding on all the Courts, there is no specific provision directly empowering the High Court to declare the law and making its decisions binding on its subordinate Courts. But it is well settled that the Courts from a State subordinate to a High Court from that State are bound by its decisions. Question is as to what is the basis for this settled law. Answer to this question can be found in the decision of Honourable Supreme Court decision in *M/s. East India Commercial Co. Ltd. Calcutta and another V/s. Collector of Customs, Calcutta*.⁸ It is ruled in paragraph 29 of the Judgment as under-

*“29 We, therefore, hold that **the law declared by the highest court in the State is binding on authorities or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding.** If that be so, the notices issued by the authority signifying the launching of proceedings contrary to the law laid down by the High Court would be invalid and the proceedings themselves could be without jurisdiction.”*

15. The doctrine of precedent as has been applicable to the decision of the parent High Court is not applicable to the decision of other High Courts as constitutionally they have no supervisory powers over the Courts of lower judiciary in other States. The above discussion in respect of constitutional provisions making a precedent of a parent High Court binding on the Courts of the lower judiciary are concerning its subordinate courts in view of the above discussed provisions and hierarchy of Courts. Hence the doctrine of precedent cannot be applicable to the decisions of other High Courts. However, the decisions of other High Courts have persuasive value and can be used as advisory, if on the same point, there is no decision of a parent High Court.

PER INCURIAM DECISIONS:

⁸ (AIR 1962 S.C.1893)

16. Per incuriam decisions do not have binding effect. Per incuriam decisions mean where the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction or when the decision is given in ignorance of the terms of a statute or a rule having statutory force. Referring the Halsbury's Laws of England, the Apex Court in ***State of Bihar Vs. Kalika Kuer alias Kalika Singh & others***,⁹ examined the circumstances in which a decision is said to have been rendered per incuriam as follows:

“A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow; or when it has acted in ignorance of House of Lords decision, in which case it must follow that decisions; or when the decision is given in ignorance of the terms of a statute or rule having statutory force.”

CONFLICTING DECISIONS OF DIFFERENT STRENGTH

17. The Five-Judges Constitution Bench of Honourable Supreme Court in case of ***Central Board of Dawoodi Bohra Community v. State of Maharashtra***,¹⁰ has observed that,

“The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength”.

18. This view is followed by Honourable Bombay High Court in case of ***Reliance General Insurance Company Ltd. versus Syeda Aleemunbee w/o. Syed Razaq***.¹¹ To quote Honourable Bombay High Court-

*“28) It is well-settled, judicial process demands that a judge move within the frame-work of relevant legal rules and the coveted modes of those for ascertaining them. **The judicial robe has its inbuilt discipline, which mandates, for a High Court to adhere in tune with the precedent of Supreme Court and in particular of the larger Benches.** This is more so, if there are divergent views by Honourble Judges of the Supreme Court, on identical issues.”*

It has been further observed [quoting observation of Honourable Supreme Court¹²] in Reliance case that-

⁹ (2003) 5 SCC 448

¹⁰ (2005) 2 SCC 673 and also in AIR 2005 SC 752

¹¹ First Civil Appeal No. 1611 of 2013, decided on 03.03.2014 [Hon. Shri Justice Chandiwal]

“we are of the view that a decision of a Constitution Bench of this Court binds a Bench of two learned Judges of this court and that judicial discipline populate them to follow it regardless of their view about its correctness. At the most they should have ordered that matter be heard by a Bench of three learned Judges.” ... “Judgment of constitution Bench of Honourable Supreme Court has binding effect. A decision of three-judges Bench of Honourable Supreme Court has also a binding effect than to a judgment of Honourable Lordships of Division Bench.”

19. Likewise in case of ***Siddharam Satlingappa Mhetre v. State of Maharashtra and Others***,¹³ while addressing the issue of per incuriam, Honourable Supreme Court has observed that,

“The analysis of English and Indian Law clearly leads to the irresistible conclusion that not only the judgment of a larger strength is binding on a judgment of smaller strength but the judgment of a co-equal strength is also binding on a Bench of Judges of co-equal strength.....In case there is no judgment of a Constitution Bench or larger Bench of binding nature and if the court doubts the correctness of the judgments by two or three judges, then the proper course would be to request Hon'ble the Chief Justice to refer the matter to a larger Bench of appropriate strength.”

20. The ratio laid down in Sidharam Mhetre's case on the above point is reiterated again in ***Rattiram & Ors v/s. State of M. P. Through inspector of police with Satyanarayan & ors v/s. The state of Madhya Pradesh through incharge, Police Station Cantt.***,¹⁴ by full bench of Honourable Supreme Court. An useful reference can be made in this context to case of ***Sudeep Kumar Bafna versus State of Maharashtra and another***,¹⁵ also.

CONCLUSION:

21. Law expects that we should understand the doctrine of precedent and apply it to achieve the uniformity in the application of law and legal concepts.

¹² (2001) 4 SCC 448

¹³ [AIR 2011 SC 312 : (2011) 1 SCC 694]

¹⁴ 2012 STPL(Web) 121 (SC)

¹⁵ 2014 STPL(Web) 209 (SC)

RES JUDICATA

1. “Res Judicata” is a Latin maxim which means ‘*the thing has been judged*’ or ‘*things already adjudged*’, meaning thereby that the issue before the Court has already been decided by another Court, between the same parties. Res Judicata, as a concept, is applicable both in case of Civil as well as Criminal legal system.
2. The term is also used to mean as to ‘bar to re-litigation’ of such cases between the same parties, which is different between the two legal systems. Once a final judgment has been announced in a lawsuit, the subsequent judges who are confronted with a suit that is identical to or substantially the same as the earlier one, they would apply the **Res-Judicata doctrine to preserve the effect of the first judgment**. This is to prevent injustice to the parties of a case supposedly finished, but perhaps mostly, to avoid unnecessary waste of resources and time of the Judicial System. Therefore, the same case cannot be taken up again either in the same or in the different Court of India. This is just to prevent them from multiplying judgments, so a prevailing plaintiff may not recover damages from the defendant twice for the same injury.

Pre-Requisites For Applying Principle Of Res Judicata :-

- 1) The matter must be directly and substantially in issue in two suits
 - 2) The prior suit must have been between the same parties or persons claiming under them
 - 3) Such parties must have litigated under the same title in the former suit
 - 4) Subject to the provisions contained in Explanation VIII, the Court which determined the earlier suit must be competent to try the later suit or the suit in which such issue is subsequently raised
 - 5) The question directly and substantially in issue in the subsequent suit should have been heard and finally decided in the earlier suit.
3. The provisions of Section 11 of C.P.C. are not exhaustive even though it has very wide and enlarged amplitude. Section 11 of C.P.C. “does not affect the jurisdiction of the Court” but “operates as a bar to the trial” of the suit or issue. If the matter in the suit was directly and substantially in issue (and finally decided) in the prior suit between the same parties litigating under the same title in a Court, they are barred to litigate the subsequent suit in which such issue has been raised. Thus, this doctrine of Res Judicata is a fundamental concept based on

public policy and private interest. It is conceived in the larger public interest, which requires that every litigation must come to an end. It therefore, applies to civil suits, execution proceedings, arbitration proceedings, taxation matters, writ petitions, administrative orders, interim orders, criminal proceedings, etc.

4. An ordinary litigation being a party or claiming under a party of a former suit cannot avoid the applicability of section 11 of C.P.C. as it is mandatory except on the ground of fraud or collusion as the case may be. The onus of proof lies on the party relying on the theory of Res Judicata. The provisions of section 11 of C.P.C. are “not directory but mandatory”. The judgment in a former suit can be avoided only by taking recourse to section 44 of the Indian Evidence Act on the ground of fraud or collusion.

5. The doctrine of res judicata has been explained in the simplest manner in **Satyadhyan v/s. Deorajin Debi**,¹⁶ as-

"The principle of res judicata is based on the need of giving finality to judicial decisions. What it says is that once a res judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter, whether on a question of fact or a question of law, has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again"

6. In **Sulochana Amma v/s. Narayanan Nair**,¹⁷ it has been observed that,

"S. 11 embodies the rule of conclusiveness as evidence or bars as a plea an issue tried in an earlier suit founded on a plaint in which the matter is directly and substantially in issue and became final. In a later suit between the same parties or their privies in a court competent to try such subsequent suit in which the issue has been directly and substantially raised and decided in the judgment and decree in the former suit would operate as res judicata. S. 11 does not create any right or interest in the property, but merely operates as a bar to try the same issue once over. In other words, it aims to prevent multiplicity of the proceedings and accords finality to an issue, which directly and substantially had arisen in the former suit between the same parties or their privies, been decided

¹⁶ AIR 1960 SC 941

¹⁷ AIR 1994 SC 152

and became final, so that parties are not vexed twice over, vexatious litigation would be put to an end and the valuable time of the court is saved. It is based on public policy, as well as private justice. They would apply, therefore, to all judicial proceedings whether civil or otherwise. It equally applies to quasi-judicial proceedings of the tribunals other than the civil courts".

7. The doctrine of res judicata is based on **three maxims-**

(i) ***nemo debet bis vexari pro una et eadem causa*** which means no man should be vexed twice for the same cause;

(ii) ***interest reipublicae ut sit finis litium*** which means it is in the interest of the State that there should be an end to a litigation; and

(iii) ***res judicata pro veritate occipitur*** which means a judicial decision must be accepted as correct.

8. Thus, the doctrine of res judicata is the combined result of public policy reflected in maxims (2) and (3) and private justice expressed in maxim (1); and they apply to all judicial proceedings whether civil or criminal. Thus, there should be an issue raised and decided, not merely a finding on an incidental question for reaching such a decision. If such issue is not raised and if on any other issue, if, incidentally and finding is recorded, it would not come within the periphery of principle of res judicata¹⁸.

Difference between res judicata and O. II R. 2 of C. P. C and estoppel.

Res Judicata	O. 2 r.2
This refers to plaintiff's duty to bring forward all the grounds of attack in support of his claim.	This requires the Plaintiff to claim all reliefs flowing from the same cause of action.
This refers to both the parties i.e. Plaintiff as well as Defendant and precludes a suit as well as defence.	This refers to only to the Plaintiff and bars a suit.

10. The doctrine of res judicata is often treated as a branch of the law of estoppel. Res judicata is really estoppel by verdict or estoppel by judgment. Even then the doctrine of res judicata differs in essential particulars from the doctrine

¹⁸ [Madhvi Amma Bhavani Amma V/s K.P.M. Pallai, (2006) 6 SCC 301.]

of estoppel. Res Judicata results from a decision of the court, whereas, estoppel flows from the acts of parties. Res Judicata bars multiplicity of suits, whereas, estoppel prevents multiplicity of representations. Res Judicata ousts the jurisdiction of the court to try the case and to reopen the matter which is already adjudicated upon and thereby precludes an enquiry in limine. The estoppel is only a rule of evidence and shuts the mouth of a party

Res judicata & Constructive res judicata: (Matter constructively in issue)

11. The principle of *constructive res judicata* emerges from Explanation IV when read with Explanation III both of which explain the concept of “matter directly and substantially in issue”. Explanation III clarifies that a matter is directly and substantially in issue, when it is alleged by one party and denied or admitted (expressly or impliedly) by the other. Explanation IV provides that where any matter which might and ought to have been made a ground of defence or attack in the former suit, even if it was not actually set up as a ground of attack or defence, shall be deemed and regarded as having been constructively in issue directly and substantially in the earlier suit. Therefore even though a particular ground of defence or attack was not actually taken in the earlier suit, it was capable of being taken in the earlier suit, it becomes a bar in regard to the said issue being taken in the second suit in the view of the principle of constructive *res judicata*. Constructive *res judicata* deals with ground of attack and defence which ought to have been raised, but not raised, whereas Order II of the Code relates to relief which ought to have been claimed on the same cause of action but not claimed.

12. In ***Direct Recruit Class II Engineering Officers’ Association V/s State of Maharashtra***,¹⁹ a **Constitutional Bench** of the Apex Court reiterated the principle of Constructive Res judicata after referring to observations in ***Forward Construction Co. V/s Prabhat Mandal***,²⁰ that-

“an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the party might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation an every matter coming into the legitimate purview of an original action but in respect of the matter of claim and defence.”

¹⁹ (1990) 2 SCC 71=AIR 1990 SC 1607

²⁰ (1986) 1 SCC 100=AIR 1986 SC 391

13. Thereafter, in *Ramchandra Vrs. Vithu Mahure*,²¹ Honourable Supreme Court has explained the doctrine of *constructive res judicata* as applicable in Indian law. A sub-set of the doctrine of *res judicata*, emanating from Section 11 of the Code of Civil Procedure, the doctrine of *constructive res judicata* sets to naught any claims being raised in a subsequent proceeding where in an earlier proceeding such claim should/ought to have been raised and decided. A rule of prudence, thus, the doctrine seeks to bar determination and enforcement of claims which have not been raised at an appropriate juncture in judicial proceedings.

Matter in issue:

14. The expression 'matter in issue' means the right litigated between the parties i. e. the facts on which the right is claimed and the law applicable to the determination of that issue. Explanation III clarifies that a matter cannot be said to have been directly and substantially in issue in a suit unless it was alleged by one party and denied or admitted, either expressly or impliedly by the other. A matter can be said to be substantially in issue if it is of importance and value for the decision of the case. The word 'substantially' means as '*in effect though not in express terms*'. It avoids the supposition that the plaintiff may evade the application of the rule, merely by varying his form of pleading or by describing the subject matter of his suit or expressing his rights in different language. It is, however, not necessary that a specific and distinct issue should have been framed; but, it must be necessary to decide the question in order to grant relief to the plaintiff. Thus, an unnecessary or irrelevant issue, the decision of which either way will not affect the final outcome of the suit, cannot be of any importance or value for the decision of the suit and cannot, therefore, be said to be 'substantially in issue'. It is not necessary that the cause of action in the two suits should be identical for invoking the bar of *res judicata*. It is also not necessary that to invoke this principle, there must be similarity of the subject matter in both the suits. The question whether a matter is 'directly and substantially in issue' would depend upon whether a decision on such an issue would materially affect the decision of the suit. Whether a decision in an earlier litigation operates as *res judicata* the court must look at the nature of the litigation, what were the issues raised and what was actually decided therein. In other words, the question has to be determined with reference to the plaint, written statement, issues and judgment.

²¹ AIR 2010 SC 818

Matter collaterally or incidentally in issue:

15. A collateral or incidental issue means an issue which is ancillary to the direct and substantive issue. For example: A executes 4 bonds in B's favour. B sues A on two bonds. A contends that the said bonds as also other two bonds were satisfied by payment. The suit is decreed on the ground that none of the bonds was satisfied. A then sues B for all the four bonds. B pleads res judicata. The suit is barred in respect of two bonds, but not barred in respect of the other two as the issue of satisfaction was merely incidental or collateral to the main issue in the former suit.

16. Here, reference may be made to the decision of Honourable Supreme Court in the case of *Sulochana Amma vs. Narayanan Nair*,²² on the issue between the same parties or persons under whom they claim title or litigating under the same title, it operates as a res-judicata. **A plea decided even in suit for injunction touching the title between the same parties, would operate as res judicata. It was observed that:**

“It is a settled law that in a suit for injunction when title is in issue, for the purpose of granting injunction the issue directly and substantially arises in that suit between the parties. When the same is put in issue in a later suit based on title between the same parties or their privies in a subsequent suit, the decree in injunction suit equally operates as a res judicata.”

Parties under whom they or any of them claim:

17. This comprise of (i) parties actually present in the former suit; (ii) parties who claim under the parties to the suit (privies); and (iii) persons who were represented by a party in a former suit. A person is said to claim under another if he has derived title through that person by assignment or otherwise.

Same title:

18. Same title means same capacity. Title refers to the capacity or interest of a party, whether he sues or is sued for himself in his own interest or for himself as representing the interest of another or as representing the interest of others along with himself and it has nothing to do with the particular cause of action on which he sues or is sued.

²² (1994) 2 SCC 14 Para 9

Competent court:

19. The test is : Is the second suit such as could have been tried by the first court? If yes, the matter can be res judicata. In order that a decision in a former suit may operate as res judicata, the court which decided the former suit must have been either **a court of exclusive jurisdiction**; or **a court of concurrent jurisdiction**; or **a court of limited jurisdiction**.

Conclusion:

20. To support the plea of res-judicata, it is not enough that the same matter is in issue, it is also important that the matter has been heard and finally decided. This expression, '**heard and finally decided**' refers to a matter on which the court, having exercised its judicial mind, has recorded a finding and arrived at a decision on a contested manner. The principle behind the doctrine is in the interest of the public, to avoid conflicting decisions on the same issues by different courts and to estop parties to litigate or raise same issues again and again.

Sentencing Policy:

The summary cannot be better started, without quoting **Mr. Thomas Szasz**, a US Psychiatrist, in his book 'The second sin- Punishment' 1973. He has indited that-

“If he who breaks the law is not punished, he who obeys it is cheated. This, and this alone, is why lawbreakers ought to be punished; to authenticate as good and to encourage as useful, law-abiding behavior. The aim of Criminal Law cannot be correction or deterrence; it can only be the maintenance of the legal order.”

The topic is a daily affair for a judge. In cases culminating in conviction of accused, a Judge has to work out his sentencing policy. But, in Indian Criminal Justice Delivery system, there is no framework of policy while sentencing accused. Giving punishment to the wrongdoer is at the heart of the system. But, it is the weakest part of administration of Criminal Justice in our country. To reiterate, there is no legislative or judicially laid down guidelines to assist the trial Court in meeting out the just punishment to the accused facing trial before it, after he is held guilty of the charges. Though the *Madhava Menon Committee* and *Mallimath Committee* have recommended introduction of sentencing guidelines, it is yet to be developed in our country.

Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. It is necessary to mention that section 235(2) and section 248(2) of Code of Criminal Procedure, 1973, mandate a convicting Court, to hear accused on point of nature and quantum of sentence. The importance of these provisions and the procedure is underscored in case of ***Santa Sing versus State of Punjab***.²³ It is observed that-

“Non-compliance with the provisions of Section 235(2) and 248(2) ex-facie vitiates the order as it causes to the accused inherent and implicit prejudice, because of the infraction of the rules of natural justice according to which accused is completely deprived of an opportunity to represent to the court which manifestly results in a serious failure of justice.”

Basically, this exercise places the Judge in a better position to know circumstances prevailing at the time of commission of offence. Moreover, such

²³ AIR 1976 SC 2386

interaction with accused enables the Judge to understand his dependencies, his criminal antecedents and chances of reformation. All Courts do follow mandates of the aforesaid provisions and accused gets a chance to submit about sentence. Still, the practice of punishing all serious crimes with equal severity is now unknown to civilized societies. Such radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now, for a single grave infraction, drastic sentences are imposed. In fact, uniformly disproportionate punishment brings undesirable practical consequences.

In ***State of Punjab versus Prem Sagar and others***²⁴, Honourable Supreme Court has observed that-

A sentence is a judgment on conviction of a crime. It is resorted to after a person is convicted of the offence. It is the ultimate goal of any justice delivery system. The Parliament, however, in providing for a hearing on sentence, as would appear from sub-section (2) of section 235, sub-section (2) of section 248, section 325 as also section 360 and 361 of Code of Criminal Procedure, has laid down certain principles. The said provisions lay down the principle that the Court in awarding the sentence must take into consideration a large number of relevant factors; sociological backdrop of the accused being one of them. Although a wide discretion has been conferred upon the Court, the same must be exercised judiciously. It would depend upon the circumstances in which the crime has been committed and his mental state. Age of the accused is also relevant. What would be the effect of the sentencing on the society is a question which has been left unanswered by the legislature. The Superior Courts have come across a large number of cases which go to show anomalies as regards the policy of sentencing. Whereas the quantum of punishment for commission of a similar type of offences varies from minimum to maximum, even where same sentence is imposed, the principles applied are found to be different. Similar discrepancies have been noticed in regard to imposition of fine.

Expressing similar concern about sentencing policy, Honourable Apex Court has observed in case of ***Dhananjay Chatterjee alias Dhana versus State of West Bengal***,²⁵ that-

²⁴ (2008) 7 SUPREME COURT CASES 550

²⁵ 1994 SUPREME COURT CASES (CRIMINAL) 358

“In recent years, the rising crime rate particularly violent crime against women has made the criminal sentencing by the courts a subject of concern. Today there are admitted disparities. Some criminals get very harsh sentences while many receive grossly different sentence for an essentially equivalent crime and a shockingly large number even go unpunished thereby encouraging the criminal and in the ultimate making justice suffer by weakening the system’s credibility. Of course, it is not possible to lay down any cut and dry formula relating to imposing of sentence but the object of sentencing should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it. In imposing sentences in the absence of specific legislation, Judges must consider variety of factors and after considering all those factors and taking an overall view of the situation, impose sentence which they consider to be an appropriate one. Aggravating factors cannot be ignored and similarly mitigating circumstances have also to be taken into consideration. The measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposing of appropriate punishment is the manner in which the courts respond to the society’s cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment.

So, it was expressed and ruled down that nature and quantum of sentence is depended upon certain factors. No such factors were enlisted anywhere, as such straitjacket formula cannot be laid. But, in case of **Soman versus State of Kerala**²⁶, it is been observed that-

Nonetheless, if one goes through decisions of this Court carefully, it would appear that this Court takes into account a combination of different factors while exercising discretion in sentencing, that is proportionality, deterrence, rehabilitation etc.. In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender. The seriousness of an offence depends, apart from other things, also upon its harmfulness. The question is whether the consequences of the offence can be taken as the measure

²⁶ (2013) 11 SUPRME COURT CASES 382

for determining its harmfulness? In addition, quite apart from the seriousness of offence, can the consequences of an offence be a legitimate aggravating (as opposed to mitigating) factor while awarding a sentence. Thus, to understand the relevance of consequences of criminal conduct from a Sentencing standpoint, one must examine: (1) whether such consequences enhance the harmfulness of the offence; and (2) whether there are any aggravating factors that need to be taken into account by the Courts while deciding on the sentence. From the above, one may conclude that-

- 1. Courts ought to base sentencing decisions on various different rationales- most prominent amongst which would be proportionality and deterrence.*
- 2. The question of consequences of criminal action can be relevant from both a proportionality and deterrence standpoint.*
- 3. In so far as proportionality is concerned, the sentence must be commensurate with the seriousness or gravity of the offence.*
- 4. One of the factors relevant for judging seriousness of the offence is the consequences resulting from it.*
- 5. Unintended consequences/harm may still be properly attributed to the offender, if they were reasonably foreseeable. In case of illicit and underground manufacture of liquor, the chances of toxicity are so high that not only its manufacturer but the distributor and the retail vendor would know its likely risks to the consumer. Hence even though any harm to the consumer might not be directly intended, some aggravated culpability must attach if the consumer suffers some grievous hurt or dies as result of consuming the spurious liquor.*

Similarly In case of ***State of Madhya Pradesh versus Babu Barkare***,²⁷ and in case of ***State of Madhya Pradesh versus Munna Choubey***²⁸, it is observed that-

“in operating sentencing system, the law should adopt the corrective machinery as deterrence based on factual matrix. By different modulation sentencing processes be stern where it should be, and tempered with mercy where it warrant to be. The facts and given circumstances are relevant facts which would enter into the area of

²⁷ (2005) 5 SUPREME COURT CASES 413

²⁸ (2005) 2 SUPREME COURT CASES 710

consideration. Therefore, under sympathy to impose inadequate sentence would do more harm to the justice system to undermine, the public confidence in the efficacy of the law, and the society could not long endure under such serious threat. Therefore, the duty of every court is to award proper sentence having regard to the nature of offence and the manner in which it was executed or committed.

Recently, Honourable Apex Court has laid down six basic principles of sentencing in ***Mohammed Jamiluddin Nasir versus State of West Bengal***,²⁹ as follows-

“153. Having noted the above decisions on the question of sentence we formulate the following fundamental principles to be borne in mind while dealing with the sentence to be imposed in respect of crimes committed of such grotesque nature.

1) The sentence to be awarded should achieve twin objectives

a) Deterrence

b) Correction

2) The Court should consider social interest and consciousness of the society for awarding appropriate punishment.

3) Seriousness of the crime and the criminal history of the accused is yet another factor.

4) Graver the offence longer the criminal record should result severity in the punishment.

5) Undue sympathy to impose inadequate sentence would do more harm to the public

6) Imposition of inadequate sentence would undermine the public confidence in the efficacy of law and society cannot endure such threats.”

Thus, After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court.

²⁹ AIR 2014 SC 2587

Alongside these factors, the Theories of Punishment are also to be borne in mind in letter and spirit. These theories enunciate the aims of sentencing the convicted accused. There are four renowned theories of punishment, and each is distinctly characterized. Retributive, Deterrent, Preventive and Reformative are those four theories. It is desirable to quickly explore them.

Retributive Theory: Retributive theory is vengeance and aims at taking the revenge. This theory is based on the maxim of “tooth for tooth or eye for eye”. This theory is unscientific and unsocial. Eminent Jurist Salmond has said that “conception of retributive justice still remains a prominent place in popular thought.”

Deterrent: This theory aims at severity of punishment. This theory aims to deter the criminal from committing similar or other offences. This theory is doubted on the ground of efficiency of this theory, since, the severity of punishment on the wrong doer fails to produce a deterrent effect on the others.

Preventive: This theory aims at elimination of crime from society. It is quite satisfactory, but Proponents of this theory believes that what can successfully help in achieving this objective is not severity but certainty in punishment.

Reformative Theory: This theory is aimed at the reformation of the offender's law-breaking tendencies. The aim is to secure conformity, not through fear, but through some inner positive motivation on the part of the individual. The strategy of reformation, may involve therapy, counseling, intervention in the family, skills training and so on. Sentencing based on this theory, improves the offender's character so that he is less often inclined to commit offences again even when he can do so without fear of penalty.

To boot, society considers the justice delivery system as an instrument of preserving peace and tranquility and stopping crime. It may be difficult to define the concept of “justice”. It not only includes the right of an accused or a convict, but also of victims of crime. The society has legitimate expectation from Court that those who commit crime should be punished and punished after fair and speedy trial. Delayed trials, unmerited acquittal and apathy towards expectations of victims shock the collective conscience of society.

Crime has come to cast off rigid procedures and rigid interpretation of law. **It is necessary to make our system simpler, faster and less technical and people friendly.** Our interpretations of law must adopt new realities of life vide applying statutory and procedural laws. Judges must insure that an innocent person is not

convicted and should also endeavor to see that those who are guilty of heinous crimes do not go Scot-free. The duty of a judge is highlighted and laid down by Honourable Supreme Court in case of ***Ambika Prasad versus State of Delhi***.³⁰ Honourable Supreme Court was pleased to observe that

“criminal trial meant for doing justice not to the accused but also to the victim and the society, so that law and order maintained. The judge does not proceed over the criminal trial merely to see that no innocent man is punished but the judge also presides to see that guilty man does not escape. One is important as the other. Both the public duties which the judge has to perform.”

Likewise, there is always discussion about Death Sentence of sentencing a person to Capital Punishment. In case of ***Jagmohan Singh versus State of Uttar Pradesh***,³¹ Honourable Supreme Court has enunciated an approach of balancing mitigating and aggravating factors of the crime when capital punishment is to be imposed. The approach was called into question in case of ***Bachan Singh versus State of Punjab***.³² In Bachan Singh’s case, Honourable Supreme Court has emphasized that since an amendment was made to India’s Code of Criminal Procedure, the rule has changed so that ‘the offence of murder shall be punished with the sentence of life imprisonment. The Court can depart from that rule and impose the sentence of death, only if there are special reasons for doing so.’

However, more recently, in case of ***Sangeet and another versus State of Haryana***,³³ Honourable Apex Court has noted that the approach in Bachan’s case has not been fully adopted subsequently that primacy still seems to be given to the nature of crime, and that the circumstances of the criminal, referred to in Bachan Singh appear to have been taken a bit of a back seat in the sentencing process. In Sangeet’s case, Honourable Supreme Court has concluded that

This court has not endorsed the approach of aggravating and mitigating circumstances in [the 1971 case of] Bachan Singh. However, this approach has been adopted in several decisions. This needs a fresh look. In any event there is little or no uniformity in the application of this approach.

Aggravating circumstances relate to the crime while mitigating circumstances relate to the criminal. A balance sheet cannot be drawn up

³⁰ (2001) 2 SUPREME COURT CASES 646

³¹ (1973) 2 SUPREME COURT REPORTER 541

³² (1980) 2 SUPREME COURT CASES 684

³³ (2013) 2 SUPREME COURT CASES 452

for comparing the two. The considerations for both are distinct and unrelated. The use of the mantra of aggravating and mitigating circumstances needs a review.

In the sentencing process, both the crime and the criminal are equally important. We have, unfortunately, not taken the sentencing process as seriously as it should be with the result that in capital offences, it has become judge-centric sentencing rather than principled sentencing. The Constitution Bench of this Court has not encouraged standardization and categorization of crimes and even otherwise it is not possible to standardize and categorize all crimes.

The grant of remission is statutory. However, to prevent its arbitrary exercise, the legislature has built in some procedural and substantive checks in the statute. These need to be faithfully enforced. Recent changes have been made to the crime of rape in India's Penal Code. Absent any aggravating factors, the section stipulates a minimum punishment of imprisonment of seven years up to maximum of life, and a mandatory fine. In situations where certain aggravated situations occur, punishment is for a minimum term of ten years up to a maximum of life imprisonment, and a mandatory fine.

To be compendious, convicting Judge shall pay heed to these guiding precedents on the topic. In absence of any policy, the above decisions should be taken as guidelines and should be followed as doctrine of precedent also demands them to follow. Too much disparity in sentences, awarded by judicial officers, raises doubt about the system and the approach as well as attitude of the presiding officers. Time has now come to have more matured and rational approach to re-establish the faith in the judicial system and to achieve the desired results of punishments for any proven crime in society.

Victim Compensation Scheme:

Honourable Apex Court of India has observed in case of ***National Human Right Commission versus State of Gujarat and another***,³⁴ that-

“The role of victim in a criminal trial can never be lost sight of. He or she is an inseparable stakeholder in the adjudicating process. ... The protection is necessary so that there is no miscarriage of justice; but protection is also necessary to restore in them, a sense of human dignity.”

The term “**VICTIM**” is defined under **section 2 (wa)** of The Code Of Criminal Procedure, 1973 as, **“A person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression victim includes his or her guardian or legal heir.”**

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was adopted by the United Nations General Assembly in resolution 40/34 of 29th November, 1985. According to the first paragraph of this declaration, **victims of crime** are described as **“Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative in Member States, including those laws prescribing criminal abuse of power. It is they who need protection.”**

All victims have a right to seek help and protection from the State as their fundamental right included in **Article 21** which guarantees to every person protection of his life and personal liberty. In this respect directive principles contained in Part IV, particularly **Article 39(a)**- right to adequate means of livelihood, **Article 39-A** - seeking free legal aid for seeking justice. The authorities of the State in each district through Collector being the district administrative head, the Superintendent of Police, the Chief Medical and Health Officer, and the District Legal Services Authority are constitutionally and statutorily obliged to extend help and support to the victims.

We should reassure the victim that he/she is not forgotten in the entire system. In the case Delhi Domestic Working Women’s Forum versus Union of India and others, it is been directed the National Commission for women to evolve a “scheme so as to wipe out the tears of unfortunate victims of rape”.

³⁴ (2009) 6 SUPREME COURT CASES 342

Honourable Supreme Court has observed that having regard to the Directive Principles contained in Article 38(1) of the Constitution, it was necessary to set up Criminal Injuries Compensation Board, as rape victims besides the mental anguish, frequently incur substantial financial loss and in some cases are too traumatized to continue in employment. **It is further directed that, compensation for victims shall be awarded by Court on conviction of the offender and by the Criminal Injuries Compensation Board, whether or not conviction has taken place.** The Board shall take into account the pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth, if this occurs as result of the rape.

The 152nd Report of the Law Commission had recommended the introduction of section 357-A prescribing inter alia that the compensation be awarded at the time of sentencing to the victims of the crime. The 154th Report of the Law Commission of India noticed that its earlier recommendation had still not been given effect to by the government. It went one step further and recommended that it was necessary to incorporate a new section 357-A in the Code to provide for a comprehensive scheme of payment of compensation for all victims fairly and adequately by the Courts. Heads of compensation are for (i) for injury, (ii) for any loss or damage to the property of the claimant which occurred in the course of his/her sustaining the injury and (iii) in case of death from injury resulting in loss of support to dependants.

Therefore, The Code of Criminal Procedure, 1973 as amended by The Code of Criminal Procedure (Amendment) Act 2008 (5 of 2009) has now an added provision in the form of the section 357-A on victim compensation.

The Government of Maharashtra has now in the year 2013 introduced the victim compensation scheme as contemplated under section 357-A(1) of the Code. The scheme is called '**Manodhairya (मनोधैर्य)**', the scheme is implemented from 2nd October 2013. As part of the scheme, the state would give monetary compensation in the range of ₹ 2,00,000/- to ₹ 3,00,000/- to victims of crime especially of rape, child sex abuse and acid attacks. Victims who suffer from complete disfigurement of face or physical handicap in acid attack will get compensation of ₹ 3,00,000/- while in case of minor injuries ₹ 50,000/-. There is also a provision to help women and child victims meet emergency expenses up to ₹ 50,000/- apart from a host of support services to victims such as housing, counseling medical and legal aid, education and vocational training that the scheme offers. A district level criminal injuries relief and rehabilitation boards,

headed by the district collector, will implement the scheme and it will be funded by the state government till the time the central government introduces a bigger scheme. It is also worth to mention about recent verdict that compensation payable under section 357A of CrPC by the State Government shall be in addition to payment of fine to victim under section 326A or 376D of IPC. It is so ruled down in ***Suo Motu Writ Petition (Criminal) no. 24 of 2014***.³⁵

This development of law is based on certain guiding precedents. The case of ***Hari Krishnan and the State of Haryana versus Sukhbir Singh and others***,³⁶ is the most important case where Honourable Supreme Court has reiterated its firm understanding once again, in following words-

“The power under section 357 of CrPC is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is to some extent, a recompensatory measure to rehabilitate to an extent the beleaguered victims of the crime, a modern constructive approach to crime, a step forward in our Criminal Justice System.” ... “Section 357 of the CrPC is an important provision but Courts have seldom invoked it. This section of law empowers the Court to award compensation while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to the victim who has suffered by the action of the accused. This power to award compensation is not ancillary to other sentences but is in addition thereto. It is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We therefore recommend to all courts to exercise this power liberally so as to meet the ends of justice in a better way.

It is worth to mention that there is no upper limit or cap to the amount of compensation to be awarded under section 357(3) of Code of Criminal Procedure, 1972. It is been consistently held so. Moreover, to know paying capacity of the accused, a small inquiry is required to be held while quantifying the amount of compensation, as held in ***Dilip Dahanukar versus Kotak Mahindra Company Limited***.³⁷ As regards to enforcing such order of compensation, useful reference

³⁵ AIR 2014 SC 2816

³⁶ AIR 1988 SC 2127

³⁷ 2008 (1) Maharashtra Law Journal 22 (SC)

can be made to case of ***Suganthi Suresh Kumar versus Jagdeeshan***, it has been observed that-

“When the Supreme Court pronounced Hari’s case that Court may enforce an order to pay compensation by imposing sentence in default, it is open to all the courts in India to follow the said course.”

Afterwards and recently, in ***K. A. Abbas H.S.A. versus Sabu Joseph and another***,³⁸ a question was posed as to whether in default of payment of compensation ordered under section 357(3) of CrPC, a default sentence can be imposed or not. After considering all the relevant provisions and authorities on the point, Honourable Supreme Court has ruled down that-

“Section 421 clearly provides that an order of compensation under section 357(3) will be recoverable in the same way as if it were a fine. Section 421 further provides that the mode of recovery of a fine and the section clearly provides that a person can be imprisoned for non-payment of fine. Therefore, going by the provisions of the Code, the intention of the legislature is clearly to ensure that mode of recovery of a fine and compensation is on the same footing. In light of the aforesaid reasoning, the contention of the accused that there can be no sentence of imprisonment for default in payment of compensation under section 357(3) should fail.”

It is necessary to explore some more precedents in this context. In famous and landmark case of ***Rudal Shah veruss State of Bihar***,³⁹ Bihar Government was directed to pay compensation of ₹ 30000/- to petitioner, who had to remain in jail for 14 years, even after his acquittal, because of irresponsible behavior of State Government Officers.

In another case, ***Railway Boards versus Chandrima Das***,⁴⁰ compensation of ₹ 10,00,000/- was awarded to victim of rape at Rail Yatri Niwas. Honourable Supreme Court has iterated importance of compensation and landmark decision in case of ***Bodhisathwa Gautam versus Subhra***⁴¹, was pronounced. In said case, Honourable Supreme Court has awarded an interim compensation of ₹ 1000/- per month to victim of rape, until the charges are decided by the trial Court. Similarly, Honourable Supreme Court has awarded

³⁸ 2010 STPL(Web) 384 SC

³⁹ (1983) 4 SUPREME COURT CASES 141

⁴⁰ AIR 2000 SC 988

⁴¹ (1996) 1 SUPREME COURT CASES 490

compensation to widow of a convict, who was killed by co-accused in jail while serving sentence, in case of ***Kewal Patil versus State of Uttar Pradesh***⁴².

In case of ***People's Union for Civil LibertiesV/sUnion of India***,⁴³ Honourable Supreme Court held that killing of two persons in fake encounter by police was clear violation of the right to life guaranteed in Article 21 of the Constitution of India. Honourable Apex Court has awarded ₹ 1,00,000/- as compensation to each deceased. Then, in case of ***Delhi Domestic working women's Forum v/s. Union of India***,⁴⁴ As per the Directive principles under Article 38(1) of The Constitution of India, compensation for Victim shall be awarded by the court on Conviction of the offender and by the Criminal Injuries Compensation Board whether or not a Conviction has taken place.

To conclude, it must be kept in mind that punishing accused and caring for victim are two sides of same coin. Criminal justice system must not lose its sight to imposition of appropriate sentence to culprit and also to physical, psychological, economic, social rehabilitation of victims. Award of proportionate compensation to victims enhances level of Justice System from Criminal Justice System to Curative Justice System. Prior to Code of Criminal Procedure (Amendment Act) 2008, India was lacking a comprehensive legislation for compensation to victims of crime. Compassionate treatment of Victims under the criminal justice system itself leads to belief in the system which is enhanced by way of compensation programs, independent of conviction of offenders.

The summary of this topic must be concluded with reference to observations observation of the Honourable Apex Court in the case of ***State of Karnataka .Vs.Krishnappa***,⁴⁵ in paragraph no. 15 that

“A socially sensitized judge, in our opinion, is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos.”

---0---

⁴² (1995) 3 SUPREME COURT CASES 600

⁴³ AIR 1997 SC 1203

⁴⁴ (1995) 1 SUPREME COURT CASES 14

⁴⁵ AIR 2000 SC 1470