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सत्यमेव जयते

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JUDICIAL OFFICERS' TRAINING INSTITUTE

HIGH COURT OF MADHYA PRADESH

JABALPUR-482007

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सत्यमेव जयते

A.K. MATHUR
Chief Justice
High Court of Madhya Pradesh

I congratulate all the Judicial Officers on the eve of Golden Jubilee of India's Independence. Judiciary has come of age after completing 50 years of its exemplary performance in the service of the nation. Fifty years in the life of any institution is too small period but none-the-less in a limited period the Indian judiciary has come on the top and has come to acquire international stature. We can be proud of our achievement. Though this achievement has not come in a easy way. Our predecessors have toiled for it and left a great legacy for us. It is now our responsibility to maintain and to keep the torch lighted.

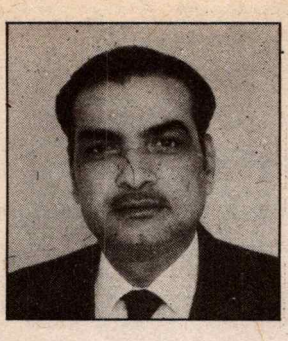
When we talk about our achievement, it will not be out of place to mention some of our drawbacks also which has lately done a damage to the Institution. There are certain grey areas which need to be tackled. In the State of Madhya Pradesh I can say with satisfaction that the Judicial officers in the last couple of years has done a great service and has a distinction of disposing of a large number of cases and have been able to contain the evermounting pressure of arrears to a large extent. Our experiment of Pilot Project in the four districts of Rajnandgaon, Seoni, Guna and Ratlam has been a great success and that has encouraged us to introduce the Pilot Project in another four districts, namely , Bilaspur, Shahdol, Sagar and Dhar. I have reviewed the progress in these Projects also and I find that the work is going on satisfactorily.

There is another mode of disposal of cases which has been introduced by the parliament by enacting Legal Services Authorities Act. This was previously under the control of Government of M.P. and now it has recently been passed on to the High Court and a Judge of this Court has been appointed Executive chairman. This alternative mode of disposal of cases popularly known as Lok Adalat is also progressing satisfactorily. All the districts are organising Lok Adalats from time to time and I look forward that many more cases will be disposed of through the medium of Lok Adalat so as to impart quick justice.

On the eve of Golden Jubilee of India's Independence, I congratulate all my Brother Judges as well as members of subordinate Judiciary and the staff for their kind co-operation and look forward that on the eve of this anniversary, they will re-affirm the faith of the people in the Institution and dedicate themselves to the service of the people for quick dispensation of Justice.

Jai Hind.

A.K. MATHUR



JUSTICE S.K. DUBEY
Judge,
High Court of Madhya Pradesh
CHAIRMAN
JUDICAL OFFICERS TRAINING INSTITUTE
JABALPUR

On the eve of 50 years of independence of our country, I warmly welcome and greet you all.

Our country is the largest democracy of the world. During 50 years of independence, the democratic set-up is being run under the constitution which is supreme law of the land. Any law inconsistent to Constitution is void. Every citizen of this country is governed by rule of law. No one is above law. Equality before law is the signature tune of the Constitution. Executive, Legislative and Judiciary are the three organs of the State. Judiciary has to administer justice in accordance with law. Administration of Justice, according to law, is to reach out injustice. Whenever and wherever any individual suffers injustice, he comes to the Court. Courts are temples of justice, where justice is administered according to law to eradicate injustice.

We are proud of our Judiciary and judicial system. The highest Judiciary of this country is marching ahead for upliftment of the society and progress of the nation and to save the system of democracy of our country.

The Judges and Judicial officers, who administer justice, owe a great responsibility, as society expects from them that justice will be administered without fear and favour. The independence and integrity of the Judiciary in democratic system of the Government are of highest importance and interest not only to the Judge; but to the citizen at large who seek redress from the Courts of Law. Therefore, it is not only the ability and integrity of Judge; but it is his commitment to impart justice. To keep the stream of justice clean and pure . Judge must be endowed with sterling character, unimpeachable integrity and behaviour . He has to perform his duties truely, faithfully and with devotion and dedication so that justice not only is administered according to law but manifestly it appears to have been done, so that faith of the people in Judiciary shall remain affirmed.

On 50th Anniversary of our Independence, we salute all those sons of soil, who have sacrificed their life for Independence of our country having dream in their mind that every citizen in secular State will live happily and peacefully. To fulfil their dream and to achieve the goal of our Constitution, on this occasion, every one of us, should make a self-retrospection. If somewhere any one lacks, he must improve and march ahead for upliftment of the society and progress of the nation. On this day let all of us take a pledge that flag of the democracy of the country will fly high.

I wish you all the best, happiness and success.

Jai Hind.

JUSTICE S.K. DUBEY

"वंदे - मातरम्"

15 अगस्त 1947 को यह राष्ट्र स्वतंत्रता के 50 वर्ष पूर्ण कर 51 वें वर्ष में प्रवेश कर रहा है। स्वतंत्रता को अक्षुण्य बनाए रखने का गौरवपूर्ण एवं दायित्व युक्त अधिकार एवं कर्त्तव्य न्यायपालिका पर अधिक ही है क्योंकि सर्वसामान्य व्यक्ति के अधिकार दायित्वों का न्यायिक विश्लेषण हम आप मिलकर करते हैं व निर्णय देते हैं।

लंका विजय पश्चात भगवान श्रीराम जी ने सोने की लंका को देखा लेकिन उनकी इच्छा उसके प्रति नहीं थी। इसके विपरीत विरक्त भाव उत्पन्न हो गए व सहज भाव से भाई लक्ष्मण से कहा :–

"अति स्वर्णमयी लंका नये रोचति लक्ष्मण।

जननी जन्मभूमिश्च स्वर्गादपि गरीयसी।।"

यह मातृभूमि के प्रति प्रेम का अतुलनीय उदाहरण है। मातृभूमि के प्रति सम्मान आदर एक स्वाभाविक गुण होता है। अपने क्रिया कलापों से भी वह अभिव्यक्त होता रहता है। राष्ट्रहित को सर्वोपरि मानते भारतीय संविधान के प्रति आस्था प्रकट करते हुए हमने न्याय पथ पर अग्रसर होते रहना है। सर्वसामान्य व्यक्ति तक न्याय की ज्योति हमें पहुंचाना है। ***हुसैन आरा विरुद्ध होम सेक्रेटरी*** (ए.आई.आर. 1979 सु. को. 1377–81) में कहा है,

> ".....Let it not be forgotten that law is not only to speak justice but also deliver justice, and is an absolute imperative..... It is intended to reach justice to the common man who, as the poet sang-"
>
> *"Bowed by the weight of centuries he leans*
> *Upon his hoe and gazes on the ground,*
> *The emptiness of ages on his face,*
> *And on his back the burden of the world".*

अतः हमारा कर्त्तव्य है कि भारतीय संविधान की भावनाओं के अनुरूप न्यायदान की यह तपस्या श्रद्धा व आस्था से पूर्ण करेंगे।

संपादकीय

न्यायिक परिपक्वता

न्यायिक अधिकारी प्रशिक्षण संस्थान में विभिन्न स्तरों के न्यायिक अधिकारीगणों के लिए समय–समय पर प्रशिक्षण शिविरों का आयोजन अप्रैल 1994 से सतत होता आ रहा है। वर्तमान में अतिरिक्त जिला न्यायाधीश जो 1996 में पदोन्नत हुए थे उनका पुनश्चर्या सत्र प्रगति पर हैं। अब ऐसी बात नहीं है कि प्रशिक्षण शिविर दीर्घ अवधि के तथा प्रतिदिन दीर्घ समय के हो रहे हैं । विपरीत इसके मनोवैज्ञानिक आधार को ध्यान रखते हुए समय भी कम किया गया है, बीच बीच में चायपान के लिए अंतराल रखा जाता है व भोजन अवकाश भी होता है। लक्ष्य केवल यह था कि श्रोताओं की ग्रहण शक्ति अथवा ग्रहण शीलता (रिसेप्टिव्हिटी) बनी रहे व उचित रूप से मार्गदर्शन प्राप्त करें। मनुष्य स्वभाव हर समय हर स्थान पर प्रतिलक्षित होता रहता है। प्रशिक्षण शिविरों पर शासकीय व्यय भी पर्याप्त रूप से होता रहता है। यदि मोटे रूप से अनुमान लगाया जावे तो प्रत्येक प्रशिक्षार्थी के लिए औसत 3500/– रू व्यय होता है व उनके 8 से 10 कार्य दिवसों की भी क्षति होती है। परंतु इसके पीछे चिंतन यह है कि यदि वे अच्छे से प्रशिक्षण प्राप्त कर लेते हैं तो कार्य क्षमता व दक्षता में वृद्धि होगी। कार्य में गुणात्मक व संख्यात्मक रूप से वृद्धि भी होगी व यह प्रशिक्षण कुल मिलाकर लाभदायक व परिणाम मूलक होगा।

मुंडे मुंडे मर्तिभिन्ने वाली स्थिति हमेशा बनी रहेगी। जितने लोग उतनी बातें तो होंगी। लेकिन एक बात निश्चित है कि प्रशिक्षण हेतु आए न्यायिक अधिकारियों को कुछ नई बातें बताई जाती हैं, नया चिंतन प्रस्तुत किया जाता है उसे उन्होंने ग्रहण करना चाहिए। प्रशिक्षार्थियों ने यह अनुभव करना चाहिए तथा उनकी यह अनुभूति होना चाहिए कि वे कुछ जानने के लिए आए हैं कुछ ग्रहण करने हेतु आए हैं। प्रशिक्षण का मुख्य उद्देश्य भी औसत न्यायिक अधिकारी के स्तर को आधार मानते प्रशिक्षण वर्ग संचालित करना होता है। सहज संभव है कि कुछ प्रशिक्षार्थी अन्य से अधिक बुद्धिमान होंगे अथवा यहां तक कि वे प्रशिक्षण देने वाले से भी अधिक सक्षम या योग्य होंगे। लेकिन मुख्य बात यह है कि प्रशिक्षण शिविरों में एक अनुशासन होना चाहिए, दूसरों के प्रति सहिष्णुता, शिष्टता होना चाहिए व स्वयं में बडप्पन एवं संयम होना चाहिए। होता यह है कि यदि किसी व्याख्याता का व्याख्यान चल रहा है तो उसका श्रवण करके महत्वपूर्ण बातों को नोट करने के बजाय उसके व्याख्यान में बीच बीच में, बार बार प्रश्न पूछकर व्यवधान पहुंचाया जाता है तथा विषयांतर किया जाता है। ऐसा करने से प्राप्ति कुछ भी नहीं होती है। पढ़ाने वाला, निर्धारित अवधि में अपना विषय पूर्ण नहीं कर पाता। जो प्रशिक्षु गंभीरता पूर्वक जानने पढ़ने के लिए आते हैं वे ऐसे महत्वपूर्ण चिंतन से वंचित हो जाते हैं। ऐसे प्रशिक्षु जो बीच बीच में प्रश्न पूछते रहते हैं उनकी मानसिकता का अध्ययन आवश्यक है। उनके मन में स्वयं के प्रति एक निश्चित धारणा यह होती है कि वे सर्वज्ञाता हैं व अब ऐसी कोई जानकारी शेष नहीं रही है जो उन्हें जानना बाकी है। यह निष्कर्ष इस लिए भी अधिक सशक्त हो जाता है कि जब व्याख्याता व्याख्यान पश्चात प्रश्न पूछने हेतु श्रोताओं को आमंत्रित करता है तो ये ही लोग कुछ भी नहीं पूछते। निष्कर्ष पर पहुंचने के पूर्व चिंतन का अभाव भी इसका कारण है। अपनी बात का औचित्य सिध्द करने का एकमात्र आशय इनका होता है। न्यायाधीश व वकील के लिए यह कथन प्रसिद्ध है कि वकील पढ़ेगा तो समझेगा एवं न्यायाधीश सुनेगा व पढ़ेगा तो समझेगा। निष्कर्ष निकालने में उतावला व्यक्ति न्याय का अधिष्ठाता कैसे होगा? ये ही लोग कुछ व्याख्यानों में एकदम सुज्ञ व शांत बैठने का दिखावा करते हैं क्योंकि उन्हें मालूम है कि उनके कृत्यों से उनके विरुद्ध अनुशासनात्मक कार्यवाही हो सकती है।

माननीय न्यायाधिपति महोदय श्रीमान आर.सी. लाहोटी, दिल्ली उच्च न्यायालय ने दिल्ली में आयोजित एक प्रशिक्षण शिविर में कही बात समीचीन है जो इस प्रकार है :

"In the workshop do not hesitate to participate actively. Do not feign your ignorance. Learn if you need to be instructed let others learn if you can impart instructions. Give and take. That alone would bring the work and shop together. Else it would be a pretence of work and senile of shop".

कहने का तात्पर्य यह है कि जो प्रशिक्षु विषय वस्तु से अनभिज्ञ हैं उन्होंने जानने का गंभीरतापूर्वक प्रयत्न करना चाहिए तथा जो ज्ञानी होने का स्वांग करके स्वयं को छलते हैं ने दूसरों को प्रशिक्षण का अलभ्य लाभ लेने से वंचित नहीं करना चाहिए। जो व्यक्ति व्याख्यान देता है वह भ्रमित नहीं है। अपनी मर्यादाएं वह जानता है स्वयं के प्रति वह अवगत है कि उसका ज्ञान कितना है, कितनी जानकारी है तथा वह स्वयं और अधिक ज्ञान प्राप्ति का आतुर है। उसने अपने मस्तिष्क के गवाक्ष खुले रखे हैं। नये विचारों का न केवल वह स्वागत करता है अपितु उसे व्यवहारिक धरातल पर किस प्रकार उतारा जावे इसका भी चिंतन करता है। इसी अनुभूति से एक माननीय न्यायाधिपति महोदय ने व्याख्यान के समय सहज भाव से यह कहा कि हे प्रशिक्षार्थियो ऐसा प्रश्न न पूछना कि हम उत्तर न दे सकें। यह उनका बड़प्पन था, विनय था कि वे यह अनुभव करते थे कि ज्ञान अथाह है तथा कोई परिपूर्ण नहीं है।

सर्वतो जय मिच्छेत । शिष्य तिच्छेत पराभव।।

सब दूर विजय चाहने वाला शिक्षक भी अपने शिष्य से शास्त्रार्थ में पराभव प्राप्त करता है तो उसकी वह सफलता है व इस कारण वह गौरवान्वित होता है।

न्यायिक कार्य व हमारे बीच वह समानता नहीं हो सकती जो एक कूप तथा मंडूक के बीच होगी। न्याय की दुनिया बहुत बड़ी है। माननीय न्यायाधिपति श्रीमान माथुर एवं माननीय प्रशासनिक न्यायाधिपति श्रीमान दुबे ने समय पर प्रबंधन विषय पर चिंतन करते हुए कहा था कि जब यह विश्व नये आयाम से संक्रमित हो रहा है तो हमारा चिंतन क्रांतिकारी रूप से परिवर्तित होना है। प्रकरणों के शीघ्र निराकरण हेतु नये–नये माध्यम अवगत कराने होंगे। हमारा चिंतन पूर्वाग्रहों से मुक्त होना चाहिए। सेवा में आते समय या सेवाकाल में हमने कुछ अमिट रेखाएँ मस्तिष्क पर अंकित करके रखी हैं तथा उसे ही हमने अंतिम सत्य मान लिया है। लेकिन यह ध्यान रखना चाहिये कि प्रक्रिया संबंधी धारणाओं को समय के साथ परिवर्तन ही बहती नदी के पानी जैसा है। विचारों के पानी को अवरूद्ध न करो। सतत् प्रवाह बना रहने दो।

Prejudices, are most difficult to eradicate from the heart whose soil has never been loosened or fertilised by education; they grow there, firm as weeds among stones. **-Charlotte Bronte**

मित्रो! न्यायिक कार्य चुटकियों में निपटाने वाला (Niff-natt)सतही (Superficial) हलंका, तुच्छ, नगण्य (Trifling or Trivial) या नुमाइशी (gewgaw) चीज नहीं है न टालमटोल (Palter) या समय गंवाने (dawdle) लायक व्यवसाय है। विपरीत इसके वह धीरज, धैर्य, गंभीरता ,सहिष्णुता, आत्मविश्वास, निष्ठा, समर्पण भाव; अलिप्तता, निर्भयता व निष्पक्षता से परिपूर्ण जीवन पद्धति (मिशन) है। सतत् अध्ययनशीलता अपेक्षित होती है।

यह अविरत सुधार की प्रक्रिया है। जितना हृदय विशाल होगा उतनी ही उदात्तता हम आप में होगी।

पुरुषोत्तम विष्णु नामजोशी

न्याय प्रबंधन

23 जुलाई 1997 को अतिरिक्त जिला न्यायाधीश के प्रथम वर्ग का प्रशिक्षण सत्र प्रारम्भ हुआ । 1996 में पदोन्नत हुए न्यायिक अधिकारीगणों के इस सत्र को माननीय मुख्य न्यायाधिपति महोदय श्री ए. के. माथुर साहेब ने अपने विद्वतापूर्ण एवं परिपूर्ण विचारों के माध्यम से पथ–प्रदर्शित किया । न्यायिक अधिकारीगणों की कार्य निराकरण करने की सामूहिक उपलब्धि की प्रशंसा करते हुए माननीय महोदय ने कहा कि न्यायिक अधिकारीगणों ने इस वर्ष तुलनात्मक रूप से अधिक कार्य किया है तथा ऐसे सकारात्मक पहलू की प्रशंसा की । श्रीमान माथुर साहेब ने अपने भाष्य में इस बात को बहुत महत्वपूर्ण माना कि न्यायिक अधिकारियों ने साक्ष्य का विश्लेषण उचित रूप से करना चाहिये । विशेष उल्लेख करते हुए इस बात की ओर ध्यान आकृष्ट किया कि चिकित्सीय प्रमाण का विश्लेषण गंभीरतापूर्वक नहीं किया जाता है और न इस संबंध में न्यायिक अधिकारी महत्व समझ पा रहे हैं । साक्ष्य लिपिबद्ध करते समय पीठासीन अधिकारी की जागृतता व सक्रियता की ओर विशेष उल्लेख करते हुए उन्होंने कहा कि न्यायिक अधिकारीगणों ने साक्ष्य लिपिबद्ध करते समय सतर्क रहना चाहिए । पक्षकारों की ओर से प्रस्तुत साक्षियों के कथन लिपिबद्ध होने के पूर्व पीठासीन अधिकारी को इस बात की समग्र रूप से माहिती होना चाहिए कि प्रकरण के क्या तथ्य हैं । कौन सा साक्षी क्या सिद्ध करेगा व साक्ष्य लिपिबद्ध करते समय न्यायालय ने अपनी भूमिका पंच की अथवा दर्शक के रूप में मात्र निभाना नहीं है । न्यायिक अधिकारियों की निष्ठा पर विशेष रूप से बल देते हुए कहा कि प्रत्येक अधिकारी को अपना जीवन स्वच्छ निष्कलंक रखना चाहिये । पक्षपात रहित न्यायिक कार्य के लिए विशेष रूप से उल्लेख करके शुद्ध व सात्विक विचारों से परिपूर्णता की अपेक्षा की । सुस्पष्ट व निष्पक्ष गोपनीय चरित्रावालियों के लिखने पर जोर दिया व कहा कि उच्च न्यायालय को न्यायिक अधिकारियों के संबंध में जानकारी गोपनीय चरित्रावली के माध्यम से ही मिलती है । उनका निर्देश विशिष्ट रूप से पालन करने हेतु अगले सत्र से इस संबंध में एक विशिष्ट व्याख्यान आयोजित होता रहेगा ।

उनकी यह अपेक्षा थी कि अपील तथा रिवीजन न्यायालय के पीठासीन अधिकारी होने के नाते विधि संबंधी अंग्रेजी का मूलभूत ज्ञान होना अत्यन्त आवश्यक है क्योंकि अभी भी न्यायिक कार्य, रिपोर्टिंग आदि सभी अंग्रेजी में होता है । उन्होंने इस सत्र के न्यायिक अधिकारियों को शुभेच्छा व्यक्त कर के यह अपेक्षा की कि न्यायिक निष्ठा सर्वोपरी है व उसको हमें हर स्थिति में बनाकर रखा जाना है ।

मंगलाचरण के रूप में माननीय प्रशासनिक न्यायाधिपति महोदय श्रीमान एस. के. दुबे साहेब ने सत्र का प्रारंभ किया । संक्षिप्त एवं सारगर्भित उद्‌बोधन में आपने अपने विचारों की अभिव्यक्ति करते हुए न्यायिक अधिकारियों से अपेक्षा व्यक्त की कि आज भी न्यायपालिका के प्रति सर्वमान्य व्यक्ति की अगाध श्रद्धा व उसे अक्षुण्य बनाये रखने का परम कर्त्तव्य न्यायिक अधिकारियों का है । प्रक्रिया संबंधी दोषों की ओर विशेष शब्दों में उल्लेख करते हुए कहा कि न्यायिक अधिकारियों को प्रक्रिया संबधी विधि का समग्र रूप से ज्ञान होना

चाहिये व उसका कठोर पालन कठोरता से हो जिसका परिणाम यह होगा कि प्रकरणों के निराकरण में काफी समय बचेगा व निराकरण समय पर हो सकेगा। Actus legis nemini est damnosus/injuriam के सिद्धांत को प्रतिपादित करते हुए उन्होंने कहा कि न्यायिक कार्य से किसी को पूर्वाग्रह युक्त रूप से विपरीत रूप से प्रभावित नहीं किया जा सकता है अर्थात An act in law shall prejudice none.

प्रबंधन के विषय पर महत्वपूर्ण चर्चा करते उन्होंने कहा कि परिवर्तित समय ऐसा आ गया है कि प्रबंधन के नए नए लक्ष्य निर्धारित करने होंगे व प्रकरणों का प्रबन्धन इस प्रकार से हो कि पक्षकारों को कम से कम असुविधा हो और प्रकरण शीघ्रातिशीघ्र नराकृत हो। माननीय दुबे महोदय की यह अपेक्षा थी कि न्यायियक अधिकारियों ने प्रबंधन व्यवस्था सुदृढ़ करने हेतु प्रकरणों का अग्रिम रूप से अध्ययन करना चाहिये जिससे निर्धारित तिथि पर प्रकरण तुच्छ कारणों से बढ़ न जाए। मौलिक चिंतन प्रबन्धन विषय पर किया जावे, ऐसी उनकी इच्छा थी। माननीय महोदय ने **पी. के. घोष विरूद्ध जे. सी. राजपूत (1995) 6 एस.सी.सी. 744** के न्यायदृष्टांत का संदर्भ देते हुए कहा कि न्यायिक अधिकारियों ने कोई भी पूर्वाग्रह नहीं रखना चाहिये तथा यदि तुच्छ सीमा तक भी हितबद्धता पक्ष विपक्ष में हो तो स्वयं को उस प्रकरण से पूर्ण रूप से मुक्त कर लेना चाहिए।

स्टेट विरूद्ध अनि (ए.आई.आर. 1977 स. को. 1023) (जिसके अंश इसी अंक में अन्यत्र प्रकाशित हैं) के दृष्टांत की ओर विशेष रूप से ध्यान आकृष्ट करके उन्होंने कहा कि धारा 165 सहपठित धारा 137 साक्ष्य अधिनियम के अंतर्गत साक्ष्य लिपिबद्ध करते समय न्यायालय की ओर से प्रश्न पूछने का पूर्ण व सशक्त अधिकार है। जहां अस्पष्टता हो अथवा साक्षी प्रक्रिया से अनभिज्ञ हो तथा प्रश्नों को ठीक से समझ नहीं पा रहा हो तब भी न्यायालय ने अपनी ओर से अस्पष्टता दूर करने हेतु प्रक्रिया का पालन करते हुए प्रश्न पूछते रहना चाहिये। आशीर्वचन के साथ यह सत्र प्रारंभ हुआ था।

सत्र में माननीय प्रशासनिक न्यायाधिपति श्रीमान एस.के. दुबे साहेब ने मोटरयान दुर्घटना विषय पर, माननीय न्यायाधिपति महोदय श्रीमान आर. एस. गर्ग साहेब ने व्यवहार प्रक्रिया संहिता के अपील से संबंधित मुख्य अंगों पर तथा क्षतिपूर्ति एवं प्रतिभूति विषय पर चिंतन प्रस्तुत किया। इसके अतिरिक्त मेडिको लीगल साइंस की विभिन्न शाखाओं पर एफ.एस.एल. विभाग के श्री सुभेदार, श्री निगम व मेडिकल कालेज से डॉ. साकल्ले एवं अस्थि विशेषज्ञ डॉ. जामदार ने विद्वतापूर्ण एवं प्रभावशाली विचारों को अभिव्यक्त किया। सतर्कता जिला न्यायाधीश श्री पी.सी. अग्रवाल ने "साक्ष्य का अवलोकन व विश्लेषण तथा फाइलफ्लो मैनेजमेंट" विषय पर ओजस्वी एवं प्रतिभापूर्ण रूप से सशक्त विचार व्यक्त किया। श्री एन.एस. राजपूत, एडिशनल रजिस्ट्रार ने विभागीय जांच व गोपनीय चरित्रावली के संबंध में प्रभावशाली विचारों को सम्मुख रखा।

दिनांक 6 अगस्त 1997 से 11 अगस्त 1997 तक के दूसरे सत्र को माननीय मुख्यध्यायाधिपति व माननीय प्रशासनिक न्यायाधिपति ने संबोधित किया व उपर उल्लेखित वक्ताओं ने अपने विचारों की प्रस्तुति की।

Excerts from the text of the address delivered in the judicial officers training programme at Delhi

JUSTICE R. C. LAHOTI

INTRODUCTION

LAW OF INJUNCTIONS :

(i) What is an injunction :-

An Injunction is a judicial process whereby a party is required to do or to refrain from duty any particular act. It is in the nature of preventive relief granted to a litigant quia timet i.e. because he fears a future possible injury.Its main purpose is to preserve the subject matter of the suit in status quo for the time being.

Injunction belongs to the realm of equity. That is why it is generally described as an equitable remedy. In India the law of injunction-substantive and procedural is codified by and large.

(ii) Substantive Law.

Section 94 of the Code of Civil Procedure provides:-

Supplemental Proceedings:-

94. In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed :-

(a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;

(b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property;

(c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;

(d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;

(e) make such other interlocutory orders as may appear to the Court to be just and convenient.

Order 39 Rules 1& 2 provide as under:-

"1. Cases in which temporary injunction may be granted:-

Where in any suit it is proved by affidavit or otherwise

(a) that any property in dispute in a suit is indanger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to (defrauding) his creditiors,

[(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,]

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit, as the Court thinks fit, until the disposal of the suit or until further orders.

By the Amending Act of 1976, word "defrauding" was substituted for the word "defraud", clause (c) was inserted and the words "or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit" were added.

2. Injunction to restrain repetition or continuance of breach :-

(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury Complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) the Court may by order grant such injunction, on such terms as the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit."

Part III Chapters 7 & 8 of the Specific Relief Act, 1963 deal with preventive relief by way of injunction generally and perpetual injunctions. Injunctions may be temporary or perpetual. The life of a temporary injunction is co-terminus with the life of the suit or earlier if so directed by the Court. ***(Food Corporation of India Vs. Yadav Engineer & Contractor, AIR 1982 SC 1302 Pr. 11.)*** They are regulated by the Code of Civil Procedure. A perpetual injunction can only be granted by a decree of the Court.

Sections 38 and 41 provide when a perpetual injunction can be granted and when it cannot be granted.

38. Perpetual injunctions when granted.-

(1) Subject to the other provisions contained in or referred to by this Chapter a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

(2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.

(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases, namely :-

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

41. Injunction when refused.- An injunction cannot be granted-

(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought;

(c) to restrain any person from applying to any legislative body;

(d) to restrain any person from instituting or prosecuting any proceeding in criminal matter;

(e) to prevent the breach of a contract the performance of which would not be specifically enforced;

(f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(g) to prevent a continuing breach in which the plaintiff has acquiesced;

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

(j) when the plaintiff has no personal interest in the matter.

Section 42 provides an exception to the rule enacted by Clause(e) of Section 41. Where a contract comprises an affirmative agreement to do a certain act coupled with a negative agreement, expressed or implied, not to do a certain act, the circumstance the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement, provided that the plaintiff had not failed to perform the contract so far as it is binding on him. Section 39 speaks of power to grant injunction in mandatory form. When to prevent a breach of an obligation it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its descretion grant injunction to prevent the breach complained of and also to compel the performance of the requisite acts.

Section 40 empowers the Court to grant damages in lieu of or in addition to an injunction.

Through the power of the Court to grant temporary injunctions is not limited only to suits for permanent injunction or only to such cases where the plaintiff may ultimately be held entitled to the grant of permanent injunction, yet the trend of judicial opinion is that a temporary injunction is to be granted on the same principles as are applicable to the grant of permanent injunction.

(iii) Principles relevant :-

It is well settled that to be entitled to the grant of an injunction the plaintiff has to satisfy the triple test of prima facie case, balance of convenience and irreparable injury.

To satisfy the test of prima facie case, the plaintiff has to show that there is a serious question to be tried in the suit and that on the facts before the Court there is a probability of his being entitled to the relief asked for by him. This is the existance of a prima facie case.

Balance of convenience lies in favour of the applicant by weighing the comparative mischief or inconvenience which is likely to issue from withholding the injunction as against that which is likely to arise from granting it. The former must be the greater.

Irreparable injury exists if it is demonstrated that the Court's interference is necessary to protect the applicant from that species of injuries which the Court calls irreparable before his legal right can be established on trial. Justice and demand for justice would be rendered farce unless the court may extend its protective umbrella, or the relief likely to be granted to the plaintiff would cease to be a real relief in the absence of an interlocutory relief, spell out an irreparable injury to the applicant.

On the principles to be kept in view, the law as stated in ***Dalpat Kumar Vs. Prahlad Singh,*** (1992) 1 SCC 719 is instructive :- (page 721)

"The burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie, case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bonafide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case in itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparble injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of conveinece" must be in favour of granting injunction. The court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of

substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the ourt considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

(iv) Injunction, a discretionary relief :-

Injunction emanating from the jurisdiction in equity, is a discretionary relief. The court is not bound to grant an injunction merely because it is lawful to do so. Inspite of the plaintiff having satisfied the court on the availability of the triple test in his favour, the Court may still refuse to protect the plaintiff by granting an injunction if the Court is satisfied that looking to the conduct of the applicant it will not be equitable to do so. The plaintiff may be guilt of acquiescence, delay or waiver. He may not have come to the Court with clean hands. In his zeal he might have done something which may be unbecoming of an honest upright diligent and deserving litigant. This is of all the more importance when an ex-parte injunction is sought for.

Discretion: Discretion is a science of understanding, to disceren between falsity and truth, between wrong and right, between shadows and substance, between equity and colourable losses and pretences, and not to do according to their wills and private affection; for, as one said, tails discretio discretionem confundit (Warhton's Law Laxicon, 14th Edition, p. 546).

Discretion, when applied to the Court of law. says Lord Mensfield - means discretion guided by law. It must be governed by rule and not by humour. It must not be arbitrary vague and fanciful but legal and regular. So the discretion of the Court must be exercised on recognised principles and should not be arbitrary.(Basu-Law of Injunctions, 1980, p.42).

The Chief Justice of India, Hon'ble Shri A.M. Ahmedi has said while inaugurating the International Law Conference on Moral and Justice at Lucknow -"Justice is a relative term; it cannot be put in a straight jacket formula." His Lordship has opined that justice is the first virtue of a civilised Society. International community has acknowledged the need for an independent and vibrant justice delivery system. With respect I-may add-"**Law gives independence to Judge; discretion makes the justice vibrant.**"

Vesting legal jurisdiction in a judge is a confidence reposed in him by law. Vesting of discretionary jurisdiction in a judge is a confidence reposed by seekers of justice in a judicial system. An error of law may be available to be corrected in superior jurisdiction; an error of discretion may well escape scrutiny. Care and caution to be used by a judge while exercising discretion is of paramount importance for it is a trust. Law remedies legally the wrong done to a common man. Discretion permits judge to mould the exercise of statutory power so as to meet the just demands of an individual case. **It is the discretion which converts the pleasure of administering the law into charm of**

delivering justice. A judge without discretion may have the satisfaction of having decided a case according to law yet may not have the satisfaction of having delivered the justice to the parties. Neither a literal compliance with dictates of law nor a rigorous regard for duties; discretion permits striking a balance between the two to suit the exigencies of a situation before a judge. Discretion is the means of travel from utopia of phiolosophical thinking to reality of life events.

Discretion comes to play thrice with a judge dealing with an injunction :

(i) while deciding whether to grant or not to grant an injunction,

(ii) while formulating the grant,

(iii) while deciding if the applicant needs to be put on terms.

(iv) (a) Conduct of applicant :-

When a party approaches the court seeking relief of interim injunction moreso when the relief sought for is projected as urgent and is accompanied by a prayer for an ex-parte relief the Court places implicit reliance on the plaintiff. They are the facts set out by the plaintiff in its pleadings and the documents filed which enable the court forming an opinion whether to exercise or not to exercise jurisdicton in the matter of issuing an interim injunction (behind the back of the opposite party who is yet to be noticed). The court while reposing confidence in the plaintiff naturally expects him to make a clean brest of all the material and relevant facts which would enable the court forming a correct opinion and exercising judicial discretion at that stage. Mis-statement by itself would be enough to throw out the application. If it be a concealment, the court would ask (i) whether it was a relevant fact (it being immaterial whether it would have enabled or disabled the plaintiff in securing the relief; and (ii) whether the plaintiff was in the knowledge of or could have been in the knowledge of, such fact. If both the answers be in the affirmative, the plaintiff would be held disentitled. The Court would not then enter into the merits of the case. The Court would simply tell the plaintiff - "**your conduct has been unbecoming of the confidence impliedly reposed by the court in you and so you must be shown out of the court.**" The plaintiff may then either withdraw the aplication, may be subject to terms, or suffer a dismissal. (***ANZ Grindlay's Bank VS. Commissioner MCD,*** 1995-II AD Delhi 573, pr. 55)

(iv) (b) Injunction on terms :-

Order 39 Rule 2 specifically speaks of an injunction being granted on such terms as the court thinks fit. Even otherwise the Court has inherent jurisdiction to subject the plaintiff to terms as a condition precedent to the grant of relief of injunction on the principle that one who seeks equity must do equity. This is with a view to protect the defendant from the zeal of an unscrupulous plaintiff and with a view to balance the protection deserved by both the parties. Terms if imposed must be reasonable, not too stringent, and certainly not oppressive.

However, the court has jurisdiction while injuncting the defendant to put the plaintiff on terms and such terms though not imposed by way of an

injunction may yet have the effect of restraining the plaintiff to some extent. For example, either party may be restrained from alienating the suit property under clause (a) of Rule 1. Under clause (c), the Court while restraining the defendant from dispossessing the plaintiff put the plaintiff on term that he too shall not during the operation of injunction induct a third person into possession of the property.

(v) Injunction against plaintiff :-

In a suit, can the defendant seek an injunction against the plaintiff ?

On a plain reading of the provisions of sub-rules 1 & 2 of Order 39 it is clear that it is only the cases contemplated by Clause (a) of sub-rule 1 of Order 39 where the court may grant an injunction on a prayer made by either party against the opposite party. In the cases covered by clauses (b) & (c) of Rule 1 and by Rule 2, it is only the defendant who can be injuncted.

(vi) Injunction in exercise of inherent power of the Court :-

The court can in appropriate cases grant temporary injunction in exercise of its inherent power in cases not covered by Order 39 CPC. There are two limitations :-

(i) the court will, not exercise inherent power in a field covered by statutory provisions;

(ii) inherent power of the Court cannot be invoked to nullify and stultify the statutory provisions. (***Manohar Lal VS. Hira Lal,*** AIR 1962 SC 527, ***Cotton Corporation of India Ltd. VS. United Indl. Bank Limited,*** AIR 1983 SC 1274.)

(vii) Procedural Law :-

Procedure for dealing with injunction application is laid down by rules 3, 3 A and 4 of Order 39 which provide as under :-

3. Before Granting injunction, Court to direct notice to opposite party- The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party;

[Provided that, were it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by dealy, and require the applicant -

(a) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with-

(i) a copy of the affidavit filed in support of the application;

(ii) a copy of the plaint; and

(iii) copies of documents on which the applicant relies; and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.]

3 A. Court to dispose of application for injunction within thirty days. Where an injunction has been granted without giving notice to the application within thirty days from the date on which the injunction was granted; and where it is unable so to do, it shall record its reasons for such inability.

4. Order for injunction may be discharged, varied or set aside. Any order for an injunction may be discharged, or varied or set aside by the Court, on application made thereto by any party dissatisfied with such order :

[Provided that if an application for temporary injunction or in any affidavit supporting such application a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interest of justice :

Provided further that where an order for injuncton has been passed after giving to a party an opportunity, of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has cause undue hardship to that party.]

Inspite of mandatory safeguards having been in-built in the provisions by the 1976 amendment in CPC, experience shows that in majority of the cases, the provisions as to issuance of notice to the defendant before granting an injunction and recording of reasons at that stage have been honoured more in breach then in compliance. The reasons are two : heavily loaded cause list and the benevolence of the judge having yeilded to the pursuation of forceful forensic ability of the counsel strategically utilised ex-parte.

(viii) Affidavit evidence :

An injunction may be founded on facts proved by an affidavit. The provisions of Order 39 are not subject to the provisions or Order 19 rules 1 & 2 CPC. The Court is not obliged to accept a prayer for cross examination of the deponent of affidavit on a prayer made by the opposite party though the Court has jurisdiction to permit such cross-examination. It cannot be contended that an uncorss examined affidavit cannot be acted upon for the purpose of Order 39 CPC. Prayer for cross-examination would certainly be refused if it is intended to delay the final disposal of injunction application.

(ix) Mandatory Injunctions

While a preventive injunction maintains the status quo as on the date of the suit, a mandatory injunction maintains status quo as on a date antecedent to the suit, in special circumstances. An application for grant of mandatory injunction may be filed at a late stage of the suit seeking restoration of status quo as obtaining on the date of the suit. It is granted sparingly and on proof of a very strong probability upon the facts that grave damage will accrue unless the relief is granted. The most common case of mandatory injunction is to undo the consequences flowing from an advantage secured by the opponent in violation

of a preventive injunction granted by the Court. The power is there and is meant to be exercised in appropriate cases; the only rider being that the Court should act with greatest circumspection and only in rare and exceptional circumstances.

Interlocutory mandatory injunctions are granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully from the party complaining. Courts have evolved certain guidelines :-

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

The relief shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. The above guidelines are neither exhaustive nor complete nor absolute rules and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of judicial discretion. (***Dorab Cawasji Warden VS. Coomi Sorab Warden.*** AIR 1990 SC 867.)

PRECAUTIONARY ANGLES :

The court must be vigilant to see that it has jurisdiction to entertain the suit and to grant an injunction at the stage of disposing of a prayer for the grant of an injunction moreso when an injunction ex-parte is pressed for. Examples are not wanting where an injunction is sought for against a defendant or touching a subject matter over which the court may not have territorial jurisdiction by artificially demonstrating the facts conferring such jurisdiction. A court of limited pecuniary jurisdiction may be pursuaded to grant relief of injunction in respect of a subject matter not within its jurisdiction by arbitrarily valuing the suit so as to bring the same within the pecuniary jurisdiction of the Court. There are legislations which expressly bar the jurisdiction of civil court touching certain reliefs or certain disputes, such as a suit seeking restraent on an order of eviction passed by an estate officer under Public Premises (Eviction of Unauthorised Occupants) Act. A well informed judge may not interefer in such cases. There are cases where the jurisdiction though not expressly barred is yet taken away by necessary implication, such as a civil suit challenging the notifications under Sections 4 and 6 of Land Acquisition Act, 1894 (***State of Bihar vs. Dhirender Kumar*** 1995-II MPWN 106) or a suit challenging legality of tax assessments.

An inadvertant slip may lead even a cautions judge into the trap of showing indulgence in such matters. Such an order of injunction has the harmful tendency of causing an embarrassment ot statutory functionaries within their

protected zone apart from bringing the courts in ridicule in public opinion. The judge may himself feel embarrassed being called upon to record the finding of the injunction being without jurisdiction or non est, at the stage of proceedings complaining of breach of injunction. Such a situation ought to be avoided.

If the trial court has no jurisdiction over the matter or exceeds its power by granting an injunction in the matter beyond its jurisdiction, the injunction should be treated as null and void. (Basu Law of Injunctions, Basu, 4th Edition p. 39). Disobedience of such an injunction cannot be punished (***Subhadra Koer Vs. Dhajadhari Goswami,*** 65 IC 380; ***State Bank of India Vs. Vindhya Telelinks Ltd.,*** 1993 (1)MPJR 249.)

The plaintiff has no prima facie case if he has invoked the jurisdiction of a Court not having jurisdiction to entertain the suit. ***State Bank of India Vs. Vindhya Telelinks*** (supra).

Of late an unfortunate tendency displayed by unscrupulous litigants, to which sometimes the counsel too contribute, has become noticeable and has met with severe criticism at the hands of the Apex Courts. Bench-hunting (***Sarguja Transport Co. Vs. State,*** Gwalior AIR 1987 SC 88, ***Shahjad Hassan Khan Vs. Ishtyag Hassan Khan,*** AIR 1987 SC 1613), Forum-shopping, Judicial adventurism (***Morgan Stainley Mutual Fund VS. Kartick Dass,*** 1994 (4) SCC 255) are all phrases coined by the Apex Court in the context of disgruntled or unscrupulous litigants having been caught by the Apex Court in the act of securing interlocutory orders by means devoid of judicial propriety.

An injunction outwardly styled as a suit to obtain an injunction purporting to enforce an application by the personal obedience of the defendant. If in substance a suit for land situated without the legal limits of the jurisdiction of the Court, will be refused to be entertained. The court must have regard to the real object of the suit and to what are the rights and contentions of the respective parties. (***Delhi & London Bank Vs. Wordie,*** ILR 1876 Calcutta 249, 257 : ***Kellie Vs. Fraser*** ILR 1877 (2) Calcutta 453, 457, 463).

The Court would not pass an injunction order which would be ineffective or merely for the fun of passing it (***HMK Ansari & Co.*** AIR 1984 SC 29, para 21).

(b) Framing of order :-

An order of injunction must satisfy the requirements of any other judicial order. Being an interlocutory order it is not supposed to be exhaustive but being subject to scrutiny by a court of appeal, must record facts and reasonings though brief yet giving a glimpse into these aspects: (i) the judge had a grip of the facts of the case; (ii) the flow of reasoning leading to the grant or refusal of injunction; and (iii) the judge was alive to the necessity of finding availability of the three well known pillars to rest the grant or refusal of injunction and such other factors which have to be kept in view in specified category of cases.

An order of injunction whether mandatory or preventive, may be required to be executed. if violated, its breach may be complained which might lead into entailing penal consequences on a party. Breach of injunctions may in appropriate cases invite invoking of the contempt jurisdiction of the High Court.So it has to

be seen that an order of injunction is not unduly oppressive to a party and it is guardedly worded not to permit any dubious interpretation. It may also not be misused. An interesting example is of a suit for injunction filed by a government servant complaining of his wrongful retirement. He alleged that he born in 1930 he would retire by attaining the age of 60 years in the year 1990, but the employer was retiring him in the year 1988, by wrongly assuming his date of birth in 1928. In a suit filed in the years 1988, the Court having been convinced of the existence of a prima facie case granted a temporary injunction restraining the employer- defendant from retiring the plaintiff until further orders. The suit remained pending even after the years 1990 and by force of temporary injunction the plaintiff continued to serve upto the year 1993. Thanks to the unlimited operation of the order of injunction on account of its having been loosely worded .

Order of injunction ex-parte:- Whenever a court considers it necessary in the facts and circumstances of a particular case, to pass an order of injunction ex-parte, it must record the reasons for doing so and should take into consideration while passing an order of injunction all relevant factors including as to how the object of granting injunction itself shall be defeated if an ex- parte order is not passed. The recording of reasons is not a mere formality. The party which invokes the jurisdiction of the Court for grant of an order of restrained against a party without affording an opportunity to him of being heard must satisfy the Court about the gravity of the situation and Court has to consider briefly these factors in the ex-parte orders. The parliament has prescribed a particular procedure for passing of an order of injunction without notice to the other side under exceptional circumstances.Such ex-parte orders have far reaching effect. As such a condition has been imposed that Court must record reasons before passing such orders.(Morgan Stainley Mutual Fund(supra), ***Shiv Kumar Chadha Vs.MCD,*** 1993 (3) SCC 161, 176),

Findings/ Observations byJudge in an order of injunction are only tentative

Though it is usual for the judges while passing an order of injunction to say that all the findings recorded in the order and the observations made therein are tentative, made merely for the purpose of that order and would not prejudice the rights of either party at the trial, but it is not necessary to do so, In the very nature of things such observations are tentative observations for the limited purposes of the interlocutory proceedings. When the question of deciding the matter on merits ultimately arises the matter would of course be disposed of with on open mind uninfluenced and uninhibited by any observations made in the course of these orders, on the basis of the evidence on record and in the light of submissions then made in accordance with law. (Jay Kishan Jagwani 1987 Supple. SSC 72); P. Govindaswami, 1987 Supple. SSC 58. Daplat Kumar 1992 (1) SCC 719, para 7).

Life of an injuncton : The life of an order of injunction is co-terminus with the life of the suit though not so stated in the order. It is customary to frame the order so as to remain in operation - (i) till the decision of the suit, (ii) until further orders, (iii) till the next date. In the last category of cases, the order of injunction

has to be renewed or extended on every date of hearing, else it ceases to operate. An order of injunction made operative until further orders or till the decision of the suit would continue to operate until vacated.

OPERATION OF INJUNCTION

Injunction is a writ in personam. It does not run with the land.

Section 16 of CPC provides a suit relating to an immovable or moveable property being instituted within the local limits of whose jurisdiction the property is situated. However, where a relief sought for can be entirely obtained through the personal obedience of the defendant it can be instituted also in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business or personally works for gain. In such a case the property may be outside the territorial jurisdiction of the Court but must nevertheless be in India.

Order 39 Rule 5 specifically provides an injunction issued against a Corporation binds its members and officers also.

An injunction binds (i) the parties thereto,(ii) in a representative suit, the persons who would be deemed to have been represented in the suit though not co-nomine parties to the suit. (Specific Relief, Subba Rao, IV th Edition, P.1304).

Persons claiming under or through a party are bound by the order of injunction made against a party.

An injunction would also bind the attorneys, agents, servants and workmen of the party; the purchaser under the decree. (injunctions, Woodroffe, para 17.02).

POWER TO MAKE INCIDENTAL / ALTERNATE ORDERS / ARRANGEMENTS

Court dealing with a prayer for the grant of an injunction has jurisdiction to pass orders which are incidental to the exercise of jurisdiction to grant an injunction. It may issue commission for inspection of the property, have inventories prepared, direct photographs to be taken or plans to be prepared. The guideline to the exercise of power being to prevent the ends of justice from being defeated, the court may pass supplementary orders in addition to the order of injunction and may pass orders as an alternate to the grant of injunction if it is satisfied that such order would better serve the ends of justice than a mere grant or refusal of injunction. An indication of such incidental, alternate and additional orders is to be found in Section 94 of CPC which are by no means exhaustive but only illustrative and put the ingenuity and wits of a judge to test while formulating the relief to meet the ends of justice in the facts and circumstances of the case at hand.

If satisfied the court may while dealing with the prayer for the grant of injunction, appoint a recciver. The power of appointing a recciver when the relief is necessary for the collection and preservation of property pending an injunction suit is a necessary incident to the power of granting an injunction. Though it has

to be remembered that existence of a **Prima facie case** would justify the grant of an injunction, existence of a **good prima facie** title has to be made out to sustain an order appointing receiver. The court should not interefere by appointing receiver unless a strong case is made out (Basu, Law of Injunctions, 1980,p.39)

A FEW CASES OF EVERY DAY RECURRENCE:-

Law and the principles generally applicable to the prayers for grant of injunction without regard to the class of cases have been dealt with. The judicial wisdom gathered by experience from variety of case and of case - makers has resulted in formulating additional principles to be observed while dealing with specified categories of cases. It would be useful to deal with a few of them.

(i) Unauthorised/ illegal constructions

In Shiv Kumar Chadha VS. MCD.(1993) 3 SCC 161, their Lordships have laid down following guidelines:-

"(i) The Court should first direct the plaintiff to serve a copy of the application with a copy of the plaint alongwith relevant documents on the counsel for the Corporation or any competent authority of the Corporation and the order should be passed only after hearing the parties.

(ii) If the circumstances of a case so warrant and where the court is of the opinion, that the object of granting the injunction would be defeated by delay, the court should record reasons for its opinion as required by provision to Rule 3 of Order 39 of the Code, before passing an order for injunction. The court must direct that such order shall operate only for a period of two weeks, during which notice alongwith copy of the application, plaint and relevant documents should be served on the competent authority or the counsel for the Corporation. Affidavit for service of notice should be filed as provided by proviso to Rule 3 of Order 39 aforesaid. If the Corporation has entered appearance, any such ex-party order of injunction should be extended only after hearing the counsel for the Corporation.

(iii) While passing an ex-parte order of injunction the Court shall direct the plaintiff to give an undertaking that he will not make any further construction upon the premises till the application for injunction finally heard and disposed of."

In addition the High Court of Delhi in ***ANZ Grindlays Bank Vs. MCD.*** (1995) II AD Delhi 573, 605 has observed that the courts faced the prayer for grant of temporary injunctions in such matters would do well :-

(a) to see whether the plaint in the suit was accompanied by following documents-

(i) duly sanctioned building plan;

(ii) building completion certificate;

(iii) existing site plan of the suit property.

(b) to see if the application for injunction contains a categoric statement on affidavit of the applicant that the existing construction and the use to which the property was being subjected was not inconsistent with the Master Plan of Delhi and any other law applicable to such locality and/ or building, and that there has been no unauthorised construction or user violating the sanctioned plan/ the Master Plan.

(c) if the Court be inclined to grant an ex-parte injunction restraining sealing/ demolition of the building, to put the plaintiff also on terms asking it to undertake that during the period of operation of injunction the plaintiff shall also maintain the status quo and shall not proceed with further construction, nor create third party interests. This would obviate the possibility of the plaintiff completing its construction (if found to be illegal or unauthorised after hearing the opposite party) so also no third party would be roped into acquiring interest in the property or entering into possession thereof to its serious prejudice (by the time the opposite party is served or makes appearance).

(d) to examine prima facie the locus standi of the plaintiff to file the suit by reference to Section 343/344 of the DMC act in the light of the plaint averments. The plaintiff must explain why the alternative remedy of appeal available under Section 343(2) / 347 B of the Act has not been availed and if availed, what was the result.

(e) to appoint one independent commissioner for local inspection, at the cost of the plaintiff and bring on record the existing state of the property on the date of injunction order."

(ii) Recovery of tax or Government Revenue:

The court has to show awareness to the fact that a Municipality cannot function or meet its financial obligation if its source of revenue is blocked by an interim order restraining the Municipality from recovering the taxes.The Municipality has to maintain essential civic services, purchase the supplies and pay the salaries.The grant of an interlocutory order would paralyse the administration and dislocate the entire working of the Municipality. These serious amifications must not be lost sight of.

Municipal Corporation of Delhi VS. C.L. Batra. (1994) 5 SCC 355, ***Siliouri Municipality & ors. VS, Amalendu Das & Ors.*** (1984) 2 SCC 436.

The Court has therefore to strike a delicate balance after considering the pros and cons of the matter lest larger public interest is not jeopardised and institutional embarasment is eschewed. The only consideration should be to ensure that no prejudice is occasioned to the rate payers in case they ultimately succeed it the conclusion for the proceedings. This object can be attained by requiring the body or authority levying the impost to give an undertaking to refund or adjust against future dues, the levy of tax or rate of a part thereof, as the case may be, in the event of the entire levy or a part thereof being ultimately held to be invalid by the Court without obliging the tax- payers to institute a civil suit in order to claim the amount alreday recovered from them."

Interim orders are not to be granted in revenue matters merely be casue a prima facie case has been shown." It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But the Court must also have good and sufficient reason to by pass the alternative remedy provided by statute. Surely matters invovling the revenue where statutory remedies are available are not such matters." (***Assistant Collector of Central Excise, Chandan nagar, W.B. Vs. Dunlop India Ltd.***) (1985) 1SSC 260; ***Municipal Corporation of Delhi Vs. C.L. Batra*** (Supra).

(iii) Service Matters :

In matters impugning termination, dismissal, removal and retirement from services, the Court may not grant an injunction restraining the order impugned. In the event of success, the plaintiff may well be compensated by a decree for monetary benefits and compensation, if necessary.

In a case laying belated challenge to the date of birth recorded in the service record, the Apex Court has observed that entertaining such a belated challenge will mar the chances of promotion of the juniors and prove to be an undue encouragement to the other employees to make similar applications at the fag end of service careers with the sole object of preventing their retirements when due. The very conduct of non-raising of an objection by the employee at an earlier stage would be a sufficient reason to refuse indulgence. Granting of an interim relief of continuance in service visits the juniors with irreparable injury as in that they would be denied promotion, a damage which cannot be repaired if the claim is ultimately found to be unacceptable. On the other hand, if no interim relief is granted and ultimately the claim is accepted, the damage can be repaired by granting all those monetary benefits which would have been received if continued in service. In such cases it would be imprudent to grant interim relief. (***Burn Standard Company & Others Vs. Shri Din Bandhu Mazumdar***, JT 1995 (4) SC 23).

Legal and departmental proceedings should not be intercepted way between and at interlocutory stages except where the continuance of such proceedings would amount to an illegality or an abuse of process of the law by itself such as the cases where departmental enquiry proceedings suffer from inherent lack of jurisdiction (***Jagmal Singh Vs. DTC***. 1995 III AD Delhi 691).

(iv) Execution of Decree

In an appropriate case, court may grant adinterim injunction when the party seeks to set aside the decree on the ground of fraud or want of jurisdiction in the Court which passed the decree. But the Court would be circumspect before granting injunction and look to the conduct of the party, the probable injury to either party and whether the paintiff could be adequately compensated if injunction is refused. (***Dalpat Kumar Vs. Pehlad Singh*** (1992) 1SCC 719).

Section 44 of Evidence Act permits a judgment, order or decree being challenged if it was delivered by a Court not competent or was obtained by fraud or collusion.

(v) Preventive Relief

Ordinarily a preventive relief by way of prohibitory injunction cannot be granted by a Court with a view to restraining any person from institute or prosecuting any proceedings and this is subject to one exception enacted in larger public interest namely a superior court can injunct a person from instituting or prosecution an action in a subordinate court with a view to regulating the proceedings before the subordinate court. (***Cotton Corporation of India Ltd. Vs. United Indl. Bank Ltd.,*** AIR 1983 SC 1272). A bank had sought to restrain a Corporation by an injunction of the Court from instituting a proceedings for winding up of the Bank. The injunction was refused in view of a clear bar in Section 41 (b) of the Specific Relief Act against granting the relief.

The court would not ordinarily issue and injunction which would have the effect of stemming statutory proceedings before a statutory authority. It is only in case of patent defect in jurisdiction or where an authority is proceeding to usurp the jurisdiction not legally vested in it, the Court may intercept during the pendency of the proceedings and injunct the authority from exercise of such jurisdiction as it does not possess. (***Smt. Raj Kumari Vs. State of Madhya Pradesh,*** 1992 (2) MPJR 347.)

(vi) Arbitration cases

A court exercising jurisdiction under the Arbitration Act, 1940 has been given power to issue interim injunction under Section 41 (b), but only for the purpose of and in relation ot arbitration proceedings before to Court. If the conditions of Clause (b) of Section 41 of Arbitration Act are not satisfied the Court cannot grant an interim injunction and cannot resort to clause (a) of Section 41. (***Dr. H.M. Kamalluddin Ansari & Ors. Vs. Union of India***, AIR 1984 SC 29; ***Indian Railway Construction Company Ltd. Vs. M/S. Codricon Pvt. Ltd.,*** 1994 (31) DRJ 397).

Injunction restraining arbitration proceedings : An injunction cannot be granted restraining the arbitration proceedings merely because the existence of contract is denied or because the arbitration proceedings are alleged to be futile. Such an injunction may be granted where the contract under which the reference to arbitration is proposed to be held is vitiated by mistake, misrepresentation, fraud etc. It may be restrained also when corruption or misconduct disqualifying arbitrator from acting is proved. (Subaro on Law of Specific Relief, 4th Edition pp. 1262 - 1263).

(vii) Injunction restraining alienations :-

Extra care and caution has to be adopted by the Court to see that the plaintiff does not intend to achieve something else or is not action with an ulterior motive in the garb of seeking an injunction. People do not ordinarily alienate their property but for some reason A temporary injunction granted

without care and caution may have the effect of making the situation irreversible. By the time the case comes to be decided it may become practically impossible to place the person injuncted in the same position in which he would have been if the injunction was not granted. The necessity of strong prima facie case arises in such cases because the plaintiff must have extra strength for piercing into the umbrella of shelter taken by the defendant under Section 52 of the Transfer of Property Act. Whether the palintiff has reasonable prospect of obtaining permanent injunction at the end of the suit and how the plaintiff would suffer irreparably inspite of the protection in-built in Section 52 of the T.P. Act are the additional questions which must be posed by the Court to itself while considering a prayer for the grant of temporary injunction restraining alienation of the suit property (***Devi Prasad Vs. Babu Lal,*** 1993 (1) MPJR 462).

An injunction restraining an alienation can be granted under three provisions. The distinction between the three and the scope of each has to be brone in mind. Any property in suit, if in danger of being alienated, may be restrained by injunction under clause (a) of Rule 1 of Order 39. A Property not in suit may be restrained from being alienated under clause (b) of rule 1 of Order 39 as also by attachment under order 38 Rule 5. The distinction between these two provisions is as under (Injunctions, by woodroffe, IInd Edition para 50.03) :-

Injunction **Order 39 Rule 1 (b)**	**Attachment before judgment** **Order 38 Rule 5**
✣ Alienation must be with a view to defrauding his creditors.	Alienation must be with a view to obstruct or delay the execution of a likely decree.
✣ Property is left in the hands of owner subject only to prohibition enjoined by injunction.	Property is attached
✣ Value of peoperty has no relation with value of suit	Attachment is generally limited to property sufficient to satisfy the likely decree.
✣ Property forming subject matter of injunction may be beyond jurisdiction of court	Property beyond territorial jurisdiction of court cannot be attached.
✣ Private alienation subsequent to injunction is not void though penal consequences under Rule 4 may follow.	Any private alienation after attachment is null and void.
✣ May be made ex-parte	Cannot be made without notice to defendant.

It is pertinent to note that an order of attachment under Order 38 rule 5 cannot be made without notice to the defendants requiring him to furnish security in the first instance and failure to comply with this safeguard provided by Order 38 Rule 5 (i) renders the attachment void. A plaintiff in order to avoid the defendant being noticed may try to invoke Order 39 rule 1(b) and secure an

order of injunction though the facts and circumstances would justify applicability of Order 38 Rule 5. Such an attempt has to be guarded against.

(Viii) Injunction protecting (illegal) possession

On the authority of three Supreme Court decisions, the High Court of Madhya Pradesh has held - "The law respect possession. When a person is in settled and peaceful possession of property then his possession should be protected and even an owner cannot be allowed to take recourse to extra judicial methods for dispossessing the person in settled and peaceful possession though without title. The position may be different when the encroachment committed is of flimsy character or where a tresspasser is sought to be prevented by the real owner whilst former was in the process of committing tresspass. (***Kalabai Vs. Bhojraj 1992*** (1)MPJR Note 7.) However, it is considered that possession even if settled and peaceful may not be protected by the Court by issuing an injunction against real owner unless the possession be under colour of title or semblance of title. Otherwise there would be not prima facie case. It tantamounts to saying that the person seeking an injuction "must be in actual possession as well as entitled to the possession." (**Basu-Law of Injunctions,** 4th Edition page 462).

Licencee continuing in possession after the termination of licence may not be entitled to an injunction restraining the licensor from entering into possession of the property so long as the force used is reasonable.

(ix) Injunction against invoking bank guarantee.

An injunction restraining a beneficiary under a bank guarantee from invoking the same cannot be granted except in cases of fraud or irretrievable injury or invocation being contrary to the terms of contract. (AIR 1994 SC 626 and AIR 1994 SC 2778).

(x) Injunction restraining public issue

Suits are filed seeking to injunct either the allotment to shares or the meeting of the Board of Directors or the meeting of General Body. The Court is approached at the last minute. As far as India is concerned the residence of the company is where the registered office is located. Normally cases should be filed only where the registered office of the Company is situated. Courts outside the palce where the registered office is located, if approached, must ensure that the plaintiff comes to court well in time so that notice may be served on the defandant and he may have his say before any interim order is passed. Apart from the three principles, the court shall weigh the following factors before granting an ex-parte injunction.

(i) the time at which the plaintiff first had notice of the act complained of so that making of improper order against a party in his absence is prevented;

(ii) whether the plaintiff had acquiesced for sometime;

(iii) ex-parte injunction if granted would be for a limited period of time (**See Morgan Stainley Mutual Fund** 1994 (4) SC 225.

(xi) Injunction against exhibition of T.V. Serial

The right of a citizen to exhibit films on Doordarshan after following the prescribed procedure is a fundamental right. It may be restrained by temporary injunction in appropriate cases, such as:-

(i) the exhibition was in contravention of any specific law or direction issued by the Government;

(ii) the Doordarshan had shown any undue favour to the producer of the serial and the sponsoring institution resulting in any financial loss to the public exchequer;

(iii) violation of any right confered on the applicant by any statute or acquired under a contract which would entile it to secure an order of temporary injunction.

(iv) The exhibition was prima facie prejudicial to the community.(***Odyssey Communications Pvt. Ltd.VS. Lokvindayan Sangathan,*** AIR 1988 SC 1642).

ORDER 39 RULE 4 CPC

An order of injunction by-party cannot be discharged, varied or set aside unless(i) necessitated by a charge in the circumstances or (ii) on satisfaction of the court that the order has caused undue hardship to the party. An interesting but complicated question arises. What happens if the order of injunction has been passed by an appellate court varying or substituting an order passed by the trial court . The only decision available on the point is of the High Court of Madhya Pradesh(***Ravi Shankar VS. 7th ADJ Bhopal,*** 1994 (2) MPJR 200.It has been held:-

"(i) exercising its jurisdiction under rule 4, the Court may with advantage drawn upon the principles revolving around explanation IV to Section II of the CPC and asked itself whether the pleas raised in the application under Order 4 might and ought to have been raised before passing of the order ? If yes, the court may reject the application.If, any, the Court may very well entertain the application and dispose of the same on merits.

(ii) When the appellate Court passes an order of injunction while finally disposing of the appeal before it,the order stands substituted in place of the order of the trial Court . The order is passed not for the purpose of appeal, not to remain operative during the hearing of the appeal, it is an order passed for the purpose of the suit and to terminate with the decision of the suit. An application under Order 39 rule 4 CPC can appropriately be dealt with by the trial Court though the order of injunction sought to be discharged, varied or set aside be one passed by the appellate Court."

II. EPILOGUE

This paper is not intended to be an exhaustive statement of law on the subject of injunctions. It could not have been. I have made an effort at putting forth the basics and their application to cases of every day occurence in courts of law. Swami Vivekanand has said " if you learnt by heart five fundamental principles, I would deem it to be more education then learning a whole theory in life."

This article is published in M.P. JR Nov. 1996

Courtesy :-

(1) Hon'ble Justice Shri R. C. Lahoti, Delhi High Court

(2) Shri Mahendra Dvivedi, Law House, Gwalior

NOTE :- For appreciation of the Article with reference to M.P. amendments in C.P.C. the relevent amendments are reproduced here for ready reference so that the Judicial officers may be able to have immediate approach to the M.P. Amendments as and when required. These Amendments were published in Vol. III part 3 June 1997 issue of the "JOTI JURNAL". They are as under :

8. Amendment of Order XXXIX of the First Schedule : In Order XXXIX of the First Schedule to the Principle Act.

(a) In rule 2, in sub-rule (2) following proviso shall be inserted. namely "Provided that no such injunction shall be granted-

(a) where no perpetual injunction could be granted in view of the provisions of Section 38 and Section 41 of the Specific Rellef Act. 1963 (No. 47 of 1947) : 0r

(b) to stay the operation of an order for transfer. suspension, reduction in rank, compulsory retirement. dismissal, removal or otherwise termination of service of or taking charge from. any person appointed to public service and post in connection with the affairs of the state including any employee of any company or corporation owned or controlled by the State Government : or

(c) to stay any disciplinary proceeding pending or intended or the effect of any adverse entry against any person appointed to public service and post in connection with the affairs of the State including any employee of the company owned or controlled by the State Government : or

(d) to restrain any election : or

(e) to restrain any auction intended to be made or, ot restrain the effect of any aucton made by the Government : or to stay the proceedings for the recovery of any dues recoverable as land revenue unless adequate security is furnished :

and any order for injunction granted in contravention of these provisions shall be void."

(b) In rule 4 -

(i) after the words 'by the court' the words 'for reasons to be recorded, either on its own motion or' shall be inserted :

(ii) at the end. the following proviso shall be inserted, namely :

"Provided also that if at any stage of the suit it appears to the court that the party in whose favour the order o injunction exists is delaying the proceedings or is otherwise abusing the process of court, it shall set aside the order for injunction."

DEMOCRACY

Man's Capacity for Justice makes democracy possible, but man's inclination to injustice makes democracy necessary.

REINHOLD NIEBUHR

DEBATE

CANCELLATION OF BAIL: WHO CAN?

P.V. NAMJOSHI

There are two main sections under which bail can be cancelled. The first is Section 437 (5) and the another is Section 439 Part 2. Section 437 (5) runs as under:

Any court which has released a person on bail under sub section(1) or sub section (2) may if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

The second provision of Section 439 Part(2) runs as under:

A High Court or a Court of Sessions may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

Thus the bare reading of these sections makes it clear that firstly the court who has granted bail has jurisdiction to cancel it. Secondly the Court of Sessions and the High Court are also empowered to cancel the bail granted by subordinate courts. That is if the bail is granted by the Magistrate or the Sessions court then it can be cancelled by the High Court and if the bail is granted by the Magistrate it can be cancelled by the Sessions Court and High Court.

The powers of the Sessions Court are limited powers with reference to the cancellation of bail. So far as "inherent powers"are concerned the Sessions court has no such powers. An example can be cited of. ***A.I.R. 1958 SC 376 Talab Hazi Hussain vs. Maharashtra State*** in which it was held that the high court has inherent powers to cancel bail in bailable offences also. It is further held that Section 437(5) of the code applies only to cases where bail has been granted under section 437 Cr.P.C . It has no application to case where bail has been granted under Section 436 or section 439(1). In ***Gurucharan Vs. Delhi Ad.*** A.I.R. 1978 SC 179 it is held that S. 437 is concerned only with the High Court and the Court of Session. In A.I.R. 1940 ***Bombay Emperor vs. Ratanlal*** has also held that every Judge or Magistrate trying a criminal case has inherent power to see that the trial is properly conducted and that the ends of justice are not defeated and if facts are brought to his attention which suggest that unless the person who is being tried is placed under arrest the ends of justice will be defeated, the Court has inherent power to direct his rearrest. Hence where the Magistrate to whose Court a case is transferred is satisfied that the accused who has been released on bail by the Magistrate of the previous court has been tempering with a prosecution witness; he is entitled to direct that the accused should be rearrested. Here in this case the words inherent power has little bit different sense. The powers of the High Court with reference to the inherent powers are quite different from the powers of the subordinate courts with limited meaning only. As laid down in ***Indian Bank vs. Satyam Fibres (India) Private Limited*** (1996) 5 SCC page 550. Supreme Court has in para 22 of its judgment held as under:

"..... These powers spring not from legislation but from the nature and the constitution of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court's business."

With this introduction now we turn to the main subject whether a Magistrate has jurisdiction to cancel a bail order passed by a superior court. Simply speaking the Magistrate has no jurisdiction to do so. But the problem which occurs in day to day functioning is little bit complicated in which every Magistrate is on the Horns of a dilemma. They are in such a position where a choice has to be made between alternatives that are unpleasant in either case. As laid down in **A.I.R. 1940 Bombay, 40.** (Supra) Sometimes it happens that the accused has obtained bail from the Sessions Court or the High Court in a case triable by Magistrate and after obtaining a bail order form the superior court that is either from the Sessions Court or the High Court the accused does not turns up. Therefore the Magistrate as a routine course cancels the bail, forfeits the bail bonds and issues warrant of arrest. Thereafter if the accused is produced before the Court or is brought before the Court or is arrested he states that he has bail order in his favour by the superior court and that bail order stands as it is and the Magistrate has no jurisdiction to cancel the same. Therefore the Magistrate, at this juncture is on the Horns of a dilemma and the Magistrate at this stage finds it difficult how to come across such type of problem and is in embarrassment and in perplexity. The Magistrate wants to be on safer side and to be on safer error. Therefore to get rid of the problem instead of indulging in the academic discussions he conceds to the prayer of the accused and allows him to be on bail after furnishing fresh bail bonds. But ultimately he has to face the problems every then and now.But he is not in a position to get a correct reference of law. Therefore this article is meant to start discussion on this subject and to keep the windows of the mind open to enter fresh air of views. It is ably said by Lord Denning in ***Packer vs. Packer*** (1954) p 15 (28) that:

" What is the argument on the other side? Only this, that no case has been found in which it has been done before.That argument does not appeal to me the least. If we never do anything which has not been done before, we shall never get anywhere. The law will stand still whilst the rest of the world goes on; and that will be bad for both."

In 1977 Cr.L.J. 1797 ***Anant Kumar Naik vs. State of A.P.*** the Supreme Court held that in cancellation or alteration of conditions of bail could only be made by the Sessions Judge who has granted the bail or the High Court under Section 439(2) of the Cr.P.C.

On this point the judgment of the Orissa High Court in ***Dandapani Rout vs, State of Orissa*** 1984 (2) crimes p 784 is very clear in which the same point has been decided . The facts of the case were Magistrate cancelled a bail on an application made by the Officer-in-charge of the police station without affording an opportunity to the petitioners to show cause and are being heard.Some of the petitioners were released on anticipatory bail by the High Court and the others

were released on bail by the Assistant Sessions Judge, exercising the powers of the Court of Sessions Judge u/s 439 of the IPC. The Officer -in-charge in his petition stated that the accused have violated the conditions of the bail bonds. The Magistrate accordingly cancelled the bail and directed issue of non bailable warrant of arrest against them. Making reference of Section 439 (2) and Section 437 (5) the High Court held that the Magistrate could cancel bail under sub section 5 of section 437 of the Code if he had granted bail to the petitioners. As bail had been granted by the High Court to few accused persons and by the Court of Sessions to some other accused persons, the Magistrate had no jurisdiction to cancel the same under Section 437.(5) of the Code. See also ***State vs. Kamraj , 1967 Cut.L.T. 67, Dayanidhi vs. State, 1977 Cut.L.T.328*** and ***Pritam Singh vs. Ragbir*** A.I.R. 1944 Lah. 95 (96). However, the Magistrate can cancel a bail order passed by the Sessions Court or the High Court if such authority has been given by the superior courts in their order. We can make a reference of ***Champalal vs. State,*** A.I.R. 1956, Madhya Bharat p.103 (106)F.B. in which it was stated that the Magistrate would have power to cancel the bail if the High Court 's order granting bail to the accused satisfied that the grant of bail is only temporary and that it would be open to the Magistrate to cancel the bail at a certain stage in the proceedings on the fulfilment of certain conditions. In that case a direction in the order of the High Court granting bail to the effect that if at any time the Magistrate is satisfied that there are reasonable grounds for believing that the accused is tampering with the prosecution witnesses he would be at liberty to cancel the bail is not a direction delegating to the Magistrate the power of the High Court to cancel the bail.

The High Court by its order granting the bail had also exercised its discretion to cancel the bail in future on the ground of tampering with prosecution witnesses, leaving it to the Magistrate to determine the fact of tampering the prosecution witnesses, necessary for the High Court's direction with regard to the cancellation of the bail to become operative. The High Court by such an order while granting bail to the accused has also taken the decision to cancel the bail on the ground of tampering the prosecution witnesses and the High Court has itself laid down condition with regard to the operation of the order granting bail and its cancellation in future and everything which is to follow upon the condition being fulfilled.

Conditional orders of this kind are in many cases convenient and are certainly not unusual in matters relating to bail and it is within the competency of the High Court or the Court of Sessions to make such orders.

In this regard different cases may also be cited. Those are as under:

Mirza Mohammad vs. Emperor, A.I.R. 1932 All. 534 at p 536:Crown Prosecutor, ***Madras vs. N.S. Krishnan,*** AIR 1945 Mad 250 and ***Seoti vs. Rex.*** A.I.R. 1948 All 366 (FB).

Generally the problem which the Magistrates have to face is what is to be done if an accused who has been granted bail misuses his liberty and remains absent without a proper cause in a case pending before it. The net result is this that the Magistrate can cancel a bail if he has granted the bail or his

predecessor has granted the bail or a case which has been transferred from another Court is such that in which the Magistrate has granted bail . But if the bail was granted by superior court like that or Sessions Court or the High Court and even if the accused person commits breach of the order of the bail even then the Magistrate has no jurisdiction to cancel the bail. A situation may arise where due to continuous breach of the order of the bail the case does not proceed and the Magistrate finds himself unable to tackle with the problem because the bail order was from the superior court.

In such circumstances it is open to the Magistrate to report, submit, refer or state the case to the superior court. If the bail order is from the High Court the matter may be stated or submitted or referred or reported to the High Court and in case if an order is from the Sessions Court the matter may be stated or submitted or referred to the Sessions Court. The word refer has nothing to do with 'Reference' u/s 395 of the Cr.P.C. Those provisions of 'Reference' are quite different from stating the case or intimating the superior court regarding interruption of proceedings by the accused by remaining absent during the trial. It is true that the prosecution or the complainant may move the concerning court who granted the bail for cancellation of bail order but sometimes if the complainant or the prosecution does not move the concerning superior Court then the Magesterial Court is not helpless. If such intimation is given to the superior courts, the superior courts may exercise their powers for cancellation of bail u/s 439(2) Cr. P.C. Again in **AIR 1956 MB 103 (FB)** it was held that where bail is granted by the High Court under Section 439, it can in exercise of the inherent powers cancel the bail. Reference of A.I.R.1952 MB 189(FB) ***Champalal vs. State,*** **1991 Cr.L.J. 128** can be made. **In 1975 CR. L .J. 1348 (1349) (J&K)** it was held that there is no legal bar for the High Court to deal with an application for cancellation of bail u/s 497 or 498 (2) (Old Cr.P.C.) that is under Section 437 and 439 Cr.P.C. apart from exercising its jurisdiction under its inherent powers. In ***A.I.R.1952 MB 189*** above referred, in paragraph 5 of the judgment making reference to ***A.I.R. 1945 PC 94*** (***Jairam Das vs. Emperor***) it was held as under:

> " It is true there is under S. 498 no power to cancel bail as there is in section 497. But, if bail is granted by the Sessions Judge under S.498, the High Court can, as a Court to revision, cancel the bail. So also, where the bail is granted by the High Court under S. 498, the High Court can in the exercise of its inherent power saved under S. 561 A, cancel the bail, if facts are **BROUGHT TO** its notice which show that, unless the person so released on bail by it under S. 498 is re-arrested and taken into custody, the ends of justice will be defeated." .

High Court can suo motu initiate proceedings for cancellation of bail, in exercise of it's inherent powers. (1988) **3 Bom CR 466 (473) : 1989 Mah LJ 304.**

High Court has inherent powers to cancel bail granted to a person who by subsequent conduct forfeits his right to be released on bail. **1987 All. LJ 49 (53): 1987 All. Cri R 3.**

Where the accused who was released on bail under the provisions of old Code, was not facilitating proper conduct of the case, the High Court has powers under the new Code to cancel the bail. **1982 Cri, L.J. 2148; 1982 (2) 23 Guj LR 317.**

Such powers cannot be exercised by the Magistrate because it is clear from the above discussion that the Magistrate has no jurisdiction to cancel the bail. Section 439 (2) of the Cr.P.C.specifically states the powers of the High Court and the Court of Sessions. Since the powers cannot be exercised by the Magistrate the only way out to the Magistrate is to submit the proceedings stating the facts and the circumstances of the case.

In ***Bachchulal vs. State*** A.I.R. 1951 All 836 (838) it has been held that the inherent jurisdiction possessed by the High Court under this Section is not confined to cases pending before it but extended to all cases which may come to its notice under appeal, revision or OTHERWISE.

In ***Ramjatan vs. Bilas Yadav, 1974 B.L.J.R.653 (At p.656)*** it was held that in such matters powers of the High Court are not fattered and recourse can well be taken to the provisions of Section 382 of the Code and it will be atrocious to deny such a power to the High Court without glaring facts for cancellation of bail are BROUGHT TO ITS NOTICE. Therefore the Magistrate can also brought to the notice of the High Court by making submissions or reporting the facts of the case with reference to the conduct of the accused who puts the fair trial into jeopardy. It would be the primary and paramount duty of the criminal courts to ensure that the risk to the fair trial is removed and criminal courts are allowed to proceed with the trial carefully and without any interruption or obstruction and this would be equally true in cases of both bailable as well as non-bailable offences. **(Taluq Hazi Hussain's case, AIR 1958 SC 376).**

The next thing is generally the words bail order and the bail bonds are misconstrued.The bail order is totally different from bail bonds. If an accused person is absent and the Magistrate thinks it proper to forfeit bail bonds then he can do so. He can also cancel the bail if he had granted it. But forfeiture of bail bond is purely u/s 446 of the Cr.P.C. After forfeiture of bail bond the Magistrate has jurisdiction to issue a warrant of arrest u/s 89 of the Cr.P.C. even though the bail order is from a superior court .Section 89 of the Cr. P.C. states as under:-

" S. 89: Arrest on breach of bond for appearance:-When any person who is bound by any bond taken under this Code to appear before a Court, does not appear,the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him."

In ***Dayanidhi vs. State*** 1977 Cut L.R., it has been held that the power to re-arrest and commit the accused to custody is an inherent power possessed by every court. If in pursuance of warrant under Section 89 of the Cr. P.C. the accused is produced before the Magistrate the accused may insist for releasing him on furnishing bail bonds as per the previous order of bail which is not cancelled by the superior court and the Magistrate is bound to release him after the accused has furnished bail bonds u/s441 Cr.P.C. It may be due to oversight or inadvertance or for any other reason, sometimes it happens that the Sessions Court exercising the powers u/s 439 of the Cr. P.C. does not pass a conditional order particularly in cases .triable by Magistrates and blanket order passed by the Sessions Court and indirectly allows the accused to delay the proceedings and prolong the litigation and comfortable to remain absent in the trial Court

because the bail order is generally not cancelled and concerning superior court is not moved for cancellation of that order.Therefore the safest course for the Sessions Court is that while allowing the bail, particularly in cases triable by Magistrate following few sentences may be added to the order granting bail is passed. By this the Magistrate is safe from procrastination and prolong procedure. After passing the bail order the Sessions Court may in addition to other terms and conditions u/s 437 (3) and/ or 438 (2) direct the Magistrate as under:

" That if the accused fails to attend in the trial court without any proper reasons and Magistrate orders for cancellation and forfeiture of bail bond then in that case the accused shall have no right to claim bail on the strength of this bail order and this bail order shall stand automatically cancelled, ineffective and without any force. The Magistrate would be free to consider fresh bail application of the accused if he so chooses to file."

To conclude this subject it is submitted that if an accused who has been granted bail misuses his liberty and absents himself without proper cause in a case proceeding before a Court that Court has inherent jurisdiction to cancel the bail previously granted by it. (***Peepath Ram Vs. State*** AIR1954 All, 671). If the bail order is from the High Court or the Court of Sessions then Magistrate can only cancel the bail (and not the bail order). Any other Court cannot cancel bail granted by those Courts. But a Magistrate would have the power to cancel bail if the High Court's (or Session's Courts) order granting bail to accused satisfies that the grant of bail is only temporary and that it would be open to the magistrate to cancel the bail at a certain stage in the proceedings or on the fulfilments of certain conditions. **(See AIR 1956 MB 103 (FB)** and other rulings quoted above with this ruling.)

Kindly go through the article "Cancellation of bail in bailable offences" appeared in 'JOTI JOURNAL' Vol. II Part VI December 1996 issue page No. 10 for continuity of views on this topic.

●

JINGLE

Good, better, best
Never let it rest
Till your good is better
and your better best
Do some better than the best

TEXT AND IMPORTANT NOTIFICATIONS U/Ss 9, 10 AND 11 OF THE MADHYA PRADESH CIVIL COURTS ACT, 1958

Sec. 9. Power to invest certain Civil Courts with Small Cause Court Jurisdiction-

(1) The High Court may , by notification, invest any Court of a District Judge or an Additional District Judge or a Civil Judge (Class 1) or a Civil Judge (Class II) with the powers of a Court of Small Causes under the law for the time being in force in any area relating to Courts of Small Causes. Such power shall be exercised in cases arising within the limits of the Court's jurisdiction or in any specified area within such limits.

(2) The value of suits of small cause nature shall not exceed One Thousand Rupees in the case of the Court of a District Judge or an Additional District Judge, five hundred rupees in the case of the Court of a Civil Judge (ClassI) and two hundred rupees in the case of the Court of a Civil Judge (Class II).

NOTIFICATION

The Madhya Pradesh High Court vide notification No.13 published in M.P. Gazette dated the 1st January, 1959, invested the courts to try suits of Small causes nature as follows:-(i) all Courts of the District Judge with the powers of a Court of Small Causes for the trial of suits cognizable by such Courts and not exceeding Rs. 1,000 in value,(ii) all Courts of the Civil Judges(Class I) with the powers of a Court Small Causes for the trial of suits cognizable by such Courts and not exceeding Rs.500 in value, and (iii) all Courts of Civil Judges (Class II) with the powers of a Court of Small Causes for the trial of suits cognizable by such Courts not exceeding Rs. 100 in value, arising within the local limits of their respective jurisdiction of each such Courts.

The District Judge has jurisdiction to decide any regular suit or original proceedings of any value, but so far suits of Small Cause nature are concerned his powers are limited to Rs. 1000/- only. The powers of Additional District Judge are the same as of the District Judge.

Sec. 10. Exercise of jurisdiction of District Court by Civil Judges in certain proceedings.-

1. The High Court may, by general or special order, authorise any Civil Judge (Class I) to take cognizance of and any District Judge to transfer to a civil Judge (Class I) under his control, any proceeding or any class of proceedings, specified in such order, arising under.-
   (a) Parts I to VIII of the Indian Succession Act, 1925 (Act No.XXXIX of 1925); or
   (b) Part IX of the Indian Succession Act, 1925 (Act No. XXXIX of 1925) which cannot be disposed of by District Delegates;or
   (c) The Guardians and Wards Act, 1890 (Act No. VIII of 1890); or
   (d) The Provincial Insolvency Act, 1920 (Act, No. V of 1920).

(2) Notwithstanding anything contained in section 388 of the Indian Succession Act, 1925 (Act No. XXXIX of 1925) the High Court may, by general or special order, invest any judge inferior in grade to the District Judge with power to exercise the functions of a District Judge, under Part X of that Act.

(3) The District Judge may withdraw any such proceeding taken cognizance of by or transferred to, a Civil Judge (Class I) under his control, and may either dispose it of himself or transfer it to any other competent court.

(4) Proceedings taken cognizance of by, or transferred to a Civil Judge (Class I) under this section shall be disposed of by him in accordance with the law and rules applicable to like proceedings in the Court of the District Judge

NOTIFICATIONS

The State Government, in exercise of the powers conferred by sub-section (i) of section 388 of the Indian Succession Act, 1925, vide notification No. II-7375-XI-B-58 published in the Madhya Pradesh Gazette dated the 1st January. 1959, has invested from 1st January, 1959, all Courts of the Civil Judges (ClassI) in Madhya Pradesh with the functions of a District Judge under Part X of the Indian Succession Act, 1925 (Act No. XXXIX of 1925).

Powers under the Guardian and Wards Act, 1890 (Act No. VIII of 1890).-

The High Court of Madhya Pradesh, in exercise of the powers conferred under (Section 10 of this Act). - read with section 4-A of the Guardians and Wards Act 1890, vide notification No. 17, published in the M.P. Gazette dated the 1st Junuary,1959 has authorised(i) all District Judges to transfer to Civil Judges Class I under their control any proceeding or any class of proceedings arising under the Guardians and Wards Act, 1890, and (ii) Civil Judges,ClassI in Madhya Pradesh to take cognizance of such proceedings transferred to them by the District Judge.

Powers under the Provincial Insolvency Act. 1920 (Act No. V of 1920).-

The M.P. Government vide notification No. 9-7375-XXXI-B-58,published in M.P. Gazette dated 1st January, 1959, exercising the powers conferred by section 3 of the Provincial Insolvency Act, 1920 (Act No. V of 1920) has invested from 1st January, 1959,. all Courts of Civil Judges (Class I) in Madhya Pradesh with jurisdiction in all cases under the Provincial Insolvency Act, 1920 within the local limits of their respective jurisdiction.

Again the M.P. Government vide notification No.10-7375-XXI-B-58 published in the M.P. Gazette, dated 1st January, 1959, exercising the powers conferred by section 59-A of the Provincial Insolvency Act, 1920 (Act No. V of 1920) has laid down that from 1st January, 1959 all District Courts and the Courts of the Civil Judges(Class I) in Madhya Pradesh exercising insolvency jurisdiction, shall exercise the powers under the said section.

Powers under the Hindu Marriage Act, 1955.-

The M.P. Government , vide notification No. 36802-11386/XXI-B, dated 7th Decmber , 1960 published in M.P. Gazette dated 23rd December, 1960, has declared that all the Courts of the Additional District Judge shall have jurisdiction in respect of the matter under the Hindu Marriage Act,1955.

11. Jurisdiction under the Indian Divorce Act.-

The Court of the District Judge and the Court of the Additional District Judge shall have jurisdiction to hear and determine any original proceeding under the Indian Divorce Act, 1869(Act No. IV of 1869) and shall be deemed to be the District Court under that Act for the Civil District.

NOTE

For original Proceeding refer A.I.R. 1950 Nag. 115=1949 N.L.J 588 ***Jagannath V/S Gulab Singh.***

M.A. NO. 186/95

SAURABH KUMAR SHUKLA Vs. HUKUM CHAND AND OTHERS

Unreported reference judgment dated 29.7.1997 by Division Bench of M.P. High Court, Jabalpur presided over by Hon'ble Shri Justice S.K. Dubey and Hon'ble Shri Justice Rajeev Gupta.

This appeal under Section 173 of the M.V. Act 1988 arises out of an order passed on 6.12.1994 in Claim Case No. 71/92 by M.A.C.T. Hoshangabad, whereby the application under Section 140 of the Act, for grant of quantified fixed amount under Section 140 of the Act for the fracture of Right 4th and 5th metacarpals received by the applicant in an accident, was dismissed holding that appellant has not suffered permanent disability as defined in section 142 of the Act.

The appeal came up for hearing before Hon'ble Shri Justice R.P. Awasthy who did not concur with the view taken by Hon'ble Shri D.M. Dharmadhikari in ***Mahendra Prasad Mishra Vs. Mohammad Sabir and another*** (1994 ACJ 942) that fracture of bones in a motor accident can be called "privation of any member of joint". Hon'ble Awasthi, J. was of the opinion that the words "privation of any member or joint" appearing in clause (a) of section 142 means loss of any member or joint.

Para 11 to 19 are reproduced here for the perusal of the judicial officers which are as under :-

11. Before a relief is granted the Tribunal has to prima facie satisfy whether injury suffered by a victim of motor accident has resulted in permanent disablement. The word permanent has been used as adjective to disability. The dictionary meaning in the sense is 'lasting or meant to last indefinitely.'

12. The expression 'disability' is defined by webster's New International Dictionary. English Language, Part I, of 1890 and 1900 Edition, at page 632, thus :

> "Disability" 1. State of being disabled: deprivation or want of ability; absence of competent physical, intellectual, or moral power, means, fitness, or the like, an instance of such want or deprivation."

13. The Randum House Dictionary of the English Language, the Unabridged Edition, deals with 'disability' at page 408 thus :

> "Disability" 1. Lack of competent, power, strength, or physical or mental ability; incapacity 2. a permanent physical flaw, weakness, or handicap, which prevents one from living a full, normal life or from performing any specific job. 3. the state of condition of being disabled."

14. When a bone breaks, a fracture is said to occur. Fractures are breaches in structure of bones produced by violence. There are various varieties or forms of fractures. Black's Medical Dictionary Edited by C.W.H. Havard, 36th Edn. deals with fractures from page 283. Varieties are : simple fracture, compound or open fractures, complete fractures, incomplete fractures, fissured fractures, depressed fractures, complicated fractures, comminuted fractures, impacted fractures, ununited fractures, malunited fractures. The reference related to simple fracture. Simple fractures form the commonest variety, consisting of those in which the bone is broken,

with or without much laceration of the surrounding parts, but, in which there is no wound leading from the fracture through the skin. [see Black's Medical Dictionary (supra) at page 283].

15. The fractures resulting from automobile accident just like other fractures necessarily require some forces to break the bone. In automobile accident some rashness and negligence is often the background of multiple fractures and crush injuries. So all these fractures are considered all the more seriously. On civil side, a fracture involving a joint invariably leads to compulsory privation of the joint for a variable period which is a factor to be considered in assessing the compensation for the period. The disability and assessment varies from fracture to fracture. It also depends on the site of fracture and age of the patient. The disability is mainly determined by defect in locomotion, gait or postural defect. This mainly depends on the joints involved as well as the period of immobilisation. (see medical Jurisprudence, Fourth Edition, by V.B. Raju, page 349, 359, and 360)

16. "Permanent Disability" is not a purely medical condition. A patient is 'permanently disabled' if under a permanent disability when his actual or presumed ability to engage in gainful activity is reduced or absent because of "impairment" and no fundamental or marked change in the future can be expected. Physcial impairment is purely medical condition. Permanent physical impairment is any anatomical or functional abnormality or less after maximum medical rehabilitation has been achieved and which abnormality or loss the physician considers stable or non-progressive at the time the evaluation is made. Thus, permanent disability applies to permanent damage or to loss of use of some part of the body after the stage of maximum improvement from orthopaedic or other medical treatment has been reached and the condition is stationary.

17. When a Court considers a prayer for grant of relief under section 140 of the Act an injury resulted in fracture of bones simplicitor, it has certainly to record a prima facie finding whether such fracture or privation of a member of joint has resulted in permanent disablement or not. If the Court is prima facie satisfied on the material produced by the claimant that the fracture of bone has resulted in any permanent disablement, i.e. permanent privation of the sight of either eye or the hearing of either ear, or privation of any member of joint certainly the compensation under section 140 of the Act will be granted. But from prima facie satisfaction if simple fracture does not show any permanent disability as defined in section 142 the claimant would not be entitled to the relief. In such a case he would be entitled to relief on proving the disbaility at the final adjudication. To award compensation under section 140 of the Act, the resultant effect of the fracture should be permanent disablement which is the sine quo non for award of compensation. If the injury is simple fracture only without anything more as contemplated in section 142 of the Act, person receiving such injury would not be entitled to compensation under section 140 of the Act.

18. Before parting with the reference we may say that grant of relief will depend on the facts and circumstances of each case, nature and form of the fracture and its resultant effect. No hard and fast rule can be laid down. If the requirements of section 140 are prima facie satisfied certainly the Court would grant the relief under section 140 of the Act.

19. Accordingly the reference is answered. Let the records be placed before the appropriate Bench to decide the appeal on merits since learned referring Judge has demitted the office.

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CRIMINAL APPEAL NO. 787/1988 JABALPUR BENCH DT. 24.7.1997
SUKHLAL VS. THE STATE OF MADHYA PRADESH
SEC. 302, SEC. 304 R/W EXCEPTION 1 OF 300 IPC

(The Judgment is yet to be published in any other magazines.)

Facts of the Case

The appellant along with his wife Sonkunwar deceased and the child were going on 12-5-1986 to the bank of the river for fishing purpose. On way altercation took place between two and during the altercation, the deceased slapped the accused across the face. On this, the accused took out his bow and shot an arrow on the chest of the wife and she was killed.

The Division Bench of the M.P. High Court headed by Hon'ble Shri Justice S.K. Dubey and Hon'ble Justice Shri Rajeev Gupta in its Judgment held in page 9 that in the present case, the accused and the deceased were illiterate and rural rustic. Their way of life in which they live was of tribals with the traditional values in the back ground of the society. Tribals commonly keep bow and arrow or tangia with them in their dwelling places and whenever they go out, they keep bow and arrow with them and tangia for cutting wood. The accused and the deceased were living ambicably. On day of occurrence, both left their house with their child for fishing. On way altercation and quarrel took place. The deceased slapped the accused, at that juncture, the accused under the immediate impulse of grave and sudden provocation lost the self control, took out his arrow and shot it so as to inflicit injury on the deceased. The act was not premeditated, nor from the circumstances, there was any intention to kill his wife. In the circumstances, principle, test of grave and sudden provocation, whether a reasonable man belonging to the same class of society, as the accused, placed in the situation, in which the accused was placed, would be so provoked as to lose his self-control, and the provocation must be such as would upset not merely a hot tempered or highly sensitive person but one of ordinary calmness is attracted. Therefore, the appellant is entitled to benefit of Exception I to Section 300 I.P.C. the offence committed by him will not be a case of murder but a case of culpable homicide not amounting to murder. Therefore, we convict him under Section 304, Part I instead of Section 302 of the Indian Penal Code.

Cases referred in the Judgment :-

A.I.R. 1966 Kerala 258 Madhavan Vs. State. A.I.R. 1962 SC 605, K.M. Nanavati Vs. State paras 84 and 85 at page 629.

Please also refer to ***Sharif Khan Vs. State on M.P.*** 1997 (2) Page 74.

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CRIMINAL REVISION NO. 225/97 N.D.P.S. CASES : RIGHT TO WITH DRAW AND TRANFER CASES
ALPESH VS. CENTRAL NARCOTICS BUREAU, RATLAM AND TWO OTHER CASES. INDORE BENCH DT. 14.7.1997

(Yet unpublished in any other monthly magazine)

Two Criminal Revisions and one Misc. Criminal case was disposed of by order dated 14.7.1997 by M.P. High Court Indore Bench. The Single Bench

headed by Hon'ble Shri Justice N.K. Jain held as under :

Facts of the case relating these cases were that :

The complaints were filed before the respective Courts of Sessions as the Special Courts under Section 36 of the N.D.P.S. Act. The Sessions Court exercised powers under the tansitory provisions of Section 36 (d) but later on Special Courts were constituted by the M.P. High Court. The cases were then transferred to the special judges as per the directions of the High Court. The parties challenged the orders on the ground that their cases cannot be transferred to the special judges by the Sessions Judges because they have taken cognizance of the offence in view of Section 36 (2) of the N.D.P.S. Act.

The High Court held that :

A special Court/Sessions Court, may upon perusal of police report of the facts constituting an offence under the N.D.P.S. Act or upon a complaint made by an officer of the Central Government or a State Government authorised in this behalf, take cognizance of that offecne without accused being committed to it for trial. The trial of the cases under the Act would be like that of a Sessions cases accordance with the procedure laid down under chapter XVIII of the Cr.P.C. (vide Sec. 36 D). Under this scheme the Judge trying a case under the Act has hardly any occassion to apply his mind for the purpose of taking cognizance of the offence unless stage is reached for framing of charge. However, when he applies his mind not for the purpose of proceeding under chapter XVII of the Code but for taking action of some other crime e.g. remanding the accused, order investigation or considering application for bail, it was observed by the Apex Court in ***Gopal Das. Vs. State*** **A.I.R. 1961, SC 986** "cannot be said to have been taken cognizance of the offence".

It was further held that the sessions Courts trying offences under the transitory provision of Sec. 36 D of the N.D.P.S. Act, Can be said to have taken cognizance thereof only when they have applied their mind for the purpose of framing of charge. In the instant cases, that stage was not reached and it cannot be thus said that the cognizance of the offence has been taken by the Sessions Courts. Order for transfer of cases to Special Courts under the circumstances, were fully justified in law and no interference was, therefore, called for by the High Court in revision.

Please refer :-

R.R. Chari Vs. State, A.I.R. 1951 SC 207, Tulsiram Vs. Kishore, A.I.R. 1977 SC 2401, Anil Sharma Vs. State (1995) 6 SCC 142, V.C. Shukla Vs. State 1980 SC 1382 and Dagdu Vs. Punjab, A.I.R. 1937 Bombay 55.

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CLAIM CASE UNDER SEC. 110-AA OLD AND 167 (NEW) M.V. ACT
MISC. APPEAL NO. 726/96 JABALPUR BENCH DT. 16.7.1997
ORIENTAL INSURANCE CO. LTD. VS. GAURIBAI AND OTHERS
THE JUDGMENT WAS DELIVERED BY HON'BLE JUSTICE R.S. GARG

(Yet unpublished in any other monthly magazines)

The widow Gauribai and other heirs filed a claim petition in the Tribunal. Mehtaruram, husband died on 2.9.1992. He was working in Bhilai Steel Plant. The Vehicle was insured with the appellant. the vehicle was being driven rashly and negligently. The deceased met with an accident and died. The claim petition was filed. The petition was challenged inter alia on the ground that under the

workmen's compensation Act, the amount of compensation was deposited by the employer and therefore a claim petition in the Claim Tribunal is not tenable. It was also alleged that the claimant respondent has withdrawn that sum from the competent authority. While referring to various citations the High Court held that the Claim petition was filed first in time and the employer in exercise of the statutory application deposited the sum before competent authority. Therefore the contention of the appellant was totally rejected and it was held that the claim is maintainable.

It was further held that it is clear that the claimants had exercised their option under Section 110-AA of the Motor Vehicle Act by lodging the claim before the Accident Claim Tribunal on 4.12.1992. Any subsequent act of theirs for receiving the compensation deposited by the employer of the deceased would not destroy the option exercised by them nor would create an embargo or impediment in their right of claiming the compensation before the Claim Tribunal. Even otherwise, it has to be held that if the employer in discharge of his statutory obligation makes a deposit of the compensation amount under Section 4 of the Workmen's Compensation Act and the claimants who are entitled to file a claim petition under the Motor Vehicles Act, wihtdraw the amount deposited with the Commissioner, their right to lodge the claim before the Claims Tribunal is not at all impaired.

In paragraph 14 of the Judgment it is stated as under:

In the instant case, as found by the trial court, the claim petition was filed on 4.12.92, application for deposit was made before the Commissioner by the employer on 23.4.93. It appears that on 23.4.93, sum of Rs. 58,480/- was already deposited by the employer with the Commissioner workmens Compensation. The claimants after receiving the knowledge of the said deposit, filed an application before the Commissioner appointed under the workmen's Compensation Act for disbursement of the said amount. It is not the case of the present appellant that no amount was deposited by the employer and the claimants were forced to recover the amount from the employer. The claimants had already exercised their option by filing the claim petition before the Claim Tribunal on 4.12.1992. Assuming that Section 3(5) (a) of Workmen's Compensation Act applied with full force, at best the amount deposited by the employer could not have been given to the claimants, but deposit of the amount on 23.4.93 with the Commissioner would not hinder or affect the option already exercised by the claimants on 4.12.1992.

Case referred :-

N.N. Kashyap Vs. Ratti Ram and others, 1986 ACJ 484 ***New India Assurance Co. Ltd. Vs. Kamar Jahan and others*** 1994 ACJ 100, ***Harivadan Vs. Chandrasinh,*** A.I.R. Gujrat 69.

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TIT BITS

1. POWER OF THE COURT TO PUT QUESTIONS TO WITNESS
A.I.R. 1997 SUPREME COURT 1023
STATE OF RAJASTHAN VS. ANI ALIAS HANIF

Reticence silence may be good in many circumstances, but a judge remaining mute during trials is not an ideal situation. A taciturn Judge may be the model caricatured in public mind. But there is nothing wrong in his becoming active or dynamic during trial so that criminal justice being the end could be achieved. Criminal trial should not turn out to be about or combat between two rival sides with the judge performing the role only of a spectator or even an umpire to pronounce finally who won the race. A judge is expected to actively participate in the trial, elicit necessary materials from witnesses at the appropriate context which he feels necessary for reaching the correct conclusion. There is nothing which inhibits his power to put questions to the witnesses, either during chief examination or cross- examination or even during re-examination to elicit truth. The corollary of it is that if a judge felt that a witness has committed an error or a slip it is the duty of the judge to ascertain whether it was so, for , to err is human and the chances of erring may accelerate under stress of nervousness during cross--examination. Criminal justice is not to be founded on erroneous answers spelled out by witnesses during evidence collecting process. It is a useful exercise for trial judge to remain active and alert so that errors can be minimised.

The Suprenme Court also referred to the judgment in ***Ram Chander vs. State of Haryana,*** A.I.R. 1981 SC 1036 in which it was stated that:

" The adversary system of trial being what is, there is an unfortunate tendency for a judge presiding over a trial to assume the role of a reference or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive elements entering the trial procedure. If a Criminal Court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth."

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2. MURDER: APPRECIATION OF EVIDENCE
AIR 1997 SC 1160
SATBIR VS. STATE OF HARYANA

It is common knowledge that villagers go to cultivate their lands in the early morning and therefore there was nothing unusual in PW- 10"s carrying the meals at or about 8 a.m. for their consumption sometimes later. We cannot also lose sight of the fact that it was the peak of the summer then and therefore it was not unlikely that to avoid heat the family members had sent the young girl in the morning so that she could return home early.

The other comment the High court made about her testimony was that as she was not a resident of the village and occasionally came there she was not expected to be acquainted with the villagers. This comment is based on the fact that she failed to recognise three of the accused persons, namely, Subh Ram,Udey Ram and Suresh Kumar in the test identification parade that was held by a Magistrate (DW-1). This comment of the High Court is also not a proper one for, out of the above three Udey Ram and Suresh Kumar were accused of conspiracy and not of rioting and murder, to which only she was a witness; and when she had failed to identify one of the nine accused the benefit can go only to the person not identified, namely Subh Ram, and not others.Having gone through her evidence we find no reason to disbelieve her more so when we find that nothing was elicited in cross-examination to discredit.

The High Court disbelieved the ocular evidence also on the ground that medical evidence contradicted it so far as assault on Bir Singh was concerned, in that, where as the eye witnesses claimed that Balwant Singh assaulted Bir Singh with a pharsa, a sharp edged weapon, the injuries that the doctor found on his body could be caused by blunt weapons only. In the facts of the instant case this finding of the High Court is, in our view, wholly untenable.The High Court ought to have appreciated that in an incident where a number of persons assaulted three persons at one and the same time with different weapons, some contradictions as to who assaulted whom and with what weapon, were not unlikely and such contradictions could not be made a ground to reject the evidence of eye-witnesses, if it was otherwise reliable. If in the instant case no incised wound, which is caused by a sharp edged weapon, was found on the body of any of the victims it might have made the prosecution case suspect but, as earlier noticed, the other two victims hade incised wounds on their persons.

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3. MOTOR VEHICLE ACT: LEGAL REPRESENTATIVES : THEIR RIGHT TO CONTINUE THE ACTION
1997 (PT. 1) JLJ 74
CHANDRAKANTH VS. MUKESH

The principle actio personatis moritum cum persona (a personal claim dies with person- cannot bar right to sue claim by the legal representative).

Delay in substitution of legal representatives in place of deceased appellant may be condoned as provision under Section 166 (3) prescribing 6 months limitation for filing a claim petition under Section 166 (1) has been removed.

Application for compensation under Section 166 (1) or appeal under Section 173 of M.V.A. provisions regarding abatement contained under Order 22 Rule 3(2) and Rule 4 (3) are not applicable. The application or appeal does not abate L.Rs. may be substituted at any time. Reference was made to ***Chuharmal vs. Haji Wali*** 1968 JLJ 1013.

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4. SECTION 166 MOTOR VEHICLE ACT (LIMITATION)
1997 PART I MPLJ 230
HEMA PANDEY VS. SAROJ SINGH

The claim petition was filed on 21.3.1990 and was dismissed on 2.3.1993.Claim barred by limitation. But the M.P. High Court in above stated case gave effect to the principle laid down there in ***Dhannalal vs. T.P. Vijay Vargeeya*** 1997 Part I MPLJ 195 in which Supreme Court held that the deletion of sub section 3 of Section 166 of Motor Vehicle Act of 1988 by section 53 of the Motor Vehicles Amendment Act of 1994 with a result that there is no limitation for filing claims before Tribunal in respect of an accident. it does not appear that the omission of Sub section 3 has been done retrospectively.But at the same time there is nothing in the Amending Act to indicate that benefit of omission/ deletion of Section 166(3) is not to be extended to pending cases where a plea of limitation has been raised. In this background, the deletion of sub section 3 from Section 166 should be given full effect so that the object of deletion of the said Section is not defeated.If a victim of the accident or heirs of the deceased victim can prefer claim for compensation although not being preferred earlier because of the expiry of the period of limitation prescribed, the victim or the heirs of the deceased shall be in a worse position if the question of condonation of delay in filing the claim petition is pending either before the Tribunal, High Court or the Supreme Court. The matter will be different if any claimant having filed a petition for claim beyond time which has been rejected by the Tribunal or the High Court, the claimant does not challenge the same and allows the said judicial order to become final . The aforesaid Amending Act shall be of no help to such claimant , the reason being that a judicial-order saying that such petition of claim was barred by limitation has attained finality. But that principle will not govern cases where the dispute as to whether petition for claim having been filed beyond the period of twelve months from the date of the accident is pending consideration either before the Tribunal, High Court or Supreme Court. In such cases, the benefit of amendment of sub- section(3) of section 166 should be extended..

Please refer to case 1996 JLJ 448 ***Narendra Singh vs. Gulab Bai*** in which same principle was applied. It was held that Section 166 (3) of the Motor Vehicle Act is procedural law and applies retrospectively. Now there is no limitation to file claim petition. Claim petition filed when bar was operative cannot be dismissed. Subsequent change to be taken into consideration.

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5. EVIDENCE ACT SECTIONS 60 AND 45 :MAGNIFING INCEDENT
1997 (PT. 1) JLJ 259
RAM KISHORE VS. STATE

Witnesses deposing that some injured were unconscious. Doctor stating that all injured persons were in a fit condition to speak. The injured persons sustain previous injuries. They could have still regained consciousness. It is not a contradiction between eye witnesses and medical witnesses.

Medical Evidence:- No defence questions asked from any witness. Medical evidence cannot be objected to by surmises,.Not a single question was put to any of the witnesses who had accompanied with the victim to suggest that Thakurudin had a fall from the tractor. Therefore the contention that the medical evidence does not support the evidence of the eye witnesses has no merit.

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6. SECTION 227 AND 228 OF THE CR.P.C.
IMTIAZ AHMED VS. STATE OF M.P. 1997 (1) JLJ 373

The exercise of framing of charges against the accused is an important step in criminal trial. It is neither more observing of a formality nor a mechanical process. Rather the order, directing framing of charges, is pretrial judicial pronouncement of the existence of a prima facie case against the accused for making him to face trial on a particular charge. It substantially affects his liberty. Though it is not always necessary that the order, derecting framing of charges, should be a detailed one but the application of mind, by the trial Court, to the allegations and amterial against the accused should always be apparent from such an order. AIR 1996 SC 1744 was followed. Ss. 227 and 228 charge can only be framed on the basis of material available against an accused. No material available against co-accused can be relied upon to frame a charge. offence involving more than one accused. Court should evaluate material against each accused. AIR 1996 SC 1774 was followed.

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7. RECORDING DYING DECLARATION : DIRECTION BY THE DISTRICT MAGISTRATE TO DOCTOR NOT LEGAL
M.P. MEDICAL OFFICERS ASSOCIATION AND OTHERS VS. STATE OF M.P. 1997 (1) JLJ 362

The District Magistrate issued directions to the Doctors directing them to record dying declaration. This order of the District Magistrate was challenged by the applicant by way of PIL. The High Court held that the primary duty of recording dying declaration is that of the Executive Magistrates. The administrative order of the Hon'ble High Court issued, on 18.7.1975 was Considered.

Further, the dying declarations are normally recorded by the Magistrate under the provisions of Section 164 of the Code of Criminal Procedure. Only when the Magistrate is not available, such statements in the nature of dying declaration are recorded by the attending doctor. The recording of dying declaration by the Magistrates has been awlays advised and directed with a view to make the statement authentic. The Apex Court in the case reported in AIR 1976 SC 2199 had directed that the police should requisition the services of the Magistrate for recording the dying declaration. The authenticity of the recording of dying declaration has been emphasised in the case reported in AIR 1958 SC 22. The power of District Magistrate under the Code of Criminal Procedure is only for distribution of business among the Magistrates. The impugned order is not within the scope of distribution of business rather it violates the established principle of law as emphasised by the Apex Court from time to time and also as intended by the legislature under Section 164 Cr.P.C.

The powers of District Magistrate are difined in Section 17 of the Code of Criminal Procedure only for distribution of business. In view of Section 20 of the Cr. P.C., it was not within the power of the District Magistrate to give directions in this respect against the statutory provisions and established law. The purport of order dated 19.11.1996 (Annex P/1) passed by the District Magistrate is not in the nature of recording of dying declaration by the doctor when the Executive Magistrate is not available but it emphasised that only doctors to record the dying declaration and Executive Magistrates should be prohibited. This could not be done by the District Magistrate and the same was not within his power. Now, the purport of the order should have been that when the Executive Magistrate is not available for unavoidable reasons, only then the attending doctors could record a dying declaration. The impugned order, therefore, suffers from this infirmity and could not stand.

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8. COMPROMISE UNDER SECTION 145 CR. P.C. -
KISHORE MEHTA VS. STATE OF M. P. 1997 (1) JLJ 367

There was a compromise between parties to the proceedings under Section 145 of the Cr.P.C. but the Executive Magistrate not only recorded the compromise but decided to assign shares between parties to the proceedings. It was held that the Sub Divisional Magistrate may consider and compromise the case under Section 145 Cr. P.C. and has also jurisdiction to drop proceedings but has no jurisdiction to allot the property to various persons. Such function is that of the Civil Court.

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9. CANCELLATION OF BAIL
1988 MPLJ 759
KALYANSINGH VS. STATE OF M.P.

One Dipak aged 10 years was allured away and kidnapped. The F.I. R.was lodged under Section 363 of the IPC relating to kidnapping from lawful guardianship. The case was registered only under Section 363 of the IPC. On investigation it was found that certain letters demanding ransom and containing threat that the kidnapped would be done away with if the amount demanded was not paid, were recovered from the grandfather of the victim whereupon, the offence was converted into one under Section 365 of the IPC. The accused persons having been apprehended they were let out on bail by the Magistrate. The singular reason which prevailed in the mind of the Magistrate was that the offence with which the accused were charged was not one punishable with life imprisonment or death.Later on the bail was cancelled by the same Magistrate under Section 437 (5) of the Cr.P.C..It was held by the High Court that accused when granted bail were accused of offence under Section 365, Indian Penal Code. Later investigation pointing to more heinous crime under section 364, Indian penal Code . Bail cancelled and accused not surrendering as per earlier order granting bail. Order of cancellation held justified. Considerations which prevail with a Judge granting bail at an earlier point of time when the accusation was of comparatively minor and less heinous offence different from the

consideration which would prevail in the mind of the Judge when the question of enlarging an accused on bail in connection with the comparatively more serious offence is posed before him.

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10. BAIL : CONVERSION OF OFFENCE, EFFECT

On conversion of offence, amount of sureties should fixed on his making application before Session Court and applicant in the meantime shall continue to remain on same bail which was granted to them earlier and shall not be arrested on account of same crime been converted to S. 307, IPC also. **1989 UP Cri R 394 (1) (394) (All).**

(See also 1990 U.P. Cri LR 80 (All), 1988 All LJ 1360 (1361): 1988 All WC 1355.)

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11. BAIL: POWER TO REARREST BY POLICE

Unless the bail granted to the accused is cancelled by a competent Court, the police cannot rearrest the accused, already released on bail, merely because the facts after investigation disclose some other offences which were not made out at the time the accused was released on bail. **1988 Cri LR (Raj) 650 (652).**

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12. BAIL: JUDICIAL DISCIPLINE

Where application for bail was pending before High Court and successive application of accused for bail was allowed by Sessions Court the order is liable to be cancelled in order to maintain judicial discipline. **1990 All Cri R 576 (579) 1990 Cri LJ 1894 (1897, 1898): 1990 All WC 1097.**

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13. NON EXAMINATION OF I.O.
1985 CR.L.J. 1406
VASANTH SINGH VS. STATE OF BIHAR

If investigating Officers not examined, prejudice to the accused as claimed by the defence has to be considered and looked into and even after perusal of the diary, so permitted, the element of prejudice persists, benefits should be given to the accused of course depending upon the facts and circumstances of each case

It is true, the Investigating Officer is an important witness, but cannot be substituted for an inevitable witness. If on account of certain compelling circumstance his attendance could not be procured, the extent of impact upon the prosecution case on account of absence of the Investigating Officer shall depend upon the facts and circumstances of each case

Non- examination of the Investigating Officer will not make the place of

occurrence vague and doubtful because the evidence of the witness are sufficient to fix the place of occurrence as unfolded by the prosecution. Moreover , in the facts and circumstances of the case, no exception or exoneration can be awarded to the appellant Bhagwan Singh for any justification for the use of the gun.

Absolutely, no contradiction has been pointed out and thus no case of prejudice has been made out in absence of the examination of the Investigating Officer and, therefore, non- examination of the Investigating Officer cannot said to have prejudiced the defence to the extent that the allegations directed against appellant Bhagwan Singh has to be rejected.

Please refer to **AIR 1946 Patna 127, AIR 1954 SC 51 and AIR 1980 SC 873**,1996 SCC. 317 ***Bihari prasad VS State of Bihar***

(See J.O.T.I. VOL. II Part III June 1996).

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14. CONFISCATION OF VEHICLE BY FOREST OFFICER

AIR 1997 SC 301

STATE OF M.P. VS. SWAROOP CHAND

Reversing the judgment of M.P. High Court published in A.I.R. 1984 M.P. 7 the Supreme Court held as under:

The case relates to M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam 1969. Truck No. 9491 was seized which was carrying 22 logs of timber. The timber was also seized . The case was compounded by the others and the compounding fees of Rs. 1,000/- was charged to the driver. The seized truck was not produced before the criminal court. No Charge Sheet was laid before the Court. It was argued that the confiscation of truck was without authority of law. The Supreme Court in para 6 and 7 of the Judgment stated that M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam 1969 was made with a view to prevent illicit transportation of the forest produce or the specified forest produce and seizure and confiscation have been provided for, could it be said that the Legislature intended to exclude the confiscation of the container, i.e., vehicle or receptacles or boats, carts or tools used for carriage of the specified forest produce, i.e., content in contravention of the provisions of the Act? The answer is obviously no.

In our view , the High Court was clearly in error in reaching the conclusion that there is no such provision under the Forest Act .It is seen that the Act occupies the field in respect of the specified matters enumerated thereunder. In view of the fact that the Forest Act, as amended under the State Amendment Act 9 of 1965 has already occupied the field for confiscation of the vehicles etc., it is not necessary, again to provide the same procedure under the Act, In this behalf, it is relevant to look into the procedure provided in the amendment Act 9 of 1965. Section 52 deals with the seizure of the property liable to confiscation and procedure thereunder . Section 52-A deals with the appeal against orders of confiscation. Section 52-B deals with revision before

Court of Session against order of appellate authority. Section 53 gives power to the Forest Officer to release the seized property under certain circumstances enumerated thereunder. Thus, it could be seen that Ss. 52 and 52 A, as amended by the State Amendment Act 9 of 1965, having occupied the field in respect of the confiscation of vehicles etc., and the procedure thereunder, the Legislature had not expressly provided such procedure again for confiscation under the Act, The High court, therefore was clearly in error in coming to the conclusion that by operation of S. 22 of the Act, the vehicle used for transportation of the specified forest produce on contravention of the Act has excluded the applicability of the provisions of the Forest Act, as amended by Act 9 of 1965 in respect of vehicles etc. It was confined only to specified forest produce.

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15. MURDER: APPRECIATION OF EVIDENCE
A.I.R. 1997 SC 921
TEJA SINGH VS. STATE OF M.P.

Multiple injuries on the person of deceased. The opinion of the doctor was injuries could have been caused in motor accident. Fractures were caused to the ribs of the deceased but corresponding external injuries that should have been caused if fractures were caused by motor accident. There was absence of external injuries. Some damage was caused to the scooter was incompatible with number of injuries. The suggestion that the injuries were caused due to accident was not accepted. The deceased was taken in tractor trolley. There was absence of blood in the tractor trolley. The accused was acquitted . The Supreme Court held that none of the injuries was such as to cause bleeding out much less profused bleeding. It was further held that when trolley was seized on next day of the occurrence there was no blood stains brick pieces. Therefore it was not a case of blood inside tractor trolley. The Judgment of High Court was upset.

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16. OMMISSION OF IMPORTANT FACTS IN F.I.R. RES JESTA
A.I.R. 1997 S.C. 768 (RATANSINGN VS. STATE)

If there is an ommission of important fact in F.I.R. like presence of one witness. The evidence has to be considered along with other evidences to determine whether the facts so omitted never happened at all. Section 32 (A) of the Evidence Act refers to the words,"as to circumstances of the transaction which resulted in death". There need not be direct nexus between the words " circumstances"and "death". Statement " as to circumstances of the transaction which resulted in death". There need not necessatily be direct nexus between "circumstances" and "death ". The statement of the deceased before her death that accused was standing with gun.. Subsequently turning out to circumstances of transactions which resulted in her death was held as statement. Such statement is admissible under Section 32 (A).

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17. MOTOR VEHICLE ACT SECTION 140 (2) DEALS WITH SUBSTAN TIVE LAW A.I.R. 1997 KERALA 109 (F.B.)

THE ORIENT INSURANCE COMPANY VS. SHEELA RATNAN

The main application under Section 166 M.V.A. deals with substantive law and not procedural law. In para 7 of the judgment it was held that the right accrues for compensation and the liability is incorporated by the opposite party on the date of the accident and not on the date of consideration of claim. Again in ***A.I.R. 1977 Gujrat p 60 Munshiram Vs Pravinsingh*** it was held that for a relief under Section 140 of M.V.A. filing of an application for compensation under Section 166 of the Act is not a condition precedent. Main claim petition under Section 166 as it stood prior to its amendment in 1994 dismissed on ground of bar of limitation. Application for interim compensation under Section 140 cannot be dismissed on that ground.

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18. CHARGE

(1997) 4 SCC 393

STATE VS. PRIYA SHARAN

The Supreme Corut in para 3 and 8 of the judgment held that at the stage of framing of charge referring to Ss. 227,228 and 219 it was held that required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the aileged offence,. The Court may , for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.Therefore , at the stage of framing of the charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceedings against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

What the Court has to consider at the stage of framing of the charge is whether the version of the person complaining together with his/her explanation is prima facie believable or not. It was therefore, not proper for the High Court to seek independent corroboration at that stage and to quash the charge and discharge the accused in absence thereof. The High Court was wholly wrong in discarding the material placed before the Court as false and discharging the accused on that ground.

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19. DATE OF BIRTH: SERVICE MATTERS

(1997) 4 SCC 647

UNION VS. C. RAMA SWAMI

The Supreme Court in para 25 and 26 held as under:-

In matters relating to appointment to service various factors are taken

into consideration before making a selection or an appointment . One of the relevant circumstances is the age of the person who is sought to be appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated . But it will not be unreasonable to presume that when a candidate , at the first instance, communicates a particular date of birth there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing authority for adjudging his suitability for a responsible office.In fact , where maturity is a relevant factor to assess suitability, an older person is ordinarily considered to be more mature and, therefore, more suitable . In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently claims to be younger in age., after taking that advantage. In such a situation', it would be against public policy to permit such a change to enable longer benefit to the person concerned. This being so, we find it difficult to accept the broad proposition that the principle of estoppel would not apply in such a case where the age of person who is sought to be appointed may be a relevant consideration to assess his suitability.

In such a case, even in the absence of a statutory rule like Rule 16-A, the principle of estoppel would apply and the authorities concerned would be justified in declining to alter the date of birth . If such a decision is challenged the court also ought not to grant any relief even if it is shown that the date of birth, as originally recorded,was incorrect because the candidate concerned had represented a different date of birth to be taken into consideration obviously with a view that would be to his advantage . Once having secured entry into the service , possibly in preference to other candidates, then the principle of estoppel would clearly be applicable and relief to change of date of birth can be legitimately denied. To that extent the decision in Manak Chand case does not lay down the correct law. ***Manak Chand Vs. State of H.P.*** **(1976) 1SLR. 402 (H.P.) Overruled on this point.**

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20. 386 CR.P.C. : JUDGMENT BY APPELLATE COURT
(1997) 3 SCC 721
K.I. PAVUNNY VS. ASST. COLLECTOR CENTRAL EXCISE

In a criminal trial as also in civil suits, the trial court and the appellate court should marshall the facts and reach conclusion, on facts . In a criminal case , the prosecution has to prove the guilt beyond doubt. The concept of benefit of doubt is not a charter for acquittal . Doubt of a doubting Thomas or of a weak mind is not the road to reach the result . If a Judge on objective evaluation of evidence and after applying relevant tests reaches a finding that the prosecution has not proved its case beyond reasonable doubt, then the accused is entitled to the benefit of doubt for acquittal. On scanning the evidence and going through the reasoning of the Single Judge it has to be held that the Single Judge was right in accepting the confessional statement of the appellant to be a voluntary one and that it could form the basis for conviction. The Magistrate had dwelt upon the controversy, no doubt on appreciation of

the evidence but not in proper or right perspective. Therefore, it was not necessary for the Single Judge to wade through every reasoning and give his reasons for his disagreement with conclusion reached by the Magistrate. On relevant aspects. the Single Judge dwelt upon in detail and recorded the disagreement with the Magistrate and reached his conclusion . Therefore, there is no illegality in the approach adopted by the single Judge . Therefore, the Single Judge was right in his findings that the prosecution has proved the case. AIR 1985 M.P. 141 ***Nirbhay Singh Vs. Shankarlal*** 1980 M.P.R.C.J. Note 97 ***Chuttilal Vs. Mulla*** 1982 W.N. 125 ***Kantilal Vs. Murlidhar.*** AIR 1967 SC Page 1124 (1129) ***Girjanand Vs. Bijendra*** 1983 M.P.W.N. 123 ***Rajaram Vs. Kailash. 1985 W.N. 501 Mansingh Vs. Narmadibai.***

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21. DEPARTMENTAL ENQUIRIES STANDARD OF PROOF
(1997) 5 SCC 129
HIGH COURT OF JUDICATURE AT BOMBAY VS. UDAY SINGH

Standard of proof in criminal trials and departmental enquiry compared by the Supreme Court in the above mentioned case. The technical rules of evindece and proof beyond doubt is not applicable to departmental enquiries. Preponderance of probabilities and conclusions drawn as a reasonable man from evidence available on record is sufficient for the purposes of departmental enquiries. In departmental enquiries appreciation of evidence against a judicial officer regarding demand of illegal gratification from the litigating party before that magistarte. It was held that complainant statement was in itself not sufficient to prove misconduct but complainant is contemporaneous act of reporting the matter ot her advocate which ultimately resulted in the matter coming to the knowledge of the District Judge was taken as a credibility.

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22. JURISDICTION OF CIVIL COURT. SEC. 9 CPC
(1997) 5 SCC 120
PUNJAB STATE ELECTRICITY BOARD VS. ASHWINI KUMAR

The Electricity Board issued statutory instructions regarding and dealing with cases of tampering with meter and accordingly sent bills to respondent-consumer, whose meter was removed suspecting tampering but later on restored on request. The Supreme Court held that in the present case fundamental procedural fairness had been followed by Board. Therefore, suit filed by respondent seeking permanent injunction for collecting and recovering the amount demanded, without first availing the remedy provided under the Electricity Act and Electricity (Supply) Act and the instructions issued by Court cannot be entertained by Civil Court. Ordinarily Civil Court has jurisdiction to go into disputed question of civil nature where fundamental fairness of procedure is violated. When provisions for appeal by way of review has been provided alternative staturoy remedy should be availed as it is available. The authorities concerned should afford hearing to the parties, consider their objections and pass reasoned orders.

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23. DATE OF BIRTH
(1997) 5 SCC 181
STATE OF ORISSA VS. RAMNATH PATNAIK

Mr. Ramnath Patnik retired from service on 31.12.1976. In 1981 he filed a suit against rejection of his representation for correction of his date of birth. Supreme Court held that when entry was made in the service record and when respondent was in service, he did not make any attempt to have the service record corrected. Any amount of evidence produced subsequently would be of no avail. Cases refferred: ***State of T.N. Vs. T.V. Venugopalan*** (1994) 6 SCC 302 relied on. Please refer to above mentioned other case ***Union of India Vs. C. Ramaswamy*** (1997) 4 SCC 647.

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24. JURISDICTION : CRIMINAL COURTS SEC. 178 (C) CR.P.C.
(1997) 5 SCC 30
SUJATA VS. PRASANT

Continuing offence committed in more local areas than one. A complaint was filed by wife under Sections 498-A, 506, and 323 IPC against the husband and Laws. Specific allegation that the husband had gone to the house of her parents and has assaulted her. It was held undr Section 178 (c) The Magistrate at her parents' place also had jurisdiction to entertain complaint.

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25. SECTION 64. M.P. CO-OPERATIVE SOCIETIES ACT-JURISDICTION OF CIVIL COURT
(1997) 5 SCC 125
R.C. TIWARI VS. M.P. STATE

Dispute relating to disciplinary matter of an employee of a cooperative society is covered by Section 64. The dispute decided by Deputy Registrar under that Act, then the matter could not be reagitated before the Labour Court under the Industrial disputes Act 1947. Principle of Section 11 CPC is applicable.

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26. EASEMENT RIGHT
1997 (2) M.P.L.J. PG. 1
UMRAH KHATOON VS. MOHD. JAFIR KHAN

The plaintiff filed a suit for declaration of the title of the suit land and in alternative he had also claimed easementary right to use the suit passage for discharge of the drain water. The first two Courts found that the plaintiff is entitled to the easement though he could not establish the protion from where the drain water use to pass is his own. The supreme Court held that the plaintiff's claim for title may not be accepted for reasons which may not be adverted but then the plaintiff's claim for easementary right has been accepted by the trial Court as well as the first Appellate Court. Ultimately the plaintiff had prayed for the right of easement which may not lose only because in the body of the palint some assertions had been made regarding title also. Keeping in view the totality of the facts and the Courts which the particular litigation has

taken through the 3 Courts below. The Supreme Court was of the view that the prayer of the plaintiff to allow to discharge drain water over the land in question is more in accordance with justice than to deny it as it has been found that she had infact discharged the drain water through the lane for long many years referred. ***Chapsibhai Dhanjibhai Danad Va. Purushottam,*** (1971) 2 SCC 205 = A.I.R. 1971 SC 1878refered.

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27. RIGHT OF PRIVATE DEFENCE
1997 (2) M.P.L.J. PAGE 7
MANTRAM VS. STATE

It is open to the accused to demonstrate even from the prosecution evidence that the accused had acted in exercise of the right of private defence. Non-examination of injuries on the person of the accused makes it probable that accused may have acted in exercise of private defence. Reference was made to ***Laxmi Singh Vs. State of Bihar,*** **A.I.R. 1976, Supreme Court 2263.** Please refer for futher details relating to giving explanation to the injuries on the person of the accused by the prosecution. ***Gajendra Singh Vs. State,*** **A.I.R. 1975 Supreme Court 1703,** ***Omkarnath Vs. State,*** **A.I.R. 1974 Supreme Court 1550 and page 1545, Page 1699 and 21.**

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28. SECTION 10 AND 20 S.R. ACT. SECTION 20 T.P. ACT AND TRANSACTION WITH MINOR
1997 (2) M.P.L.J. PAGE 4
NIVARTI GOVIND VS. REVANAGOUNDA

The plaints mother Radhabai wanted to sink a well in her one of the fields. She obtained a loan of Rs. One Thousand from the father of the respondent but having insufficient funds she mortgaged one protion of the property by executing a sale deed with an agreement of reconveyance, in favour of the respondent who was then a minor. His father was a constable. The amount was paid off but the reconveyance was not executed. In the meanwhile property was transferred from the respondent to some one else. The trial Court and the first Appellate Court decreed the plaintiff suit but the High Court dismissed the same. In Supreme Court it was argued on behalf of the respondent that the agreement of reconveyance was not for the benefit of the minor and therefore no decree for specific purpose could have been granted. It was further argued that the leave of the competent court was not obtained for entering into such an agreement with minor. It is seen that the appellant's mother is the owner of the property. She had obtained loan from the respondent and executed the sale deed with an agreement of reconveyance. When the father of the respondent had obtained the sale deed in the name of the minor obviously he is bound by the agreement of reconveyance as well. Having received the money, he had not executed the sale deed. Necessarily, the appellants are entitled to seek the specific performance. Under these circumstances, the question that agreement was not for the benefit of the minor which is a legal proposition, cannot be

applied to the facts. It is contended that subsquent purchaser from the father of the respondent of the selfsame property, without knowledge of the pendency of the suit is bound by the agreement. We find no froce in the contention. The appellants have been seeking the remedy in the civil suit; any subsequent sale will be barred by the doctrine of lis pendens. Therefore, the subsequent purchaser is bound by the decree of specific performance and liable to convey the property ot the appellants. The decree of the trial judge is accordingly restored and that of the High Court and the Additional Civil Judge stand set aside. The remedy of recovery of the purchased money from the respondent may be sought in an appropriate action.

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उल्लेखनीय उद्धरण

विधि -

दोष पर से सफल नहीं हो सकती - रुचि अथवा अरुचि पर चयन की प्रवृत्ति नहीं है।

प्रथा-

जब हमारी पसंद हमें उपलब्ध नहीं हो - जो उपलब्ध है उसे पंसद करना होगा।

प्रथा-विवेकाधिकार-

विधि द्वारा विनयमित तथा नियमों द्वारा मार्गदर्शित होना चाहिए, मनोदशा द्वारा नहीं। (1770) 4 बर 2528 अवलंबित।

प्रथा-विवेकाधिकार-

न्यायिक पुनर्विलोकन से उन्मुक्त स्वच्छंद विवेकाधिकार जैसा कुछ नहीं होता। (1971) (1) आल इ आर 148 तथा ए आइ आर 1975 एस सी 550 अवलंबित।

न्यायालय-शक्ति तथा कर्त्तव्य -

यदि शक्ति का प्रयोग इस प्रकार अनुचित तौर पर या भूल से किया गया है जिससे प्रजा के विधिसंगत अधिकार अथवा हित अन्यायपूर्ण रूप से अतिक्रमण होते हों, तब न्यायालयों को ऐसाघोषित करना होगा। न्यायालय कार्यपालिका तथा प्रजा के बीच सतर्क हैं, यह देखने के लिए सतर्क कि विवेकाधिकार की शक्ति का अतिक्रमण अथवा दुरुपयोग नहीं हो। (1942) ए सी 206 अवलंबित।

(1977) 1 जे.एल.जे. 221 प्रतिक्षा कुमारी विरुद्ध देवी अहिल्या बाई विश्वविद्यालय एवं अन्य। निर्णय द्वारा- माननीय न्यायाधिपति ए.आर. तिवारी एवं माननीय न्यायाधिपति श्री एन.के. जैन।

मध्यप्रदेश अधिनियम

क्रमांक 12 सन् 1997

न्यायालय फीस (मध्यप्रदेश संशोधन) अधिनियम, 1997

विषय– सूची

धाराएं:

मध्यप्रदेश अधिनियम

क्रमांक 12 सन् 1997.

न्यायालय फीस (मध्यप्रदेश संशोधन) अधिनियम, 1997.

(दिनांक 31 मार्च, 1997 को राज्यपाल की अनुमति प्राप्त हुई; अनुमति " मध्यप्रदेश राजपत्र (असाधारण) " में दिनांक 1 अप्रैल, 1997 को प्रथम बार प्रकाशित की गई.)

मध्यप्रदेश राज्य को लागू हुए रूप में न्यायालय फीस अधिनियम 1870 को और संशोधित करने हेतु अधिनियम.

भारत गणराज्य के अड़तालीसवें वर्ष में मध्यप्रदेश विधान – मण्डल द्वारा निम्नलिखित रूप में यह अधिनियमित हो :–

संक्षिप्त नाम और प्रारंभ.

1. (1) इस अधिनियम का संक्षिप्त नाम न्यायालय फीस (मध्यप्रदेश संशोधन) अधिनियम, 1997 है.

(2) यह 1 अप्रैल, 1997 से प्रवृत्त होगा.

मध्यप्रदेश राज्य को लागू हुए रूप में केन्द्रीय अधिनियम, 1870 का सं. 7 का संशोधन.

2. मध्यप्रदेश राज्य को लागू हुए रूप में न्यायालय फीस अधिनियम, 1870 (1870 का सं. 7) (जो इसमें इसके पश्चात् मूल अधिनियम के नाम से निर्दिष्ट है) को इसमें इसके पश्चात् उपबंधित रीति में संशोधित किया जाए.

धारा 7 का संशोधन.

3. मूल अधिनियम की धारा 7 में,–

(एक) खण्ड (चार) के उप खण्ड (च) में, शब्द " बीस रूपए" के स्थान पर शब्द " चालीस रूपए" स्थापित किए जाएं;

(दो) खण्ड (पांच) के उप खण्ड (ग) में, शब्द "दो रूपए" के स्थान पर शब्द " पांच रूपए" स्थापित किए जाएं.

धारा 18 का संशोधन.

4. मूल अधिनियम की धारा 18 में, शब्द " आठ आने "के स्थान पर शब्द " दो रूपए" स्थापित किए जाएं.

धारा 19– छ का संशोधन.

5.मूल अधिनियम की धारा 19 – छ में, शब्द " दस प्रतिशत" के स्थान पर शब्द " बीस प्रतिशत" स्थापित किए जाएं.

अनुसूची– 1 का संशोधन.

6. मूल अधिनियम की अनुसूची – 1 में,–

(एक) अनुच्छेद 1– क के स्थान पर निम्नलिखित अनुच्छेद स्थापित किया जाए, अर्थात्:–

"1– क. धारा 3 में वार्णित किए गये के सिवाय किसी सिविल या राजस्व न्यायालय को प्रस्तुत किया गया वादपत्र, मुजरा (सेट आफ) या प्रतिदावे का अभिवचन करने वाला लिखित कथन या अपील ज्ञापन (जिसके लिए इस अधिनियम में अन्यथा उपबंध न किया गया हो).	जब विवादग्रस्त विषय–वस्तु की रकम या मूल्य दस हजार रूपए से अधिक न हो.	न्यूनतम एक रूपये के अध्यधीन रहते हुए दस प्रतिशत.
	जब ऐसी रकम या मूल्य दस हजार रूपए से अधिक हो, किन्तु पांच लाख रूपये से अधिक न हो.	एक हजार रूपये और ऐसी रकम या मूल्य पर, जो दस हजार रूपये से अधिक हो, बारह प्रतिशत.

	जहां ऐसी रकम या मूल्य पांच लाख रूपये से अधिक हो, किन्तु दस लाख रूपये से अधिक न हो.	उनसठ हजार आठ सौ रूपये और ऐसी रकम या मूल्य पर, जो पांच लाख रूपये से अधिक हो, छह प्रतिशत.
	जहां ऐसी रकम या मूल्य दस "लाख रूपये से अधिक हो	नवासी हजार आठ सौ रूपये और ऐसी रकम या मूल्य पर, जो दस लाख रूपये से अधिक हो, तीन प्रतिशत.
	परन्तु अपील ज्ञापन पर उद्ग्रहणीय न्यूनतम फीस पांच रूपये होगी.	

(दो) अनुच्छेद 6 में, उचित फीस से संबंधित कालम में शब्द " पचहत्तर पैसे" "एक रूपया पचास पैसे "तथा " दो रूपए के स्थान पर शब्द " दो रूपए " "चार रूपये" तथा " पांच रूपये " क्रमशः स्थापित किए जाएं;

(तीन) अनुच्छेद 7 में, उचित फीस से संबंधित कालम में शब्द" एक रूपया" " दो रूपया " तथा " पांच रूपये और तीस नया पैसा " के स्थान पर शब्द " दो रूपये " , " पांच रूपये " तथा " दस रूपये " क्रमशः स्थापित किए जाएं;

(चार) अनुच्छेद 8 में, उचित फीस से संबंधित कालम में शब्द " एक रूपया " के स्थान पर शब्द " दो रूपया" स्थापित किए जाएं;

(पांच) अनुच्छेद 9 में, उचित फीस से संबंधित कालम में शब्द " एक रूपये " के स्थान पर शब्द " दो रूपयें" स्थापित किए जाएं;

(छह) अनुच्छेद 11 के स्थान पर निम्नलिखित अनुच्छेद स्थापित किया जाए, अर्थात्:–

11. विल (इच्छापत्र) का प्रोबेट या प्रशासन पत्र जिसके साथ विल उपाबद्ध हो या न हो.	जब उस संपत्ति की जिसके कि संबंध में विल का प्रोबेट या प्रशासन पत्र मंजूर किया गया हो, रकम या मूल्य एक हजार रूपये से अधिक हो, किन्तु पच्चीस हजार रूपये से अधिक न हो.	ऐसी रकम पर 3 प्रतिशत.
	जब ऐसी रकम या मूल्य पच्चीस हजार रूपये से अधिक हो किन्तु पचास हजार रूपये से अधिक न हो	सात सौ पचास रूपए और ऐसी रकम या मूल्य पर, जो पच्चीस हजार रूपए से अधिक हो, चार प्रतिशत.

जब ऐसी रकम या मूल्य पचास हजार रूपये से अधिक हो किन्तु पांच लाख रूपये से अधिक न हो.	एक हजार सात सौ पचास रूपये और ऐसी रकम या मूल्य पर, जो पचास हजार रूपए से अधिक हो, पांच प्रतिशत.
जब ऐसी रकम या मूल्य पांच लाख रूपये से अधिक हो.	चौबीस हजार दो सौ पचास रूपये और ऐसी रकम या मूल्य पर, जो पांच लाख रूपये से अधिक हो, छह प्रतिशतः परन्तु जब संपदा (इस्टेट) में सम्मिलित किसी सम्पत्ति के संबंध में भारतीय उत्तराधिकार अधि–नियम 1925 (1925 का सं. 39) के भाग 10 के अधीन प्रमाण–पत्र मंजूर किए जाने के पश्चात् उसी संपदा के संबंध में प्रोबेट या प्रशासन पत्र मंजूर किया जाय, तो उपरोक्त मंजूरी के संबंध में देय फीस में से पूर्वोक्त के संबंध में चुकाई गई फीस की रकम कम कर दी जाएगी".

(सात) अनुच्छेद 12 के स्थान पर निम्नलिखित अनुच्छेद स्थापित किया जाए अर्थात्:–

" 12 भारतीय उत्तराधिकार अधिनियम, 1925 (1925 का सं. 39) के भाग 10 के अधीन प्रमाण–पत्र।	जबकि अधिनियम की धारा 374 के अधीन प्रमाण–पत्र में उल्लिखित किये गये ऋणों या प्रति–भूतियों की कुल रकम या मूल्य एक हजार रूपये से अधिक हो, किन्तु पच्चीस हजार रूपये से अधिक न हो.	ऐसी रकम या मूल्य पर 3 प्रतिशत और किसी ऐसे ऋण या प्रतिभूति की, जिस पर कि प्रमाण–पत्र अधिनियम की धारा 376 के अधीन विस्तारित किया गया हो, रकम या मूल्य पर 5 प्रतिशत.

जब ऐसी रकम या मूल्य पच्चीस हजार रूपये से अधिक हो किन्तु पचास हजार रूपये से अधिक न हो.	सात सौ पचास रूपये और ऐसी रकम या मूल्य पर, जो कि पच्चीस हजार रूपये से अधिक हो, चार प्रतिशत तथा किसी ऐसे ऋण या प्रतिभूति की, जिस पर कि प्रमाण–पत्र अधिनियम की धारा 376 के अधीन विस्तारित किया गया हो, रकम या मूल्य पर छह प्रतिशत.
जब ऐसी रकम या मूल्य पचास हजार रूपये से अधिक हो किन्तु पांच लाख रूपये से अधिक न हो.	एक हजार सात सौ पचास रूपये और ऐसी रकम या मूल्य पर, जो कि पचास हजार रूपये से अधिक हो, 5 प्रतिशत तथा किसी ऐसे ऋण या प्रतिभूति की, जिस पर कि प्रमाण पत्र अधिनियम की धारा 376 के अधीन विस्तारित किया गया हो, रकम या मूल्य पर 12 प्रतिशत.
जब ऐसी रकम पांच लाख रूपये से अधिक हो.	चौबीस हजार दो सौ पचास रूपये और ऐसी रकम या मूल्य पंर, जो कि पांच लाख रूपये से अधिक हो, 6 प्रतिशत तथा किसी ऐसे ऋण या प्रतिभूति की, जिस पर कि प्रमाण–पत्र अधिनियम की धारा 376 के अधीन विस्तारित किया गया हो, रकम या मूल्य पर 12 प्रतिशत."

(आठ) अनुच्छेद 14 में, उचित न्यायालय फीस से संबंधित कालम में शब्द" पांच रूपये " तथा " एक रूपया पचास पैसे " के स्थान पर शब्द "दस रूपए" तथा " तीन रूपए " क्रमशः स्थापित किए जाएं.

(नौ) मूल्यानुसार फीस की दर से संबंधित सारणी का लोप किया जाए.

7. अनुसूची– 2 में, उचित फीस से संबंधित कालम में,– अनुसूची – 2 का संशोधन.

(एक) शब्द " पच्चीस पैसे " " साठ पैसे " तथा " एक रूपया " जहां कहीं भी वे आए हों, वहां उनके स्थान पर शब्द " दो रूपये " स्थापित किये जाएं;

(दो) शब्द " एक रूपया तीस पैसे ", " एक रूपया पचास पैसे " , " दो रूपये", " दो रूपये पचास पैसे " तथा " दो रूपये साठ पैसे " जहां कही भी वे आए हों, वहां उनके स्थान पर शब्द " पांच रूपये " स्थापित किये जाएं;

(तीन) शब्द "तीन रूपये" ,"तीन रूपये पचास पैसे", " चार रूपये पचास पैसे" तथा "पांच रूपये"जहां कहीं भी वे आए हैं वहां उनके स्थान पर शब्द " दस रूपये " स्थापित किये जाएं;

(चार) शब्द " छह रूपयें " " छह रूपये साठ पैसे " तथा " सात रूपये पचास पैसे " जहां कहीं भी वे आए हैं वहां उनके स्थान पर शब्द " दस रूपये " स्थापित किये जाएं;

(पांच) शब्द " दस रूपये " " पन्द्रह रूपये " तथा " बीस रूपये " जहां कहीं भी वे आए हैं, वहां उनके स्थान पर शब्द " बीस रूपये " " तीस रूपये " तथा " चालीस रूपये " क्रमशः स्थापित किए जाएं;

(छह) शब्द " पच्चीस रूपये " जहां कहीं भी वे आए हैं वहां उनके स्थान पर शब्द " एक सौ रूपये" स्थापित किए जाएं;

(सात) शब्द " छब्बीस रूपये साठ पैसे "के स्थान पर शब्द " पचास रूपये " स्थापित किए जाएं;

(आठ) शब्द " तीस रूपये " " सैंतीस रूपये पचास पैसे " , " चालीस रूपये " तथा " पैंतालीस रूपये " जहां कहीं भी वे आए हैं वहां उनके स्थान पर शब्द " साठ रूपये", "पचहत्तर रूपये " , " अस्सी रूपये " तथा " एक सौ रूपये " क्रमशः स्थापित कए जाएं;

(नौ) शब्द " साठ रूपये" ,, " पचहत्तर रूपये " , " नब्बे रूपये " " एक सौ पचास रूपये " के स्थान पर शब्द " एक सौ बीस रूपये " , " एक सौ पचास रूपये ", " दो सौ रूपये " तथा " तीन सौ रूपये " क्रमशः स्थापित किए जाएं.

THE INDIAN STAMP (MADHYA PRADESH AMENDMENT) ACT, 1997

No. 14 of 1997*

[Received the assent of the Governor on the 31st March, 1997 assent first published in the " Madhya Pradesh Gazette (Extraordinary)" dated the 5th April 1997.]

An Act further to amend the Indian Stamp Act , 1899, in its application to the State of Madhya Pradesh.

Notes

Statement of Objects and Reasons - 1. To Check the tendency to execute power of attorney authorising the attorney to sell or transfer immovable property in place of a conveyance deed and to increase the revenue of the Government , it is considered necessary to amend the Indian Stamp Act, 1899, in its application the State of Madhya Pradesh, suitably.

*Published in M.P. Rajpatra (Asadharan) dated 5-4-97 page 412(1).

2. Hence this Bill.

Be it enacted by the Madhya Pradesh Legislature in the Forty-eighth Year of the Republic of India as follows:-

1. Short title and commencement. - (1) This Act may be called the Indian Stamp (Madhya Pradesh Amendment) Act, 1997.

(2) It shall come into force on such date as the State Government may, by notification, appoint.

2. Amendment of Central Act, No. 2 of 1899 in its application to the State of Madhya Pradesh. - The Indian Stamp Act, 1899 (No. 2 of 1899) (hereinafter referred to as the Principal Act), shall in its application to the State of Madhya Pradesh be amended in the manner hereinafter provided.

3. Amendment of Schedule 1-A. -In Schedule 1-A of the Principal Act , in Article 48,-

(i) for clause (f), the following clauses shall be substituted, namely:-

" (f) when given for consideration and authorising the attorney to sell or transfer any immovable property.	The same duty as a conveyance under Article 23 on the market value of the property.
(f-1) when given without consideration in favour of persons who are not his or her spouse of Children, or Mother or father and authorising the attorney to sell or transfer any immovable property.	The same duty as a conveyance under Article 23 on the marker value of the property.

(ii) the existing explanation shall be renumbered as explanation I thereof and after explanation I as so renumbered, the following explanation shall be inserted, namely:-

EXPLANATION II.- Where under clause (f) and (f-1) duty has been paid on the power of attorney and a conveyance relating to that property is executed in pursuance of power of attorney between the executant of power of attorney and the person in whose favour it is executed, the duty on conveyance shall be the duty calculated on the market value of the property reduced by duty paid on the power of attorney."

THE INDIAN STAMP (MADHYA PRADESH SECOND AMENDMENT) ACT, 1997

No. 20 of 1997*

[Received the assent of the Governor on the 15th April, 1997; assent first published in the " Madhya Pradesh Gazette (Extraordinary)" dated the 25th April, 1997.]

* Published in M.P. Rajpatra (Asadharan) dated 25-4-97 Page 450(2)-450(4).

An Act further to amend the Indian Stamp Act, 1899, in its application to the State of Madhya Pradesh.

Be it enacted by the Madhya Pradesh Legislature in the Forty-eighth Year of the Republic of India as follows :-

Notes

Statement of Objects and Reasons. -The Finance Minister while presenting the Budget for the year 1997-98 had in his speech announced that the State Govemment had decided to enhance the rates of Stamp duty under Schedule I-A to Indian Stamp Act, 1899.

2. It is, therefore proposed to amend the Schedule I-A of the Indian Stamp Act, 1899 in its application to the State of Madhya Pradesh.

3. Hence this Bill.

1. Short title and commencement. - (1) This Act may be called the Indian Stamp (Madhya Pradesh Second Amendment) Act, 1997

(2) It shall come into force with effect from the 1st April, 1997.

2. Amendment of Central Act, No. 2 of 1899 in its application to the State of Madhya Pradesh.- The Indian Stamp Act, 1899 (No. 2 of 1899) (hereinafter referred to as the Principal Act) shall, in its application to the State of Madhya Pradesh, be amended in the manner hereinafter provided.

3. Amendment of Schedule I-A.- In Schedule I-A to the Principal Act,-

(i) in Article 3, in column (2). for the words "One hundred rupees" the words "Five hundred rupees" shall be substituted;

(ii) in Article 5, against clause (b), in column (2), for the words "Ten rupees", the words "Fifty rupees" shall be substituted ;

(iii) in Article 7, in column (2), for the words" Forty five rupees", the words "One hundred rupees" shall be substituted;

(iv) for Article 12, the following Article shall be substituted, namely:-

"**12. Award**,that is to say any decision in writing by an arbitrator or umpire, not being an award directing a partition, on a reference made, otherwise than by an order of the Court in the course of a suit-

(a) Where the amount or value of the property to which the award relates does not exceed Rs. 10,000/	The same duty as a Bond (No.15) for such amount.
(b) Where it exceeds Rs. 10,000/-,	
(i) on the first Rs. 10,000/-,	The same duty as a Bond (No.15) for such amount.
(ii) on every additional Rs. 1,000/- or part thereof in excess of Rs. 10,000/-	Ten rupees;",

(v) in Article 17, in column (2) for the words " Twenty rupees" the words " One hundred rupees" shall be substituted;

(vi) in Article 19, in column (2) for the words " One rupee", the words " Two rupees" shall be substituted;

(vii) in Article 24, in column (2) for the words "Five rupees" ,the words " Ten rupees" shall be substituted;

(viii)in Article 29, in column (2) for the words " Thirty rupees" the words " One hundred rupees" shall be substituted;

(ix) in Article 36, in column (2) for the words " One rupee" the words "Two rupees" shall be substituted;

(x) in Article 39, against clause (a) in column (2) for the words " One hundred rupees" the words "Five hundred rupees" shall be substituted;

(xi) in Article 42, in column (2), for the words "Five rupees", the words " Ten rupees" shall be substituted'

(xii) for Article 46, the following Article shall be substituted, namely:-

" **46. Partnership-**

A. Instrument of -	The same duty as a Bond (No. 15) for the amount or the capital of partnership subject to a maximum of One Thousand rupees.
B. Dissolution of -	Two hundred fifty rupees."

(xiii)in Article 48. in column (2)-

(a) against clause (a) for the words. " Three rupees: , the words " Ten rupees"shall be substituted;

(b) against clause (b) for the words," Three rupees" , the words "Ten rupees" shall be substituted ;

(c) against clause (c). for the words,"Five rupees", the words " Twenty rupees" shall be substituted;

(d) against clause (d). for the words. "Twenty rupees", the words "One hundred rupees" shall be substituted;

(e) against clause (e) for the words, "Thirty five rupees", the words " One hundred fifty rupees" shall be substituted;

(f) against clause (g) for the words, "Five rupees", the words " Twenty rupees " shall be substituted;

(xiv)in Article 57,-

(a) in column (1), in clause (a), for the words and figures "Rs.1000/- " the words and figures "Rupees 5000/-" shall be substituted;

(b) in column (2), against clause (b), for the words,"Fifty rupees", the words "Two hundred and fifty rupees" shall be substituted '

(xv) in Article 61, in column (2), against clause (b), for the words "Twenty rupees", the words" One hundred rupees" shall be substituted;

(xvi)in Article 64, in column (2),-

(a) against clause (A), for the words " One hundred rupees", the words Five hundred rupees" shall be substituted;

(b) against clause (B) , for the words "Fifty rupees" the words " Two hundred and fifty rupees" shall be substituted.