



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

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ISSN

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# **HARSHAD MEHTA VS CBI AND FACTS WHICH NEED NOT BE PROVED**

AUHTORED BY - ASHISH SHUKLA

## **1. INTRODUCTION:**

Harshad Shantilal Mehta, along with other bankers and politicians, engaged in manipulating the markets on the Bombay Stock Exchange, which culminated in the 1992 Indian stock Market deception. The scam duped investors of more than 10 Million USD and severely impacted stock-market.

Mehta employed a variety of strategies, such as manipulating market vulnerabilities, having dishonest officials sign fictitious checks, and fabrication, to inflate stock values up to forty times their initial value. Stock traders who profited handsomely from the scheme were able to deceitfully apply for bank unsecured loans. The Indian stock market crashed in April 1992, the same banks found themselves holding millions of Indian rupees (INR) in worthless debt, and this was before the scheme was exposed.

## **2. Harshad Mehta Securities Fraud (1988-1995)<sup>1</sup>:**

SEBI was given less jurisdiction in 1988. Its primary duties included overseeing the securities industry and ensuring its steady expansion. SEBI had no authority over the transactions that took place between brokers and investors. But things changed with the Harshad Mehta Securities scam.

In 1990, stockbroker Harshad Mehta founded "Grow More Research & Asset Management Limited," a securities company. In the marketplaces, he was well-known and respected. Mehta was regarded as the "Sultan of Dalal Street," and investors dutifully followed in his footsteps. Mehta manipulated the stock prices of specific shares on the scrip for his own financial benefit by abusing his position.

Essentially, Harshad Mehta made significant financial investments in a specific share. The other

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<sup>1</sup> Debhasis Basu & Sucheta Dalal, "The Scam, Who Won , Who lost, Who got away"-1 May 1993.

investors and shareholders made an investment in the same shares after witnessing him make one. This led to an abnormal inflow of capital into the stock markets, which raised the price of these shares on the script. The Bull Run, an artificial increase in stock values, was the outcome. During the course of one year (1991–1992), this Bull Run<sup>2</sup> caused the share price of companies like Associated Cement Company (ACC), the first company in which Mehta made an investment in the stock markets, to soar by 4400% from Rs. 200 to Rs. 9000.

The aforementioned activity, while unethical, was not unlawful; rather, the issue stemmed from Mehta's usage of bank funds to obtain capital for stock market investments. Mehta invested the money that banks granted him to buy government securities that were held by other banks. **(Issuance of bogus Bank Receipt in exchange of securities with the bank and manipulation in SGL, i.e. Subsidiary General Ledger.)**

Furthermore, some banks were using these receipts for forward transactions, meaning that when the crash happened, the securities that Bankers' Receipts were scheduled to be issued against could not be squared. Even if the number of people arrested appears to be small, it is now evident that these activities were common, involving not only a small number of institutions but the majority of the banking industry, with a disproportionate number of foreign and private sector banks implicated. **(CitiBank and Kolkata Mandi Group, i.e. Manu Mandra & ORS.)**

On a different note, banks were able to secure substantial funding for their trading operations, as well as to increase deposits from public sector organisations and the corporate sector, through the Portfolio Management Schemes (PMS) administered by the government, which allowed short-term deposits to be transferred to banks. Due to government economic dominance, private capital is now somewhat reliant on bureaucratic and political favouritism. The financial markets were well aware of the political influence and kickback scheme in place to get the majority of these deposits.

It is now established that these actions have been carried out for a considerable amount of time in defiance of RBI regulations to on the other hand. There is a few-day lag between the registration of security transfers between banks and the movement of funds against bankers' receipts since accounting in securities transactions is done manually. This gave brokers and the banks they

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<sup>2</sup> The Bull Run phenomenon is defined as the large scale purchase of securities resulting in the increase in price on the scrip.

represented a motivation as well as the opportunity to benefit from the cash in the interim.

**(Concept of Bankrage.)**

Mehta possessed 50 lakh shares in over 130 businesses. He sold the majority of his shares to avoid prosecution after the well-known journalist of the day, Sucheta Dalal, exposed his swindle. The investors sold their shares because they believed Mehta had deceived them.

Because of this relentless selling, the markets lost Rs. 0.1Million in 1day.

Due to its lack of jurisdiction to control the exchange of information between brokers and investors, SEBI was limited. The Central Bureau of Investigation was the sole agency with the authority to investigate the situation.

### **3. Harshad Mehta Securities Scam (1996-2000)<sup>3</sup>;**

Mehta established the Damayanti Group, a network of front firms, in an attempt to re-enter the markets in 1997. The 1990 securities company owned by Mehta was housed in the same office as this group.

Mehta hired brokers and agents to purchase and sell shares on his behalf at the stock exchange in order to get paid. Harshad Mehta even succeeded in locating businesses (such as BPL, Videocon, and Sterlite Industries).

Mehta continued to invest significant sums of money in particular stocks in an attempt to trigger a bull run. But SEBI and investors were now too savvy to be duped by Harshad Mehta.

Due to suspicious activity surrounding the abrupt rise in some scrip share prices in 1998, SEBI launched an investigation. Through phone bills, payments to solicitors, investment information and other means, they were able to connect Damayanti Group to Harshad Mehta and his accomplice.

Court associates Harshad Mehta and others. Before he could hurt investors and manipulate the markets, Harshad Mehta was restrained by SEBI. After a decade of significant expansion, SEBI

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<sup>3</sup> Debhasis Basu & Sucheta Dalal, "The Scam , Who Won , Who lost, Who got away"-1 May 1993.

was well positioned to assume the role of market watchdog.

#### 4. Janakiraman Report Of RBI:

- **First Interim Report May'92<sup>4</sup>:**

- i. On the basis of the preliminary examination made by the RBI officials, it has been found that:
- ii. The following banks, subsidiaries of banks and institutions have made payments for purchase of investments for which they do not hold either Securities, SGL forms or BRs to the extent indicated below:
- iii. National Housing Bank (NHB) 1199.39 State Bank of Saurashtra SBI Capital Market Ltd. 175.04 121.23, Standard Chartered Bank 300.00, Total Amount in Crores.1795.66.
- iv. The transactions that were put through NHB's intermediary and are still pending have, at least on the surface, something to do with the broker, Shri Harshad S. Mehta, and/or Growmore Research and Assets Management Ltd., his associate company. This is demonstrated by the fact that nearly all of the A/C payee checks that NHB used to make payments to the company banks were collected and credited to Shri Harshad Mehta's current accounts at SBI and ANZ Grindlays Bank. The payee checks were drawn on the RBI.
- v. Shri Harshad Mehta has been involved in a significant amount of SBI transactions on its own investment account, totaling over Rs. 17,000 crores between July 1, 1991, and April 6, 1992. Furthermore, it appears that a number of Shri Harshad Mehta's transactions in his current SBI account were processed improperly. A connection exists between the broker Shri Harshad Mehta and the transactions processed by State Bank of Saurashtra and SBI Caps.
- vi. In the instance of UCO Bank, the bank discounted debts totaling Rs. 50.40 crores. These bills most likely dealt with the shares that the broker, Mrs. Jyothi H. Mehta, who is the wife of Shri Harshad Mehta, sold to affiliate companies. It is evident from the way this transaction was handled that it was a definite advancement towards resolving the related issues. These worries seem to have been transferred into funds upon maturity in order to pay off the debts through UCO Bank's acquisition of shares from Shri Harshad Mehta at a total cost of Rs. 49.50 crores. On April 8, 1992, the UCO Bank had already acquired

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<sup>4</sup> Janakiraman Committee-"Report of the committee to enquire into securities transactions of banks and financial institutions"-R.B.I , 1992-93

shares from his holdings at a total cost of Rs. 12.25 crores. In contrast to the current market value is only about Rs. 40 crores, despite the total cost of Rs. 61.75 crores

• **Second Interim Report July'1992<sup>5</sup>:**

- A. The total value of investments made by banks and institutions for which they do not hold either securities, SGL transfer forms or BRs has on further scrutiny been determined to be as under :
- B. To put it briefly, the following formula can be used to determine the overall extent of the problem exposure in securities transactions:
- C. Total value of investments made by banks and institutions for which they do not hold any securities, SGL transfer forms or BR is of Rs. 1967.84 Crore as per Bifurcation mentioned below.

1.Bank/Institutions.	2.Acquisition cost. (crs.)	3.Bank/Institutions To whom payment was made.	4.Account to which Amount Received was credited.
National Housing Bank (NHB)	1271.20	1.SBI-707.56 2.ANZ-506.55 Grindlays Bank 3.Standard Chartered-55.18 4.Canfina-1.91	Harshad Mehta and Growmore Asset management Co.ltd
State Bank Of Saurashtra (SBS)	174.93	1.SBI -99.11 2.NHB- 75.82	Harshad Mehta (through SBI)
SBI Caps	121.36	SBI-121.36	Harshad Mehta
Stanchart	400.35	Under Investigation	

- A. The bank's preparation of the SBI's investment reconciliation has shown a deficiency in investments totaling Rs. 650 crores. In response, the bank obtained from Shri Harshad

<sup>5</sup> Second Interim Report ,Janakiraman Committee-“Report of the committee to enquire into securities transactions of banks and financial institutions”-R.B.I , 1992-93

Mehta Rs. 622.52 crores, which it then used to buy securities worth Rs. 624 crores and treasury bills for Rs. 21 crores. Thus, there is a Rs. 5 crore unresolved shortfall. An investigation is being conducted on the bank's reconciliation.

- B. At the request of Shri Harshad Mehta, SBI issued SGLs on its account with the PDO and deposited SGLs that were delivered by Shri Harshad Mehta into the same account. The money received for SGLs issued and the payments made for SGLs received have been credited and debited from Shri Harshad Mehta's account; there is no record of these transactions in the SBI books. To this sense, it appears that Shri Harshad Mehta used the funds created by the SBI's investment—which is represented in its SGL balance with the PDO to finance ready-to-close agreements with other banks. From April 1, 1991, to June 22, 1992, the entire face value of SGL forms that were delivered from the entire face value of SGL forms put in the SGL account in this way added up to Rs. 6712.67 crores and Rs. 7282.89 crores for the SGL account. The Rs. 570.22 crore deficiency most likely makes up a portion of the Rs. 622.52 crores that SBI was able to retrieve. The SGL account's entries are still being looked into;

## 5. List of Changes by SEBI after the Harshad Mehta Securities Scam:

- Strict guidelines for full transparency were implemented. The complete disclosure guidelines concerned significant information, particular risk considerations, prudential guidelines, etc.
- All listed firms were required to abide by the Listing Agreement, which was introduced.
- When a company makes a public offer to buy stocks, a code of advertisement was developed to make sure that investors are given all the facts in a trustworthy and honest manner.
- To improve operational transparency, the National Stock Exchange (NSE) with its online, screen-based, nationwide electronic trading was established.
- The Bombay Stock Exchange (BSE) switched over to online, screen based trading.
- A revised “carry forward” system replaced the “badla<sup>6</sup>” system.
- There were developed guidelines pertaining to the necessity of full disclosure to SEBI.
- There were also introduced prerequisites that had to be met in order to make public offers to buy equities.

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<sup>6</sup> “Badla” system was introduced in the Bombay stock exchange to combat the shortage of funds in the secondary market. It was system of borrowing money from various brokers.

## 6. Cases on Harshad Mehta after the Scandal got exposed:

- **Harshad Mehta V. C.B.I<sup>7</sup>:**

**Facts:**

Since the petitioner was detained at Byculla jail in Bombay during the pertinent period, C.B.I. filed an application for the petitioner's production before Special Judge Delhi on August 12, 1992, in accordance with Section 267 of the Criminal Procedure Code. In an order dated August 12, 1992, the Special Judge of Delhi ordered the Subdt. Jail in Byculla, Bombay, to bring Mr. Harshad S. Mehta before the court so that he might be questioned in relation to the case's investigation.

That on August 17, 1992, the petitioner appeared before the Special Judge in Delhi as required by the aforementioned order. On August 17, 1992, the petitioner in this case was formally arrested upon production. Remand from the police was requested and granted until August 20, 1992. Police remand was then extended until August 22, 1992. However, by decision dated August 22, 1992, Mr. Kuldip Singh, Special Judge, Delhi, remanded the petitioner to judicial custody in Central Jail, Tihar, until August 25, 1992, instead of granting police remand.

That on August 17, 1992, the petitioner appeared before the Special Judge in Delhi as required by the aforementioned order. On August 17, 1992, the petitioner in this case was formally arrested upon production. Remand from the police was requested and granted until August 20, 1992. Police remand was then extended until August 22, 1992. However, by decision dated August 22, 1992, Mr. Kuldip Singh, Special Judge, Delhi, remanded the petitioner to judicial custody in Central Jail, Tihar, until August 25, 1992, instead of granting police remand. That after being transported to Bombay on August 24, 1992, the petitioner was never seen in front of the Special Judge in Delhi. After August 25, 1992, the petitioner did not request or receive the remand.

However, Mr. Saxena, representing the C.B.I., argued that the Supreme Court had held in *The Central Bureau of Investigation, Special Investigation Cell-1 Vs. Anupam J. Kulkarni* 1992(2) Crimes that a person may be formally arrested in a second case if they are already in judicial custody in the first. Therefore, by notifying the court that accused Harshad S. Mehta has been placed under arrest in this matter, remand for police custody was requested for a period of seven days. On the CBI's motion, the Court issued an order remanding the petitioner to police custody until August 20, 1992. On August 17, 1992, the Court issued a detailed decision, in which Shri

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<sup>7</sup> 1992(24) DRJ392, ILR1993DELHI274

Kuldeep Singh, Special Judge, stated that after Harshad S. Mehta was brought before him in his court, the C.B.I. officially arrested him for this crime. Mr. Saxena argued that the CBI's action was appropriate in light of the ruling in *CBI v. Anupam J. Kulkarni*. Because no legal provision prohibits the following arrest in a different case if there are many cases against the accused. Furthermore, the petitioner was officially arrested in this case when he appeared before Shri Kuldeep Singh, Special Judge, and it was only after his arrest that the court ordered a police remand. As a result, the clauses under Section 57 of the Cr.P.C. are not being violated.

It must be acknowledged that in this instance, neither the remand request nor the necessary police diary was presented to the magistrate after August 25, 1992. Not a single CBI application explaining why the petitioner wasn't produced after August 25, 1992. It was therefore unlawful for him to be detained after August 25, 1992. However, the question that emerges is whether he was automatically entitled to bail given the illegality of his incarceration. As stated in the case of *Mahesh Chand Vs. State of Rajasthan*, the law is now well established that, in the event that the imprisonment is unlawful, the remedy is a petition for habeas corpus rather than bail. Even yet, our own High Court's Single Bench Judgement in the *Prof. Darshan Singh case Vs. State in*, determined by M.K. Chawla, J. on October 10, 1986, wherein bail was granted, taking this into consideration as a contributing element, however it was not the primary one. There is no disagreement with the idea that this may also be taken into account while determining whether to grant bail. As far as the legal position is concerned, this is it. In terms of bail, it can only be given while the subject is being held in custody. However, Mr. Harshad S. Mehta is not being held in this matter. Consequently, it was reasonably acknowledged by Mr. Saxena, who was representing the C.B.I., that an individual who is not in custody cannot be given bail.

the bail has reached the point of in-fructuousness. In light of these observations, the petition is dismissed.

- **R.Venkatakrishnan. V. Crime Branch Of Investigation<sup>8</sup>:**

**Facts:**

Atul M. Parekh, Harshad Shantilal Mehta, S.V. Ramanathan, R. Venkatkrishnan, and S.V. were charged with conspiring to conduct criminal breach of trust and corruption. Harshad Shantilal Mehta, the fourth accused, was said to be the mastermind behind the scheme. The

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<sup>8</sup> AIR 2010 SUPREME COURT 1812, 2009 (11) SCC 737

Indian Penal Code and the Prevention of Corruption Act had several sections that the accused were charged under. Defendants 6 and 7 were workers of National Housing Bank and were accused with violating the 1988 Prevention of Corruption Act. In the lower courts, Accused Nos. 1 through 7 contested the legality of the sanction orders.

**Issues:**

1. Whether the offence of conspiracy has been proved against the accused? Whether the call money transactions fall within the scope and ambit of the definition of the term "securities"?
2. Whether the routing of call money from National Housing Bank to the account of the deceased Shri Harshad Mehta who was a stockbroker was contrary to the provision of the National Housing Bank Act, 1987?
3. Whether the orders of sanction issued against the accused were valid? Whether the accused committed criminal breach of trust and corruption?

**Decisions:**

Accused number two, R. Venkatkrishnan, was given a six-month term of RI and a two-month default SI punishment of Rs. one million. S.V. Ramanathan, the third accused, was given a one-month RI sentence as well as a fine of Rs. 10,000 and a 15-day SI. Atul M. Parekh, the fifth accused, was fined Rs 10,000 and ordered to participate in RI for 15 days. lasting fifteen days in default SI. The fourth accused, the accused Harshad Shantilal Mehta (Harshad Mehta), was said to be the mastermind behind the entire scheme. In the lower courts, Accused Nos. 1 through 7 contested the legality of the aforementioned penalty orders.

The Bank's officers were found guilty of the crime of criminal breach of trust. Accused 5 couldnot have been found guilty of participating in the conspiracy as claimed by the prosecution based on the evidence presented in court, as they were cleared of all criminal accusations of breach of trust. The National Housing Bank Act, 1987, clause was broken when call money was transferred from the bank to the stockbroker's account of the late Shri Harshad Mehta. The sanctions imposed on the accused were legitimate and lawful. The defendants engaged in criminal deception and misconduct.

## 7. Conclusion on Harshad Mehta Securities Scam:

The Securities Scam of 1992, also referred to as the Harshad Mehta scam, was a significant financial fraud in the Indian stock market. Stockbroker Harshad Mehta utilised dishonest techniques to manipulate the stock values of several firms, and he profited handsomely from the scheme. In response to the scam, the Indian government and regulatory bodies implemented a number of legislative and judicial actions.

- **The SEBI Act:** The Act also gave SEBI the authority to look into and punish people and companies that engage in insider trading, price manipulation, and other stock market fraud.
- **Banking Regulation Act 1949:** By using this Act, the RBI was able to look into and punish banks that had given loans to Harshad Mehta and his friends without the necessary collateral. Additionally, the RBI strengthened bank regulations in an effort to stop such lending practices in the future.
- **The Securities Scam (1992) and the subsequent investigation by the JPC:** The JPC was established to look into the Harshad Mehta scam and suggest ways to stop similar scams in the future. Following the JPC's 1993 report submission, the Indian stock market saw a number of improvements, including the creation of the NSE and the adoption of electronic trading.
- **The IPC and PCA:** Under these Acts, a number of people connected to the Harshad Mehta scam were prosecuted for a variety of crimes, such as fraud, criminal breach of trust, and corruption.

All things considered, the Harshad Mehta scam was a terrible chapter in the Indian financial system's history, but it also sparked much-needed reforms and adjustments that have strengthened the system and increased its resistance to future scams of this kind.

## 8. Law Of Evidence; Facts Which Need Not Be Proved;

“**Fact**” can be defined as: Any- thing , state of things , relation of things , that can be sensed (External facts).

“**Fact in issue**” can be defined as: The facts that are being contested are known as "principal facts" or factum probandum, and they are the facts that need to be established. A fact is in question when it is the subject of disagreement or controversy and impacts the parties' rights and obligations. The arguments made by the defendants and plaintiffs are determined by the facts at

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<sup>9</sup> Section 3, The Indian Evidence Act, 1872.

hand. To influence the court's decision in their favour, the parties must demonstrate that the relevant facts support their pleas. What comprises the relevant facts depends on the substantive law that applies to the offence. While the framing of issues occurs in civil proceedings, the facts in question in criminal cases are determined by the information contained in the charge sheet.

**“Relevant fact”** can be defined as: The facts required to support or refute a particular claim are known as relevant facts. Another name for pertinent facts is evidential facts (factum probans). The primary point of contention or disagreement between the parties is not these facts, so they are not in dispute. Instead, pertinent or evidentiary facts provide further context or insight into the events at hand, allowing for the drawing of conclusions about them. Relevant facts show a relationship between facts that, based on a reasonable sequence of reasoning and common sense, either support or refute each other's existence. Relevant facts serve as supplemental evidence to influence the court's decision in favour of the party presenting the case based on the facts at hand.

Chapter III of the Evidence Act discusses Facts which need not be proved. Section 56 deals with facts judicially noticeable need not be proved. Section 57 is concerned with facts which court must take judicial notice (clause 1 to 13). Section 58 discusses about facts admitted need not be proved.

As a general rule, all facts in issue must be proved and any condition precedent must be proved and any condition precedent must be proved by the person who seeks to adduce such evidence.

However, some matters need not be proved in evidence because:

- They are well known or they have been already admitted by the parties.
- Proving some matters may jeopardize national security especially matters which are considered as classified.
- Proving some matters may be prejudicial to a fair trial in the way likely to mislead the court and thereby jeopardize the justice.
- The Following facts are presumed to be true in the absence of proof and no evidence is required to prove them: a) Judicial Notice, b) Presumptions, c) Admissions.

## 9. What is Judicial Notice<sup>10</sup>?

The Doctrine of Evidence applied by the court that allows it to recognise and accept the existence of a particular fact commonly known by persons of average intelligence without establishing its existence by admitting evidence.

- S.57 not an exhaustive list.
- Merely provides that the courts must take judicial notice of the facts enumerated therein.
- Does not prohibit the courts from taking judicial notice of other facts, not to be found in list
- For example: In England, the court takes judicial notice of matters appearing in its own proceedings, and there is no reason why Indian courts also would not take judicial notice of such proceedings.

**Section 58:** Lays down that if the parties to the proceedings or their agent agrees to admit a fact at hearing or which they agree to admit by writing under their hands before hearing or which by any rule of pleading in force at the time, they are deemed to have admitted by their pleading if need not be proved. Although u/s 58, admission made by the parties and their agents need not be proved: it is not conclusive proof of the fact admitted. The section also postulates that things admitted need not be proved. Under Order 12, Rule 6 of the CPC the court is not bound by admissions of the parties and their agents. The court may exercise its discretion to demand some other proof.

## 10. Admission in Criminal Cases:

- In criminal cases the rules of evidence are that the prosecution is under duty to prove the case against the accused and that they should not rely upon admissions made by him in the course of the trial for convicting him.
- An accused cannot be convicted upon the admission of his pleader. AN admission by the accused in answer to question put by the court u/s 313, Cr.PC cannot be utilised to fill up gap in the evidence for the prosecution.
- The court by its discretion requires some other evidence to support the admitted facts.
- If the court is convinced that the admission was obtained by fraud, collusion or there is suspicion about admission it may require the fact to be proved otherwise than by such admission.

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<sup>10</sup> Section 57, The Indian Evidence Act, 1872.

## **11. Cases based on the Facts which need not be Proved:**

### **A. M.S.Narayanan Menon .V. State of Kerala<sup>11</sup>:**

It is not in dispute that transactions comprising purchase and sales of shares by investors is a matter of confidence . Both parties would have to rely upon one another. For the said purpose, the courts of law may also take judicial notice of the practice prevailing in such business.

### **B. Steel Authority of India .V. UOI<sup>12</sup>:**

The effect of an admission in the context of Sec.58 of the Indian Evidence Act has been considered by this court in Sangramsinh P. Gaekwad & Ors. V. Shantadevi P Gaekwad. Wherein it was categorically held that judicial admission by themselves can be made the foundations of the rights of the parties and admissions in the pleadings are admissible proprio vigore against the maker thereof.

## **12. Conclusion;**

A fact may be admitted into evidence under the rules of judicial notice in the law of evidence if its veracity is so well-known, renowned, or authoritatively established that there is no reasonable basis for doubting it. The notoriety of the fact, its accuracy and ease of determination, and its suitability for judicial notice are among the elements that courts typically take into account. The party wishing to depend on the fact in question requests that this be done. Without the need for a formal witness introduction or other rule of evidence, facts and materials admitted under judicial notice are accepted. In fact, they are admissible even if one party wants to lead the witness in testimony.

## **13. Bibliography & References:**

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<sup>11</sup> AIR, 2006 SC 3366.

<sup>12</sup> AIR, 2006 SC 3229.

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