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SOCIO ECONOMIC CRIMES

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I INTRODUCTION

SOCIO ECONOMIC crimes are the product of greed. Greed is the mother of many sins. "After private property came into existence man was seized with the acquisitive[1] instinct."[2] It has been rightly said that:[3]

लोभात्क्रोधः प्रभवति, लोभात्कामः प्रजायते।
लोभान्मोहश्चनाशश्च, लोभः पापस्यकारणम्॥
lobhātkrodhaḥprabhavati, lobhātkāmaḥprajāyaté |
lobhān_mohash_chanāshash_cha, lobhaḥpāpasyakāraṇam

Greed influences (causes) anger, greed begets desire, from greed [come] delusion and destruction, greed is the root cause of pâpa (sin, evil, any wrongful deeds).

While greed induced crimes are known since ages, the modern development of such crimes may be traced in multiple developments including the industrial revolution, transformation of a *laissez faire* state to welfare state, unregulated capitalist ideology, hero worshipping of "rich and famous", considering western model as an ideal for human development, over-emphasis on 'end' disregarding 'means', and so on. When the 'end' becomes more important than the 'means', the first casualty is moral values. India is no exception to this sharp decline. The marginalisation of ethical norms, growing opportunities to earn more and more wealth lead to the unholy nexus of people in power, business and crime. Maximisation of profit at every cost paves way to criminalisation of business. Poor laws, poorer execution and the pathetic process of judiciary multiplies the problem. The miraculous advancements in science and technology hasre-established that socio economic crimes know no borders.

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1 having a strong desire to own or acquire more things, *available at:* https://www.britannica.com/dictionary/acquisitive.

2 Markendey Katju, J. "Ancient Indian Jurisprudence *vis-à-vis* Modern Jurisprudence" Speech delivered at the 6th Justa Causa National Law Festival, RashtrasantTukadoji Maharaj Nagpur University, Babasaheb Ambedkar College of Law, Nagpur dated February 23, 2008, *available at:* https://www.outlookindia.com/website/story/from-the-ancient-to-the-modern/264730.

3 *Hitopdesh, available at*: https://www.wisdomlib.org/hinduism/book/hitopadesha-sanskrit/d/doc276526.html (last visited on May, 20, 2022).

The survey of 2020 contains a critical view on various pronouncements of the Supreme Court of India dealing with socio economic crimes. The laws that are covered include the Prevention of Corruption Act, 1988 (PCA); the Narcotics and Psychotropic Substances Act, 1985; Provisions under the Indian Penal Code, 1860, provisions dealing with the menace of dowry, etc. The survey focuses on the new legal developments through judicial process, interpretative conflict on how to read the silence of the law, and delay in the cases of socio-economic crimes. The competing claim of due process model *vis-a-vis* crime control model in the interpretation of socio economic crimes is visible in various pronouncements.

In the case of *Tofan Singh* v. *TN*,[4] Indira Banerjee J., invokes the nature of socio economic crimes as under:[5]

> Socio-economic crimes such as trafficking in narcotic drugs and psychotropic substances, food adulteration, black marketing, profiteering and hoarding, smuggling, tax evasion and the like, which are "white collar crimes" affect the health and material welfare of the community as a whole, as against that of an individual victim, and are, by and large, committed not by disadvantaged low class people, but by very affluent and immensely powerful people, who often exploit the less advantaged, to execute their nefarious designs. Such crimes have to be dealt with firmly and cannot be equated with other crimes, committed by individual offenders against individual victims. …The safeguards provided in a statute, are always scrupulously to be adhered to, more so when the punishment is very severe.

Above passage is an *obiter* but important to alert us that socio economic crimes need special attention by all stakeholders.

II THE PREVENTION OF CORRUPTION ACT, 1988

Rafale III: The story so far

The narratives of corrupt practices in defence deals hardly surprises anyone. Many times, such allegations and narratives are based on strong evidence, sometimes they are the product of political disliking. Upendra Baxi rightly observes:[6]

> The trouble with all these narratives is they are many-sided. One, the allegation of corruption is rather easily made but is very difficult to substantiate. Trading in suspicion and even slander, is different from establishing guilt beyond a reasonable doubt. Second, allegations are mainly anecdotal and emerge from the Bar grapevine; the Bar's passion and penchant for telling stories is well known.

4 (2021) 4 SCC 1. It will be discussed elaborately in the next survey *i.e.*, 2021.

5 Banerjee J., though was in minority, this statement is general in nature on which the court can be said to be unanimous.

6 Many meanings of corruption, *available at*:https://indianexpress.com/article/opinion/columns/judiciary-corruption-law-of-contempt-4556016/(last visited on May 19, 2022).

"The Government of India entered into a multi-crore Rafale aircraft deal with Dassault (a French company). There was a complaint made to CBI regarding the Rafale deal that the Government of India has favoured one Indian Business Group. It was alleged that such favour discloses cognizable offence under section 7(a), 7(b) and 7(c) read with explanation 2 of section 7 of the amended (in 2018) Prevention of Corruption Act, and section 7, 13 (1) (d) (ii) and 13 (1) (d) (iii) of unamended Prevention of Corruption Act, 1988.This complaint led to three cases which are referred to as *Rafale* case I, *Rafale* case II and *Rafale* case III." *Rafale* I was a writ petition where the prayer was to explore the possibilities of a registration of FIR against the government for alleged corrupt practices. The Supreme Court rejected the petition rightly. *Rafale* II was an issue of maintainability of a document. A privileged document indicating some unfair practice was published in a newspaper. The government raised objections to that privileged document. The government argued that the document is not maintainable and admissible under law. However, the government failed to convince the court and the Supreme Court allowed the document. *Rafale* III was the review petition against *Rafale I* verdict where the privileged document was also used. This came for consideration in the case of *Yashwant Sinha* v. *Central Bureau of Investigation*.[7] The review petition, like the original writ petition, was dismissed unanimously.[8] KM Joseph, J. who silently agreed in *Rafale I* was vocal in *Rafale IiI.* He "agreed with the final decision" but placed detailed separate opinions and reasons on certain aspects. His opinion has a few significant points on the investigation of corruption cases, reference of the pronouncement of the constitution bench in the case of *Lalita Kumari* v. *Govt. of UP*,[9] and the impact of the Prevention of Corruption (Amendment) Act, 2018.

Scope of Preliminary Enquiry, PCA (Amendment) Act, 2018

It was argued by the petitioners to make a deeper inquiry into the *Rafale* deal to unearth the alleged corrupt practices. KM Joseph, J. agreed with other judges that the Supreme Court cannot make a fishing inquiry into the deal to unearth the truth, if any, because "it is neither appropriate nor within the Court's experience to step into what is technically feasible or not." The Judiciary cannot be both investigator and arbitrator. However, he insisted that this restricted review is a limitation only on the judiciary and not on the investigative body like CBI. CBI can make an in depth inquiry to disclose the matter. He observed as under:

> No such limitation applies to an Investigator of a cognizable offence. What is important is that it is the duty of the Investigating Officer to collect all material, be it technical or otherwise, and thereafter, submit an appropriate report to the court concerned, be it a final report or challan depending upon the materials unearthed.

7 (2020) 2 SCC 338.

8 It was authored by SK Kaul, J. and Ranjan Gogoi, CJ. KM Joseph, J. concurred with the outcome but differed on reasoning and finding of the Court.

9 (2014) 2 SCC 1. It was a unanimous opinion of the constitution bench. *Hereinafter* referred as *Lalita Kumari.*

Another limitation on the court was that it had to make its finding on the basis of material available. If there is "absence of substantial material" it has to rely on such absence and decide. One of the reasons for dismissing the writ petition as well as the review petition was that there was not sufficient material to smell a rat in the defence deal. There were anecdotes, hearsay and popular hypotheses. On the other hand, absence of material "is not a restriction on the investigating officer. Far from it, the very purpose of conducting an investigation on a complaint of a cognizable offence being committed, is to find material."

FIR *vis-a-vis* preliminary enquiry under PCA

When a complaint is made to an authority like, the Police, CBI, *etc.* there are three possibilities *viz.,* (i) the content of the complaint discloses the commission of a cognizable offence, (ii) the content of the complaint does not disclose the commission of a cognizable offence but there is some material to make preliminary enquiry to ascertain whether a cognizable offence is made out or not (iii) the content of the complaint does not disclose the commission of a cognizable offence at all.

Public servant and pre *Lalita Kumari* cases

KM Joseph, J. in *Rafale* review petition has elaborated the position before and after *Lalita Kumari*.[10] Way back in 1970s in the case of *P. Sirajuddin*[11] the Supreme Court "expressed the need for a preliminary inquiry before proceeding against public servants". Similar concern was made in *Tapan Kumar Singh*[12] where the "Court has validated a preliminary inquiry prior to registering an FIR only on the ground that at the time the first information is received, the same does not disclose a cognizable offence."

The Constitution Bench in *Lalita Kumari*, declared that registration of FIR is mandatory if information discloses commission of a cognizable offence and no preliminary enquiry (PE) is required. At the same time the constitution bench in *Lalita Kumari* was conscious of the precedents of *P. Sirajuddin* and *Tapan Kumar Singh*. The court was also aware that corruption cases need careful attention because they are an easy tool to victimise a public servant. Sometimes even a false complaint "would do incalculable harm." In *Lalita Kumari* it was argued that the CBI functions under the Delhi Special Police Establishment Act, 1946. CBI, therefore, need not be bound by Cr PC under which the state Police is bound. But the CBI has its own procedures under special law. KM Joseph, J. rightly mentions that "it is thereafter that under the caption 'Exceptions', the Constitution Bench has proceeded to deal with offences relating to corruption." *Lalita Kumari* carved out five exceptions and placed "corruption cases" as one of them where preliminary enquiry may be required. "The scope of the preliminary inquiry is not to verify the veracity or otherwise of the information received but it is only to ascertain whether the information reveals any

10 (2014) 2 SCC 1.

11 *P. Sirajuddin* v. *State of Madras* (1970) 1 SCC 595 : 1970 SCC (Cri) 240*, hereinafter* referred as *P. Sirajuddin.*

12 *CBI* v. *Tapan Kumar Singh* (2003) 6 SCC 175 : 2003 SCC (Cri) 1305.

cognizable offence." KM Joseph, J. highlighted two of the rules laid down in *Lalita Kumari*, (i) "if the information does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not." (ii) Moreover if "the preliminary inquiry ends in closing the complaint, the first informant must be informed in writing forthwith and not later than a week. That apart, reasons, in brief, must also be disclosed."

Application of *Lalita Kumari* in *Rafale* case

KM Joseph, J. continued with the requirement of preliminary enquiry in corruption cases. He also resorted to the CBI manual that "Chapter 9 [of the CBI Manual] deals with preliminary enquiries". Therefore, "the petitioners may not be justified in approaching this Court seeking the relief of registration of an FIR and investigation on the same as such." However, "the petitioners have not sought the relief of a preliminary inquiry being conducted." The court can grant a relief not specifically sought. So, instead of FIR the Court could order a preliminary inquiry. But he noticed that there is "yet another seemingly insuperable obstacle."

Interpretation of the Prevention of Corruption (Amendment) Act, 2018

The Prevention of Corruption (Amendment) Act, 2018 inserted section 17A[13] which says that:

> No Police Officer is permitted to conduct any enquiry or inquiry or conduct investigation into any offence done by a public servant where the offence alleged is relatable to any recommendation made or decision taken by the public servant in discharge of his public functions without previous approval, *inter alia*, of the authority competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

The petitioners at first approached the CBI. They mentioned section 17A and also the peculiar situation that they are required "to ask the accused himself, for permission to investigate a case against him. The approval for legal proceeding is sought." The petitioners knew that CBI's "hands are tied in this matter," but they should "at least take the first step of seeking permission of the government under section 17A of the Prevention of Corruption Act." KM Joseph, J., therefore, feels that it will "be a futile exercise" to direct registration of an FIR, "having regard to section 17A." The petitioners may have been able to make a case under the constitution bench decision of *Lalita Kumari* as well as under section 17A of the Prevention of Corruption Act, "in a Review Petition, the petitioners cannot succeed." KM Joseph, J. also held that the original writ petition (*Rafale judgement*) cannot stop the CBI to take legal action on the basis of the complaint filed against the PMO and can seek prior approval.

13 Prevention of Corruption (Amendment) Act, 2018, s.17A Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duty.

It seems that KM Joseph J., was convinced that though there was insufficient material to register an FIR, CBI should initiate a preliminary enquiry at their own level because there was some material for a preliminary inquiry. What is surprising is that KM Joseph J., has not used his power under article 142 to order CBI to proceed. He presented section 17A of the PCA as an "insuperable obstacle". It is established law that the power of the Supreme Court is a constitutional power under article 32/ 142 and it cannot be limited by a statutory provision like section 17A. In the case of *State of West Bengal* v. *CPDR*,[14] a Constitution Bench held as under:

In view of the constitutional scheme and the jurisdiction conferred on this court under article 32 and on the high courts under article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, *no Act of Parliament can exclude or curtail the powers of the Constitutional Courts with regard to the enforcement of fundamental rights.* [emphasis added]

Though the Constitution Bench did remind the courts regarding "self-imposed limitations on the exercise of these Constitutional powers." They must "be exercised sparingly, cautiously and in exceptional situations." Why did the authority of article 142 provided by the constitution and the constitution bench in *West Bengal* v. *CPDR* was not used by KM Joseph J., for initiating preliminary inquiry by the CBI in the *Rafale* case. Is it because of "self-imposed limitations"? Was *Rafale* not presenting an exceptional situation? Was it not a matter of enforcement of fundamental rights? Or was it because his direction could be a minority opinion which could be a futile exercise? It is difficult to appreciate what was there in the subconscious mind of KM Joseph, J. It seems he was aware that the petition had a political colour. The Lok Sabha elections were round the corner. The final verdict was left for the People to decide.

***Vinod Kumar Garg* : Inconsistent statement of witness and sanction order under PC Act**

Vinod Kumar Garg v. *State (Govt. of National Capital Territory)*[15] throws light on two points. (i) inconsistencies among the witnesses and the role of inconsistent statements of witnesses under PC Act? Can all contradictions in statements be termed as material to the trial. Can an accused be punished despite there being some inconsistencies in the statements of witnesses in PC Act? Are some inconsistencies natural? When can such statements and omissions lead to the benefit of doubts and when they cannot? (ii) if all materials are not placed before the sanctioning authority, is a sanction order bad in law? How do they play their role under the Prevention of Corruption Act, 1988?

If demand, receipt and recovery of bribe money is established beyond reasonable doubts, then inconsistencies in the statement of witnesses can be overlooked. In this case there was some inconsistency as to the date/time of demand of bribe (complainant stated in the complaint that bribe was demanded 15 days before the date of complaint

14 (2010) 3 SCC 571. It was a unanimous view of the Constitution Bench.

15 (2020) 2 SCC 88 : (2020) 1 SCC (Cri) 545.

while as witness he stated that it was demanded on the date of complaint), amount of bribe (whether the demand was for Rs 2000 or Rs 4000), purpose of bribe (complainant stated that he wanted electricity supply for a shed on rent while owner denied that the shed was given on rent) and whether hand wash done or not. Usually such dates are required to give credence to the story. Specific dates, exact money provides confidence in the story of prosecution. They are required as a rule of caution or prudence but they are not essential rules of law. The Supreme Court, while upholding conviction held that minor discrepancy and inability of two witnesses "to remember the exact details of whether or not the hand wash or pant wash was done would not justify acquittal of the appellant."

It was established beyond reasonable doubt that the accused, VK Garg, had asked for the bribe money and it was paid to him. The bribe money was recovered by the Police. On point of recovery the statements of all three witnesses are on a similar line. The presence of a witness in the immediate vicinity where the bribe was paid remained unchallenged. The deviations do not raise any reasonable doubts on these facts. The currency notes were treated scientifically as per law. On the issue of inconsistency in the statements of witnesses the Supreme Court took into consideration that the incident took place in 1994, the testimony of one prosecution witness was taken in 1999 and of a second witness was taken in 2001. The Supreme Court observed:

Given the time gap of five to six years, minor contradictions on some details are bound to occur and are natural. The witnesses are not required to recollect and narrate the entire version with photographic memory notwithstanding the hiatus and passage of time. Picayune variations do not in any way negate and contradict the main and core incriminatory evidence of the demand of bribe, reason why the bribe was demanded and the actual taking of the bribe that was paid, which are the ingredients of the offence under Sections 7 and 13 of the Act, that as noticed above and hereinafter, have been proved and established beyond reasonable doubt.

VK Garg case used the precedent of the *State of U.P.* v. *G.K. Ghosh*,[16] wherein it was held that:

> …in a case involving an offence of demanding and accepting illegal gratification, depending on the circumstances of the case, it may be safe to accept the prosecution version on the basis of the oral evidence of the complainant and the official witnesses even if the trap witnesses turn hostile or are found not to be independent. When besides such evidence, there is circumstantial evidence which is consistent with the guilt of the accused and inconsistent with his innocence, there should be no difficulty in upholding the conviction.

Sanction- purposive interpretation

Section 19 of the PC Act needs sanction for prosecution. It is a statutory protection provided to safeguard the interest of honest public servants from harassment. Many times they have to make strong and independent decisions. The provision of

16 (1984) 1 SCC 254.

sanction filters innocent mistakes from intentional mistakes. If all the materials have not been placed before the sanctioning authority, will it make the sanction order bad in law? In *VK Garg*, sanction was granted on the basis of (i) the report of the investigation officer and (ii) kalandra (a notice of a magistrate) of oral and documentary evidence.

However, the sanctioning authority did not receive following copies:

(i) statements of witnesses recorded under section 161 of Cr PC; (ii) the seizure memos regarding the seizure of the bribe money. (iii) copy of the report of the C.F.S.L. (iv) verification from the records whether the complainant had applied for an electric connection and was the tenant for allottee of the shed.

It was argued that in the absence of above records the sanction order cannot be sustained. The sanctioning authority must be aware of the facts constituting the offence. He has to apply his mind that a *prima facie* case for sanction is made out. The court quoted from the *State of Karnataka* v. *Ameerjan*,[17] that "ordinarily, before passing an order of sanction, the entire records containing the materials collected against the accused should be placed" so that it is shown that mind was applied. However in the *State of Maharashtra* v. *Mahesh G. Jain*[18] it was held with clarity that the "adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order" and "if the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction." The purpose of the Parliament in providing the "order of sanction as a prerequisite" is "to provide a safeguard to a public servant against frivolous and vexatious litigants." At the same time sanction should not be construed in a pedantic manner and there should not be a hyper technical approach to test its validity." It is correct that in *VK Garg* all relevant materials were not produced before the sanction officer which is ordinarily or ideally required. However, in this case the accused was caught red handed. The police version was available with the sanctioning authority. The complaint was available. The court has, therefore, made a purposive interpretation of the situation rather than going into the technicalities. Purposive interpretation requires that in case a situation can have two interpretations, the court should interpret the situation which serves the purpose of the enactment.

The court referred *Ashok Tshering Bhutia v. State of Sikkim*[19] where it was held that unless a miscarriage of justice has been caused by not considering all materials, the sanction order cannot be quashed for mere error, omission or irregularity. It is important to refer that the sanction order is also required in counter terror legislations like TADA, POTA and UAPA 1967. But in these cases the sanction order needs strict scrutiny because the punishment in many cases is 10 years, or life imprisonment or even death. In PC Act, the maximum punishment under section 7 was 5 years. The punishment awarded in *VK Garg* case was 1.5 years. This may be a reason why the court has not made a strict scrutiny of the sanction order.

17 (2007) 11 SCC 273.
18 (2013) 8 SCC 119.
19 (2011) 4 SCC 402.

Delay

Delay of justice seems to be a basic feature of the judicial process in many cases. In *Vinod Kumar Garg*, it took 25 years to punish the accused. In 1994 Nand Lal allegedly paid Rs. 500/ to Vinod Kumar Garg. In 1999 the trial court recorded his testimony. In 2002 Special Judge (PCA) Delhi ordered imprisonment for 1.5 years under sections 7 and13 of the Prevention of Corruption Act, 1988. In 2009 the High Court of Delhi upheld conviction. In 2019 the Supreme Court also upheld the conviction. 1994-2019, it took 25 years to convict a person who took a bribe of Rs 500/. The deterrence element of punishment is considerably diluted. No surprise, why the corruption in government offices is still rampant and common citizens, especially poor people, daily wage earners, those in unorganised sectors hit the most. This is SoS for the judiciary.

III NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

Among many cases decided by the Supreme Court in 2020 two pronouncements deserve special and detailed mention ie *Mukesh Singh*[20] which is a unanimous decision of the constitution bench and *Tofan Singh*[21] which is a full bench decision with 2:1. Both reflect on the conflicting views on whether the crime control model is good or the due process model is better? Should a rule of law prevail or should the court look for the rule of prudence? Should the rule of prudence be made as rule of law? While "read into" is a legitimate tool of interpretation, when should the court "read into" something not mentioned in the provision? If the penal law is silent, who gets the benefit? Accused or state? How to read the silence of the law?

Informant as investigating officer : whether permissible

In the case of *Mukesh Singh* v. *Delhi*,[22] the court was required to address whether a police officer can be an informant/ complainant as well as an investigating officer? Whether one police officer can act in a dual capacity? Ideally, both should be different persons because an investigating officer should begin as a neutral party. If he is an informant there is a natural human tendency that he is likely to tread the path that will support his information. This is known as "confirmation bias".[23] An investigating officer who is different from an informant is likely to process the evidence in a better fashion. As a criminal investigation leads to deprivation of personal liberty and there are collateral damages like loss of job, reputation, association with family and friends, *etc* the law should be a little more strict. Secondly, the position of informant as well as investigating officer in one person makes him more powerful. The chances of unfair and corrupt practices are enhanced. Law should not support such a monopoly else the aphorism of Lord Acton cannot be far away.[24] Thirdly, a police officer is the first protector of human rights. An investigating officer is also an agency of justice

20 (2020) 10 SCC 120. It was a unanimous view of the Constitution Bench.

21 (2021) 4 SCC 1. It will be discussed elaborately in the next survey i.*e.,* 2021.

22 (2020) 10 SCC 120. It was a unanimous view of the Constitution Bench.

23 *Available at*: https://www.britannica.com/science/confirmation-bias.

24 See, ""Power tends to corrupt, and absolute power corrupts absolutely," https://www.britannica.com/biography/John-Emerich-Edward-Dalberg-Acton-1st-Baron-Acton,

delivery. Justice should not only be done. It must be seen to be done.[25] While these reasons have great merit, the threat due to narcotic drugs are equally material for decision making. The law should not be interpreted in such a fashion that the very purpose of making special law is frustrated.

The background of *Mukesh Singh*

In the case of *Mohan Lal* v. *State of Punjab*[26] it was held that "in case the investigation is conducted by the police officer who himself is the complainant, the trial is vitiated and the accused is entitled to acquittal." *Mohan Lal* was further examined and explained in the case of *Varinder Kumar* v. *State of Himachal Pradesh*[27] where a three judge bench of this court [out of which two Judges were also in the Bench in the case of *Mohan Lal* (supra)] "held that the decision of this Court in the case of *Mohan Lal* (supra) shall be applicable prospectively, meaning thereby, all pending criminal prosecutions, trials and appeals prior to the law laid down in *Mohan Lal* (supra) shall continue to be governed by individual facts of the case."

Doubt was raised on the precedential value of above cases. The matter was sent to a constitution bench which unanimously decided that an informant/complainant can be an investigation officer also. The constitution bench decided on two lines viz. (i) they analysed the conflicting precedents and found which one is the correct line of reasoning. (ii) they analysed the provisions of NDPS Act and Cr PC.

Liberal precedents

In the area of criminal law liberal precedents are those which are solely guided by the due process model and disregard the gravity of crime. The intention of the legislature is interpreted in favour of the accused. The expectation from the prosecution is on highest pedestal. These precedents also read the silence of the statute in favour of the accused. The concept of rule of law also supports that silence of law cannot be interpreted in favour of the state. The absence of express provision has to be interpreted in favour of the accused.[28] They are accused centric precedents. They overlook the rights of victims, and are influenced by the "rights'' model of the criminal justice system. (i) they read the "rights" which are expressly mentioned in the statute, and rightly so, like search Under NDPS Act before a magistrate (ii) If any other right has emerged through judicial decisions, the liberal precedents will also follow them without question, like informant cannot be investigating officer (iii) They also read these "rights" which are not expressly mentioned but as a matter of prudence can be found impliedly in the statute. They express what is implied. Same example can be given, an informant cannot be an investigating officer. (iv) they will not go into the details of why the rule of prudence has not been granted statutory status by the legislature. Was

25 "*Justice must not only be done, but must also be seen to be done*". This was laid down by Lord Hewart, Lord Chief Justice of England in the case of *Rex* v. *Sussex Justices,* [1924] 1 KB 256.

26 (2018) 17 SCC 627.

27 2019 (3) SCALE 50 : (2020) 3 SCC 321.

28 Jeremy Waldron, "The Rule of International Law, 30 *Harvard Journal of Law & Public Policy* at 16-18(2006), *available at* : http://www.rexsresources.com/ uploads/6/5/2/ 1/6521405/ vol30_ no1 _ waldrononline.pdf, (last visited on June 11, 2022).

it an oversight by the legislature or was it deliberate? Did the legislature leave it to interpretation by the judiciary on a case to case basis or the abuse of law is so apparent that the judiciary ought to step in without waiting for the legislature to amend the law? (v) if the rule of prudence has not been followed, what should be the consequence proceeding? Should the whole trial be declared illegal or should the court look for prejudices caused to the accused?

Therefore, there are various precedents which hold that "informant and investigating officers must be two different persons". These precedents do not treat this different person theory as mere rule of prudence. They use the judicial power to upgrade these rules of prudence into the rule of law. This amounts to informal amendments of the provisions of Cr PC or NDPS Act. A few judges who are called "liberal" feel that to preserve the rights of accused, and guard against the possible abuse of authority ie the Police here, we should be ready to pay this price of judicial intervention in legislative wisdom. Any discrepancy or departure will pollute the fair trial and proceedings have to be quashed. These precedents are *Baldev Singh*,[29] *Bhaskar Ramappa Madar*[30] and *Surender*.[31] In the current case under survey *i.e., Mukesh Singh*, the Constitution Bench of the Supreme Court examined these liberal precedents and concluded that these precedents do not lay down any principle of law to be followed by subsequent bench because:

a. they are case specific and are limited to the cases themselves. In these cases the Supreme Court has acquitted the accused because of many reasons. One of the reasons was that the complainant was himself an investigating officer. But that was not the sole basis. Many other factors raised serious doubts in the narrative of the prosecution. Acquittal was the result of cumulative effect of all factors.

b. the liberal precedents did not discuss the relevant laws like provisions of CrPC, NDPS Act etc comprehensively. They have made a casual glance over the provisions and a detailed examination of these provisions have not been taken into.

c. There were conflicting (and conservative) precedents that had also not been considered by judges. The conflicting precedents hold the view that a liberal interpretation will kill the very purpose of the enactment *viz*., NDPS Act.

The Supreme Court in *Mukesh Singh* observed as under:

> On considering the entire decision of this Court in the case of *Mohan Lal* (supra), it appears that in this case also the Court did not consider in detail the relevant provisions of the Cr.P.C. under which the investigation can be undertaken by the investigating officer, more particularly Sections 154, 156 and 157 and the other provisions, namely, Section 465 Cr.P.C. and Section 114 of the Indian Evidence Act. Even in the said decision, this Court did not consider the aspect of prejudice to be established and proved by the accused in case the investigation

29 (1999) 6 SCC 172.

30 *Bhaskar RamappaMadar* v. *State of Karnataka* (2009) 11 SCC 690.

31 *Surender* v. *State of Haryana* (2016) 4 SCC 617.

> has been carried out by the informant/complainant, who will be one of the witnesses to be examined on behalf of the prosecution to prove the case against the accused. This Court also did not consider in detail and/or misconstrued both the scheme of the NDPS Act and the principle of reverse burden.

Besides liberal precedents there are two other precedents. Balancing precedents and conservative precedents. Balancing precedents are the precedents which provide equal weightages to the rights of accused as well as victims. Conservative precedents are the precedents which provided less weightages to the rights of accused and more to that of victims. They exercise restraints in amending the provisions of law to safeguard possible misuse (even if hypothetical) of authority of the police can be termed as conservative precedents. One such precedent in *Mukesh Singh* is *V. Jayapaul* case.[32] This should be given more weightage because

a. *Jayapaul* case was on the Prevention of Corruption Act, 1988 where the informant and investigating officer was the same person for the contraband seized.

b. *Jayapaul* case has considered the entire scheme of investigation under the Cr PC *viz.,* scheme of sections 154, 156 and 157 Cr PC.

c. It was held that investigation by the same police officer who lodged the FIR is not barred by law.

d. It is further observed that such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer and the question of bias would depend on the facts and circumstances of each case.

e. It is not proper to lay down a broad and unqualified proposition that such investigation would necessarily be unfair or biased.

f. Cases of *Bhagwan Singh* (supra) and *Megha Singh* (supra) were discussed in *Jayapaul* and both were held to be on their own facts and circumstances. They do "not lay down a proposition that a police officer in the course of discharge of his duties finds certain incriminating material to connect a person to the crime, shall not undertake further investigation if the FIR was recorded on the basis of the information furnished by him."

S. Jeevanantham was a more relevant precedent.[33] It was an NDPS case. The accused was convicted though the informant and the investigating officer were the same person. The reasoning of the Supreme Court was that the accused failed to show that the investigation by the complainant police officer himself had caused prejudice to him or was biased against the accused. Abuse of authority cannot be presumed in all cases.

Cr PC 1973, NDPS Act and safeguards

After examining the relevant precedents the constitution bench evaluated the provisions under Cr PC 1973. They reached the conclusion that Cr PC 1973 does not

32 *State* v. *V. Jayapaul* (2004) 5 SCC 223.

33 (2004) 5 SCC 230.

bar any informant from acting as an investigating officer. They also provided a couple of illustrations to suggest that in certain cases the chances of the informant and investigating officer being the same person cannot be avoided. If a police officer going to office finds a dead body on the road. What will he do? Should he inform the nearest police station and begin an investigation? Should he only inform and wait for another investigating officer? If so, vital evidence may be gone.

Flip side is that he should wait for the investigating officer because he himself is an informant. Meanwhile he can record evidence, dying declaration (if the victim was not dead), ask a few witnesses on the road what happened or how it happened? He can be a prosecution witness instead of an investigating officer.

The Constitution Bench states that NDPS is a complete code in itself. However, it seems in *Tofan Singh* in the same year a different observation has been made. The Constitution Bench has addressed the concern of abuse of power in case an informant and investigating officer is the same person taking resort to the inbuilt safeguards.

For example section 50 requires that prior to search of a person he must be informed that the search may be made before a competent officer. If the accused so wish, the search shall be made before that competent authority. If it is not possible the search may be made by NDPS officials but the reasons for such urgency has to be recorded and as to be sent to the superior.

Section 52 mandates that grounds of arrest be informed, the arrested person and the seized item has to be forwarded to competent authority without delay. After that the investigation shall be conducted by an officer in charge of the police station.

The NDPS Act does not specifically bar that an informant cannot be an investigating officer. If this is a sound argument can a counter argument be made that the NDPS Act does not state that an informant can be an investigating officer. The NDPS Act states that the officer incharge of the police station shall investigate the case and no other person. Suppose the O1C is the informant. Who will investigate the case? Another reason why the same person should be an informant as well as an investigating officer is practical in nature. In NDPS cases the offence is very organised and planned. Suppose an officer O1 gets some tip. He follows this information for many days and finds a few concrete leads. O1 may be aware of the *modus operandi* of the gang. O1 is the most appropriate person to follow them, collect information, prosecutable and clinching evidence. If the investigation is assigned to O2, he will have difficulty in coordinating all leads and undercover agents. The source of information (a *mukhbir*) may not be comfortable with O2.[34]

It is encouraging to see that the *Mukesh Singh* case was decided in two years in the Supreme Court. Many cases in the Supreme Court itself take longer years, sometimes more than seven years.

34 This illustration was given by NDPS officials in CBI Academy, Ghaziabad, UP, where this author has gone as resource person for a training programme in June 1, 2022.

Tofan Singh v. *State of Tamil Nadu*[35] is another important development of law. The issue was whether the NDPS officials who record statements under section 67 of the NDPS Act are police officers or not? The judgement of the Supreme Court was 2:1. The majority (RF Nariman and Naveen Sinha, JJ.) decided that based on the functionality test, NDPS officials under section 67 are also police officers. Therefore, any confession recorded by them is hit by section 25 of the Indian Evidence Act. Section 67 of NDPS Act does not provide power to record a "statement". It only provides space for enquiry to get more information so that an investigation can be started. Therefore, the information gathered under section 67 is not "evidence" and cannot be presented in the court. *Tofan Singh* has overruled those decisions (*Rajkumar Karwal*and *Kanahiya Lal* case) which held that NDPS officials are not police officers. It has also rejected the test that a police officer is only that person who has authority to file a report under section 173 of Cr PC.

The minority (Indira Banarjee J.,) did not agree on these reasons because

a. The interpretation of NDPS Act has to be purposive and strict interpretation will only benefit the accused which is contrary to the intention of the Parliament.

b. The nature of crime needs to be considered while interpretation and the NDPS Act is a very serious socio economic crime.

c. There are constitutional bench decisions which have declared that NDPS officials are not police officers.

d. The NDPS Act or CrPC does not debar the confessional statement by NDPS officials.

This author agrees with the finding of minority view in *Tofan Singh* case. It is better that an authoritative pronouncement be made through a larger bench decision.

IV DOWRY CASES

Dowry cases are peculiar cases of socio economic crimes where the conservative society be it where dowry transaction is an accepted norm. Both accused and victims mutually agree to take and give it despite laws since 1961. The cases surround demand of dowry, cheating, criminal breach of trust, dowry death etc.

Alteration of charges after judgement reserved :*Nallapareddy Sridhar Reddy* v. *State of A.P*[36]

As facts are significant it is summarised. Marriage was conducted in 2003. Cruelty and demand of dowry was noticed in 2006. However, an FIR was registered in 2011. The chargesheet was filed for offence under section-498A, IPC; section 3, 4 of the Dowry Prohibition Act, 1961. The Police received new information and sought permission for further investigation. Additional charge-sheet was filed for sections 406 and 420. However, the trial court commenced the trial on the basis of the first chargesheet only. The prosecution has not pointed out that there is an additional

35 (2021) 4 SCC 1.

36 (2020) 12 SCC 467. This author acknowledges the assistance of Yashavi, LL.M student of ILI (2021-22) for her help on dowry cases.

chargesheet and the trial court was required to state expressly whether it was accepted or rejected. The trial court reserved judgement in 2017. In 2017 the prosecution came out of slumber and submitted an application to frame charges for sections 406 and 420. The trial court observed that the previous trial judge took cognizance of section 406/420. But somehow the trial did not commence for section 406/420 as the additional chargesheet was placed in a different bundle. [If it was so why the prosecution did not point it out and why the trial judge did not take note of all records]. In 2017 the trial court framed charges for section 406, 420 also before judgement. However, framing of charge was done without following due process ie without hearing both parties and examining witnesses. The high court ordered the trial court to proceed again by rectifying lacuna in the procedure. The trial court reconsidered the additional chargesheet and refused to frame charges for section 406/420. This time the trial court did not disclose any reason whether the elements of section 406/420 are prima facie satisfied or not. The high court rejected the trial court approach because the trial court should have examined the evidence on record to ensure that there is sufficient or insufficient material to proceed. In the Supreme Court it was argued :

a. that the delay in trial under the additional chargesheet was deliberate.
b. to examine the ingredient of offence for framing charges the court need not to examine the probative force of evidence and the high court has committed mistake.

The Supreme Court held that under section 216 of Cr PC a charge can be modified any time before judgement is delivered. There are only two restrictions :

i) it should not cause prejudice to the party (accused). [therefore, he should be heard]
ii) if charge is modified, the modified provision and their elements must have direct connection with the evidence on record.

The Supreme Court also found that the delay was not deliberate on the part of the victims because the cognizance under section 406/420 was already taken.

While determining *prima facie* the trial court has to examine whether the evidence *may[and not shall]* lead to the conviction or not. The evidence should convey convictability and not actual conviction. " What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out." This author feels that the test rests in answering the question "can he be convicted?" and not "will he be convicted"?

How to draw a *prima facie* inference for section 406/420?

In such cases of cheating there are two questions. One, was it *prima facie*? Two, was it a mere contractual transaction which is purely civil in nature or did criminality slip into it?

Father alleged that his son in law promised that he would look after his daughter in the United Kingdom (UK) and promised to provide a Doctor job in the UK and claimed Rs.5 lakhs for the said purpose and received the same. This statement was supported by two independent witnesses.

Whether the above statement makes up a prima facie case? A family relative promises something. For this he asks money. Statement suggests that money was given. The relative did not provide the job as promised. Nor did he return the money. These transactions are supported by two witnesses. One witness said that the father borrowed Rs. 5 lakh from a person and delivered this Rs. 5 lakh to son in law in presence of two witnesses. The son in law does not state that he returned money. The son in law does not accept receiving money.

Martin Burn Ltd. v. *R.N. Banerjee*[37] may throw some light on the concept:

> A *prima facie* case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a *prima facie* case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence.

Another useful precedent is from America. In *State* v. *Sattley* it was observed :

> "Prima facie evidence is such that raises such a degree of probability in its favor that it must prevail unless it be rebutted, or the contrary proved." And it is to be noted that the terms "prima facie evidence" and "prima facie case" differ in meaning. "Prima facie evidence" refers to a single piece of evidence which tends to establish a single fact or a single conclusion of law. A "prima facie case," on the other hand, generally means that one side has produced some evidence of each of several elements of a conclusion of law.

Prima facie means if the accused does not give any evidence, he can be convicted. If the accused chooses to remain silent, the court will rely on the statement of the father because it is also supported by two witnesses.

Is it a contractual transaction or a cheating? How to know *prima facie*? The money was not returned. This indicates that the intention was to take money wrongfully, ie dishonest intention. Therefore it was a case of *prima facie* cheating and section 406/420 is made out. The words of the Supreme Court may be reproduced as under:

> When the amount is entrusted to A1, with a promise to provide a job and when he fails to provide the job and does not return the amount, it can be made out that A1 did not have any intention to provide job to his wife and that he utilised the amount for a purpose other than the purpose for which he collected the amount from LW1, which would suffice to attract the offences under Sections 406 and 420 IPC. Whether there is truth in the improved version of LW.1 and what have been the reasons for his lapse in not stating the same in his earlier statement, can be adjudicated at the time of trial.

In *Nallapareddy Sridhar Reddy* the cause of action occurred in 2006 and FIR was filed in 2011, *i.e.,* after a lapse of 5 years. It is very surprising in this particular

37 AIR 1958 SC 79.

case. It is appreciable that a police officer had filed a charge-sheet within a year *i.e.,* and 2012 which generally does not happen practically. Also in the present case, the matter took approximately nine years for the determination whether the trial court should or should not have acted upon additional charges. It means a further number of years [may be nine more years] will be required for the case to be fully disposed of. We know that dowry offences are socially accepted socio economic crime. Such offences need to be addressed at the earliest for which Dowry Prohibition Act, 1961 is passed as a special legislation. And every special legislation is enacted with a purpose of providing speedy justice. The lapse at trial level by prosecution or the trial judge should have been taken more seriously. The prosecution did not notice that the trial commenced on first chargesheet and not on the additional chargesheet. The public prosecutor as well as the trial judge should be made accountable for such lapses. The lapse may be because of workload on the officers but is not a defence. The government should ask the public prosecutor on such an issue. The high court and the Supreme court should have asked both the public prosecutor and the trial judge to explain such a lapse.

Bail post conviction*: Preet Pal Singh* v. *State of Uttar Pradesh*[38]

In cases of dowry death what are the principles to be followed for granting bail post conviction? Are the celebrated principles of bail *viz.,* Bail is rule, Jail is exception and presumption of innocence to be considered with the same vigour? What are the grounds on which bail can be granted after conviction under section 30$B? *Preet Pal Singh* is significant to understand these principles.

The Supreme Court reminded that the bail jurisprudence significantly differs in case of pre conviction and post conviction. At the post conviction stage "bail is the rule and jail is the exception" cannot be the controlling philosophy. Nor the doctrine of presumption of innocence is available to the accused because it has been neutralised by the prosecution by establishing the case beyond reasonable doubts. The court granting bail need not follow the idea of "personal liberty" passionately post conviction. In cases like dowry death the court should be additionally alert that with every stay on punishment and bail the sense of justice and right of victim is discouraged. Therefore, the court should grant such stay and grant bail only if

a. There is patent error in the conviction order which makes it prima facie erroneous
b. Chances of unreasonable delay at appellate stage
c. There is speaking order disclosing grounds of bail

Preet Pal Singh case can be reproduced as under:

> …in case of post conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather,

38 (2020) 8 SCC 645.

> the Court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) of the Cr PC.

Appellate Court is only to examine if *there is such patent infirmity* in the order of conviction that renders the order of conviction prima facie erroneous.

The court further observed:

Section 389(1) [of CrPC] is to be exercised judicially, the Appellate Court is obliged to consider whether any cogent ground has been disclosed, giving rise to substantial doubts about the validity of the conviction and whether there is likelihood of unreasonable delay in disposal of the appeal, as held by this Court in *Kashmira Singh* v. *State of Punjab*,[39] and *Babu Singh* v. *State of U.P.*[40]

Preet Pal Singh case applied above principle on the facts and law as under:

> It is nobody's case that the death of the victim was accidental or natural. There is evidence of demand of dowry, which the Trial Court has considered. The death took place within 7 or 8 months and there is oral evidence of the parents of cruelty and torture immediately preceding the death. There is also evidence of payment of Rs.2,50,000/- to the Respondent-Accused by the victim's brother. The Respondent No.2 has not been able to demonstrate any apparent and/or obvious illegality or error in the judgment of the Sessions Court, to call for suspension of execution of the sentence.

Lesson for the high court

Preet Pal Singh case conveys clear lesson to the appellate court granting bail in conviction cases which can be fruitfully presented as under:

> It is difficult to appreciate how the High Court could casually have suspended the execution of the sentence and granted bail to the Respondent No. 2 without recording any reasons, with the casual observation of force in the argument made on behalf of the Appellant before the High Court, that is, the Respondent No.2 herein. In effect, at the stage of an application under Section 389 of the CrPC, the High Court found merit in the submission that the brother of the victim not having been examined, the contention of the Respondent No.2, being the Appellant before the High Court, that the amount of Rs. 2,50,000/- was taken as a loan was not refuted, ignoring the evidence relied upon by the Sessions Court, including the oral evidence of the victim's parents. The failure to lodge an FIR complaining of dowry and harassment before the death of the victim, is in our considered view,

39 (1977) 4 SCC 291.

40 (1978) 1 SCC 579.

> inconsequential. The parents and other family members of the victim obviously would not want to precipitate a complete break down of the marriage by lodging an FIR against the Respondent No.2 and his parents, while the victim was alive.

If the above passage is analysed the Supreme Court was disappointed from the high court because

a. It has not recorded the reasons

b. It has examined the merit of the case at bail level which is not permissible like

i. Non examination of one memberie brother of the victim here,

ii. The nature of amount, whether it was a dowry amount or a loan amount

iii. Why was FIR not registered before death of bride when the harassment was complaint

Above three were to be examined at appeal of conviction and not at bail level. The non registration of FIR was inconsequential because the parents were more interested in saving the marriage and registration of FIR could "precipitate a complete breakdown of the marriage."

c. Overlooked the evidence relied upon by the trial court

***Prima facie : Arun Singh* v. *State of Uttar Pradesh*[41]**

Arun Singh case again makes us understand the scope of prima facie. The marriage between the accused and the victim girl was set up. Before marriage the accused established physical relationship with would be wife by suggesting that only ceremonies of *fere* is required. After this the boy's family started demanding dowry of Rs 5lakh in open panchayat. The victim filed a case under section 493 of IPC[42] and 3/4 of the Dowry Prohibition Act, 1961. The Supreme Court examined section 493. It requires that the girl be misled by the fact that she was lawfully married. The complaint shows that the girl was not misled. She knew that marriage was not solemnised and the boy also said that formalities are yet to be done. The ingredients of section 493 cannot meet and there are no chance of convictibility of the accused. The Supreme Court quashed the proceeding under section 493 of IPC. On the other hand there was prima facie proof that money was demanded for dowry. This cannot be quashed.

V CONCLUDING REMARKS

The Rafale jet case not only dominated the political space and media spectrum, it was litigated in the judicial arena also. The allegation of corrupt practices in the defence deal was found to be insufficient and based on hearsay evidence. The Supreme Court reached to the conclusion that no *prima facie* case is made out to order an FIR.

41 (2020) 3 SCC 736.

42 S. 493 reads: "Cohabitation caused by a man deceitfully inducing a belief of lawful marriage. - Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

The review petition on *Rafale* discussed the scope of preliminary enquiry in the light of PCA (Amendment) Act, 2018. This may be treated as the first interpretation of the PC Act as amended in 2018. *VK Garg* case provides us the difference between beyond reasonable doubts and beyond all doubts in case of PC Act. If there are inconsistencies in the statements of witnesses, but the rest of the evidence proves the elements of crime beyond reasonable doubts such inconsistencies are not material. Similarly, the sanction order should consider all relevant materials. This is a rule of prudence. However, if the sanction order fails to consider all material, the trial does not necessarily fail unless non consideration of rest of the materials cause miscarriage of justice. In every trial there will be some doubts but they may not necessarily be reasonable doubts. *VK Garg* suggests that the court should be additionally careful to this distinction and acquittal should not be made for the want of technical issues.

Natural justice is an essential part of every law. They may or may not be codified because it is neither possible nor feasible to codify all of them. The case of *Mukesh Singh* indicates the demand of the highest pedestal of rule against bias. The constitution bench in *Mukesh Singh,* however, has rejected this demand and held that an informant and an investigating officer can be the same person. This sounds like the court has legitimised that "a person can be a judge in his own case". Ideally an informant and investigating officer should be two different persons. While this may be desirable, is it feasible? If it is desirable, does the want of it make it unlawful generally? Or it may be unlawful on a case to case basis? Certain doctrines are buried in the law but not expressly recognised in the text. A law may be silent on individual freedom on certain aspects? If there is silence of law on individual freedom the individual can take the benefit of silence or loopholes in law. If law imposes constraints on individual freedom, such constraints cannot be through silence of law or loopholes of law because the silence or loopholes of law should be interpreted in favour of individual freedom.[43]

A law may be silent on various issues. *Firstly*, it may be silent on the power of an authority to restrict freedom. For example the power to arrest or search a person. In such cases the silence of the law should be interpreted in favour of the individual. The constraints on liberty cannot be implied or cannot be inferred. It has to be expressed. The reasonable restrictions have to be mentioned.

Secondly, it may be silent on the exercise of power of authority which may not have any direct or proximate link with liberty. For example, who can be an investigating officer. Does "rights" discourse come into picture here? While advocating "rights" or "individual liberty" approach or due process model, have we given due consideration to the fact that NDPS Act addresses not a municipal crime but a "Transnational Organized Crime" which poses a global challenge. The law is silent on the question "whether the informant can be an investigating officer"? Should it be interpreted to give benefit to the accused or should it be interpreted to favour the State? The Constitution bench decided the State has better and greater claim because social interest prevails over individual interest. The author agrees with the finding. Another noticeable development is *Tofan Singh* where it was decided by the majority that NDPS officials

43 Jeremy Waldron, "The Rule of International Law," 30 *Harv. J.L. & Pub. Pol'y* 17 (2006).

are to be treated as police officers and the statement (confession) recorded by them is hit by section 25 of the Indian Evidence Act, 1872. This was an interpretation in favour of the accused and the Supreme Court was influenced by the "rights" model. Unlike the *Mukesh Singh* case *Tofan Singh* goes against the State and rule of caution has been elevated to the rule of law. *Tofansingh*is an illustration of judicial legislation. This author respectfully disagrees with the majority in *Tofan Singh* and supports the view of the minority. *Tofan Singh* case should be referred to a larger bench or the Parliament should amend NDPS Act to make the position clear. NDPS Act needs to follow the crime control model and due process model is not for the crimes covered under NDPS Act which has devastating effect on the young generation in India besides effect on economy. In this sense NDPS Act is different from other socio economic crimes like corruption, dowry etc because they do not essentially affect the young generation.

Among dowry related offences *Nallapareddy Sridhar Reddy* lays down that the trial court can alter charges even if judgement is reserved. This case is also useful to understand the concept of *prima facie* for section 406/420 of IPC. *Arun Singh* case also help understand the application of *prima facie* for section 493 of IPC and section 3/4 of DP Act, 1961. The case of *Preet Pal Singh* is useful for post conviction bail matters where it was held that the bail jurisprudence is diluted in such cases.