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NATIONAL JUDICIAL ACADEMY



TRAINING PROGRAMME FOR BANGLADESH JUDGES AND JUDICIAL OFFICERS

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**SESSIONS 1-7
TABLE OF CONTENTS**

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TABLE OF CONTENTS

S. No	Articles/ Case Law/ Commentary/ Book Excerpt/ Reports	Page. No
SESSION 1		
OVERVIEW AND ARCHITECTURE OF THE INDIAN CONSTITUTION		
1.	A Comprehensive Note on <i>Indian Constitution</i> Lok Sabha Secretariat Parliament Library and Reference, Research, Documentation And Information Service (Larrdis), New Delhi	1
2.	Justice A.P. Sahi & Sharath Chandran, <i>Salient Features of the Indian Constitution</i> in MP JAIN INDIAN CONSTITUTIONAL LAW (Lexis Nexis, Eighth Edition 2023) pp. 18-35.	24
3.	Chintan Chandrachud, <i>Constitutional Falsehoods: The Fourth Judges Case and the Basic Structure Doctrine in India</i> , AN UNAMENDABLE CONSTITUTION? UNAMENDABILITY IN CONSTITUTIONAL DEMOCRACIES, (2018)	43
4.	Ridwanul Hoque, <i>Eternal Provisions in the Constitution of Bangladesh: A Constitution Once and for All?</i> AN UNAMENDABLE CONSTITUTION? UNAMENDABILITY IN CONSTITUTIONAL DEMOCRACIES, (2018)	64
5.	Dr. B.R. Ambedkar's speech introducing the Draft Constitution in the Constituent Assembly on Nov. 04, 1948, MOTION RE. DRAFT CONSTITUTION, Volume VII (4th November 1948 to 8th January 1949)	99
6.	<i>Constituent Assembly vis-à-vis Constitution</i> in DR. RAJENDRA PRASAD, LSS (PRIS-LC) I EPM I 7 (1990)	129
7.	R.C. Lahoti, <i>Preamble Source of Basic Structure</i> in THE PREAMBLE: THE SPIRIT AND BACKBONE OF THE CONSTITUTION OF INDIA, Ed. First, (Eastern Book Company 2004) pp. 108 – 113.	150
8.	Arvind P. Datar, <i>Our Constitution and its Self-Inflicted Wounds</i> , Indian J. Const. L. 65 (2007)	156
9.	Muhammad Ekramul Haque, <i>The Concept of 'Basic Structure': A Constitutional Perspective From Bangladesh</i> , the Dhaka University Studies, Part-F Vol. XVI (2): 123— 154, December 2005	177
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1.	<i>A.S. Narayana Deekshitulu v. State of A.P. & Ors</i> , (1996) 9 SCC 548	
2.	<i>Bhanumati & Ors v. State of U.P.</i> , (2010)12 SCC 1	
3.	<i>Kesavananda Bharti v. State of Kerala</i> , AIR 1973 SC 1461 - [Constitution - basic structure of Constitution]	
4.	<i>Indira Nehru Gandhi v. Raj Narain & Another</i> ; AIR 1975 SC 1590	
5.	<i>Minerva Mills Ltd. & Ors. v. Union of India & Ors</i> , AIR 1980 SC 1789	
6.	<i>L. Chandra Kumar v. Union of India</i> , AIR 1997 SC 1125	
7.	<i>A.K. Gopalan v. State of Madras</i> , (AIR 1950) SC 27	
8.	<i>A.D. M. Jabalpur vs. S. S. Shukla</i> [1976] Supp. S.C.R. 172, AIR 1976 SC 1207	
9.	<i>Golak Nath v. State of Punjab</i> , AIR 1967 SC 1643	
10.	<i>Parmanand Katara, Advocate v. Union of India & Anr.</i> (1995) 3 SCC 248 – Right to decent burial	

11. *Om Prakash v. Ranbir B. Goyal*, (2002) 2 SCC 256 – Power of civil Court to Mould relief, Sec 151 CPC
12. *Prithipal Singh v. State of Punjab* 2012 (1) SCC 10 – extraordinary situation requires extraordinary measures. Justice B.S. Chauhan [Para 50]
13. *B.P. Achala Anand v. S. Appi Reddy* [(2005) 3 SCC 313 : AIR 2005 SC 986]: (SCC p. 318, para 1)
14. *S. R. Bommai v. Union of India*, AIR 1994 SC 1918
15. *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545
16. *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248
17. *Rustom Cavasjee Cooper v. Union of India*, (1970) 1 SCC 248
18. *Md. Abdul Haque v. Fazlul Qader Chowdhury*, PLD 1963 Dacca 669 (This judgment was Dhaka High Court Judgment, wherein the doctrine of Basic structure as applied by the Indian Supreme Court had originated which was upheld in appeal by the Pakistan Supreme Court in the case *Fazlul Qader Chowdhury V. Abdul Huq*, PLD 1963 SC 486. Later referred to in *Anwar Hossain Chowdhury v Bangladesh (1989) [8th Amendment Case]*).

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6. Madhav Khosla, INDIA'S FOUNDING MOMENT: THE CONSTITUTION OF A MOST SURPRISING DEMOCRACY, Harvard University Press, 2020
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12. Arvind P. Datar, COMMENTARY OF CONSTITUTION OF INDIA, Wadhwa And Company Nagpur, (2007)
13. Chinnappa Reddy, THE COURT AND THE CONSTITUTION OF INDIA: SUMMITS AND SHALLOWS, Oxford India Paperback, (2008)
14. Pai, V. Sudhish., WORKING OF THE CONSTITUTION: CHECKS AND BALANCES, Eastern Book Company, Lucknow, (2014)
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16. Chintan Chandrachud, BALANCED CONSTITUTIONALISM, COURTS AND LEGISLATURES IN INDIA AND THE UNITED KINGDOM, Oxford University Press (2017)
17. Granville Austin, WORKING A DEMOCRATIC CONSTITUTION, A HISTORY OF THE INDIAN EXPERIENCE, Oxford University Press (2004)
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19. A.G. Noorani, CONSTITUTIONAL QUESTIONS & CITIZENS' RIGHTS, Oxford University Press (2010)
20. Rohan J. Alva, LIBERTY AFTER FREEDOM: A HISTORY OF ARTICLE 21, DUE PROCESS AND THE CONSTITUTION OF INDIA, HarperCollins India (2022)

SESSION 2		
INDIAN JUDICIARY: ORGANIZATIONAL STRUCTURE AND JURISDICTION		
1.	Ecosystem of Justice: Court Hierarchies, Administration and the legal Profession , Chapter –X, Book Courts of India – Past to Present. Published by The Publications Division Government of India SC 2016.	209
2.	Jain, SN, Vahini, V., Judicial System and Legal Remedies , ILI. N. M. Tripathi Pvt. Ltd (2006), 140-153	253
3.	Robinson, N., Judicial Architecture and Capacity , THE OXFORD HANDBOOK OF THE INDIAN CONSTITUTION, Oxford University Press (2016), 331348	269
4.	V. Sudhish Pai, The Myth of Sovereignty in WORKING OF THE CONSTITUTION, EBC Publishing (P) Ltd., Lucknow (2014)	290
<p style="text-align: center;">Judgements</p> <p style="text-align: center;"><i>(Judgments mentioned below include citations and brief note only for reference. Please refer full judgment (available in pen drive) for conclusive opinion)</i></p>		
1.	Supreme Court of India v. Subhash Chandra Agarwal , (2020) 5 SCC 481 [<i>Independence of judiciary is not limited to judicial appointments to the Supreme Court and High Courts. It is a much wider concept which takes within its sweep independence from many other pressures and prejudices. It consists of many dimensions including fearlessness from other power centers, social, economic and political, freedom from prejudices acquired and nurtured by the class to which the judges belong and the like.</i>]	
2.	State of Rajasthan v. Ramesh Chandra Mundra , (2020) 20 SCC 163 [<i>Adequate budgeting so as to meet the judiciary's work demands, so as to ensure proper infrastructure and facilities is integral to judicial functioning. In that sense it is an aspect of judicial independence. That independence of judiciary is a part of the basic structure of the Constitution is well entrenched, an integral part of independence of judiciary as a constitutional value is institutional independence i.e. the aspect concerning the financial freedom or autonomy which the judiciary must possess and enjoy.</i>]	
3.	Supreme Court Advocates-on-Record Assn. v. Union of India , (2016) 5 SCC 1 [<i>Institutional independence of judiciary – Complete immunity is conferred on conduct of judges and words spoken or written in discharge of judicial duties, from discussion in any legislature under Articles 121 and 211, and from civil and criminal liability.</i>]	
4.	Ministry of Health & Welfare, Maharashtra v. S.C. Malte , (2012) 13 SCC 118 [<i>If the state is able to exercise pressure on the judges of the High Court by providing arbitrary or unreasonable conditions of service or by altering them in an arbitrary manner, it would certainly be an act of impinging upon the independence of the judiciary.</i>]	
5.	Brij Mohan Lal v. Union of India , (2012) 6 SCC 502 [<i>Any policy or decision of the Government which would undermine or destroy the independence of the judiciary would not only be opposed to public policy but would also impinge on the basic structure of the Constitution. It has to be clearly understood that State policies should neither defeat nor cause impediment in discharge of judicial functions.</i>]	
6.	Maninderjit Singh Bitta v. Union of India , (2012) 1 SCC 273 [<i>Disobedience of orders of the court strikes at the very root of rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. If the Judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs.</i>]	
7.	Glanrock Estate Pvt. Ltd. v. State of Tamil Nadu , (2010) 10 SCC 96 [<i>Challenge to Schedule IX cannot succeed on merely establishing a violation of a fundamental right. In such a position State must justify its action on the anvil of "doctrine of basic structure". Violation of fundamental rights ipso facto may not violate basic structure, but a law</i>	

violating the basic structure invariable violates fundamental rights. Ordinary equality distinguished from egalitarian equality as an overarching principle.]

8. **Parkash Singh Teji v. Northern India Goods Transport Co. (P) Ltd.**, (2009) 12 SCC 577 [*Higher court should normally avoid use of disparaging remarks against lower judicial officer while finding his judgment under appeal or revision before it is to be erroneous or lacking in any such manner, particularly if the officer had not opportunity to give his explanation.*]
9. **V.K. Jain v. High Court of Delhi**, (2008) 17 SCC 538 [*High Court's jurisdiction over subordinate courts –adverse remarks against subordinate judicial officers - strong remarks which damage the judicial system as a whole should not be made. Erosion of credibility is the greatest threat to independence of judiciary. No greater damage can be caused to administration of justice and to confidence of people when judges at superior courts express lack of faith either in ability or integrity of subordinate judges. The much cherished judicial independence must not be presented from outsider but from within by those who form integral part of the judicial system. Damage from within has much greater potential for harm than danger from outside. It is the duty of judges of superior courts to ensure that independence of judiciary is not compromised and every judicial officer should feel that he can freely and fearlessly give expression to his own opinion.*]
10. **Parkash Singh Badal v. State of Punjab**, (2007) 1 SCC 1 [*Control of the High Court over subordinate judiciary is comprehensive, exclusive and effective and it is to subserve the basic feature of the Constitution i.e. the independence of judiciary.*]
11. **Tirupati Balaji Developers (P) Ltd. v. State of Bihar**, (2004) 5 SCC 1 [*Appellate hierarchy of the judiciary, examined in the correct perspective, is a factor strongly contributing towards the independence of the judiciary by securing finality in adjudication within the system therefore its insulation from any outside interference or correction*]
12. **In Re: “K” a Judicial Officer**, (2001) 3 SCC 54 [*Adverse remarks - appeal filed for seeking deletion of adverse remarks passed by High Court in judgment delivered - judgment delivered in appeal filed against decision passed by appellant - appellant (Metropolitan Magistrate) contended that remarks made in judgment was not essential and adversely affect her career growth - no opportunity of explaining herself given to appellant - remarks passed were not necessary for matter decided - they were not formed the part of reasoning given in judgment although found prejudicial to appellant's career - remarks directed to be deleted.*]
13. **Registrar (Admn.), High Court of Orissa v. Sisir Kanta Satapathy**, (1999) 7 SCC 725 [*High Courts are vested with the disciplinary control as well as administrative control over the Members of the Judicial Service exclusively, but that does not mean that they can also pass orders of dismissal, removal, reduction in rank or termination from service while exercising administrative and disciplinary control over the Members of Judicial Service. Undoubtedly, the High Courts alone are entitled to initiate, to hold enquiry and to take a decision in respect of dismissal, removal, reduction in rank or termination from service, but the formal order to give effect to such a decision has to be passed only by the State Governor on the recommendation of the High Court.*]
14. **High Court of Judicature of Bombay v. Shirishkumar Rangrao Patil**, (1997) 6 SCC 339 [*Mechanism to ensure independence in subordinate judiciary – placing them under the control of High Court and regulating their service conditions.*]
15. **K. Veeraswami v. Union of India**, (1991) 3 SCC 655 [*President as the authority competent to remove judges of Supreme Court and High Courts – so that may not result in interference of executive with judiciary, criminal case against the judge must be registered and decision regarding grant of sanction for prosecution of the judges must be taken by the President in consultation and in accordance with the advice rendered by the Chief Justice of India. The decision regarding grant of sanction for prosecution of the CJI himself, must be taken by the President in consultation with the other judges of the Supreme Court.*]
16. **Three Judges Case**
 - ✓ **S.P. Gupta v. Union of India**, 1981 Supp SCC 87 [*The independence of the judiciary is a basic feature of the Constitution. “Consultation” did not include “concurrence”. The power of appointment of Judges under Article 124 was vested with the President and the President could override the views of the consultees.*]

✓	Supreme Court Advocates-on-Record Assn. v. Union of India , (1993) 4 SCC 441 [<i>Primacy of the opinion of the Chief Justice of India in regard to the appointments of Judges to the SC and the HC, and in regard to the transfers of HC Judges/Chief Justices (based on a collective decision, by a collegium of judges.)</i>]
✓	In re Special Reference 1 of 1998 , (1998) 7 SCC 739 [<i>Opinion of the Chief Justice of India has primacy in the matter of recommendations for appointment to the Supreme Court has to be formed in consultation with a collegium of Judges.</i>]
17. NJAC Judgment	
	Supreme Court Advocates-on-Record Assn. v. Union of India , (2016) 5 SCC 1 [<i>Process of appointment of judges is an integral part of independence of the judiciary, which is part of the basic structure of the Constitution</i>]

SESSION 3

CONSTITUTIONAL VISION OF JUSTICE: GOALS, ROLE, AND MISSION OF COURTS

1.	Justice M N Venkatachaliah, Constitutional Ideals & Justice in Plural Societies , NIAS Foundation Day Lecture, June 2016, published by National Institute of Advanced Studies.	311
2.	Singh, M. P. (2015-2016), Mapping the Constitutional Vision of Justice and its Realization , Journal of National Law University, Delhi (3), 1-16	332
3.	Justice A. K. Sikri, Constitutional Democracy: India's Moments (Constitution and Constitutionalism) in THE CONSTITUTION OF INDIA: CELEBRATING AND CALIBRATING 70 YEARS, Lalit Bhasin (Ed.), Law & Justice Publishing Co. (2020) pp. 2-34	350
4.	Rex E. Lee & Richard G. Wilkins, On Greatness and Constitutional Vision: Justice Byron R. White , 1994 BYU L. Rev.291 (1994)	368
5.	Fali S. Nariman, Quest for Justice: Collection of Essays	390
6.	Mahantesh G. S., Social and Economic Justice under Constitution of India: A Critical Analysis , 2018 IJLMH Volume 2, Issue 1 ISSN: 2581-5369	403
7.	Dr. S. Muralidhar, Trials, Errors And Hope, Indian Experiments with Access to Justice , Journal of National Judicial Academy on Judicial Reforms, 1 J. NAT'L JUD ACAD. 2005	416

Case Law:

Kunnummal Mohammed & Anr v. State of Kerala, AIR 1963 Kerala 54 [**Access to Legal Aid**] [*Before me part with the case we have to strike a note of warning against the practice of some of the Sessions Judges appointing raw and inexperienced juniors to defend the accused in capital cases. If however such inexperienced advocates alone are available to defend such unfortunate accused, the court has a primary duty to come to the aid of the accused by putting timely and useful questions and warning the advocates from treading on dangerous grounds. In this case it is really unfortunate that the court has instead, freely made use of the defects resulting from the inexperience of the advocates to build up the case against the accused.*]

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2.	Justice Ruma Pal, Judicial Oversight or Overreach: The Role of the Judiciary in Contemporary India , (2008) 7 SCC (J)

SESSION 4		
ELEMENTS OF JUDICIAL BEHAVIOUR: ETHICS NEUTRALITY, AND PROFESSIONALISM		
1.	Justice R.V. Raveendran, <i>How to be a Good Judge: Advice to New Judges</i> in ANOMALIES IN LAW & JUSTICE: WRITINGS RELATED TO LAW & JUSTICE, EBC Publishing (P) Ltd., (2021) pp. 277-317	458
2.	Lord Denning, “ <i>Into the Conduct of Judges</i> ” in THE DUE PROCESS OF LAW, Oxford University Press (2012), pp. 58-66	501
3.	<i>Restatement of Values of Judicial Life, 1999</i> [As adopted by Full Court Meeting of the Supreme Court of India on 7th May, 1997]. https://main.sci.gov.in/pdf/Notice/02112020_090821.pdf	510
4.	Aharon Barak, <i>The Role of the Judge: Theory, Practice and the Future</i> in THE JUDGE IN A DEMOCRACY, Princeton University Press (2008) pp. 306-315	513
5.	Robert A. Leflar, <i>The Quality of Judges</i> , 35 IND. L.J. 289 (1960)	524
6.	Justice Sunil Ambwani, <i>Elements of Judicial Behavior Ethics, Neutrality and Professionalism</i> , [Presentation Delivered at NJA for Training program for Bangladesh Judges and Judicial Officers on 14th March. 2023]	541
7.	R. C. Lahoti, <i>Canons of Judicial Ethics</i> , NJA Occasional Paper Series No. 5, National Judicial Academy, Bhopal, India	558
CASE LAWS		
(Judgments mentioned below include citations and short notes for reference. Please refer full judgment (available in pen drive) for conclusive opinion)		
1.	Muzaffar Husain v. State of Uttar Pradesh and Anr. 2022 SCC OnLine SC 567 [Showing undue favour to a party under the guise of passing judicial orders is the worst kind of judicial dishonesty and misconduct. The extraneous consideration for showing favour need not always be a monetary consideration. It is often said that "the public servants are like fish in the water, none can say when and how a fish drank the water". A judge must decide the case on the basis of the facts on record and the law applicable to the case. If he decides a case for extraneous reasons, then he is not performing his duties in accordance with law. As often quoted, a judge, like Caesar's wife, must be above suspicion]	
2.	Mathew Z Pulikunnel v. Chief Justice of India , WP(C) NO. 17654 OF 2021 [If it is held that a party who is directly or indirectly connected with a dispute decided by a Judge can approach the Court in a proceedings under Article 226 of the Constitution seeking direction on a complaint lodged against the Judge concerning the decision taken by him alleging that the same is not one conforming to the Restatement of Values of Judicial Life, there cannot be any doubt that the same will have a deleterious effect on the institution.]	
3.	Sadhna Chaudhary v. State of Uttar Pradesh (2020) SCC Online 307 [Judicial officers must aspire and adhere to a higher standard of honesty, integrity and Probity]	
4.	Shrirang Yadavrao Waghmare v. State of Maharashtra , (2019) 9 SCC 144 [The first and foremost quality required in a Judge is integrity. The need of integrity in the judiciary is much higher than in other institutions. The judiciary is an institution whose foundations are based on honesty and integrity. It is, therefore, necessary that judicial officers should possess the sterling quality of integrity]	
5.	Lalu Prasad v. State of Jharkhand (2013) 8 SCC 593 [In administering justice, judges should be able to act impartially, objectively and without any bias, Every litigant is entitled to fair justice. Independence of judiciary is the basic feature of the Constitution. It demands that a judge who presides over the trial, the public prosecutor who presents the case on behalf of the State and the lawyer vis-à-vis amicus curiae who represents the accused must work together in harmony in the public interest of justice uninfluenced by the personality of the accused or those managing	

affairs of the State. They must ensure that their working does not lead to creation of conflict between justice and jurisprudence. A person whether a judicial officer, public prosecutor or lawyer defending the accused should always uphold the dignity of their high office with a full sense of responsibility and see that its value in no circumstance gets devalued.]

6. **Supreme Court AOR v. Union of India**, (2016) 5 SCC 808 [*Impartiality of a Judge, Recusal by a Judge when warranted*]
7. **Registrar General, Patna High Court v. Pandey Gajendra Prasad**, 2012 STPL(Web) 305 SC [*There is no gainsaying that while it is imperative for the High Court to protect honest and upright judicial officers against motivated and concocted allegations, it is equally necessary for the High Court not to ignore or condone any dishonest deed on the part of any judicial officer*]
8. **Rajendra Singh Verma (Dead) Through LRs. v. Lieutenant Governor (NCT of Delhi)**, (2011) 10 SCC 1 [*In case where the Full Court of the High Court recommends compulsory retirement of an officer, the High Court on the judicial side has to exercise great caution and circumspection in setting aside that order because it is a complement of all the Judges of the High Court who go into the question and it is possible that in all cases evidence would not be forthcoming about integrity doubtful of a judicial officer*]
9. **Tarak Singh v. Jyoti Basu**, (2005) 1 SCC 201 [*There is nothing wrong in a Judge having an ambition to achieve something, but if the ambition to achieve is likely to cause a compromise with his divine judicial duty, better not to pursue it. Because, if a Judge is too ambitious to achieve something materially, he becomes timid. When he becomes timid there will be a tendency to make a compromise between his divine duty and his personal interest. There will be a conflict between interest and duty*]

[“Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary took utmost care to see that the temple of justice does not crack from inside, which will lead to a catastrophe in the judicial-delivery system resulting in the failure of public confidence in the system. It must be remembered that woodpeckers inside pose a larger threat than the storm outside.”]
10. **High Court of Judicature at Bombay v. Shashikant S. Patil**, (2000) 1 SCC 416 [*Honesty and integrity are the hallmarks of judicial probity. Dishonesty and lack of integrity are hence the basic elements of misconduct as far as a Judicial Officer is concerned*]
11. **Union of India v. K.K. Dhawan** (1993) AIR 1478 [*The judicial officer, if acts negligently or recklessly or attempts to confer undue favour on a person or takes a decision which is actuated by corrupt motive, then he is not acting as a judge*]
12. **High Court of Judicature at Rajasthan v. Ramesh Chand Paliwal**, (1998) 3 SCC 72 [*Judges have been described as ‘hermits’, further reminding that, “they have to live and behave like hermits, who have no desire or aspiration, having shed it through penance. Their mission is to supply light and not heat*]
13. **High Court of Judicature at Bombay v. Uday Singh**, (1997) 5 SCC 129 [*Maintenance of discipline in the judicial service is a paramount matter. Acceptability of the judgment depends upon the credibility of the conduct, honesty, integrity and character of the officer. The confidence of the litigating public gets affected or shaken by lack of integrity and character of Judicial Officer*]
14. **Daya Shankar v. High Court of Allahabad**, (1987) 3 SCC 1 [*Judicial officers cannot have two standards, one in the court and another outside the court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy*]
15. **State vs. Chief Editor, Manabjain and others**, LEX/BDHC/0113/2002 (**Supreme Court of Bangladesh**), [*To safeguard the position Court suggested suggested to follow the self-restrained path of social isolation. The Supreme Court held that Judges should keep the confidence of the public in the judiciary by laying down certain key points.*]
16. **C. Ravichandran Iyer v. Justice A.M. Bhattacharjee & Ors.** (1995) 5 SCC 457 [*Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to*

have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process]

17. **K.P. Singh vs. High Court of H.P. & ors.** 2011(3)KLJ11 [A judge is judged not only by the quality of his judgments, but also by the quality and purity of his character and the measurable standard of that character is impeccable integrity reflected transparently in his personal life as well. One who corrects corruption should be incorruptible. That is the high standard, the public has set in such high offices of institutional integrity. Therefore, any departure from the pristine codes and values of discipline and disciplined conduct on the part of the judicial officers will have to be viewed very seriously lest the very foundation of the system would be shaken and, if so, that will be the death knell of democracy...]
18. **R.C. Chandel v. High Court of M.P.**, (2012) 8 SCC 58 [There can be no manner of doubt that a Judge must decide the case only on the basis of the facts on record and the law applicable to the case. If a Judge decides a case for any extraneous reasons then he is not performing his duty in accordance with law. 10. In our view the word “gratification” does not only mean monetary gratification. Gratification can be of various types. It can be gratification of money, gratification of power, gratification of lust etc., etc.]
19. **All India Judges' Association v. Union Of India**, 1992 AIR 165 [Para 61 – It is time we mention about society's expectation from the Judicial Officers. A judge ought to be wise enough to know that he is fallible and, therefore, even ready to learn and be courageous enough to acknowledge his errors. The conduct of every judicial officer should be above reproach. He should be conscientious, studious, thorough, courteous, 'patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private, political or partisan influences; he should administer justice according to law, and deal with his appointment as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.]
20. **Rajesh Kohli vs. High Court of J. and K. and Anr.** (2010) 12 SCC 783 [Upright and honest judicial officers are needed not only to bolster the image of the judiciary in the eyes of litigants, but also to sustain the culture of integrity, virtue and ethics among judges. The public's perception of the judiciary matters just as much as its role in dispute resolution. The credibility of the entire judiciary is often undermined by isolated acts of transgression by a few members of the Bench, and therefore it is imperative to maintain a high benchmark of honesty, accountability and good conduct.]
21. **In Re: “K” a judicial officer**, (2001) 3 SCC 54 [Adverse remarks - appeal filed for seeking deletion of adverse remarks passed by High Court in judgment delivered - judgment delivered in appeal filed against decision passed by appellant - appellant (Metropolitan Magistrate) contended that remarks made in judgment was not essential and adversely affect her career growth - no opportunity of explaining herself given to appellant remarks passed were not necessary for matter decided - they were not formed the part of reasoning given in judgment although found prejudicial to appellant's career - remarks directed to be deleted.]
22. **Bidi Supply Co. v. Union of India**, AIR 1956 SC 479 [The heart and core of a democracy lies in the judicial process, and that means independent and fearless Judges free from executive control brought up in judicial traditions and trained to judicial ways of working and thinking. The main bulwarks of liberty and freedom lie there and it is clear to me that uncontrolled powers of discrimination in matters that seriously affect the lives and properties of people cannot be left to executive or quasi executive bodies even if they exercise quasi-judicial functions because they are then invested with an authority that even Parliament does not possess. Under the Constitution, Acts of Parliament are subject to judicial review particularly when they are said to infringe fundamental rights, therefore, if under the Constitution Parliament itself has not uncontrolled freedom of action, it is evident that it cannot invest lesser authorities with that power.]
23. **Sarojini Ramaswami v. Union of India**, 1992 (4) SCC 506 [The five-Judge Bench of Hon'ble Supreme Court in its judgment delivered on 27th August 1992 in the case held that the impeachment facing Judge Mr. V. Ramaswamy would not be entitled to a copy of the Inquiry Committee Report at the stage when it is to be submitted to the Speaker for tabling the same before the House of People. The Supreme Court has rested this conclusion on the premise that

the concerned Judge would be able to seek a judicial review of the finding of 'guilty' of the Inquiry Committee, if any, after the Presidential order of removal of Judge, if passed. The declaration that at the end of the Parliament's vote and consequential order of the President removing the Judge, the finding of 'guilt' can be subjected to judicial review is a controversial proposition.]

Additional Readings

1.	Leslie Steven Rothenberg, <i>The Role of Judges and the Courts as Definers of Ethical Norms</i> , Selected Papers from the Annual Meeting (American Society of Christian Ethics), 1977, Eighteenth Annual Meeting (1977), pp. 104-128
2.	Justice G. S. Singhvi, <i>Judicial Ethics</i> 7(2) Journal of Delhi Judicial Academy 93-106 (2011)
3.	Justice Sunil Ambwani, <i>Ethical Reasoning in Judicial Process</i> , (2012) 4 SCC J-35
4.	Justice V. K. Bist, <i>Judicial Behavior and Conduct in the Present Scenario</i> , Uttarakhand Judicial & Legal Review, Uttarakhand Judicial & Legal Review, Available at: https://ujala.uk.gov.in/files/ch1.pdf
5.	Commentary on <i>Bangalore Principles of Judicial Conduct</i> , United Nations office on Drugs and Crime, September 2007 [A detailed draft commentary was prepared on each of the Bangalore Principles and discussed in depth, together with the Principles, at the Open-Ended Intergovernmental Expert Group Meeting on Strengthening Basic Principles of Judicial Conduct held in Vienna on 1-2 March 2007. The Commentary gives depth and strength to the Principles and contributes significantly to furthering their global adoption as a universal declaration of judicial ethics]. Link to access: https://www.unodc.org/documents/corruption/publications_unodc_commentary-e.pdf
6.	<i>The Bangalore Principles of Judicial Conduct, 2002</i> [The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002].
7.	Cynthia Gray, <i>Ethical Standards for Judges</i> , American Judicature Society [Ethical Standards for Judges was developed in 1999 under grant from the State Justice Institute, "An Educational Program for Members of State Judicial Conduct Organizations." It was substantially up-dated and revised in 2009]

SESSION 5

JUDGING SKILLS: ART, CRAFT AND SCIENCE OF DRAFTING JUDGMENTS

1.	Justice R. V. Raveendran, <i>Rendering Decisions- Basics for New Judges (Decision-Making & Judgment-Writing)</i> in ANOMALIES IN LAW & JUSTICE: WRITINGS RELATED TO LAW & JUSTICE, EBC Publishing (P) Ltd. (2021) pp. 319-361	596
2.	Justice G. Raghuram, <i>Art of Judgment</i>	618
3.	Justice Sunil Ambwani, <i>The Art of Writing Judgment</i> in JUDGMENTS AND HOW TO WRITE THEM, Eastern Book Company (2018)	628
4.	S. I. Strong, <i>Writing Reasoned Decisions and Opinions: A Guide for Novice, Experienced, and Foreign Judges</i> , 2015(1) Journal of Dispute Resolution 93 – 128 (2015)	640
5.	S.D. Singh, <i>Judgments in General</i> , in JUDGMENTS AND HOW TO WRITE THEM, EBC Publishing (P) Ltd. (2018) pp. 8-45	678
6.	Andrew Goodman, <i>The Use of Language in Judgements</i> in HOW JUDGES DECIDE CASES: READING, WRITING AND ANALYSING JUDGMENTS, Wildy, Simmonds & Hill Publishing, Second Edition, pp. 68-114	700
7.	Justice Michael Kirby CMG, <i>The Australian Law Journal on the Writing of Judgments</i> pp. 29-50	747

8.	Arthur T. Vanderbilt, “ <i>A Man of Law's Tale - The Reminiscences of the Rt. Hon. Lord Macmillan</i> ”, (book review), American Bar Association Journal, Vol. 39, No. 4 (April 1953), pp. 310-312 (Refer Pages 147-155)	769
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Additional References:

1. S. Sivakumar, *Judgment or Judicial Opinion: How To Read and Analyse*, Journal of the Indian Law Institute, July – September 2016, Vol. 58, No. 3 (July – September 2016), pp. 273-312

CASE LAW

(Judgments mentioned below include citations and short notes for reference. Please refer full judgment (available in pen drive) for conclusive opinion)

1. **SBI & Another v. Ajay Kumar Sood**, (2022) SCC OnLine 1067 [The judgment replicates the individuality of the judge and therefore it is indispensable that it should be written with care and caution. The reasoning in the judgment should be intelligible and logical. Clarity and precision should be the goal. All conclusions should be supported by reasons duly recorded. The findings and directions should be precise and specific. Writing judgments is an art, though it involves skillful application of law and logic.]
2. **B (A Child)(Adequacy of Reasons)**, [2022] EWCA Civ 407 (Lord Justice Peter Jackson & Lady Justice Nicola Davies) (Relevant Paras 59 and 60)

Judgments reflect the thinking of the individual judge and there is no room for dogma, but in my view a good judgment will in its own way, at some point and as concisely as possible: state the background facts; identify the issue(s) that must be decided; articulate the legal test(s) that must be applied; note the key features of the written and oral evidence, bearing in mind that a judgment is not a summing-up in which every possibly relevant piece of evidence must be mentioned; record each party's core case on the issues; make findings of fact about any disputed matters that are significant for the decision; evaluate the evidence as a whole, making clear why more or less weight is to be given to key features relied on by the parties; give the court's decision, explaining why one outcome has been selected in preference to other possible outcomes.

The last two processes – evaluation and explanation – are the critical elements of any judgment. As the culmination of a process of reasoning, they tend to come at the end, but they are the engine that drives the decision, and as such they need the most attention. A judgment that is weighed down with superfluous citation of authority or lengthy recitation of inessential evidence at the expense of this essential reasoning may well be flawed. At the same time, a judgment that does not fairly set out a party's case and give adequate reasons for rejecting it is bound to be vulnerable.
3. **Aparna Bhat v. State of M.P.** (2021) SCC OnLine SC 230 [Court to make sure survivor can rely on their impartiality and neutrality. Sensitivity in judicial approach/language/reasoning. Sensitivity to the concerns of survivors of sexual offences. Embargo on orders that reflect adversely on the judicial system/undermining the guarantee to fair justice. Removing gender bias.]
4. **Shakuntala Shukla v. State of Uttar Pradesh**, 2021 SCC OnLine SC 672 [“Judgment” means a judicial opinion which tells the story of the case; what the case is about; how the court is resolving the case and why. ... It is also defined as the decision or the sentence of a court in a legal proceeding along with the reasoning of a judge which leads him to his decision. ... It is not adequate that a decision is accurate, it must also be reasonable, logical and easily comprehensible. The judicial opinion is to be written in such a way that it elucidates in a convincing manner and proves the fact that the verdict is righteous and judicious. What the court says, and how it says it, is equally important as what the court decides. ... The judgment replicates the individuality of the judge and therefore it is indispensable that it should be written with care and caution. The reasoning in the judgment should be intelligible and logical. Clarity and precision should be the goal. All conclusions should be supported by reasons duly recorded.] (Refer Para 9)
5. **Ajit Mohan v. Legislative Assembly Delhi**, 2021 SCC OnLine SC 495 [it is the need of the hour to write clear and short judgments which the litigant can understand. The Wren & Martin principles of precis writing must be adopted.]

6. **Chief Election Commissioner of India v. M. R. Vijayabhaskar**, (2021) 9 SCC 770 [Judges should exercise caution and circumspection in the use of language while making oral remarks in court. Language, both on the Bench and in judgments, must comport with judicial propriety.]
7. **Nipun Saxena v. Union of India**, (2019) 2 SCC 703, [Keeping in view the social object of preventing the victims or ostracising of victims, it would be appropriate that in judgments of all the courts i.e. trial courts, High Courts and the Supreme Court the name of the victim should not be indicated. This has been repeated in a large number of cases and we need not refer to all.]
8. **Surjeet Singh v. Sadhu Singh**, (2019) 2 SCC 396 [...there was no need to cite several decisions and that too in detail. Brevity being a virtue, it must be observed as far as possible while expressing an opinion]
9. **Kanailal v. Ram Chandra Singh**, (2018) 13 SCC 715 [Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived; Objectivity in reasons; Adjudging validity of decision; Right to reason is indispensable part of sound judicial system; Salutory requirement of natural justice]
10. **Joint Commissioner of Income Tax v. Saheli Leasing & Industries Ltd.**, (2010) 6 SCC 384 [State only what are germane to the facts of the case; Must have correlation with applicable law and facts; Ratio decidendi should be clearly spelt out; Go through the draft thoroughly; Sustained chronology in judgment – perfect sequence of events; Citations should afford clarity rather than confusion; Pronounce judgment at the earliest]
11. **Board of Trustees of Martyrs Memorial Trust v. Union of India**, (2012) 10 SCC 734 [Brevity in judgment writing; Due application of mind; Clarity of reasoning; Focussed consideration; Examination of every matter with seriousness; Sustainable decision]
12. **Siddharth Vashisht Aias Manu Sharma v. State (NCT of Delhi)**, 2010 6 SCC 1 [Adverse remarks - Trial Judge made adverse remarks against prosecution-And Division Bench against trial Judge-Such adverse remarks expunged. The higher Courts in exercise of their appellate or original jurisdiction may find patent errors of law or fact or appreciation of evidence in the judgment which has been challenged before them. Despite this, what is of significance is that, the Courts should correct the error in judgment and not normally comment upon the Judge. The possibility of taking a contrary view is part of the system. The judicial propriety and discipline demand that strictures or lacerating language should not be used by the higher Courts in exercise of their appellate or supervisory jurisdiction. Judicial discipline requires that errors of judgments should be corrected by reasons of law and practice of passing comments against the lower courts needs to be deprecated in no uncertain terms. The individuals come and go but what actually stands forever is the institution.]
13. **Reliance Airport Developers v. Airport Authority of India and Ors**, (2006) 10 SCC 1 [Judicial Discretion – Parameters to be followed while exercising Discretion - Relevant Paras 26-35] [Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution; nice discernment, and judgment directed by circumspection: deliberate judgment; soundness of judgment; a science or understanding to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colourable glosses and pretences, and not to do according to the will and private -affections of persons. When it is said that something is to be done within the discretion of the authorities, that some thing is to be done according to the rules of reason and justice, not according to private opinion: according to law and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man, competent to the discharge of his office ought to confine himself (Per Lord Halsbury, L C. in Sharp v. Wakefield (1891) AC 173. The word "discretion" standing single and unsupported by circumstances signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste; evidently therefore a discretion cannot be arbitrary but must be a result of judicial thinking. (33 Bom 334) The word in itself implies vigilant circumspection and care: therefore, where the Legislature concedes discretion it also imposes a heavy responsibility.]
14. **Deoraj v. State of Maharashtra**, (2004) 4 SCC 697 [Ordinarily, this Court in its exercise of jurisdiction under Article 136 of the Constitution does not interfere with the orders of interim nature passed by the High Court or Tribunals. This is a rule of discretion developed by experience, inasmuch as indulgence being shown by this Court at an interim stage of the proceedings pending before a competent Court or Tribunal results in duplication of proceedings; while

the main matter is yet to be heard by the Court or Tribunal seized of the hearing and competent to do so, valuable time and energy of this Court are consumed in adjudicating upon a controversy the life of which will be co-terminus with the life of the main matter itself which is not before it and there is duplication of pleadings and documents which of necessity shall have to be placed on the record of this Court as well. However, this rule of discretion followed in practice is by way of just self-imposed discipline.]

15. **Bhupinder Sharma v. State of Himachal Pradesh**, (2003) 8 SCC 551 [In 1983, in order to prevent social victimisation, the IPC was amended inserting provision of section 228A, clause (3) thereof makes disclosure of the identity of victim of sexual offences without permission of that court, punishable.]
16. **State of Karnataka v. Puttaraja**, [(2004) 1 SCC 475] [...keeping in view the social object of preventing social victimization or ostracism of the victim of a sexual offence for which Section 228A has been enacted, it would be appropriate that in the judgments, be it of the Supreme Court, High Court or lower courts, the name of the victim should not be indicated. The Apex Court reiterated the said principle]
17. **Anil Rai v. State of Bihar** (2001) 7 SCC 318 [Repeated adjournment of matters 'for orders' after arguments are heard is impermissible.]

SESSION 6 RATIO OF A PRECEDENT

1.	Justice R.V. Raveendran, <i>Precedents – Boon or Bane?</i> in ANOMALIES IN LAW AND JUSTICE, 363 (Eastern Book Company, 2021)	774
2.	Mohan Parasaran, <i>How to Comprehend Precedents</i> , (2016) 2 SCC J-28	828
3.	Chintan Chandrachud, <i>The Precedential Value of Solitary High Court Rulings in India: Carving an Exception to the Principle of Vertical Stare Decisis</i> , Lawasia Journal 25 (2011).	841
4.	Henry Campbell Black, <i>Interpretation of Judicial Decisions and The Doctrine of Precedents</i> in CONSTRUCTION AND INTERPRETATION OF THE LAWS, Indian Economy Reprint, 2023 (New Delhi, Law & Justice Publishing Co.)	855
5.	Benjamin N. Cardozo, <i>Adherence to Precedent – The Subconscious Element in the Judicial Process</i> in THE NATURE OF THE JUDICIAL PROCESS, 142 (Oxford University Press, 1928)	900
6.	Bryan A. Garner, <i>Weight of Decisions</i> in THE LAW OF JUDICIAL PRECEDENT, Thomas Reuters, United States (2016), pp. 155-175	941
7.	S.P. Gupta & Rahul Agarwal, <i>Doctrine of Precedent and Stare Decisis in India</i> , (2009) 3 SCC (J)	962
8.	Heward, Edmund (2003), <i>Precedent</i> , Lord Denning: A biography, 2 nd edition Universal Law Publishing.	976

Additional References:

1. V Sudhish Pai, ***Precedents – Scope and Limits*** in THE CONSTITUTIONAL SUPREMACY: A REVISIT, OakBridge Publishing Pvt. Ltd. (2019) pp. 35-54
2. Prof. Dr. A. Lakshminath, ***Stare Decisis in the Indian Courts – Institutional Aspects*** in JUDICIAL PROCESS – PRECEDENT IN INDIAN LAW, 3rd Edn. 13 (Eastern Book Company, 2009)
3. Mark Alan Thurmon, ***When the Court Divides: Reconsidering the Precedential Value of Supreme Court Plurality***, Duke Law Journal, Vol. 42, No. 2 (Nov. 1992), pp. 419-468
4. Rupret Cross, J. W. Harris, ***Ratio Decidendi and Obiter Dictum*** in PRECEDENT IN ENGLISH LAW, Clarendon Press (1991) pp. 52-52, 63-71

CASE LAW

(Judgments mentioned below include citations and short notes for reference. Please refer full judgment (available in pen drive) for conclusive opinion)

1. **Govt. of NCT of Delhi through Sect. Land & Building Dept. v. M/s. K.L. Rathi Steels Ltd. & Ors.** ... [Whether the subsequent overruling of a precedent relied on in a judgment a ground to review it]
2. **Trimurthi Fragrances (P) Ltd. v. Government of N.C.T. of Delhi**, 2022 SCC OnLine SC 1247 [A decision delivered by a Bench of largest strength is binding on any subsequent Bench of lesser or coequal strength. It is the strength of the Bench and not number of Judges who have taken a particular view which is said to be relevant - A Bench of lesser quorum cannot disagree or dissent from the view of law taken by a Bench of larger quorum. Quorum means the bench strength which was hearing the matter - The numerical strength of the Judges taking a particular view is not relevant, but the Bench strength is determinative of the binding nature of the Judgment.]
3. **Gregory Patrao v. Mangalore Refinery & Petrochemicals Ltd.**, 2022 SCC OnLine SC 830 [Subsequent Supreme Court Decisions which have considered & distinguished earlier judgments are binding on High Courts]
4. **Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana** (2021) 6 SCC 230, [The bench noted that “the observation that order shall not be considered as a precedent for any other person who is accused in the FIR on the grounds of parity does not constitute judicially appropriate reasoning.” It was emphasised that whether an order is a precedent or not is a matter of future adjudication, and the observation of the judge ‘caveating’ the order was inappropriate and erroneous.]
5. **Union of India v. R. Thiagarajan**, (2020) 5 SCC 201 [Judgment of High Court applicable only to the State(s) within its jurisdiction. Pan-India application of the order of the High Court would tantamount to usurpation of the jurisdiction of the other High Courts.]
6. **Shah Faesal v. Union of India**, (2020) 4 SCC 1 [Per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. Earlier precedent can be overruled by a larger Bench if - (i) it is manifestly wrong, or (ii) injurious to public interest, or (iii) there is a social, constitutional, or economic change necessitating it. A coordinate Bench of the same strength cannot take a contrary view and cannot overrule the decision of earlier coordinate bench. No doubt it can distinguish the judgment of such earlier Bench or refer the matter to a larger Bench for reconsideration in case of disagreement with the view of such earlier Bench.]
7. **S.E. Graphites (P) Ltd. v. State of Telangana**, (2020) 14 SCC 521 [Even Brief Judgments Of Supreme Court Passed After Grant Of Special Leave Are Binding Precedents]
8. **Kaikhosrou (Chick) Kavasji Framji v. Union of India**, (2019) 20 SCC 705 [Views in Lead Judgment are binding precedents if concurring judgments did not express any contrary opinion on it.
9. **M/s Bhati v. National Insurance Co. Ltd.**, (2019) 12 SCC 248 [The law laid down by a three Judge Bench of Supreme Court in *Mukund Dewangan vs Oriental Ins. Co. Ltd.* (2017) as against the conflict between two judge bench decision binds this Court. As a matter of judicial discipline, the court is bound to follow that decision which continues to hold the field.]
10. **State of Gujarat v. Utility Users Welfare Association**, (2018) 6 SCC 21 [It is mandatory that there should be a person of law as a Member of the Commission, which requires a person, who is, or has been holding a judicial office or is a person possessing professional qualifications with substantial experience in the practice of law, who has the requisite qualifications to have been appointed as a Judge of the High Court or a District Judge.]
11. **State of U.P. v. Ajay Kumar Sharma**, (2016)15 SCC 289 [in the interest of dispensation of criminal justice that competent counsel possessing integrity should alone be appointed, since otherwise, there is a strong possibility of miscarriage of justice.]
12. **Vedica Procon Pvt. Ltd. v. Balleshwar Green (Pvt.) Ltd.**, (2015) 10 SCC 94 [The Supreme Court found inconsistency in two judgments of the court of equal strength on the issue of opening of sale in liquidation proceedings in *Navalkha & Sons v. Sri Ramanya Das & Others*, (1969) 3 SCC 537 and *Divya Manufacturing Company (P) Ltd. v. Union Bank*

of India & Others, (2000) 6 SCC 69, observing that in the latter case, the Supreme Court departed from the principle laid down in 1969 case unnecessarily, thus 11969 case followed.

13. **Hyder Consulting (UK) Ltd. v. State of Orissa**, (2015) 2 SCC 189 [A prior decision of this Court on identical facts and law binds the Court on the same points of law in a later case. In exceptional circumstances, where owing to obvious inadvertence or oversight, a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, the principle of *per incuriam* may apply.]
14. **Sundeeep Kumar Bafna v. State of Maharashtra**, (2014) 16 SCC 623 [Per incuriam rule is strictly applicable to ratio decidendi and not to obiter dicta. When two mutually conflicting decisions of Supreme Court are cited at Bar, earlier judgment should be applied by High Court. Even if High Court Bench holds a different view, it should make a reference to the Chief Justice for constituting a larger Bench. When mutually conflicting decisions of co-equal Benches are cited, the earlier one should be followed as the latter decision would be *per incuriam*]
15. **Rajbir Singh Dalal (Dr.) v. Chaudhari Devilal University, Sirsa & Anr.**, (2008) 9 SCC 284 [The decision of a Court is a precedent, if it lays down some principle of law supported by reasons. Mere casual observations or directions without laying down any principle of law and without giving reasons do not amount to a precedent.]
16. **Union of India v. Major Bahadur Singh**, (2006) 1 SCC 368 [Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes]
17. **State of Haryana v. Ranbir**, (2006) 5 SCC 167 [Court discussed the concept of Obiter dictum- A decision, if it is well settled, is an authority for what it decides and not what can logically be deduced there from]
18. **Central Board of Dawood Bohra Com v. State of Maharashtra**, (2005) 2 SCC 673 [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.]
19. **State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat**, (2005) 8 SCC 534 [The trend of judicial opinion, in our view, is that stare decisis is not a dogmatic rule allergic to logic and reason; it is a flexible principle of law operating in the province of precedents providing room to collaborate with the demands of changing times dictated by social needs, State policy and judicial conscience. Stare decisis is not an inexorable command of the Constitution or jurisprudence. A careful study of our legal system will discern that any deviation from the straight path of stare decisis in our past history has occurred for articulable reasons, and only when the Supreme Court has felt obliged to bring its opinions in line with new ascertained facts, circumstances and experiences. (Precedent in Indian Law, A. Laxminath, 2nd Edn. 2005, p. 8.) The doctrine of stare decisis is generally to be adhered to, because well-settled principles of law founded on a series of authoritative pronouncements ought to be followed. Yet, the demands of the changed facts and circumstances, dictated by forceful factors supported by logic, amply justify the need for a fresh look.] [Refer paras 110-119 on Stare Decisis]
20. **Union of India v. Amritlal Manchanda**, AIR 2004 SC 1625 [The Courts should not place reliance on the decisions without discussing as to how the situation fits in with the factual situation. Circumstantial flexibility, one addition or a different fact, makes a difference between conclusions in two cases.]
21. **Megh Singh v. State of Punjab**, (2003) 8 SCC 666 [Circumstantial flexibility, one additional or different fact may make a world of difference between conclusion in two cases or between two accused in the same case. Each case depends on its own facts and a close similarity between one case and another is not enough because a single significant detail may alter the entire aspect.]
22. **Suganthi Suresh Kumar v. Jagdeeshan**, (2002) 2 SCC 420 [It is impermissible for the High Court to overrule the decision of the Apex Court on the ground that the Supreme Court laid down the legal position without considering any other point. It is not only a matter of discipline for the High Courts in India, it is the mandate of the Constitution as provided in Article 141 that the law declared by the Supreme Court shall be binding on all courts within the territory of India.]

23. **State of Bihar v. Kalika Kuer**, (2003) 5 SCC 448 [*the Court elaborately considered the principle of per incuriam and held that the earlier judgment by a larger Bench cannot be ignored by invoking the principle of per incuriam and the only course open to the coordinate or smaller Bench is to make a request for reference to the larger Bench.*]
24. **Director of Settlements A.P. & Ors. v. M.R. Apparao & Ors**, (2002) 4 SCC 638 [*An obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a bind effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case.*]
25. **Delhi Administration (Now NCT of Delhi) v. Manohar Lal**, (2002) 7 SCC 222 [*The court said that the ratio decidendi had to be ascertained by the analysis of the facts of the case. The court needs to find the major premise and minor premise of the case. The major premise consists of the pre-existing rule of law. The minor premise is "the material fact of the case under immediate consideration".*]
26. **Vishnu Traders v. State of Haryana**, 1995 Supp (1) SCC 461 [*In the matters of interlocutory orders, principle of binding precedent will not apply. However, the need for consistency of approach and uniformity in the exercise of judicial discretion respecting similar causes and the desirability to eliminate occasions for grievances of discriminatory treatment requires that all similar matters should receive similar treatment except where factual differences require a different treatment so that there is assurance of consistency, uniformity, predictability and certainty of judicial approach.*]
27. **Hari Singh v. State of Haryana**, (1993) 3 SCC 114 [*The doctrine of precedent is not applicable to an order passed by this Court rejecting a Special Leave Petition. Any such order cannot be held to be stare decisis so that it is a binding on us.*]
28. **CIT v. M/s Sun Engineering**, AIR 1993 SC 43 [*The Apex court held that, "While applying the decision to a later cases, the court must carefully try to ascertain the true principle laid down by the decision of the Supreme Court and not to pick out words or sentences from the judgment divorced from the context of question under consideration by the court to support their reasoning."*]
29. **Krishena Kumar v. Union of India**, (1990) 4 SCC 207 [*The doctrine of precedent, that is, being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain "propositions wider than the case itself required."* [374A-B]. *the enunciation of the reason or principle upon which a question before a court has been decided is alone binding as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to a decision. Apart from Article 141 of the Constitution the policy of courts is to stand by precedent and not to disturb settled point. When court has once laid down a principle of law as applicable to certain state of facts, it will adhere to that principle, and apply it to all future cases where facts are substantially the same.*]
30. **Union of India v. Raghubir Singh**, AIR 1989 SC 1933 [*The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transaction forming part of his daily affairs...the doctrine of binding precedent is circumscribed in its governance by perceptible limitations, limitations arising by reference to the need for re- adjustment in a changing society, a re-adjustment of legal norms demanded by a changed social context.*]
31. **Empire Industries Ltd. v. Union of India**, (1985) 3 SCC 314 [*Different courts sometimes pass different interim orders as the courts deem fit. It is a matter of common knowledge that the interim orders passed by particular courts on certain considerations are not precedents for other cases which may be on similar facts.*]
32. **Waman Rao & Ors v. Union of India**, (1981) 2 SCC 362 [*A deliberate judicial decision made after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, and the precedent by long recognition may mature into stare decisis. But these cases cannot be considered as having decided, reasons apart, that the 1st Amendment which introduced Article 31A into the Constitution is valid. ... Every new discovery or*]

argumentative novelty cannot undo or compel reconsideration of a binding precedent.]

33. **Valliamma Champaka Pillai V. Siuvathanu Pillai**, (1979) 4 SCC 429 [*It was held that the decision of one High Court is not binding precedent upon another High Court and at best can only have persuasive value. However, at the cost of repetition we must emphasize that the decision of another High Court rendered in the context of an all India Act would have persuasive value and normally to maintain uniformity and certainty we would adopt the view of the High Court*]
34. **Commissioner of Income Tax v. Godavari Devi Saraf**, 1977 SCC Online Bom 215 [*Until contrary decision is given by any other competent High Court, which is binding on a Tribunal in the State of Bombay, it has to proceed on the footing that the law declared by the High Court, though of another State, is the final law of the land.*]
35. **Regional Manager v. Pawan Kumar Dubey**, (1976) 3 SCC 334 [*It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.*]
36. **State of Orissa v. Sudhansu Sekhar Misra**, (1968) 2 SCR 154 [*A decision is only an authority for what it actually decides. The essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It is not a profitable task to extract a sentence, here and there from a judgment and to build upon it.*]
37. **K.T.M.T.M. Abdul Kayoom v. CIT**, 1962 Supp (1) SCR 518 [*Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.*]
38. **East India Commercial Co., Ltd., Calcutta & Ors v. Collector of Customs, Calcutta**, AIR 1962 SC 1893 [*The Supreme Court, on consideration of Articles 215, 226 and 227 of the Constitution of India came to the conclusion that the cumulative effect of the above noted provisions of the Constitution is that the decisions of the High Court have binding effect upon the subordinate judiciary and the tribunals.*]
39. **State of Gujarat vs Gordhandas Keshavji Gandhi And others**, AIR 1962 Guj 128 [*The principles of judicial comity and legal propriety require, in order to avoid conflict of authority and to secure certainty, uniformity and continuity in the administration of justice, that one Judge of a High Court sitting singly should follow the decision of another Judge of the same High Court sitting singly, and that a Division Bench of a High Court should follow another Division Bench of the same High Court, that a decision of a Full Bench consisting of the same number of Judges should follow the decision of a Full Bench of equal number of Judges and that a decision of a larger Full Bench should be considered authoritative and binding on all other benches constituted of a lesser number of judges.*]
40. **Mahadeolal Kanodia v. Administrator General of West Bengal**, AIR 1960 SC 936 [*Judicial decorum no less than legal propriety forms the basis of judicial procedure. If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if judges of co-ordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view, the result would be utter confusion. The position would be equally bad where a judge sitting singly in the High Court is of opinion that the previous decision of another single judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench.*] (refer paras 19 & 20)
41. **Atma Ram v. State of Punjab**, AIR 1959 SC 519. (page 527) [*...the better course would have been to constitute a larger Bench, when it was found that a Full Bench of three Judges, was inclined to take a view contrary to that of another Full Bench of equal strength. Such a course becomes necessary in view of the fact that otherwise the subordinate Courts are placed under the embarrassment of preferring one view to another both equally binding upon them.*"]

42. **Bengal Immunity Co Ltd vs. the State of Bihar**, AIR 1955 SC 661 [*the question of whether the Supreme Court is bound by its judgment under Article was challenged. In that instance, it was determined that the Supreme Court is not bound by its earlier decision and is free to reconsider it in appropriate cases. When two Supreme Court decisions disagree, the decision of the larger Bench takes precedence over the decision of the smaller Bench. This principle applies to High Courts as well.*]

SESSION 7

PRINCIPLES OF EVIDENCE: APPRECIATION IN CIVIL AND CRIMINAL CASES

1.	Dr. Justice B. S. Chauhan, [Unpublished, prepared for NJA programme, 19.10.22.] – Appreciation of Evidence – Burden of Proof and Evidentiary Presumptions	984 1003
2.	U.L. Bhat, LECTURES ON THE INDIAN EVIDENCE ACT, Universal Law Publishing, Lexis Nexis, (2016) – Presumptions (Section 79 to 90A, 113A, 114) , pp. 203-236 – Burden of Proof (Sections 101 to 113, 114A & 114B) , pp. 263-287	1028 1064
3.	Justice S. G. Gokani, Burden of Proof and Reverse Burden in DIAMOND JUBILEE 1960-2020 60 YEARS LEGACY AND LAW, (The High Court of Gujarat 2021) pp. 83- 93.	1089
4.	David Hamer, The Presumption Of Innocence and Reverse Burdens: A Balancing Act , Cambridge Law Journal, 66(1), March 2007, pp. 142.	1103
5.	Anton Koshelev and Ekaterina Rusakova, The Problem of Admissibility of Evidence in Indian Civil Proceedings , SHS Web of Conferences 106 , 02015 (2021) MTDE 2021	1133
6.	S.S. Upadhyay, Appreciation of Evidence in Civil Cases , available at: http://lawhelpline.in/pdfs/civil_laws/appreciation_of_evidence_in_civil_cases.pdf	1138

Additional References:

Osborn, Albert S. (Albert Sherman), 1858-1946., **THE PROBLEM OF PROOF** [especially as exemplified in disputed document trials : a discussion of the proof of the facts in courts of law : with some general comments on the conduct of trials], Law and Justice 2020

CASE LAW

(Judgments mentioned below include citations and short notes for reference. Please refer full judgment (available in pen drive) for conclusive opinion)

1. **Rahul v. State (NCT of Delhi)**, (2023) 1 SCC 83 [*Held that DNA evidence is an opinion evidence as under section 45 and like any other opinion evidence its probative value depends on case to case basis. The law in regard [to confession] is very clear that the confession before the police officer by the accused when he is in police custody, cannot be called an extra-judicial confession. If a confession is made by the accused before the police, and a portion of such confession leads to the recovery of any incriminating material, such portion alone would be admissible under Section 27 of the Evidence Act, and not the entire confessional statements.... the information furnished to the investigating officer leading to the discovery of the place of the offence would be admissible to the extent indicated in Section 27 read with Section 8 of the Evidence Act, but not the entire disclosure statement in the nature of confession recorded by the police officer.*]
2. **Gireesan Nair v. State of Kerala**, (2023) 1 SCC 180 [*In cases where the witnesses have had ample opportunity to see the accused before the identification parade (TIP) is held, it may adversely affect the trial. It is the duty of the prosecution to establish before the court that right from the day of arrest, the accused was kept “baparda” to rule out the possibility of their face being seen while in police custody. If the witnesses had the opportunity to see the accused before the TIP, be it in any form i.e. physically, through photographs or via media (newspapers, television, etc.), the*]

evidence of the TIP is not admissible as a valid piece of evidence (*Lal Singh v. State of U.P.* [*Lal Singh v. State of U.P.*, (2003) 12 SCC 554 : 2004 SCC (Cri) Supp 489] and *Suryamoorthi v. Govindaswamy* [*Suryamoorthi v. Govindaswamy*, (1989) 3 SCC 24 : 1989 SCC (Cri) 472])

3. **Indrajit Das v. State of Tripura**, 2023 SCC OnLine SC 201 [At the threshold, the Court noted that the case is of circumstantial evidence and ought to fulfil the two-fold requirement – 1) Every link in the chain of circumstances necessary to establish the guilt of the accused must be established beyond reasonable doubt; and 2) All the circumstances must be consistently pointing towards the guilt of the accused.

“The basic links in the chain of circumstances starts with motive, then move on to last seen theory, recovery, medical evidence, expert opinions if any and any other additional link which may be part of the chain of circumstances.”]

4. **Vijay Madanlal Choudhary. v. Union Of India**, 2022 SCC OnLine SC 929 [Constitutionality of reverse burden of proof under Section 24 of the Prevention of Money Laundering Act, 2002 upheld]
5. **Shaju v. State of Kerala**, 2022 SCC OnLine Ker 4443 [voir dire – Child witness - Voir dire is a measure by which the Court satisfies itself about the competence of a witness to testify and the testimony cannot be totally eschewed merely for reason of its absence.]
6. **Dauvaram Nirmalkar v. State of Chhattisgarh**, 2022 SCC OnLine SC 955 [The prosecution must prove the guilt of the accused, that is, it must establish all ingredients of the offence with which the accused is charged, but this burden should not be mixed with the burden on the accused of proving that the case falls within an exception. However, to discharge this burden the accused may rely upon the case of the prosecution and the evidence adduced by the prosecution in the court.]
7. **Keshav v. Gian Chand**, 2022 SCC OnLine SC 81 [The burden of establishing perfect fairness, adequacy and equity is cast upon the person in whom the confidence has been reposed.]
8. **Jaikam Khan v. State of Uttar Pradesh**, 2021 SCC OnLine SC 1256 [Court acquitted three death row convicts on the ground that prosecution failed to discharge its burden to prove its case beyond reasonable doubt.]
9. **Khushi Ram v. Nawal Singh**, 2021 SCC OnLine SC 128 [A compromise decree passed by a court in respect of immovable property which is subject matter of the suit would ordinarily be covered by Section 17(1)(b) of the Registration Act and would not require registration. But if the compromise is entered into in respect of an immovable property other than the subject- matter of the suit or proceeding would be covered under Section 17 (2) (vi) of the Registration Act and the same would require registration.]
10. **Iqbal Basith v. N. Subbalakshmi**, (2021) 2 SCC 718 [Adverse presumption u/s 114(g) of the Evidence Act can be drawn against the defendant if he does not present himself for cross-examination and refuses to enter witness box in order to refute the allegations made against him or support his pleadings in his written statement. Where in suit for permanent injunction, plaintiff had proved his possessory title over the suit property, though not the full title, and the defendant had failed to prove any title to the suit property, it has been held by the Supreme Court that the plaintiff's suit deserved to be decreed against the interference of the defendant with the plaintiff's possession over the suit property.]
11. **Bijendar v. State of Haryana**, 2021 SCC OnLine SC 1028 [The doctrine of extending benefit of doubt to an accused, notwithstanding the proof of a strong suspicion, holds its fort on the premise that “the acquittal of a guilty person constitutes a miscarriage of justice just as much as the conviction of the innocent”.]
12. **Rattan Singh v. Nirmal Gill**, 2020 SCC OnLine SC 936 [The standard of proof required in a civil dispute is preponderance of probabilities and not beyond reasonable doubt. The court held that for invoking Section 17 of the Limitation Act, 1963, two ingredients i.e. existence of a fraud and discovery of such fraud, have to be pleaded and duly proved and that in case of failure to establish the existence of fraud, there is no occasion for its discovery. Opinion of an expert is not binding piece of evidence if not corroborated by other pieces of evidence.]
13. **Ratnagiri Nagar Parishad v.. Gangaram Narayan Ambekar**, (2020) 7 SCC 275 [Specific Relief Act, 1963 — Ss. 34, 35, 38, 39 and 41 — Declaratory relief with suit for injunction simpliciter — When necessary: Where bare injunction

suit has been filed to restrain State Authorities from acting in a particular manner without seeking declaratory relief as to illegality of orders/actions of State Authorities based on which State Authorities were seeking to act, said bare injunction suit was not maintainable, as no government order can be ignored altogether unless a finding is recorded that it was illegal, void or not in consonance with law.]

14. **Sugandhi v. P.Rajkumar**, (2020) 10 SCC 706 [*Where the documents were missing and could not be filed by the defendant at the time of filing of his written statement and were sought to be produced at the time of final hearing, explaining the provisions of Order 8, rule 1A (3) and Order 13, rule 1 CPC, it has been held by the Supreme Court that as the defendant had shown cogent reasons for not filing the said documents along with his written statement and the documents were necessary for arriving at just decision in the suit, permission to produce the documents should have been granted.*]
15. **Bhagwat Sharan v. Purushottam**, (2020) 6 SCC 387 [*Admission of a party is only a piece of evidence and not conclusive of the fact admitted. Where there is no clear-cut admission as to the fact concerned, it would be of no consequence.*]
16. **Jagmail Singh v. Karamjit Singh**, (2020) 5 SCC 178 [*Exhibited documents and their admissibility in evidence. Factual foundational evidence must be adduced showing reasons for not furnishing evidence. Mere admission in evidence and making exhibit of a document not enough as the same has to be proved in accordance with law.*]
17. **Ravinder Kumar Grewal v. Manjit Kaur**, (2020) 9 SCC 706 [*A memorandum of family settlement or family arrangement requires compulsory registration as per Section 17 (2) (v) of the Registration Act, 1908 only when it creates or extinguishes for the first time any right, title or interest in an immovable property among the family members. If it records only pre-existing right in the immovable property or arrangement or terms already settled between the parties in respect of the immovable property, it does not require registration.*]
18. **Nand Ram v. Jagdish Prasad**, (2020) 9 SCC 393 [*Document brought on record but not proved cannot be read in evidence.*]
19. **C. Doddanarayana Reddy v. C. Jayarama Reddy**, (2020) 4 SCC 659 [*Authenticity of entries of public document like school register or T.C. may be tested by court.*]
20. **Mohd. Yusuf v. Rajkumar**, (2020) 10 SCC 264 [*Compromise decree comprising immovable property which is the subject-matter of the suit or proceeding in question, held, does not require registration. It is only a compromise decree comprising immovable property other than that which is the subject-matter of suit or proceeding in question, which requires registration.*]
21. **Vimla Devi v. National Insurance Company Limited**, (2019) 2 SCC 186 [*Non-exhibition of documents is only a procedural lapse. Non-exhibition of documents cannot disentitle a claim when otherwise sufficient evidence is adduced and the documents established the fact in controversy.*]
22. **Kamal Kumar v. Premrata Joshi**, (2019) 3 SCC 704 [*Whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of the earnest money etc. and, if so, on what grounds. To avail relief of specific performance, parties are required to plead and prove all statutory requirements prescribed under the provisions of Sections 16(c), 20, 21, 22 & 23 of the Specific Relief Act, 1963 and Forms 47 & 48 of Appendix A to C of the CPC.*]
23. **Yashwant Sinha v. Central Bureau of Investigation**, (2019) 6 SCC 1 [*Secret documents relating to Rafale fighter jets were removed/stolen from the custody of the Ministry of Defence, Govt. of India and their photocopies were produced before the Supreme Court. The objection raised before the Supreme Court by the Central Govt. was that the secret stolen documents were not admissible in evidence. The Supreme Court held that all the documents in question were admittedly published in newspapers and thus already available in public domain. No law specifically prohibits placing of such secret documents before the Court of law to adjudicate legal issues. Matter involved complaint against commission of grave wrong in the highest echelons of power. Review petition could be adjudicated on merits by taking into account the relevance of the documents.*]

Section 123 of the Evidence Act relates to the affairs of the State. Claim of immunity u/s 123 has to be adjudged on the touchstone that the public interest is not put to jeopardy by requesting disclosure of any secret document. Documents

in question (stolen papers of the Rafale fighter jets from the Ministry of Defence, Govt. of India) being in public domain were already within the reach and knowledge of the citizens. The Supreme Court held that the claim of immunity u/s 123 of the Evidence Act raised by the Central Govt. was not tenable and the documents in question were admissible as evidence.]

24. **Mallikarjun v. State of Karnataka**, (2019) 8 SCC 359 [S. 372 proviso introduced w.e.f. 31-12-2009] and Ss. 2(wa), 2(d) and 378 — *Right of victims to appeal against acquittal: Nature, Scope and Applicability of right of “victim” as defined in S. 2(wa) to appeal against acquittal under S. 372 proviso, explained.]*
25. **Smt. Bhimabai Mahadeo Kambekar v. Arthur Import and Export Company**, (2019) 3 SCC 191 [Revenue record is not a document of title. It merely raises a presumption of possession u/s 110 of the Evidence Act.]
26. **State of Andhra Pradesh v. Pullagummi Kasi Reddy Krishna Reddy @ Rama Krishna Reddy and others**, (2018) 7 SCC 623 [Murder trial: *In this case due to rivalry between two factions in village led to attack using country-made bombs, hunting sickles and iron pipes and there was death of four persons but all respondent-accused were acquitted by High Court. It was held by the Supreme Court that the High Court erred in eschewing testimonies of witnesses in toto. Minor contradictions and omissions in evidence of witnesses were to be ignored. All eyewitnesses including one who turned hostile consistently spoke about attack on one deceased and his supporters. Witness who gave vivid description of incident was corroborated by other witnesses. However, on oral evidence of witnesses and medical evidence, High Court rightly acquitted some respondents giving them benefit of doubt but acquittal of other respondents by High Court, set aside, convicting them under S. 302 IPC and sentencing them to undergo life imprisonment.]*
27. **State of Himachal Pradesh v. Raj Kumar**, (2018) 2 SCC 69 [The court while allowing the appeal held: (i) *In his evidence, son of deceased stated that he was threatened by the Accused to make telephonic call to his maternal uncle that deceased person had run away from the house and under such threat the son informed accordingly. The deceased person was living with her brother-in-law/accused along with her children. If deceased person was so missing, the natural conduct of the Accused was to inform the police. But that was not done. Burden is cast upon the accused, being the inmate of the house to give a cogent explanation as to how deceased person died. No reasonable explanation was forthcoming from the Accused as to why he had neither lodged the complaint nor informed the police about the missing of deceased person. The Respondent-Accused being inmate of the house cannot get away by simply keeping quiet and offering no explanation. This was a strong militating circumstance against the Respondent indicating that he might be responsible for the commission of the offence. The motive attributed to the Accused was that he had frequently quarrelled with the deceased and also assaulted her. A dispute was also suggested pertaining to the land of one Swami who wanted to give his property solely to the deceased which was not acceptable to the accused.*

(ii) *The High Court was not right in doubting the version of deceased's son on the ground that he made improvements in his version. His evidence could not be doubted simply because names of Ramesh Kumar and Om Prakash were not mentioned in his statement. Deceased's son was already threatened by Accused Om Parkash to inform his maternal uncle that deceased had run away. When deceased's son statement was recorded, he must have been in trauma and fear psychosis. In such circumstances, omission to mention the names of Om Parkash and Ramesh Kumar in his statement does not render his evidence untrustworthy.]*
28. **Mukesh v. State (NCT of Delhi)**, (2017) 6 SCC 1 (Nirbhaya Case) [The Court concluded that the evidence of the informant was unimpeachable and it deserved to be relied upon. The Accused persons along with the juvenile in conflict with law were present in the bus when the prosecutrix and her friend got into the bus. There was no reason to disregard the CCTV footage, establishing the description and movement of the bus. The arrest of the Accused persons from various places at different times was proved by the prosecution. The personal search, recoveries and the disclosure leading to recovery were in consonance with law and the assail of the same on the counts of custodial confession made under torture and other pleas were highly specious pleas and they did not remotely create a dent in the said aspects. That apart, the dying declaration by gestures was proved beyond reasonable doubt. There was no justification to think that the informant and the deceased would falsely implicate the Accused and leave the real culprits. The dying declarations made by the deceased received corroboration from the oral and documentary evidence and also enormously from the medical evidence.]

29. **Krishnegowda v. State of Karnataka**, (2017) 13 SCC 98 [*It is settled law that mere laches on the part of Investigating Officer itself cannot be a ground for acquitting the accused. If that is the basis, then every criminal case will depend upon the will and design of the Investigating Officer. The Courts have to independently deal with the case and should arrive at a just conclusion beyond reasonable doubt basing on the evidence on record. Once there is a clear contradiction between the medical and the ocular evidence coupled with severe contradictions in the oral evidence, clear laches in investigation, then the benefit of doubt has to go to the accused. The finding of the High Court that the ocular evidence and the medical evidence are in conformity with the case of prosecution to convict the accused, was incorrect. The High Court brushed aside the vital defects involved in the prosecution case and in a very unconventional way convicted the Accused. The judgment of the High Court was set aside and the order of acquittal passed by the Trial Court was re-affirmed.*]

30. **Sudha Renukaiah v. State of Andhra Pradesh**, (2017) 13 SCC 81 [*The fact that weapon was not shown to the Doctor nor in the cross-examination attention of the Doctor was invited towards the weapon, was not of much consequence in the facts of the present case where there was clear medical evidence that injuries could be caused by knife, axe and battle axe. When there are eye-witnesses including injured witness who fully support the prosecution case and proved the roles of different accused, prosecution case cannot be negated only on the ground that it was a case of group rivalry.*

Present was a case where the High Court exercised its appellate power Under Section 386 Code of Criminal Procedure In exercise of Appellate power Under Section 386 Code of Criminal Procedure the High Court has full power to reverse an order of acquittal and if the Accused are found guilty they can be sentenced according to law. Present was a case where reasoning of the Trial Court in discarding the evidence of injured witness and other eye-witnesses were found perverse. The High Court did not commit any error in reversing the order of acquittal and convicted the accused. From the eye-witnesses account and for the reasons given by the High Court in its judgment, the High Court was correct in setting aside the order of acquittal and convicting the Accused.]

31. **Jose v. Sub-Inspector of Police**, (2016) 10 SCC 519 [*The accused has a right to rebut the presumption of guilt and it is only when prosecution establishes that the accused was present along with the victim at the time of commission of offence, only then section 106 could apply.*]

32. **Gajanan Dashrath Kharate v. State of Maharashtra**, (2016) 4 SCC 604 [*Initial burden to establish case is on the prosecution, but in view of the provisions of section 106 of the Evidence Act the corresponding burden lies also on the inmates of the house to cogently explain how crime was committed.*]

33. **Bhagwan Jagannath Markad v. State of Maharashtra**, (2016) 10 SCC 537 [*Burden of proof is always on prosecution and accused is presumed to be innocent unless proved guilty. Prosecution has to prove its case beyond reasonable doubt and accused is entitled to benefit of reasonable doubt. The reasonable doubt is one which occurs to a prudent and reasonable man. S. 3, Evidence Act, refers to two situations in which a fact is said to be proved: (i) when a person feels absolutely certain of a fact i.e. “believes it to exist”, and (ii) when he is not absolutely certain and thinks it so extremely probable that a prudent man would, under the circumstances, act on the assumption of its existence. The doubt which the law contemplates is not of a confused mind but of prudent man who is assumed to possess the capacity to separate the chaff from the grain. The degree of proof need not reach certainty but must carry a high degree of probability.*]

34. **Sheikh Zahid Mukhtar v. State of Maharashtra**, SCC OnLine Bom 2600 (2016) [*The facts stated in the Preamble and the Statement of Objects and Reasons appended to any legislation are evidence of legislative judgment. The Court would begin with a presumption of reasonability of the restriction, more so when the facts stated in the Statement of Objects and Reasons and the Preamble are taken to be correct and they justify the enactment of law for the purpose sought to be achieved*”.]

35. **Pawan Kumar v. State of Uttar Pradesh**, (2015) 7 SCC 148 [*Criminal - Conviction - Circumstantial evidence - Sections 149 and 302 of Indian Penal Code, 1860 - Present appeal filed against order whereby Appellants were convicted for offence punishable under Sections 149 and 302 of Code - Whether prosecution had established beyond reasonable doubt complete chain of events which pointed at guilt of accused - Held, Accused Nos. 4 & 7 disclosed names of their co-accused at whose instance various incriminating materials including pistols, cartridges, bullets,*

blood stained articles were recovered - Confession given by accused was not basis for courts below to convict accused, but it was only source of information to put criminal law into motion - Hence, accused could not take shelter under Section 25 of Evidence Act - Motive behind brutal murder of deceased as brought forward by prosecution was trustworthy in light of material available on record - Merely because all bullets fired from gun did not hit target and were not recovered from scene of offence, was no ground to conclude that incident did not take place - Nexus between accused as well as their participation in crime is well established beyond reasonable doubt and nothing on record to suggest that accused were unnecessarily implicated by police - Entire evidence brought on record by prosecution, was not only convincing, but was also trustworthy - Prosecution had established beyond reasonable doubt complete chain of events which points at guilt of accused - Therefore, impugned order of conviction was sustainable and required no interference.]

36. **Tomaso Bruno v. State of U.P.**, (2015) 7 SCC 178 [The initial burden lies on the prosecution to establish that the person concerned was in a position such that he could have special knowledge of any fact.]
37. **Municipal Corporation, Gwalior v. Puran Singh**, (2015) 5 SCC 725 [Khasra entries are not proof of title and ownership of land.]
38. **Union of India v. Vasavi Co-operative Housing Society Limited**, (2014) 2 SCC 269. [Held, in a suit for declaration of title and for possession, burden always lies on the plaintiff to make out and establish his case by adducing sufficient evidence and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to plaintiff. In the instant case, trial court as well as High Court rather than examining in depth, the question, as to whether the plaintiffs have succeeded in establishing their title to the suit land, went on to examine in depth the weakness of defendants' title. Plaintiffs have not succeeded in establishing their title and possession of the suit land. Judgment of trial court, affirmed by High Court, is set aside.]
39. **Sebastiao Luis Fernandes v. K.V.P. Shastri**, (2013) 15 SCC 161 [Burden of proof is used in three ways: (i) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later; (ii) to make that of establishing a proposition as against all counter evidence; and (iii) an indiscriminate use in which it may mean either or both of the others.]
40. **Ayaubkhan Noorkhan Pathan v. State of Maharashtra**, (2013) 4 SCC 465 [In view of the amended provisions of Order 19, rule 1-A CPC w.e.f. 10.2.1981, evidence on affidavit can be received by court where the case has proceeded ex-parte. In such cases the court may permit the plaintiff to adduce his evidence on affidavit.]
41. **Darbara Singh v. State of Punjab**, 2012 (10) SCC 476 [Held that so far as the question of inconsistency between the medical evidence and the ocular evidence is concerned, the law is well settled that, unless the oral evidence available is totally irreconcilable with the medical evidence, the oral evidence would have primacy. In the event of contradictions between medical and ocular evidence, the ocular testimony of a witness will have greater evidentiary value vis-à-vis medical evidence and when medical evidence makes the oral testimony improbable, the same becomes a relevant factor in the process of evaluation of such evidence. It is only when the contradiction between the two is so extreme that the medical evidence completely rules out all possibilities of the ocular evidence being true at all, that the ocular evidence is liable to be disbelieved.]
42. **K.K. Velusamy v. N. Palanisamy**, (2011) 11 SCC 275 [The court examined the power of the courts with regard to re-opening the evidence and recalling witnesses. The court while examining the relevant provisions of the Code of Civil Procedure, 1908 has culled out the principles for invoking the inherent powers of the court.]
43. **Kapil Core Packs Pvt. Ltd v. Harvansh Lal**, (2010) 8 SCC 452 [According to Rule 54 of the General Rules (Civil), when a certified copy of any private document is produced in Court, inquiry shall be made from the opposite party whether he admits that it is a true and correct copy of the document which he denies, or whether it is a true and correct copy of the document the genuineness of which he admits without admitting the truth of its contents, or whether he denies the correctness of the copy as well as of the document itself. Admission of the genuineness of a document is not to be confused with the admission of the truth of its contents or with the admission that such document is relevant or sufficient to prove any alleged fact.]

44. **LIC of India v. Ram Pal Singh Bisen**, (2010) 4 SCC 491 [*Mere admission of a document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof which is required to be done in accordance with law.*]
45. **Kumar Exports v. Sharma Carpets**, AIR 2009 SC 1518 [*"Presumption" is an inference, affirmative or negative, of the truth or falsehood of a doubtful fact, drawn by a process of probable reasoning from something proved or taken for granted.*]
46. **Noor Aga v. State of Punjab and Another**, (2008) 16 SCC 417 [*Section 35 and 54 of the Narcotics Act which imposes a reverse burden on the accused is constitutional as the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution.*" *"Confessional statement is admissible only under Section 138 B, Customs Act if all the essential ingredients mentioned there in is satisfied.*]
47. **P.R. Metrani v. Commissioner of Income Tax, Bangalore**, (2007) 1 SCC 789 [*A presumption is an inference of fact drawn from other known or proved facts. It is a rule of law under which courts are authorised to draw a particular inference from a particular fact. It is of three types, (i) "may presume", (ii) "shall presume" and (iii) "conclusive proof". "May presume" leaves it to the discretion of the court to make the presumption according to the circumstances of the case. "Shall presume" leaves no option with the court not to make the presumption. The court is bound to take the fact as proved until evidence is given to disprove it. In this sense such presumption is also rebuttable. "Conclusive proof" gives an artificial probative effect by the law to certain facts. No evidence is allowed to be produced with a view to combating that effect. In this sense, this is irrebuttable presumption.*]
48. **Manager, Reserve Bank of India, Bangalore v. S. Mani**, (2005) 5 SCC 100 [*Non-denial of or non-response to a plea that is not supported by evidence cannot be deemed to be admitted by applying the doctrine of non-traverse. The Evidence Act does not say to the contrary. Pleadings are not substitute for proof.*]
49. **Bhupender sharma v. State of Himachal Pradesh**, (2003) 8 SCC 551 [*Indian Penal Code, 1860 - Section 376 (2) (i) (g) with Explanation (1)--Rape--Gang rape--Corroboration of evidence of victim not to be insisted on as it would be adding insult to injury--Trial court convicting and sentencing accused appellant for gang rape to 4 years on ground that he did not actually commit rape--High Court enhancing sentence to minimum 10 years as prescribed--Whether justified?--Held, "yes"--Ground for reducing sentence from minimum prescribed given by trial court untenable.*]
50. **Bodhisattwa Gautam v. Subhra Chakraborty**, AIR 1996 SC 922 [*Criminal - sexual assault - Sections 312, 376, 420, 493, 496 and 498-A of Indian Penal Code, 1860, Articles 21, 32, 38 (1) of Constitution of India and Section 114-A of Indian Evidence Act, 1872 - complaint registered against accused under Sections 312, 420, 493, 496 and 498-A - accused induced complainant and cohabited with her giving her false assurance of marriage - he had also gone through certain marriage ceremony with knowledge that it was not valid marriage and thereby dishonestly made complainant to believe that she was lawfully married wife of accused - accused even committed offence of miscarriage by compelling complainant to undergo abortion twice against her free will - in such cases no strict legal compulsion to look for corroboration of evidence of prosecutrix before recording Order of conviction - proceedings against accused cannot be quashed - till criminal proceedings are pending accused bound to pay compensation to complainant.*]
51. **Prem Lata v. Arhant Kumar Jain**, AIR 1973 SC 626 [*When both sides had adduced evidence, the question of burden of proof pales into insignificance.*]
52. **Narayan v. Gopal**, AIR 1960 SC 100 [*Where parties have joined the issue and have led evidence and such conflicting evidence can be weighed to determine which way the issue can be decided, the question of burden of proof become academic.]*
53. **Kalua v. State of Uttar Pradesh**, 1958 AIR 180 [*Firearm Expert Evidence - Circumstantial Evidence - Firearm expert examined which conclusively proved that the cartridge had been fired from the pistol of the appellant - Circumstantial evidence sufficient to establish the guilt of the appellant.*]
54. **Anil Rishi v. Gurbaksh Singh**, (2006) 5 SCC 558
55. **Raghavamma v. Chechamma**, 1964 AIR 136

56. **Dahyabhai Chhagan Bhai Thakkar v. State of Gujarat**, 1964 AIR 1563
57. **Ashok v. State of Maharashtra**, (2015) 4 SCC 393, [Last Seen Theory]
58. **Sumitha Pradeep v. Arun Kumar**, 2022 SCC Online SC 1529 [POCSO, refer Para 11]
59. **State of Haryana v. Sher Singh**, (1981) 2 SCC 300
60. **K.M. Nanavati v. State of Maharashtra**, 1962 Supp (1) SCR 567 [*The legal impact of section 103 & section 105 of the Indian Evidence Act on the question of burden of proof may be stated thus: In India, as it is in England, there is a presumption of innocence in favour of the accused as a general rule, and it is the duty of the prosecution to prove the guilt of the accused; to put it in other words, the accused is presumed to be innocent until his guilt is established by the prosecution. But when an accused relies upon the general exceptions in the Indian Penal Code or on any special exception or proviso contained in any other part of the Penal Code, or in any law defining an offence, Section 105 of the Evidence Act raises a presumption against the accused and also throws a burden on him to rebut the said presumption. Under that Section the Court shall presume the absence of circumstances bringing the case within any of the exceptions, that is, the court shall regard the non-existence of such circumstances as proved till they are disproved.*]
61. **Mohan Lal v. State of Punjab**, (2018) 17 SCC 627 [A fair trial to an accused, a constitutional guarantee under Article 21 of the Constitution, would be a hollow promise if the investigation in an NDPS case were not to be fair or raises serious questions about its fairness apparent on the face of the investigation. In the nature of the reverse burden of proof, the onus will lie on the prosecution to demonstrate on the face of it that the investigation was fair, judicious with no circumstances that may raise doubts about its veracity. The obligation of proof beyond reasonable doubt will take within its ambit a fair investigation, in the absence of which there can be no fair trial. If the investigation itself is unfair, to require the accused to demonstrate prejudice will be fraught with danger vesting arbitrary powers in the police which may well lead to false implication also. Investigation in such a case would then become an empty formality and a farce. Such an interpretation therefore naturally has to be avoided.]
62. **Bhola Singh v. State of Punjab**, (2011) 11 SCC 653 [The culpable mental state of an accused has to be proved as a fact beyond reasonable doubt and not merely when its existence is established by a preponderance of probabilities.]
63. **Dharampal Singh v. State of Punjab**, (2010) 9 SCC 608 [The initial burden of proof of possession lies on the prosecution and once it is discharged legal burden would shift on the accused. Standard of proof expected from the prosecution is to prove possession beyond all reasonable doubt but what is required to prove innocence by the accused would be preponderance of probability. Once the plea of the accused is found probable, discharge of initial burden by the prosecution will not nail him with offence.]
64. **Seema Silk & Sarees v. Directorate of Enforcement**, (2008) 5 SCC 580 [Reverse burden as also statutory presumptions can be raised in several statutes as, for example, the Negotiable Instruments Act, the Prevention of Corruption Act, TADA, etc. Presumption is raised only when certain foundational facts are established by the prosecution. The accused in such an event would be entitled to show that he has not violated the provisions of the Act.]
65. **P.N. Krishna Lal v. Govt. of Kerala**, 1995 Supp (2) SCC 187 [It is thus settled law even under general criminal jurisprudence that Sections 105 and 106 of the Evidence Act place a part of the burden of proof on the accused to prove facts which are within his knowledge. When the prosecution establishes the ingredients of the offence charged, the burden shifts on to the accused to prove certain facts within his knowledge or exceptions to which he is entitled to. Based upon the language in the statute the burden of proof varies. However, the test of proof of preponderance of probabilities is the extended criminal jurisprudence and the burden of proof is not as heavy as on the prosecution. Once the accused succeeds in showing, by preponderance of probabilities that there is reasonable doubt in his favour, the burden shifts again on to the prosecution to prove the case against the accused beyond reasonable doubt, if the accused has to be convicted.]
66. **Rabindra Kumar Dey v. State of Orissa**, (1976) 4 SCC 233 [On the question, the nature and extent of the onus of proof placed on an accused person who claims the benefit of an exception is exactly the same as the nature and extent of the onus placed on the prosecution in a criminal case; it was observed that, there is consensus of judicial opinion in favour

of the view that where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. That, no doubt, is the test prescribed while deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but that is not a test which can be applied to an accused person who seeks to prove substantially his claim that his case falls under an exception. Where an accused person is called upon to prove that his case falls under an exception, law treats the onus as discharged if the accused person succeeds 'in proving a preponderance of probability'. As soon as the preponderance of probability is proved, the burden shifts to the prosecution which has still to discharge its original onus. It must be remembered that basically, the original onus never shifts and the prosecution has, at all stages of the case, to prove the guilt of the accused beyond a reasonable doubt.]

- 67. Prem Chand (Paniwala) vs Union Of India (Uoi) And Ors**, AIR 1981 SC 613 [*Emphasis on emphasise the need of the State to issue clear orders to the Police Department to free the processes of investigation and prosecution from the contamination of concoction through the expediency of stockpiling of stock-witnesses. To police persons who get rich quick by methods not easily or licitly understandable, is perhaps a social service. Among the list of wanted persons must be not only the poor suspects but the dubious rich. To keep an eye on their activities, without close shadowing and surveillance may, perhaps, lead to criminal discoveries, if they are not too influential for the police. By this judgment what we mean is not to tell the Police to fold up their hands and remain inactive when anti-social elements suddenly grow in wealth but to be activist and intelligent enough to track down those who hold the nation's health, wealth, peace and security in jeopardy. The only insistence is that the means must also be as good as the ends.]*

Additional References:

Judgements on Circumstantial Evidence - Citations for Reference only

1. *Suresh and Another v. State of Haryana*, AIR 2018 SC 4045
2. *Kulvinder Singh and Another v. State of Haryana*, (2011) 5 SCC 258
3. *Shanmughan v. State of Kerala*, (2012) 2 SCC 788
4. *Subhash Chand v. State of Rajasthan*, (2002) 1 SCC 702
5. *Tahsildar Singh & Another v. State of U.P.*, 1959 SUPP (2) SCR 875
6. *Miller v. Minister of Pensions*, (Aug. 9, 1947) All England Law Reporter
7. *K. Gopal Reddy v. State of Andhra Pradesh*, (1979) 1 SCC 355
8. *Trimukh Maroti Kirkan v. State of Maharashtra*, (2006) 10 SCC 681