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SOCIO-ECONOMIC CRIMES

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ईशा वास्यमिदं सर्वं, यत्किञ्ज जगत्यां जगत्।
तेन त्यक्तेन भुञ्जीथा, मा गृधः कस्यस्विद्धनम्

All this is for habitation by the Lord, whatsoever is individual universe of movement in the universal motion. By that renounced thou shouldst enjoy; *lust not after any man's possession*. [Shuklayadurved, 40/1]

I PERSPECTIVE

"Corruption is behavior of public officials which deviates from accepted norms in order to serve private ends."[2] In 1939 Sutherland identified that the political institutions do not recognise the presence of the largest source of invisible corruption ie white collar criminality.[3] In 1968 Huntington identified that corruption is "of course, one measure of the absence of effective political institutionalization."[4] The result can be correctly reproduced in the word of the United Nations as under:[5]

Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of

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1 īśā vāsyamidaṁ sarvaṁ yatkiñca jagatyāṁ jagat | tena tyaktena bhuñjīthā mā gṛdhaḥ kasyasviddhanam || जगत्याम् - jagatyām - in the universal motion | यत् किम् च - yat kim ca - whatsoever | जगत् - jagat - individual universe of movement | अस्ति - (asti) - is | इदम् - idam - this | सर्वम् - sarvam - all | ईशा - īśā - by the Lord | वास्यम् - vāsyam - for habitation | तेन - tena - by that | त्यक्तेन - tyaktena - renounced | भूञ्जीथाः - bhūJñīthāḥ - thou shouldst enjoy | कस्यस्वित् - kasyasvit - any man's | धनम् - dhana - possession | मा गृधः - mā gṛdhaḥ - lust not after |

2 Samuel P. Huntington, *Political Order in Changing Societies*,59,(Yale University Press,1968), *available at* https://ia601400.us.archive.org/17/items/in.ernet.dli.2015.117282/2015.117282.Political-Order-In-Changing-Societies_text.pdf

3 Edwin H. Sutherland, "White-Collar Criminality," 1 *American Sociological Review* (1940), *available at* https://www.asanet.org/wp-content/uploads/1939_presidential_address_edwin_sutherland.pdf. *Hereinafter* referred to as *Sutherland.*

4 Samuel P. Huntington, *supra.*

5 Forward, United Nations Convention Against Corruption, 2004, https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf

human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.

Indian states like other nations have addressed the concern by first recognising socio economic crimes like the Prevention of Corruption Act, 1947, followed by a fresh enactment in 1988. The passage of the Prevention of Money Laundering Act, 2002 demonstrates the shift of the legal system from socio economic crimes to white collar crimes. While zero tolerance policy against corruption is a *mantra* to deal with the menace of socio economic crimes,[6] 2014 onwards, with the change in political dispensation in India this policy has started showing its actual worth. The Parliament has modified the laws and the executive has made significant noticeable productive interventions. At the judicial front also the courts have maintained the jurisprudential distinction while dealing with conventional crimes and socio economic crimes. This survey of 2023 cases is limited to the pronouncements of the Supreme Court of India only though the author has also studied and referred to a couple of high court decisions to correctly appreciate the apex court decisions. Major focus is the Prevention of Corruption Act, 1988 (PCA) and the Prevention of Money Laundering Act, 2002 (PMLA).

II PREVENTION OF CORRUPTION ACT, 1988 (PCA)

State of Gujarat* v. *Dilipsinh Kishorsinh*: What is *prima facie?

Prima facie case has presented various difficulties and many judicial pronouncements have tried to explain its meaning. As this may differ case to case basis the elements of subjectivity is an essential evil. In cases of special crimes where there is a presumption clause the issue of *prima facie* creates more difficulties. However, if the principles are well understood and are applied to the facts in its spirit the disputes and delay may be checked to considerable extent. *State of Gujarat* v. *Dilipsinh Kishorsinh*[7] again answers the issue of *prima facie* in PCA cases.

In *Dilipsinh Kishorsinh*[8] a sub-inspector was facing corruption charges of disproportionate assets under PCA, 1988. A complaint was filed in 2013 under section 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1985. The accused submitted a written explanation [2014] as well as the supporting documents to justify his property as lawful and within legal norms. He argued that

(i) he informed his office about the purchase of properties or investments on every occasion

(ii) he submitted documents of visit abroad which were duly sanctioned.

(iii) He took loans from friends and relatives for which the statements of the witnesses are attached. His loans were wrongly considered in the income.

(iv) Therefore, the calculation is also faulty.

6 *Available at:* https://pib.gov.in/Pressreleaseshare.aspx?PRID=1696775 (last visited on Jan. 20, 2024).

7 (2023) SCC OnLine SC 1294: 2023 INSC 89414. It was a division bench judgment.

8 *Ibid*.

He argued that the investigating officer (IO), sanctioning authority [2015] and the trial court [2016] did not consider his above explanations. When he reached the high court [2018] the high court was convinced with the above arguments and granted discharge.

The matter came before the Supreme Court which upheld the charge sheet, restored the trial court order and set aside the high court decision. The Supreme court held that when a chargesheet is submitted and the court begins to frame charges, the court has to satisfy itself whether a *prima facie* evidence against the accused is available or not. Literally it means 'on the face of it'. In order to identify this level of evidence the court studies the chargesheet and the documents attached with it. It is not required to hear the version of accused in his defence at this stage. "It would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed." The trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are *sufficient* to proceed against the accused on the basis of charge sheet material. After studying "the nature of the evidence recorded or collected by the investigating agency or the documents produced" if *prima facie* it reveals that there are suspicious circumstances against the accused, charges will be framed. If there are grounds for presuming that the accused has committed the offence charges will be framed. On the other hand if there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged.

Framing of charge: what are the rights of the accused?

The sub inspector, who was accused of offences under PCA wanted to produce documents before the court. The court held that "at the time of framing of the charge and taking cognizance the accused has no *right* to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge." Judicial mind has to be applied on the basis of charge-sheet material only. The expression "the record of the case" used in section 227 Cr.P.C indicate that material must be on record before it is presented to the court for cognizance.

Though the accused cannot present any document he can use the document presented by the Police or prosecution. He can demonstrate from the charge-sheet material that it "drastically affects the very sustainability of the case." It will be unfair if such material is not considered. If the accused has presented certain material before the Investigating Officer, the trial court can consider that material also and such consideration is not limited to oral hearing or oral arguments only.

The court in *Dilipsinh Kishorsinh* also referred to the *State of Tamil Nadu* v. *N. Suresh Rajan*.[9] This was also a case on disproportionate assets and therefore was extremely relevant. Here the Supreme Court examined the rules to be applicable

9 (2014) 11 SCC 709.

at the time of framing of charge and discharge application. The Court in *Suresh Ranjan* held that:

i. at the time of applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office. [this is some protection to the accused.]

ii. the court may sift [filter] evidence in order to find out whether or not the allegations made are groundless.

iii. the court has to proceed with an assumption that the materials brought on record by the prosecution are true. [This finding is like a shall presumption but in a limited way because the presumption can be displaced only by "documents on records" under section 227 of Cr PC and the accused cannot produce other documents.]

iv. it has to evaluate the said materials and documents to find out whether there is existence of all the ingredients of alleged offence.

v. at this stage, the probative value of the materials has to be gone into. The inquiry is only limited to the find whether there is a ground for presuming that the offence has been committed or not.

vi. probative value need not be to inquire whether a ground for convicting the accused has been made out or not, because that will be required only during the trial. No need to go deep into the matter.

vii. if the material is sufficient to satisfy that accused might have committed the offence it can frame the charge. It is not necessary to reach to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.

What facts made it a *prima facie* case

facts that convinced the trial court and the Supreme court to arrive at the conclusion that there was a *prima facie* case against the accused can be summarised as under:

i. Property worth more than his known source was found.

ii. delayed justification of the loan that too taken from family members and friends.

Gujarat high court exercised its revisional jurisdiction under section 397 Cr PC to declare that the chargesheet under PCA, 1988 was wrong and quashed it under section 482 of Cr PC. In order to examine whether the high court was correct or not the Supreme Court in *Dilipsinh Kishoresinh* quoted from *Amit Kapoor* v. *Ramesh Chandra*[10] where scope of section 397 has been succinctly explained. It was held that the case must be one of the rarest of rare cases because section 397 and quashing under 482 has to be done sparingly and with circumspection. There

10 (2012) 9 SCC 460.

is a patent defect or an error of jurisdiction or law or well founded error. They may be:

i. no compliance with the provisions of law, or
ii. the finding recorded is based on no evidence, or
iii. material evidence is ignored or
iv. judicial discretion is exercised arbitrarily or perversely
v. allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied

The high court is not required to go into

i. meticulous examination of the evidence
ii. the court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie*
iii. finding whether sufficient material for conviction is available or not. The court is concerned primarily with the allegations taken as a whole whether they will constitute an offence.

The judgement of the Supreme Court and the high court shows that there were two sets of evidence:

A. Evidence presented by the Investigating officer/ prosecution and available on record

i. 40% asset disproportionate to his regular income which was not declined by accused
ii. the initial seven statements of the accused did not disclose any loan taken. Justification of disproportionate assets was given at the later stage with details of cheque, transactions in banks, promissory note
iii. Why was this crucial evidence not placed in the very beginning?
iv. Prosecution argued that this shows it was afterthought and *prima facie* very suspicious.

B. Evidence presented by the accused to the Investigating officer[11]-

a. sale or purchase of property was done after prior sanction of the office as per compliance by a public servant.
b. additional or disproportionate income was because of miscalculation by the investigating officer and non consideration of legitimate transaction
c. sale or purchase done under compulsion as a plot was allotted in the colony of MLAs who did not want the SI as his neighbour[12]

11 January 11, 2018, high court [Gujarat] judgement. A couple of these pieces of evidence are not mentioned in the Supreme court judgement but in high court judgement.

12 January 11, 2018, high court [Gujarat] judgement. This reason is not mentioned in the Supreme Court judgement.

d. the loan was taken from family members with promissory note, cheque, bank transaction details.

e. no expenses on son in Australia because he is earning.

f. acquittal or discharge from previous cases of corruption.

g. prosecution not mentioning how was SI engaged in corrupt practices.

h. at one place the disproportionate asset is mentioned as 52 lakh while finally it was mentioned as 32 lakh.

i. the statement about loan even if not given in the first seven statements and given at a later stage cannot be treated as afterthought because the Police submitted the chargesheet after six months of the last statement about loan.

Now the question is whether these pieces evidence present a *prima facie* case against the accused or not? The trial court only considered the evidence 1-3 above because they were sufficient to make a *prima facie* case. The Prosecution and trial court did not consider the evidence (a) to (f) above because the permission of the departmental office regarding purchase of property, visit abroad shows compliance of civil services rules and they do not give "seal of authenticity". Also various documents are matters of fact to be considered at the time of trial and not before. The high court also went into the evidence of (a) to (f). The high court declared that the trial court committed an error because it did not consider the evidence presented before it. The Supreme Court held that the high court has started weighing evidence to see whether it will lead to conviction or not. By going into the prior permission of purchase of property, previous acquittal in PCA cases, no mention of *modus operandi* of corrupt practices of the accused SI, reasons of purchase of property etc the high court has engaged itself in a mini trial. It was not permissible at the stage of discharge application. It was a revision jurisdiction under section 397 and not an appellate jurisdiction where roving inquiry is permissible. This case was not a fit case for quashing the charge and the discharge of the accused was "serious error in interfering with the well-reasoned order passed by the trial court."

The takeaway from *Dilipsinh Kishorsinh*[13] is that

i. The rule of natural justice has very limited application at the level of section 227 of Cr.PC. Accused has no right to present documents or evidences before the court at the time of framing of charge.

ii. At chargesheet level only *prima facie* cases are required to be established.

iii. The evidence against the accused should sufficiently show that the ingredients of the offence meet and at this level no inquiry is required to establish whether the evidence can lead to conviction or not.

iv. Mere chance of conviction is enough and not more.

v. If the accused presents strong defence, it is itself a case for trial and *prima facie* established.

13 (2023) SCC OnLine SC 1294: 2023 INSC 89414. It was a division bench judgement.

Delay

The case of *Dilipsinh* was registered in 2013. The sanction order for prosecution was granted in 2015. The trial court accepted the chargesheet in 2016. The matter whether the trial should begin or not was decided by the high court in 2018 and by the Supreme Court in 2023 which sent the matter to the trial court to begin trial. It took ten years [2013-2023] to begin trial in the PCA case which is a special law. It may further take 10-15 years for conviction or acquittal finally by the Supreme Court.

Jagtar Singh* v. *State of Punjab*[14] : Application of *Neeraj Dutta

Jagtar Singh was a government servant working as a cleaner. He allegedly demanded bribes for a death certificate of a person. The complainant approached the Police who set up a trap. A panchayat member was taken as a shadow witness. JS was caught red handed. As this was a case of demand of bribe, offence under section 7 and Section 13(2) of the PC Act was possible provision.

***Neeraj Dutta*: Constitution bench on proof of demand**

In the case of *Neeraj Dutta*[15] the constitution bench has held as under:

(i) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.

(ii) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact.

This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

(iii) Further, the fact in issue, namely the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

If the public servant makes a demand and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13(1)(d)(i) and (ii) of the Act.

There were three witnesses. The complainant, the panchayat member and another person [Gurjinder Singh] who recovered the alleged dirty money [coated with phenolphthalein powder, numbers on note recorded]. During the trial both complainant and the shadow witness became hostile. In such case *Neeraj Dutta* states that :

14 2023 SCC OnLine SC 320.

15 *Neeraj Dutta* v. *State (Govt. of NCT of Delhi)* (2022) SCC Online SC 1724. It was a Constitution bench unanimous opinion.

(f) In the event of complaint turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the presumption can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

Jagtar Singh also was not empowered to make a death certificate, though in an emergency he was assigned other responsibilities on record. The death certificate in question was already made three days before Jagtar Singh was deputed to make the certificate. Can following facts lead to a presumption of fact of demand for a bribe?

i. V alleges that Rs 300/ was demanded by J as a bribe for a death certificate.
ii. V registers a complaint with the police.
iii. Trap was set up and Rs 300/ was delivered to J by V in front of S.
iv. Rs 300/, as chemically treated was recovered from J.
v. J could not explain why the victim paid him Rs 300?
vi. J has no authority to prepare or process death certificates as he was a cleaner.
vii. However, some time he was duly authorised to help in the process of certificate like delivery of certificate.
viii. J joined his duty on 20 March 2003 but the certificate was prepared by the office on 17 March. J was not on duty on 17 March for the certificate, he cannot deliver it to V for money.
ix. Certificate was alleged to be dispatched on 17 March by post but no record was presented. It was in possession of J on March 20.
x. Death certificate was recovered from J.
xi. there is no allegation of bias of V against J.
xii. During trial complainant V and eye witness S turned hostile.

The high court in its judgement has made a couple of pertinent points. Using precedents of the Supreme Court it has concluded that receipt of alleged bribes can raise presumption of demand if such recovery is not explained satisfactorily. The high court observed as under: [the accused J] has also not explained as to how the money was received by him. Thus, the presumption would be that the accused received the money by way of illegal gratification. It was observed in *C.I. Emden* v. *State of Uttar Pradesh*[16] and *V.D. Jhangan* v. *State of*

16 *C.I. Emden* v. *State of Uttar Pradesh,* AIR 1960 SC 548. It was a constitution bench decision where the issue was "s. 4(1) of the Act [PC Act 1947]which requires a presumption to be raised against an accused person is unconstitutional and ultra vires as it violates the fundamental right guaranteed by Art. 14 of the Constitution." The constitution bench held that the presumption in certain cases of offenses *vis a vis* no presumption in other offences is based on intelligible differentia. It is difficult to find evidence beyond reasonable doubts in many bribery cases and a presumption is placed to check the menace of corruption by public servants.

Uttar Pradesh,[17] that if money is received and no convincing, credible and acceptable explanation is offered by the accused as to how it came to be received by him, the presumption under Section 4 of the old Act [PCAct, 1947] [18] is available. When the receipt is admitted it is for the accused to prove as to how the presumption is not available as perforce the presumption arises and becomes operative. These aspects were highlighted recently in *State of Andhra Pradesh* v. *V. Vasudev Rao*.[19]

Based on above precedents and circumstantial evidence the high court arrived at the conclusion that demand is established by the receipt and other facts. The conviction, therefore, was correct.

The Supreme Court in *Jatar Singh* has brushed aside the precedents and propositions of the high court as under: The high court has passed its judgment on the assumption that the money having been recovered from the appellant, there was demand of illegal gratification. This is not a case where there was circumstantial evidence to prove the demand.

With due respect to the judgement of the Supreme Court, this surveyor submits that the high court has not made unfounded "assumptions". It has referred precedents of the Supreme Court which stated in no uncertain terms that once receipts of bribe is established, the accused has to explain the recovery. The high court also tried to connect the dots leading to circumstantial evidence. The reasoning of the high court may not be satisfactory or provide proof beyond reasonable doubts. But the Supreme Court should have addressed how these precedents are not applicable to *Jagtar Singh.* How the chain of circumstances extracted by the high court has serious fault lines. Whether the absence of constitution bench ruling of *Neeraj Dutta* led the high court to conviction? In other words, had the high court had the benefit of *Neeraj Dutta*, would the high court have taken a different turn. A judgement of the Supreme Court is a binding precedent for all. It creates a law for generations. Therefore, the reasonings of the Supreme Court should be clear on all possible points of controversy. It will help in judicial education and training.

Dealy

The FIR was registered in 2003. Trial court judgement came in 2005[in 2 years] high court decision and Supreme Court decision came in 2010[5 years] and 2023[13 years] respectively. The judicial journey is of 20 years in a PCA case which

17 1966 (3) SCR 736.

18 where in any trial of an offence punishable under s. 161 or s. 165 of the Indian Penal Code it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said S. 161, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

19 JT 2003 (9) SC 119 : 2003 (4) RCR (Cr.) 917 (SC).

is a special enactment. One of the aims of special enactment was to create special courts so that the decision is certain and swift. Out of 20 years more than 60% time was taken by the Supreme Court.

***Neeraj Dutta* v. *State (Govt.Of N.C.T.Of Delhi)*[20]**

Ms Neeraj Dutta was an inspector in the D.V.B./electricity department. Ravijit Singh, a shop owner, applied for a meter in 1996. The meter was installed but after a few months it was removed. He approached Neeraj Dutta who allegedly demanded a bribe. Ravijit informed the police and a trap was planned where he handed over the electricity document and a bundle of Rs 10000/ to Neeraj. Meanwhile Ravijit died [or allegedly murdered] before the trial commenced. As the complainant died the direct proof of demand also died with him. However, the accused was convicted by the trial court and the high court on the basis of circumstantial proof *Neeraj Dutta* challenged the conviction on the ground that the proof of demand cannot be established through circumstantial evidence and the demand cannot be presumed through inferences for which she referred a few precedents. It was noticed that there were conflicting precedents of the Supreme Court on this matter. Ultimately a constitution bench[21] resolved that there is no conflict. The law and the precedents were interpreted that in case direct proof of demand is not available, circumstantial proof can be used. Demand can also be presumed by inferences if there is convincing evidence. Now the time was the application of the constitution bench pronouncement. How to construct the law on the factual situation. Was there evidence beyond reasonable doubts to establish circumstances leading to proof of demand?

According to the prosecution the demand was made two times. First time when Ravijit Singh went to meet Neeraj Dutta at her residence. He was alone. He complained to the Police. No charge was made on first demand. As he died the direct evidence of demand also extinguished. The second time of demand was when the trap was set up. The eyewitness statement is as under:

> *Neeraj Dutta asked the complainant to give papers regarding his electricity meter and Rs.10,000/- to her as she was in a hurry.* Complainant handed over the documents of his electricity meter and treated GC Notes of Rs.10,000/- to Mrs. Neeraj Dutta in her right hand after taking the same out of left pocket of his shirt. Mrs. Neeraj Dutta handed over said GC Notes to his associate Yogesh Kumar to count and she told the complainant that his work would be done.(emphasis added)

20 [2023] 2 SCR 997.

21 2022 SCCOnLine SC 1724. "The Constitution Bench held that in absence of the complaint's testimony in a prosecution for offences punishable under Sections 7 and 13(2) of the PC Act, the prosecution can rely upon even circumstantial evidence to prove the demand of gratification."

Neeraj Dutta demanded papers of electricity meter and Rs 10000/. Can the above statement be treated as "demand" of bribe? The division bench answered it in negative as under:

> When we consider the issue of proof of demand within the meaning of Section 7, it cannot be a *simpliciter demand for money but it has to be a demand of gratification other than legal remuneration.* All that PW-5 says is when the appellant visited the shop of the complainant, she asked the complainant to give papers regarding the electricity meter and Rs.10,000/- to her by telling him that she was in a hurry. This is not a case where a specific demand of gratification for providing electricity meter was made by the appellant to the complainant in the presence of the shadow witness. PW-5 has not stated that there was any discussion in his presence between the appellant and the complainant on the basis of which an inference could have been drawn that there was a demand made for gratification by the appellant. The witness had no knowledge about what transpired between the complainant and the appellant earlier. PW-5 had admittedly no personal knowledge about the purpose for which the cash was allegedly handed over by the complainant to the appellant.

According to section 7 of PCA, and established norms there must be two elements of demand for bribes. (a) demand of money(or similar things) (b) money other than for any legal remuneration. Both must be established beyond reasonable doubts. As per above statement (a) is fulfilled. (b) Accused Neeraj Dutta expressly demanded money for electricity purposes. There was nothing to suggest that it was a codeword, or impliedly it means bribe. Fact is that the electricity bill was pending. Neeraj Dutta was also collecting electricity dues [@71000] in camps. Indeed @71000/ was recovered from the car of the accused. This lends support to the claim of Neeraj Dutta. A witness states that Even if she took it as a bribe there must be strong positive evidence for such inference. Is there any possibility that the money given was for the electricity bill? If the answer is possibly yes, the benefit of doubt goes to the accused. The witness present at the scene of alleged crime has not heard anything between the accused and the bribe giver. There is no circumstantial evidence to establish demand.

The prosecution did not submit any copy of application for electricity connection to establish an electricity connection was indeed applied. Prosecution also alleged that the electricity meter was stolen. There is a mismatch of date of complaint to ACB and date of electricity meter allegedly stolen. Date of complaint to ACB is prior to the date of the stolen meter. Does it mean on the date of complaint to ACB was the meter not stolen? If so, why did he apply for a fresh meter?

Based on these arguments the Supreme Court held that the proof of demand cannot be established by circumstantial facts.

Delay

The journey of *Neeraj Dutta case* began in 2000 and ended in 2023 in acquittal. In the 23 years from 2010 to 2023 the case was with the Supreme Court. 10 years with trial court and high court while 13 years with the Apex Court. As the matter was to resolve conflict between precedents of a full bench of three judges, *Neeraj Dutta* and many cases remained stuck till the constitution bench decided in 2022 which we have already discussed in the last survey of 2022. This delay is manageable.

III PREVENTION OF MONEY LAUNDERING ACT, 2002(PMLA)

***Pankaj Bansal* v. *Union of India*[22] : Written grounds of arrest is mandatory?**

There were complaints of gross illegalities, corruption, bribery against certain builders. Various cases were registered between 2018 to 2023. Anti-corruption bureau, Panchkula, Haryana, also registered a case under the Prevention of Corruption Act, 1988, in April 2023. As allegations of money laundering were also made, the ED came into the picture which registered an ECIR [Enforcement Case Information Report]. A summon was sent to Pankaj Bansal. However, an email dated June 13, 2023 bearing the time 06.15 pm was sent by ED, was addressed to both Pankaj Bansal and Basant Bansal. They were asked to appear before the ED within twelve hours ie June 14, 2023 at 11.00 am. While Pankaj Bansal and Basant Bansal were at the office of the ED at Rajokri, New Delhi, in compliance with these summons, Pankaj Bansal was served with fresh summons at 04.52 pm on June 14, 2023. He was required to be present before another Investigating Officer at 05.00 pm on the same day. This summon was in connection with the second ECIR. There is lack of clarity as to when summons in relation to the second ECIR were served on Basant Bansal. According to the ED, he was served the summons on June 13, 2023 itself and refused to receive the same. However, Basant Bansal was also present at the ED's office at Rajokri, New Delhi, on June 14, 2023 at 11.00 am. Basant Bansal was arrested at 06.00 pm and Pankaj Bansal was arrested at 10.30 pm on the same day *i.e.*, on June 14, 2023. These arrests, made in connection with the second ECIR, were in exercise of power under Section 19(1) of the Act of 2002. The arrested persons were then taken to Panchkula, Haryana, and produced before the learned Vacation Judge/Additional Sessions Judge, Panchkula. There, they were served with the remand application filed by the ED. The Additional Sessions Judge, Panchkula, initially passed an order dated June 15, 2023 holding that custodial interrogation of the arrested persons was required. The court granted their custody to the ED for five days. By the later orders custody remand of the ED was extended later they were sent to judicial custody.

The issue was whether the arrest by ED was valid and lawful. If the remand order is passed by the court whether the arrest illegally made is legitimised? The Supreme Court held as under:

22 *Pankaj Bansal* v. *Union of India,* (2023) SCC OnLine SC 1244.

> Though judgments were cited by the ED which held to the effect that legality of the arrest would be rendered immaterial once the competent Court passes a remand order, those cases primarily dealt with the issue of a writ of habeas corpus being sought after an order of remand was passed by the jurisdictional Court and that ratio has no role to play here.

Section 19 of the Act of 2002 prescribes the power and manner of arrest if the allegation is regarding offences of money laundering. As per section 19 the conditions before arrest is

> The ED must have some material in its possession against the accused,
>
> i. The material must provide *reason to believe* that any person has been guilty of an offence under section 3 of PMLA
>
> *ii. the reason for such belief must be recorded in writing*
>
> iii. he may arrest such person
>
> After the arrest following conditions must be fulfilled-
>
> iv. inform him of the grounds for such arrest as soon as may be
>
> v. immediately forward a copy of the order along with the material in his possession to the Adjudicating Authority in a sealed envelope
>
> vi. Must present arrested person within twenty-four hours to the designated court

Above four conditions for pre arrest and three conditions for post arrests are for the protection of accused and obligations of authorities under PMLA. Two conditions post arrest are guaranteed under the Constitution of India which elevates these two protections.

In the case of *Vijay Madanlal Choudhary* a full bench upheld the validity of section 19 of PMLA because it has various safeguards [ie and seven conditions mentioned above]. In other words the power of arrest and the protection of accused both are equally significant. These inbuilt safeguards are to ensure fairness, bring objectivity, check arbitrary behaviour and ensure accountability of the authorized officer in forming an opinion regarding the necessity to arrest under PMLA. These mandates are for the ED officers to observe mandatorily and for the remand magistrate to see the mandate is followed in word and spirit.

The Supreme Court referred the precedent of *Madhu Limaye*,[23] a three judge bench decision of Supreme Court "wherein it was observed that it would be necessary for the State to establish that, at the stage of remand, the Magistrate directed detention in jail custody after applying his mind to all relevant matters and if the arrest suffered on the ground of violation of article 22(1) of the Constitution, the order of remand would not cure the constitutional infirmities attaching to such arrest.

23 (1969) 1 SCC 292.

V. Senthil Balaji v. *The State*,[23(a)] 2023 was another precedent which *Pankaj Bansal* uses. *V. Senthil Balaji* is also a very relevant precedent as it was on section 19 PMLA. *Pankaj Bansal* analysed the law laid down in *V. Senthil Balaji* as under:

> The Magistrate is under a bounden duty to see to it that Section 19 of the Act of 2002 is duly complied with and any failure would entitle the arrestee to get released. It was pointed out that Section 167 Cr.P.C is meant to give effect to Section 19 of the Act of 2002 and, therefore, it is for the Magistrate to satisfy himself of its due compliance by perusing the order passed by the authority under Section 19(1) of the Act of 2002 and only upon such satisfaction, the Magistrate can consider the request for custody in favour of an authority. To put it otherwise, per this Court, the Magistrate is the appropriate authority who has to be satisfied about the compliance with safeguards as mandated under Section 19 of the Act of 2002. In conclusion, this Court summed up that any non-compliance with the mandate of Section 19 of the Act of 2002, would enure [to accept something undesirable] to the benefit of the person arrested and the Court would have power to initiate action under Section 62 of the Act of 2002, for such non-compliance. Significantly, in this case, the grounds of arrest were furnished in writing to the arrested person by the authorized officer.

Senthil Balaji provides two points, (i) Non compliance of section 19 in word and spirit will lead to the custody as illegal and release of the accused. (ii) Penal action under section 62 may also be taken.

If pre and post arrest does not follow any of the seven conditions, arrest will be illegal. The magistrate has to verify it essentially. Any order of the magistrate in violation of the seven conditions will be illegal. A remand order cannot legitimise the illegal arrest. This establishes that the doctrine of the "fruit of the poisonous tree" is valid here. [Generally it is not valid in other cases like when a recovery is made using unlawful means (no warrant to search) the recovered items may be valid evidence.]

Application of *Senthil Balaji*

The remand magistrate in the case of *Pankaj Bansal* has noted that the case is a serious one. According to the prosecution …the remand is essential. This is not something which is required under section 19 where a magistrate has to make a subjective satisfaction. He cannot rely on the materials attached but need to examine the materials. The remand order must state (i) that the magistrate has seen the arrest order of ED.(ii) There are reasons recorded for 'reasons to believe'. (iii) Reason to believe is based on the material with ED. However, the court observed as under:

> 20. This chronology of events speaks volumes and reflects rather poorly, if not negatively, on the ED's style of functioning. Being a premier investigating agency, charged with the onerous responsibility

23(a) (2023) 12 SCR 853.

> of curbing the debilitating economic offence of money laundering in our country, every action of the ED in the course of such exercise is expected to be transparent, above board and conforming to pristine standards of fair play in action. The ED, mantled with far-reaching powers under the stringent Act of 2002, is not expected to be vindictive in its conduct and must be seen to be acting with utmost probity and with the highest degree of dispassion and fairness. In the case on hand, the facts demonstrate that the ED failed to discharge its functions and exercise its powers as per these parameters.

Colourable exercise of power or personal bias- difference

Was it a colourable exercise of power or *mala fides* or malice on the part of the ED officials, or was it a wanton abuse of power, authority and process by the ED? The answer by *Pankaj Bansal* is that they will "tantamount to the same thing". The jurisprudential inquiry into what is *mala fide* and what is personal bias has been made through *State of Punjab* v. *Gurdial Singh*.[24]

> 'The question, then, is what is malafides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power — sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions — is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal[destruction of law]. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: "I repeat . . . that all power is a trust — that we are accountable for its exercise — that, from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act.'

24 (1980) 2 SCC 471.

Power can be abused for two purposes. It can be abused to meet a legitimate end or it can be abused to attain an object different from "one for which the power is entrusted". In other words, in the first case the end is good but the means is bad. In the second case the end as well as the means both are bad. It is not easy to understand why this distinction is made in the above passage when the consequence is the quashing of the procedure and the decision.

With the help or two other precedents ie *Collector (District Magistrate), Allahabad* v. *Raja Ram Jaiswal*,[25] *Ravi Yashwant Bhoir* v. *Collector* [26] the court in *Pankaj Bansa* explored the meaning of *malafide* exercise of power as "Passing an order for unauthorized purpose constitutes malice in law".

An ECIR was registered. Accused secured anticipatory bail. Then immediately a second ECIR was registered. The ED summoned them within 24 hours on one ground and arrested them on another ground. The ED made a preliminary inquiry to register an ECIR. After that they are required to follow due process before arrest mentioned in Cr.PC as well as under section 19(1)(a) of PMLA. Registering an ECIR is one thing but arresting a person is an entirely different thing because in arrest article 21 and 22 is directly involved. How did the ED get time to examine material in possession, arriving at reason to believe within hours? "It is not clear as to when the ED's Investigating Officer had the time to properly inquire into the matter so as to form a clear opinion about the appellants' involvement in an offence under the Act of 2002, warranting their arrest within 24 hours." This "manifests complete and utter lack of bonafides" on the part of the ED. When the bail application was before the high court for first ECIR there was another FIR already registered. It was not brought to the notice of the high court. Once bail was granted in the first FIR, 2nd ECIR was registered. Written submission and replies are not in sync. The super prompt action of ED was retaliatory and the omission before high court lacked probity by ED.

Non cooperation of accused and power of arrest

Non cooperation of the accused is a natural outcome because of two reasons. If he has not committed the offence he cannot provide any vital information about crime. If he has committed the crime he will not say so. Moreover an accused can choose to remain silent and it is a strong common law principle. Article 20(3) also provides fundamental right against anything which may be incriminating. Therefore non cooperation during interrogation is not only natural but also has legal backing. To arrest a person just because the accused is not cooperating is not a valid ground to arrest a person either under Cr PC or under special enactment like PMLA. Under Cr PC section 41(1)(i)[27] needs reason to believe that the accused has committed the offence. Similarly section 19(1)(a) of PMLA also needs reason

25 (1985) 3 SCC 1.

26 (2012) 4 SCC 407.

27 Cr. PC 41(1)(i)the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence.

to believe. Something more will be required. The court in *Pankaj Bansal* observed as under:

> Mere non-cooperation of a witness in response to the summons issued under Section 50 of the Act of 2002 would not be enough to render him/her liable to be arrested under Section 19. As per its replies, it is the claim of the ED that Pankaj Bansal was evasive in providing relevant information. It was however not brought out as to why Pankaj Bansal's replies were categorized as 'evasive' and that record is not placed before us for verification. In any event, it is not open to the ED to expect an admission of guilt from the person summoned for interrogation and assert that anything short of such admission would be an 'evasive reply'. In Santosh S/o Dwarkadas Fafat vs. State of Maharashtra,[28] this Court noted that custodial interrogation is not for the purpose of 'confession' as the right against self-incrimination is provided by Article 20(3) of the Constitution. Similarly, the absence of either or both of the appellants during the search operations, when their presence was not insisted upon, cannot be held against them.

If replies are alleged to be evasive, the ED must produce some reason why it feels the reply was evasive.

Interpretation of "inform"-grounds of arrest: Written or oral

Information as to the ground of arrest is a constitutional mandate under article 22 (1) and a statutory dictate under section 19(1)(a) of PMLA. There are two questions *i.e.*, Mode of information and time of information. Should such information of the ground of arrest be in oral or in writing mode? And when should the information be given? Should it be immediately after arrest or after a few hours or anytime within 24 hours? In *VInijay Madanlal Chaudhry* it was held that the copy of ECIR cannot be shared with accused or others because it contains various sensitive information and it may have "deleterious impact on the final outcome of the investigation." It is sufficient if the grounds are informed. *Pankaj Bansal* highlights that neither the PMLA nor precedents[*Vijay Madanlal Choudhary (supra) or* v. *Senthil Balaji*] are categorical on how and when to "inform" the grounds of arrest. The practices in various regions are different. At some places either it is given in writing or the grounds are orally read over or shown. The grounds of arrest are significant in all cases be it under Cr. PC or PMLA. However, in case of PMLA it has greater significance. The court imported the reasoning from section 45 of PMLA which is as under:

firstly, the court must be satisfied, after giving an opportunity to the public prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the offence and, secondly, that he is not likely to commit any offence while on bail. To meet this requirement, it

28 [2017] lOS.C.R. 129.

would be essential for the arrested person to be aware of the grounds on which the authorized officer arrested him/her under section 19 and the basis for the officer's 'reason to believe' that he/she is guilty of an offence punishable under the Act of 2002. It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the special court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail. Therefore, communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution and Section 19 of the Act of 2002, is meant to serve this higher purpose and must be given due importance.

In *Pankaj Bansal* the Supreme Court provided three points—

i. The accused is required to defend that he has not committed the offence

ii. This defence is possible only if

i. the accused knows the grounds of arrest and

ii. He also knows the reason to believe

iii. The communication serves a higher purpose under article 22.

Pankaj Bansal also refers to the rules of PMLA[29] which has a format to inform the accused as to grounds of arrest. As the format does not mention whether it should be done written or oral, the ED officials in various regions of the country do it as per wish. Sanjay Kumar, J. who authored *Pankaj Bansal* found this practice as "dual and disparate".

***Pankaj Bansal* : the law laid down**

Sanjay Kumar, J. in the case of *Pankaj Bansal* seems to be influenced by personal liberty concerns. It supported the written version of ground of arrest and laid down the law as under:

> … to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of the Act of 2002 of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception.

The law laid down in *Pankaj Bansal* may be summarised as under:

i. In case of PMLA the grounds of arrest must be given in writing.

ii. Written grounds shall be a norm without exception.

iii. Rule of written grounds shall be applicable henceforth.

Read into or read down *vis a vis* constitutional validity: Difference?

Pankaj Bansal case is conscious that the constitutional validity of section 19 of PMLA is already decided in *Vijay Madanlal Choudhary*. The court held that

29 R. 6 of the Prevention of Money Laundering (The Forms and the Manner of Forwarding a Copy of Order of Arrest of a Person along with the Material to the Adjudicating Authority and its Period of Retention) Rules, 2005.

there is a need to read into or read down section 19 even if the validity issue has been settled by a larger bench. The relevant passage can be reproduced here:

> 10. Though the appellants did not challenge the constitutional validity of Section 19 of the Act of 2002 in their writ petitions and had only sought 'reading down' and/or 'reading into' the provisions thereof in the light of the judgment of this Court in *Vijay Madanlal Choudhary* v. *Union of India*,[30] *the Division Bench of the Punjab & Haryana High Court failed to note this distinction* and disallowed their prayer under the mistaken impression that they were challenging the constitutional validity of the provision. The finer connotations and nuances of the language used in Section 19 of the Act of 2002, to the extent left uncharted by this Court in Vijay Madanlal Choudhray (supra), were still open to interpretation and resolution and, therefore, the High Court would have been well within its right to undertake that exercise. Be that as it may.

Above passage suggests that the Court went into using this tool of interpretation on two grounds :

(i) Constitutional validity vis a vis reading into/reading down are two different things which may work independently in their own sphere.

(ii) "Finer connotations and nuances" of section 19 is still untouched by *Vijay Madanlal Choudhray.*

Both the premises are doubtful. Read into or read down is a tool of interpretation to determine legal validity in common law countries. *Craies* in his time honoured work states as under:[31]

> where the words of an Act are clear, there is no need for applying any of the principles of interpretation which are merely presumptions in cases of ambiguity in the statute. The safer and more correct course of dealing with the question of construction is to take the words themselves and arrive, if possible, at their meaning without in the first place referring to cases. Where an ambiguity arises to supposed intention of the legislature, one of the statutory constructions, the court propounded, is the doctrine of reading down.

Same is true for reading into.

Cross in his pioneering work *Statutory Interpretation*[32] also states as under:[33]

The power to add to, alter or ignore statutory words is an extremely limited one. Generally speaking it can only be exercised where there has been a demonstrable mistake on the part of the draftsman or where the consequence of applying the words in their ordinary, or discernible secondary, meaning would be

30 2022 (10) SCALE 577.

31 Craies, *Statute Law* 64, Ch. 5 (7th education, Sweet and Maxwell Ltd, UK), as quoted in *Delhi Transport Corpn.* v. *D.T.C. Mazdoor Congress*,1991 Supp (1) SCC 600.

32 Cross, *Statutory Interpretation* 92 (Butterworths' edn., 1976).

33 As quoted in *Delhi Transport Corpn.* v. *D.T.C. Mazdoor Congress*,1991 Supp (1) SCC 600.

utterly unreasonable. Even then the mistake may be thought to be beyond correction by the court, or the tenor of the statute may be such as to preclude the addition of words to avoid an unreasonable result.'

In countries with a written constitution above passages should be referred with care because unlike in the United Kingdom where the Parliament is supreme and sovereign, in India it is the constitution which has supremacy over the Parliament. Parliamentary laws have to be in consonance with the enforceable provisions of the constitution especially fundamental rights and basic structure theory. However there is no dispute that the tool of reading into or reading down has to be used mostly when the constitutional validity is in question.

The constitution bench opinion of *Delhi Transport Corpn.* v. *D.T.C. Mazdoor Congress*,[34] is relevant here:

> Therefore, the Doctrine of Reading Down is an internal aid to construe the words or phrase in statute to give reasonable meaning, but not to detract, distort or emasculate the language so as to give the supposed purpose to avoid unconstitutionality.

A provision can be declared constitutional as it is or the same may be declared constitutional by reading into or reading down a word. For example in the case of *Kedar Nath Singh* v. *State of Bihar,*[35] the constitution bench held that section 124A of IPC shall be valid only if the conduct of expression has "tendency of violence or disorder." If this element is not read into section 124A, it will violate article 19(1)(a) of the constitution. The tool of read into or read down is not independent but closely interdependent with validity of a law. If this tool is used, it means the court is dealing with the validity of a law and wants to save it from being declared as unconstitutional. *Arup Bhuyan* v. *State of Assam*[36] a full bench of three judges unanimously observed as under:

> 11.3 Even otherwise in absence of any challenge to the constitutional validity of Section 10(a)(i) of the UAPA there was no question of reading down of the said provision by this Court. Therefore, *in absence of any challenge to the constitutional validity of Section 10(a)(i) of UAPA, 1967 there was no occasion for this Court to read down* the said provision.

In the case of *Subramanian Swamy* v. *Raju through Member, Juvenile Justice Board* ,[37] it was observed that :

> At the cost of repetition, it is observed that reading down a particular statute even to save it from unconstitutionality is not permissible unless and until the constitutional validity of such provision is under challenge and the opportunity is given to the Union of India to defend a particular parliamentary statute

34 1991 Supp (1) SCC 600.

35 AIR 1962 SC 955. It was a Constitution Bench unanimous opinion.

36 (2023) 8 SCC 745.

37 (2014) 8 SCC 390.

In *Pankaj Bansal* the court recognised that the constitutional validity of section 19 is not under challenge. It had no occasion to identify the difference between read down and constitutional validity. If the court is interpreting section 19 of PMLA and using the tool of read into, it is deciding the validity.

The court in *Pankaj Bansal* has not explained how the validity of a law differs from read into or read down? And the validity issue was already resolved conclusively in the case of *Vijay Madanlal Choudhary* which is a larger bench than *Pankaj Bansal*. With due respect it can be said that *Pankaj Bansal* has not followed the judicial discipline, the rule of precedent that a smaller bench is bound by the larger bench. There is least doubt that *Pankaj Bansal* has developed a law which is better, certain and established the value of rule of law.

But is the reform in law one of the essential tasks of the judiciary in a constitutional democracy? Should the court interpret just because the earlier law has some difficulty and a better law can be created? A better course was that *Pankaj Bansal* should have referred the matter to a larger bench. A review of *Vijay Madanlal Choudhary* is already pending in the case of *Karti P. Chidambaram* v. *Enforcement Directorate*.[38] As the scope of review petition is very limited[39] it is seriously doubtful if an "error apparent on the face" is visible. However the power of the Supreme Court under article 142/32 is very wide.

Interpretation of PMLA: Rights *vis a vis* restriction regime

In case of PMLA higher stakes are involved. Those under PMLA scanner are not poor, vulnerable group people having little means to approach for justice. They are "rich and famous". PMLA deals with "crime in the upper or white-collar class, composed of respectable or at least respected business and professional men".[40] "The present-day white-collar criminals, who are more suave and deceptive than the 'robber barons'," do not need the same protection of due process through interpretation the way conventional accused need it because of the obvious reasons.[41] They are what Al Capone called "the legitimate rackets."[42] The reasons for a different treatment can be imported from what Sutherland mentioned in 1940 as under:[43]

These varied types of white-collar crimes in business and the professions consist principally of violation of delegated or implied trust, and many of them can be reduced to two categories: misrepresentation of asset values and duplicity in

38 R.P.(Crl.) No.219/2022. On 06-03-2025 the division bench ordered "List on 07.05.2025."

39 Supreme Court Rules, 2013 PART-IV ORDER XLVII states that "no application for review will be entertained in a criminal proceeding except on the ground of an error apparent on the face of the record.

40 Edwin H. Sutherland, "White-Collar Criminality," 1 *American Sociological Review* (1940), *available at* https://www.asanet.org/wp-content/uploads/1939_presidential_address_edwin_sutherland.pdf. *Hereinafter* referred to as *Sutherland.*

41 *Id.* at 2.

42 *Id.* at 3.

43 *Ibid.*

the manipulation of power. The first is approximately the same as fraud or swindling; the second is similar to the double-cross. The latter is illustrated by the corporation director who, acting on inside information, purchases land which the corporation will need and sells it at a fantastic profit to his corporation. The principle of this duplicity is that the offender holds two antagonistic positions, one of which is a position of trust, which is violated, generally by misapplication of funds, in the interest of the other position.

Second reason for a separate treatment to PMLA accused is the financial cost involved. A statement many decades old is still true:

> The financial cost of white-collar crime is probably several times as great as the financial cost of all the crimes which are customarily regarded as the "crime problem."

In India 1.45 lakh Crore of property is attached under PMLA during 2014-2024.[44]

The third reason can also be supplemented as under:[45]

White-collar crimes violate trust and therefore create distrust, which lowers social morale and produces social disorganization on a large scale. Other crimes produce relatively little effect on social institutions or social organization.

Therefore the interpretation of section 19 ought to be a balanced interpretation not to be guided solely by personal liberty concern but also by the concern raised in cases of white collar crimes.

Three reasons why the grounds must be in writing

The three reasons of Sanjay Kumar, J. can be illustrated as under:

i. Certainty- A1 was given oral information as to grounds of arrest. ED officer [E1] takes his signature on a paper which certifies that A1 is aware of grounds of arrest. In the court A1 declines any such knowledge and also blames that E1 has procured his signature under coercion or misrepresentation or signature was taken on blank papers. It lacks "due and proper compliance". If grounds of arrest are communicated in writing this problem can be minimised. It will also minimise the unnecessary litigation and arguments and will reduce delay in judicial process. Same happened in *V. Senthil Balaji* and same was the case in *Pankaj Bansal*. ED states that grounds were communicated to the accused in Hindi before witnesses the accused declined. By 'writing' the procedure becomes more certain and less debatable.

ii. Constitutional objective- Article 22(1) guarantees right to counsel immediately and for further defence. How can an accused place an effective

44 1.45 lakh-crore assets attached under PMLA till 2024: ED data, https://www.hindustantimes.com/india-news/145-lakh-crore-assets-attached-under-pmla-till-2024-ed-data-101738211446754.html. However the exact amount confiscated is Rs 15623 Crore till 2023, *available at:* https://enforcementdirectorate.gov.in/statistics-0 (last visited on Jan. 20, 2024).

45 *Sutherland* at 5.

defence if grounds are not mentioned in writings. The grounds and facts leading to arrest may be in four five pages. Is it humanly possible and fair to remember various facts written in the document read over by ED?

iii. Difference between oral and written ground - There is a possibility that the grounds of arrest told by ED orally and pleaded in the court may differ. The ED may also add new grounds for arrest and claim that the same was told to the accused who declined to sign the document. This again makes the matter complex and may add to the litigation.

In other words a written ground of arrest, therefore, is always preferable than oral. Such preference is a mark of good governance, an accountable authority, a more transparent investigation, a necessary offshoot of due process, a respect for article 22 in cases of special enactments. This was a rule of prudence already used by ED at a few places in India. *Pankaj Bansal* has elevated a rule of prudence to a rule of law. This was a new development in law. It was a cheer up moment for the due process model. Benjamin Disraiely has observed that ... "All power is a trust – that we are accountable for its exercise – that, from the people, and for the people, all springs, and all must exist."[46]

Sanjay Kumar, J. in *Pankaj Bansal* has made the PMLA authorities more accountable. His interpretation follows the rule that the judiciary is not only to interpret law in a mechanical manner. *Municipal Council, Ratlam* v. *Vardichan*, Krishna Iyer, invoked the wisdom as under: [47]

> 16...The nature of the judicial process is not purely adjudicatory nor is it functionally that of an umpire only. Affirmative action to make the remedy effective is of the essence of the right which otherwise becomes sterile..."

Pankaj Bansal has added an affirmative duty under section 19 of PMLA to make the remedy effective. It has amended section 19. But, was the Supreme court division bench a right forum?

***Ram Kishore Arora*: Written grounds not essential**

One of the perplexing questions under PMLA is the requirement of grounds of arrest in *written* form. While it is beyond doubt that grounds of arrest have to be informed because of constitutional mandate in India under article 22 and due to common law doctrines, should the information be oral or written? It has generated considerable debate under PML. In *Vijay Madanlal Choudhary* a full bench of three judges declared that grounds of arrest once communicated whether in writing or oral, necessary compliance of article 22(1) and section 19 of PMLA is complete. In *Pankaj Bansal* a division bench held that grounds must be given in writing

46 Benjamin Disraiely was a novelist and PM of the UK twice in the late 19th Century. His statement is quoted in *Municipal Council, Ratlam* v. *Shri Vardichan*, (1980) 4 SCC 162 by V.R. Krishna Iyer, J.

47 *Municipal Council, Ratlam* v. *Vardichan* (1980) 4 SCC 162.

without exception. In *Ram Kishore Arora* v. *Directorate of Enforcement*[48] the issue was when to enforce *Pankaj Bansal.* Should it be retrospective or should it be prospective in operation?

Ram Kishor Arora,[RKA] the appellant, is the founder of Supertech Ltd., a real estate company. This company and the group took various real estate projects in different parts of UP. Complaining irregularities and serious illegalities, several flat buyers registered a number of FIR[around 26] against RKA. In September 2021, ED registered an Enforcement Case Information Report (ECIR) against this company and others. Due to this, RKA and others were summoned, and their statements were recorded. While proceedings of insolvency were under way, ED attached property of RKA in 2022.[49] In May 2023, the ED filed an original complaint before the Adjudicating Authority under the PMLA seeking confirmation of provincial attachment.[50] This confirmation proceeding is another safeguard mechanism against arbitrary attachments. A show cause notice to the appellant was issued to explain why the properties attached should not be confirmed as it was allegedly involved in money laundering.[51] On June 27, 2023, the appellant was arrested. The ED handed over a document containing the grounds of arrest to the accused when he was arrested. The accused had also signed below the said grounds of arrest after making an endorsement. The ED took it back after obtaining the endorsement and not furnished a copy thereof to the arrestee at the time of arrest. As his bail was rejected he came before the Supreme Court where the court addressed two issues:

i. Whether the Supreme Court's ruling in *Pankaj Bansal* v. *Union of India*[52] applies retrospectively or prospectively?

ii. Whether written grounds of arrest under PMLA are mandatory or not?

Between *Vijay Madanlal Chaudhary* and *Pankaj Bansal* there was conflict. To resolve the conflict the court took support from two Constitution Bench judgments of *Raghubir Singh* v. *Union of India,*[53] *Chandra Prakash* v. *State of U.P.*[54] which insists on the need of the doctrine of binding precedent and its implementation as under:

> But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been

48 2023 INSC 1082. A bench comprising Bela M. Trivedi and Satish Chandra Sharma, JJ delivered the verdict. The author is thankful to Kajol Chauhan, LL.M. (2nd year) for her research assistance.

49 The Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s.5(1)

50 *Id.,* s.8(3)

51 *Id.*, s.8(1).

52 2023 SCC OnLine SC 1244.

53 (1989) 2 SCC 754.

54 (2002) 4 SCC 234.

done here, the reasons why it could not agree with the earlier judgment. If, then, the Bench of three learned Judges also comes to the conclusion that the earlier judgment of a Bench of three learned Judges is incorrect, reference to a Bench of five learned Judges is justified.

Per Incuriam

Ram Kishore Arora also discusses the concept of *per incuriam* through *Sundeep Kumar Bafna*[55] where the court presented three situations regarding *per incuriam* which may be classified as under:[56]

i. A decision or judgment can be *per incuriam* any provision in a statute, rule or regulation, which was not brought to the notice of the Court.

ii. A decision or judgment can also be *per incuriam* if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a Co-equal or Larger Bench; or

iii. if the decision of a High Court is not in consonance with the views of this Court.

The court warned all courts "to be extremely careful and circumspect in concluding a judgment of the Supreme Court to be *per incuriam*."

Despite discussion on *per incuriam*, the court in *Ram Kishore Arora* did not declare *Pankaj Bansal* as *per incuriam*. It has only declared that *Vijay Madanlal Choudhary* holds the field "and any observation…contrary to…Vijay Madanlal Choudhary…would be not in consonance with…jurisprudential wisdom."

There was some controversy regarding the timing of grounds of arrest. Should it be given at the time of arrest or after a few hours of arrest but maximum within 24 hours? *Ram Kishore Arora* also made it clear that "as soon as may be" does not mean immediately at the time of arrest. In other words it should generally be within one or two hours or so. In exceptional cases it can be a maximum of 24 hours.

Ram Kishore Arora was arrested in June 2023. Ram Kishore Arora was provided the grounds of arrest orally and not in writing. *Pankaj Bansal* was decided in Oct 2023 that grounds must be furnished in writing. If it is not in writing the arrest is illegal. Ram Kishore Arora argued that the ruling of *Pankaj Bansal* be applied in his case and his arrest be declared illegal. The court in *Ram Kishore Arora* had no difficulty in deciding it because *Pankaj Bansal* itself says that the "only written grounds rule" will be applicable "henceforth" *i.e.*, all arrests made post Oct 3, 2023.

A question of doctrine of precedent is also raised in the *Ram Kishore Arora* case. Can a division bench of two judges (*Ram Kishore Arora*) declare the decision of the coordinate bench (*Pankaj Bansal*) as bad in law? *Central Board of Dawoodi*

55 *Sundeep Kumar Bafna* v. *State of Maharashtra* (2014) 16 SCC 623.
56 *Ibid*.

Bohra Community v. *State of Maharashtra*,[57] a Constitution Bench states the dispute as under:

> (i) 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 coequal strength.
>
> (ii) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. *It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted*.

While *Pankaj Bansal* has committed a departure from judicial discipline by changing the *ratio* of a larger bench [*Vijay Madanlal Choudhary*], *Ram Kishore Arora*, another division bench should have sent the matter for a larger bench. Another point is that if *Pankaj Bansal* has to be made applicable henceforth *i.e.,* all arrests made after October 3, 2023, how can the arrest made on June 14, 2023 could be declared illegal in *Pankaj Bansal* case, *i.e.,* retrospectively.[58] Ram Kishore Arora was also arrested in June, 2023 like Pankaj Bansal. if Pankaj Bansal is entitled to due process, why not Ram Kishore Arora. The answer to this question is the fact that the way ED conducted its process, *bona fide* of ED was questionable in the *Pankaj Bansal* case. It did not rest solely on the non availability of written grounds of arrest. Even if the issue of grounds to be given in writing is kept apart, the remand could still be declared as arbitrary and against due process in the *Pankaj Bansal* case. In the *Ram Kishore Arora* case the accused was summoned and recorded his statement on various dates. Attachment procedure of his property and its confirmation was also going on. The accused was very well aware of the process of ED months in advance before he was arrested. In *Pankaj Bansal* case, issuing of summon, registration of one ECIR, then another ECIR, statement recording and arrest were made in such a hurried manner that it buried the safeguards provided under section 19 of PMLA. Therefore the comparison of both cases on retrospective application issues is a comparison of apple and orange.

Status in The United Kingdom and United States

In the United Kingdom, section 28 of the Police and Criminal Evidence Act, 1984 (PACE) governs arrest procedures. Under section 28, officers must inform an

57 (2005) 2 SCC 673.

58 *Available at:* https://thewire.in/law/how-scs-latest-verdict-involving-ed-eases-arrests-bypassing-binding-law https://www.livelaw.in/articles/a-critique-of-supreme-courts-rk-arora-judgment-giving-ed-24-hours-to-furnish-written-reasons-for-arrest-244887(last visited on Jan. 20, 2024).

individual of the reason for their arrest at the time or as soon as practicable. However, there is no statutory requirement to provide written grounds of arrest immediately. Instead, the reason for the arrest is documented in custody records, ensuring legal accountability. In serious cases like money laundering, suspects can be detained for up to 96 hours without charge. While oral communication suffices at the time of arrest, written justifications are later recorded in legal documents. Same is the United States except that *Miranda warnings* have to be conveyed orally at the time of arrest itself.[59]

***Directorate of Enforcement* v. *M. Gopal Reddy*:[60] Twin condition applicable to anticipatory bail**

This is a unique case of cyber crime, bribery and money laundering. Technology can also be manipulated. It was thought that the beginning of E-tenders will be a new age of fairness, healthy competition, transparency, trust in the legal system, confidentiality and revenue generation. However, every innovation comes with its limitations. The Government of Madhya Pradesh has an e"Procurement (online) Portal, which is run by MPSEDC (M.P. State Electronics Development Corporation Ltd). Three companies, including Tata Consultancy Services (TCS), were given the contract for the period of five years for the maintenance & operation of the said portal. Certain E- tenders were floated but it was found that the tenders are successfully going to a few infrastructure companies. Some investigation revealed that companies "based at Hyderabad in collusion with a few Government officials and IT management companies" have conspired to illegally win e-tenders. The public funds have been siphoned off for personal illegal enrichment and for making illegal bribe payments through hawala channels. The appellant department has recovered fund trail evidence and generation of black money through bogus and over billing. FIR under sections 120B, 420, 471 IPC and section 7 read with section 13(2) of Prevention of Corruption (PC) Act was registered. This was followed by case under section 3 of the Prevention of Money Laundering Act, 2002[61] (hereinafter referred to as the PMLA) and

59 The requirement to give Miranda warnings came from the Supreme Court decision, *Miranda* v. *Arizona*, 384 US 436 (1966) . In Miranda , the court held that a defendant cannot be questioned by police in the context of a custodial interrogation until the defendant made aware of:

The right to remain silent, the right to consult with an attorney and have the attorney present during questioning, and the right to have an attorney appointed if indigent.

These warnings stem from the USA Fifth Amendment privilege against self-incrimination and the Sixth Amendment right to counsel. *Available at:* https://www.law.cornell.edu/wex/miranda_warning.

60 [2023] 13 S.C.R. 1049: 2022 SCC OnLine SC 1862. (Bench: C.T. Ravikumar, M.R. Shah JJ.; authored by Justice M.R. Shah. I acknowledge the research assistance of Ankit Singh, LL.M. (II New Delhi).

61 *Offence of money-laundering:* Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

punishable under Section 4[62] of the PMLA. M Gopal Reddy,[MGR]Additional Chief Secretary in the Water Resources Department in the State of Madhya Pradesh that time, was summoned by the ED to explain the sudden spurt in the allocation of tenders to Mantena Construction who is alleged to gain a profit of Rs. 1020 crore dishonestly and fraudulently.

MGR secured an anticipatory bail under section 438 of Cr PC from Telangana high court on the ground that the twin condition under section 45 and the rigour of section 45 of PMLA [twin condition] is not applicable to section 438 of Cr. PC.

***VC Mohan* relied upon**

The Supreme Court in *M. Gopal Reddy* held that the high court overlooked the decision of *VC Mohan.* In 2022 in the case of *The Asst. Director Enforcement Directorate* v. *V.C. Mohan*[63] the Supreme Court has already held that section 45 is applicable to all bail proceedings, be it pre arrest or post arrest. There was some confusion as to the application of *Nikesh Tarachand Shah* v. *Union of India.*[64] *V.C. Mohan* held that *Nikesh Tarachand Shah* did not bar application of section 45 on Cr.PC 438. *Secondly* the high court has dealt with the case as if it was a bail application under IPC and not under PCA and PMLA. The gravity of offence has not been considered which includes money laundering at large scale.

Thirdly, comparison with other accused cannot help at this stage. Unlike other accused MGR was not named in the FIR or a few of the accused were discharged/ acquitted. If any investigation or inquiry is going on against him, this itself is sufficient to continue.

Fourthly, in case of economic offences the courts should be slow in exercising discretion in granting bail under section 438[65] because they have different and graver impacts on society.

Ultimately, the court rejected the anticipatory bail granted by the high court on the ground that twin conditions and the rigour of section 45 is applicable to all bail processes.

IV Narcotic Drugs and Psychotropic Substances Act, 1985

***Mangilal* v. *State of Madhya Pradesh*:[66] Scope of section 52A**

Section 52A of NDPS Act provides for "Disposal of seized narcotic drugs and psychotropic substances". It ensures that safeguards are followed properly

62 *Punishment for money-laundering:* Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted.

63 2022 SCC OnLine SC 452.

64 (2018) 11 SCC 1.

65 *P. Chidambaram* v. *Directorate of Enforcement* (2019) 9 SCC 24.

66 2023 INSC 634.

to make the authority accountable and minimise the chances of arbitrariness. If it is not followed it cannot be treated as mere procedural and avoidable lacuna but an essential substantial lapse.

Mangilal was sentenced for 10 years under section 8(b) read with section 15(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 by the trial court and the high court. He was allegedly supplying narcotic substances in the nature of poppy straw and he was caught with the prohibited substance in a tractor. The issue before the court was whether provisions of NDPS (section 52A especially) were properly followed in seizure and disposal of the seized narcotic substance or not? Whether the reliance on witnesses is standard enough to reach the threshold of beyond reasonable doubts or not?

The court begin with the principle that :

One has to remember that the provisions of the NDPS Act are both stringent and rigorous and therefore the burden heavily lies on the prosecution. Non-production of a physical evidence would lead to a negative inference within the meaning of Section 114(g) of the Indian Evidence Act, 1872.

The court has analysed section 52A with the help of provisions and precedents. The court reiterated from *Noor Aga* v. *State of Punjab,*[67] that the guidelines and statutory instructions are " cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact." *Union of India* v. *Mohanlal*,[68] *Union of India* v. *Jarooparam*,[69] was also resorted to. The court found that following evidence were seriously doubtful—

i. The memorandum of informer's information indicates signature of two witnesses, both of them turned hostile. Though they admitted their signature it was clearly deposed that they were not present at the scene of occurrence. In fact these two witnesses were party to most of the exhibits.

ii. One of the witnesses to the seizure memo has not been examined while the other turned hostile. Both the witnesses to the arrest memo have not been examined.

iii. There is a serious doubt on seizure. A police officer himself had deposed that materials were existing the very same seized materials even before the occurrence.

iv. memorandum under Section 27 of the Act, as witnessed by the two witnesses, would be of no value in evidence as there is no discovery of new facts involved.

67 (2008) 16 SCC 417.
68 (2016) 3 SCC 379.
69 (2018) 4 SCC 334.

v. seized materials could not be produced in court nor any record to suggest how they were disposed of. There is no explanation for it. They could have been the best evidence. The court referred to *Jitendra* v. *State of M.P.*[70] where it was considered a serious lapse.

vi. The FSL Report was mechanically relied upon. The statement of the expert witness was admitted as the gospel truth. They were mere opinions.

In other words section 52A and other established procedures were not followed. Therefore, the conviction order was bad in law.

Delay

The case started in 2010. The accused was imprisoned as both trial court and high court convicted him. The Supreme Court acquitted him because the executive machinery and the public prosecutor did not do their job properly. If the accused had really committed the offence his freedom without conviction is dangerous and creates trust deficit. If he was innocent then his time in the prison cannot come back. It is therefore necessary that the system be placed with rigorous fundamentals. The recruitment of talented young persons, filling up vacancies regularly, robust training of officers, incentives on good performances [like conviction by Supreme Court], accountability fixing for gross negligence, use of retired professionals, using AI and technology etc can be useful tips for reforms.

***B.S. Hari Commandant* v. *Union of India*:[71] A blend of sensitivity, quality and reform**

Border areas are vulnerable to controlled substances. Sometime allegations have also been raised against the men in uniform at the borders about facilitating drug trafficking. This case is one illustration where constitutional law (issue of judicial review under article 226, how to write a judgement), administrative law (responsibility of superior officer in charge) and penal law(NDPS Act) is brewed together intelligently.

It was alleged that on 4/5th April, 1995, B.S. Hari, commandant "knowingly permitted the two smugglers to take out 44 Jerrycans[a controlled substance under section 9A of NDPS Act, 1985] of 40 litres each of Acetic Anhydride from India to Pakistan from Border fencing gate No. 205 of BOP Barake, under his control." A raid was conducted at his residence and nothing was recovered.

Inspector Didar Singh, who was in actual and physical command and control of the area in the vicinity of which the alleged Jerrycans were recovered, has made a statement that he was involved in the incident at the behest of the appellant. In other words B.S. Hari, the commandant, has committed abetment to commit crime.

Charges under Section 46 of the BSF Act for Civil offence committed in contravention of Section 25 of the NDPS Act and one charge under Section 40 of the BSF Act. Trial against the appellant commenced on 30.10.1995 by convening a

70 (2004) 10 SCC 562.
71 (2023) 13 SCC 779.

General Security Force Court (GSFC). On 10.04.1996, the GSFC gave its verdict, finding the appellant not guilty of the first charge but guilty of the second and third charges. It sentenced him to 10 years' Rigorous Imprisonment; imposed a fine of Rs. 1,00,000/-, and dismissed him from service. This was confirmed by the Confirming Officers. BS Hari challenged the finding through writ under article 226.

Judicial review in matters of security forces leading to punishment

The high court held that the finding of the GSFC cannot be interfered with as under:

> The finding by a Security Force Court on the basis of appreciation of evidence would be beyond the purview of a writ Court as has been consistently held by various Courts including the Supreme Court.

The Supreme Court through Ahsanuddin Amanullah, J. agreed with the issue of discipline in paramilitary forces and the limited judicial review available here. He disagreed (and rightly so) with this hand off approach of the high court. He quoted from *Council of Civil Service Unions* v. *Minister for the Civil Service*[72] to appreciate the concept of judicial review. *Ranjit Thakur* v. *Union of India*,[73] was also quoted that "… the punishment is so strikingly disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review."

Applying the principle of judicial review in *BS Hari case,* the judgement traced two relevant facts. One, proportionality, ie the accused was a first-time delinquent, and not a habitual offender. Two, his career of three decades was un-blemish and was a recipient of the President award. The judgement felt, and correctly so, that ten year imprisonment, 1Lakh fine, dismissal is harsh and disproportionate. The next course was to send this matter back to the court below but the litigation was three decades old. Ahsanuddin Amanullah, J. then rightly thought to resolve the matter in the Supreme Court itself.

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Dereliction of duty and criminal action

The accused was in command of a very large area. But the actual "manning of the area was by the subordinate personnel. Subordinates were adjudged guilty, indicating his active involvement. There was no direct evidence against the accused.

72 [1984] 3 WLR 1174 (HL).

73 (1987) 4 SCC 611, para 45. *Andhra Pradesh Industrial Infrastructure Corporation Limited* v. *S N Raj Kumar*, (2018) 6 SCC 410 was also quoted besides others.

An analogy has been drawn that can an IPS or SP be held criminally accountable if a couple of junior police officers are held guilty under criminal law. "This would be an extreme and absurd extension of the principle of dereliction of duty and/or active connivance". While the duty of the commander to prevent such incidents is beyond question "but to stretch it to the extent to label him an active partner and/or facilitator of such crime is wholly unjustified." Except Subedar Didar Singh's statement, roping in the appellant, there is no material or recovery against him. Therefore the high court under 226 has power to exercise its authority under judicial review "under the Constitutional scheme" to safeguard rights of citizens. For exactly this reason, this court has never laid down any strait-jacket principles that can be said to have "cribbed, cabined and confined".

Other factors that went in favour of the accused was that the two alleged smugglers could not be convicted because one smuggler established successfully an *alibi* that on the alleged day of smuggling he was inside jail. And the other smuggler was discharged. In the light of all evidence and developments the conviction order and other orders against accused BS Hari was quashed with full retrial benefits.

Reforms in judgement writing

Another defining feature of this judgement is a direction to all high courts on how to write judgements. Ahsanuddin Amanullah, J. armed with precedents[74] issued a highly commendable and essential message that "it is desirable that all Courts and Tribunals, as a matter of practice, number paragraphs in all Orders and Judgments in seriatim, factoring in the judgments afore-extracted." He ensured that the message is productive and reaches to the stakeholders by directing the registry to circulate it to all concerned. In the considered opinion of this author/surveyor besides this objective criteria a few subjective criterias can also be considered. Like the facts and developments may also be mentioned in a chronological order for easy understanding of readers. Parties to litigation already attach this detail. Sometimes it is very difficult to know all the facts and issues because one part is in the beginning and another significant fact is somewhere in the middle. Small sentences, easy words in the passages will add to the natural beauty of the judicial pronouncements. Unnecessary long repetitive quotations from precedents, judgements from other jurisdictions should also be avoided as far as possible. Last but not the least, a conclusion must be given by the bench (in addition to those by individual judges) so that the confusion as to what is the law laid down can be minimised. It will also reduce chances of fresh petitions and save precious time, energy and expertise of our learned judges, advocates, litigants and researchers. Judgement reading ought to be a more pleasant exercise and the directions in *BS Hari* can be a good starting point.

74 *Shakuntala Shukla* v. *State of Uttar Pradesh*, 2021 SCC OnLine SC 672: *State Bank of India* v. *Ajay Kumar Sood*, 2022 SCC OnLine SC 1067.

Delay

BS Hari case began its journey in 1995. In 1996 the internal tribunal convicted him. The matter was brought to high court in 1997. The high court decided the case in 2010. It was appealed in the Supreme Court in 2010. In 2010 and 2011 it was listed two times in the Supreme Court. Then the record shows that it was listed four times in 2014. In 2015 two times. Then in 2021 one day, in 2023 it was listed three times. It took 1 year in trial court, 14 years in high court and 13 years in the Supreme Court. Indeed credit must be given to Ahsanuddin Amanullah, J.(with Krishna Murari, J who agreed on this humanistic approach) who not only acknowledged this unusual delay but also took pain to decide the matter then and there instead of sending it back to courts below. If provisions like article 128 be put into motion some unusual delays are manageable.

V DOWRY OFFENCES

Dowry prohibition laws and the criminalisation of dowry demands, dowry death are another group of laws which attempt to address the issues in socio economic crimes. It is correctly mentioned that "Dowry, as it is practiced today, involves gruesome economic violence, including extortion, blackmail, holding women hostage for extracting money, and exploitation of women and their families."[75] While the problem is marginally reduced but the law is ineffective as dowry, its demand, *len den, are* socially accepted in rural or urban society. Other socio economic crimes like corruption are different from dowry offences. In corruption crimes there may be a fatigue because of "cynical resignation" to the situation that nothing can be done, the whole system is involved. On the other hand dowry offences [demand and acceptance of dowry] are many times committed voluntarily. Indeed the family plan for dowry for their daughters since their young age. In case there is a son and daughter, those who are victims of dowry [as parents of daughters] feel justified to act as offenders of dowry crimes by making extortive demands. However, killing a bride is not acceptable by any one even if the society accepts dowry *len den.*

***Paranagouda* v. *State of Karnataka:*[76] Hostile witnesses and one dying declaration**

The significance of this case lies in the fact that despite many hostile witnesses and parents not supporting dowry crimes, the conviction was possible due to dying declaration, though under lesser grave provisions. In this case the marriage was solemnised in 2010. There was allegedly consistent demand for dowry followed by torture. She could not sustain the physical and mental torture. In the same year *i.e.,* in 2010 she committed suicide by self-immolation *viz.,* by pouring kerosene and lighting herself. In 2012 the accused were convicted under Section 498A, 304B read with Section 34 of IPC and Section 3 and 4 of Dowry Prohibition Act, 1961. In 2022 the high court upheld conviction.

75 Shalu Nigam, *Dowry is a Serious Economic Violence: Rethinking Dowry Law in India*, (Cambridge Scholars Publishing, UK, 2024).

76 2023 INSC 933.

The finding of the Supreme Court regarding evidence is as under:

9.2 The complainant, PW-24 who is the father of the deceased has not supported the case of the prosecution and he has deposed that accused had looked after the deceased well. Long and short of the deposition of PW-24 (father of deceased) is that he did not support the case of the prosecution. PW-1 witness to the inquest panchanama too has turned hostile. The neighbours of the house where the deceased was residing namely PW-3 and PW-4 have turned hostile. PW-5 and PW-21 whom the prosecution claimed of having known the fact of ill- treatment given by the accused to the deceased have turned hostile. The persons who are said to have advised the accused not to ill-treat the deceased have also turned hostile. The persons who were present during the marriage talks of the deceased and accused No.1 namely PW-7 to PW-9 have also not supported the case of the prosecution. Other witnesses namely PW-10, 11, 12, 19, 18, 30 as well as the mother of the deceased PW-22 have not supported the case of the prosecution. Dr. Suresh Basarkod (PW.26) who tendered the case sheet attested by casualty medical officer of Kumareshwar Hospital, Bagalkot, where deceased was admitted, has deposed that Dr. Pramod Mirji (PW-31) and Dr. Vishwanath are competent to speak about medical treatment extended to Mahadevi (deceased). However, Dr. Vishwanath was not examined.

The finding regarding dying declaration is as under:

10. Taluka executive Magistrate Basappa Laxmappa Gothe PW-25 is said to have recorded the dying declaration of the deceased as per Ex.P-45, based on which the accused has been convicted by the trial court and affirmed by the High Court. PW25 who was the Tahasildar at Bagalkot during the relevant period has deposed that he was working as Tahasildar in Bagalkot from 08/07/2009 to 27/04/2011. He has deposed that Dr. Mahalingappa Kori (PW32) was present when he recorded the statement of Mahadevi from 4:20 PM to 5:15 PM. He further deposes that Dr. MC Kori had talked to the deceased and found that she was in a fit condition to give statement. He further deposes that he was also convinced that Mahadevi was fit to give statement. He has identified the statement recorded by him as Ex-P45 and also the LTM[Long-term electroencephalographic monitoring] of the deceased found in Ex-P45. He has deposed that doctor was present throughout the time of recording of statement and the signature and endorsement of the doctor marked as Ex-P45(b) has been identified. PW25 had also conducted inquest panchnama (Ex.P-1) & recorded the statement of Renavva Chandappa Guli (PW22) and he has identified his signature found on the statement of PW22 (Ex.P40) as Ex.P-40(a). He has denied the suggestion that deceased Mahadevi had not given any statement.

As the dying declaration was good enough to satisfy the elements of section 498A of the Indian Penal Code (IPC) [or sections 85 and 86 of the Bharathiya Nyaya Samhita (BNS)] the conviction was made under this provision. For conviction under 304B of the Indian Penal Code (IPC) [or section 80 of Bharathiya Nyaya Samhita (BNS)] the court did not find causal relation. The passage can be reproduced as under:

This Court having arrived at a conclusion that the dying declaration made by the deceased as per Ex.P-45 being genuine and when said declaration is perused it would not suggest that there was any proximate nexus to the act of committing suicide on account of preceding demand for dowry or in other words the demand of dowry on any particular date having triggered the deceased to commit the suicide or forced her to self- immolate. This proximate link not being available in the facts obtained in the present case, we are of the considered view that conviction of the accused under Section 304B cannot be sustained.

The acquittal under 304B indicates that the police and prosecution need to work hard so that the menace of dowry and socio economic crimes can be addressed effectively.

VI CONCLUSION

Like every survey the socio economic crimes continue to demonstrate that the law is not as effective as it ought to be. But it can be a template argument in almost all jurisdictions and will remain a universal argument especially for those who keep on challenging the state for its failures and do not find anything good in the functioning of States. An objective assessment will examine the strength and weaknesses of a legal system through judicial delineation. This survey, like many others since 2016 has pursued the same approach. Happy news is that there are various convictions in socio economic crimes cases. Be it PCA, PMLA, NDPS, DPA, etc. The enforcement of PMLA post 2014 has created an impression that however big you may be, the law is above you. There are voices which dub PMLA as harsh and draconian because it makes human rights a farce. The judgments show a roller coaster trend, For example in one year, one judgement (*Pankaj bansal*) has made the law liberal in favour of the accused while the other (*Ram Kishore*) made it against him. However, delay in the judicial process is a great concern.

Dilipsinh Kishorsinh investigates the meaning of *prima facie* in case of disproportionate asset case under PCA. It declares that at the time of framing of charge an accused has no right to present his evidence in defence. A collapsing figure is that the case in *Dilipsinh Kishorsinh* was registered in 2013 and in 10 years only clarity is that charges can be framed. The trial, conviction or acquittal, appeal etc will further take at least a decade. A constitution bench decision of *Neeraj Dutta* (2022) resolved a decade old dispute under the PCA, 1987. Demand for bribes can also be proved by circumstantial evidence if direct evidence is not available. Now the state has got some relief in the war against corruption. But how to establish demand through circumstances will be a challenging question. A division bench in *Neeraj Dutta* (2023) has applied the law declared by the

constitution bench. It arrived at the conclusion that there is no circumstantial evidence to establish the 'demand' for bribes. Accused has some moments of relief and joy. *Neeraj Dutta* also took 23 years. Why should a judicial process under a special enactment take 23 years? Is it not self defeating? *Jagtar Singh* is also an application of *Neeraj Dutta* (2022) but the Supreme Court judgement in *Jagtar Singh* has not addressed the valid points made by the high court. The accused was recipient of acquittal and freedom for want of evidence. On delay *Jagtar Singh* also took 20 years to reach finality, provided it does not go to review and curative petition.

Pankaj Bansal makes an enthusiastic and purposive interpretation of law by declaring that the grounds of arrest must be given in writing only under PMLA. It tried to avoid the rigor of *Vijay Madanlal Choudhary* for a temporary period. But before it could make a long stride, *Ram Kishore Arora* has shown a red light. It declared that *Pankaj Bansal* is not in conformity with jurisprudential wisdom as it breaches the judicial discipline by not following the rules of precedent. It declares that the grounds of arrest under PMLA need not be immediate and in writing only. And a larger bench in *Vijay Madanlal Choudhary* still holds the field. *M Gopal Reddy* clarifies again that the twin condition of section 45 of PMLA is applicable not only to bail but also to anticipatory bail proceedings. *Mangilal* highlights the need for religious observance of section 52A of NDPS Act. Accused got relief here. *BS Hari* where also the accused got relief, secures the accused from the scourge of unjustified and harsh punishment in offences involving NDPS. Evidence of mere dereliction of duty cannot be criminalised. It also issues objective guidelines for a more organised judgement writing.

Dowry cases continue to demonstrate the greedy nature of society. *Paranagouda* shows that even if parents do not support the prosecution and there are other hostile witnesses, a timely and carefully noted dying declaration of the bride can lead to conviction under section 498A of IPC. However, for conviction under section 304B the same could not be used as dying declaration was not positive on demand of dowry, soon before *etc*. As the trial was finished and punishment was given within two years, this is reason for little celebration because trials usually take around a decade in our trial courts even in special courts. What is a matter of concern are many hostile witnesses, including parents. It was not a case of a longer trial. It was not a case where a very powerful person was involved who can buy witnesses or coerce them. [At least from the judgement it is not inferred]. It a matter for socio-legal researchers to find the reasons in these cases. One caution needs to be flagged. The court in *Paranagouda* has relied upon *Sher Singh Alias Partapa vs State of Haryana*[77] which is not a good precedent so far as the standard of proof is concerned. *Sher Singh* declared that the prosecution may establish its case with preponderance of probability and accused has to establish beyond reasonable doubts. This finding was not in conformity with principles, precedents or professional opinion nor is good in policy. This survey in 2015 itself

77 (2015) 1 SCR 29.

and other scholastic writing has highlighted that *Sher Singh* needs to be declared a bad law and *per incuriam*.[78]

In order to address delay in the Supreme Court, the Supreme Court and the Government of India need to think if the provisions of article 127[79] and 128[80] of the Constitution of India can be used. While article 127 can have some difficulty as it can be used for want of quorum, article 128[81] can be easily used because it has no precondition. In 2023 itself nine judges of the Supreme Court retired. Between 2020-2024, 27 judges of the Supreme Court retired.[82] It does not include Chief Justices of India.[83] A rule may be proposed that if a case is pending with a Supreme Court judge, s/he can continue to adjudicate it after retirement. As the decision on who should continue is with the Chief Justice of India and the Government of India they may not continue a judge whose efficiency is reduced due to age factor or any other very strong reasons.

78 Anurag deep, "Laws Regarding Dowry and Maintenance to Women: The Interpretational Dilemma" 51-52 XVI *National Capital Law Journal* (2017), *available at*: https://lc2.du.ac.in/Data/National%20capital%20law%20journal%20vol%20xvi%202017.pdf

79 Art. 127. Appointment of ad hoc Judges.

80 Art.128. Attendance of retired Judges at sittings of the Supreme Court-Notwithstanding anything in this Chapter, the Chief Justice of India may at any time, with the previous consent of the President, request any person who has held the office of a Judge of the Supreme Court or of the Federal Court 3 [or who has held the office of a Judge of a High Court and is duly qualified for appointment as a Judge of the Supreme Court] to sit and act as a Judge of the Supreme Court, ….

81 Art. 128 reads: Attendance of retired Judges at sittings of the Supreme Court.

82 *Available at:* https://www.sci.gov.in/former-chief-justice-judges/(last visited on Jan, 20, 2024).

83 Between 2020-2024, four CJIs retired.