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संपादकीय

हमारी देवरानियाँ!

सन् 2000 के चयनित व्यवहार न्यायाधीशों की नियुक्ति एवं पदस्थापना का कार्य चल रहा है। अभी तक लगभग 75 न्यायाधीशों की पदस्थापना भी हो चुकी है। जिसमें से एक वृन्द को प्रथम प्रशिक्षण चक्र में बुलाया जा चुका है व दूसरे वृन्द का प्रशिक्षण प्रगति पर है।

न्यायिक परिवार हमारा अपना परिवार है व नये व्यवहार न्यायाधीशों के प्रति हर एक का कर्तव्य भी है। हम आप भी सेवा के प्रारंभ में प्रशिक्षण के इस दौर से गुजरे हैं। समय परिवर्तित होता गया एवं हमारे में से ही कुछ जन प्रशिक्षण भी बन गए हैं। प्रशिक्षण की प्रत्यक्ष जिम्मेदारी प्रत्येक जिला न्यायाधीश, मुख्य न्यायिक दंडाधिकारी की है तो महती जिम्मेदारी इस संस्था की भी है। चूंकि प्रशिक्षु न्यायाधीश प्रत्यक्षतः जिला स्तर पर जिला न्यायाधीश के व मुख्य न्यायाधीश के संपर्क में आते हैं अतः वे उन्हें और अधिक अच्छे से मार्गदर्शित कर सकते हैं। दैनंदिन कार्यों में अनुभव होने वाली कठिनाईयाँ, समस्याओं का निराकरण भी हो सकता है। प्रत्येक प्रशिक्षु न्यायाधीश की यह स्वाभाविक अपेक्षा होती है एवं वह सही भी है कि उसकी समस्याओं का निदान वरिष्ठ न्यायाधीश अवश्य करें। वास्तव में हम आपकी यह परीक्षा की घड़ी होती है कि हम उन्हें अपेक्षित बातें बता सकेंगे या नहीं। हम जो बता रहे हैं उसका क्या तारतम्य है, क्या हम जो बता रहे हैं वह विधि प्रावधानों के अनुरूप है या कि हम जो करते आ रहे हैं वही सही मानकर बता रहे हैं। जब ये न्यायाधीश हमें कुछ पूछते हैं तो हमारा कर्तव्य है कि उस बात को, विषय को, समस्या को या कि कठिनाई को समग्र परिप्रेक्ष में विचार चिंतन कर बताएं जिससे की वे विषय–वस्तु को समझ सकें। बालक जब बोलने लगता है तो विभिन्न प्रश्नों की झड़ी लगा देता है। उसके उत्तर देना संभव नहीं होता है जैसे, बाबा हम चलते क्यों हैं, बोलते क्यों हैं, चंदामामा आकाश में ही क्यों रहता है, मामा क्या होता है आदि। लेकिन समय के साथ वह समझने लगता है। ऐसा नहीं है कि उसके प्रश्न सुसंगत नहीं होते हैं लेकिन उसकी आयु के हिसाब से उन प्रश्नों के माध्यम से वह जानना कम चाहता है अपने कुतूहल, उत्सुकता की तुष्टि मात्र चाहता है अतः हम उसको कल्पकता पूर्वक कुछ न कुछ बताते रहते हैं व कुछ कुछ वह मान लेता है, समझ जाता है या कि जो बताया जा रहा है उन्हीं शब्दों, वाक्यों में से ही कुछ बात पकड़ कर पुनः प्रश्न पूछता रहता है। माता–पिता की क्या स्थिति होती है हम आप सभी समझते हैं, जानते हैं। लेकिन ऐसा मानकर हम इन नए न्यायाधीशों के प्रश्नों को **निपटाने** का प्रयत्न करेंगे तो हम हंसी के पात्र होंगे। उनकी आयु कुतूहल को शान्त करने की नहीं है अपितु वास्तविकताओं से अवगत होना चाहते हैं। अब वे परिवार के सदस्य हैं। सदस्य

भी कैसे? जैसे सास--ससुर, बेटे–बेटियां, जेठ–जेठानी, देवर–देवरानियां। विशेष कर जेठानियां–देवरानियां जैसे। हम आप सब उन नए न्यायिक अधिकारियों की जेठानियां जैसे ही हैं। हम चूंकि हमारे घर रम गए हैं तब हमें उन्हें यह बताना होगा कि इस परिवार की क्या–क्या मर्यादाएं हैं, क्या विशेषताएं हैं, क्या रीति–रिवाज हैं, क्या परंपराएं हैं। आगंतुकों के साथ, अतिथियों के साथ, मेहमानों के साथ, अधिवक्ताओं के साथ, पक्षकारों के साथ किस प्रकार व्यवहार किया जाता है, क्या शिष्टाचार है, क्या अदब है व क्या तमीज है। हम जैसा बताएंगे उसे वे यथारूप स्वीकार कर लेंगे। अतः हम आपको भी अच्छे से शिष्ट व्यवहार की जानकारी होना चाहिए, न्यायालय में जब वे हमारे साथ बैठें तब भी हमने हमारे व्यवहार को इस प्रकार ढालना चाहिए जिससे वे रीति–नीति को जान सकें, अनुभव कर सकें। न्यायालय में, न्यायालय के बाहर एवं विधि क्षेत्र को तमाम खूबियों को समय–समय पर बताना होगा। वे नए एवं कोरे (फ्रेश) हैं। हम यद्यपि पुराने हैं फिर भी नए ही हैं अंतर केवल इतना ही है कि कोरी स्लेट पर लिखने की सीमा तक अक्षर ज्ञान प्राप्त किया है। अतः हम–आप को प्रसन्नता तब होगी जब उनके साथ–साथ हम भी कार्य में रम जावें। यह लोकोक्ति सही है कि :–

"Teaching others teaches yourself and who teaches often learns himself"

पुरुषोत्तम विष्णु नामजोशी

WHAT MATTERS

To look is one thing
To See what you look at is another
To understand what you see is a third
To learn from what you
understand is still
something else,
But to act on what you learn
is really what matters.

Educators Dispatch

Courtesy : **"For you Teacher" Better yourself Books, Bombay**

- न्यायाधीश शक्तिशाली तब होगा जब उसका चरित्र (शील) उच्च होगा।

–न्यायमूर्ति सी.के. प्रसाद

- कार्य अभियान नहीं आदत है।

–न्यायमूर्ति आर.एस. गर्ग

न्यायिक अधिकारी-आचरण एवं व्यवहार

नव--नियुक्त व्यवहार न्यायाधीश वर्ग–2, सन् 2000 के न्यायाधीशों को प्रशिक्षण देने हेतु सत्र प्रारंभ हो गए हैं तथा दो प्रशिक्षण सत्रों में 41 न्यायाधीश सम्मिलित हुए थे अब अगला सत्र 17 अगस्त 2000 से 26 अगस्त 2000 तक का होगा।

प्रथम सत्र दिनांक 3 जुलाई से 12 जुलाई तक का था तथा दूसरा सत्र दिनांक 24 जुलाई से 2 अगस्त 2000 तक का था। प्रथम सत्र के मंगलाचरण के लिए माननीय मुख्य न्यायाधिपति महोदय एवं संरक्षक न्यायिक अधिकारी प्रशिक्षण संस्थान श्रीमान भवानी सिंह साहेब प्रथम बार पधारे थे तो द्वितीय सत्र के उद्घाटन के लिए माननीय न्यायाधिपति महोदय श्रीमान दीपक मिश्रा साहेब का शुभ–आगमन हुआ था दोनों ही सत्रों को समापन माननीय न्यायाधिपति श्री सी.के.प्रसाद साहेब ने किया था।

माननीय मुख्य न्यायाधिपति महोदय एवं संरक्षक न्यायिक अधिकारी प्रशिक्षण संस्थान श्रीमान भवानी सिंह महोदय ने अपने विद्वतापूर्ण विचारों के द्वारा न्यायिक अधिकारीगणों को दीक्षित किया था। माननीय महोदय ने यह कहा कि नव–नियुक्त न्यायिक अधिकारीगणों को उनके निवास स्थान से यथा संभव निकट पदस्थ किया गया है जबकि उनके गृह राज्य हिमाचल प्रदेश में नव–नियुक्त न्यायाधीशगणों को दुर्गम स्थानों पर भी पदस्थ किया जाता था। माननीय मुख्य न्यायाधिपति महोदय की यह अपेक्षा थी कि न्यायिक अधिकारियों ने निर्धारित गणवेश में ही आना चाहिए एवं यह नियम कठोरतापूर्वक पालन होना चाहिए और सुव्यवस्थित रहना चाहिए। समय की पाबंदी के संबंध में माननीय न्यायाधिपति महोदय ने यह विचार व्यक्त किए कि कार्यालयीन समय आपका अपना समय नहीं है अपितु लोक कार्य करने के लिए वह समय निर्धारित किया गया है तथा ऐसे समय में सार्वजनिक कार्य ही संपादित होना चाहिए और न्यायाधीशों ने न्यायिक कार्य करना चाहिए। न्यायिक अधिकारियों का कार्य अन्य किसी भी विभाग के कार्यों से एकदम भिन्न होता है अतः अधिक लगन से कार्य करने लिए समय की कीमत का ध्यान रखना चाहिए।

माननीय महोदय ने यह भी कहा कि न्यायालयीन कार्य को करने के लिए अधिवक्तागणों से आप के संबंध उचित और सहयोगात्मक होना चाहिए ताकि प्रकरणों के निराकरण में सुगमता हो। न्यायालयीन वातांवरण में तब तनाव अथवा उत्तेजना, बैचेनी या व्यग्रता उत्पन्न हो जाती है जब निषेधाज्ञा के संबंध में कार्यवाही निष्पादित की जाती है और यही स्थिति प्रतिभूति आवदेन पत्र के निराकरण के समय भी होती है। ऐसे समय में ही न्यायाधीशगणों ने संतुलन बनाकर रखना चाहिए एवं किसी भी प्रकार से एक दूसरे के प्रति अनावश्यक रूप से अशिष्ट भाषा का प्रयोग और वाद–विवाद की स्थिति उत्पन्न नहीं करना चाहिए। न्यायिक अधिकारियों का मुख्य कार्य न्यायिक प्रशासन चलाने का है और इसलिए अन्य बातों में न्यायिक अधिकारियों ने किसी भी प्रकार से अपने आपको उलझाना नहीं चाहिए ना शामिल होना चाहिए। विचारण न्यायालयों में लगभग 80 प्रतिशत कार्य होता है एवं उक्त कार्य को यथेष्ट रूप से शीघ्रता से और सुगमता से निराकृत करना चाहिए। आम व्यक्ति का जो अभिमत विचारण न्यायालयों के प्रति होगा वही अभिमत उनका वरिष्ठ न्यायालयों के प्रति भी हो सकता है इसलिए जहां पर बहुत बड़ी संख्या में सर्वसाधारण जन अधीनस्थ न्यायालयों से सम्पर्क में आते हैं वहां पर आने वाले अधिवक्ता, पक्षकार और साक्ष्यीगणों के प्रति उनका व्यवहार सौजन्यतापूर्ण होना चाहिए।

न्यायिक अधिकारी ऊँचे व्यासपीठ पर बैठता है इसका अर्थ ही है कि उसे प्रत्येक जन सहजता से देखता है और उसकी ओर प्रत्येक का ध्यान होता है इसलिए भी न्यायिक अधिकारियों का व्यवहार प्रत्येक क्षण एवं प्रत्येक क्रियाकलाप में ऐसा हो कि कोई भी व्यक्ति किसी भी क्षण शंका के दृष्टिकोण से न्यायाधीश को न देखे इसलिए निष्पक्षतापूर्वक न्यायदान करना अपेक्षित होता है। न्यायाधीश और न्यायपालिका की स्थिति अत्यन्त संवेदनशील तथा नजाकत भरी होती है और इसलिए न्यायाधीश को अपना कार्य इस प्रकार से करना चाहिए कि किसी भी प्रकार से अनावश्यक रूप से स्वयं को विवादों में नहीं फंसाना चाहिए। न्यायाधीशों को इस कारण से विश्वास के साथ निष्ठा से निष्पक्ष न्यायदान करना चाहिए। प्रशिक्षण कालावधि का अधिकतम उपयोग उचित रूप से प्रशिक्षण प्राप्त करने हेतु किया जाना चाहिए ताकि न्यायिक प्रशासन के संबंध में अधिकतम जानकारी न्यायिक अधिकारियों को प्रारंभ में ही प्राप्त हो जाना चाहिए।

माननीय मुख्य न्यायाधिपति महोदय श्रीमान भवानी सिंह साहेब ने यह अपेक्षा दर्शित की कि नये न्यायाधीशगणों का समय सेवाकाल में अच्छे से व्यतीय होगा एवं सर्वसाधारण की उचित रूप से सेवा हो सकेगी।

दोनों ही सत्रों के समापन अवसर पर अपने विद्धतापूर्ण उद्‌बोधन में माननीय न्यायाधिपति श्री सी.के. प्रसाद महोदय जो कि न्यायिक अधिकारी प्रशिक्षण संस्थान के अध्यक्ष भी हैं, ने सारगर्भित और सटीक शब्दों में अपने विचारों को अभिव्यक्ति दी। प्रथमतः न्यायाधीशों को समय पर आने का महत्व प्रतिपादित करते हुए यह कहा कि समय पर आना न्यायाधीश का न केवल कर्त्तव्य है अपितु कर्म के प्रति समर्पण भी है। न्यायिक जीवन में न्यायाधीश के साथ उलझने भी रहेंगी। विधि को पढ़ना होता है, समझना होता है और व्यवहारिक रूप से उसको किसी प्रकरण में तथ्यों के साथ देखना भी होता है। प्रत्येक न्यायाधीश को विधि के दायरे में रहकर ही कार्य करना है। न्याय व्यक्तिगत अनुभूति जैसी कोई चीज नहीं है। समाज इतना समझदार है कि वह यह अनुभव करने लग जाता है कि न्यायालय न्याय कर रहा है या नहीं। लोकमत की अपेक्षा क्या है यह भी ध्यान रखना चाहिए। माननीय प्रसाद महोदय ने महत्वपूर्ण बात यह कही कि विद्यार्थी के रूप में वर्ष में एक बार और व्यवहार न्यायाधीश के चयन के लिए पुनः परीक्षा देनी पड़ी और पढ़ के सफल हुए लेकिन न्यायाधीश के रूप में पदस्थापित होने का परिणाम यह है कि अब उसे प्रतिदिन आने वाली समस्याओं का निराकरण भी प्रकरण एवं कानून पढ़ के ही करना है प्रत्येक दिन परीक्षा का है। प्रत्येक न्यायाधीश ने इस बात को ध्यान में रखना चाहिए कि वह एक न्यायाधीश है, और ज्ञाता है लेकिन दूसरा पक्ष निश्चित ही मूर्ख नहीं है केवल उसका कार्य भिन्न है। कोई व्यक्ति जन्मतः विद्वान हो सकता है क्योंकि ईश्वरीय देन हो सकती है। कोई परिश्रम से विद्वान हो सकता है लेकिन दूसरे को मूर्ख समझना विद्वता का लक्षण कभी भी नहीं होता है। आपका व्यवहार, उठना, बैठना एवं बोलचाल ऐसी न हो जिससे कि आम व्यक्ति आपके न्यायिक निष्ठा के विपरीत चिंतन कर सके। एक समय था जब न्यायपालिका सर्वोच्च शिखर पर थी। अब सभी क्षेत्रों में पतन होने लगा। न्यायपालिका भी अछूती नहीं रही। अतः प्रत्येक न्यायाधीश का यह कर्त्तव्य है कि वह अपने कर्त्तव्यों का पालन इस प्रकार से करे कि न्यायपालिका को पुराना गौरव प्राप्त हो सके। बैंक का मैनेजर जन–धन का न्यासी है उसी प्रकार न्यायाधीश न्याय का न्यासी है यह बात कभी भी नहीं भूलना चाहिए।

माननीय महोदय ने अन्य अवसर पर यह कहा कि **बिना भय व पक्षपात के न्याय करें।** किसी भी कार्य को करते समय इधर–उधर न देखते हुए अथवा ऐसा करें या न करें अथवा करेंगे तो कहीं विपरीत परिणाम तो नहीं होगा ऐसा चिंतन न करते हुए देय तथ्यों के आधार से कानूनी स्थिति को देखते हुए निर्णय करें। माननीय न्यायाधिपति श्रीमान सी.के. प्रसाद महोदय ने अपने उद्‌बोधन में कहा कि वर्तमान में न्यायापालिका में एक अनावश्यक एवं काल्पनिक भय व्याप्त है कि न्यायाधीशों के प्रत्येक क्रियाकलाप को शंका की दृष्टि से एवं भ्रष्ट आचरण के रूप में देखा जाता है। लेकिन यह भय

निर्मूल है क्योंकि समग्र रूप से चिंतन व विचार करने की क्षमता एवं अनुभव वरिष्ठ जनों में है। न्यायिक अधिकारियों को कोई भी वरिष्ठ अधिकारी प्रभावित नहीं करेगा और न ही किसी से भी प्रभावित होना है। भूलें सभी से होती हैं और न्यायाधीश स्वाभाविक रूप से भूल करेगा भी और इसलिए वरिष्ठ न्यायालयों का भी अस्तित्व हुआ है इसलिए भूल होना बहुत स्वाभाविक क्रिया है लेकिन दुर्भावनावश भूल न हो। आप अपनी आत्मा के आवाज से न्याय कीजिए और आत्मा की वह आवाज होगी जो विधिशास्त्र के साथ तादात्म्य स्थापित होने पर ज्ञात होगी जब आप विधि को पढ़ेगे और समझेंगे। अधिवक्ता और न्यायाधीशों के बीच में समझदारीपूर्ण, स्नेहपूर्ण संबंध हों लेकिन इसका यह अर्थ नहीं है कि आपके उनके साथ व्यक्तिगत संबंध स्थापित हो जायें अथवा घनिष्ठ परिचय हो जाये। वर्तमान पद्धति में न्यायिक कार्य शोध और गर्वेषणा और अन्वेषण के आधार से नहीं होता है लेकिन नई पीढ़ी अपना कार्य समय के साथ शीघ्रता से करे तो ऐसा होना संभव होगा। न्याय–पीठ पर भी न्यायाधीशों ने शिष्ट आचरण व व्यवहार रखना चाहिए और सौहार्दपूर्ण व्यवहार होना चाहिए अथवा अन्यथा न्यायिक कार्य में अवरोध और कटुता उत्पन्न होगी। यह एक भ्रम है कि सही निर्णय भ्रष्टाचार से मुक्त होता है। निर्णय सही अथवा गलत होना एक बात है लेकिन भ्रष्टाचरण होना दूसरी बात है। परेशान व्यक्ति अतार्किक हो जाता है और गलत तरीके अपनाने लग जाता है। न्यायाधीश समाज का अंग है लेकिन समाज में रहते हुए भी उसका मार्ग और उस पर उसका संचालन एक पृथक रूप से होता है। आप अपने नाम का अथवा पदीय स्थिति का दुरूपयोग किसी को न करने दें। समाज में आप अपने मित्र इस प्रकार से चुने जो समाज के लिए लांछन न हो अन्यथा वे व्यक्ति आपको भी लांछित करेंगे। आप शीघ्र न्याय करें लेकिन उतावलेपन से नहीं अन्यथा न्यायदान का उद्देश्य भ्रष्ट हो जायेगा। आपमें ज्ञान होना एक बात है लेकिन सफल न्यायाधीश होना एकदम भिन्न बात है ऐसा करते हुए माननीय न्यायाधिपति श्री प्रसाद महोदय ने कहा कि सफल न्यायाधीश के लिए गुणात्मक रूप से योग्यता भी होना चाहिए।

माननीय न्यायाधिपति महोदय श्रीमान दीपक मिश्रा साहेब ने द्वितीय प्रशिक्षण शिविर में अपने मंगल उद्बोधन में कहा कि न्यायिक अधिकारी अथवा वरिष्ठ न्यायालय के न्यायाधीश में न्यायिक कार्य के प्रति कोई भेदभाव नहीं है प्रत्येक न्यायाधीश अपने स्तर पर प्रकरणों का गुणात्मक रूप से निर्णय करता है अन्तर केवल श्रेणीबद्ध स्तर का है। न्यायिक अधिकारी अथवा न्यायाधीश की समाज में कोई विशेष भिन्न स्थिति नहीं है और न ही न्यायिक अधिकारी को अपने अधिकार अथवा अपनी पदीय स्थिति के आधार से किसी पर दबाव डालने का अधिकार है। न्यायिक अधिकारियों को वास्तव में ईश्वरीय शक्ति का प्रतिनिधित्व करना होता है। अतः विधि का ज्ञान यद्यपि उससे अपेक्षित है लेकिन संभवतः अनुक्रम में वह

सर्वस्व नहीं होगा क्योंकि सर्वोच्च स्थान उसके व्यवहार एवं उसके मानवता के प्रति आदर व आस्था को देना होगा। यह कहा जाता है कि न्यायाधीश वाग्मीय अथवा सजीव जीता–जागता बोलता चालता कानून है तो कानून मौन न्यायाधीश है अर्थात न्यायाधीश विधि का प्रतिरूप प्रतिनिधि है इसलिए न्यायाधीश में सामान्य व्यक्ति से और अधिक उच्च कोटि के गुण होना चाहिए। न्यायाधीश में लेशमात्र भी वाचालता नहीं हो। यह कि अधिकारों के संबंध में गलतफहमी नहीं होना चाहिए क्योंकि न्यायाधीश भी विधि का सेवक है। उसका स्वभाव शांत होना चाहिए और न्यायिक रूप से चिंतन की क्षमता होना चाहिए। उसका व्यक्तित्व प्रभावोत्कर्षक हो एवं दीर्घसूत्रता से वह कार्य न करे। दूसरों के द्वारा हुई आलोचना अथवा प्रशंसा के बहकावे में आकर वह न्याय निर्णय न करे। अपनी प्रशंसा सामने वाले से करवाने के लिए दूसरे को प्रेरित न करे। न्याय निर्णय करते समय अधिवक्ताओं के द्वारा यदि कोई बात कही जाती है, दृष्टांत बताये जाते हैं अथवा स्थापित सिद्धांत के संबंध में कोई तर्क प्रस्तुत किए जाते हैं तो उसकी ओर उपेक्षा से न देखे अपितु समग्र रूप से चिंतन करके ही प्रकरण का निराकरण करे। माननीय न्यायाधिपति महोदय श्रीमान दीपक मिश्रा साहेब ने यह भी कहा कि न्यायाधीश को सतत रूप से अध्ययनशील रहना चाहिए और अपनी जानकारी को विस्तार रूप से बढ़ाते रहना चाहिए।

माननीय मुख्य न्यायाधिपति महोदय श्रीमान भवानी सिंह, माननीय न्यायाधिपति श्रीमान सी.के. प्रसाद एवं माननीय न्यायाधिपति श्रीमान दीपक मिश्रा महोदय के अतिरिक्त माननीय न्यायाधिपति श्री आर.पी. अवस्थी (सेवा–निवृत्त) माननीय न्यायाधिपति श्री व्ही.के. अग्रवाल एवं माननीय न्यायाधिपति श्री एस.एस. सराफ भी प्रशिक्षण शिविर में पधारे और उन्होंने विद्वतापूर्ण रूप से मार्गदर्शन किया। इसके अतिरिक्त श्री आय.एस. श्रीवास्तव, रजिस्ट्रार, 'सेट;, श्री एस.एन. खरे, अतिरिक्त जिला न्यायाधीश, श्री पी.के. तिवारी पूर्व लेखाधिकारी, उच्च न्यायालय ने भी अपने विद्वतापूर्ण उद्‌बोधन से न्यायिक अधिकारियों को मार्गदर्शित किया।

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NEXUS BETWEEN CAUSE OF ACTION AND TERRITORIAL JURISDICTION

- ANKIT MAJUMUDAR
- VARGESE THOMAS
Students of National Law School of India University, Bangalore

1. It is a fundamental principle of English Law, that wherever there is a right, there is a remedy (abijus ibi remedium). This has also been adopted in Indian Law. Therefore, anyone having a civil grievance has a right to institute a suit in a civil court.

2. However, this right is regulated to the extent that this suit can only be filed in a court competent to try that particular suit. It is in this context that the nexus between cause of action and territorial jurisdiction gains importance. In most cases, it is the presence and character of the cause of action which given the court jurisdiction.

3. Jurisdiction may be defined as the power or authority to hear and determine a cause, to adjudicate and exercise any judicial power in relation to it.[1] Jurisdiction of a Court has also been defined as the authority of a Court to administer Justice prescribed with reference to the subject matter, primary value and local limits. [2] Jurisdiction of a Court may be restricted by a variety of circumstances, and the first thing which needs to be determined in this context is the place of suing.

4. If we examine the provisions of the Civil Procedure code, we find this aspect examined is Secs. 15 onwards. The title of these sections is itself "Place of Suing" "Place" in this context means place in India and the headline indicates that the Courts referred to in these section are courts in India, and the immovable properties referred to is also in India.[3] As was held in BHAMBHOO v. RAM NARAYAN [4], these sections regulate the venue within India and apply only to those places where the code is in force. They deal with matters of domestic concern, and prescribe rules for the assumption of territorial jurisdiction by Indian courts in matters within their cognizance.

5. Jurisdiction of a Court may be divided into 3 categories, namely territorial jurisdictions, pecuniary jurisdiction and jurisdiction as to subject matter. In determining all these, it is the cause of action which play a major-role. It is the subject of the cause of action which determines whether a court has jurisdiction over such subject matter and it is the pecuniary value of the suit which establishes the present or absence of competence in a court to every suit presupposes the existence of a cause of action and in major-

ity of cases, it is the place where the cases of action arises, which determines the jurisdiction of the Court. As will be shown in the forth coming chapters, it is true that the case does provide rules for territorial jurisdiction in most cases. But many of these rules are indirectly connected with the cause of action, Moreover, at some stages, it is the place where the cause of action arises and the Court at that place, which has Jurisdiction.

6. Thus, as can be seen from the above, the nexus between cause of action and territorial jurisdiction is very much present and real. A clear examination of this nexus is a must to understand the true application of either.

Cause of Action

7. Every suit presupposes the existence of cause of action against the defendant. If there is no cause of action the plaint will have to be rejected. The expression "Cause of Action" has not been defined in the Code, though it has been defined RAM AWALAMB v. SHANKAR [5] as meaning every fact which, it traversed it would be necessary for the plaintiff to prove in order to support his right to the judgment of the Court. It has also been described[6] as "a bundle of essential facts which it is necessary for the plaintiff to prove before he can succeed."

8. It is necessary, that the plaintiff states specifically certain details regarding the cause of action. The words "cause of action" are sometimes used in a restricted sense and sometimes in a wider sense. In the restricted sense they mean the circumstances forming the infringement of the right or the immediate occasion for the action. In the other sense they mean the necessary conditions for the maintenance of the suit, including not only the infringement of the right but the infraction coupled with the right itself.[8]

9 Thus it would be necessary to state when the cause of action arose, this will enable the Court to ascertain whether in fact and law the cause arose. Thus, in a suit on a promissory note, on demand it must be stated that inspite of the demand being made, no payment was made by the promisee defendant.]

10. The plaint must also disclose the fact showing how the Court has pecuniary and territorial jurisdiction over the subject matter of the suit. It must also explain, if the suit is based by limitation, the ground of exemption. Further, it must specifically state the relief demanded by the plaintiff.

11. If the plaint filed by the plaintiff does not disclose any cause of action, the Court will reject it. The power to reject a plaint on this

ground will be exercised only if the Court comes to the conclusion that even if all the allegations set out in the plaint are proved, the plaintiff will not be entitled to any relief. [9]

12. Thus, as is visible from the above explanation even the circumstances which relate to the territorial jurisdiction of a Court form a part of the Cause of action, if and adopts the meaning of the phrase in the wider sense. No doubt, it is the facts of the cause of action which determine territorial jurisdiction. But a clear adoption of the wider defination easily establishes the nexus between cause of action and jurisdiction.

Place of Suit

13. This is the heading for sections 15-25, Sec. 15-20 of the Civil Procedure Code regulate the forum for institution of suits. These sections deal with the various facts of jurisdictions, including territorial jurisdiction.

Sections 15

The section refers to the pecuniary jurisdiction of the Court. It requires every suit to be instituted in the Court or the lowest grade competent to try such suit. Its object in requiring a sector to bring his suit in the Court of lowest grade competent to try it is that the higher Courts should not be over crowded with suits [9] This rule, however, is only one of procedure and got one of jurisdiction.[10] Therefore, while exercises of jurisdiction by a court of higher grade than is competent to try the suit is an irregularity and the decree is not a nullity. But exercise of jurisdiction by a Court of lower grade than which is competent to try it is said as being without jurisdiction".[11]

Sections 16

14. Section 16 deals with the jurisdiction of Courts in regard to suits have no jurisdiction in regard to immovable property outside India. [12]

The principle underlying the section is that a Court can have no jurisdiction over a matter in regard to which it cannot give an effective judgment. [13] Thus the section mandates that these suits must be filed within the local limits of where jurisdiction the property is situated. Also, the words, "subject to any pecuniary or other limitations, Prescribed by any law" indicate that the court must concurrently satisfy both pecuniary and territorial competence. Thus the general rule that Courts within the limits of whose jurisdiction a part of the cause of action arises can entertain the suit is not always applicable to its under this section. [14]

15. Immovable property as defined in S. 3(26) of the General Clauses Act. as including land. benefits to arise out of land, and things attached to the earth or permanently attached to anything fastened to the earth. Thus it has been held to include trees standing on land, [15] a right of fishery in enclosed waters [16] and even an easement.[17]

Clause (a)states that the section applies to the recovery of immovable property with or without rent or profits. However it was held in BANARAS BANK v. SURENDRA NARAYANA SINGH, [18] that when the suit is merely to set aside the decree without anything more. it may be instituted in the Court which passed the decree though the properties affected by the decree are situated elsewhere. Also, in STATE OF ASSAM v. BIRAJ MOHAN[19] while discussing interpreting S. 16, the Court held that it is the substance of the plaint that has got to be relief claimed, in order to find out whether the suit is one for the recovery of property.

Clause (b) with the partition of immovable property, Clause (c) deals with suits for foreclosure, sale or redemption in case of mortgage on immovable property. Thus suits in these matters must be instituted in the Court within the local limits of whose jurisdiction the mortgaged or partition property is situated.

Clause (d) deals with the determination of any other right or interest in immovable property. The words determination of any right do not only mean determination of an existing right, these words also include the determination of a right claimed which may not be in existence at the time the suit is brought. [20]

However, a suit for rent is not a suit for the determination : of any other rights to or immovable property within the meaning of Sec. 16 (d) [21]

Clause (e) refer to torts affecting immovable property such as trespass, nuisance, infringement or easement, etc. while clause (f) deals with the exception of the general rule that movables follow the person and deals with movable property under attachment. [22]

16. The proviso is an application,in a highly modified form, of the maxim that equity acts in personam, [23] i.e. the Court has jurisdiction respecting immovable property, though the property may be outside its jurisdiction, if relief can be obtained through personal obedience of the defendant. Personal obedience can be secured

only if the defendant resides within its jurisdiction or carries on business therein. For in one case, the defendant. himself is present, and in another, the personal property of the defendant. Therefore, in order to ensure, compliance with the decision of the Court, it may be ordered that the defendant be arrested or his goods be attached.[23]

17. In essence, therefore, S. 16 removes the usual nexus between cause of action and territorial jurisdiction by making the situation of immovable property in controversy as the determining factor in the establishing of territorial jurisdiction. However, it we consider the immovable property, itself as the cause of action or at least part of it, then there continues to remain a nexus between the two concepts.

Section17

18. This section states that in case of immovable property situated within the jurisdiction of different Courts, suits relating to it can be instituted in either of these Courts.

Thus, this section supplements S. 16, its object being to avoid a multiplicity of suits [24]. Section 17 cannot apply to suits in respect of immovable property which is not of the category mentioned in Sect. 16. Further, the properties must be, in the particular circumstances of the suit, be capable of being discribed as a single entity [25] A portion of the property must actually be existing in the iurisdiction of the Court in which the suit is brought. [26] Thus, where a suit in respect of a house and a certain land was filed in a Court within whose jurisdiction the house alone was situated and an appeal from the decree in the suit was filed in the court to which appeals lie from the decree of that court, it was held that the fact that the plaintiff abondoned his claim in respect of the house on appeal and that the appeal related only to the land which did not lie within the jurisdiction of the appellate court would not affect the jurisdiction of the Court to hear the appeal. [27] A decree by a Court in a suit where a part of the property situated within its jurisdiction will operate as Res judicata with respect to the property situated outside its jurisdiction, but covered by the decree. [28] The section allows a plaintiff who has two or more causes of action to take advantage of it, if the joinder of such causes of action is permitted. [29] However, the section does not apply if the cause of action as to property, situated outside its local limits is different from that, situated within,[30] Thus, here one court is vested with territorial jurisdiction over the immovable property. Effectively the other Court is defined. The Court obtains jurisdiction over the

entire cause of action even though only part of the property lies in its jurisdiction.

Section 18

19. This Section deals with the situation of there not being certainty as to within which of several courts the jurisdiction of the property lies. In such a case one of the Courts, if it is satisfied that there is uncertainty may, after recording a statement to that effect proceed to entertain and dispose off the suit. The section also makes a provision for the exingincy of a state ment not been recorded and an objection being taken before the appellate court, that the court did not have jurisdiction, In such a situation, the objection will not be allowed, unless there was, at the time of institution of the suits no reasonable ground for uncertainty and a consequential failure of justice has occured.,

Thus, both the conditions must be fulfilled before the decree can be initiated. [31] Moreover when an objection is not taken in the trial court the decree cannot be set aside on the ground of uncertainty of its territorial jurisdiction.[32]

Thus, by virtue of this section, territorial jurisdiction is vested in a Court, even if it is not certain that the immovable property exists therein. A nexus between the two is retained, however, since only one of the courts in respect of which such uncertainty exists can try the case.

Section 19

20. This section deals with suits for torts to person or movable property. These suits may be brought at the option on the plaintiff either where the tort is committed, or where the defendant resides or carries on business or personalty works for gain.

Sec. 20 overlaps with this section. This section is limited to torts in India, and to defendants residing in India. The phrase wrong done is indicatives of completed action and is wide enough to take in the results as the basis of the purposes of restitution. Thus where the wrongful act was done at one place, but the resultant damage was caused at another place, the Court at the latter place had jurisdiction under this section.[33] in a suit for malicious prosecuction, the service of summons in the prosecution is itself part of the malicious prosecution and is a wrong and that the Court at the place where the summons was served will have the jurisdiction to try the suit although the actual prosecution took place else where.[34]

21. When a Government servant residing at A and employed at a place other than A filed a suit against the Government for arrears of salary at A, it was held that no cause of action arose at A, and the Government could not be deemed to the carrying on business at A by virtue of the explanation to carrying on business at A by virtue of the explanation to S. 20. Therefore, the Court at A did not have jurisdiction.[35] The word "resides" is only applicable to natural persons, therefore, for a suit against the Government, jurisdiction has at the place where the tort is committed. [36]

22. In the case of intangible properties such as shares their situate for the purposes of jurisdiction their setus is the place where they can be effectively do it with for the purpose of transfer or transmission.[37]

Thus S. 19 acts as provision for movable properties and torts to them and persons. It provides an other example of a partial nexus between the cause of action and territorial jurisdiction. The plaintiff has the option of filing the suit at the place where the wrong was done. The cause of action arose or in an exception to this usual rule at the place where defendent resides, or carries on business or personally works for gain.

Section 20

23. This section provides for all other cases not covered by the foregoing rules. All such suits may be filed at the plaintiffs option in any of the following Courts VIZ.

(1) Where the cause of action, wholly or in part arises, or

(2) Where the defendant resides or carries on business or personally works for gain, or

(3) Where there are two or more defendants, any of them resides or carries on business or personally works for gain, provided that in such case (a) either the leave of the court is obtained (b) the defendants who do not reside or carry on business or personally work for gain that place acquires in such institution.

Thus, Sec. 20 is a general section affecting all personal action. Its object is to secure that justice may be brought as near is possible to every man's hearthstone and that the defendant should not be put to trouble and expense of travelling long distance in order to defend himself in cases in which he may not be involved.[38] S. 20 applies where S. 16-19 do not apply.

24. The plaintiff cannot, after he had made his choice and selected the forum, be allowed to change the forum by withdrawing the suit

to be filed elsewhere [39] However, decree passed in a suit which does not comply with the provisions of this section is not a millity.[40]

25. As regards the words "actually and voluntarily resides" the word "residence" has been held to denote the place where a person eats, drinks and sleeps, or where his family or serve eat, drink or sleep. [41] The expression "actually resides" means residence in reality in fact and not merely in form.[42]

As regards the phrase "carries on business", it has been held not to involve actual presence or personal effort and a man may carry on business at a place through an agent without ever having gone there. It means having an interest at that place, a voice in what is done, a share in the gain or loss and some control over it not the actual method of working at any rate over the existence of business.[43]

26. Thus, where the defendant firm had its head office at Bombay and a sub-office at Amritsar and the sub-office conducted correspondence with its local customers, received orders, received and disbursed money, though the orders placed at Amritsar were not binding unless accepted by the head office, it was held that the defendant firm was carrying on business at Amritsar.[44] Again, where a company having its head quarters at Hyderabed, was owning another company registered in Bombay, and was carrying on business at Bombay, through the letters it was held that a Bombay Court had jurisdiction over the former for breach of contract to deliver goods entered into with the latter at Bombay.[45]

27. As regards "cause of action", the meaning of the term has been examined previously. It is noteworthy that jurisdiction exists where the cause of action wholly or in part arises. Thus, where a right and an infringement thereof are both necessary to be proved before relief can be granted, the cause of action arises partially where the right created and partly where it was infringed. Thus, where right was colleged from the plaintiff at Calicut but the goods were short delivered, the cause of action for refund of the freight and for price of goods short delivered arises in part at Calicut.[46] There must be in existence such fact which by itself forms part of the cause of action of the suit. Mere preparation for the interference with possession of the plaintiff of a property which is outside the jurisdiction of the Court, even if such preparation is made at a place within the jurisdiction of the Court will not by itself form any part of the cause of action of the suit.[47] Thus, where the plaintiff based the claim for tax refund on 3 alternate grounds, for one of which alone a cause of action may at best be said to have arisen in

Calcutta, but not for the others, this cannot confer jurisdiction on the Calcutta High Court for other grounds.[48]

28. Choice of forum by agreement : If two Courts have jurisdiction to try a suit, parties can agree that the dispute be tried by one of them- not against public policy.[49] However, parties cannot by agreement, confer jurisdiction on Courts not inherently possessed by them.[50]

However, though parties can stipulate that all disputes arising out of their contract should be subject to the jurisdiction of a particular Court alone, it would not necessarily most the jurisdiction of the other competent Court. If it would be oppressive to compel the plaintiff to seek his remedy in the Court specified by the terms of the contract. Thus, where, on the facts of the case, it was held that it would be oppressive to compel the plaintiff to file the suit at Delhi (as should have been done by the terms of the contract) it was rightly entertained by the Ahmedabad Court.[51] Normally, however, if the terms of the agreement are clear and unambingious, the other Court ceases to have jurisdiction.[52]

cause of action in contracts

29 In a suit for damages for breach of contract, the cases of action consists of the making of the contract and of its breach. So that the suit may be filed either at the place where the contract was made or at the place where is should have been performed and the breach occured. [53] Cause of Action arises not at the place where the offer was made, but where it was accepted. [54] In a contract for life insurance, the cause of action includes death, and a suit can be filed where the death occured. [55] As regards the Common Law rule that the debtor must approach the creditor for payment, it has been held that great caution must be exercised while cesing this rule. [56]

30. In a suit for stridhan, which is unlawfully detained by husband, can be brought at the place of marriage. [57] A suit for damage to goods in transit by railway cannot be filed at H.Q. of railways, though it can be filed at (1) place of consignment (2) place of destination (3) place of damage. [58] Cause of action in a suit to set aside a forged will arise at the place where the will was published.[59]

Suits Against the Government

31. The 54th Law Commission, in its 1974 report, stated that, "in connection with suits against the Government guestures of forum sometimes presents difficulty, because the Government had no "residence", and the question of how for the Government can be

said to "carry on business" is one which, for a long time, engaged the attention of the Courts". The commissions, therefore, recommended a clause that the place of plaintiff's residence is treated as a proper forum.

32. In ASSOCIATED COMMERCIAL ENGINEERING v.STATE [60], a contract was executed on behalf of the State Government by the Chief Engineer at Tawa, and the withdrawal of the work by the Superintendent of Engineer also took place at Tawa. In the circumstances, cause of action for breach of contract was held to have wholly arisen at Tawa. It was held "actually resides" in S.20 does not apply to the Government.

33. Explanation to the section states that a corporation shall be deemed to carry on business at its principal office, or in respect of any cause of action arising at any place where it also has a subordinate office at such place. This explanation has been criticised by the 54th Law Commission, which stated that since the section allowed for suits where the cause of action arose, there was no need of giving the subsidiary office principle states.

Section 21

34. An objection as to local jurisdiction of Court does not stand on the same footing as an objection to the competence of a Court to try a case. Competency goes to the very root of the jurisdiction, and where it is lacking it is a case of inherent lack of jurisdiction. On the other hand, an objection as to local jurisdiction of a Court can be waived, and this has been given statutory recognition in S.21 of the Code.

35. The section does not refer to the Court of first instance and in the Court of first instance the objection may be taken at any time before the final judgment. But under this section, a court for appeal or revision will not entertain the petition unless it had been taken at the earliest opportunity, and moreover, a failure of justice had resulted. Thus, in HIRA LAL v. KALI NATH, [63] where the suit which ought to have been filed at the Agra Court was filed, with the leave of the Court, at the Bombay High Court, it was held that the objection to such jurisdiction falls within section 21.

36. An objection as to place of seeing will be allowed only when the following three conditions co exist. [64]

    1. The objection was taken in the Court of first instance.
    2. It was taken at the earliest possible opportunities and in cases where issues are settled at or before settlement of issues.
    3. A consequent failure of justice has occured.

37. The reason is that of a defendant allows the trial Court to proceed to decide the matter without raising the objection as to the place of seeing and takes the chance of a verdict in his favour, he clearly waives the objection as to place The rationals of the section was explained in KIRAN SINGH v. PASWAN, [65] as that the policy of the legislature has been to treat, objections at teritorial jurisdiction as technical and not open has been a prejudice on merits.

"Earliest possible opportunity" does not however, mean that the defendant should have filed his written statement before he raises an objection as to the place of suing.[66]

38. As regards failure of Justice in B.P. Co. v. P.J. PAPPU [67], when in connection with a jurisdiction of court the defendants disputes the jurisdiction of the Cochin Court, when the contract was in Bombay, the Court held that the condition unless there had been a failure of justice implied that at the time when the objection is taken in the appellate or revisional Court the suit has already been tried on merits, and that the section does not preclude the objection as to the place of suing if the trial Court has not given a verdict on the merits at the time when the objection is taken in the appellate or revisional Court.

39. As regards the meaning of failure of justice, it was held in N.T. ASSURANCE v. NANJUNDA, [68] in which the Court was considering the venue for an insurance claim over damage due to a fire, that the question whether trial in the wrong court has led to a failure of justice must be answered on a consideration of the merits of the case that is to say, on a consideration of the question whether in spite of a trial, the evidence which the parties wanted to call has been called and the hearing and the trial was satisfactory as a matter of procedure and whether the decision appeals to be right in fact.

40. Thus, Sec. 21 allows for cases where the necessary nexus between territorial jurisdiction and cause of action has not been achieved. However, when the absence of such nexus was objected to by the defendant, and when its absence had led to a failure of justice such objection may be allowed by an appellate or revisional Court.

Conclusion

41. It we are to examine the provision relating to the place of suing that are present in the C.P.C. we find that it is only in S.20 that a direct reference to cause of action is present. However, if we consider the cases of provisions, we find indirect reference to the nexus between cause of action and territorial jurisdiction.

42. Thus, sec. 16 refers to the jurisdiction of the Court in relation to immovable property, as being where the immovable property is situated. Again, S. 19 the plaintiffs are given an option as to whether the suit be instituted where the wrong was committed or where the defendant resides. S.20 however, directly provides that an option is provided to institute the suit at the place where the cause of action has arisen.

43. It is submitted, however, that if we consider the term cause of action and territorial jurisdiction in most cases, the location of the immovable property can be well considered to be part of the cause of action. In respect of the provisions giving jurisdiction to the Courts, where the defendant resides or carries on business, etc., it is submitted that the nexus vanishes. Where the defendant resides is hardly connected to the cause of action, but is more a procedure which gives greater advantage to the defendant in terms of convenience. These provisions force the plaintiff to file the suit at a place where the defendant will not be put to great hardship while defending himself.

44. The law at present, however, does suffer from certain defects. Firstly, it is ambiguious in statutory terms as regards the filing of suits against the Government. Although the Courts have interpreted the requisite procedure, it is submitted that the Law Commission is recommendation allowing the plaintiff residence to serve as a site where a suit can be filed, is correct. Considering the vast difference in the capacity of the state and the ordinary suit or such an advantage being given to the plaintiff seems perfectly justified. Moreover, the option is still open to the plaintiff to file his suit at the place where the cause of action arises.

45. It is also submitted that the Law Commission was right in considering that the explanation to S.20 was redundant, considering that a suit can be filed wherever the cause of action arises. As a result, whether the branch office is given the status of situs of jurisdiction or not does not make a difference. Therefore, the presence of the explanation does not appear to make a difference.

46. If we consider objections to jurisdiction, it is worth considering whether the requirement of consequent failure of justice is really necessary. It is submitted that the very fact that the suit is tried in a Court different from that within which the suit as filed itself occassions a failure of justice in terms of the fact that he is denied the right to defend the suit in the Court which the law modates.

47. Cause of action a mandatory requirement in any civil suit. On the Contrary an absence of a cause of action would lead to a dismissal

of the plaint. Therefore, in any plaint, the plaintiff must high light the presence of a cause of action, as well as the reason why the suit has been instituted in this particular Court. Alongside, he would also have to detail the questions of pecuniary jurisdiction and subject matter.

48. It is submitted that in most cases, there exists a clear nexus between cause of action and territorial jurisdiction. This is visible in most provisions. The nexus is only partially removed when the option of seeing at places uncommitted with the cause of action are provided which are incorporated mainly in the interests of justice.

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कपोल कल्पना - न्यायादान का मूलाधार

कपोल कल्पना व कल्पना में कोई साम्य नहीं है अपितु विपरीत दिशाओं में बहने वाली स्थिति है। जहाँ कल्पकता समाप्त होती है वहाँ कपोल कल्पना का प्रारम्भ होता है, जैसे कुएं का पानी समाप्त हो जाये तो पंक की मात्र प्राप्ति होती है। कभी–कभी जहां कल्पकता का नितान्त अभाव हो वहां मूलतः कपोल कल्पना का ही अस्तित्व होता है। कपोल कल्पना को हम अंग्रेजी में (vapour or idle fancy) कह सकते हैं। कल्पकता (invent) में अविष्कार उपज्ञात, ईजाद आदि का वास्तविकता से सम्बन्ध होगा जिसके लिए अध्ययन, चिंतन, तर्कशक्ति, विभिन्न संदर्भग्रंथ आदि की आवश्यकता होगी। साथ ही अध्ययन आदि के लिए समय की उपलब्धि भी आवश्यक होगी। आजकल समय किसी के पास नहीं है, विधि पुस्तकों की उपलब्धि एवं आवश्यकता का सामंजस्य ठीक से जमता नहीं है। विधि पुस्तकों का क्रय करना (कृपया संस्थानिक प्रतिवेदन पढ़ें) आवश्यक नहीं क्योंकि उससे हमारा कलेवर रूपसज्जा (get up) में वृद्धि नहीं होती। जब ये सब विपरीत स्थितियाँ हों तो न्यायादान के लिए हमारा अमोध अस्त्र (infallible-effectual) का हम उपयोग करते हैं। एक सत्र प्रकरण अतिरिक्त सत्र न्यायाधीश के यहाँ लंबित हो तथा उसमें प्रत्याभूति हेतु आवेदन प्रस्तुत हो तो न्यायाधीश महोदय का कहना होगा कि सत्र न्यायाधीश के यहां प्रस्तुत करो। वहां प्रस्तुत होने पर आवदेन पत्र सत्र न्यायाधीश ने वापस अतिरिक्त सत्र न्यायाधीश को भेजा। अब वे इस बात पर अड़े हैं कि पूर्व में यदि सत्र न्यायाधीश ने प्रत्याभूति आवेदन निरस्त किया था तो मैं यह आवेदन पत्र क्यों सुनूं? कानून बताओ। प्रश्न यह है कि ऐसा हो तो क्या हो? संभवतः स्थापित न्याय सिद्धान्त है। ***शहजाद हसन खान विरुद्ध इसहाक खान 1982 (2) एम.पी. वि.नो. (सु.को.) 186*** के सिद्धान्त को पढ़ना उचित होगा एवं ***स्टेट विरुद्ध चन्द्रहास 1991 एम.पी.एल.जे. 779*** भी पढ़ लेना न्यायिक स्थास्थ्य के लिए अपाय–कारक न हो। उसमें कहा है कि –

"Case made over for trial to Additional Sessions Judge. The Sessions Judge ceases to exercise jurisdiction in respect of bail application even though before case was made for trial, bail application had been rejected by the Session Judge."

एक अन्य घटना विनिर्दिष्ट अनुतोष अधिनियम के अन्तर्गत मकान के क्रय विक्रय के विषय में विनिर्दिष्ट सहायता मांगते हुए दावा प्रस्तुत किया। विकल्प में वादी ने यह सहायता भी चाही कि यदि ऐसी विनिर्दिष्ट सहायता नहीं दी जा

सकती है तो बयाने की रकम (अग्रिम धन) जो विक्रेता को दिया था, लौटाया जावे। क्षतिपूर्ति भी चाही गई। वास्तव में ये सब बातें धारा 15, 21, 22, 29, 40 में समाहित हो जाती हैं। वैकल्पिक सहायता न मांगी जावे तो वादी को वैधानिक कठिनाईयों का सामना भी करना होता है। न्यायालय ने दावा डिक्री किया, ठीक वैसे ही जैसे तेरा तुझको अर्पण क्या लागे मेरा ..... । न्यायालय ने कहा विनिर्दिष्ट सहायता दी जाती है कि प्रतिवादी वादी को विवादित संपत्ति का विक्रय करे। यदि प्रतिवादी ऐसा नहीं करेगा तो यह बयाने की रकम लौटाए। यदि वह ऐसा नहीं करेगा तो न्यायालय विक्रय करा देगा। ये पता नहीं चला कि यह भी लिखा गया था या नहीं कि न्यायालय संपत्ति विक्रय नहीं कराएगा तो अग्रिम धन कौन लौटाएगा।

एक अन्य प्रकरण। वादी का एक पक्षीय कथन कि वैकल्पिक स्थान उसके उपयोगी नहीं है। विचारण न्यायालय ने वैकल्पिक स्थान उपयोगी नहीं इस विषय पर निर्णय में कहा कि यह तो पक्षकार का अभिमत (ओपिनियन मात्र है) सिद्धता (Proof) नहीं है। अपील न्यायालय ने कहा कि एक पक्षीय साक्ष है, तो मान लेना चाहिए कि वादी को वैकल्पिक स्थान उपयोगी नहीं है। यदि ऐसा है तो अपील न्यायालय के निर्णय का सार–अनुपात (Ratio of Judgment) यह होगा कि एक पक्षीय प्रकरण में पक्षकार का अभिमत प्रमाण का स्थान लेगा। यह मान्य सिद्धांत के विपरीत प्रतीत होता है। कृपया देखें **ज्योति 2000 (1) पृष्ठ 33 एवं 37 (फरवरी अंक)** अभिमत (ओपिनियन) साक्ष (एविडेन्स) तथा प्रमाण (प्रूफ) में कोई साम्यता नहीं है।

मित्रों! यदि हम आप ऐसा ही करते रहे हैं तो स्थिति का आंकलन हम नहीं कर रहे हैं। यह स्थिति तमसो मा ज्योतिर्गमय वाली तो निश्चित ही नहीं है। इस पत्रिका का संपादकीय भी कह रहा है कि हमारा कर्तव्य प्रशिक्षु न्यायाधीशों के प्रति क्या है? उन पर यह बात हम सब के द्वारा बिंबित करना होगी कि वे अंदाज से काम न करें। रूल्स एण्ड आर्डर्स सिविल व क्रिमिनल का अध्ययन सतत रूप से पारायण जैसा करें। प्रकरणों के निराकरण के पूर्व सम्बन्धित सारवान विधि, प्रक्रिया संबंधि विधि एवं न्याय सिद्धांतों का सांगोपांग विचार कर लेने हेतु प्रेरित करना होगा तब ही सच्चे अर्थों में हम उन्हें प्रशिक्षित करेंगे, दीक्षा देकर दीक्षित कर पायेंगे। यह बात भी सही है दीक्षा देने की क्रिया द्विमार्गी है अर्थात जब हम दूसरों को देते हैं तब हम स्वयं के लिए भी बिना प्रयास प्राप्त करते हैं। आज के युग में बिना प्रयास के निःशुल्क चीज ईमान के साथ तो मिलती ही नहीं तब इतनी बड़ी उपलब्धि को हमने हाथ से नहीं जाने देना चाहिए। यह वैधानिक (statutory) चेतावनी (warning) नहीं है लेकिन अवैधानिक (illegal) बात भी तो नहीं कि "कपोल कल्पना न्यायिक स्वास्थ्य के लिए हानिकारक है।"

व्यवहार प्रकरणों में समझौता

पुरूषोत्तम विष्णु नामजोशी

व्यवहार प्रक्रिया संहिता के अंतर्गत करार, समझौता, राजीनामा, आपसी तोड़, विवाद का आपसी निपटारा आदि शब्द कान पर आते हैं तो आ. 23 नि 3 व्य.प्र.स. का स्मरण स्वाभाविक रूप से हो जाता है। लेकिन अन्य प्रावधान भी इस विषय में हैं जिन पर भी समय समय पर ध्यान किया जाना चाहिए। यांत्रिक रूप से प्रकरण का निराकरण भी नहीं होना चाहिए। आ. 23 नि. 3 व्य.प्र.स. के विषय पर विस्तार से भाष्य करने हेतु यह लेख नहीं है अपितु राजीनामें से संबंधित प्रक्रिया विषयक मुख्य मुद्दों पर विचार किया जाना है। **ज्योति 2000 (1) फरवरी पृष्ठ 33** पर प्रकाशित लेख एवं **पृष्ठ 37** पर प्रकाशित न्यायदृष्टांत ***1999 (8) एस.सी.सी. 396 बलराज तनेजा वि सुनील मदान*** का दृष्टांत देखना न भूलें व सतर्क हो जावें, ऐसा न हो कि कि पक्षकार प्रकरण में राजीनामा प्रस्तुत कर रहे हैं तो उसी आधार पर राजीनामा प्रमाणित कर आदेश दे दिया। धोखा खाओगे। राजीनामें की न्यूनतम शर्त है **विधिपूर्ण** होने से। विधिपूर्ण करार ही प्रवर्तनशील होते हैं अतः राजीनामा ऐसा हो जो विधिपूर्ण करार हो जो परिणामतः प्रवर्तनशील हो जैसा कि संविधा अधिनियम की धारा 2 एवं 23 से ज्ञात होगा।

प्रथमतः यहां महत्वपूर्ण प्रावधान नीचे दिए जा रहे हैं यथा;

(1) आ.1 नि. 8 (4)

(2) आ. 23 नि. 3, 3–क, एवं 3ख व्य.प्र.स.

(3) आ. 32 नि. 7 व्य.प्र.स.

(4) आ. 43 नि. 1–क (2) व्य.प्र.स

(5) सिविल रूल्स एण्ड ऑर्डर्स (नियम एवं आदेश सिविल नि. 167, 168)

उक्त प्रावधानों का पुनः प्रस्तुतीकरण यहां इसलिए किया जा रहा है जिससे त्वरित संदर्भ प्राप्त हो तथा लेख की विषय वस्तु को सुगमता से ग्रहण कर सके।

आ.1 नि. आठ : एक ही हित में सभी व्यक्तियों की ओर से एक व्यक्ति वाद ला सकेगा या प्रतिरक्षा कर सकेगा-

(1) जहां एक ही वाद में एक ही हित रखने वाले बहुत से व्यक्ति हैं वहां,

(क) इस प्रकार हितबद्ध सभी व्यक्तियों की ओर से या उनके फायदे के लिए न्यायालय की अनुज्ञा से ऐसे व्यक्तियों में से एक या अधिक व्यक्ति वाद ला सकेंगे या उनके विरूद्ध वाद लाया जा सकेगा या वे ऐसे वाद में प्रतिरक्षा कर सकेंगे;

(ख) न्यायालय यह निर्देश दे सकेगा कि इस प्रकार हितबद्ध सभी व्यक्तियों की ओर से या उनके फायदे के लिए ऐसे व्यक्तियों में से एक या अधिक व्यक्ति वाद ला सकेंगे या उनके विरूद्ध वाद लाए जा सकेंगे या वे ऐसे वाद में प्रतिरक्षा कर सकेंगे।

(2) न्यायालय ऐसे प्रत्येक मामले में जहां उपनियम (1) के अधीन अनुज्ञा या निदेश दिया गया है, इस प्रकार हितबद्ध सभी व्यक्तियों को या तो वैयक्तिक तामील कराकर या जहां व्यक्तियों की संख्या या किसी अन्य कारण से ऐसी तामील युक्तियुक्त रूप से साध्य नहीं है वहां लोक विज्ञापन द्वारा, जैसा भी न्यायालय हर एक मामले में निर्दिष्ट करे, वाद में संस्थित किए जाने की सूचना वादी के खर्च पर देगा।

(3) कोई व्यक्ति जिसकी ओर से या जिसके लिए फायदे के उपनियम (1) के अधीन कोई वाद संस्थित किया जाता है या ऐसे वाद में प्रतिरक्षा की जाती है, उसे वाद में पक्षकार बनाए जाने के लिए न्यायालय को आवेदन कर सकेगा।

(4) आदेश 23 के नियम 1 उपनियम (1) के अधीन ऐसे वाद में दावे के किसी भाग का परित्याग नहीं किया जाएगा और उस आदेश के नियम 1 के उपनियम (3) के अधीन ऐसे वाद का प्रत्याहरण नहीं किया जाएगा और उस आदेश के नियम 3 के अधीन ऐसे वाद में कोई करार, समझौता या तुष्टि अभिलिखित नहीं की जाएगी जब तक कि न्यायालय ने इस प्रकार हितबद्ध सभी व्यक्तियों को उपनियम (2) में विनिर्दिष्ट रीति से सूचना वादी के खर्चे पर न दे दी हो।

(5) जहां ऐसे वाद में वाद लाने वाला या प्रतिरक्षा करने वाला कोई व्यक्ति वाद या प्रतिरक्षा में सम्यक् तत्परता से कार्यवाही नहीं करता है वहां न्यायालय उस वाद में वैसा ही हित रखने वाले किसी अन्य व्यक्ति को उसके स्थान पर रख सकेगा।

(6) इस नियम के अधीन वाद में पारित डिक्री उन सभी व्यक्तियों पर आबद्धकर होगी जिनकी ओर से या जिनके फायदे के लिए, यथास्थिति, वाद संस्थित किया गया है या ऐसे वाद में प्रतिरक्षा की गई है।

स्पष्टीकरण- इस बात का अवधारण करने के प्रयोजन के लिए कि वे व्यक्ति जो वाद ला रहे हैं या जिनके विरूद्ध वाद लाया गया है या जो ऐसे वाद में प्रतिरक्षा कर रहे हैं, किसी एक वाद में वैसा ही हित रखते हैं या नहीं, यह साबित करना आवश्यक नहीं है कि ऐसे व्यक्तियों का वही वाद–हेतुक है जो उन व्यक्तियों का है जिनकी ओर से या जिनके फायदे के लिए , यथास्थिति, वे वाद ला रहे हैं या उनके विरूद्ध वाद लाया जा रहा है या वे ऐसे वाद में प्रतिरक्षा कर रहे हैं।

आ. 23 नि. 3. वाद में समझौता- जहां न्यायालय को समाधानप्रद रूप में यह साबित कर दिया जाता है कि वाद पक्षकारों द्वारा लिखित और हस्ताक्षरित किसी विधिपूर्ण करार या समझौते के द्वारा पूर्णतः या भागतः समायोजित किया जा चुका है या जहां प्रतिवादी वाद की पूरी विषय–वस्तु के या उसके किसी भाग के संबंध में वादी की तुष्टि कर देता है वहां न्यायालय ऐसे करार समझौते या तुष्टि के अभिलिखित किये जाने का आदेश करेगा और जहां तक कि वह वाद पक्षकारों से संबंधित है चाहे करार, समझौता या तुष्टि की विषय–वस्तु वही हो या न हो जो कि वाद की विषय–वस्तु है वहां तक तदनुसार डिक्री पारित करेगा।

परन्तु जहां एक पक्षकार द्वारा यह अभिकथन किया जाता है और दूसरे पक्षकार द्वारा यह इन्कार किया जाता है कि कोई समायोजन या तुष्टि तय हुई थी वहां न्यायालय इस प्रश्न का विनिश्चय करेगा, किन्तु इस प्रश्न के विनिश्चय के प्रयोजन के लिए किसी स्थगन की मंजूरी तब तक नहीं दी जाएगी तब तक कि न्यायालय, ऐसे कारणों से जो लेखबद्ध किए जाएंगे, ऐसा स्थगन मंजूर करना ठीक न समझें।

स्पष्टीकरण- कोई ऐसा करार या समझौता जो भारतीय संविदा अधिनियम, 1872 (1872 की संख्या 90) के अधीन शून्य या शून्यकरणीय है, इस नियम के अर्थ में विधिपूर्ण नहीं समझा जाएगा।

आ. 23 नि. 3-क. वाद का वर्जन -- कोई डिक्री अपास्त करने के लिए कोई वाद **इस आधार पर नहीं लाया जाएगा कि वह समझौता जिस पर डिक्री आधारित है, विधिपूर्ण नहीं था।**

आ. 23 नि 3. ख. प्रतिनिधि वाद में कोई करार या समझौता न्यायालय की इजाजत के बिना प्रविष्ट न किया जाना

(1) प्रतिनिधि वाद में कोई करार या समझौता न्यायालय की इजाजत के बिना जो कार्यवाही में अभिव्यक्त रूप से अभिलिखित हो, नहीं किया जाएगा और न्यायालय की इस प्रकार की अभिलिखित इजाजत के बिना किया गया ऐसा कोई करार या समझौता शून्य होगा।

(2) ऐसी इजाजत मंजूरी करने के पूर्व न्यायालय ऐसी रीति से सूचना जिसे वह ठीक समझे, ऐसे व्यक्तियों को देगा जिनके बारे में उसे यह प्रतीत हो कि वे वाद में हितबद्ध है।

स्पष्टीकरण- इस नियम में "प्रतिनिधि वाद" से अभिप्रेत हैं–

(क) धारा 91 या धारा 92 के अधीन वाद,

(ख) आदेश 1 के नियम 8 के अधीन वाद,

(ग) वह वाद जिसे हिन्दू अविभक्त कुटुम्ब का कर्ता, कुटुम्ब के अन्य सदस्यों का प्रतिनिधित्व करते हुए चलाता है उसके विरूद्ध चलाया जाता है।

(घ) कोई अन्य वाद जिससे पारित डिक्री इस संहिता के या तत्समय प्रवृत्त किसी अन्य विधि के उपबन्धों के आधार पर किसी ऐसे व्यक्ति को, जो वाद में पक्षकार के रूप में नामित नहीं है, आबद्ध करती हो।

आ. 32 नि 7 वाद-मित्र या वादार्थ संरक्षक द्वारा करार या समझौता

(1) कोई भी वाद–मित्र या वादार्थ संरक्षक अवयस्क की ओर से कोई करार या समझौता उस वाद के बारे में जिसमें वाद मित्र या संरक्षक की हैसियत में वह कार्य करता है, न्यायालय की इजाजत के बिना नहीं करेगा जो इजाजत कार्यवाहियों में स्पष्ट रूप से अभिलिखित की जाएगी।

1 (1क) उपनियम (1) के अधीन इजाजत के लिए आवेदन के साथ, यथास्थिति, वाद–मित्र या वादार्थ संरक्षक का शपथपत्र होगा और यदि अवयस्क का प्रतिनिधित्व प्लीडर द्वारा किया जाता है, तो प्लीडर का इस आशय का प्रमाणपत्र भी होगा कि प्रस्थापित करार या समझौता उसकी राय में अवयस्क के फायदे के लिए है।

परन्तु शपथपत्र या प्रमाणपत्र में इस प्रकार अभिव्यक्त की गई राय, न्यायालय को यह जांच करने से प्रवारित नहीं करेगी कि क्या प्रस्थापित करार या समझौता अवयस्क के फायदे के लिए है।

(2) न्यायालय की इस प्रकार अभिलिखित इजाजत के बिना किया गया कोई भी करार या समझौता अवयस्क से भिन्न सभी पक्षकारों के विरूद्ध शून्यकरणीय होगा।

आ. 43 नि 1 क. डिक्रियों के विरूद्ध अपील में के ऐसे आदेशों पर आक्षेप का अधिकार जिनकी अपील नहीं की जा सकती

(1) जहां इस संहिता के अधीन कोई आदेश किसी पक्षकार के विरूद्ध किया जाता है और तदुपरान्त निर्णय ऐसे पक्षकार के विरूद्ध सुनाया जाता है और डिक्री तैयार की जाती है वहां ऐसा पक्षकार डिक्री के विरूद्ध अपील में यह प्रतिवाद कर सकेगा कि ऐसा आदेश नहीं किया जाना चाहिए था और निर्णय नहीं सुनाया जाना चाहिए था।

(2) ऐसी डिक्री के विरूद्ध अपील में जो समझौता अभिलिखित करने के पश्चात् या समझौता अभिलिखित किया जाना नामंजूर करने के पश्चात् वाद में पारित की गई है, अपीलार्थी को इस आधार पर डिक्री का प्रतिवाद करने की स्वतंत्रता होगी कि समझौता अभिलिखित किया जाना चाहिए था या नहीं किया जाना चाहिए था।

तुष्टि, समझौता, या समाधान (Satisfaction, Compromise or adjustment) की दशाओं में कार्यवाही करते समय पीठासीन न्यायाधीशों के ध्यान आदेश 23 नियम 3 के प्रावधानों की ओर आकृष्ट किय जाता है। इस नियम द्वारा, न्यायलयों द्वारा दो पृथक कार्यवाहियां अपेक्षित है– (1) सहमति, समझौता या भुगतान को अभिलेखित (Record) किये जाने का आदेश देना, (2) वह जहां तक दावे से संबंधित है, उसके अनुसार आज्ञप्ति (जय–पत्र) प्रदान करना। इस कार्यवाही को उचित एवं प्रभावपूर्ण रूप से कार्यान्वित करने का तरीका यह होगा कि या तो आज्ञप्ति में पूरा समझौता दोहराया जावे, तथा दावे के वाद विषय में संबंधित भाग के संबंध में आदेश देकर उसका अंत किया जावे **या उस समझौते को आज्ञप्ति के साथ परिशिष्ट (Schedule) के रूप में लगाया जावे।**

168. जहां दावे का विषय अचल सम्पत्ति हो, तो आपत्ति से प्रभावित सम्पत्ति का स्वरूप आदेश 20 नियम 9 के अनुसार , वाद–पत्र या अभिलेख के किसी अन्य भाग का सन्दर्भ दिये बगैर, स्पष्टतया बताया जावेगा।

नोट :- भूमि के संबंध की आज्ञप्ति बनाये जाने में, प्रत्येक न्यायाधीश का कर्तव्य होगा कि वह स्वयं, इस बात का संतोष करे कि उसमें ऐसे विवरण दिये गये हैं जिससे उस भूमि के क्षेत्रफल एवं चतुर्सीमा तथा न्यायालय द्वारा निर्णीत स्वत्व के प्रकार के संबंध में कोई त्रुटि होना असंभव है।

टिप्पणी:- आदेश 20 नियम 9, व्यवहार प्रक्रिया संहिता में यह प्रावधान है कि जहां दावे की विषय–वस्तु अचल सम्पत्ति हो, जो आज्ञप्ति (डिक्री में ऐसी सम्पत्ति का उसकी पहचान के लिये पर्याप्त वर्णन रहेगा, और जहां ऐसी सम्पत्ति सीमाओं से या भू–प्रबंध या मापन की संख्याओं से पहचानी जा सकती हो, आज्ञप्ति (डिक्री) में ऐसी सीमाओं या संख्याओं का वर्णन होगा।

उपर आ. 32 नि. 3 के प्रावधान को देखेंगे तो ज्ञात होगा कि राजीनामा **विधिपूर्ण** अर्थात **वैधानिक** हो एवं उक्त प्रावधान का जो स्पष्टीकरण है उसमें यह भी दर्शाया है कि संविदा अधिनियम के अंतर्गत शून्य या शून्यकरणीय न हो। साथ ही साथ आ. 32 नि. 7 (2) में कहा गया है कि न्यायालय की इस प्रकार अभिलिखित अनुमति के सिवाय किया गया कोई भी करार या समझौता शून्य है। इसका अर्थ सर्वोच्च न्यायालय ने बताया है।

इस प्रावधान को सर्वोच्च न्यायालय ने ***कौशल्या देवी वि. बैजनाथ सन्याल ए.आई. आर. 1961 सु.को. 790*** में प्रतिपादित कर कहा कि "A compromise on behalf of the minor in the absence of leave under this rule, cannot be supported. Such a Compromsė is, however, not a nullity so far as re-

gards parties other than the minor are concerned, It cannot be avoided by any person other than the minor himself" अवयस्क के विरूद्ध भी ऐसा समझौता शून्य नहीं होगा अपितु शून्यकरणीय होगा। कृपया अन्य दृष्टांत **ए आई.आर. 1951 सु. को 280, ए.आई.आर. 1971 सु.को. 2184 (2188)** तथा **1961 एम.पी.सी. 187 (190)** भी देखें। **1961 एम.पी.सी. 187** में कहा है कि Terms of Compromise not separatable in regard to minors and majors Major can also avoid Compromise. एक अन्य दृष्टांत ***गुडी वि. बनवारी 1991 (1) एम.पी. एल.जे. पृष्ठ 63*** देखना होगा। उसमें विचार व्यक्त किया है कि वादी की अवयस्कता के होते हुए न्यायालय के अनुमति सिवाय पक्षकारों ने समझौता किया। डिक्री अवैध होने बाबत् दावा संस्थित नहीं होता अपितु संबंधित न्यायालय में आवेदन देना चाहिए जिसने डिक्री पारित की।

इसी प्रकार वादी व प्रतिवादी के बीच राजीनामा हो जाता है तो यांत्रिकी रूप से डिक्री पारित नहीं करना है। यह देखना है कि वादी ने अपने दावे में अभिकथित कथन किस प्रकार से विधिपूर्ण है जिस आधार से वादी डिक्री पाने का अधिकारी है। जैसे वादी ने विरोधी अधिपत्य से अधिपत्य होना अभिकथित किया प्रतिवांदी ने वादी के साथ इन अभिकथनों के आधार से राजीनामा कर लिया तो क्या न्यायालय डिक्री दे देगी। निश्चित ही नहीं। अन्यथा घोषणात्मक सहायता की कोर्ट फीस देकर जमीनों का क्रय विक्रय हो जाया करेगा। इसीलिए प्रारंभ में ही सर्वोच्च न्यायालय के निर्णय **1999 (8) एस. सी. सी. 396** की ओर ध्यान आकृष्ट किया है। देखें **2000 (1) ज्योति पृष्ठ 33 एवं 37**।

प्रकरण में समझौता करते समय दावे की विषय वस्तु पक्षकारों की प्रतिनिधि स्वरूप की स्थिति अथवा अवयस्कता की स्थिति या सामान्य स्थिति का ध्यान रखकर प्रावधानों को निश्चित रूप से अवश्य देखकर फिर ही राजीनामा होना चाहिए। जैसा कि प्रारंभ में बताया है।

प्रतिवादी ने वादी के साथ राजीनामा कर लिया है तब भी यह देखना होगा कि ऐसा करने से "Factual contraversy" अर्थात आधार का अस्तित्व (Ground exist) सिद्ध है क्या? जिस संबंध में साक्ष्य द्वारा ही तथ्य सिद्ध हो सकते हैं तो राजीनामा करने के पूर्व ऐसे मुद्दे पर पक्षकारों से विचार विमर्श करें। स्वीकारोक्ति केवल "Pleadings limited in character" की सीमा तक मान्य होगी। उदाहरणार्थ रामलाल ने श्यामलाल के विरूद्ध दावा प्रस्तुत किया व कहा कि वह विरोधी अधिपत्य से कब्जाधारी है विवादित दावे में वादी प्रतिवादी राजीनामा प्रस्तुत करते हैं व प्रतिवादी समझौते द्वारा ऐसा विरोधी अधिपत्य स्वीकार करता है तो ऐसा दावा राजीनामे के आधार से स्वीकार करने के पूर्व वैधानिकता का चिंतन उपर बताए **दृष्टांत (1999) 8 एस.सी.सी. 396 2000 (1) ज्योति 33-37** से कर ले। विरोधी अधिपत्य का कथन चाहे कितना भी स्पष्ट शब्दों

में हो तथ्य के रूप में स्वीकार नहीं करना चाहिए जब तक उस संबंध में प्रमाण नहीं है चाहे विपक्षी ने भी ऐसा तथ्य को अभिकथनों के माध्यम से स्वीकार भी क्यों न कर लिया हो। कारण स्पष्ट है विरोधी अधिपत्य विषयक कथन दावे में लिखने एवं प्रतिवादी के द्वारा स्वीकारोक्ति के कारण सिद्ध नहीं होंगे उसका अस्तित्व सिद्ध करना होता है। 12 वर्ष से अधिक समय से अधिपत्य कैसा था, प्रतिवादी के ज्ञान, खुलेतौर पर शांतिपूर्वक बिना किसी वास्तविक अवरोध के एवं प्रतिवादी की अनुमति सहमति इच्छा के विपरीत था ये बातें लेखी एवं मौखिक साक्ष्य द्वारा ही सिद्ध होना है। अतः ऐसी स्थिति में समझौते के आधार से अथवा प्रतिवादी एक पक्षीय होने की स्थिति में या उसके द्वारा उत्तर वाद प्रस्तुत न करने की स्थिति में भी आ. 8 नि. 5 एवं 10, आ. 12 नि.6, आ. 15 नि. 1 या आ. 23 नि. 3 व्य.प्र.स. के अन्तर्गत राजीनामा स्वीकार नहीं करना है व डिक्री नहीं देना है।

राजीनामा प्रस्तुत होने पर यह देख लें कि कहीं काट छांट नहीं है यदि है तो उसे अधिवक्ता/पक्षकारों से लघु हस्ताक्षरित करवा लें। ज्यादा ही काटछांट है तो नया आवेदन पत्र प्राप्त कर सकते हैं। साफ सुथरा आवेदन पत्र हो। राजीनामे की शर्तें स्पष्ट हो व किसी भी शर्त का निर्वचन पक्षकारों के मर्जी पर न छोड़ें। हर शर्त सुस्पष्ट हो क्योंकि प्रकरण का अंतिम रूप से निराकरण होना है। छलकपट (फ्राड) के अतिरिक्त अन्य किसी आधार से निर्णय व डिक्री को चुनौती नहीं दी जाना है। अतः किसी भी प्रकार की हड़बड़ाहट या उतावलेपन या उपेक्षा घातक होगी। आवेदन पत्र प्राप्त होने पर उसे ठीक से देख लें व अधिकृत अधिवक्ता के हस्ताक्षर संबंधित पक्षकारों के हस्ताक्षर हैं या नहीं यह देख लें। यदि अधिवक्ता अथवा मुख्तार द्वारा हस्ताक्षरित है तो वकील पत्र देख लें कि अधिवक्ता को समझौता करने का हक है या नहीं। मुख्तार नामा भी देख लें कि वह वैध है या नहीं तथा मुख्तार को समझौता करने का अधिकार है या नहीं। आवेदन पत्र प्रस्तुत होने पर हम उसे पढ़ेंगे। वैधानिकता की जांच करेंगे एवं वैध है तो उस पर प्रथम पृष्ठ पर हाशिये में हमारे सामने पक्षकारों के एवं अधिवक्ताओं के हस्ताक्षर तब लेंगे जब हमने समझौते की शर्तें पक्षकारों को पढ़कर बता दी हो व उन्होंने स्वेच्छा से स्वीकार करना समझने के पश्चात बताया हो। ऐसा करने पर वहीं हाशिये पर पीठासीन अधिकारी ने सत्यापित (व्हेरिफाईड) लिखकर हस्ताक्षर करना चाहिए। राजीनामा एक से अधिक पृष्ठों का हो तो यह देख लें कि प्रत्येक पृष्ठ पर पक्षकार/अधिवक्ता के हस्ताक्षर है। सत्यापित करने के पूर्व पक्षकारों का राजीनामा एवं शर्तें पढ़कर समझाने का कर्तव्य न्यायालय का है क्योंकि न्यायालय के संतुष्टी पश्चात ही आवेदन पत्र स्वीकार होना है।

न्यायालय के सम्मुख प्रस्तुत राजीनामें पर हाशिये पर समस्त औपचारिक कार्यवाही होने के पश्चात न्यायालय वादी/उसके अधिवक्ता प्रतिवादी/ उसके अधिवक्ता का यथा

परिस्थिति राजीनामे की शर्तों के आधार से परीक्षण कर ले। पक्षकार उपस्थित है तो उन्हीं का कथन अवश्य करवाना। कथन प्रारंभ होने के समय प्रथम पंक्ति में ही वादी/प्रतिवादी का पहचान का चिन्ह जैसा तिल–टट्टूचिन्ह आदि भी कथन में लिख लें। कथन पूर्ण होने पर कथन कर्ता के यथा स्थिति हस्ताक्षर अंगुष्ट चिन्ह अपने सामने अंकित करवा लें तथा सरसरी रूप से कथनकर्ता के अन्यत्र उपलब्ध हस्ताक्षरों से तुलना भी कर लें। छल–कपट धोखा प्रतिरूपण करना सामान्य बात है। न्यायालय की सतर्कता, ऐसे कृत्यों के होने देने में रोकने में, सहायक होती है।

आदेशिका में उन सब प्रक्रिया का विवरण दो जिस पर न्यायालय ने अवलंबन किया था। आदेशिका का एक प्रारूप ऐसा भी हो सकता है। आदेशिका पर पक्षकार एवं अधिवक्ताओं के हस्ताक्षर अवश्य लें।

आदेशिका

1, दि. 01-8-2000 :– वादी रामलाल सहित श्री ए.बी. शर्मा अधिवक्ता उपस्थित

2. प्रतिवादी श्यामलाल सहित सी.डी. वर्मा अधिवक्ता उपस्थित

3. उभय पक्षों की ओर से एक आवेदन पत्र आ. 23 नि. 3 व्य.प्र. स के अंतर्गत प्रस्तुत हुआ है। उक्त आवेदन पत्र का अवलोकन किया। यह दावा प्रोनोट के आधार से वसूली हेतु है जिसमें पक्षकारों ने आपसी समझौता किया है। दावा उत्तरवाद देखा गया एवं राजीनामे के दृष्टिकोण से प्रकरण का अवलोकन किया। राजीनामा उभयपक्षों को पढ़कर सुनाया गया। सही होना पक्षकारों ने स्वीकार किया अतः उक्त राजीनामें के हाशिये पर न्यायालय के सामने, पक्षकारों से व अधिवक्ताओं से, जिन्होंने अपने अपने पक्षकारों का पहचाना है के भी हस्ताक्षर लिए गए एवं राजीनामा प्रमाणित किए जाने की टीप (Remark) अंकित किया गया।

4. राजीनामे के आधार से वादी रामलाल एवं प्रतिवादी श्यामलाल के कथन लिपिबद्ध किए जिनमें उनके पहचान के चिन्ह भी अंकित किए हैं पक्षकारों के कथनों के आधार से ज्ञात होता है कि राजीनामा स्वेच्छया किया गया है। राजीनामा विधिवत व वैधानिक होना प्रतीत होता है अतः प्रकरण में राजीनामे के आधार से उचित आदेश हेतु प्रकरण निर्धारित होता है।

5. प्रकरण आदेश हेतु दि. 2.8.2000 को प्रस्तुत हो।

हस्ताक्षर
नाम
पदनाम सील

निर्धारित तिथि पर जब आप आदेश देंगे तो वह आदेश आदेशात्मक निर्देश (Mandatary direction) के रूप में हो न कि घोषाणात्म रूप का। जैसे, प्रतिवादी वादी को रु. 500.00 (अक्षरी रु. पांच सौ) दि. 12.12.2000 **को या उसके पूर्व** संदाय करें। ऐसा न लिखें कि यह घोषित किया जाता है कि वादी प्रतिवादी के रुपये 500 दि. 12-12-2000 तक पाने का अधिकारी है। ऐसे वाक्य का अनर्थ यह होगा कि वादी को प्रतिवादी यदि उक्त रकम 12.12.2000 **तक** नहीं देगा तो ऐसी रकम तत्पश्चात वादी प्राप्त करने से वंचित होगा।

राजीनामा यदि अचल सम्पत्ति का हो व वर्णनात्मक हो एवं नक्शा भी हो तो नक्शे की दो प्रतियां पहले ही प्राप्त कर ली गई हों जिस पर पक्षकारों के हस्ताक्षर अवश्य हों। नक्शे की प्रति हमेशा आदेश का भाग होगी एवं आदेश के साथ ही उस पर भी संयुक्त पृष्ठों पर सील अंकित की जावेगी व पीठासीन अधिकारी अपने हस्ताक्षर करेगा नाम लिखेगा व पदनाम सील लगाएगा। यह भी लिखेगा कि नक्शा राजीनामें के आदेश का भाग (अंग) है।" राजीनामे के आधार से डिक्री अवश्य बनाना है। कृपया **सिव्हिल रूल्स एंड ऑर्डस 167** को पढ़ें। मूल राजीनामा भी आदेश एवं डिक्री का अंग बनाया जावे जिससे मूल राजीनामा क्या है यह सतत् ज्ञात हो सकेगा। पक्षकार जब भी प्रमाणित प्रतिलिपि प्राप्त करेंगे तो उन्हें आदेश, डिक्री एवं राजीनामा तथा नक्शे की नकल भी स्वयमेव उपलब्ध होगी क्योंकि राजीनामा व नक्शा डिक्री का अंग है (a part of the decree)

हम आप यदि कुछ समय निकाल पाएं तो **सिव्हिल रूल्स नियम 165 से 178** तक के नियम अवश्य पढ़ लेंगे ताकि हमें ज्ञात हो कि डिक्री कैसे बनती है।

हिन्दु विवाह अधिनियम के अंतर्गत राजीनामा किन आधारों पर होगा व किन आधारों पर अनुमति नहीं दी जाना है इस विषय पर **ए.आई.आर मॅन्यूअल पंचम संस्करण छटा भाग पृष्ठ 459 नोट 11 Application to proceed under H.M.A.** को देखें। म.प्र. स्थान नियंत्रण अधिनियम एवं हिन्दु विवाह अधिनियम में एक समान स्थिति यह है कि उल्लेखित प्रावधानों के अंतर्गत आधार का अस्तित्व (Ground exist) होना अनिवार्य है। ऐसा आधार न्यायालय के संतुष्टि के अनुसार हो। अतः राजीनामे में ऐसा आधार स्पष्ट करना होगा। जैसे यह कि उभयपक्ष स्वीकार करते हैं एवं प्रतिवादी यह मान्य करता है कि वादी के विवादित स्थान की वास्तविक रूप से सद्भावना पूर्वक निवास हेतु आवश्यकता होकर उसके पास अन्य कोई स्थान निज का इस कार्य हेतु न्याय नगर, नगर पालिक निगम क्षेत्र के अंतर्गत उपलब्ध नहीं है। राजीनामे के आधार से पारित आदेश में ऐसी स्पष्टोक्ति भी अभिव्यक्त होना चाहिए।

प्रकरण यदि किसी अन्य तिथि के लिए निर्धारित है तथा मध्यांतर में ही पक्षकार राजीनामा करने हेतु आवेदन पत्र देते हैं तो मूल प्रकरण रीडर से तब तक निकालने के

लिए न कहें जब तक कि आ. 13 नि. 10 व्य.प्र.स. का आवेदन पत्र प्रस्तुत नहीं हो जाता। मध्यांतर में प्रस्तुत राजीनामे के आवेदन पत्र की जांच थोड़ी सतर्कता से व कठोरता से हो क्योंकि कभी कभी प्रतिरूपता की संभावना ज्यादा होती है विशेषकर तब जब कोई अन्य अधिवक्ता पक्षकार की ओर से नया वकील पत्र प्रस्तुत करता है। ऐसी स्थिति में सबसे संरक्षित मार्ग यह है कि राजीनामे की औपचारिकता पूर्ण कर ली जावे व आदेश हेतु प्रकरण उस तिथि हेतु निर्धारित करे जिस तिथि के लिए पूर्व से प्रकरण निर्धारित है। यदि आप छल–कपट धोखा अथवा प्रतिरूपण की आशंका निर्मूल मानते हैं तो राजीनामा होने के दूसरे दिन भी आदेश पारित कर सकते हैं।

राजीनामे के संबंध में आ. 1 नि 8 (4) आ. 32 नि. 7 एवं आ. 23 नि. 3–3 क एवं 3 ख व्य.प्र.स. का प्रयोग प्रकरण के प्रकार को देखकर करना चाहिए तथा जो प्रक्रिया निर्धारित है उसका अलांघनीय रूप से (sacrosanct-peremptory) पालन करना चाहिए। ये बात भी ध्यान रखना चाहिए कि राजीनामे के आधार से पारित डिक्री के विरुद्ध अपील नहीं होती है। अपील केवल किसी सीमा तक होती है जो आ. 43 नि. 1 क (2) में दर्शित है। अर्थात जहां राजीनामा प्रमाणित किया जा सकता था लेकिन न्यायालय ने ऐसा राजीनामा प्रमाणित नहीं किया एवं जहां प्रमाणित नहीं किया जा सकता था वहां प्रमाणित किया।

मित्रो अत्यंत सार संक्षिप्त में यह प्रस्तुतीकरण है। समय–समय पर प्रावधान एवं उस विषय पर भाष्य पढ़कर ही आप स्वयं उचित निष्कर्ष निकाल सकेंगे। विषय को एक स्थान पर एकत्र कर प्रस्तुति का मात्र लक्ष्य था।

विशिष्ट शब्द एवं उनके अर्थ इस प्रकार हैं :

1. **Compound a felony or offence.** Forbear from prosecution for consideration or on private motives.
2. It is offence which the law allows to be compounded privately between the parties
3. **Compoundable.** Capable of being compounded. Compoundable Offence.
4. **Compromise.** To adjust by mutual concession; to settle without resort to the law ; to compound. (*As noun*) An "adjustment of matters in dispute by mutual concessions." "An agreement between the parties to a controversy for a settlement of the same." (*Abbott.*) "A settlement of differences by mutual concessions." "The mutual yielding of opposing claims; the surrender of some right or claimed right in consideration of a like surrender of some counter-claim." (*Anderson L Dict.*) "An agreement between two or more persons, who, to avoid a law suit, amicably settle their differences, on such terms as they can agree upon". (*Bouvier*).

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न्यायिक अधिकारी का न्यायालय में व्यवहार एवं शिष्टाचार

न्यायमूर्ति श्री उमेश चन्द्र श्रीवास्तव
ज्येष्ठ न्यायाधीश, इलाहाबाद उच्च न्यायालय

विधि द्वारा शासित राज्य के तीनों अंगों में न्यायपालिका का स्थान सदैव ऊँचा रहा है, और वह ठीक ही है, ऐसा कोई सभ्य राज्य हो ही नहीं सकता जो मानव–मात्र के प्रति न्याय का आदर्श न रखे। विधि की सर्वोच्चता और गरिमा की रक्षा उन व्यक्तियों की निष्पक्षता, आर्जव (Fairness) (ऋजु = fairसे) और न्यायशीलता द्वारा होती है जो न्याय–प्रशासन करते हैं और उन सब को न्याय देते हैं जो उनका दरवाजा खटखटाते हैं या उनके सामने आते हैं।

विधि और न्याय–प्रशासन के गौरव और गरिमा को भारत में अनादिकाल से सदैव मान्यता दी गई है। प्राचीन भारत में विधि 'धर्म' से अलग न होकर उसका अंग थी और उसमें भीतरी तथा बाहरी अनेक परिवर्तन हुए, रूढ़ियों और परम्पराओं ने उसे स्वरूप प्रदान किया। आचरण के नियमों और दूसरी दुनिया के भय ने उसे ढाला, विदेशियों के आने से विधि पर तथा न्याय–प्रशासन करने वालों पर भी प्रभाव पड़ा, यद्यपि स्थानीय क्षेत्रों में न्याय–प्रशासन करने वाली तत्कालीन न्याय पंचायतों पर उतना प्रभाव नहीं पड़ा पहले काजी पद्धति आई, और फिर अंग्रेजी शासन और अंग्रेजी विधि के आगमन के साथ धीरे धीरे संहिताबद्ध विधियां अस्तित्व में आईं। उनके द्वारा स्थापित न्यायालय उसी पद्धति के थे।

आचार-व्यवहार :

प्राचीन भारत में राजा न्याय का स्त्रोत होता था तथा बराबर रहा। साथ ही न्याय करने में उसे भी एक प्रकार की आचरण संहिता एवं शिष्टाचार का पालन करना होता था। **मनु स्मृति** में कहा गया है : "न्याय आसन में प्रतिष्ठित होकर तथा अपने शरीर, इच्छा, वस्त्र और मन को संयत करके न्यायाधीश अपने इष्टदेवता को प्रणाम करे और फिर विचारण प्रारंभ करे-- चाहे बैठकर और चाहे खड़े होकर– वस्त्रालंकार में किसी दिखावे के बिना वह विवादियों के मामलों का विचारण करे। राजा को चाहिए कि भले लोगों के लिए न्यायपूर्ण प्रतिकर और बुरे लोगों के लिए न्यायपूर्ण दण्ड की व्यवस्था करे। न्याय के नियमों का कभी उल्लंघन न करे"

व्यवहारान्दिदृक्षस्तु ब्राह्मणैः सह पार्थिव :।
मंत्रज्ञैमन्त्रिभिश्चैव विनीतः प्रविशेत्सभाम्।। 8·1।।
तत्रासीनः स्थितोवापि पाणिमुद्यम्य दक्षिणम्।
विनीतवेषाभरणः पश्येत्कार्याणि कायणिाम् ।।8·2।।
धर्मासनमधिष्ठाय संवीताङ्गः समाहितः ।
प्रणम्य लोकपालेभ्यः कार्यदर्शनमारभेत् ।।8·23।।

राजा के अधिकारों और कर्तव्यों में वृद्धि के कारण यह आवश्यक समझा गया कि न्यायाधीशों की नियुक्ति की जाए जो अपने बुद्धि बल का प्रयोग न्याय करने के लिए करें; और राजा ने उच्चतम सत्ता अपने हाथ में रखी, इस प्रकार राजा ने अपने द्वारा नियुक्त न्यायाधीशों को अपनी ही शक्तियां प्रदान कीं। इन नियुक्त न्यायाधीशों के लिए भी आचरण संहिता और शिष्टाचार का विधान था।

कात्यायन ने कहा है कि न्यायाधीश को आत्मनियंत्रण, निष्पक्षता, मन की स्थिरता, ईश्वर में आस्था, कर्तव्यनिष्ठा और क्रोधहीनता रखनी चाहिए और सम्यक जीवन जीना चाहिए। शुक्र ने **शुक्रनीतिसार** में कहा है कि राजा द्वारा नियुक्त न्यायाधीश विधिक प्रक्रिया में दक्ष, बुद्धिमान, अच्छे आचार–विचार वाले, मृदुभाषी, मित्र और शत्रु के प्रति निष्पक्ष, सत्यनिष्ठ, विधिज्ञ और क्रियाशील तथा क्रोध, लोभ और तृष्णा से मुक्त होने चाहिए।

अपने प्रसिद्ध **अर्थशास्त्र** में कौटिल्य ने कहा है कि न्यायाधीश विवादों का निर्णय सभी प्रकार के घुमाव–फिराव से बचकर, अविचलित मन से और सभी परिस्थितियों में अडिग रहकर तथा सबके प्रति प्रतिकार और शालीन रहते हुए करें।

अर्थशास्त्र में न्यायिक अवचार (Miscounduct) और उसके लिए इस प्रकार कहा गया है: "सबसे पहले दण्ड उस न्यायाधीश को दिया जाना चाहिए जो अपने न्यायालय में किसी विवादी को डराए, धमकाए, बाहर करे या उसका बोलना अनुचित रूप से बन्द करे।"

इससे प्रकट होता है कि प्राचीन भारत के धर्मशास्त्री न्यायिक आचरण और शिष्टाचार के प्रति पूर्ण जागरूक थे और उन्होंने ऐसी बातें कहीं जो समाज के विकास के साथ धीरे–धीरे प्रतिष्ठित हो गई। उनके उपदेश आज भी प्रासंगिक हैं और इस विषय पर सभी मूलभूत आवश्यकताओं की पूर्ति करते हैं।

मध्यकाल में विशेषतः मुगल काल में, काजी के नियुक्ति आदेश में उसे निदेश दिए जाते थे वह न्यायी, ईमानदार और निष्पक्ष हो तथा विचारण वह पक्षकारों की उपस्थिति में और न्यायालय के समय में करे, जहां वह कार्य करता हो वहां के किसी व्यक्ति से भेंट लेना उसे मना था और जिस किसी के द्वारा प्रस्तुत मनोरंजन में शामिल होना भी उसके लिए निषिद्ध था।

न्यायिक अधिकारी के न्यायालय में व्यवहार और शिष्टाचार में बहुत सी बातें आती हैं। जनसामान्य की न्यायपालिका और न्याय व्यवस्था तथा विधि की महत्ता में आस्था तथा उसके प्रति आदर और भय का भाव, न्यायिक अनुशासन, व्यवहार और नियंत्रण, सब एक दूसरे से जुड़े हैं। न्यायिक अधिकारी की स्थिति तथा उसकी शक्तियों के प्रयोग का ढंग कार्यपालिका के अधिकारियों से भिन्न होते हैं। यह नहीं भूलना चाहिए कि

न्यायिक अधिकारियों को कुछ सीमा तक सन्यासी का जीवन व्यतीत करना होता है और उनका जीवन सामाजिक होने की अपेक्षा समाज से अलग और अछूता होने का अधिक रहता है। उन्हें अपने व्यवहार और आचरण से न्यायालय की गरिमा बनाए रखनी होती है और यह सुनिश्चित करना होता है कि जनसामान्य द्वारा उनमें निहित विश्वास उनके व्यवहार तथा कार्य करने के तौर–तरीकों से डिगे नहीं। यह कहना ठीक ही होगा कि किसी समाज को सभ्य मुख्यतः इसलिए माना जाता है कि वह न्यायपालिका के प्रति आदर और सम्मान प्रकट करता है। न्यायपालिका का यह कर्तव्य है कि उस अंतरस्थ एवं हार्दिक सम्मान और आदर की रक्षा करे जो जनता में न्यायिक अधिकारियों के प्रति है। उन पर सरकारी सेवक आचरण नियमावली तो लागू है ही। उन्हें साधारण नियम (सिविल) General Rules (Civil) तथा उच्च न्यायालय द्वारा समय–समय पर निकाले गए परिपत्र भी शासित करते हैं, जिन न्यायिक अधिकारियों को न्याय और विधि का निर्वचन (Interpretation) तथा कार्यान्वयन करना कराना होता है, उन्हें उन नियमों का भी पालन करना होता है जो उनके आचरण और शिष्टाचार के विषय में हैं, इन विधि संरक्षकों के जरा से विचलन से जनसाधारण द्वारा उनमें निहित विश्वास हिल जाएगा और यह धारणा बनेगी कि जो व्यक्ति उन नियमों और विनियमों का उल्लंघन कर सकता है जो स्वयं उसके लिए हैं वह वास्तविक और निष्पक्ष न्याय नहीं कर सकता।

वेशभूषा :

न्यायिक अधिकारी को साधारण नियम (सिविल) में लिखे नियमों के अनुसार उचित पोशाक स्वयं तो पहननी ही चाहिए, यह भी देखना चाहिए कि उसके समक्ष उपस्थित होने वाले सभी विधि–व्यवसायी उचित वेशभूषा में हों, उचित वेशभूषा में बाल काढ़ना, कोट और कमीज के बटन लगाना तथा कोट के ऊपर गाउन पहनना भी आएगा, स्वयं उचित पोशाक में होकर ही न्यायिक अधिकारी विधि–व्यवसायियों से कह सकेगा कि वे नियमों के अनुसार पोशाक पहनें जिससे कि विधि–व्यवसायी के रूप में उनकी पहचान हो और उस रूप में उन्हें सुना जा सके, किन्तु वकीलों से यह बात नम्रतापूर्वक कहनी है– वेशभूषा की यह मांग विधि की ही नहीं, न्यायालय के तद्विषयक अनुशासन और परम्परा की भी है।

शिष्टाचार :

यद्यपि इस विषय में कोई नियम नहीं है, किन्तु न्याय के आसन के प्रति अभिवादन प्राचीन भारतीय विधान और परम्परा के अनुसार है तथा उच्चतम न्यायालय और उच्च न्यायालय में भी प्रचलित है। यह एक अच्छी परम्परा है और इस बात को बराबर–स्मरण कराती है कि न्यायिक नैतिकता का पालन पूरे दिन किया जाए तथा न्यायाधीश को अधिवक्ताओं और वादकारियों का अधिकाधिक आदर, सम्मान और विश्वास प्राप्त हो।

समय-पालन :

न्यायिक अधिकारियों को न्यायालय में बैठने के तथा लञ्च के लिए विहित समय का पालन कड़ाई से करना चाहिए। ऐसा न करने का अर्थ होगा नियमों का स्वयं उन व्यक्तियों द्वारा उल्लंघन जो विधि के संरक्षक हैं और जिन्हें नियमों का पालन ही नहीं कराना है अपितु उनका उल्लंघन करने वाले सभी व्यक्तियों को दण्ड भी देना है। उन्हें जनता के समय और धन के प्रति पूर्ण न्याय करना चाहिए। न्यायालय में कार्य के लिए विहित समय का पालन न करना, विहित से अधिक समय पर्यन्त लञ्च में रहना और इस प्रकार काम के घंटे घटा देना जनता के समय और धन के प्रति अन्याय है। उससे जन–सामान्य की न्यायालय के प्रति दृढ़ आस्था, विश्वास और आदरभाव पर भी दुष्प्रभाव पड़ेगा। साधारण नियम (सिविल) के अनुसार अधीनस्थ न्यायालयों के काम का समय निर्धारित है। पीठासीन अधिकारियों को इस प्रकार भी कार्य नहीं करना है जिससे कि वकीलों और वादकारियों की यह धारणा बने कि वाद–सूची का विनियमन और उसमें परिवर्तन पीठासीन अधिकारी नहीं बल्कि कर्मचारी करते हैं।

भाषा :

वकीलों, वादकारियों और न्यायालय के कर्मचारियों द्वारा प्रयुक्त की जाने वाली भाषा तीखी नहीं होनी चाहिए। तीखी भाषा का उत्तर भी नम्र और शालीन होने की बजाय तीखा हो सकता है। किन्तु इसका यह अर्थ नहीं है कि यदि न्यायालय का कोई कर्मचारी या वादकारी मार्ग–भ्रष्ट हो जाए तो उसकी भर्त्सना न की जाए या उसे नियंत्रण में न लाया जाए। वादकारियों के विरूद्ध न्यायालय अवमान अधिनियम (Contempt of Courts Act) के अधीन भी कार्यवाही की जा सकती है। निरसंदेह पीठासीन अधिकारी को ऐसे मामलों में अतिसंवेदनशील नहीं होना चाहिए, और न किसी बात को अपनी बात का प्रश्न बना लेना चाहिए। उसे जब न्यायालय की गरिमा और शिष्टाचार बनाए रखने के लिए विवश होना पड़े तब न्यायालय अवमान अधिनियम के उपबन्धों का आश्रय लेना ही होगा, भले ही वह ऐसा अनिच्छापूर्वक करे। यदि न्यायालय की कार्यवाही में अवरोध उत्पन्न किया जाए तो भारतीय दंड संहिता की धारा 228 एवं दंड प्रक्रिया संहिता की धारा 345 का भी आश्रय लिया जा सकता है। किन्तु ऐसे मामलों में कार्यवाही सावधानी से करनी चाहिए और तभी करनी चाहिए जब वह वस्तुतः आवश्यक हो जाए तथा अन्य विकल्प या तो उपलब्ध न हो या वह लगभग अनुपलब्ध हो गया हो।

साक्षी :

वर्तमान भारतीय न्याय–व्यवस्था में साक्षियों की स्थिति बहुत दृढ़ नहीं है और

न्यायालय का कर्तव्य है कि उन्हें संरक्षण प्रदान करे और देखे कि उन्हें अनावश्यक रूप से तंग न किया जाए, और न भ्रान्ति में डाला जाए, और न उनसे सच का झूठ कराया जाए, मुकदमें में तारीख लगाते समय तक कोई उनकी सुविधा की ओर ध्यान नहीं देता। पीठासीन अधिकारियों को देखना चाहिए कि जब साक्षी बयान दे रहा है तब उसे तंग करने के लिए अनावश्यक और विसंगत (Irrelevant) जिरह न की जाए। उसका विनियमन और नियंत्रण विधि के अनुसार और चतुराई से किया जाना चाहिए जिससे कि अनावश्यक विवाद और संघर्ष न हो। यद्यपि पीठासीन अधिकारियों को साक्षियों के प्रति शिष्ट होना चाहिए, किन्तु इसका अर्थ यह नहीं है कि जब साक्षी मार्गभ्रष्ट होने लगे अथवा वकीलों से बहस करने लगे अथवा उन पर या न्याय–व्यवस्था पर छींटाकशी करने लगे तो उसकी भर्त्सना न की जाए या उसे उसकी सीमाएं न बताई जाएं, या उसे चेतावनी न दी जाए।

वकील :

जिस प्रकार वकील पीठासीन अधिकारियों के व्यक्तित्व का अध्ययन करते हैं उसी प्रकार पीठासीन अधिकारियों के लिए भी वकीलों के व्यक्तित्व का अध्ययन बहुत महत्वपूर्ण है। बैंच और बार के संबंध मधुर होने चाहिए और उसके लिए बराबर प्रयत्नशील रहना चाहिए। उनमें परस्पर आदरभाव होना चाहिए। यद्यपि पीठासीन अधिकारी को चाहिए कि देखे कि लोग उसे आंख न दिखा सके। उसे अपने समक्ष के मामलों को संतुलित और अविचलित मस्तिष्क से निपटाने के लिए न्यायपूर्वक और निष्पक्षता से, तथा पूर्वग्रह, क्रोध या पक्षपात के बिना अग्रसर होना चाहिए। उसे न नाराज होना चाहिए और न उग्र वकीलों से बहस में उलझना चाहिए। जब परिस्थितियों का तकाजा ऐसा न हो तो उसे उस समय आदेश आरक्षित करके दिन के अन्त में चैम्बर में जाने के ठीक पहले सुना देना चाहिए।

अनावश्यक स्थगन (Adjournment) आज कुछ वकीलों में बहुप्रचलित हैं; उससे निरुत्साहित किया जाना चाहिए। लम्बा विचारण, साक्षियों को तंग करना, मुकदमें के स्थानांन्तरण के लिए आधार पैदा करना, भले ही वह मुकदमें में विलम्ब कराने के लिए ही हो, ऐसे कार्य हैं जिनके संबंध में कार्य नम्रता और चतुराई से, किन्तु निर्भय होकर, करना चाहिए। पीठासीन अधिकारियों को यह नहीं सोचना चाहिए कि वे असहाय स्थिति में हैं और धौंस–पट्टी का मुकाबला नहीं कर सकते।

यदि पीठासीन अधिकारी की यह ख्याति हो जाए कि वह निष्पक्ष, न्यायी, ईमानदार, पूर्वग्रह–रहित(Free from bias), प्रतिकूल धारणा और हितबद्धता से रहित, निस्संग, और किसी एक वर्ग या कोटि के वादकारियों या वकीलों के किसी समुदाय की ओर न

झुकने वाला है तो उसे न्यायालय की कार्यवाही पर नियंत्रण रखना और व्यवस्था बनाए रखना अधिक आसान हो जाता है।

पीठासीन अधिकारी को चाहिए कि न्यायालय में ऐसी कोई बातचीत न करे जो कि मुकदमे से असंबद्ध और हल्की फुल्की या विसंगत हो बैंच और बार में वाक्पटूता का आदान--प्रदान तो होता ही रहता है। किन्तु पीठासीन अधिकारी का उत्तर इस प्रकार का होना चाहिए जो दूसरे व्यक्ति को चुभे नहीं और प्रतिकूल प्रतिक्रिया भी न हो।

पीठासीन अधिकारी को चाहिए कि मुकदमे में सुनवाई निष्पक्ष रूप से और पूरी तौर पर करे। उसे बेसब्री नहीं दिखानी चाहिए, और न कोटा पूरा करने की दृष्टि से जल्दबाजी से कार्य करना चाहिए। किन्तु इसका यह तात्पर्य नहीं है कि समय अनावश्यक रूप से नष्ट करने दिया जाए। संयम और न्यायिक अनुशासन ऐसे प्रत्येक न्यायिक अधिकारी के लक्ष्य होने चाहिए जिसे न्यायिक औचित्य से विचलित नहीं होना है। न्यायिक अनुशासन और औचित्य से ही वह सफल न्यायिक अधिकारी बनता है और सभी प्रकार के विरोध और विवाद से बचता है।

सिविल न्यायालय में सर्वाधिक विवाद तब होता है जब व्यादेश (Injunction) का कोई मामला आता है। तत्पश्चात् आते हैं अधिकारिता, मूल्यांकन तथा न्यायालय फीस की अदायगी के प्रश्न। जब ऐसे मामले में बहस हो तो बड़े संयम से काम लेना चाहिए। इसी प्रकार फौज़दारी के मामलों में जमानत के आवेदन पर बहस के साथ--साथ उसे मंजूर करने के लिए आग्रह भी होता है और तत्पश्चात् उससे इंकार से कभी--कभी अभूतपूर्व दृश्य उपस्थित हो सकता है। किसी पक्षकार द्वारा मामले को स्थगित कराने का प्रयत्न, जो इधर अधिक बढ़ता जा रहा है, एक अन्य बात है जिसके संबंध में विशेष ध्यान और सावधानी अपेक्षित है।

उपस्थानगतः कार्यार्थिनामद्धारसंज्ञं कारयेत।
दुर्दर्शो हि राजा कार्याकार्यविपर्यासमासन्नंः
कार्यते। तन प्रकृतिकोपमरिवशं वा गच्छेत्॥
अर्थशास्त्र 1-19।।

राजा/न्यायाधीश को न्यायालय में ऐसी व्यवस्था करनी चाहिए कि वादकारियों को अधिक प्रतीक्षा न करनी पड़े, क्योंकि वादकारी का राजा/न्यायाधीश से सम्पर्क न हो पाने की स्थिति में आस-पास के लोग उचित-अनुचित में गड़बड़ी उत्पन्न कर देते हैं जिससे प्रजा में शासन के प्रति क्षोभ उत्पन्न होता है और राज्य चला जाता है।

साभार : न्यायिक प्रशिक्षण एवं अनुसंधान संस्थान उत्तर प्रदेश एवं श्री राकेश श्रोतीय, व्यवहार न्यायाधीश वर्ग 1, जबलपुर

FUNDAMENTAL RULE 11- RAMIFICATIONS OF

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1. Fundamental Rule 11 is one of the most important Rules under the Fundamental Rules and has a wide range of ramifications. The Rule states, "Unless in any case it be otherwise distinctly provided, the whole time of a Government Servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority, without claim for additional remuneration, whether the services required of him are such as would ordinarily be remunerated from general revenues, from a local fund or from the funds of a body incorporated or not, which is wholly or substantially owned or controlled by the Government".
2. Thus a Government servant cannot earn anything from any other source or by engaging himself in a business. Any dereliction in this behalf can involve the Government servant in disciplinary action against him.
3. A Government Servant can therefore earn nothing except pay or when he is on leave according to leave rules, leave salary depending on nature of leave and leave salary admissible. During leave also he cannot engage himself in any private business or service or engage himself as an agent. He remains a Government Servant during leave.
4. During suspension, a Government Servant is entitled to get subsistence allowance only under FR 53 but every month when he is paid the subsistence allowance, he must furnish to his employer office a certificate of non-employment FR 53 (2). This is because he remains a Government servant during suspension.
5. A Government Servant can get additional remunerations like compensatory allowances under FR 44 which are intended to save him from loss of the value of salary due to special conditions. Thus during tour or transfer, he gets appropriate travelling allowance under FR 44 only to compensate him for extra expenditure which he is required to incur in performance of duty in public interest.
6. Payment of dearness allowance is governed by separate orders and is not made under FR 44. Obviously the allowance is paid to compensate for escalation in cost of living. Cost of living increased since World War II and dearness allowance is the product of that Great War. Thereafter inflation has taken the grip of country's economy because of multifarious developmental activities of state. Inflation is a vast ocean and dearness is one of its ingredients but not distinctly discernible.
7. A Government servant, under special circumstances can do private duty like a doctor attending patients after hospital hours at their residence or a teacher, with proper permission, doing auctions. The remu-

neration so received is called 'Fee' and is subject to the provisions and tutions restrictions of FR 46A and 47. It is receivable by him under FR 46 (a).

8. A Government servant can also get additional remuneration from Government itself for important, urgent and unavoidable work of occasional or intermitent nature under FR 46 (b) which is yet subject to restrictions of FR 47. This is called Honorarium.
9. A Government servant can also receive an award under FR 48 provided the award is granted on the objects and purposes stated in FR 48.
10. Medical reimbursement is also payable only because of special orders of the Government called "M.P. Civil Services Medical Attendance Rules 1958."

Thus a government servant cannot get any extra remuneration except what is stated supra because of the general provisions of FR 11 which superintends all other provisions involving extra remuneration to Government servants. A general view amongst Government servants prevailing now-a-days that they are free to do anything after office hours is infact an erroneous view and can lead them to fatal consequences in the matter of their retention in service.

जमानतीय/अजमानतीय अपराध

जांजगीर के एक न्यायाधीश ने पत्र लिखकर यह अपेक्षा की कि दंड प्रक्रिया संहिता के अंतर्गत कौन से अपराध जमानतीय अथवा अजमानतीय हैं इसकी सूची पत्रिका के माध्यम से प्रकाशित हो। उक्त न्यायिक अधिकारी का यह भी कहना है कि भिन्न–भिन्न प्रकाशनों में शुद्धता का अभाव है। उक्त न्यायिक अधिकारी का कहना सत्य है। उदाहरणार्थ धारा 471 भा.द.वि. का अपराध भारत लॉ हाउस प्रकाशन के भा.द.वि. 1988 के प्रकाशन में पृष्ठ क्र. 1870 पर जमानतीय दर्शाया गया है जबकि अन्य कुछ पुस्तकों में अजमानतीय।

पत्रिका की पृष्ठ संख्या इतनी नहीं है कि सभी अपराधों के संबंध में सम्पूर्ण सूची प्रकाशित की जा सके अतः न्यायिक अधिकारी अपने अपने जिले के जिला न्यायाधीश को आग्रह कर सकते हैं कि केन्द्र सरकार के प्रकाशन विभाग द्वारा प्रकाशित दंड प्रक्रिया संहिता पुस्तक क्रय करें। उक्त पुस्तक संभवतः प्रत्येक जिले में उपलब्ध होगी। फिर भी यह प्रयत्न रहेगा कि अजमानतीय अपराधों की सूची यथा समय प्रकाशित कर दें। ध्यान रहे मध्य प्रदेश संशोधनों की ओर भी हमारा ध्यान रहना चाहिए क्योंकि राज्य सरकार ऐसे संशोधन करती रहती है। यहीं स्थिति राजीनामा योग्य अपराधों के विषय में भी होगी।

संपादक

THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 1999

NO. 46 OF 1999

(Received the assent of the President on 30th December, 1999)

CONTENTS

An Act further to amend the Code of Civil Procedure, 1908, the Limitation Act, 1963 and the Court Fees Act, 1870.

Be it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:-

CHAPTER I

Preliminary

1. Short title and commencement.- (1) This Act may be called the Code of Civil Procedure (Amendment) Act. 1999.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and for different States or for different parts thereof. **(Note : Govt. has not yet notified the date)**

CHAPTER II

Amendment of sections

2. Amendment of section 26.- In the Code of Civil Procedure. 1908 (5 of 1908) (hereinafter referred to as the principal Act.) existing section 26 shall be re-numbered as sub-section (1), and after sub-section (1) as so renumbered. the following sub-section shall be inserted. nemely:-

"(2) In every plaint, facts shall be proved by affidavit".

3. Amendment of section 27.- In section 27 of the principal Act, the following words shall be inserted at the end, namely:-

"on such day not beyond thirty days from date of the institution of the suit".

4. A mendment of section 32.- In section 32 of the principal Act, in clause (c), for the words "not exceeding five hundred rupees", the words "not exceeding five thousand rupees" shall be substituted.

5. Amendment of section 58.- In section 58 of the principal Act,-

(i) in sub-section (1),-

(a) in clause (a), for the words "one thousand rupees", the words "five thousand rupees" shall be substituted;

(b) for clause (b), the following clause shall be substituted, namely:-

"(b) where the decree is for the payment of a sum of money exceeding two thousand rupees, but not exceeding five thousand rupees, for a period not exceeding six weeks".

(ii) in sub-section (1A), for the words "five hundred rupees", the words "two thousand rupees" shall be substituted.

6. A mendment of section 60.- In section 60 of the principal Act, in the first proviso to sub-section (1), in clause (i), for the words, "four hundred rupees", the words "one thousand rupees" shall be substituted.

7. **Insertion of section 89.-** In the principal Act, after section 88, the following section shall be inserted, namely:-

"89. **Settlement of disputes outside the Court.-** (1) where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the court may reformulate the terms of a possible settlement and refer the same for-

(a) arbitration;

(b) conciliation;

(c) judicial settlement including settlement through Lok Adalat ; or

(d) mediation.

(2) Where a dispute has been referred-

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act:

(d) for mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed."

8. **Amendment of section 95.-** In section 95 of the principal Act, in sub-section (I), for the words "not exceeding one thousand rupees". the words "not exceeding fifty thousand rupees" shall be substituted.

9. **Amendment of section 96.-** In section 96 of the principal Act, in sub-section (4) for the words "three thousand rupees", the words "ten thousand rupees" shall be substituted.

10. **Substitution of new section for section 100 A.-** For section 100A of the principal Act, the following section shall be substituted, nemely:-

"100 A. **No further appeal in certain cases.-** Notwithstanding anything contained in any Letters Patent for any High Court or in any

other instrument having the force of law or in any other law for the time being in force.-

(a) where any appeal from an original or appellate decree or order is heard and decided,

(b) where any writ, direction or order is issued or made on an application under article 226 or article 227 of the Constitution,

by a single Judge of a High Court, no further appeal shall lie from the judgment decision or order of such Single Judge".

11. Substitution of new section for section 102.- For section 102 of the principal Act, the following section shall be substituted, namely:-

"102, No second appeal in certain cases.- No second appeal shall lie from any decree, when the amount or value of the subject- matter of the original suit does not exceed twenty- five thousand rupees."

12. Amendment of section 115.- In section 115 of the principal Act, in sub-section (1)-

(i) for the proviso, the following proviso shall be substituted, nemely:-

"Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings".

(ii) after sub-section (2), but before the Explanation, the following sub-section shall be inserted, namely:-

"(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court".

13. A mendment of section 148:- In section 148 of the principal Act, after the words "such period", the words "not exceeding thirty days in total", shall be inserted.

CHAPTER III

Amendment of Orders

14. Amendment of Order IV.- In the First Schedule to the principal Act (hereinafter referred to as the First Schedule), in Order IV, in rule 1,-

(i) in sub-rule (1), for the words "plaint to the Court", the words "the words "plaint in duplicate to the Court" shall be substituted;

(ii) after sub-rule (2), the following sub-rule shall be inserted, namely:-

"(3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2)".

15. Amendment of Order V.- In the First Schedule, in Order V,-

(i) in rule 1, for sub-rule (1), the following shall be substituted, namely:-

"(1) When a suit been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, on such day within thirty days from the day of institution of the suit as may be specified therein:

Provided that no such summons shall be issued when a defendant has appeared at the presentation of the plaint and admitted the plaintiffs claim:

Provided further that where the defendant fails to file the written statement on the said day, he shall be allowed to file the same on such other day which shall not by beyond thirty days from the date of service of summons on the defendant, as the court may think fit.";

(ii) for rule 2, the following shall be substituted, nemely:-

"2. Copy of Plaint annexed to summons.- Every summon shall be accompanied by a copy of the plaint".

(iii) in rule 6, for the words "for the appearance of the defendant". the words, brackets and figures "under sub-rule (1) of rule 1" shall be substituted;

(iv) in rule 7, for the words "all documents", the words, figure and letter "all documents or copies there of specified in rule IA of Order VIII" shall be substituted;

(v) for rule 9, the following rules shall be substituted, namely:-

"9. Delivery of summons to the plaintiff or his agent.- (1) The court shall issue summons and deliver the same to the plaintiff or his agent, for service, and direct the summons to be served by registered post acknowledgment due or by speed post or by such courier service as may be approved by the High Court or by fax message or by Electronic Mail Service or by such other means as the High Court may prescribe by rules, addressed to the defendant to accept the service at the place where the defendant or his agent actually and voluntarily resides or carries on business or personally works for gain.

(2) The plaintiff or his agent shall send the summons by any means as directed by the court under sub-rule (1) within two days

from the delivery of summons to the plaintiff by the court under that sub-rule.

(3) When an acknowledgment or any other receipt purporting to be signed by the defendant or his agent received by the court or postal article containing the summons is received back by the court with an endorsement purporting to have been made by a postal employee or by any authorised person to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or refused to accept the summons by any other means specified in sub-rule (1), when tendered or transmitted to him the court issuing the summon shall declare that the summons had been duly served on the defendant:

Provided that summons was properly addressed, pre-paid and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgment having been lost or misled or for any other reasons has not been received by the court on the date fixed by it.

9A. Simultaneous issue of summons for service by the court controlled process.- (1) The court may, in addition to, and simultaneously with the delivery of summons for service to the plaintiff as provided in the manner provided in rule 9, may also direct that summons to be served on the defendant or his agent empowered to accept the service at the place where the defendant or his agent actually and voluntarily resides or carries on business or personally works for gain.

(2) The summons shall, unless the court otherwise direct, be delivered or sent to the proper officer in such manner as may be prescribed by the High Court to be served by him or one of his subordinates.

(3) The proper officer may be an officer of the court than that in which the suit is instituted, and where he is such an officer, the summon may be sent to him in such manner as the court may direct.

(4) The proper officer may serve the summons by registered post acknowledgment due, by speed post, by such courier service as may be approved by the High Court, by fax message, by Electronic Mail service or by such other means as may be provided by the rules made by the High Court."

(vi) rule 19A shall be omitted;

(vii) in rule 21, for the words "or by post", the words "or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court" shall be substituted;

(viii) in rule 24, for the words "by post or otherwise", the words "or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail Service or by any other means as may by provided by the rules made by the High Court" shall be substituted;

(ix) in rule 25, for the words "by post", the words "or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court" shall be substituted.

16. Amendment of Order VI.- In the First Schedule, in Order VI.-

(i) rule 5 shall be omitted;

(ii) in rule 15 after sub-rule (3), the following sub-rule shall be inserted, namely:-

"(4) The person verifying the pleading shall also furnish an affidavit in support of his pleading".

(iii) rules 17 and 18 shall be omitted.

17. Amendment of Order VII.- In the First Schedule, in Order VII.-

(i) for rule 9, the following rule shall be substituted, namely:-

"**9. Procedure on admitting plaint.-** (1) Where the plaint is admitted, the court shall give to the plaintiff summons in the name of all the defendants to be served upon or get served in the manner provided under Order V.

(2) Within two days of the receipt of summons under sub-rule (1), the plaintiff shall send or cause to sent the summons to the defendants alongwith the copy of the plaint in the manner provided under Order V.

(3) Where the court orders that the summons be served on the defendants in the manner provided in rule 9A Order V, it will direct the plaintiff to present as many copies of the plaint on plain paper as there are defendants within two days from the date of such order alongwith requisite fee for service of summons on the defendants."

(ii) in rule 11, after sub-clause (d), the following sub-clause shall be inserted, nemely:-

"(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply sub-rule (2) of rule 9;

(g) where the plaintiff fails to comply sub-rule (3) of rule 9."

(iii) for rule 14, the following rule shall be substituted, namely:-

"14. Production of document on which plaintiff sues or relies.- (1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) Where a document or a copy thereof is not filed with the plaint under this rule, it shall not be allowed to be received in evidence on behalf of the plaintiff at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross examination of the palintiff's witnesses, or, handed over to a witness merely to refresh his memory."

(iv) rule 15 shall be omitted;

(v) in rule 18, in sub-rule (1), the words "without the leave of the court" shall be omitted.

18. Amendment of Order VIII.- In the First Schedule, in Order VIII, -

(i) for rule 1, the following rule shall be substituted, namely :-

"1. Written Statement.- The defendant shall at or before the first hearing or within such time as the court may permit, which shall not be beyond thirty days from the date of service of summons on the defendant, present a written statement of his defence.";

(ii) after rule 1 so inserted, the following rule shall be inserted, namely:-

"1A. Duty of defendant to produce documents upon which relief is calimed or relied upon by him.- (1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set off or counter claim, he shall enter such

document in a list, and shall produce it in court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) Where a doucment or a copy thereof is not filed with the written statement under this rule, it shall not be allowed to be received in evidence on behalf of the defendant at the hearing of the suit.

(4) Nothing in this rule shall apply to documents-

(a) Produced for the cross- examination of the plaintiffs witnesses, or

(b) handed over to a witness merely to refresh his memory."

(iii) rules 8A, 9 and 10 shall be omitted.

19. Amendment of Order IX.- In the First Schedule, in Order IX,-

(i) for rule 2, the following rule shall be substituted, namely:-

"**2. Dismissal of suit where summons not served by the plaintiff or his agent or in consequences of failure to pay cost.-** Where on the day so fixed it is found that the summons has not been sent within stipulated period of two days, to the defendant by the plaintiff or his agent or in consequence of their failure to pay the court-fee or any charges, if any chargeable for such service, the court shall make an order that the suit be dismissed:

Provided that no such order shall be made if, notwithstanding such failure, the defendant attends in person or by agent when he is allowed to appear by agent on the day fixed for him to appear and answer."

(ii) in rule 5, for the words "one month", the words "seven days" shall be substituted.

20. Amendment of Order X.- In the First Schedule, in Order X,-

(i) after rule 1, the following rules shall be inserted, nemely:-

"**1A. Direction of the court to opt for anyone mode of alternative dispute resolution.-** After recording the admissions and denials, the court shall direct the parties to the suit to opt ei-

ther mode of the settlement outside the court as specified in sub-section (1) of section 89. On the option of the parties, the court shall fix the date of appearance before such forum or authority as may be opted by the parties.

1B. Appearance before conciliatory forum or authority.- Where a suit is referred under rule 1A, the parties shall appear before such forum or authority for conciliation of the suit.

1C. Appearance before the court consequent to the failure of efforts of conciliation.- Where a suit is referred under rule 1A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the court and direct the parties to appear before the court on the date fixed by it."

(ii) in rule 4, in sub-rule (1), for the words "may postpone the hearing of the suit to a future day", the words "may postpone the hearing of the suit to a day not later than seven days from the date of first hearing" shall be substituted.

21. Amendment of Order XI.- the First Schedule, in Order XI.-

(i) in rule 2, after the words "submitted to the court", the words "and that court shall decide within seven days from the day of filing of the said application," shall be inserted;

(ii) in rule 15, for the words "at any time", the words "at or before the settlement of issues" shall be substituted.

22. Amendment of Order XII.- In the First Schedule, in Order XII.-

(i) in rule 2, for the word "fifteen", the word "seven" shall be substituted;

(ii) in rule 4, second proviso shall be omitted.

23. Amendment of Order XIII.- In the First Schedule, in Order XIII, for rules 1 and 2 the following rule shall be substituted, namely:-

"1. Original documents to be produced at or before the settlement of issues.- (1) The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement.

(2) The court shall receive the documents so produced:

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

(3) Nothing in sub-rule (1) shall apply to documents-

(a) produced for the cross-examination of the witnesses of the other party;

or

(b) handed over to a witness merely to refresh his memory".

24. Amendment of Order XIV.- In the First Schedule, in Order XIV,-

(i) in rule 4, for the words "may adjourn the framing of the issues to a future day", the words "may adjourn the framing of issues to a day not later than seven days" shall be substituted;

(ii) rule 5 shall be omitted.

25. Amendment of Order XVI.- In the First Schedule, in Order XVI,-

(i) in rule 1, in sub-rule (4), for the words "court in this behalf", occurring at the end, the words, brackets and figure "court in this behalf within five days of presenting the list of witnesses under sub-rule (1)" shall be substituted;

(ii) in rule 2, sub-rule (1), after the words "within a period to be fixed", the words, brackets and figures " which shall not be latter than seven days from the date of making application under sub-rule (4) of rule 1" shall be inserted.

26. Amendment of Order XVII.- In the First Schedule, in Order XVII, in rule 1,-

(i) for sub-rule (1), the following shall be substituted, namely:-

"(1) The court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the suit."

(ii) in sub-rule (2), for the words "may make such order as it thinks fit with respect to the costs occassioned by the adjournment", the words "shall make such orders as to costs occasioned by the adjournment or such higher costs as the court deems fit" shall be substituted.

27. Amendment of Order XVIII.- In the First Schedule, in Order XVIII,-

(i) sub-rule (4) of rule 2 shall be omitted.

(ii) for rule 4, the following rule shall be substituted, nemely:-

"**4. Recording of evidence by commissioner.-** (1) In every case, the evidence of a witness of his examination- in-chief shall be given by affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence.

(2) The evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the court shall be taken orally by a commissioner to be appointed by the Court from amongst the panel of commissioners prepared for this purpose on the same day:

Provided that in the interest of justice and for reasons to be recorded in writing, the court may direct that the evidence of any witness shall be recorded by the court in the presence and under the personal direction and superintendence of the judge.

(3) The commissioner shall be paid such sum for recording of evidence as may be prescribed by the High Court.

(4) The amount payable to the commissioner under sub-rule (3) shall be paid by the Court or by the parties summoning the witness as may be prescribed by the High Court.

(5) The District Judge shall prepare a panel of commissioners to record the evidence under this rule.

(6) The commissioner shall record evidence either in writing or mechanically in his presence and shall make a memorandum which shall be signed by him and the witnesses and submit the same to the court appointing such commissioner.

(7) Where any question put to a witness is objected by a party or his pleader and the commissioner allows the same to be put, the commissioner shall take down the question together with his decision."

(iii) rule 17A shall be omitted;

(iv) after rule 18, the following rule shall be inserted, namely:-

"**19. Power to get statements recorded on commission.-** Notwithstanding anything contained in these rules, the court may, instead of examining witnesses in open court, direct their statements to be recorded on commission under rule 4A of Order XXVI."

28. Amendment of Order XX.- In the First Schedule, in Order XX-

(i) in rule 1, sub-rule (2), the words "but a copy of the whole judgment

shall be made available for the perusal of the parties or the pleaders immediately after the judgment is pronounced" shall be omitted.

(ii) for rules 6A and 6B, the following rules shall be substituted, namely:-

"**6A. Preparation of decree.-** (1) Every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible and, in any case, within fifteen days from the date on which the judgment is pronounced.

(2) An appeal may be preferred against the decree without filing a copy of the decree and in such a case the copy made available to the party by the court shall for the purposes of rule 1 of Order XLI be treated as the decree. But as soon as the decree is drawn, the judgment shall cease to have the effect of a decree for the purposes of execution or for any other purpose.

6B. Copies of judgments when to be made available.- Where the judgment is pronounced, copies of the judgment shall be made available to the parties immediately after the pronouncement of the judgment for preferring an appeal on payment of such charges as may be specified in the rule made by the High Court."

29. Amendment of Order XXVI.- In the First Schedule, in Order XXVI, after rule 4, the following rule shall be inserted, namely:-

"**4A. Commission for examination of any person resident within the local limits of the jurisdiction of the court.-** Notwithstanding anything contained in these rules, any court may, in the interest of justice or for the expeditious disposal of the case or for any other reason, issue commission in any suit for the examination, on interrogatories or otherwise, of any person resident within the local limits of its jurisdiction, and the evidence so recorded shall be read in evidence.

30. Amendment of Order XXXIX.- In the First Schedule, in Order XXXIX, rule 1 shall be renumbered as sub-rule (1) of that rule and after sub-rule (1) as so renumbered, the following sub-rule shall be inserted, namely:-

"(2) The court shall, while granting a temporary injunction to restrain such act or to make such other order for the purposes of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property under disposition in the suit under sub-rule (1), direct the plaintiff to give security or otherwise as the court thinks fit."

31. Amendment of Order XLI.- In the First Schedule, in Order XLI,-

(i) in sub-rule (1) of rule 1, for the words and brackets "decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded", the word "judgment" shall be substituted;

(ii) for rule 9, the following rule shall be substituted, namely:-

"**9. Registry of memorandum of appeal.-** (1) The Court from whose decree an appeal lies shall entertain the memorandum of appeal and shall endorse thereon the date of presentation and shall register the appeal in a book of appeal kept for that purpose.

(2) Such book shall be called the register of appeal."

(iii) in rule 11, for sub-rule (1), the following sub-rule shall be substituted, namely:-

"(1) The Appellate Court after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day may dismiss the appeal."

(iv) in rule 12, for sub-rule (2), the following sub-rule shall be substituted, namely:-

"(2)Such day shall be fixed with reference to the current business of the court"

(v) rules 13, 15 and 18 shall be omitted;

(vi) in rule 19, the words and figures "or rule 18" shall be omitted;

(vii) in rule 22, sub-rule (3) shall be omitted.

CHAPTER IV

Repeal and savings

32. Repeal savings.- (1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or High Court before the commencement of this Act shall, except in so far as such amendment or provisions in consistent with the provisions of the principal Act as amended by this Act, stand repealed.

(2) Notwithstanding that the provisions of this Act have come into force or repeal under sub-section (1) has taken effect, and without prejudice to the generality of the provisions of section 6 of the General Clauses Act, 1897 (10 of 1897),-

(a) the provisions of section 26 of the principal Act and of Order IV of the First Schedule, as amended by sections 2 and 14 of this Act,

shall not apply to or affect any suit pending immediately before the commencement of sections 2 and 14; and every such suit shall be tried as if sections 2 and 14 had not come into force;

(b) the provisions of section 27 of the principal Act, as amended by section 3 of this Act, shall not apply to or affect any suit pending immediately before the commencement of section 3 and every such suit shall be tried as if section 3 had not come into force;

(c) the provisions of section 58 of the principal Act, as amended by section 5 of this Act, shall not apply to or affect any person detained in the civil prison in execution of a decree before the commencement of section 5;

(d) the provisions of section 60 of the principal Act, as amended by section 6 of this Act, shall not exempt salary from attachment to the extent mentioned in clause (i) of the first proviso to sub-section (1) of section 60 before the commencement of section 6;

(e) section 89 and rules 1A, 1B, and 1C of Order X of the First Schedule, as inserted in the principal Act by sections 7 and 20 of this Act, shall not affect any suit in which issues have been settled before the commencement of section 7; and every such suit shall be dealt with as if sections 7 and 20 had not come into force;

(f) the provisions of section 96 of the principal Act, as amended by section 9 of this Act, shall not apply to or affect any appeal from original decree which had been admitted before the commencement of section 9; and every admitted appeal shall be dealt with as section 9 had not come into force;

(g) the provisions of section 100A of the prinicipal Act, as substituted by section 10 of this Act, shall not apply to or affect any appeal against the decision of a Single Judge of a High Court under article 226 or article 227 of the Constitution which had been admitted before the commencement of section 10; and every such admitted appeal shall be disposed of as if section 10 had not come into force;

(h) the provisions of section 102 of the principal Act, as substituted by section 11 of this Act, shall not apply to or affect any appeal which had been admitted before the commencement of section 11 ; and every such appeal shall be disposed of as if section 11 had not come into force;

(i) the provisions of section 115 of the principal Act, as amended by section 12 of this Act, shall not apply to or affect any proceeding for revision which had been finally disposed of;

(j) the provisions of rules 1, 2, 6, 7, 9, 9A 19A, 21, 24 and 25 of Order V of the First Schedule as amended or, as the case may be, inserted or omitted by section 15 of this Act shall not apply to any summons issued immediately before the commencement of section 15;

(k) the provisions of rules 9, 11, 14 15 and 18 of Order VII of the First Schedule, as amended or, as the case may be, substituted or amended by section 17 of this Act, shall not apply to in respect of any proceedings pending before the commencement of section 17;

(l) the provisions of rules 1 and 1A of Order VIII of the First Schedule, as substituted or inserted by section 18 of this Act, shall not apply to a written statement filed and presented before the court immediately before the commencement of section 18;

(m) the provisions of rules 2 and 5 of Order IX of the First Schedule, as amended by section 19 of this Act, shall not apply in respect of summons issued before the commencement of section 19;

(n) the provisions of rules 2 and 15 of Order XI of the First Schedule, as amended by section 21 of this Act, shall not apply to or affect order passed by the court or any application submitted for inspection to the court before the commencement of section 21 of this Act;

(o) the provisions of rules 2 and 4 of Order XII of the First Schedule, as amended and omitted, as the case may be, by section 22 of this Act, shall not affect any notice given by the party or any order made by the court before the commencement of section 22 of this Act;

(p) the provisions of rules 1 and 2 of Order XIII of the First Schedule, as substituted by section 23 of this Act, shall not affect the documents produced by the parties or ordered by the court to be produced before the commencement of section 23 of this Act.

(q) the provisions of rules 4 and 5 of Order XIV of the First Schedule, as amended and omitted by section 24 of this Act, shall not affect any order made by the court adjourning the framing of the issues and amending and striking out issues before the commencement of section 24 of this Act;

(r) the provisions of rules 1 and 2 of Order XVI of the First Schedule, as amended by section 25 of this Act, shall not affect any application made for summoning of witnesses and time granted to a party to deposit amount for summoning witnesses made by the court before the commencement of section 25;

(s) the provisions of rule 1 of Order XVII of the First Schedule, as amended by section 25 of this Act, shall not affect any adjourn-

ment granted by the court and any cost occasioned by the adjournment granted by the court before the commencement of section 25 and the number of adjournments granted earlier shall not be counted for such purpose;

(t) the provisions of rules 1, 6A and 6B of Order XX of the First Schedule, as amended and substituted by section 28 of this Act, shall not affect any application for obtaining copy of decree for filing of appeal made by a party and any appeal filed before the commencement of section 28 of this Act; and every application made and every appeal filed before the commencement of section 28 shall be dealt with as if section 28 had not come into force;

(u) sub-rule (2) of rule 1 of Order XXXIX of the First Schedule, as inserted by section 30 of this Act, shall not affect any temporary injunction granted before the commencement of section 30 of this Act;

(v) the provisions of rules 1, 9, 11, 12, 13, 15, 18, 19 and 22 of Order XLI of the First Schedule, as amended, substituted and omitted; as the case may be, by clause 32 of the Act shall not affect any appeal filed before the commencement of section 32; and every appeal pending before the commencement of section 32 shall be disposed of as if section 32 of this Act had not come into force.

(Note : It appears that in sub-clause 's' Figure 25 should be read as 26)

CHAPTER V

Amendment of the Limitation Act, 1963

33. Amendment of section 12.- In the Limitation Act, 1963, (36 of 1963) in section 12, in sub section (3), the words "on which the decree or order is founded" at the end shall be omitted.

AMENDMENT OF THE COURT FEES ACT, 1870.

Insertion of New Section 16.- In the Court Fees Act, 1870 (7 of 1870) hereafter in this Chapter referred to as the Court Fees Act), after section 15, the following section shall be inserted, namely:-

"**16. Refund of Fee.-** Where the court refers the parties to the suit to any one of the mode of settlement of dispute referred to in section 89 of the Code of Civil procedure, 1908 (5 of 1908) the plaintiff shall be entitled to a certificate from the court authorising him to receive back from the collector, the full amount of the fee paid in respect of such plaint."

THE UNSPOKEN

NON-VERBAL COMMUNICATION CAN MAKE OR BREAK YOUR IMAGE.

By honing your non-verbal communication skills, you can become a more effective communicator. Following these non-verbal attributes can attune you to better understand those with whom you communicate.

HEAR THEM OUT

Active listening is as much a fact as it is an art. It completes the communication process. How often have you seen the best classroom or boardroom lecture eliciting a uniform response, regardless of the qualitative merit of the content?

To be a good communicator you need to be a good listener, posing queries at right places, nodding acknowledgement at good point made, and generally being focused on the speaker's words.

THE RIGHT VISION

Our eyes are the windows to our soul. Every smart liar knows this! The brightest ones have perfected the art of telling a lie while looking the other person straight in the eye. However, unless you are a practiced and hardened felon, you can't really look someone in the eye on a serious issue if you are not sincere. Making eye contact is a very important aspect of non-verbal communication. Not only does it assure the other person that you are with him all the way, but also that you are not hiding anything from him.

RESPONSE FACTOR

How you respond to another person in a conversation is also a part of your non-verbal communication skills. Merely the prompting of a word might be groping for, adding an example to the context, or even smiling to acknowledge a point well made conveys your active interest in the conversation.

BODY BUILDS!

Your body language is possibly the most easily detected element in your over all communication skills. How you stand in front of others says a lot about your mindset. An open stance (Square posture palms open, upright but leaning slightly forward) says you are open-minded and interested. A closed stance (standing side on, plams shut, arms crossed) suggests you have a closed mind.

Body language can however be overdone. While it is importance to be upright and project confidence, projecting arrogance through a deliberate swagger can be off putting. Again, a firm handshake is impressive, a bone-crushing grip is boorish and conveys insecurity! The idea is to be genuinely interested in other people. This corrects most of the imbalances in posture.

THE IMAGE GAME

Projecting the right image can create the right impact. First appearances are significant as are little things like the way you dress, the stationery you use, and the manners you display in society.

So if you thought a bunch of well crafted words is all there is to good communication, think again! Your professional success will be determined by how seriously you address the effort to improve your total communication skills.

Courtesy : Debraj Mookerjee and HT Career plus enhance April 27, 2000

Attune	-	सुर मिलाना
elicity	-	प्रकाश डालना निष्कर्ष निकालना
Felon	-	कुकर्म, दुष्ट कर्म
Swagger	-	इठलाना, ऐंठकर या अकड़कर चलना, शेखी बघारना
Boor (ish)	-	असभ्य, गंवार
Hone	-	सान लगाना, प्रयत्न करना

●

KNOW THE NOW

THERE HAS BEEN MUCH TALK ABOUT THE NEW 'KNOWLEDGE ERA', WHEREIN THE WHOLE CONCEPTS OF MANAGEMENT HAVE CHANGED.

Just what do we mean by this knowledge era, what are its features, and what does the organisation require to succeed in it? The issue was discussed in a recent seminar on 'Managing in the Knowledge Economy', organised by the All India Management Association (AIMA).

THE NEW ECONOMY

The contemporary management faces the challenge of managing effectively in what can be described as a knowledge-based economy, wherein the growth of knowledge is very fast and yesterday's knowledge is not of much practicability today. Jack Welsh, Chairman, General Electronics, poses a great example of how the effective manager changes from being a leader in the old economy to a leader in the new economy, In Welsh's words, "An

organisation's ability to learn and translate that learning into actions rapidly, is the ultimate competitive advantage."

THE NEW ERA

So what is it that one requires to manage in this new era?

KNOW THE KNOWLEDGE ERA

Analysis would reveal certain distinct features that distinguish the new knowledge era from the previous times :

- **Democratisation of knowledge,** as it freely available to the masses and non confined to the elite.
- A shift of premium from **natural to intellectual resources,** as has happened in countries like Japan and South Korea.
- The **knowledge component** is larger in all activities of production of a commodity or service.
- Reduced time gap between the **generation and the implementation of ideas.** While the colour television took 13 years to reach the five million sets mark, the internet has achieved a similar success in just three years.
- The **employee profiles** have been changing with larger proportion of knowledge professionals and workers in almost every organisations.
- With everyone getting an **easier access to knowledge,** the boundaries are fading. Thus, what we see now is globalisation without national barriers.
- Finally, the accelerated pace of change is forcing people to **constantly learn new things, and unlearn old processes.**

CHANGEYOUR ORGANISATION

Managing in new paradigms requires redical organisational **changes in the operating strategies:**

- Domestic Market Leadership to Global Competitiveness.
- Capacity Utilisation to Customer Focus.
- Initiative (replicate others' success) to Innovation.
- Brick and Mortar to Human Capital.

CHANGE YOURSELF

Changing the organisational structures and strategies will work only if it is accompanied by a simultaneous **shift in the mindset** as well, Geoffrey James refers to this new mindset as the 'Business Wisdom of the Electronic Elite' :

- **Business :** Should be identified not as a Battlefield (competitors) but as an Eco-System, where diversity is balanced by the system of predators and victims, and the fittest survives.
- **Management :** to be defined not as Control, but as Service.
- **Employees :** to be seen not as children (to be coerced) but as Peers.
- **Motivation :** Should be channelled not through Supervision, but through a Shared Vision.
- **Change :** should be seen not as a Pain, but as Growth.

YOUR GREATEST ASSET

The new knowledge paradigm places a very heavy premium on the employees as the most valuable asset of the organisation. But managing these knowledge-enables employees is a challenge in itself. To begin with, these professional constitute an extremely mobile asset. You have no way of knowing if the individual will come back to the office in the morning after having walked out of the gates in the evening. In such a paradigm, the following principles would help the HR manager realise his goals :

- Hire for attitude and train for skills.
- Build the element of challenge in the work.
- Invest in continuous learning of the employees, to the tune of a minimum of five percent of your sales revenues.
- Involve the employees in the functional decision-making.
- Create a system of effective intangible rewards for the employees, as after a point money ceases to be the motivating factor. Remember, the new knowledge era is not to be, intimidated by.

Instead, the organisations should try and encash in on the tremendous new opportunities being thrown up.

Put in some extra effort to adjust yourself to the new environment, and the sky is the limit for success.

Courtesy : Shruti Gupta and HT. Careers plus Enhance. May 4, 2000

Elite	-	सर्वोत्कृष्ट, श्रेष्ठ वर्ग
Paradigm	-	उदाहरण प्रतिमान
Conglomerate	-	एकत्र हो जाना, सम्पिण्डित
Coerced	-	दबाव डालना, बाध्य करना
Peers	-	साथी, बराबरी का
burn-outs	-	उत्तेजित हो जाना

MINING YOUR MIND

TAP THE UNLIMITED POTENTIAL WITHIN YOU BY UNDERSTANDING THE CONCEPT OF MIND MANAGEMENT

Every morning in Africa, a gazelle wakes up. It knows it must run faster than the fastest lion or it will be killed. Every morning in the same jungle, a lion wakes up. It knows it must run faster than the slowest gazelle or it will starve to death. It doesn't matter whether you are a lion or a gazelle (read CEO, junior/senior level management); when the sun comes up tomorrow morning you'd better be running to attain your share of success.

To be successful is to be able to live your life in your own way. It only takes one dream, one thought and one idea to change your life.

THE IMAGE

Did you know that 78 per cent of all our self-talk is negative. or that an average child is exposed to 1,48,000 negative stimuli in a year?

The sen.-image of a person is the single most important secret of success. The biggest challenge for us if we have to achieve success is to overcome all our negative thoughts. words and deeds, develop a positive attitude and have the grit to get up despite failures and move ahead.

Self image, self esteem, understanding the mechanism of the mind; ability to handle criticism. rejection and failure; and persistence are perhaps the critical success factors that helps one in changing one's life. May be all these are known to most of us, but is helpful to remember that some of **the most brilliant people did not succeed in life because they didn't realise that life does not pay you for what you know-it only pays for what you do.** If you choose to take a black and white photograph does not mean that the world has no colours. Deep within man lies unbelievable powers: powers that would astonish him, that he never dreamed of possessing. forces that would revolutionise his life if aroused and put into action.

SPELLING SUCCESS

What are the motives that stimulate you to do great things in your life? How can you motivate yourself to win and achieve everything you always wanted to in life? Most people think of success in relation to business and financial wealth only, but this isn't true. Your are not truly successful until success permeates your entire psyche.

Success is not comparing what you have achieved to what others have like company houses, cars, designations, bank balance. True success is comparing what you have achieved to what you are capa-

ble of achieving. You must be successful in all areas of life including social, professional and spiritual front.

CRITICAL SUCCESS FACTORS

Self Esteem- It is a belief that you deserve to be happy and successful, combined with a trust in your ability to manage life's challenges.

Self Image- It's not 'what you are' that holds you back, it's what makes you think you're not! Individuals behave, not in accordance with reality but in accordance with their perception of reality. How the individual feels about himself or herself is everything. for all that he or she ever does or aspires to be will be predicted on that all important concept of self image.

Self Confidence- is not just believing that you can succeed, it is having the belief that you can come back and win after you have failed, lost or been rejected. The one consistent trait of successful people they continue to place one foot in front of the other. Failure is only absolute when you give up. Everyone gets knocked down; the question is, will you get up?

Mind Control- In his book 'the Unfair Advantage,' psychologist Tom Miller compares our two minds with a horse and a rider. It's easy to train a horse to follow a path. Every day you ride it along the same route, after a while the horse gets it. Once a horse has become used to following a route, it is maddening to try to get it to follow another. The subconscious mind is like that horse and the conscious mind is the rider. The horse follows the rider's instructions.

Dr. Maxwell Maltz. a plastic surgeon turned psychologist explained the working of the conscious and the subconscious mind.

The conscious mind follows two sets of principles:

Selection Principle is where the conscious mind looks at options and makes purposeful choices from among them.

Elimination Principle is where once the conscious mind has made its selection. all other possible options are eliminated for that given moment. When the conscious mind sets a goal. it a eliminates all alternatives.

The Subconscious mind follows two sets of principles;

Agreement Principle is where the subconscious mind always says 'yes' to everything and the conscious mind tells it. The agreement principle describes the way your self image was formed.

Compliance Principle is where the subconscious mind always moves is the direction in which the conscious mind points it.

The subconscious mind is an obedient 'yes man'. It accepts every conscious thought as 100 per cent truth. Each time you consciously absorb the thought, "I severely lack an intelligence" your subconscious mind replies "Amen".

Once the subconscious mind has accepted the way the conscious mind is tying to move it, it moves in that direction every time.

The conscious mind sets the vision and the subconscious mind just follows it. The subconscious mind can't make a decision as it can't tell the difference between a real experience and an imagined one. It merely agrees and moves towards the image consistent with the data.

Understanding this simple concept can get you to consciously design your life patterns. Henry Ford summarised this concept quite aptly, when he said whether you think you can or can't, you are right!" The ability of an individual to handle criticism, rejection or failure really decides on how high he is going to clamp the corporate ladder or the success ladder. You are successful when you understand that failure is an event and never a person. You are successful when you understand that yesterday ended last night and today is a brand new day. You must become too big to be threatened by someone's criticism. Appreciate yourself as a beautiful human being refusing to accept anyone's verdict about your ability to achieve something.

Look at a stonecutter hammering away at his rock, perhaps a hundred times without as much as a crack showing in it. Yet at the hundred and first blow, the rock will split into two and it was not that blow that did it but all that had come before. Persistence is something that matters. There is a Japanese proverb, which says **'when you complete 95 per cent of your task you're only half done. the willingness to travel the last five per cent separates the great from the very good'.** Success is clearly a trained habit, you can tailor and design you life. So learn to control your own destiny.

Courtesy:

1. Dr. Rakesh Sinha Mind Management Therapist Endoscopy and laser surgeon
2. Headstart Indian express Mumbai- 19-5-2000

Gazelle	-	चिंकारा	Permeat	-	फैल जाना
Stimuli	-	प्रेरणाएं, योजनाएं	Perception	-	ज्ञानबोध
Grit	-	धैर्य, चरित्रबल	Absolute	-	चरम–संपूर्ण
Astonish	-	विस्मय, अचंभा	Trait	-	विशेषता

उच्च न्यायालय मध्यप्रदेश, जबलपुर

ज्ञापन

क्र. 9081/ तीन-2-9/40 पार्ट I फाईल क्र. 15 दि. 2 अगस्त 1976

विषयः- जमानतनामा व मुचलका मुख्य न्यायिक दण्डाधिकारियों द्वारा स्वीकृत कर उच्च न्यायालय को भेजने के संबंध में।

उच्च न्यायालय के ध्यान में यह आया है कि दांडिक अपीलों में अभियुक्तों के दोष मुक्ति के विरूद्ध शासन के द्वारा अपील होने पर अभियुक्त उच्च न्यायालय से नोटिस तामील होने पर उपस्थित होते हैं, अभियुक्त कोई जमानत नामा नहीं देते हैं। कुछ समय बाद वे व्यक्तिगत उपस्थिति से छूट के आदेश प्राप्त कर लेते हैं। इस कारण उनको उच्च न्यायालय में उपस्थित होने के लिए विवश करने का कोई साधन नहीं रहता। इन कठिनाईयों को दूर करने के उद्देश्य से यथानिर्देशित निम्नलिखित आदेश प्रसारित किये जाते हैं।

1. शासन या अभियुक्तों द्वारा अपीलों में जमानत के आदेश होने पर जमानत से संबंधित समस्त कागजातों को पूरी तरह छानबीन करने व स्वीकृत होने पर उच्च न्यायालय को तुरन्त इस प्रमाण पत्र के साथ मुख्य न्यायिक दण्डाधिकारी एवं अतिरिक्त मुख्य न्यायिक दण्डाधिकारी भेजें कि जमानत नामा व मुचलका उनके द्वारा स्वीकृत कर लिए गए हैं।

2. जिन प्रकरणों में उच्च न्यायालय से व्यक्तिगत उपस्थिति से छूट दे दी गई है तथा अपीलकर्ता या प्रत्यर्थी को मुख्य न्यायिक दण्डाधिकारी के न्यायालय में उपस्थित होने के दिए गए निर्देश का यदि उल्लंघन होता है और वे नियत दिनांक को उनके समक्ष उपस्थित नहीं होते हैं तो उच्च न्यायालय को तुरन्त सूचित किया जावे।

3. जिन प्रकरणों में जमानत नामें या मुचलका निरस्त किए जाते हैं और जमानत की रकम के राजसात करने के आदेश दिए जाते हैं तो मुख्य न्यायिक दण्डाधिकारी एवं अतिरिक्त मुख्य न्यायिक दण्डाधिकारी उच्च न्यायालय द्वारा आदेशित शास्ति की राशि (Penalty Amount) की वसूली की कार्यवाही की प्रगति उच्च न्यायालय को सूचित करेंगे।

टीप - इन आदेशों के पालन हेतु जो भी और जब भी कार्यवाही की जावे उसको सूचना एडीशनल रजिस्ट्रार (जे.), उच्च न्यायालय मध्यप्रदेश के पते पर प्रेषित की जाना चाहिये।

नोट : (जे) शब्द संपादक ने ज्ञापन को और सुस्पष्ट करने हेतु जोड़ा है।

HIGH COURT OF MADHYA PRADESH : JABALPUR

MEMORANDUM NO. 9081- III- 2-9/40 PT. - I. FILE NO 15 DTD. 2ND AUGUST 1976

Subject - Submission of bail-bonds and surety bonds by the Chief Judicial Magistrates and Additional Chief Judicial Magistrate after acceptance, to the High Court.

It has come to the notice of the High Court that number of times, the respondents in a State appeal agaist acquittal, do not execute bail-bonds, but appear in this Court in response to the notice of appeal and obtain exemption from personal appearance. Thereafter, there is nothing before the High Court to enforce their attendance. With a view to avoiding these difficulties, I am directed to/issue the following instructions for the guidance of the Chief Judicial Magistrates and Additional Chief Judicial Magistrates:-

(i) After receipt of the bail-orders, both in State appeals or a appeals by the accused persons, the bail papers, duly verified and accepted along with a certificate that the bail bonds and surety-bonds have been accepted, should be immediately sent to the High Court by the Chief Judicial Magistrates or the Additional Chief Judicial Magistrates, as the case may be;

(ii) In cases where exemption from personal appearance is granted by the High Court and a direction is issued either to the appellant or to the respondent for appearance before the Chief Judicial Magistrates or the Additional Chief Judicial Magistrates, and they make default in appearance, intimation about such defaults should immediately be sent to this Court by the Chief Judicial Magistrates or the Additional Chief Judicial Magistrates, as the case may be; and

(iii) In case of cancellation of bail-bonds and consequent forfeiture of surety bonds, the Chief Judicial Magistrates or the Additional Chief Judicial Magistrates should intimate to the High Court the progress of recovery proceedings, in case the High Court orders realisation of the penalty amount.

Note:-Compliance as and when necessary in this behalf, shall be sent to the the Additional Registrar (J), High Court of Madhya Pradesh, Jabalpur.

Note : (J) is added by the Editor to make the memo further effective and clear.

HIGH COURT OF MADHYA PRADESH : JABALPUR
MEMORANDUM NO. 11704/III-2-9/40- 1-F-15 .29 TH SEP. 1973
ADDRESSED TO ALL DISTRICT JUDGES IN THE STATE

Subject :- Bail applications- hearing of.

It has come to notice of the Hon'ble Administrative Judge that many of the Judges and Magistrates in the subordinate Courts donot dispose of applications for bail expeditiously. There are some who donot hear the applications in the early part of the day and if they do it, they donot pass orders granting or refusing the bail till the accused or convict marches all the distance down to the Jail under handcuffs. This is a mal-practice and His Lordship desires it to be put down.

2. His Lordship desires it to be made clear that the High Court is always endeavouring to avoid unnecessary hardship to the persons seeking justice and facing trials. This can be successfully implemented with your cooperation.

3. I am therefore, desired by the Hon'ble Adminitrative Judge to request you to inform all the Judges and Magistrates subordinate to you to see that:-

   (1) applications for bail are fixed for hearing as early as possible after their presentation in the court or to the Receiving Officer;

   (2) notices on the State are served and records or Police Case Diaries, as and when necessary, are obtained without loss of time;

   (3) applications are heard and orders passed thereon in the first part of the day; and

   (4) instances of delay particularly those relating to communication of orders granting the bail or despatch of warrants of release, are sternly dealt with.

4. It is to add that you may also see to the observance of Rules 245 and 378, Rules and Orders (Criminal) and make a report to the High Court in suitable cases.

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HIGH COURT OF MADHYA PRADESH : JABALPUR
MEMORANDUM NO. 6375/III- 2-9/40-I DTD. 9TH JUNE 1970

Sub :- Service or communication of Orders including release warrants on Jail authorities.

1. I am to refer to the instructions issued in this Registry Memorandum No. 9475 dated 2-12-69 in the matter of service or communication of orders including release warrants. This circular memorandum was only

meant to prevent use of private agencies. The agencies through which service or execution of the different processes to be issued by a criminal Court is to be made are presirbed in Rule 48 of the Rules and Orders (Criminal) Provision of which should be complied with strictly.

2. It would be clear from Rule 48 ibid that the agency of the Police has to be employed for the service of summons to accused persons, summons to witnesses, warrants of arrest etc. and notices and other processes not otherwise, provided for. "Release Warrant" is covered by the term "other processeses not otherwise provided for" and therefore, it has to be served through the agency of police. The expression 'Revenue Peons' used in Rule 48 should be interpreted to mean 'Court Peons' or 'Process Servers' as may be convenient for purposes of the service or execution of other warrants of attachment and all warrants for the levy of fees, fines or compensation.

3. So far as the Criminal Courts located in the Regions of Madhya Bharat, Vindhya Pradesh, and Bhopal are concerned, the provisions of Rule 48 ibid (extract copy enclosed) should be observed as administrative instructions issued by this Court.

4. Attention is also invited to Regulation 524 of the MP Police Regulations (Extension and Amendment) Rules, 1964 under which every Criminal Court presided over by a Magistrate First Class is to be provided with a Court Orderly who has to be entrusted with the duties specified in that Regulation.

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HIGH COURT OF M.P.

MEMORANDUM NO. 1693/III-2-9/40- I.F.N. 15 DTD. 16-2-1971

Subject : Intimations to Jail affixing of Court Seal.

An accused, sentenced to pay fine and in default of payment of fine to suffer regorous imprisonment, could not be released from the Jail even after the fine was paid because the intimation about payment of fine from the Court to the Jail authorities did not bear the official seal of that Court. This resulted in unnecessary corrospondence between the Jail authorities and the magistrate, resulting in illegal detentions of the accused in Jail.

Though there is no space provided in the prescribed form (V-98) for affixing such seal as also there are no clear instructions in this respect yet in order to avoid any such recurrence in future, it is necessary to affix official Court Seal on such intimations.

I am, therefore, to request you to instruct all the Criminal Courts. subordinate to you, to invariably affix official Court Seal on such intimations to Jail authorities in prescribed forms V-98.

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TIT-BITS

1. **ARBITRATION AND CONCILIATION ACT, 1996, SECTION 34 : MODALITY OF PROCEDURE TO BE FOLLOWED UNDER THIS SECTION: SETTLING OF ISSUES AND GUIDELINES IN MATTER OF ORAL EVIDENCE BY WAY OF PLEADING, AFFIDAVITS EXPLAINED:**
2000 (2) M.P.L.J. 3
LAKME LIMITED Vs. PLETHICO PHARMACEUTICALS LTD., INDORE

There was an application for setting aside the award. The modality to be followed in dealing with the matter. Settling of issues and examining of witnesses and adducing evidence by way of affidavit when warranted. The Court should as a matter of prudence grant prayer or allow suggestion for settling issues and permit the party to adduce evidence by examining the witnesses in the Court.

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2. **ARBITRATION ACT, SECTIONS 30 AND 33:ERROR APPARENT ON THE FACE OF THE RECORD COMMITTED BY THE ARBITRATOR AMOUNTS TO MISCONDUCT:-**
2000 (2) M.P.H.T. 499
M/S BENGAL TRADING SYNDICATE Vs. UNION

An award or part thereof suffering from such an error may be set aside by the Court, under Clause (a) of Section 30 of Arbitration Act. Arbitrator cannot award any sum contrary to express term in the contract, the arbitrator commits jurisdictional error and that part of the award has to be set-aside.

The arbitrator made an award for payment of foundation work of building No. 5 holding that there was no drawing of that work in the original contract and therefore it was of a work which was outside the purview of the contract and had to be paid extra. Held, the contractor had overlooked certain express stipulations in the contract, showing that even that foundation work was included in the contract work and that the price quoted by the contractor was a lumpsome price for the entire contract work, inclusive of foundation work of building No. 5. The arbitrator by awarding a sum for foundation work of building No. 5 to be paid extra, had acted contrary to express stipulations in the contract. The arbitrator had committed jurisdictional error and had acted beyond his authority. That part of the award (in relation to claim No. 5) was held to have been rightly set aside.

Award by the arbitrator leased on particular interpretation of the clauses of the contract. Such award has not to be interfered with even if another view or interpretation may be possible, so long as the award is not in viola-

tion of the agreement. Merits of award cannot be made subject-matter of objection under Section 30 to set-aside an award.

CASES REFERRED:-

1. *Ishwar Singh Vs. D.D.A., 1994 Arbitration Law Reporter, 526*
2. *Nana Kwaru Vs. Nana Sir Ofori, AIR 1933 PC 46*
3. *M/s. Chahal Engineering & Construction Co. Vs. Irrgation Department, Punjab, Siras, AIR 1993 SC 2541* (Para 27)
4. *State of Rajashtan Vs. Puri Construction Co. Ltd., (1994) 4 SCC 485.* (Para 28)
5. *Associated Engineering Co. Vs. Govt. of Andhar Pradesh and another, AIR 1992 SC 232.* (Para 28)
6. *K.P. Poulose Vs. State of Kerala, AIR 1975 SC 1259* (Para 29)
7. *B.V. Radhakrishna Vs. Sponge Iron India Ltd., (1997) 4 SCC 693* (Paras 31 & 54)
8. *M/s. Hind Builders Vs. Union of India, AIR 1990 SC 1340.* (Paras 31 & 51)
9. *H.P. State Electricity Board Vs. R.J. Shah and Company, (1999) 4 SCC 214* (Para 31)
10. *Puri Construction Pvt. Ltd. Vs. Union of India, AIR 1989 SC 777.* (Para 32)
11. *M/s. Sudarshan Trading Co. Vs. State of Keral, AIR 1989 SC 890* (Paras 32 & 62)
12. *State of Orissa Vs. Dandasi Sahu, AIR 1988 SC 1791.* (Paras 32 & 54)
13. *New India Civil Erectors (P.) Ltd. Vs. Oil & Natural Gas Corpn., AIR 1997 SC 980.* (Paras 39, 41 & 62)
14. *V.G. George Vs. India Rare Earths Ltd., AIR 1999 SC 1409.* (Paras 39, 41 & 60)
15. *Steel Authority of India Vs. J.C. Budharaja, (1999) 8 SCC 122.* (Paras 40 & 41)
16. *U.P. Hotels Vs. U.P. State Electricity Board, (1989) SCC 359.* (Para 51)
17. *Hindustan Construction Co. Ltd. Vs. Governor of Orissa, (1995) 3 SCC 8.* (Paras 51 & 54)
18. *Tarapore & Co. Vs. State of M.P., (1994) 3 SCC 521.* (Paras 52 & 61)
19. *State of U.P. Vs. Harish Chandra & Co., (1999) 1 SCC 63.* (Para 53)
20. *Steel Authority of India Case, AIR 1999 SC 3275.* (Para 61)

21. *Roberts Vs. Bury Improvement Cmrs., (1870) LRS C.P. 310* (Para 64)

22. *C.F. Sattin Vs. Prole, (1901) Hudson's B.C. (4th Edition) 306.* (Para 64)

23. *Miller Vs. LCC, (1934) 151 L.T. 425.* (Para 65)

24. *Anderson Vs. Tuapeka Country Council, (1900) 19 NZLR 1.* (Para 65)

25. *Vipin Bhai R. Prakash Vs. General Manager, AIR 1984 Guj. 41.* (Para 66)

26. *Continental Construction Company Vs. State of M.P., AIR 1988 SC 1188.* (Para 67)

27. *Trollope & Colls Vs. Singer, 1913 H.B.C. (4th Edition), Vol. I, Page 849.* (Para 68)

28. *Himachal Pradesh Nagar Tatha Vikas Pradhikarna Vs. M/s. Agrawal Construction Company, AIR 1997 SC 1027.* (Para 69)

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3. ARBITRATION ACT, 1940, SECTION 8(2) AND LIMITATION ACT, 1963, ARTICLE 137: LIMITATION FOR FILING APPLICATION FOR APPOINTMENT OF ARBITRATOR:-
2000 (1) VIDHI BHASVAR 178
MORENA MANDAL SAHAKARI SHAKKAR KARKHANA LTD. Vs. NEW INDIA ASSURANCE CO. LTD.

Application under Section 8(2) of Arbitration Act is governed by this Article 137 of the Limitation Act. Limitation is 3 years.

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4. C.P.C., SECTION 115 AND O. 6 R. 17 AND O. 1 R. 17 : POWERS OF THE COURT IN MISC. APPEAL:-
2000 (3) M.P.H.T. 13
R.S. KUSHWAHA Vs. MASJID GANGA SAGAR

An application under O. 6 Rule 17 CPC and another application under O. 1 R. 10 CPC for impleadment was filed in an appeal (misc). It was held that the appellate Court has no power to entertain such type of application. ***Dhundasingh Vs. Leeladhar and another, AIR 1982 MP 14*** and ***Smt. Shahida Fatima and others Vs. Altaf Khan and other, 1996 (1) Vidhi Bhasvar 246*** followed.

Paragraphs 4 and 5 of the judgment are reproduced:

In the case of ***Dhundasingh vs. Leeladhar and another, AIR 1982 MP 14*** the learned Single Judge has held that when the District Judge is entertaining an appeal under Order 43 Rule 1 he has no jurisdiction to amend the plaint. it has been held as under:-

"The District Judge while hearing the appeal preferred under Order 43 Rule 1 (r) against the order of grant of interim injunction passed by the trial Court, has no jurisdiction to decide the application for amendment of the plaint on merits.

The scope of such appeal under O. 43 R. 1 (r) is restricted to examine the propriety and/or legality of order passed under various rules of O. 39. As such, the District Judge has no seisin over the suit and application could have been and ought to have been forwarded to the trial Court for decision according to law after deciding the appeal on merits."

In case of ***Smt. Shahida Fatima and others Vs. Altaf Khan and others, 1996 (1) Vidhi Bhavar 246*** the learned Single Judge in paragraph 6 held as under:

"6. Therefore, the question to be considered is whether the present applicants were justified in making an application before the first appellate Court, without approaching the trial Court where the suit is pending? It is clear from the narration of facts as above, the trial Court had granted an injunction on the application of plaintiffs/non-applicants Nos. 2 to 4 herein, which is being challenged in the Misc. Appeal. The applicants are not parties to the original suit. If at all, they should have approached the trial Court for being joined as parties where their application could have been considered on merits. Strangely enough, rather than doing so, they have approached the appellate Court where the appeal, allowing the application for temporary injunction is pending. The procedure sought to be adopted by the applicants clearly cannot be sustained. Various case laws cited by the learned counsel for the applicants only go on to discuss and indicate as to who are proper and necessary parties and when they can be impleaded. But, as pointed out above, in the present case, the question to be considered is as to whether the applicants are entitled to joint as parties in the Misc. Appeal, without approaching the trial Court? According to me, since no authority in support of such a proposition has been placed before me by the learned counsel for the applicants, I hold that the applicants should not have approached the appellate Court in the above manner and the proper course for them would have been to approach the trial Court where the suit is pending for being joined as parties, if they were so advised. The impugned order, dismissing the application, therefore, does not suffer from any illegality or irregularity or lack of jurisdiction.

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5. C.P.C., O. 9 R. 13 AND O. 9 R. 7 AND APPEAL UNDER SECTION 96 (2) CPC: SIMULTANEOUS PROCEEDINGS, MAINTAINABILITY:- 2000 (3) M.P.H.T. 35 (F.B.)

SMT. ARCHANA KUMAR Vs. PURENDU PRAKASH

After the dismissal of an application under O. 9 R. 13 CPC to set aside

an ex parte judgment and decree whether an appeal could lie under Section 96(2) of the Code? This question was considered in the Reference by the Full Bench. It was held, after dismissal of the application under O. 9 R. 13 of the Code a regular first appeal under Section 96 (2) of the Code is maintainable. Hence regular appeal under Section 96 (2) is maintainable against an ex parte decree. However, stay of further proceedings in appeal till the application under O. 9 R. 13 is decided may be prayed. **AIR 1989 MP 224 OVER RULED.**

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6. **C.P.C., SECTIONS 39 AND 42 AND O. 21 R. 82 AND O. 47 R. 1: ABSENCE OF TRANSFER OF DECREE BY THE COURT: EFFECT, POWER OF REVIEW WHEN TO BE EXERCISED AND THE PROVISIONS RELATING TO TRANSFER OF DECREE:-**
2000 (2) M.P.L.J. 13
PYARELAL Vs. RATAN CHAND

The Small Cause Court did not transfer the decree passed by it to Civil Court. Since the decree was not transferred by the Small Cause Court cannot exercise powers under S. 39 and therefore, while executing decree of Small Cause Court, could not have sold immovable property in execution of the decree. The sale of the immovable property by Civil Court was in the teeth of the provision of O. 21 R. 82 of the Code. The error being apparent on the face of the record the judgment under review dismissing the second appeal maintaining the decree of the Lower Appellate Court set aside in exercise of review jurisdiction.

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7. **C.P.C., O. 11, R. 21: SCOPE OF:-**
2000 (2) M.P.L.J. 229
INDORE DEVELOPMENT AUTHORITY, INDORE Vs. SATYAPAL ANAND

Respondent No. 1 original plaintiff filed an application under O. 11, R.12 read with Section 151, C.P.C. seeking discovery. On 4-2-1991 the trial Court rejected the application, Respondent No. 1 - Plaintiff challenged the order of rejection by preferring revision application before High Court wherein by the order dated 1-2-1995 the High Court directed the Petitioner-original Defendant to make discovery on or before 3-3-1995. Thereafter respondent No. 1 - original plaintiff also filed an application under O. 11, R. 14 for production of documents. Petitioner-original defendant till 1-2-1997 neither made discovery by filing affidavits nor produced documents mentioned by respondent No. 1 - original plaintiff in his application. The original plaintiff-respondent No. 1 moved an application under O. 11 R. 21 for striking defence of the Defendant, which was allowed by the trial court on two counts firstly for not complying the order directing the production of

documents and secondly for not making discovery. In the revision application at instance of original defendant challenging the order of striking the defence.

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8. C.P.C., O. 41 R. 21 & LIMITATION ACT, SECTION 5: DELAY OF 11 MONTHS IN FILING APPLICATION UNDER O. 41 R. 21:-
2000 (2) M.P.H.T. 71 (NOC)
SOYAMBAR Vs. RAMBILAS

The notice of Misc. Appeal was refused. However, the respondent appeared in the trial court. Thereafter, remained absent continuously. Appeal was finally decided on 8-5-1998. Application under O. 41 R. 21 for restoration along with application for condonation of delay was filed after 11 months. i.e. on 8-5-1998. It was dismissed as barred by limitation. Against it, this appeal, it was held appellants who were respondents in lower Appellate Court kept themselves present in the said appeal. Hence, the refusal of the notices would be deemed to be valid service. There is no need to issue fresh summonses. The plea that they came to know about the result of appeal on 17-3-1999 is not justified and cannot be accepted.

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9. C.P.C., SECTIONS 115 AND 146:-
2000 (2) M.P.H.T. 79 (NOC)
MANAK CHAND Vs. GOPAL

Applicant/plaintiff filed a civil suit for removal of construction carried out by the respondent/defendants on the land adjacent to his house. The Respondent No. 1 who was not party to the suit, purchased disputed land from respondent on 21-9-1993 during pendency of suit. Suit was decreed on 28-3-1994. Respondent No. 1 filed application for permission to file appeal. He was granted permission. Against it, appellant-plaintiff filed this revision. It was held that Respondent No. 1 acquired all rights and title in the suit land. Hence, he is entitled to file appeal against the judgment and decree of the trial Court. ***Sarvinder Singh Vs. Dalip Singh and others, 1997 (1) MPLJ 324*** distinguished.

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10. C.P.C., SECTION 100: DISPUTE IN RESPECT OF OWNERSHIP AND POSSESSION OF THE LAND IN QUESTION:-
2000 (2) M.P.H.T. 326
CHANDRA BHAN Vs. PAMMA BAI

With the courtesy of M.P.H.T. the head notes and sub-para are reproduced:-

Dispute in respect of ownership and possession over the land in question. Trial Court held that the respondents/plaintiff was not the land owner

nor was he in possession over that land. Lower Appellate Court affirmed the order of the trial Court. But, High Court reversed the concurrent findings of fact recorded by the trial Court and Lower Appellate Court and decreed the suit by the impugned judgment. Against it, present appeal has been preferred. It was held that since, the trial Court and the Lower Appellate Court had recorded concurrent findings of fact that Ram Nihore (since died and represented by the respondents) was not in possession at any time over the land in question. Hence, appellant/defendant had acquired the Bhumiswami rights under the M.P. Land Revenue Code on account of his long uninterrupted possession. The judgment passed by the High Court set aside and those of the lower Courts restored. Appeal allowed

It was not open to the High Court to reverse those findings, particularly when the findings were supported by the own admission of Ram Nihore that at the age of 13 he had left the village and returned after 16-17 years which indicated that he was not in possession over the land in question.

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11. C.P.C., O. 37 R. 4, OR. 1 R. 6, O. 8 RR. 5, 10, O. 9 R. 11 & O. 15 R. 2: LEAVE TO DEFEND:-
(2000) 1 SCC 324
KAMLESH KOHLI Vs. ESCOTRAC FINANCE & INVESTMENT LTD.

Leave to defend was granted to one of the defendants but to others Validity of such leaved explained. A summary suit under O. 37 for recovery of debt on the basis of memorandum of agreement was filed against defendant No. 1 firm. Defendant No. 2, being the sole proprietor of the firm and Defendent No. 3 son of defendant No. 2 who had signed the memorandum of agreement. Unconditional leave to defend sought by defendants under Or. 37 R. 4 of the CPC. The application for leave to defend was dismissed and the suit was decreed. Separate appeals preferred by defendant Nos. 2 and 3. Appeal of defendant No. 2 was dismissed, with costs but the appeal of Defendant No. 3, i.e. the son of the Defendant No. 2 for additional 1 leave to defend was granted as it was averred by the plaintiffs in reply to the application for leave to defend that the defendant arrayed only as pro forma party and no relief was claimed against him personally. The SLP preferred against this judgment by Defendant Nos. 1 and 2 was rejected. It was held that the court is not obliged to grant leave to Defendants 1 and 2 merely because such leave was granted to defendant No. 3.

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12. C.P.C., OR. 41 R. 27:-CONSIDERATIONS
2000 (1) JLJ 40
P.P.L. FACTORY Vs. MANGILAL

Production of documents in trial Court not proved. Exercise of due

deligence not established. Court not requiring additional evidence for pronouncing judgment. Application under Or. 41 R. 27 liable to be dismissed.

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13. Cr.P.C. SECTION 228: FRAMING OF CHARGES: CONSIDERATION OF DYING DECLARATION:-
2000 (2) M.P.L.J. 184
ARUN KUMAR BHODILAL Vs. STATE OF M.P.

Dying declaration of the deceased recorded during investigation not filed by prosecution in report under section 173 Cr.P.C. and not relied on . The trial Court is not bound to consider the charge in the light of statement of deceased even if it is favourable to defence.

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14. Cr.P.C., SECTION 452: ORDER FOR DISPOSAL OF PROPERTY AT CONCLUSION OF TRIAL:-
2000 (2) M.P.L.J. 265
VISHNURAM Vs. SOUTH EASTERN COAL FIELDS LTD.

While ordering for disposal of property after the conclusion of the trial, the Court has to proceed on prima facie evidence and not to act as civil court deciding question of title.

When property is seized from a person who is in possession, ordinarily it will be released back to him if the offence is found not established in respect of the property and no finding is given that although property belonged to the complainant the accused did not know that it was stolen. If the finding is of the later type, then of course, the complainant would be entitled to possession of the property. The court has to proceed on prima facie evidence and not to act as Civil Court deciding question of title. The question of title even with respect to movable property remains open after an order under S. 452 Cr.P.C. The Criminal Court decision as to who is entitled to possession is not final regarding title. The aggrieved party can establish title in civil suit. The ordinary rule to be followed is, that the person in possession from whom movable property was seized, shall be entitled for its release when it is not established that the property was subject matter for its release when it is not established that the property was subject matter of theft, or that it belonged to another. The approach of the Appellate Court was legally erroneous as it proceeded as if it was deciding the title of the stolen property.

Paragraphs 8 and 12 to 14 are reproduced:

The law about release or possession of property which is seized as stolen property under S. 452, Cr.P.C. is that the Court may make such order as it thinks fit for the disposal or deliver to any person claiming to be entitled to possession of the property produced before the Court or regard-

ing which an offence appears to have been committed. The order is to be passed on conclusion of the trial. The most relevant words are "delivery to any person claiming to be entitled to possession thereof" for deciding whether the person is entitled to delivery of such property about which offence of receiving it as stolen property is tried. The Court has to proceed on prima facie evidence and not to act as Civil Court deciding question of title. When property is seized from a person who is in possession, ordinarily it will be released back to him if the offence is found not established in respect of the property and no finding is given that although property belonged to the complainant the accused did not know that it was stolen. If the finding is of the later type, then of course, the complainant would be entitled to possession of the property. In the present case that finding had not been reached and the property was seized from the premises of the accused.

In deciding entitlement to possession under S. 452 Cr.P.C., these fine considerations as to wherefrom the coal might have been mined (for which there is no certainty) or how the accused acquired the coal, cannot be gone into. The Court has to broadly see if possession should be delivered to somebody other than the person from whose possession it was seized on the basis of available evidence.The approach of the appellate Court has been that since the accused claims to have purchased D grade coal and according to the report of analyst and the statement of General Manager, it was B grade coal, it must have been coal of this Company and not otherwise.

In view of this, the approach of the appellate Court was not justified. The simple fact that the accused had purchased certain D Grade of coal, (which could also be mixed with other grades of coal), would not establish that the coal must have belonged to the Company because most might have been of higher grade as stated by General Manager who had only given an opinion evidence on visual feature of coal, or even on basis of the opinion evidence of the analyst. Nobody has seen or alleged how the entire coal stack reached there. The reasoning of the trial Court was that seven bags of coal carried on 7 cycles cannot create a stack of 180 MT (metric tons). It cannot be brushed aside. The prosecution was liable to prove that theft of company's stocks had been committed to such large quantities by some thieves or gang of thieves and stack reached the brick-kiln of the accused. There was no evidence that the Company had noticed depletion of its coal stacks, at some stage. In these circumstances in the view of this Court, the ordinary rule to be followed was, that the person in possession, from which immovable property was seized, shall be entitled for its release when it is not established that the property was subject matter of theft, or that it belong to another.

The approach of the appellate Court is, therefore, legally erroneous. This Court had not to enter into finding of fact as to whom coal belonged, on preponderance of evidence.

The question of title even to movable property remains open after an order under S. 452 Cr.P.C. and the Criminal Court decision as to who is entitled to possession is not final regarding its title. The aggrieved party can establish title in a civil suit.

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15. Cr.P.C., SECTIONS 157. 162, 173 AND EVIDENCE ACT SECTION 145: RIGHT OF CROSS-EXAMINATION BY THE ACCUSED AND THE PREVIOUS STATEMENT OF THE WITNESSES AND CALLING OF THE RECORD: DUTY OF THE COURT:
2000 (2) M.P.L.J. 280
CHARLES VICTOR Vs. STATE OF M.P.

Section 145 of the Indian Evidence Act, gives an important right to the accused to cross-examine the prosecution witnesses in context with their previous statements recorded, if those statements are relevant to the cause of the trial. It is the duty of every court conducting the trial to enable both prosecution as well as defence to have access to the documents which are relevant to the trial and to the mission of finding truth in the criminal trial. If such party is unable to get the certified copy of such documents or wants to have a perusal of the court of such original documents, in the interest of justice, the court should not deny such a prayer unless it finds it to be totally irrelevant to the trial.

The register which embodies the entry in respect of despatch of the copy of FIR to the Magistrate in view of section 157, Criminal Procedure Code is quite important in the criminal trials connected with the cognizable offences. The accused may not get certified copy of such entry in the said register within short time. Therefore, if the accused makes a prayer to the court for calling such record for perusal and if necessary for cross-examination of the concerned witnesses by confronting him with it, the court should not refuse to call such register from the police station unless the court finds it unnecessary exercise. Accused are entitled to demonstrate before the Court that provisions of section 157, Cr.P.C. have not been complied with.

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16. CR.P.C., SECTIONS 401, 220 AND LIMITATION ACT, SECTION 5:CRIMINAL REVISION AND JOINT TRIAL:-
2000 (2) M.P.H.T. 14 (NOC)
SURESH TIWARI Vs. STATE OF M.P.

The five Criminal Revisions were barred by limitation. An application for condonation of delay in all five revisions is moved by the applicant stat-

ing that the appellant was prevented from filing the revision in time due to applicant's ailment. The ground being sufficient delay was condoned.

It is not the right of the accused to ask for joint trial treating it to be his statutory right. It is essentially a matter of judicial convenience for the Court to decide as to whether a consolidated trial or joint trial would be expedient or not. This becomes a matter of discretion to be exercised in the context of each case. The trial court had assigned adequate reasons for rejection of the said trial.

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17. CR.P.C. SECTION 438: ANTICIPATORY BAIL: CIRCUMSTANCES TO BE CONSIDERED FOR SANCTION: MURDER CASE:-
2000 (2) M.P.H.T. 37
ASHOK AGRAWAL Vs. STATE OF M.P.

Accused/applicant filed an application for anticipatory bail. Professional jealousy between the accused/applicant and the deceased since long is appeared. Case-diary involves the accused/applicant in the incident of murder. In a non-bailable offence the nature and gravity of offence has not to be ignored and lost sight of. Application for anticipatory bail was rejected.

The fact remains that at this initial stage there cannot be any ground for disbelieving the prosecution case as it lurks from the different pages of the case-diary involving the applicant in the incident of murder of Balveer Singh. I am of the view that apart from the other considerations lingering on the merits or otherwise of the case, in a non-bailable offence the nature and gravity of the offence has not to be ignored and lost sight of. Thus, considering the seriousness of the prima facie allegations levelled against the accused-applicant, particularly, at this stage when the investigation is continuing and is very much in progress. I am of the view that, in the interest of justice, he cannot be released on anticipatory bail.

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18. Cr.P.C. SECTIONS 468 AND 473 : CRIMINAL CASE,LIMITATION:-
2000 (2) M.P.H.T. 39
CHANDRA PRAKASH LADKANI Vs. STATE OF M.P.

Period of incidents of cruelty was described between 4-12-77 to 26-4-91. Decree of divorce was passed by the Original Court on 6-9-1994 between the petitioner and respondent No. 2. Cognizance of the offence under S. 498 A, I.P.C., against the petitioner was taken by the Magistrate on 15-3-1996. Petitioner alleged that the parties were no longer husband and wife as the decree of divorce was passed by the Original Court on 6-9-1994. Period of limitation of three years provided for under S. 468, Cr.P.C. elapsed. Whether bar of S. 468 Cr.P.C. can be applied.

It was held that no. The matrimonial offence relating to cruelty of husband on wife is apparently in the nature of continuing offence. Further held that the provisions of S. 468 Cr.P.C. coupled with provisions of S. 473 Cr.P.C. should have got to be liberally construed in favour of the wife.

Paragraphs 3 and 8 are reproduced:-

I have heard the learned counsel on both the sides at length and have carefully gone through the relevant documents filed by the petitioner. The main thrust of the learned counsel for the petitioner is on two counts; the first argument advanced by the learned counsel is that the period of incidents of cruelty described by the respondent No. 2, Smt. Vimla Devi, swings between 4-12-77 to 26-4-91 and afterwards on 15-3-96 the cognizance of the offence under Section 498-A,I.P.C. was taken by the learned Magistrate, and since after the elapse of the period of limitation of three years provided for under Section 468 Cr.P.C. cognizance was taken by the learned trial Court on 15-3-96, hence, it was an abuse of the process of the Court leading to miscarriage of justice, his second vehement argument is that admittedly, there was a litigation in respect of divorce between the petitioner Chandra Prakash and the respondent No.2, Smt Vimla Devi, the decree of divorce was passed by the Seventh Additional District Judge, Gwalior, in Civil Suit (Hindu Marriage Act) No. 578-A/91; appeal was filed by the respondent Smt. Vimla Devi in the High Court and the same (First Appeal No. 67 of 1994) was dismissed by this Court on 31-7-1995. Thereafter, L.P.A. No. 89/95 was filed which was also dismissed by this Court on 21-11-95. The respondent thereafter moved Hon'ble the Supreme Court by filing Special Leave Petition No. 3235/96 which was also dismissed on 9-8-96. Thus the crux of the argument of the learned counsel for the petitioner on this count is that since the parties were no longer husband and wife as the decree of divorce was passed by the Original Court on 6-9-94, hence the trial Court was wrong in taking cognizance of the offence under Section 498-A, I.P.C. against the petitioner who was no longer the husband of the respondent Smt. Vimala Devi. On these counts the learned counsel for the peitioner has very vehemently assailed the proceedings pending in the trial Court, which, according to him, deserve to be quashed.

The non-obstante clause with which the above provision starts, has a greater significance in the matter and it overrides the provisions of Section 468 Cr.P.C. Thus, the bar regarding taking of cognizance of the offence provided for under Section 468 Cr.P.C. is not absolute as the provisions of section 473 Cr.P.C. cannot be lost sight of, and they do go to condone the delay, in the interest of justice. That apart, I am of the opinion that the matrimonial offence relating to cruelty of husband on wife is apparently in the nature of continuing offence to which bar of Section 468 Cr.P.C., in the interest of justice, cannot be applied. I am further of the view that in such matrimonial offences the provisions of Section 468 Cr.P.C. coupled with

provisions of Section 473, Cr.P.C. should have got to be liberally construed in favour of the wife. Thus, on the point of fact, though various alleged incidents of cruelty swinged between 4-12-77 to 26-4-91 and the period of limitation for taking cognizance had expired, still it could not be said that the taking of cognizance by the Magistrate on 15-3-96 was either without jurisdiction or it was illegal and improper and had occasioned a failure of justice and for that matter some miscarriage of justice had occurred.

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19. CR.P.C., SECTIONS 228 AND 401: FRAMING OF CHARGE - INTRODUCING A NEW STORY:-
2000 (2) M.P.H.T. 63 (NOC)
RAM SINGH Vs. STATE

A charge sheet was filed under sections 147, 148, 323 and 294, IPC. The charges were framed against the applicants.

During trial, complainant introduced a new story of dacoity. Hence, case committed for trial to the Sessions Judge who framed charge under Section 395 IPC against the applicants. Charge was quashed by the High Court. The allegation of decoity is neither in FIR nor in statements recorded. In the report of the complainant the allegations were of simple 'marpeet' and abuses. It was held dthat framing of charge of dacoity is miscarriage of justice.

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20. CR.P.C., SECTIONS 397 (2), 451 AND 482: RETURN OF VEHICLE AFTER PART OF THE CASE IS COMPROMISED BY SOME PARTIES:-
2000 (2) M.P.H.T. 236
DEVKARAN Vs. STATE

Provisions of Section 482 cannot be taken to be a substitute for approaching the High Court against an interlocutory order.

The case being of general importance regarding return of vehicles involved in accidents the paragraphs 2 and 3 of the judgment are reproduced:

However, afterwards the accused persons, Santosh Prajapati and others, entered into a compromise with the injured/complainant and filed an application before the learned trial Court under Section 320 (2) & (4) of the Code of Criminal Procedure. The learned trial Magistrate granted permission to enter into compromise. The injured persons had also mentioned in their application that they had received compensation of Rs. 45,000/- from the accused persons. The case for the offences under Sections 297 and 304-A of the Indian Penal Code remained pending. At this juncture it is worthwhile to note that the petitioner-Devkaran Mevara- who claims to be

the owner of the above mentioned vehicle, was not a party at all in that compromise He afterwards filed an application that since no compensation remained to be ordered to be paid to the injured persons hence in the light of the compromise entered into between the parties, the conditional order passed by the Court below should be amended and the conditions in regard to the Bank Guarantee etc., should be removed. The learned Magistrate rejected that application.

Now, the petitioner aggrieved by the impugned order dated 20-4-99, has moved this Court invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure. It is again curious to note that the petitioner did not choose to file a criminal revision against the said impugned order. Learned counsel for the petitioner submits that the revision petition could not be filed because the impugned order is an interlocutory order. I am of the view that the provisions of Section 482 of the Code of Criminal Procedure cannot be taken to be a substitute for approaching the High Court against an interlocutory order. Had it been so, the provisions of Section 397 (2) of the Code of Criminal Procedure would have become redundant. The legislature cannot be presumed to take away one legal remedy by one hand and provide another similar legal remedy by another hand. That apart, the factual aspects involved in the case also do not go to indicate that it is such a rare case in which invoking of the inherent jurisdiction of this Court is justified.

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21. Cr.P.C., SECTIONS 439, 437 AND 389 : APPLICATION FOR GRANT OF BAIL:
2000 (2) M.P.H.T. 241 (F.B.)
SANTOSH Vs. STATE OF M.P.

Accused convicted under Section 302 IPC moved an application for suspension of sentence and grant of bail during pendency of the appeal. The application was rejected with liberty to the appellant to renew the prayer for bail after two years. Thereafter, another application was filed under Section 389 Cr.P.C. for suspension of sentence and grant of bail. The question whether the second or successive bail applications should be considered by the Bench which has considered the first bail application referred to this Full Bench and this reference was answered that second or successive bail applications in a pending appeal or bail application under Section 439 Cr.P.C. should be considered by the Bench which has considered the first bail application unless the Bench which decided the earlier is not available for the sufficient duration.

Gopal Vs. State of M.P., 1999 (2) Vidhi Bhasvar 22 overruled.

Narayan Prasad Vs. State of Madhya Pradesh, 1993 MPLJ 1 (FB) and ***Munna Singh Vs. State of M.P., 1989 MPLJ 414*** relied on. ***Shahzad***

Hasan Khan Vs. Ishtiq Hasan Khan, (1987) 2 SCC 684 = AIR 1987 SC 1613, State of Maharashtra Vs. Buddhikota Subha Rao, AIR 1989 SC 2292 and Vikramjit Singh Vs., State of M.P., AIR 1992 SC 474 followed. *Uthaman Vs. State of Kerala, 1983 Cr.L.J. 74* discussed.

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22. **Cr.P.C., SECTIONS 437, 438 AND 439 AND CRIMINAL TRIAL "CHANGED CIRCUMSTANCES" EXPLAINED:**
2000 (2) M.P.H.T. 321
CHANDRASHEKHAR Vs. STATE OF M.P.

A Magistrate even after rejection of application under Section 438 Cr.P.C. may grant bail to the accused under Section 437. The words "Changed circumstances" means a court should always remember that the changed circumstances does not simply means an absolute overhaul in the circumstances, but simply means that something creeping up which may persuade the discretion of the Judge hearing the application to grant bail in favour of the accused. The Court hearing the application for grant of bail should not exercise its jurisdiction for rejecting the application but should always take into consideration that whether justifiable reasons exist for rejecting the application.

In a case under Section 498-A, IPC rejected the application. Court below has rejected the application mainly on the ground that an application or grant of anticipatory bail was rejected on 4-2-2000 and since, there was no change in the circumstances, hence the applicants would not be entitled for an order of bail. The change which occurred in the circumstances was that the applicants were arrested on 8-2-2000. Distinction between Section 438 Cr.P.C. and Section 439 Cr.P.C., it was held that simply because an aplication under Section 438 Cr.P.C. stands rejected, the right of the applicants to be released on bail under Section 439 Cr.P.C. can not be turned out.

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23. **Cr.P.C., SECTION 438: ANTICIPATORY BAIL: SPEAKING WORDS "CHAMAR":-**
2000 (2) M.P.H.T. 35 (NOC)
RAJ KUMAR JAIN Vs. STATE

The appllicant is apprehending his arrest for an offence punishable under Sections 294, 506 B, IPC and Section 3 (1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Applicant threatened the complainant and uttered the word CHAMAR. The complainant belongs to Scheduled Caste. It was held that merely by using the word CHAMAR the provisions of the Act is not applicable. ***Raghuveer Prasad Vs. State of M.P., 1995 (2) MPWN Note No. 70*** relied on.

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24. **Cr.P.C., SECTION 439: BAIL IN DISPOSAL OF TRIAL: ENTITLEMENT OF BAIL:-**
2000 (2) M.P.H.T. 39 (NOC)
ASHOK KUMAR Vs. STATE

Accused facing trial under Sections 302 , 307 and allied sections of the I.P.C. Petitioner and his co-accused father alleged to have committed murder. Petitioner is a young boy of 19 years who is in custody for two years. 10 out of 20 witnesses were examined so far. It was held that the petitioner is entitled to bail.

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25. **Cr.P.C., SECTION 309: CLOSING OF CASE THOUGH WITNESSES PRESENT IN THE COURT**
2000 (2) M.P.H.T. 69 (NOC)
STATE Vs. GANESH

This case has been reported in **2000 (2) JOTI PAGE 170.**

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26. **Cr.P.C., SECTIONS 6, 193 AND 227: CASE UNDER S.C. S.T. (PREVENTION OF ATROCITIES) ACT:COMMITMENT OF CASES UNDER SECTION 193 CR.P.C.:-**
2000 (2) M.P.H.T. 101
GANGULA ASHOK Vs. STATE OF A.P.

This case has been reported in **2000 (3) JOTI at page 371.**

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27. **Cr.P.C., SECTIONS,182(2) 401 AND 403: CRIMINAL REVISION: DISPOSAL OF CASES IN THE ABSENCE OF PARTIES:COMPLAINT UNDER CR.P.C., IMPORTANT POINTS LACKING, EFFECT OF:-**
2000 (2) M.P.H.T. 109
DURGABAI Vs. BHAGATRAM

The Court need not wait for the parties. The provisions pertaining to the domain of discretion of the Court under Section 403 Cr.P.C. In criminal revision the revisional Court has to examine the correctness, propriety and illegality of the order which is under challenge.

Complaint lacking of important points regarding determination of jurisdiction. The Court cannot take cognizance of such complaint and consequently cannot issue process against accused indicated in the complaint.

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28. **Cr.P.C., SECTION 389-392: SUSPENSION OF SENTENCE: CIRCUMSTANCES TO BE SEEN:-**
2000 (2) M.P.H.T. 91 (NOC)
ARJUN Vs. STATE OF M.P.

Appellants convicted and sentenced under Section 302 IPC. Application made by the appellants for suspension of sentence. Division Bench equally divided in opinion as to whether or not the prayer for suspension of jail sentence be granted. Hence, this Criminal Appeal, under Section 392 Cr.P.C. has been laid before another Bench for consideration of the application made by the appellants for suspension of sentence. It was held that as the pendency is very large at the Bench, and there is likelihood of this appeal being heard in near future. Agreeing with the opinion that the application deserves to be allowed. **AIR 1999 SC 1859, Bhagwan's case** followed.

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29. Cr.P.C., SECTION 438: ANTICIPATORY BAIL: CONSIDERATIONS FOR GRANT OF:-
2000 (2) M.P.H.T. 117 (NOC)
V.K. MESRAM Vs. STATE OF M.P.

The applicant Mesram apprehended his arrrest for offences punishable under Section 420 IPC. Alleged that he had issued wrong mark-sheets to the students. In the Departmental Inquiry, applicant has been found to be negligent only. The applicant was directed to be released on anticipatory bail.

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30. Cr.P.C. SECTION 438, ANTICIPATORY BAIL:CONSIDERATION OF:-
2000 (2) M.P.H.T. 351
ANIL KUMAR DUBEY Vs. STATE OF M.P.

Offences punishable under Sections 147, 148, 324/149, 294, 506-II and 329/149 IPC. Police wants to arrest under Section 506-II, IPC. Property disputes pending between the parties held that it is a fit case for granting an order under Section 438 Cr.P.C.

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31. Cr.P.C., SECTION 432: REMISSION: ENTITLEMENT - NATURE OF:-
2000 (2) M.P.H.T. 377
STATE OF HARYANA Vs. NAURATTA SINGH

The difference between bail and parole explained. Entitlement for remission, question is whether a convicted person can claim that he is entitled to remission of the period during which he was on bail under the orders of the Court. It was held no, remission can be granted only with reference to an operative punishment. It was further held that the benefits intended for those who are on parole or furlough cannot be extended to those who are on bail.

Paragraphs 14 to 17 of the judgment are reproduced:

Parole is defined in Black's Law Dictionary, as "a conditional release of

a prisoner, generally under the supervision of a Parole Officer, who has served part of the term for which he was sentenced to prison". Parole relates to executive action taken after the door has been closed on a convict. During parole period there is no suspension of sentence but sentence is actually continuing to run during that period also.

A Constitution Bench of this Court has considered the distinction between bail and parole in the context of reckoning the period to which a detenue under a preventive detention order has to undergo in prison. It was in ***Sunil Fulchand Shah Vs. Union of India, (2000) 2 JT (SC) 230: (2000 AIR SCW 582),*** Dr. A.S. Anand, C.J., speaking for himself and for K.T. Thomas, D.P. Wadhwa & S. Rajendra Babu, JJ., has observed thus:

"Bail and parole have different connotations in law. Bail is well understood in criminal jurisprudence and Chapter XXXIII of the Code of Criminal Procedure contains elaborate provisions relating to grant of bail. Bail is granted to a person who has been arrested in a non-bailable offence or has been convicted of an offence after the trial. The effect of granting bail is to release the accused from internment though the Court would still retain constructive control over him through the sureties."

After referring to the meaning given to the word "parole" in different lexicographs, learned Chief Justice has stated thus:

"Thus, it is seen that 'parole'is a form of temporary release from custody, which does not suspend the sentence or the period of detention, but provides conditional release from custody and changes the mode of undergoing the sentence."

In recent decision rendered by a two Judge Bench of this Court in ***State of Haryana Vs. Mohinder Singh etc., (2000) 1 JT (SC) 629: (2000 AIR SCW 478)*** a similar question was considered and it was held that the benefits intended for those who are on parole or furlough cannot be extended to those who are on bail. The said decision has been quoted with approval by the Constitution Bench in the majority judgment in ***Sunil Fulchand Shah (2000 AIR SCW 582)*** supra.

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32. Cr.P.C., SECTION 179 READ WITH SECTIONS 113(2) AND 53 OF COMPANIES ACT: JURISDICTION OF THE COURT IN CASES OF SHARES AND DEBENTURES:-
2000 (2) M.P.H.T. 387
H.V. JAYARAM Vs. INDUSTRIAL CREDIT AND INVESTMENT CORPORATION OF INDIA LTD.

Default in delivery of share certificates within stipulated time to the appellant. Appellant lodged a criminal case against the respondent-Companies for the offences punishable under Section 113 (2) of the Act. Under the provision of Section 53 of the Act two modes are prescribed for serving

the documents, one to serve personally and the other by post. Registered offices of the respondent-Companies are located either at Bombay or at Gujrat. While, appellant is resident of Bangalore question of arising of cause of action, it was held that complaint for the offence punishable under Section 113 (2) of the Act could be filed only where the registered office of the Company is situated, and not where the complainant is residing. Appeals dismissed. ***Ranbaxy Laboratories Ltd. Vs. Smt. Indra Kala, (1997) 88 Com. Cas. 348 (Raj)*** overruled. ***Upendra Kumar Joshi Vs. Manik Lal Chatterjee, (1982) 52 Com. Cas. 177 (Pat)*** confirmed. ***H.P. Gupta Vs. Hiralal, AIR 1971 SC 206*** relied on.

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33. **Cr.P.C., SECTIONS 401 AND 401 (3): CRIMINAL REVISION AGAINST ACQUITTAL: LOCUS STANDI OF PARTY NOT PARTY TO THE PROCEEDINGS:-**
2000 (2) M.P.H.T. 393
ASHOK Vs. RAMSEWAK

The petitionrs filed criminal revision against the impugned order of acquittal of non petitioners passed by the trial Court. The preliminary objection of non-petitioners regarding petitioners' locus standi. Hence question of maintainability of this criminal revision was raised as to whether the petitioners who are deprivate parties, have locus standi to move this Court by filing this criminal revision because the aggrieved party was the State, who has not preferred appeal against the order of acquittal. It was held that there is no bar as such for the private parties to prefer a revision petition. It can be entertained in exceptional cases, where there has been miscarriage of justice on account of a manifest error on a point of law. ***K. Chinna Swamy Vs. State of A.P., AIR 1962 SC 1788*** followed.

NOTE:- Please see **Joti Journal, 1999 February at page 47 and Joti Journal, 1999 April at pages 142 and 113.** Also see **1998 (2) V.B. 116, AIR 1961 SC 1415, AIR 1986 SC 1721, 1990 (2) MPWN 158, 1990 (2) MPWN 185, (1998) 8 SCC 41, (1993) 3 SCC 690, (1973) 2 SCC 583, (1975) 4 SCC 477, AIR 1961 SC 1415 and AIR 1986 SC 1721.**

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34. **Cr.P.C., SECTIONS 2 (h)AND 4(2): THE MEANING OF THE WORD "INVESTIGATION"AND THE MEANING OF THE WORD "ANY OTHER LAW", EXPLAINED AND N.D.P.S. ACT, SECTIONS 20(b)(i), 37, 42, 43, 50, 51 AND 57: WHO SHOULD INVESTIGATE THE ARTICLE IF SEIZURE IS BY ONE JUDICIAL OFFICER:-**
2000 (2) M.P.H.T. 398
DHARMU Vs. STATE OF M.P.

It was alleged that accused persons were carrying "Ganja" in two bags. The accused were caught by A.S.I. in the weekly market. The accused

was opted by him to search, that is by A.S.I.. on search five kilograms of 'Ganja' was found in each bag. Report of search and seizure was sent to the higher authority. Samples were sent in sealed condition to the Forensic Science Laboratory. It was found to be'Ganja". The appellant was convicted under Section 20 (b)(i) of N.D.P.S. Act. The argument was that after the search and seizure by the A.S.I., matter should have been investigated by another police officer. It was held that investigation includes all proceedings for collection of evidence. Authorised police Officer is empowered to conduct investigation in all its stages. Investigation by two separate persons is not provided in the Act. Recovery and further investigation can be carried on by the same police officer unless he is biased or having any personal interest. Conviction maintained.

When a police officer carrying on the investigation including search, seizure or arrest empowered under the provisions of the Code comes across a person being in possession of the narcotic drugs or psychotropic substances then two aspects will arise. If he happens to be one of those empowered officers under the NDPS Act also then he must follow thereafter the provisions of the NDPS Act and continue the investigation as provided thereunder.

The meaning of the word "any other Law" is the offences under any other law shall be investigated according to the provisions of the Code subject to the provisions of the other law. The word 'investigation' includes all proceedings under Code for collection of evidence by police officer. He is empowered to conduct investigation in all its stages.

CASES REFERRED:-

1) *Nathiya Vs. State, 1992 (1) Crimes 537 (Raj)*
2) *H.N. Rashbud Vs. State of Delhi, AIR 1955 SC 196*
3) *Bhagwan Singh Vs. State of Rajasthan, AIR 1976 SC 985*
4) *B.J. Famous Vs. State, 1992 (2) Crimes 778 (Delhi)*
5) *Ali Hussain Vs. State of Maharashtra, 1993 Cr.L.J.277(Bom)*
6) *Chhoturam Vs. State of Rajasthan, 1995 Cr.L.J. 819(Raj)*
7) *Megha Singh Vs. State of Haryana, AIR 1995 SC 2339*
8) *State of Punjab Vs. Balbir Singh, 1994 Cr.L.J. 3702(SC)*
9) *Raghubir Singh Vs. State of Haryana, (1996) 2 SCC 201.*

35. Cr.P.C., SECTIONS 386 AND 397/401: POWERS OF THE APPELLATE COURT AND TO APPRECIATE THE EVIDENCE ALSO:-
2000 (1) VIBHA 152
RAJAN Vs. STATE OF M.P.

Powers of the appellate court are co-extensive with that of the trial Court. It has to re-assess, re-appraise and re-appreciate the evidence. It has also to determine the disputed issue. It cannot act as revisional Court.

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36. Cr.P.C., SECTIONS 154, 157 AND 161: ARREST WHEN CAN BE MADE: OCCURRENCE REPORT TO BE SENT TO THE MAGISTRATE AND DELAY IN RECORDING EVIDENCE BY INVESTIGATION AGENCY:-
2000 (1) VIBHA 216
RAMESH Vs. STATE

Arrest of accused persons can only be made after lodging of FIR.

Delay in sending report by the Magistrate. Explanation by prosecution accepted by the Sessions Judge and High Court.

Supreme Court will not interfere into.

Delay in examination of witnesses by police in itself, i.e. ipso facto cannot be a ground to discard their testimonies when they have corroborated the reliable evidence.

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37. Cr.P.C. SECTION 154: FIR WHEN IT IS SUBSTANTIAL EVIDENCE AND EVIDENCE ACT, SECTION 32: FIR WHEN IT IS A DYING DECLARATION:-
2000 (1) VIBHA 262
HEERU Vs. STATE

FIR lodged by the deceased. Details of the incident and motive given. Details of incident with motive were explained in the FIR can be treated as a dying declaration. The doctor recorded the dying declaration in question -answer form. Condition of patient was also noted. Such a dying declaration cannot be ignored simply because it was not signed by the maker and no details as to father's name etc. were noted.

There was also an oral dying declaration by the deceased to his wife, Devkibai and the report was lodged by deceased himself. The cumulative reading of all these words show that the needle is pointed only towards appellant/accused.

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38. Cr.P.C., SECTION 320 (1) (2) AND (9) AND 482:-
2000 (1) JLJ 65
CHANDERLAL Vs. STATE OF M.P.

Cases not mentioned in sub-sections (1) and (2) cannot be ordered to be compounded. Non-compoundable cases cannot be ordered to be compounded under the inherent powers under S. 482.

NOTE:- Please refer to JOTI JOURNAL, 1999 at page 41 and Tit bit No. 41 and JOTI JOURNAL, 1999 at page 137, Titbit No. 52.

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39. Cr.P.C. S. 29 POWER OF THE MAGISTRATE TO IMPOSE FINE UNDER S. 138/142 N.I. ACT. 1999 (2) W.N. 212
RAJJULAL Vs. VIJAY KUMAR MAHAVAR.

The complainant has filed this revision against order dated 15.1..99 passed by III ASJ Jabalpur during pendency of Cr. A. No. 90/98 granting bail to the accused who is respondent before this Court. The amount of surety bond for his appearance was fixed as Rs. 15,000/- This is not in dispute by both the parties. It so appears from the record of the appellant Court. The complainant moved an application before the Sessions Court that the amount of surety bond should be enhanced but that was declined by order. 15.1.99. This is also the subject matter of the present revision.

The accused was convicted for offence u/s 138 of the Negotiable Instruments Act. He was sentenced to R.I. for 6 months and fine of Rs. 1,50,000/-. It is strange that the magistrate passed sentence of so much fine, when the ordinary jurisdiction of the magistrate is limited to impose fine of Rs. 5,000/- u/s 29 CrPC but that of course is not the question involved in this revision. The counsel for the petitioner herein wants the amount of surety bond to be enhanced.

After hearing the counsel for the parties this Court finds that it was the discretion of the appellate Court to fix the amount of surety bond for admitting the accused to bail. The complainant cannot be allowed to object to this unless there was misuse of the discretion.

This petition, being by the complainant, has no substance and is dismissed.

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40. COURT FEES ACT, SECTION 35: REMISSION OF COURT FEES:NOTICE TO COLLECTOR NOT NECESSARY AND NOTIFICATION NO. F.9.83-B-XXII, DATED 1-4-1983:-
2000 (2) M.P.L.J. 46
SATYA NARAYAN Vs. PREMLATA SEWAK

Rules stated that it did not appear that it was mandatory for the trial Court to issue notice to the Collector before considering the prayer for exemption of the plaintiff/petitioner. However, it would be proper for the trial Court to notice the Collector while considering such an application as the matter relates to Revenue of State.

NOTE:- Please refer to **2000 (1) JOTI 26.** It is further requested to correct the printing error in the 5th line, the year 1988 be read as 1983.

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41. **COURT FEES ACT, SECTION 7 (iv) AND SCH. II ART. 17 AND SUITS VALUATION ACT, SECTIONS 3, 4 AND 8:-**
2000 (1) JLJ 67
RAJ KAUR RANDHAWA (SMT.) Vs. M/S KINETIC GALLERY

In order to understand the nature of controversy, regarding the payment of court-fee, between the parties to this revision, it is imperative to consider the allegations in the plaint for determining the nature of reliefs claimed by the applicant. The question of pecuniary jurisdiction and in given cases the question of payment of court fee are intimately and inextricably connected with allegations in the plaint. It is often found that the real reliefs claimed as per body of the plaint are not reflected in the prayer clause. Therefore, the Courts, as a rule, determine the question of pecuniary jurisdiction and the payment of court fee by reading the plaint as a whole instead of confining themselves to the prayer clauses. These principles are so well established that it is not necessary to cite any authority on the point. It would, however, proper to point out that in the case of **S. Rm. Ar. S. Sp. Sathappa Chettiar vs. S. Rm. Ar. Rm. Ramanathan Chettiar, AIR 1958 SC 245,** the propostition aforesaid was conceded so far as the court-fee is concerned. The suit in that case was governed by the provisions of Section 7 (iv) of Court-Fees Act. In view of Section 8 of the Suits Valuation Act the pecuniary jurisdiction of a Court is to be determined in accordance with the provisions of Section 7 (iv) of Court Fees Act. However, no departure can be made from the principle aforesaid of reading the plaint as a whole even in those cases where the plaintiff seeks a relief requiring payment of fixed court-fee but puts his own value on the relief involved for the purpose of pecuniary jurisdiction.

Valuation of suit to be determined after reading whole plaint and not only prayer clause thereof. Suit in respect of land not liable to be assessed for land revanue. No rules framed under S. 3. Valuation of suit to be put by plaintiff, such value should be actual value of the relief which should neither be high or low. Suits under Section 7 (iv) (c) or under Sch. II Art. 17 of 1870 Act, State Government framed rules under S. 3 of 1958 Act, valuation would not exceed the maximum prescribed under the rules. **1976 MPLJ 484** referred.

Suit falling under S. 7 (iv) of 1870 Act, Section 4 of 1948 Act provides guidlines for valuing if for court fees and pecuniary jurisdiction. The Court would accept the valuation put by plaintiff unless it is too low or high. Plaintiff not entitled to value the relief of permanent injunction simplicitor less than relief of declaration and consequential injunction in respect of same property. Arbitrary valuation is liable to be corrected. **1963 JLJ 674** relied on. Valuation of the suit is not the value of thing affected. It is the value of relief sought which has to be determined. **ILR 1938 Nagpur 558** relief on. Relief of declaration directly and inextricably related with relief of injunc-

tion, two cannot be valued separately. Suits for permanent injunction it may be necessary to value the relief in accordance with the valuation of property affected by permanent injunction.

Cloud cast on running of the business valuation of Rs. 300/- is correct for consequential relief of injunction. AIR 1951 Nag 218 relied on.

Suit under no title to any land or interest therein claimed. Valuation of 3 lakhs of rupees for declaration is arbitrary.

Paragraph 2, 6, 7 and 8 of the judgment are reproduced:-

2. In order to understand the nature of controversy regarding the payment of court-fee, between the parties of this revision, it is imperative to consider the allegations in the plaint for determining the nature of reliefs claimed by the applicant. The question of pecuniary jurisdiction and in given cases the question of payment of court-fee are intimately and inextricably connected with the allegations in the plaint. It is often found that the real reliefs claimed as per body of the plaint are not reflected in the prayer clause. Therefore, the Courts, as a rule, determine the question of pecuniary jurisdiction and the payment of court-fee by reading the plaint as a whole instead of confining themselves to the prayer clauses. These principles are so well established that it is not necessary to cite any authority on the point. It would, however, proper to point out that in the case of ***S. Rm. Ar. S. Sp. Sathappa Chettiar vs. S. Rm. Ar. Rm. Ramanathan Chettiar, Air 1958 SC 245,*** the proposition aforesaid was conceded so far as the court-fee is concerned. The suit in that case was governed by the provisions of Section 7 (iv) of Court-Fees Act. In view of Section 8 of the suits Valuation Act the pecuniary jurisdiction of a Court is to be determined in accordance with the provisions of Section 7 (iv) of Court Fees Act. However, no departure can be made from the principle aforesaid of reading the plaint as a whole even in those cases where the plaintiff seeks a relief requiring payment of fixed court-fee but puts his own value on the relief involved for the purpose of pecuniary jurisdiction.

6. Section 8 of Suits Valuation Act Prescribes that suits other than those mentioned in paragraphs 7 (v), (vi) (ix) and clause (d) of paragraph (x), where the court fees is payable **ad valorem** under the Court Fees Act, the value or relief mentioned in the plaint for the purpose of court fees shall be the value for the purpose of jurisdiction. It follows, therefore, any suit falling within paragraph (iv) of Section 7 would be governed by Section 8 of the Suits Valuation Act and valuation put by the plaintiff on the relief claimed by a plaintiff for the purpose of court-fee shall also govern the pecuniary jurisdiction of the Court, trying the suit. In cases falling within paragraph (iv) of Section 7, a plaintiff is entitled to put his own valuation. The Courts normally accept the valuation put by the

plaintiff if it is not too low or high. The liberty of a plaintiff to value the relief is respected ordinarily, unless, he puts an arbitrary valuation which is wholly unrelated to relief claimed by the plaintiff. Section 4 of the Suits Valuation Act gives a guideline for valuing a suit under Section 7 (iv) for the purpose of court fees and pecuniary jurisdiction and under Article 17, Schedule (II) for the purpose of pecuniary jurisdiction in respect of land or an interest in land. It says that in a suit involving a relief in respect of land or interest in land if the State Government has framed rules under Section 3 of the Suits Valuation Act then valuation for aforesaid relief under Section 7 (iv) (c) for court fees and jurisdiction and under Article 17 of Schedule II of the Court Fees Act would not exceed the maximum payable under these rules. In the State of M.P. rules framed by Notification No. 1041, dated 28th September, 1911 as amended by the Notification No. 7777/303-V, dated 12th April, 1924 (see ***Laccho and another v. Keshavlal and another,*** **1976 MPLJ 484,** at paragraph- 6), the Rule 2 (a) (1) of the aforesaid Rules was framed for determining the value of land for the purpose of jurisdiction in respect of suits mentioned in paragraph (v), (vi) and (x), clause (d) of Section 7 of the Court-fees, Act. However, these rules do not cover the land which is not agricultural and, therefore, not assessed too land revenue. In absence of any rule in respect of land, which is not liable to be assessed to land revenue, Section 4 of the Suits Valuation Act would not be attracted as there are no rules framed under Section 3 of the Suits Valuation Act. Therefore, in a suit claiming relief in respect of land or interest in land not liable to be assessed to land revenue, the value has to be put by plaintiff which should be actual value of the relief. It cannot be too High or too low. Normally, value of an immovable property it its market value.

7. The controversy between the learned counsel for the parties is narrow. The counsel for the applicant says that it is governed by Article 17 (iii) of Schedule II for relief of declaration and under Section 7 (iv) (d) for the relief of permanent injunction. The counsel for the non-applicants, on the other hand, says that the suit is governed by Section 7 (iv) (c) i.e. the relief of permanent injunction directly flows from the relief of declaration. However, in the opinion of this Court, the dispute relating to court fee and pecuniary jurisdiction cannot be solved in this manner. This Court is of the view that it cannot be said axiomatically that in cases governed by Section 7 (iv) (c) of the Court Fees Act only a plaintiff is required to value the relief according to market value of immovable property. Even in cases falling under Section 7 (iv) (d) of the Act, it may be necessary to value the relief of permanent injunction in accordance with the market value of the property affected by the permanent injunction. It may be noted that the words in the last two subparagraphs of paragraph 7 (iv) of the Court-fees Act are equally appli-

cable to 7 (iv) (a), 7 (iv), (c), 7 (iv) (d) and 7 (iv) (f). The words are as follows:-

> "..... according to the amount of which the relief sought is valued in the plaint or memorandum of appeal (with a minimum fee of forty rupees).

In all such suits the plaintiff shall state the amount at which he values the relief sought."

There fore, be it a suit for declaration and consequent permanent injunction covered by Section 7 (iv) (c) or a suit for permanent injunction under Section 7 (iv) (d) the real mode of valuation is to value the relief sought. How does the plaintiff value the relief sought? In case of consequential Permanent injunction or permanent injunction, the mode of valuation of that relief should not necessarily change.

A plaintiff would not be entitled to value the relief of permanent injunction **simplicitor** less then the relief of declaration and consequential injunction in respect of same property if the value of the relief to the plaintiff be the same. The correct test was laid down by the Division Bench of this Court in the case of ***Badrilal Bholaram v. State of M.P. and another,*** reported in **1963 JLJ 674=1963 MPLJ 717,** at page 719, paragraph 7, as follows:-

> "7, While the plaintiff is at liberty to value the relief claimed in suits governed by the various clauses of sub-section (iv), including those for a declaration with the consequential relief of injunction, this Court has consistently held that he cannot be allowed to put on arbitrary value and that, if he does so and the Court considers that it is too low or unreasonable in what it bears no relation to the right litigated, it may require him to correct the valuation...."

The Division Bench quoted ***Motiram v. Daulat, ILR 1938 Nag. 558*** as follows:-

> "It is not, in our opinion, the value of the thing affected that settles the value of the relief sought. It is the value of the relief sought which has to be determined."

and stated further in paragraph 9 at page 720:

> "9,..... We agree that there are cases where there is a difference between the value of the thing affected by the action and the value of the relief sought in respect thereof. But we are of the view that, speaking generally, where the relief sought itself has a real money value which can be objectively ascertained, that value is the value of the relief and any other value ascribed to it is arbitrary and unreasonable...."

It would be apparent that what has to be valued is the relief and not the thing aXffected. The general rule is if the relief sought has a real money value which can be objectively ascertained then the plaintiff can value the suit in accordance with that value. We have to apply the aforesaid principles to the case in hand. It is obvious that relief of declaration in favour of the applicant is directly and inextricably related with the relief of permanent injunction in this case. The applicant wants to claim that she is the sub-dealer of two companies and consequently, the non-applicant No. 1 is liable to be restrained to run the show-room established by him infront her show-room. The relief of permanent injunction flows from the relief of declaration. They are not unconnected in such manner that each could be called an independent relief. The Court disagrees with the learned counsel for the applicant that merely because the non-applicant No. 1 established a show-room in the month of September. 1986, the cause of action for permanent injunction stood postponed. The cause of action began to be operative the moment, the non-applicant No. 1 started his unauthorised dealership. The establishment of show-room was merely a manifestation of his activities. This Court, therefore, agrees with the trial Court as well as with the learned counsel for the non-applicant No. 1 that the suit is governed by Section 7 (iv) (c) of the Court-fees Act. However, this finding would not sustain as would be shown in the sequel, the ultimate result. Even if the applicant was required to put a valuation to relief of permanent injunction, it is the same relief she was required to value as in case under Section 7 (iv) (c) of the Court Fees Act. Therefore, the real question to be asked in this case is if the value of the suit of the application for Rs. 3 Lacs really determines the value of relief of declarationand permanent injunction. The question is if the relief clause (h) is capable of valuation in terms of money. In the opinion of this Court, it is not. It is difficult to understand how the applicant valued the suit at Rs. three lacs assuming it to be the suit claiming an independent declaration. The relief of declaration that the applicant is the authorised sub-dealer could not be valued at Rs. three lacs unless it was disclosed in the plaint that the value of sub-dealership was worth Rs. three lacs. It appears to this Court that sub-dealership is an intangible right. Its money value to the applicant would be the likelihood of the profits to be earned by the applicant and not by any other arbitrary mode. Similarly, the relief of permanent injunction would commensurate with the profits likely to be earned by the applicant if the non-applicant is allowed to run his show-room. Again, the relief of permanent injunction is incapable of valuation. Since this Court has already held that the relief of permanent injunction in Section 7 (iv) (c) of Court-fees Act has to be looked into for determining the court-fees, this Court comes to the conclusion that the appellant was entitled to put his own value of Rs. 300/- on the relief of permanent injunction. The relief of declaration or the relief of injunction are in no way related to any land or interest in the land. The relief of permanent

injunction is very general requiring the non-applicant No.1 not to run any show-room of two companies at Jabalpur. It can be said that running of show-room by the non-applicant No. 1 has cast a cloud on the title or right of the applicant to run the sub-dealership alone. It is the applicant, who can value the cloud. It appears that the applicant has artificially inflated her right to Rs. three lacs. In the opinion of this Court, the higher value of Rs. three lacs would be excessive and inflated. The lower value of Rs. 300/-claimed in respect of permanent injunction appears to be correct and the same should be accepted as the relief under Section 7 (iv) (c) of the Court-fees Act, is incapable of valuation, In this connection, it would be profitable to recall the observation of a Division Bench case. Those remarks were made in respect of suit for declaration. They are equally applicable to the case of valuation in case of Section 7 (iv) (c) of the Court Fees Act, as would be clear from the guideline of Section 4 of Suits Valuation Act. In the case of ***Pundlik and others v. Ramsukhibai and others,*** reported in **AIR 1951 Nagpur 218,** Vivian Bose, C.J., speaking for the Division Bench stated as follows, at page 223, paragraph 42:-

> "(42) We are left therefore with O. 7 R. 1, Civil P.C. and with S. 15. The former requires a plaintiff to state the value of the subject-matter of the suit for purpose of jurisdiction and S. 15 requires that the suit be instituted in the Court of the lowest grade competent to try it. Therefore, what we have to determine is, what is the value of the subject-matter when there are no specific rules to determine the value artificially?...

It was held in that case that:-

> ".. All we can say is that the subject-matter of the suit here is a cloud. It is not the property, or is it the decree. The Financial Commissioner's order was not a competent order which the plaintiffs were bound to set aside because we have already held that the order was without jurisdiction. Therefore it is only a cloud, and the only person who can value that cloud is the plaintiff, and provided his valuation is not outrageous one way or the other his valuation must, in our opinion, be accepted."

In view of the aforesaid discussion, this Court is of the opinion that the suit is governed by Section 7 (iv) (c) of the Court-fees Act. The right permanent injunction directly flows from the right of declaration. Therefore, the applicant could put his value for the relief of declaration and permanent injunction. Since the relief claimed is in respect of an intangible right, it is incapable of valuation. However, the applicant has valued the relief of permanent injunction at Rs. 300/- This value should be accepted for the purpose of court fees and permanent injunction. The valuation of Rs. three lacs put by the applicant is totally arbitrary and exaggerated and, therefore, the applicant may be asked to delete the same.

As a result of aforesaid discussion, this revision succeeds and is allowed. The order demanding court fees on Rs. three lakhs is hereby set aside. The case is remitted to the trial Court and it shall decide the suit further in accordance with law subject to objection to its pecuniary jurisdiction suo motu or otherwise.

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42. **CONSTITUTION OF INDIA, ARTICLE 226: POWERS UNDER, WHEN NOT EXERCISED:-**
2000 (2) M.P.H.T. 23
ISARUL HAQUE Vs. STATE

The power under Article 226 is discretionary. It will be exercised only in furtherance of interest of Justice and not merely on the making out of a legal point. Land acquisition not interfered with in writ proceedings because interference would have thrown a company, which had started its activity more than a decade ago, out of gear, rendering a large number of people jobless. The petitioner had also spurned offers to be paid any amount of compensation. ***Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, (1997) 1 SCC 134*** relied on.

Writ Petition dismissed.

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43. **CONSTITUTION OF INDIA, ARTICLE 21: SPEEDY TRIAL AND CONTEMPT OF COURTS ACT, SECTIONS 10 AND 12: NON SERVICE OF SUMMONS ON WITNESSES:-**
2000 (1) VIBHA 165
JAGDISH PRASAD Vs. RAJENDRA KUMAR

Speedy trial in a criminal case is a fundamental right. Non service of summonses on witnesses in sessions trial. No valid explanation offered. Therefore, it amounts to obstruction in administration of justice. The contemner is liable to be punished. ***Saleem Vs. State, 1990 JLJ 600*** relied on.

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44. **CONSTITUTION OF INDIA, ARTICLES 226 AND 227: PENSION RULES, RULE 173, AND CLAUSE 7 OF APPENDIX II AND SERVICE LAW: DISCHARGE FROM SERVICE, DISEASE ATTRIBUTABLE TO THE SERVICE: LAW EXPLAINED:-**
2000 (3) M.P.H.T. 1
EX SEPOY REJESH KUMAR Vs. UNION OF INDIA

The petitioner was invalidated from service on account of low medical category. The Medical Board finding petitioner suffering from non-organic psychosis. The petitioner demanded for the grant of disability pension but respondents rejected the claim on the ground that the decease was not

attributable to military services. it was held that the decease which led to the petitioner's discharge shall be deemed to have arisen in service on account of legal fiction created by Clause 7 (b) of Appendix II of Pension Regulation and not on the ground that the opinion of the Medical Board is erroneous. ***Ex-Naik Shyam Sunder Prasad Vs. Union of India and other, W.P. No. 1731/95*** decided on 17-5-96 followed.

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45. CONSUMER PROTECTION ACT, SECTIONS 12 AND 14 AND CONSTITUTION OF INDIA, SECTIONS 226 AND 227:-
2000 (3) M.P.H.T. 6 (NOC)
KANJILAL PATEL Vs. M.P.E.B.

Business of petitioner is a Flour Mill. The petitioner filed a complaint before the District Forum constituted under the Consumer Protection Act, 1986 for damages on account of non-supply of electricity from 24-5-1995 to 28-7-1995, alleging loss of Rs. 150/- per day to the petitioner. The Forum on 28-4-1997 passed an award of damages of Rs. 4,750/- to the petitioner. After the order of the Forum the petitioner was served with supplementary bill dated 23-3-1998 for a sum of Rs. 31,600/- on account of electricity consumption. Against it this Writ Petition was filed. Neither meter has been tampered nor it is recording less consumption. It was held a consumer is required to pay electricity charges on the basis of consumption recorded in the meter and not on the basis of its earning. It was further held that supplementary bill issued to the petitioner cannot be sustained as the same is not on the basis of the consumption recorded in the meter. Therefore, the supplementary bill dated 23.3.1998 was quashed.

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46. CONSTITUTION OF INDIA, ARTICLES 226 AND 32:- PIL - INDIVIDUAL INTEREST
2000 (1) JLJ 36 (S.C.)
MALIK BROTHERS Vs. NARENDRA DADHICH

Public Interest Litigation is usually entertained for the purpose of redressing public injury, enforcing public duty, protecting public right etc. It does not mean settling disputes between private parties. Discretionary powers under Art. 226 cannot be exercised on the behest of person having no interest in the litigation.

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47. CONSTITUTION OF INDIA, ARTS. 226 AND 14:- LAW RELATING TO TENDERS:-
2000 (1) JLJ 44
M.K.S. ENGINEERING PVT. LTD. Vs. STATE OF M.P.

Contractual powers of the Government, judicial review is permissible

to prevent arbitrariness or favouritism. Acceptance of tender arbitrarily and against the norms of tender condition cannot be allowed to stand when petitioner has rushed upto Court without delay.

TENDER:- Lower tender may not be acceptable. It depends upon the nature of work to be performed.

LEGAL MAXIMS:- Actus curiae neminem gravabit- Acts of Court shall prejudice no man.

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48. CONTEMPT OF COURT ACT, SECTION 3, 6, 10, 12 AND 22

2000 (1) JLJ 22

B.R. NIKUNJ, CIVIL JUDGE CLASS I Vs. VIPIN TIWARI, ADVOCATE

It is not in dispute that the Presiding Judge B.R. Nikunj, Additional Chief Judicial Magistrate, Balodabazar by judgment dt. 8-1-1997 in Criminal Case 497/87 convicted the father of the contemner for offence under section 336, 427 read with Section 34 IPC and sentenced him to one year three months' imprisonment and a fine of R. 1250/- . After the above judgment of conviction and sentence the contemner made a complaint in writing supported by his affidavit to the Chief Justice of this High Court and sent its copies to the President of India, Chief Justice of India, Registrar of the High Court, President of State Bar Council and District & Sessions Judge, Raipur. In the written complaint with affidavit sowrn on 22-7-1997 he made allegations against the Additional Chief Judicial Magistrate Shri B.R. Nikunj.

We have given our consideration to the preliminary objections raised on behalf of the contemner to the maintainability of these contempt proceedings. The High Court being a constitutional Court is competent to initiate contempt proceedings on a reference made to it or, suo motu. The existence of such power in the High Court is clear from the provision of Section 22 of the Act which provides that 'the provisions of the Act shall be in addition to, and not in derogation of the provisions of any other law relating to contempt of Courts.' Section 10 of the Act also empowers the High Court' to exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of Courts subordinate to it as it has and exercised in respect of contempts of itself '. The power of the High Court as contained in Section 10 read with Section 22 of the Act and as a constitutional Court of record under Art. 215 of the Constitution of India is in no manner restricted or curtailed for taking action for contempt of subordinate Court. It can exercise such power suo motu on a reference made by the subordinate Court.

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49. CONTEMPT OF COURTS ACT, SS. 2 AND 12 : MEANING OF THE WORD "FAIR CRITICISM":-
AIR 2000 SC 68
PADMAHASINI ALIAS PADMAPRIYA Vs. C.R. SRINIVAS

Fair criticism means criticism which while criticising act of Judge does not impute any ulterior motive to him.

Allegation against Judge that he had "thwarted justice, flouted law, denigrated the fact of the judiciary and ridiculed the sanctity of the mandatory provisions and established dictates of law". Attributes by implication ulterior motive to Judge is beyond permissible limits of fair criticism. Further statement alleging by implication that Supreme Court has not dealt with his case impartially and in accordance with law has tendency to scandalise Court. Maker of such statements is guilty of contempt of Court. Strict view about punishment however not taken considering the disturbed state of mind of contemnor and the background in which offending statements were made.

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50. CONSUMER PROTECTION ACT, SECTION 11 : JURISDICTION OF FORUM UNDER SS. 11 AND 2 : CONTRACT AMOUNT:-
AIR 2000 SC 102
M/S VIKAS MOTORS LTD. Vs. DR. P.K. JAIN

Plea that District Forum had no territorial jurisdiction to entertain complaint and pass orders. Party is estopped from raising it after participating in proceedings and being satisfied with vardict regarding jurisdiction. Car which was agreed to be delivered to buyer immediately after receipt of full amount, buyer made full payment. The cut off date, i.e. date of payment was admittedly before the rise of prices of cars. Charging of extra amount at time of delivery of car by dealer not permissible. Extra amount charged by dealer directed to be refunded to the buyer.

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51. EASEMENTS ACT, SECTION 60 (b) AND EVIDENCE ACT, SECTION 115:- ADVERSE POSSESSION:-
2000 (3) M.P.H.T. 11
RAMBILAS Vs. JAGATRAM

Respondent/defendant has built house on the land belonging to his brother-Amal Sai (Original plaintiff) with his consent or acquiescence. Question of adverse possession. Licence granted by Amal Sai to his brother-respondent/defendant has become irrevocable in view of Section 60 (b) of the Easements Act. This is based on the principle of estoppel by acquiescence. ***Fazal Haq Vs. Data Ram, AIR 1975 All 373*** and ***Sewaram Vs. Swami Atmanand, 1959 MPLJ 27*** relied on.

Paragraph 3 of the judgment is reproduced:

It is argued on behalf of the appellants that in such a case possession of the defendant could not be adverse. In the facts and circumstances of this case, the licence granted by Amal Sai to his brother Jagatram has become irrevocable in view of Section 60 (b) of the Easements Act. That is based on the principle of estoppel by acquiescence. In ***Fazl Haq Vs. Data Ram, AIR 1975 All 373,*** it has been held by the Division Bench that when the licensee acting upon a licence has executed a work of permanent character and incurred expenses in the execution the licence cannot be revoked by the grantor. The man who stands by and allows another person to build on his land, in the belief that he has power or authority to do so, and incurs expenses in such building, cannot turn round and claim the removal of such building on the ground that the latter had no authority to build. He is estopped by his conduct from adopting that course and the law will presume an authority from him in such cases. The same view was taken by this Court in ***Sewaram Vs. Swami Armanand, 1959 MPLJ 27.***

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52. EVIDENCE ACT, SECTIONS 112, 114, AND 50: PROOF OF MARRIAGE AND SECTION 68 EVIDENCE ACT READ WITH SECTION 63 INDIAN SUCCESSION ACT: PROOF OF WILL, MODE OF PROOF:-
2000 (2) M.P.L.J. 202
BRIJBASUA Vs. VISHNUDEV SINGH

Presumption of marriage. Long and continuous cohabitation for number of years raises presumption of marriage. Child was also born. Mere fact that direct evidence of marriage which took place many years ago is not available cannot displace the presumption.

Paragraphs 6, 7, 10, 11 and 15 are reproduced:

The law presumes in favour of marriage and against concubinage. Long and continuous cohabitation for a number of years raises the presumption of marriage. Mere fact that direct evidence of marriage which took place many years ago is not available cannot displace the presumption. If children are born to such a couple, the presumption of the marriage is strengthened and they would be presumed to be legitimate. The presumption does not get mitigated or weakened merely because there may not be positive evidence of the ceremony of marriage having taken place. After lapse of time the priest who performed the marriage cermony and other witnesses disappear and no evidence except the hard fact of the husband and wife living together survives. Formalities, customs and rites for valid marriage would also be presumed to have been observed. The habit and repute would get the weightage.

Section 50 of the Evidence Act provides that when the Court has to form an opinion as to the relationship of one person to another, the opinion expressed by conduct, as to the existence of such relationship of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is relevant fact. Under Section 114 of the Evidence Act the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events and human conduct. Thus the opinion expressed by the persons watching the conduct of a man and woman living as husband and wife is relevant and material.

It is well settled that it is the duty of the propounder of a Will to prove it and, remove all the suspicious features.

A Will interferes with the natural line of succession. The Will must be proved in accordance with law as laid down in Section 68 of the Evidence Act read with Section 63 of the Indian Succession Act. It is true that law does not emphasise that the witness must use the language of the sections to prove the requisite merits thereof but it is also not permissible to assume something which is required by law to be specifically proved. ***Kashibai Vs. Parwatibai, (1995) 6 SCC 213.*** The onus probandi lies in every case upon the party propounding a Will and he must satisfy the conscience of the Court that the instrument so propounded is the last Will of a free and capable testator. In case the propounder takes the benefit under Will, that is a circumstance that ought generally to excite suspicion of the Court, and call upon it to be vigilant and jealous in examining the evidence in support of the instrument, in favour of which it ought not to pronounce unless the suspicion is removed, and it is judicially satisfied that the paper propounded does express the true Will of the deceased. ***Harmes Vs. Hinkson, AIR 1946 PC 156.*** It must be established that the testator was a person of testamentary capacity. The propounder must prove its due and valid execution. Merely because a Will is registered its genuineness cannot be presumed. Registration of a Will does not change the onus of proof from its propounder to the challenger. It has been observed by the Supreme Court in ***Bhagwan Kaur Vs. Kartar Kaur, (1994) 5 SCC 135*** that the endorsement made by the Sub-Registrar does not satisfy the requirements of section 63 of the Indian Succession Act and does not reach upto the level of proof required under section 68 of the Evidence Act and hence mere registration of the Will is of no consequence.

It is necessary that there should be proof that the attesting witnesses had "seen the executant sign or affix his mark". It is further necessary that the attesting witnesses must have signed as such "in the presence of the executant". In this case the judgment of the first Appellate Court shows that these ingredients for proof of the Will have not been kept in view. There is no discussion of the evidence on these crucial aspects. Banspatiram

(D.W. 3) and Satish Kumar (D.W. 5) are the two attesting witnesses to the Will dated 21-12-1979 (Ex. D-1). Banaspatiram (D.W. 3) has deposed that Gopal Singh had come to the office of the Collector to execute the Will in favour of Mangleshwar Prasad. He told him that he has become physically weak. He got the document Ex. D-1 scribed and put his thumb mark thereon. He does not specifically say that he had seen Gopal Singh putting his thumb mark on this document. He has further stated that he had signed this document as a witness and one more person did so. Again he does not specifically says that he signed as attesting witness in the presence of Gopal Singh. This witness is a Pandit. He says that Gopal Singh was not married and he had no issue. On this point the testimony of this witness cannot be said to be true as the plaintiff No. 1 has been held to be the wife and the plaintiffs Nos. 2 to 6 as children of Gopal Singh. It is obvious that this witness is not impartial and independent. He is a witness interest in the defendant. He calls the plaintiff No. 1 as 'Kolin'. That shows his prejudice.

From the evidence the Will Ex. D-1 is not proved to have been duly executed and attested as required by law. The testamentary capacity of Gopal Singh is not established. It is not shown that he did so voluntarily and with a conscious mind to exclude his own heirs. The defendant or his son cannot be said to have acquired title to the share of Gopal Singh on the basis of this Will. It does not displace the natural line of succession.

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53. S. 159 EVIDENCE ACT : REFRESHING MEMORY AND APPRICIATION OF EVIDENCE.
AIR 2000 SC 185
STATE OF KARNATAKA Vs. K. VARAPPA REDDY.

(A) Evidence Act S. 159. Refreshing memory. Investigating Officer asked during his examination-in-chief about what happened on fateful day. Investigating Officer wanting to check up his records as he could not remember without refreshing his memory. Objection as to, by defence counsel Untenable. Records by Investigating Officer are the contemporaneous entries made by him and hence for refreshing his memory it is always advisable that he looks into those records before answering any question.

(B) Penal Code (45 of 1860), S. 300 Murder. Evidence of eye-witness. Criminal Courts should not expect set reaction from eye-witness on seeing incident like murder.

Where in a murder trial, the evidence of eye-witness was disbelived by High Court on ground that on seeing the incident she did not shout or cry but remained calm, it would not be proper. Criminal Courts should not expect a set reaction from any eye-witness on seeing an incident like murder. If five persons witness one incident there could be five different types of

reactions from each of them. It is netiher a tutored impact nor a structured reaction which the eye-witness can make. It is fallacious to suggest that eye-witness would have done this or that on seeing the incident. Unless the reaction demonstrated by an eye-witness is so improbable or so inconceivable from any human being pitted in such a situation it is unfair to dub his reactions as unnatural.

(C) Penal Code (45 of 1860), S. 300/302 and Evidence Act, Section 153 Murder. Evidence of eye-witness- Allegation that husband of eye-witness and accused's father had loan transaction on which they later fell out. Eye-witness not asked about alleged loan transaction. Her evidence cannot be contradicted by citing other witness to say about any such transaction.

Where in a murder trial. It was alleged that husband of eye-witness and accused's father had loan transaction on which they later fell out. however the eye-witness was not asked about alleged loan transaction, her evidence cannot be contradicted by citting other witness to say about any such transaction. As the general rule of evidence is one of prohibiting evidence on collateral issues and since it is only by way of exception that such evidence can be permitted. the Court must guard that the defence evidence falls strictly within the exception. The basic requirement for adducing such contradictory evidence is that the witness, whose impartiality is sought to be contradicted with the help of such evidence. should have been asked about it and he should have denied it. Without adopting such a preliminary recourse it would be meaningless. If not unfair, to bring in a new witness to speak something fresh about a witness already examined.

CRIMINAL TRIAL EVIDENCE OF TWO SETS OF WITNESSES : APPRECIATION OF:-

Eye- witness found to be most natural and probable witness to occurrence. Evidence of another prosecution witness stating that it was accused who pointed to the house where dead body was lying being one of attestor of inquest report and resident of same locality lending credence to version of eye-witness. Chopper which was surrendered by accused in police station having same blood group as that found on bed sheet on which the dead body was lying- Accused was rightly convicted under S. 300.

Cri A. No. 248 of 1986, D/-14-9-1987 (Kant), Reversed.

EVIDENCE ACT, SECTION 25 AND F.I.R. BY THE ACCUSED:-

FIR given by the accused at the Police Station, so long as it contains inculpative statements, would stand excluded from evidence.

CRIMINAL TRIAL : MEDICAL EXAMINATION OF VISCERA WHEN NOT NECESSARY:-

Frustrated lover taking reluctant beloved to the house of a family friend

who welcomed them and supplied coffee to them. Later, the frustrated lover inflicting grevious blows on, and thereby killing the beloved. In such circumstances it was held that there was no need of medical examination of the viscera of the deceased's stomach to find out the present of coffee as the charge was not one causing death by poisoning. Hence non-examination of the viscera was of no assistance to the accused.

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54. HINDU MARRIAGE ACT, SECTION 5(I) AND 11 AND SPECIFIC RELIEF ACT, SECTION 34: MARRIAGE, BURDEN OF PROOF AND QUANTUM OF PROOF:-
2000 (2) M.P.L.J. 112
AJAY CHANDRAKAR Vs. SMT. USHABAI

Second marriage by husband. First wife cannot be expected to adduce any direct evidence on the point. Evidence relating to second marriage is mostly circumstantial.

The first wife cannot avail remedy provided by Section 11 of H.M. Act. She has to file a suit for declaration under S. 34 of S.R.Act and for declaration of such marriage as void.

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55. HINDU MARRIAGE ACT, SECTIONS 5 AND 11:FIRST WIFE CANNOT AVAIL THE REMEDY IN THIS SECTION AND SPECIFIC RELIEF ACT, SECTION 34: SECOND MARRIAGE MAINTAINABILITY OF SUIT:-
2000 (2) M.P.H.T. 168
AJAY CHANDRAKAR Vs. SMT. USHABAI

The trial Court held that the appellant/defendant No. 1 Ajay Chandrakar has remarried defendant No. 4 Pramila. The evidence relating to second marriage was mostly circumstantial.

The maintainability of the suit was considered. The present suit was legally maintainable. Further it was held that remedy under Section 11 of the Hindu Marriage Act is available to a person who is party to the second marriage. The first wife cannot avail the remedy provided by Section 11 of H.M. Act. She has to file a suit for declaration under Section 34 of the Specific Relief Act for declaration of such marraige as void.

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56. HINDU SUCCESSION ACT, SECTIONS 14 AND 15 AND C.P.C., SECTION 100:-
2000 (2) M.P.H.T. 67 (NOC)
CHINTARAM Vs. SMT. PUSHIBAI

Disputed land belonged to Lusru. He married to Laxmibai before 1955 in the presence of first wife as he had no issues.

Tulsiram, the original plaintiff was the son of Laxmibai through her former husband. On the death of Lusru, his property devolved upon his widow Laxmibai. She became absolute owner.

After her death Tulsiram would inherit her property. Tulsiram is entitled to get the lands of Lusru in preference to the Lusru's nephew Kunjram. Transferees of Kunjram, appellants/defendants do not get any right to the lands. ***K.P. Lodhi Vs. Hariprasad, AIR 1971 MP 129, Roshan Lal Vs. Dalipa, AIR 1985 H.P. 8*** and ***R.A, Patil Vs. A.B. Redekar, AIR 1969 Bom. 205*** relied on.

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57. HINDU LAW : JOINT FAMILY PROPERLY : SALE FOR FOR LEGAL NECESSITY:-
AIR 2000 SC 172
MUKESH KUMAR Vs. HARBANS WARAIAH

Property sold for payment of debt and taxes incurred by firm run by all major male members of joint family, defendants for benefit of family. There was a finding by Court that sale was for legal necessity. Fact that all defendants were not partners of the firm, not sufficient to conclude that business carried on by firm is not a family business of defendants.

Joint family property agreement shown to be signed by karta on behalf of joint family and for its benefit. Fact that agreement was also signed as power of attorney holder of other defendants is of no significance. Supreme Court does not interfere in the order of the High Court.

LIMITATION ACT, SECTION 21:-

This provision does not apply in cases of transposition of parties.

Section 21 (2) applies only to those cases where the claim of the person transposed as plaintiff can be sustained on the plaint as originally filed or where person remaining as a plaintiff after the said transposition can sustain his claim against the transposed defendant on the basis of the plaint as originally filed. For sub-sec. (2) to apply all that is necessary is that suit as filed originally should remain the same after the transposition of the plaintiff and there should be no addition to its subject matter. Where a suit as originally filed is properly framed with the proper parties on record, the mere change of a party from array of defendants to that of plaintiffs under O.1. R. 10 of CPC will not make him a new plaintiff and will not bring the case within this Section and in such a case sub-sec. (1) will not apply. For instance, where one of the plaintiffs refusing to join as plaintiff was first made a defendant and thereafter transposed as a plaintiff, he is not a new plaintiff. Therefore, the plea that the suit is barred by limitation so far as 'A' one of the defendants is concerned in as much as he is transposed as a plaintiff after the period of limitation, does not stand to reason.

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58. **INDIAN SUCCESSION ACT, SECTION 2(h) : 'WILL' INTERPRETATION OF:-**
2000 (2) M.P.L.J. 32
ANJORA BAI Vs. MANOHAR

Where the author stated that the conveyance was to operate immediately and not after the death and she had no other heir except respondent but did not definitely indicate that he would get the property after her death, the intention of the author as gathered from the words used in the document did not unmistakably convey that the document would be effective after her death. There was no pleading also in the written statement that this document was a Will. The document was not gathered.

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59. **I.P.C., SECTIONS 96 AND 103;: RIGHT OF PRIVATE DEFENCE AND CRIMINAL TRIAL: INJURIES ON THE PERSON OF THE ACCUSED: EXPLANATION:-**
2000 (3) M.P.H.T. 78 (D.B.)
STATE Vs. SHRIRAM

Here in this case the question was whether the accused were in possession of disputed land on the date of the incident? The accused were not in possession of the disputed land on the date of incident. The injunction was in force against the accused persons. However, in appeal by the accused persons, he did not get the injunction but the appellate Court passed an order of status quo. Therefore, an injunction order was operative against the accused and they were not in possession of the property. In that situation the accused would be deemed to be agressors and aggresssors can have no right of private defence.

Non-explanation of injuries on the person of the accused persons. Accused persons who took active part in the incident, suffering no kind of injuries. Three of the other accused persons suffering merely simple injuries. It was held, non-explanation of injuries by the prosecution witnesses did not affect their credibility.

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60. **I.P.C., SECTION 494: OFFENCE OF BIGAMY:NATURE OF PROOF REQUIRED:-**
2000 (2) M.P.H.T. 266
RAM SANEHI SINGH Vs. STATE OF M.P.

Respondent No. 2 and her father have deposed baldly that the petitoner had contracted a second marriage. Neither they had stated anything regarding the performance of 'Saptapadi' nor any other customary rituals prevalent in their community concerning the marriage. It was held that since there is lack of strict proof of bigamy alleged to have been committed by the petitioner hence no inference could be drawn that he had contracted a second marriage.

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61. I.P.C., SECTION 306/34: ABATEMEMENT OF SUICIDE: CONSIDERATION OF:-
2000 (2) M.P.H.T. 118 (NOC)
MALKHAN Vs. STATE OF M.P.

Accused person allegedly raised a demand of Rs. 2000/- and one goat over the disputed land. The deceased could not meet the demand. He was given beating. His dead body was found in the well of the accused. Appellants were convicted and sentenced under Section 306/34. It was held simple beating given to the deceased ipso facto was not enough to prove that the accused persons had abeted him to commit suicide. Accused acquitted.

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62. I.P.C., SECTIONS 306/34 AND 498-A AND EVIDENCE ACT, SECTION 113-A:-
2000 (2) M.P.H.T. 395
LAXMI BAI Vs. STATE

The appellants/accused are sisters of the husband of deceased Chanda Bai. Chanda Bai was married to their brother on 26-1-1987. Chanda Bai committed suicide by burning herself on 22-9-1987. Appellant/accused aged 22 and 18 years at that time, were convicted under Section 306/34, IPC and sentenced to rigorous imprisonment for ten years. Against it, present appeal was filed. It was held that there was domestic quarrel between the deceased and the appellants over some milk. It does not amount to cruelty within the meaning of the Explanation (a) to Section 498-A, IPC. Therefore, presumption under Section 113-A of the Evidence Act regarding abatement to commit suicide by the deceased. No wilful conduct on the part of appellants. No grave and serious provocation by the appellants. Therefore, conviction and sentence set aside. ***State of West Bengal Vs. Orilal Jaiswal, AIR 1994 SC 1418*** followed. Please also refer to **1971 JLJ SN 80, 1991 JLJ 175, 1985 (2) Crimes 987, 1987 MPLJ 403 and 1986 SC 752.**

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63. I.P.C., SECTION 498A:-
2000 (1) VIBHA 146
NIBBULAL Vs. STATE OF M.P.

No quarrel, ill treatment, demand of dowry established. Accused husband cannot be punished. ***Paparambaka Rosamma Vs. State of Andhra Pradesh, 1999 Cr.L.J. 4321 (SC)*** followed.

Paragraph 12 of the judgment is reproduced:-

"It is unfortunate for the prosecution that the parents of the deceased as well as other close relatives have turned hostile. A-1 is although a

mother-in-law, also happened to be the real grand mother of the victim. A-2 is the daughter of A-1 and also happened to be sister of mother of the deceased. As stated earlier, there were number of huts around the hut in question but nobody has come forward to support the prosecution. There is also no evidence on record to indicate that Smt. Venkata Ramana (since deceased) was met out any ill treatment or there was any dowry demand. The only grievance made in the dying declaration was that she wanted to live separately but her husband was not prepared and on that score, the husband (acquitted) had beaten her in the afternoon on the previous day. It was then stated therein that her grand mother disliked her. These statements in the dying declaration, in our opinion, are not sufficient to substantiate the prosecution case that Smt. Venkata Ramana (since deceased) was meted out with ill treatment, an offence punishable under Section 498A of the Indian Penal Code."

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64. I.P.C., SECTIONS 494, 497 AND 498: SECOND MARRIAGE, NATURE OF PROOF:-
2000 (3) M.P.H.T. 17 (NOC)
HARILAL Vs. PARDESIA

To prove the offence, under these sections, proof of valid marriage is required. The burden of proof that there was valid marriage lies on complainant. No evidence relating to valid marriage produced by the complainant. Decision of acquittal of accused given by the Lower Court upheld.

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65. I.P.C., SECTION 201, 202, 306 AND 498-A:-PROSECUTION OF DOCTOR WHO EXAMINES PATIENT
1999 (II) MPWN 153
K.K. PATNAKAK (DR. SMT) Vs. STATE OF M.P.

Screening of offender is an offence when accused gives false information. Patient referred to hospital with burn injuries. Doctors not informing police. Doctors cannot be tried under S. 201 or 202 along with offenders of crimes under Ss. 306 and 498 A.

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66. I.P.C., SECTION 304 PT. II:-
1999 (II) MPWN 173
BISHAN Vs. STATE OF M.P.

Complainant party and accused close relatives. Incident not premeditated. Injury not sufficient to cause death. Efforts of compounding the case made undergone sentence of 11 months is sufficient when 10 years already elapsed.

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67. I.P.C. SECTION 376 : RAPE: NO INJURIES ON PROSECUTRIX YET RELIABLE - WHEN
1999 (II) MPWN 172
SHAMBHULAL Vs. STATE OF M.P.

Rape committed at point of dagger. Resistance and injuries on person of prosecutrix not possible. She can also not raise alarm. Prosecutrix version corroborating with FIR and other ocular evidence. Conviction proper.

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68. I.P.C., SECTION 302 : APPRECIATION OF EVIDENCE : CRIMINAL TRIAL:-
(2000) 1 SCC 295
L.L. KALE Vs. STATE OF MAHARASHTRA

Material inconsistency in the version of PWs. Two trials held in respect of the same incident of murder. In the previous trial one A was tried and acquitted and the order of acquittal became final. In the subsequent trial present appellant convicted under S. 302. Three injured witnesses, on whose ocular statements the prosecution case against the appellant was based, had stated in the previous trial that it was A who had inflicted the fatal blows on the deceased while in the examination-in-chief in the subsequent trial they ascribed the role of giving the fatal blows to the present appellant and on being duly confronted with their former statements no explanation could be offered by them. In the circumstances, testimony of the witnesses, held, unreliable and cannot be pressed into service in bringing home the charge against the appellant.

CRIMINAL TRIAL : DUTY OF THE APPELLATE COURT EXPLAINED:-

Appeal against conviction. Duty of appellate court. Murder. Appellant's conviction under S. 302 IPC by trial court affirmed by High Court. But except affirming the conclusion of trial court, High Court not appreciating the evidence. **Neither credibility of the witnesses examined nor conclusion drawn after examining the evidence on record.** Held, High Court failed to discharage its duty of an appellate criminal court as its judgment suffers from improper judicial approach. **Appellate court while sitting in appeal against the judgment of the trial judge is duty-bound to satisfy itself that the guilt of the accused has been established beyond all reasonable doubt.**

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69. I.P.C., SECTIONS 300, 364 AND 201 : CHARGE OF KINDNAPPING AND MURDER OF A GIRL AND THEN CONCEILING HER BODY PROVED:-
AIR 2000 SC 50
DAMODAR Vs. STATE OF KARNATAKA

Evidence of prosecution witnesses mutually corroborating each other

regarding presence of deceased in company of accused on fateful day. Fact that police brought accused to his house, he himself dug the place from where body of deceased was exhumed. Also proved by prosecution witness. No motive suggested against prosecution witnesses to establish that they were falsely deposing for any particular reason against accused. Admission by accused that house from where body of deceased was exhumed belonged to him. Failure of accused to explain as to how body of deceased came to be exhumed from his house. Conviction mantained.

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70. I.P.C., SECTIONS 300 AND 302 : MURDER:-
AIR 2000 SC 53
KAMAKSHA RAI Vs. STATE OF U.P.

Arson, causing hurt and destryoing property in Harijan locality. Accused, large number members of upper caste. Evidence of three eye witnesses implicating all accused persons uniformly of offence charged against them. In facts and circumstances not sufficient to convict the accused persons.

A large number of people exceeding 500 in number were alleged to have taken part in the incident of murder, arson causing hurt and destroying property in Harijan locality by accused upper caste people. Thus in such case it would not be safe to rely on the evidence of witnesses who speak generally and in an omnibus way without specific reference to the identity of the individuals and their specific overt acts in regard to the incident that took place in the Harijan locality. In view of the large number of accused implicated in this incident and simultaneous nature of attack as stated by the prosecution witnesses, as a rule of prudent it is necessary to fix a mimimum number of witnesses needed to accept the prosecution case to base a conviction. The three eye witnesses have implicated all the appellants accused uniformly of the offence charged against them. While their presence at the place of incident cannot be doubted. It would be difficult to accept the fact that these 3 witnesses could have notice and identified all the accused numbering 64 out of nearly 500 participants in the incident. The conviction cannot be based on the evidence of said three eye witnesses only in this case and the corroboration of the evidence of said witnesses would be necessary from witnesses who have given evidence to the actual fact of the presence of the named appellants and of the overt act of those appellants in the incident.

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71. LIMITATION ACT, SECTION 27 AND ARTICLE 65 AND TRANSFER OF PROPERTY ACT, SECTION 53-A: ADVERSE POSSESSION:
2000 (3) M.P.H.T. 18 (SC)
ROOP SINGH Vs. RAM SINGH

Defendant getting possession of suit land as lessee or under a batai agreement. It is for him to establish by cogent and convincing evidence,

hostile animus and possession adverse to the knowledge of real owner. Mere possession for long time does not result in converting permissive possession into adverse possession. ***Thakur Kailash Singh Vs. Arvind Kumar, 1995 SC 73*** and ***Mohanlal Vs. Mirza Abdul Gaffar and another, (1996) 1 SCC 639*** referred to.

Plea of retaining possession by the defendant under Section 53-A of Transfer of Property Act and plea of adverse possession are inconsistent with each other. Plea of adverse possession would not be available to the defendant unless hostile animus or retaining possession as an owner after getting in possession of the land, has been asserted or pointed out.

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72. LEGAL SERVICES AUTHORITIES ACT, SECTIONS 2(d), 19 TO 22 AND 25: APPEAL FROM THE AWARD OF LOK ADALAT, MAINTAINABILITY:-
2000 (2) M.P.H.T. 25
PUNJAB NATIONAL BANK Vs. SHRI LAXMICHAND RAI

'Lok Adalat' constituted under the Special Act. Where any case is referred to, it has jurisdiction to determine and arrive at a compromise or settlement between the parties to a dispute. Has the same powers as are vested in a Civil Court. Award of Lok Adalat is final and binding on all the parties to dispute. Hence no appeal lies to any Court against the award. Section 96(3) of the CPC does not provide an appeal against a consent decree.

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73. LAND ACQUISITION ACT, SECTIONS 4 AND 6 & C.P.C., SECTION 9: JURISDICTION OF COURT EXPLAINED:-
2000 (2) M.P.H.T. 149
PASHU CHIKITSA VIBHAGYA SAHKARI NIRMAN SAMITI MARYADIT, BHOPAL Vs. STATE OF M.P.

Notification under Section 4 of the Act was followed by another Notification under Section 6 of the Act. The Collector pronounced the award in land acquisition proceeding. Appellants filed a suit in the Court of District Judge for quashing the acquisition of land in question and setting aside the award. District Judge dismissed the suit. Hence, this first appeal was preferred. It was held that Civil Court has no jurisdiction to go into the question of validity and legality of Notification under Section 4 and the declaration under Section 6 of the Act except by the High Court in a proceeding under Art. 226 of the Constitution of India. Power of Civil Court to take cognizance under Section 9, CPC stands excluded. Hence, suit was not maintainable. State of Bihar Vs. Dhirendra Kumar & others, 1995 M.P.L.J. 751.

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74. **LAND ACQUISITION ACT, SECTIONS 48(1) AND CHAPTER VII: NOTICE UNDER SECTION 48(1) UNNECESSARY TO THE AGGRIEVED PERSON:-**
2000 (2) M.P.H.T. 323
UJJAIN VIKAS PRADHIKARAN Vs. STATE

With the courtesy of M.P.H.T. the head notes are reproduced:

Petitioner Authority is a Corporation which is owned and controlled by the State of M.P. Petitioner is aggrieved by the State Government notification dated 1-1-1990 issued under Section 48 (1) of the Act, whereby the State Government had withdrawn from acquisition of certain lands as specified in the Schedule of the said notification. Petitioner was not noticed nor any opportunity of hearing was given to it before issuing the impugned notification. Hence, this writ petition was filed. It was held no question of giving any notice to the petitioner before taking action under Section 48 (1) of the Act. Petition dismissed. ***M/s Larsen and Toubro Vs. State of Gujrat and other, AIR 1998 SC 1608*** and ***Oil and Natural Gas Commission land another Vs. Collector of Central Excise, 1992 Supl (2) SCC 432*** distinguished.

Chapter 7 provides for acquisition of land for companies. Petitioner-Authority is a Corporation which is owned and controlled by the State of M.P. Hence, provisions of Chapter 7 obviously do not apply to an acquisition made for the petitioner-Corporation owned or controlled by the State.

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75. **LIFE INSURANCE CORPORATION ACT, SECTION 49: SALARY SAVING SCHEME OF L.I.C. AND WORDS AND PHRASES : MEANING OF THE WORD "AGENT" : WHO IS AGENT AND CONTRACT ACT, SECTION 182:-**
AIR 2000 SC 43
DELHI ELECTRIC SUPPLY UNDERTAKING Vs. BASANTI DEVI

Salary saving scheme of L.I.C. Agreement between employer D.E.S.U. and the L.I.C. Premium payable by employer to be deducted every month from salary of employee and to be transmitted to L.I.C. No communication from the LIC to the employee that employer was not its agent. Authority of employer to collect premium on behalf of L.I.C. implied. Employer in any case had ostensible authority to collect premium on behalf of L.I.C. Employer will be agent of LIC for employee under S. 182 though not insurance agent under Insurance Act. Where there is no insurance agent as defined in Regulations and Insurance Act, general principle of the law of agency as contained in the Contract Act are to be applied.

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76. M.P. ACCOMMODATION CONTROL ACT, 12, 12(1)(a) AND 12(1)(i): 2000 (3) M.P.H.T. 5
RADHESHYAM Vs. SARDAR PREETAM SINGH

The tenant did not produce receipts. His contention was that rent was paid regularly. No separate notice given to landlord for receipts. The trial Court held that the tenant paid the rent regularly and it was also held that the trial court erred in holding that the rent was paid regularly.

Plot in the name of the tenant's wife was sanctioned for construction. It has come in evidence that family of the tenant residing in other house. The Court below erred in holding that the house cannot be tenanted and available to the tenant for residence. The need of the landldord has to be seen from his view point also. He cannot be expected to stay on roads.

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77. M.P. ACCOMMODATION CONTROL ACT, SECTION 12 (1)(f) : EVICTION OF THE ACCOMMODATION IN THE NAME OF WIFE:- 2000 (1) JLJ 415
SARDAR GURU CHARAN SINGH Vs. PURUSHOTTAM DAS

Alternative accommodation duly occupied by the son of the landlord for business was also not suitable to the landlord. Tenant possessing suitable accommodation in the name of his wife. Eviction decree rightly passed. Judgment of the High Court affirmed.

The tenant is in appeal before us. The premises wherein the appellant is carrying on his business is owned by the respondent landlord. The repondent landlord filed a suit for eviction of the tenant on the grounds that he bona fidely requires the shop for running his own business and also for reconstruction of the building after demolition as the building is in a dilapidated condition. The eviction was also sought on the ground of default in payment of arrears of rent. The trial Court found that the need set up by the landlord was bona fide and the building required reconstrucion after demolition. Consequently, the suit was decreed. The tenant preferred an appeal against the said decree before the first appellate Court. The first appellate Court taking a curious view partly allowed the appeal. The first appellate Court held that in case the landlord who is a tenant of a shop in the Municipal Market vacates the said shop, the decree for eviction against the tenant then would be executable.

Aggrieved, the landlord preferred a second appeal before the High Court. The High Court found that such condition was totally illegal on view of the fact that the Municipal Board was not a party to the litigation. Consequently, the condition imposed by the first appellate Court was set aside by the High Court and the appeal was followed.

Against the said judgment the tenant is in appeal before us. We have heard the matter. Learned counsel appearing for the appellant urged that

although he is unable to assail the findings of the Courts below but in view of the subsequent events that have taken place, the orders passed by the Court below deserve to be quashed. Learned counsel for the appellant stated that during the pendency of this appeal one of the tenants of the respondent landlord Mohd. Yakoob vacated a shop in February, 1999. According to the landlord, the said shop is only 4 x 5 feet in area and it is occupied by his son who is running an ice cream parlour there, therefore, there is no vacant space left available with the landlord where he can run his business. The landlord also asserted that the appellant tenant has another premises in the Sunday Market, which is in the name of his wife Harbans Kaur. The address of the premises is House No. 1, Ward No. 16, Itwari Bazar, Raigarh. It is a double-storeyed building and is situated in the market area and suitable for the appellant to continue his business therein. This assertion of the landlord has not been denied by the tenant. In view of this fact, it cannot be said that the tenant would suffer any hardship if he were required to vacate the premises. No other contention was raised in this appeal.

In view of the facts mentioned above, we do not find any merit in this appeal and the same is accordingly dismissed, there shall be no order as to costs.

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78. M.P. ACCOMMODATION ACT, SECTION 12(1)(f) AND C.P.C., O. 6 R. 2 AND O.8 R. 3: GENUINE NEED, PROOF OF: FACTS NOT DENIED:-

2000 (1) JLJ 186

RAGHAVENDRA KUMAR Vs. FIRM PREM MACHINERY AND CO.

The bonafide requirement of landlord does not give raise to any substantial question of law. **(1998) 6 SCC 748** relied on.

Alternative accommodation not shown to be vacant or suitable not material.

Paragraphs 9, 10, 11, 12, 13 and 15 are reproduced:-

The only question to be decided in the suit was whether the plaintiff landlord wanted the suit premises for the bonafide requirement. The bonafide requirement of the landlord does not give rise to any substantial question of law and it has to be decided on the appreciation of evidence. This view was also expressed by this Court in ***Ram Prasad Rajak vs. Nand Kumar and Bros JT (1998) 5 SC 540.***

The learned Single Judge of the High Court while formulating the first substantial question of law proceeded on the basis that the plaintiff landlord admitted that there were a number of plots, shops and houses in his possession. We have been taken through the judgments of the Courts

below and we do not find any such admission. It is true that the plaintiff landlord in his evidence stated that there were a number of other shops and houses belonging to him but he made a categorical statement that his said houses and shops were not vacant and that the suit premises is suitable for his business purpose. It is a settled position of law that the landlord is the best judge of his requirment for residential or business purpose and he has got complete freedom in the matter (See ***Prativa Devi Vs. T.V. Krishnan (1996) 5 SCC 353***). In the case in hand the plaintiff landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted.

After the death of the father of the plaintiff landlord the plaint was amended and the following was added as para 6 (a) :

"That the father of the plaintiff had expired in the month of February 1992 and the buildings left by the father of the plaintiff were already occupied by the tenants, and the owners of these buildings are the plaintiff's mother and other legal heirs of the plaintiff's father Durga Prasad. No building having ownership of the plaintiff's father Durga Prasad is vacant or in possession of the plaintiff."

No additional written statement was filed on behalf of the defendant tenant and no further evidence was adduced after the amendment by either party.

The learned Single Judge of the High Court has found fault as the plaintiff landlord did not give evidence after the above amendment of the plaint. In our opinion it is not necessary as the above amendment was not rebutted by the defendant tenant.

Without considering whether the two questions framed by the learned Single Judge of the High Court in second appeal were substantial questions of law or not, we find that these two questions were framed contrary to the judgments of the Courts below. Mr. Satish Chandra, learned Senior Counsel while drawing our attention to the judgment of the learned Single Judge has urged that the plaintiff landlord and his late father had a number of shops, houses including the disputed shop but we find that there is nothing on record to show that any of such shop premises was vacant and suitable for the purpose of the proposed business.

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79. M.P. ACCOMMODATION CONTROL ACT, SECTIONS 23A AND 23E AND C.P.C, SECTION 151, O. VI RULES 17 AND 18: DELAY OR NON COMPLYING WITH THE DIRECTIONS OF THE COURT REGARDING INCORPORATION OF THE AMENDMENT: EFFECT OF;- 2000 (2) M.P.H.T. 21 (NOC)
CHANDRAKANT Vs. G.C.PANDEY

In a case before RCA under Section 23A and 23E for eviction of the tenant the applicant moved an application under Order 6 Rule 17 CPC which was allowed and it was directed that amendment be incorporated on or before 28-10-1998. It was not incorporated. An application under O. 6 R. 18 was filed on 11-11-1998 for granting permission to incorporate the same. The application was allowed and it was directed that the amendment should be incorporated on 12-11-1998. But it was not incorporated. The non-applicant filed an application under Section 151 CPC for dismissal of petition on the ground that the applicant committed defaults in not complying with the orders of RCA and dismissed the original petition. It was held that time was granted to the petitioner for incorporating the amendment.

NOTE: ACADEMIC DISCUSSION:-

Even if the petitioner fails to incorporate the proposed amendment the effect should not be the dismissal of the petition because the failure to incorporate the proposed amendment will not give raise to the non-applicant to seek the remedy of the dismissal of the petition and the only result would be the proposed amendment may not be allowed to be incorporated. However,it has no real adverse effect on the part of the petitioner.

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80. M.P.ACCOMODATION AND CONTROL ACT, SECTION 12(1) (f): REQUIREMENT NATURE OF, APPRECIATION:FRESH NEED OF THE LANDLORD: NEED CHANGED BY THE PASSAGE OF TIME, MINOR SON HAS BECOME MAJOR:-
2000 (2) M.P.H.T. 188 (SC)
RAMJIDAS Vs. RAMBABU

Paragraphs 6, 7 and 8 of the judgment are reproduced:-

The High Court after examining the facts on his question found that the findings of the Court below of relating the accomodation after getting it vacated for the personal need in the year 1980 cannot defeat the bonafide need of the landlord for the year 1987.

High Court rightly considered the fresh need which was after the passage of seven long years between the last order and the present application made by the landlord. By this passage of time the need has changed, his minor son has become major for whose need there was specific pleading and evidence was also led.

We find High Court has given due consideration and has given good reasons to interfere with the findings recorded by the Courts below. In our considered view no error was committed by the High Court. Accordingly, we do not find any merit in this appeal. It is accordingly dismissed.

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81. M.P. ACCOMMODATION ACT, SECTIONS 12(1)(E): FAMILY SETTLEMENT IS NOT NECESSARY FOR GETTING EVICTION:-
2000 (2) M.P.H.T. 250
KU. MAYA SHARMA Vs. SMT. SHASHI GOEL

Paragraph 13 of the judgment is reproduced:-

In a case where alternative accommodation was conjusted and the accommodation let out on rent had fallen in the share of the landlord, it was held in the case of ***Ramrao Vs. Dr. Prem Kumar, 1990 JlJ 696*** that the landlord is entitled to get such accommodation vacated. In a similar decision of this High Court in the case of ***Susheela Devi Vs. Shri Ved Prakash, 1991 (1) MPWN 171,*** it was observed that while assessing bonafide requirement of the plaintiff, it has to be seen whether, he really requires accommodation or whether, there is any malafide behind it and that the accommodation in his possession is insufficient. It was further observed that the differences in the joint family do not occur all of sudden. It creeps in and increases gradually. The members of the family may decide to live separately and as and when occasion arises and as and when suitable accommodation is made available. It is not necessary that they should quarrel in the street before separation or partition. In such circumstances, the plaintiff and her other adult members of family can plan out to make arrangement for suitable accommodation and separate residence, by metes and bounds. The family settlement is not necessary for getting an eviction under Section 12 (1)(e) of the Accommodation Control Act.

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82: M.P. ACCOMMODATION CONTROL ACT, SECTIONS 23-A(b) AND 23-J AND C.P.C., O. 6 R. 17 AND EVIDENCE ACT, SECTION 116:-
2000 (2) M.P.H.T. 268
NARENDRA KUMAR Vs. SMT. SHYAMA AGRAWAL

With the courtesy of M.P. High Court Today the head notes of M.P.H.T is reproduced:

Respondent/applicant is a widow lady. She initiated proceedings before R.C.A. under Section 23-A (b) of the Act for eviction of shop for her son. Petitioner sought amendment in the written statement to the effect that plaintiff failed to prove ownership of the suit property in the name of her husband. R.C.A. held the proposed amendment is wholly irrelevant and rejected. Against it, this revision was filed. It was held that petitioner has admitted his tenancy from the time of applicant's husband. Respondent/applicant inherited suit accommodation from her husband. Petitioner-tenant is estopped from challenging title of landlady by proposing amendment. Ambit of scope of enquiry regarding ownership is limited. Revision dismissed. ***Anar Devi Vs. Nathuram, 1994 JLJ 486*** followed.

Title to the property and ownership of the property are two different situations. Tenant is estopped to challenge title of the property, but not the

ownership of it. Principle of estoppel arises from the contract of tenancy. Defective title of landlord tenant cannot take undue advantage of that defect.

Suit by Joint landlords. Out of whom one is a landldord as defined under Section 23-J. R.C.A. can entertain it, if other co-owners do not object to eviction. Relief can be granted for the major son or daughter of the landlord. ***Shivraj Jat Vs. Asha Lata Yadav and others, 1989 MPLJ 202*** relied on.

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83. MOTOR VEHICLES ACT, 1939, SECTION 110:COMPENSATION RELEVANT FOR CONSIDERATION:-
2000 (2) M.P.L.J. 1
KUSUM BAI Vs. KALLU

It is not necessary that a claim may succeed under the Motor Vehicles Act only if the deceased is shown to have been earning money or contributing to the support of the claimants at or before the date of death provided that the claimants had a reasonable expectation of service or pecuniary benefit from the continuance of life of the deceased. It all depends on the facts and circumstances of each case. If there is a reasonable prospect of pecuniary benefit from the deceased for support of the family in the near future, the same can be taken into account. However, as a general rule parents are entitled to recover the present cash value of the prospective service and pecuniary benefits of the deceased but when the prospect is very uncertain and the nature and quality of assistance is also uncertain, the court must exclude all considerations of matters which rest in speculation of fancy though conjecture to some extent is inevitable.

The expression "Compensation" is a more comprehensive term and the claim for compensation includes a claim for damages. There is a distinction between compensation to be awarded and claim for damages being granted. Damages are given for an injury suffered. Compensation is by way of atonement for the injury caused with intent to put either the injured party or those who may suffer on account of the injury in a position as if the injury was not caused by making pecuniary atonement.

The deceased was of 12 years age. The claimant applied for compensation under Section 110 of M.V. Act. The amount of compensation claimed was Rs. 4,45,000/- on the ground that the deceased was clever, intelligent and bright and after attaining majority would have established good business or if joined service would have occupied good post. Tribunal granted compensation of Rs. 50,000/-. In appeal before the High Court it was held that in the absence of any evidence to show the capacity of parents and provision which could be made by the parents to render the necessary assistance to deceased for attaining the object in mind of father, no ground for enhancement of award could be made out.

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84. MOTOR VEHICLES ACT, 1988, SECTION 145 (b) AND (d) AND MOTOR VEHICLES RULES, 1989, R. 142: COVER-NOTE - ISSUANCE OF- EFFECT OF:-
2000 (2) M.P.L.J. 126
SURESH CHAND AWASTHI Vs. AJESH KUMAR BHOLE NATH

Cover-note issued in terms of Rule 142 will be treated as policy of insurance.

This is to included within the definition of policy of insurance. That being so, the time of coverage of risk as mentioned therein will be relevant and binding on the insurer and the insured. Not only the cover-note, but also the proposal form of the owner indicated that the insurance was sought at about 3.15 p.m. on 10-12-1991 and the accident admittedly having taken place on 10-12-1991 at 12.00 hours would not be covered by the policy of insurance issued by the insurer New India Assurance Co. Ltd. Jabalpur, and as such it was rightly exonerated from liability by the Accident Claims Tribunal.

National Insurance Co. Ltd., Vs. Jikubhai Nathuji Dabhi (Smt.) and others, (1997) 1 SCC 66 referred to.

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85. MOTOR VEHICLES ACT, 1988, SECTIONS 128 AND 173: INSURANCE OF PILLION RIDER:-
2000 (2) M.P.H.T. 5 (NOC)
MOHANLAL DUBEY Vs. MADHAV PRASAD RAWAT

The Claim case was rejected on the ground that the claimant was a pillion rider and does not fall in the category of third party. The High Court held that the finding is not correct because the insurance cover note indicates that the insurance was for two persons, one for the scooter driver and the other for the pillion rider.

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86. MOTOR VEHICLES ACT, 1988, SECTION 173 AND SECOND SCHEDULE: MULTIPLIER: RULE OF APPLICATION STATED:-
2000 (2) M.P.H.T. 7 (NOC)
SMT. SANGEETA Vs. SANJAY KUMAR

Appeal for enhancement of the amount of compensation. The age of the deceased at the time of the accident was 32 years. The Tribunal applied the multiplier of 15. The High Court held that according to the age of the deceased, multiplier of 17 ought to have been applied by the Tribunal as per the Second Schedule to the M.V. Act.

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87. **MOTOR VEHICLES ACT, 1988, SECTIONS 4 AND 173: DRIVING LICENCE, PARTIES OF PROOF, M.V. ACT, SECTIONS 145, 147 AND 173: RASH AND NEGLIGENT DRIVING:-**
2000 (2) M.P.H.T. 24 (NOC)
THE NEW INDIA ASSURANCE COMPANY LTD. Vs. CHHANDI KHANGAR

It was alleged by the appellant that the driver was minor and was not in possession of any valid driving licence.

The High Court held that Insurance Company did not lead any evidence in regard to the fact that the tractor was drove by minor and he was not in possession of any driving licence at the relevant time.

The deceased persons were labourers died on account of accident due to rash and negligent driving of the tractor. The Appellants had not filed the insurance policy and failed to establish that the tractor was used for the purposes other than the purpose for which it was insured.

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88. **MOTOR VEHICLES ACT, SECTION 140(2): NO FAULT LIABILITY, GRANT OF COMPENSATION;-**
2000 (2) M.P.H.T. 29 (NOC)
SMT. GEETA BAI Vs. SATYNANRAYAN

Appellant/claimant sustained 24% permanent disability on left foot of her person. The Tribunal refused interim compensation. The High Court held that medical certificate indicates permanent disability, the appellant is entitled for interim compensation.

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89. **MOTOR VEHICLES ACT, 1939, SECTIONS 110B, 110C AND 110 D : COMPENSATION AND MODIFICATION OF COMPENSATION EXPLAINED:-**
2000 (2) M.P.H.T. 31
KUSUM BAI Vs. KALLU

No evidence regarding capacity of parents as to good education to the deceased child. Award of Rs. 50,000/- as compensation of the interest at the rate of 12% p.a. from the date of application. Compensation was held to be unjust.

WORDS AND PHRASES: "COMPENSATION":-

Compensation means anything given to make things equivalent, a thing given to or make amends for loss, recompense, remuneration or pay.

It is a more comprehensive term and the claim for compensation includes a claim for damages. There is a distinction between compensation to be awarded and a claim for damages being granted. Damages are given for an injury suffered.

Compensation is by way of atonment for the injury caused with intent to put either the injured party or those who may suffer on account of the injury in a position as if the injury was not caused by making pecuniary atonment.

NOTE:- Please refer to **AIR 1990 Bom 4 M/s Paste Control's case** and a case decided by the Supreme Court ***R.T. Hattangadi Vs.Paste Control, 1995 ACJ 366*** and also ***Kanayyalal Vs. Anil Kumar, 1990 M.P.W.N. 203*** regarding the meaning of accident, negligence and rashness.

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90. MOTOR VEHICLES ACT, 1939, SECTION 95(2)(a) AS AMENDED BY ACT NO. 47 OF 1982: LIMITED LIABILITY OF THE INSURER AFTER AMENDMENT OF 1982:-
2000 (2) M.P.H.T. 58 (NOC)
KAMAL KUMAR Vs. NATIONAL INSURANCE Co. LTD.

After the amendment the liability of Insurance Company has been enhanced from Rs. 50,000/- to Rs. 1,50,000/-. The award was modified by the High Court as the Tribunal awarded Rs. 50,000/- only saying that the liability of the respondent No. 1, insurer was limited to Rs. 50,000/- only.

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91. MOTOR VEHICLES ACT, 1988, SECTIONS 72 AND 149(2): LIABILITY OF INSURANCE COMPANY IN CASE OF BREACH OF CONDITIONS OF PERMIT:-
2000 (2) M.P.H.T. 74 (NOC)
SANTOSH KUMAR Vs. BALRAM

Overloaded bus, breach of permit condition. Offending vehicle was insured at the time of accident. The owner/appellant was made liable to pay the awarded amount to the claimant/respondent No. 1 by the Tribunal. However, the insurer respondent No. 2 was exonerated from liability. It was held that the Insurance Company cannot escape its liability,even if there was a breach of permit condition.

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92. MOTOR VEHICLES ACT, 1988, SECTIONS 149, 149(2), (7), 163-A, 169, 170, 173, C.P.C. SECTION 115, CONSTITUTION OF INDIA ARTICLE 227 : SCOPE AND RIGHT FOR APPEAL OF INSURER:-
2000 (2) M.P.H.T. 278
UNITED INDIA INSURANCE CO. LTD. Vs. RAMDAS PATIL

In appeal by the Insurance Company the High Court answered the different questions.

Paragraph No. 29 reproduced:-

Our answer to the question formulated are therefore as under :-

Question	Answer
1. Whether the insurer can prefer an appeal on the ground of quantum of compensation awarded?	The insurer can claim no such right of appeal unless it has reserved right in terms of Policy to raise all defences on behalf of the insured and has invoked such a right effectively in the Claim tribunal by raising specific pleas and leading evidence. Such right of appeal on the question of quantum will also be available to the insurer if it was sought written permission under Section 170 of the Act from the Tribunal in case of non-contest by the other parties to the claim or fraud or collusion of the contesting parties.
2. Whether an appeal on quantum of compensation by the insurer can be entertained where the ground urged is that the compensation awarded by the Tribunal is shockingly excessive and disproportionate to the age and income of the victim?	The insurer can claim no right of appeal under the Act. In such case it may invoke revisional jurisdiction of this Court under Section 115 of Code of Civil Procedure or supervisory jurisdiction of this Court under Article 227 of the Constitution.
3. Whether right of appeal can be claimed by the insurer when the claim is based under Section 163-A of the Act of 1988 and determination of compensation is sought on the basis of structured formula contained in the Second Schedule of the Act?	The insurer can have a right of appeal only on the ground that in awarding the compensation, the provisions contained in Second Schedule of the Act have not been correctly followed.
4. Whether an insurer can have right of appeal on all grounds where it has reserved a right in the terms of the Insurance Policy to raise all defences for and on behalf of the insured?	Where the right to raise all defences on behalf of the insured has been reserved by the insurer in the Insurance Policy it will have a right of appeal only if such right reserved in the Policy was effectively exercised by the insurer before the Tribunal by specific plea and leading evidence in that behalf. Where

	the insurer has failed to invoke its right reserved in the Policy, in the Tribunal, it cannot be allowed, for the first time, to invoke such right in appeal.
5. Whether the insurer can prefer an appeal on discovery of fraud or collusion between the claimants and the insured after passing of the award?	In such case the Tribunal has inherent right of review to prevent abuse of its process and the Tribunal itself can be approached for review.
6. Whether the insurer can urge a ground an appeal of contributory negligence in case of accident between two or more motor vehicles?	Our answer to the said question is same as is answered to the questions No. 1 and 4, Even the plea of contributory negligence and right of appeal is available to the insurer only if such right is reserved in the terms of the Insurance Policy to be raised for and on behalf of the insured or in accordance with Section 170 of the Act permission from the Tribunal is sought to raise such plea because of the non-contest and fraud or collusion between the parties. In all other eventualities it has no right to appeal on the ground of contributory negligence of the claimant or the driver of the other vehicle.

93. MOTOR VEHICLES ACT, 1988, SECTION 147 AND MOTOR VEHICLES ACT, 1939, SECTION 95 (1): DISTINCTION BETWEEN : THIRD PARTY RISK GRATUITOUS PASSENGERS:-
2000 (2) M.P.H.T. 340 (SC)
NEW INDIA ASSURANCE COMPANY Vs. SATPAL SINGH

Clause (ii) of the proviso in Section 95 (1) of the old Act is totally non-existent in the proviso to Section 147 (1) of the new Act.

Under the new Act an insurance policy covering third party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the insurance company in respect of any accident which occured or would occur after the new Act came into force.

Mallawwa Vs. Oriental Insurance Company, AIR 1999 SC 589 and ***Pushpabai Parshottam Udeshi Vs. M/s Ranjit Ginning & Pressing Co. Pvt. Ltd., AIR 1977 SC 1735*** distinguished.

94. MOTOR VEHICLES ACT, 1988, SECTIONS 2(30),168, 171,173 AND FIRST PROVISO TO SECTION 173 AND GENERAL CLAUSES ACT, SECTION 6: APPLICATION OF LAW RETROSPECTIVELY EXPLAINED AND OWNER, MEANING OF EXPLAINED:HIRE PURCHASE:-

2000 (2) M.P.H.T. 345

BHAGWANDAS Vs. RATNI BAI

Accident took place on 5-6-1989. The new provisions of M.V. Act came into force in 1988 on 1-7-1989. The First Proviso to Section 173 of the Act, 1988 would not be applicable in this case. Requirement of making deposit of amount specified therein would not apply in this appeal.

On the date of the accident, registered owners of the vehicle were non-claimants No. 1 to 2. But, the possession of the vehicle held gone over to the non-claimant No. 4 on the basis of hire purchase agreement. Hence question to pay liability of compensation is only on non-complainant No. 4.

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95. MOTOR VEHICLES ACT, 1988, SECTION 173 AND SCHEDULE READ WITH SECTION 163-A: JUST AND FAIR COMPENSATION EXPLAINED:-

2000 (2) M.P.H.T. 385

SMT. SHANTIBAI Vs. ASLAM KHAN

Since it is the "just" compensation which is required to be awarded, no method of calculation of compensation could be justified if it does not result in awarding the amount which is not "just" looking to the peculiar facts of each case.

The determination of question of compensation depends on several imponderables and in the assessment of those imponderables there is likely to be a margin of error.

One has to take into account the probable duration of the life of the deceased, duration of the life of the widow and the dependents who might prematurely die, the possibility of widow's re-marriage, acceleration of interest in the estate, possibilities of increased earning on the one hand as well as the disablement or unemployment on the other. The number of years by which the life of the deceased was cut short and various other imponderable circumstances such as early natural death of the deceased, his becoming incapable of supporting the dependents due to illness or other natural handicap or calamities, the prospect of the coming up of age of the dependents and their developing independent sources of income etc., have also to be taken into account.

In the present case, the wife of the deceased, Gangaram was shown to be aged about 35 years and the age of his sons and daughters ranged

between 5 to 18 years. The Tribunal has found that the amount of Rs. 1,70,000/- was the "just" compensation.

96. **MOTOR VEHICLES ACT, 1988, SECTIONS 146 (1), 147 (5) AND 149 READ WITH SECTION 2(D)(E)(F)(H): LIABILITY OF INSURER UNDER THE CONTRACT OF INSURANCE REGARDING THIRD PARTY:VEHICLE INSURED AND POLICY OF CONTRACT OF INSURANCE REGARDING THIRD PARTY:-**
2000 (2) M.P.H.T. 440
NEW INDIA ASSURANCE CO. LTD. Vs. RULA

Vehicle insured and policy issued. Thereafter on the same day at midnight the vehicle met with an accident in which 3 occupants died. Cheque by which premium was paid, dishonoured. It was held that subsequent cancellation of Insurance policy due to dishonour of cheque would not affect the rights of the third party which accrued on the issuance of the policy on the date of accident. Appeals dismissed

CASES REFERRED:-

1. ***Abdul Azeez & Co. Vs. National Insurance Co. Ltd., AIR 1954 Madras 520 = AIR 1953 (2) MLJ 714***
2. ***Ocean Accident & Guarantee Corporation Company Vs. Patkar, AIR 1935 Bom. 236***
3. ***Equitable Fire & Accident Office Vs. Ching Wo Hong, 1907 AC 97***
4. ***New Asiatic Insurance Co. Ltd. Vs. Pessumal Dhanamal Aswani & others, AIR 1964 SC 1736***
5. ***Oriental Insurance Co. Ltd. Vs. Inderjit Kaur & others, (1998) 1 SCC 371=JT 1997 (9) SC 760.***

97. **MOTOR VEHICLES ACT, 1988, SECTIONS 163-A AND 168: PECUNIARY LOSS: THE DETERMINING FACTORS, ACTUAL EARNINGS OF THE DECEASED, AMOUNT OF DEPENDENCY OF AND SUITABLE MULTIPLIER HOW TO BE APPLIED AND THOSE WILL BE THE DETERMINING FACTORS ALSO:-**
2000 (1) VIBHA 170
RAMKALI Vs. RAGHURAJ

Provisions under Section 163-A read with Sch. II provides suitable guidelines to determine just compensation.

COMPENSATION: MODE OF CALCULATION AND MULTIPLIER EXPLAINED:-

Calculation of annual dependency and multiplying it by suitable multiplier is known as multiplier method. This has been granted statutory recognition under Sch. II of Section 163. A person cannot be permitted to

recover twice over for the same loss. Duplication of same claim is not permissible. ***Gobald Motor Service Ltd. and another Vs. R.M.K. Veluswami and others, AIR 1962 SC 1*** followed.

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98. MOTOR VEHICLES ACT, 1939, SECTION 110B AND M.V. ACT, SECTION 140: PARENTS AND OTHER FAMILY MEMBERS ENTITLEMENT OF THE COMPLAINT:-
2000 (1) VIBHA 274
M.P.S.R.T.C. Vs. KALPANA BAI

The parents and other family members filed separate claim cases. Different multiplier cannot be adopted for different dependents.

Paragraph 5 of the judgment is reproduced demonstrating the procedure for adopting multiplier:-

The father and mother of the deceased Devilal claimed compensation of Rs. 4,55,000/- (C.C. No. 17/90) while his widow Kalpanabai and minor daughter Nilima sought compensation of Rs. 3,34,000/-. The Tribunal determined different dependency and selected different multiplier for each claimant. The procedure adopted by the learned Tribunal for assessing compensation for the death of deceased Devilal is erroneous and not acceptable. Normally, multiplier is selected on the basis of the age of the deceased and that of the dependents which was higher. But different multipliers cannot be adopted for different dependents. The Tribunal will take into consideration the age of the dependents while apportioning the compensation amount among the claimants. Same is the case with dependency. It has come in the evidence of Kalpana Joshi (CW 2), the widow of the deceased that her husband was earning Rs. 900/- per month. According to Shrilal Joshi, the father of the deceased, the monthly earning of the deceased was Rs. 1,200/-. From the above evidence it appears that monthly earning of the deceased was at Rs. 900/-. after deducting 1/3rd of it for personal expenses of the deceased, monthly dependency come to Rs. 600/- and yearly Rs. 7,200/-. The widow deposed that her husband Devilal was aged about 28 years. In view of it, we select multiplier of 17. On multiplying it with the multiplicand, the amount comes to (7,200 x 17) = Rs. 1,22,400/-. Each of the appellant is also entitled to Rs. 5,000/- for loss of consortium and love and affection and Rs. 2000/- for funeral expenses, on addition of which the amount of compensation comes to Rs. 1,44,400/-. It is rounded up to Rs. 1,45,000/-. In our opinion, the amount of compensation awarded by the Tribunal is on higher side.

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99. MOTOR VEHICLES ACT, 1988, SECTIONS 166 AND 168:APPLICATION FOR COMPENSATION:-
2000 (1) VIBHA 283
MOTIBAI Vs. SOUTH EASTERN COALFIELDS LTD.

The brother, sisters, brother's children etc. live together in Indian soci-

ety. Any of them or all of them can file application for compensation. ***Gujrat State Road Transport Corporation Vs. Raman Bhai Prabhat Bhai and another, (1987) 3 SCC 234,*** followed.

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100. MOTOR VEHICLES ACT, 1988, SECTION 173 AND CIVIL PRACTICE:-
2000 (3) M.P.H.T. 20 (NOC)
BHAKTIN BAI Vs. JARNAIL SINGH

The Tribunal dismissed the application for adjournment as well as an opportunity to lead additional evidence. Consequently, the whole claim petition was also dismissed. It was held Tribunal was not justified in dismissing the claim petition without consideration of the evidence already placed on record by the appellants. Merely because the Tribunal did not find it proper to allow the application for adjournment cannot dismiss the whole claim petition. An opportunity to adduce evidence was given.

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101. MOTOR VEHICLES ACT, 1988, SECTION 140: NO FAULT LIABILITY: LIABILITY OF INSURANCE COMPANY:-
1999 (3) TAC 693 (HC)
NEW INDIA ASSURANCE CO. LTD. Vs. SMT. GHARA NAG

Existence of policy admitted but dispute about existence of a valid driving licence raised. Whether insurance company is liable for payment of interim compensation? Held, yes. Issue regarding valid driving licence to be determined on the basis of evidence. If driver found not having any driving licence and insurer is not liable. Insurer shall be entitled for reimbursement from the owner.

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102. MOTOR VEHICLES ACT, 1988, SECTIONS 140, 142 & 122A : AWARD OF IN : TERIM COMPENSATION: PERMANENT DISABILITY:-
1999 (2) TAC 651 (MP HC) INDORE BENCH)
RAMJAN ALIAS RAMJOO Vs. M.P.S.R.T.C.

Injured suffered four fractures in his right hand. Working Capacity permanently reduced by 60% Tribunal found no prima facie evidence regarding permanent disability and rejected application for interim compensation. Whether order of Tribunal is sustainable. Held No. Tribunal misconstrued the provision of Section 142. Power of limb impaired by 60% as per medical report. Claimant entitled to Rs. 12,000/- as interim compensation.

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103. MOTOR VEHICLES ACT, 1988, SECTION 168, 170 AND 166:- QUANTUM
1999 (II) MPWN 171
ORIENTAL INSURANCE CO. Vs. SMT. SATYA DEVI

Deceased is of 47 years. He is doing business of supplier of building material leaving widow and 5 children. Compensation of Rs. 4,95,000/- not excessive.

Application for claim under S. 166. Insurer granted opportunity to contest on all grounds. Claim case decided in 7 years. It cannot be presumed that insurer was not given opportunity to prove negligence of deceased.

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104. MOTOR VEHICLES ACT, 1988, SECTIONS 170 AND 173: APPEAL BY INSURER:-

1999 (3) TAC 596 (ORI HC)

UNITED INDIA INSURANCE CO. LTD. Vs. RAJ KUMARI SAHOO

Challenging award of Tribunal on merits regarding negligence and quantum. No permission sought from Tribunal to take all or any of the grounds that are available to the person against whom claim is made. Whether insurer can challenge award regarding negligence and quantum? held, no.

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105. MOTOR VEHICLES ACT, 1939, S. 2 (5-A) 2 (8), 2 (9), 2 (9-A), 2 (25) AND 2 (33) (SS. 2 (10), 2 (14), 2 (16), 2 (17), 2 (35) AND 2 (47) OF ACT 59 OF 1988), DRIVING LICENCE:-FOR PARTICULAR CATOGORY OF VEHICLE

1999 (3) TAC 625 (MAD HC)

ORIENTAL INSURANCE COMPANY LTD. Vs. PETCHI MUTHU ASARI

For different category of vehicles whether authorisation to drive one category of vehicles can enable the driver to drive another category of vehicle. No Driver having licence to drive a heavy passenger vehicle, cannot drive a heavy goods vehicle.

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106. M.P. LAND REVENUE CODE, SECTION 165 (6), BHOPAL STATE LAND REVENUE ACT, SECTION 188 AND LIMITATION ACT, SECTION 27 AND ARTICLES 64 AND 65: BURDEN OF PROOF AND ADVERSE POSSESSION:-

2000 (2) M.P.H.T. 140

SHANKERLAL Vs. SMT. PANKUNWAR BAI

Transfer of land by agriculturist to non-agriculturist. Such transfer can only be made by agriculturist after obtaining the sanction of the Collector. In such case even acquisition of title by adverse possession cannot be accepted otherwise it will violate the provisions of section 188 of the Act.

Person claiming adverse possession must establish the facts necessary to prove adverse possession. Person pleading adverse possession has no equities in his favour. Limitation starts from the date when the possession becomes adverse.

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संशोधन

माह जून 2000 की ज्योति में कुछ त्रुटियां अक्षर संयोजन की हुई हैं। संशोधन विवरण इस प्रकार है। अपनी अपनी प्रतियों में संशोधन अवश्य कर लें।

ज्योति 2000 (3) जून अंक :–

1. पृष्ठ 266 पर के Strenght स्थान पर Strength।
2. यही स्थिति पृष्ठ 267 पर भी होगी। anbility के स्थान पर ability तथा telant के स्थान पर talent पढ़ें। पृष्ठ 267 पर ही अन्तिम से एक पंक्ति उपर "योग्यात" के स्थान पर "योग्यता" पढ़ें।
3. पृष्ठ 276 पर "आरोप" के नीचे की पंक्ति में 248 के स्थान पर 246(1) पढ़ें।
4. पृष्ठ 279 पर भी धारा 248 के स्थान पर 246 पढ़ें।
5. पृष्ठ 320 पर टिट–बिट नं. 33 में चतुर्थ पंक्ति में Promtly के स्थान पर Promptly पढ़ें।
6. पृष्ठ 379 के पूर्व पृष्ठ की संख्या 278 को 378 पढ़ें।
7. पृष्ठ 394 पर 1988 (3) ज्योति के स्थान पर 1998 (3) ज्योति पढ़ें एवं 1988 (4) ज्योति के स्थान पर 1997 (4) पढ़ें।
8. पृष्ठ 266 पर चरण तीन में "भूल जावें" के स्थान पर "मान लेते" पढ़ा जावे व इस वाक्य में "वशीभूत होकर" के आगे का पूर्ण विराम लुप्त हो।
9. पृष्ठ 312 टिट–बिट क्र. 22 में SATEE के स्थान पर STAGE पढ़ा जावे।
10. पृष्ठ 313 टिट–बिट क्र. 26 में शीर्षक पश्चात तीसरी पंक्ति में M.P. के स्थान पर M.B. पढ़ें।
11. पृष्ठ 345 टिट–बिट क्र. 82 के शीर्षक में EARCH के स्थान पर EARTH पढ़ें।
12. पृष्ठ 356 टिट–बिट क्र. 99 के शीर्षक में EVIDENTIARY के स्थान पर EVIDENTARY पढ़ें।
13. पृष्ठ 364 टिट–बिट क्र. 109 में शीर्षक पश्चात INJUNCTION के स्थान पर INJECTION पढ़ें।
14. पृष्ठ 382 टिट–बिट क्र. 119 के शीर्षक में LEAVE तथा TERMINATION के बीच में AND शब्द जोड़ना है।
15. पृष्ठ 361 टिट–बिट क्र. 101 में प्रथम पंक्ति में CONVICTION के स्थान पर EVICTION पढ़ें।