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संपादकीय

हमारी सार्थकता

इस संस्थान में प्रशिक्षण हेतु समय समय पर न्यायाधीश वर्ग आता ही रहता है। संस्था ही इसीलिए है। प्रशिक्षण एकांगी मार्ग जैसा नहीं है। प्रशिक्षण देने वाले संभवतः इस संस्था के माध्यम से ज्यादा ही लाभ ले लेते हैं। वे पढ़ाते पढ़ाते समय ऐसे–ऐसे विचार सृजित कर लेते हैं जो मैदानी न्यायिक कार्यकाल की अवधि में सोच भी नहीं सकते थे। अर्थात पढ़ना–पढ़ाना एक ही सिक्के के दो पहलू हैं। जो पढ़ाता है वह सहज रूप से ज्ञात–अज्ञात रूप से पढ़ता भी है। वादे वादे जायते तत्व बोधे। निश्चित ही इसकी पेरोडी भी है कि वादे वादे जायते लट्ठ बोधे। वाद शब्द के ही यहां दो भिन्न अर्थ हो गए। एक वाद का अर्थ चिंतन है तो दूसरे वाद का अर्थ विवाद। इसी पर से वाद–विवाद शब्द का सृजन हुआ। विद्यार्थी जीवन में वाद–विवाद प्रतियोगिताएं भी होती हैं जिसमें एक ही विषय पर विभिन्न दृष्टिकोणों से चिंतन प्रस्तुत करने की कला को विकसित किया जाता है। निश्चित ही किसी विषय को विभिन्न दृष्टिकोणों से देखना समझना व सत्य के निकट के विचार को सर्वोच्च प्राथमिकता देकर निष्कर्ष तक पहुंचाने के गुण को विकसित करते रहना न्यायाधीश के व्यवसाय का सबसे बडा गुण है।

किसी निष्कर्ष पर पहुंचने के लिए विभिन्न दृष्टिकोण से देखना होता है जिसे हम पक्ष विपक्ष, अनुकूल प्रतिकूल विचारों से चिंतन करते हैं तब जाकर सिद्धान्त प्रतिपादित होता है। देखें माननीय न्यायाधिपति श्रीमान आर.एस. गर्ग महोदय का सिद्धान्त "आधा पानी आधा खाली" जो इसी पत्रिका में अन्यत्र प्रकाशित हुआ है, जो दिख रहा है वह तो वास्तविकता है उसे हर कोई समझ रहा है। उसे काले गोरे में कागज पर लिखना निर्णय नहीं कहेंगे। जो दिख रहा है उसके पीछे आशय क्या है, विवादित बिंदु के संदर्भ में क्या क्या आधार है, उद्देश्य क्या था, आशय क्या था, उस विषय में पक्षकारों के क्या लक्ष्य थे, कहीं छल कपट का लक्ष्य तो नहीं था आदि ऐसी बातें हैं जो सोचना समझना पड़ती है इसीलिए अर्थयान्वय, निर्वचन विधि Interpretation of statutes and documents पर ढेर सारी पुस्तकें प्रकाशित हुई। जनरल क्लाजेस एक्ट जैसे अधिनियम सृजित हुए। सतत् रूप से अध्ययन शीलता से उस पर विचार होता रहा है। फिर ऐसा केवल न्याय क्षेत्र में ही नहीं है अपितु गणित, विज्ञान जो निश्चित सिद्धान्तों पर टिके होने का दावा करते हैं के भी चिंतन बदलते रहते हैं। विधि साहित्य में लॉ लेक्सिकन लॉ डिक्शनरी आदि ऐसे महत्वपूर्ण ग्रंथ हैं जो 40-40 खंडों में भी उपलब्ध हैं जिसमें एक एक शब्द के अर्थ कहां–कहां किस प्रकार से प्रयुक्त हुए हैं, उसका क्या आशय है यह विस्तार से बताया है। संभवतः यह सुनिश्चित रूप से कह सकते हैं कि हम आपके सेवाकाल के समाप्ति तक हमें ऐसा बहुविधि साहित्य से संपर्क नहीं आएगा एवं कुछ

विधि साहित्य के विषय में हमें कुछ भी नहीं मालूम पड़ेगा। यह भी सुनिश्चित है। नव पल्लवित पुष्पलता से लेकर उस वृक्ष रूपी न्यायिक अधिकारी जिसकी जड़ें जमीन से छूट रही हों के विषय में भी यह बात औसत रूप से कही जा सकती है। कहने का तात्पर्य यह कि विधि ज्ञान ऐसा ज्ञान है जिसकी थाह (fatham) पाना पूर्ण रूप से असंभव है और यही विषय का सार है कि जब विधि के ज्ञान की यह असीम सीमा हो जब क्षितिज तक पहुंचना असंभव हो तब हम यदि यह भरोसा कर के कल्पना करके या भ्रांति में या स्वांग कर के मान लें कि हमें सब कुछ आता है तो हमने हमारी प्रगति पर केवल पूर्ण विराम ही नहीं लगाया है, अपितु वस्तुस्थिति यह है कि हमने प्रश्न वाचक चिन्ह लगाया है। इसी को कूप मंडूकीय स्थिति कहते हैं। अर्थात न्यून अल्प अनुभवी व्यक्तित्व। लगभग प्रत्येक प्रशिक्षण सत्र में चाहे वह सत्र का प्रारंभ हो या समापन, जिम्मेदार अनुभवी व दीर्घ अनुभव रखने वाले माननीय विद्वत्जनों ने बार–बार इस प्रश्न पर सचेत किया है कि न्यायिक अधिकारी के रूप में चुनकर आ जाने के पश्चात अब प्रत्येक दिन परीक्षा का दिन है अनुभव प्राप्त करने का दिन है, अध्ययन करने का है, समझने का है विकास करने का है तथा जैसा–जैसा समय जाता रहेगा यह कार्य और भी अधिक गंभीरता से गहरी पैठ पाने के लिए करना होगा। इस संबंध में अभी हाल में ही प्रकाशित ज्योति जनरल पत्रिका के कई अंकों में भी उल्लेख हुआ है।

व्यवहार न्यायाधीश के रूप में नियुक्ति पश्चात हमारा एक मात्र कार्य किसी भी विषय पर किसी भी दावे में संबंधित विधान प्रावधान को देखे सिवाय निर्णय लिखने का काम नहीं है अपितु प्रक्रियां संबंधी सिविल तथा अपराधिक विधियां जिसमें साक्ष्य अधिनियम भी सम्मिलित है के साथ सारवान विधि की भी जानकारी मालूमात होना तो न्यूनतम आवश्यकता, औसत प्रकार के व्यक्तित्व वाले न्यायाधीश (Mediocrity-mediocre) के लिए आवश्यक होगी। और इससे भी न्यूनता वाली स्थिति नकारात्मक अयोग्यता वाली बात होगी जो स्पष्ट रूप से दर्शित हो जाएगी। न्यायाधीश के रूप में पहचान नहीं बन पाएगी। पहचान बनाने के लिए व्यक्तित्व विकास मूलभूत आवश्यकता होगी। व्यक्तित्व विकास केवल सूट–बूट व टिप–टॉप रहना एवं खुशामद करना मात्र तो नहीं हो सकता। इसका प्रभाव एक तुच्छ सीमा तक अवश्य हो सकता है लेकिन इसके अभाव में हमारी अपनी पहचान, मान्यता नहीं हो सकती यह भ्रम टूट जाना चाहिए। न्यायाधीश के रूप में हमें यदि हमारी पहचान बनाना है तो हमारे वरिष्ठ जनों ने हमें समय–समय पर जो मार्गदर्शन प्रदान किया है, जो हमारे पथप्रदर्शक है जो हमारे हित चिंतक है जिन्हें हमारे भविष्य की चिंता है हमारे से अन्यथा कोई अपेक्षा नहीं है और ऐसे मंडली को हम पालकवर्ग के रूप में भी संबोधित कर सकते है, की अपेक्षाओं के अनुरूप खरे उतर जाएं तो उनकी व हमारी, सार्थकता, न्याय क्षेत्र में सिद्ध हो सकेगी।

पुरूषोत्तम विष्णु नामजोशी

जमीन से जुड़े रहो

पूर्व प्रतिवेदन पश्चात 10 अक्टूबर से 19 अक्टूबर की अवधि में नवनियुक्त व्यवहार न्यायाधीश वर्ग–2 की पंचम श्रृंखला का सत्र संपन्न हुआ। अभी तक शेष बचे 8 चयनित उम्मीदवारों की नियुक्ति एवं पदस्थापना न होने के कारण वे प्रशिक्षण में सम्मिलित नहीं हो सके। कुल 92 नवनियुक्त व्यवहार न्यायाधीशों का प्रशिक्षण का प्रथम चक्र पूर्ण हुआ। उन्हें पुनः प्रशिक्षण हेतु बुलाये जाने हेतु कार्यवाही प्रगति पर है।

अंतिम सत्र में माननीय न्यायाधिपति श्रीमान सी.के. प्रसाद महोदय जो कि न्यायिक अधिकारी प्रशिक्षण संस्थान के अध्यक्ष भी हैं ने समापन अवसर पर विचार अभिव्यक्त किए तथा माननीय न्यायाधिपति श्रीमान आर.एस. गर्ग महोदय ने सत्र का मंगल शुभारंभ किया। अपने स्पष्ट व वजनदार शब्दों में माननीय गर्ग महोदय ने कहा कि वर्तमान वातावरण यह हो गया है कि यह धारणा बनती जा रही है कि हमें सब आता है। ऐसी बात हमारे दिमाग में घर करती जा रही है। न्यायाधीश के पद पर लोकसेवा आयोग द्वारा चयन हो जाने के निमित्त मात्र से यह मान लिया गया है कि हमें सब कुछ आता है। यह भी सोच विकसित हो गया है कि हम सब कुछ कर सकते हैं। सत्ता में आकर उसमें सुख की तलाश प्रथम दिन से प्रारंभ हो जाती है लेकिन संतुष्टि की अनुभूति अंतिम सांस तक नहीं होती है। माननीय गर्ग साहेब ने यह भी कहा कि जब कद से बड़ी कुर्सी होती है तो जमीन पर पैर नहीं टिकते हैं। पैर सदा जमीन पर टिके हों ताकि कुर्सी न रहने पर भी आदमी जमीन पर गिरे नहीं। उन्होंने कहा कि सत्ता के आसमान से एक दिन पुनः धरातल पर ही लौटना है। न्यायिक कार्य करते समय न्यायिक विवेक व क्षेत्राधिकार के ध्यान से कभी नहीं हटना चाहिए यदि क्षेत्राधिकार के घेरे से बाहर जाकर विवेकाधिकार का उपयोग होगा तो निश्चित समझिए कि अधिकार एवं किया गया कृत्य न केवल अवैध होगा अपितु अनुचित होगा व कार्य गलत होगा। **हमारा विवेक हमारा गुरू बने** ऐसा कहते हुए माननीय न्यायाधिपति श्रीमान गर्ग महोदय ने कहा कि आज हम भयाक्रांत हैं, स्वयं से डरे हुए हैं, संभ्रम में हैं। न्यायिक अधिकार यदि न्यायाधीशों को सौंपे हैं तो उस उर्जा का सकारात्मक उपयोग होना चाहिए उक्त उष्मा का संजोने का साहस हमारे में होना चाहिए। हमारा कर्तव्य निर्णय देना मात्र नहीं है पक्षकारों के बीच सही निर्णय करने का भी है अतः अध्ययनशीलता अत्यंत आवश्यक है। **'मैं यह नहीं कर सकता'** का नया सोच विकसित होता जा रहा है कि काम को कैसे टाला जावे। सेवाकाल में आत्म परीक्षण करने की बात भी माननीय गर्ग महोदय ने कही।

माननीय न्यायाधिपति श्रीमान सी.के. प्रसाद महोदय ने अपने समापन भाषण में कहा

कि उन्हें समय–समय पर विभिन्न क्षेत्रों से जो बातें सूचित की गईं उससे यह अनुभव होता है कि जो उम्मीदवार चयनित हुए हैं उन्होंने सेवा में आने के पूर्व अपना अभिभाषकीय अथवा/एवं सहायक लोक अभियोग के रूप में ठीक से कार्य नहीं किया है व अपने व्यवसाय/नौकरी को गंभीरता से नहीं लिया है। माननीय प्रसाद साहेब ने कहा कि आपकी सेवाएं नए क्षेत्र में प्रारंभ हो रही है अतः नए सिरे से पुनः गंभीरतापूर्वक समर्पण भाव से कार्य प्रारंभ करें। उच्च न्यायालय ने नव नियुक्त न्यायाधीशों पर विश्वास करके अपने गृहनगर से निकट की पदस्थापनाएं की हैं जिससे पारिवारिक असुविधा न हो तथा न्यायिक कार्य सुगमता से सीखा जा सके। पिछले दस माह पूर्व चयन होने के पश्चात भी बीते दस माह में चयनित अधिकारियों ने कुछ भी न पढ़ने की बात को गंभीरता से लेते हुए कहा कि यदि आप अपने कर्तव्यों के प्रति जागरूक व समर्पित नहीं रहेंगे तो शिखर तक नहीं पहुंच पाएंगे व उच्च न्यायालय आपको प्रोबेशन अवधि में ही सेवा से पृथक कर देगा। माननीय न्यायाधिपति श्रीमान सी.के. प्रसाद महोदय ने यह अपेक्षा की कि पढ़ो लिखो, ज्ञान प्राप्त करो एवं वरिष्ठ जनों के अनुभव का लाभ लो। वकील के तुलना में न्यायाधीश की स्वतंत्रता मार्गदर्शित व नियंत्रित होती है अतः न्यायाधीश को अपने पद का स्तर सतत् रूप से ऊँचा रखना होगा। अतः आपका निजी एवं सार्वजनिक व्यवहार चाल–चलन उच्च कोटि का हो। लोग आपको न्यायाधीश के रूप में देखते हैं अतः आपमें सौजन्य शीलता व शिष्टता परिपूर्ण रूप से हो।

सेवानिवृत्त न्यायाधिपति श्रीमान आर.पी. अवस्थी महोदय ने प्रशिक्षण काल में 5 विभिन्न दिनों में दस वर्ग लिए जिसके माध्यम से व्यवहार एवं अपराधिक प्रकरणों में अथ से इति तक की प्रक्रिया संबंधी जानकारी विस्तार से दी। अपने प्रारंभिक उद्‌बोधन में माननीय अवस्थी साहेब ने कहा था कि घमंड मत करना। सौजन्य व सज्जनतापूर्ण व्यवहार होना चाहिए। चापलूसी नहीं करना है। वकील व पक्षकार वर्ग से एवं अपने स्टाफ से भी उच्च कोटि का व्यवहार हो। क्रोध विवेक का सबसे बड़ा शत्रु है।

इस सत्र में माननीय न्यायाधिपति श्रीमान एस.एस. सराफ महोदय के अतिरिक्त श्री आय.एस. श्रीवास्तव रजिस्ट्रार सेट, पूर्व लेखा अधिकारी श्री पी.के. तिवारी, अतिरिक्त जिला न्यायाधीश, जबलपुर श्री एस.एन. खरे, व्यवहार न्यायाधीश वर्ग–1, जबलपुर श्री राकेश श्रोती ने भी प्रशिक्षण वर्ग संचालित किए।

Hon'ble Shri Justice R.S. Garg, Judge, M.P. High Court and Member J.O.T.I. Commitee was appointed as Acting Chief Justice of Chattisgarh High Court who resumbed his charge of the office on 01-11-2000. The institute felicitate the appointment.

सत्य की सत्ता

आर.एस. गर्ग
न्यायाधिपति

माननीय न्यायाधिपति श्रीमान् आर.एस. गर्ग तत्कालीन न्यायाधिपति, मध्यप्रदेश उच्च न्यायालय, जबलपुर, संप्रति कार्यवाहक मुख्य न्यायाधिपति, छत्तीसगढ़ राज्य द्वारा 12.10.2000 को न्यायिक अधिकारी प्रशिक्षण संस्थान में व्यवहार न्यायाधीश वर्ग 2 के प्रशिक्षु न्यायाधीशों के पंचम सत्र के उद्घाटन अवसर पर अभिव्यक्त विचारों को, जो कि सहजोद्गार थे को यहां ज्यों का त्यों प्रकाशित किया जा रहा है। टेप रिकार्डर की तकनीकी खराबी के कारण कुछ अंश संपादित किए हैं। जिन्हें कोष्टक में दर्शित किया है।

- संपादक

दोस्तो ! लगभग आज से ढाई साल पहले या कहें तो 4 साल पहले निरंतर इस जुडीशियल ऑफिसर ट्रेनिंग इंस्टीट्यूट में हर सप्ताह मैं आता था, लेक्चर देने, लेक्चर देता था अलग–अलग विषयों पर अलग–अलग सब्जेक्ट्स पर। आप में से किसी को नोट्स बनाने की या किताब खोलने की कोई जरूरत नहीं है, क्योंकि मैं आपको विधि के किसी भी प्रावधान के बारे में बताने नहीं आया हूँ। लगभग ढाई साल निरंतर लेक्चर देने के बाद मुझे यह लगा और मैंने नामजोशी साहब से कहा कि किसी जज को यह समझाना कि बहस करने वाला आदमी सही है, लगभग असंभव है। मैं कहा करता था और आज भी कहूंगा कि जब मैं वकील था, किसी एक जज को समझाना बड़ा मुश्किल होता था, घंटों लग जाते थे, उसे समझाने में कि मेरे पक्ष में फैसला क्यों दें। आप 12 हैं, इसी कक्ष में 25, 30, 35 और 40 व्यक्ति उपस्थित रहे और मुझे हर बार यह लगता था कि जब मैं एक जज को नहीं समझा पाता था, तो आज के 12 या पहले के 30, 35, जजों को समझाना तो लगभग असंभव है। पूरी कोशिश की मैंने और पूरी कोशिश के बाद जब मुझे यह लगा कि "The Things have become impossible" मैंने यहां आना छोड़ दिया। मैंने नामजोशी साहब से कहा कि नामजोशी जी जजों को समझाना, घंटो चिल्लाना, भाषण देना, अपने वक्तव्य कला के बारे में उनको सिखाना, सब बेकार है, क्योंकि जज या जो भी मुझे सुन रहा है, कितना समझेगा, मुझे नहीं मालूम। इसके मुकाबले में ज्यादा अच्छा

यह है कि मैं मेरे स्टेनोग्राफर को बुलाऊँ और उससे यह कहूं कि इस पर्टिकुलर विषय के ऊपर तुम एक फैसला टाइप करो, वह फैसला आप सब पर, इस म. प्र. के हर न्यायाधीश पर बंधनकारक होगा। मेरी कही हुई बात आप पर बंधनकारक नहीं है, लेकिन मेरी लिखी हुई बात आप पर बंधनकारक है और उसके बाद मुझे जो भी कहना था, मैं हमेशा अपने फैसले के द्वारा कहता रहा। कभी--कभी और आज भी इस बात का बुरा लगता है कि हमारे यहां के न्यायाधीश, क्या मालूम क्यों, यह मानकर चलते हैं कि हमें सब आता है। मैं नहीं कहता कि मुझे सब आता है। हम सर्वज्ञाता हैं, हम सब जानते हैं यह बात हमारे दिमाग में न जाने क्यों घर कर गई है, हम तैयार नहीं हैं, इस बात को समझने के लिए कि हम अपना स्वनिरीक्षण करें, आत्मपरीक्षण करें। हमारे दिमाग में कहीं न कहीं यह बात आ गई है कि हम पब्लिक सर्विस कमीशन के द्वारा चुने गये व चुनिन्दा और समझदार लोग हैं, जिन्हें सब आता है।

दोस्तो, 24 साल वकालत की मैंने और 24 साल यही मेरा अनुभव रहा है। 6 साल से हाईकोर्ट का जज हूं और आज भी यही अनुभव है मेरा। जब यहां भाषण देने पहले आता था, तब मुझे लगता था कि संभवतः कुछ गलती कर रहा हूँ, पत्थरों से सर फोड़ रहा हूँ। नामजोशी साहब से कहता था और आज भी कहता हूँ कि नामजोशी साहब आंप और मैं युटोपिअन (एक आदर्श स्थिति) की परिकल्पना करते हैं, जहां पर हर व्यक्ति, हर स्थिति, हर समस्या ठीक होगी, लेकिन ऐसा है नहीं। जब हम कहते है कि "मुंडे मुंडे मतिर्भिन्ना" तो हर आदमी की अपनी एक सोच है, अपना ज्ञान है, अपनी समझ है। हम सडक किनारे पडे हुए वह पत्थर हैं, जिसे किसी ने सिन्दूर लगाकर मंदिर में बिठा दिया है। जिस आदमी ने सिन्दूर लगाकर हमें बिठाया है, उसने हमें भगवान बना दिया है और हम भगवान बनते ही उस सिन्दूरी चोले के कारण यह समझने लगे हैं कि हम कुछ भी कर सकते हैं। वह आदमी जो श्रद्धा से हमारे सामने समर्पण करता है, हम उस आदमी की श्रद्धा को उसकी कायरता समझने लगते हैं। हम उस आदमी के समर्पण को उसके विश्वास को, उसका भय समझने लगते हैं। उस कुर्सी पर बैठकर हमें यह लगने लगता है कि हमारे न्यायालय में हमसे बड़ा कौन है और यदि हममें समझ नहीं होती, तो न तो हम इस कुर्सी में बैठते और न ही यह सामने खड़ा हुआ आदमी मुझे "योर ऑनर या श्रीमान" कहकर पुकारता। वह जो, श्रीमान हमें कहता है, वह कहीं न कहीं हमारे छोटे से गुब्बारे में हवा भरता रहता है और हम अपनी हस्ती, अपनी औकात को भूलकर गुब्बारे जैसे फूलते चले जाते हैं। भूल जाते हैं हम कि जिस दिन यह रंग उतर जाएगा, जिस दिन यह सिंदूर हट जाएगा, जिस दिन लोगों की श्रद्धा हम पर समाप्त हो जाएगी, उस दिन वह हमें वहां से उठाकर फेंक देंगे और क्या मालूम वह वहीं फेंके, जहां से हम आए थे या किसी नाली में।

दोस्तो ! जज, न्यायाधीश उसका क्या कर्त्तव्य है और क्या अधिकार है, आप लोग जानते हैं, लेकिन मैं आज तक नहीं समझ पाया। एक न्यायाधीश के नाते संभवतः प्रकरण की सुनवाई और निर्णय ही हमारा कर्तव्य है या इससे कुछ अधिक। किसी को जमानत पर छोड़ना न छोड़ना, किसी प्रकरण में क्या निर्णय देना, क्या यही हमारा अधिकार है या इससे कम या ज्यादा। जो मैं समझ पाया हूं वह सिर्फ एक कि हमारे माथे पर सिर्फ कर्तव्य है, सिर्फ कर्तव्य। हमारा अधिकार कोई नहीं है, और हमारे अधिकार इसलिए नहीं है, क्योंकि जब हम अपने आपको भगवान के रूप में न्यायासन पर बिठा लेते हैं, तब कोई भगवान कभी नहीं कहता अपने भक्त से, कि तू मुझे कुछ दे। आता है आदमी, भक्त, पुजारी, याचक सिर्फ वो ही याचना करता है और वह बैठा हुआ भगवान उसे कुछ न कुछ देता है। कभी किसी भगवान ने आपसे कोई याचना की? यदि नहीं तो फिर किन अधिकारों की हम बात करते हैं। हमारे अधिकार कुछ नहीं हैं। हम सिर्फ एक बात जानते हैं, सत्य और सत्य वह जो हमें दिखाया जाता है। हमारे निर्णय में हम मात्र यह लिखते हैं कि इस आदमी की बात मुझे सही लगती है। हम यह नहीं कहते कि यही सत्य है। जिन दो बातों में से एक सत्य से ज्यादा निकट हो, हम उसे स्वीकार कर लेते हैं। आप नीचे बैठे हैं। आपको इस गिलास में आधा भरा हुआ पानी दिखाई देता है। आपने जो देखा, गलत नहीं देखा। आपका नजरिया सही है, क्योंकि आप ईमानदारी से देख रहे हैं। मैं ऊपर बैठा हूं, मुझे ऊपर का खाली हिस्सा दिखाई दे रहा है, यह मेरा नजरिया है कि यह गिलास आधा खाली है। यह दोनों बातें सत्य हैं। गिलास आधा खाली है, गिलास आधा भरा है। लेकिन हमें मात्र यह निर्णय करना है कि क्या गिलास आधा खाली है या आधा भरा। आपने कहा कि आधा भरा है, किसी एक पक्षकार के हित में फैसला दे दिया, मैंने यह पाया कि गिलास आधा खाली है, आपके निर्णय को पलट दिया और पलटने के बाद में किसी दूसरे पक्ष के हित में निर्णय दे दिया। जुडीशियल हेअरआरकी (पदानुक्रम) न्यायिक अधिकारिता में यह मेरा अधिकार है कि मैं किसी भी चीज को एक दूसरे नजरिए से देखूँ और इसलिए यदि आपका निर्णय किसी अपील न्यायालय द्वारा निरस्त कर दिया जाए तो यह मानने का कोई कारण नहीं है कि आपको कानून नहीं आता, क्योंकि आप और मैं दोनों किसी एक तथ्य को एक नजरिए से देखते हैं। हमारे अनुभव से हम समझते हैं, लेकिन जो वास्तविक सत्य है, उसके बारे में कभी बात नहीं करते। इस तथ्य के बारे में आप और मैं लड़ सकते हैं कि गिलास आधा खाली है या आधा भरा, लेकिन जो वास्तविक सत्य है कि गिलास बड़ा है और पानी कम है यह ऐसी बात है, जिस पर न आप कुछ कह सकते हैं और न मैं कुछ। यह ध्रुव सत्य है, अटल सत्य है, लेकिन इस सत्य के अन्वेषण हमारे न्यायालय में नहीं होते। आपका दिया गया निर्णय मैं स्वीकार करके कह दूं कि सही है, तो कोई दुख की बात नहीं है। आपके निर्णय को मैं निरस्त कर दूं तो कोई दुख की बात नहीं है। मैं जब निर्णय देता हूं और मेरे निर्णय के खिलाफ अपील होती है और अपील कोर्ट जब मेरे निर्णय को

कहती है कि यह सही है, तो मुझे सिर्फ इस बात की संतुष्टि है कि मैं कानून समझता हूं। जब अपील कोर्ट मेरे निर्णय को निरस्त कर देती है, तब भी मुझे संतुष्टि है कि मेरे गलत निर्णय के कारण अपील कोर्ट ने कानून को तो परिभाषित कर दिया। मेरा दोनों स्थितियों में कोई नुकसान नहीं है, मेरी कोई हानि नहीं है। परिणाम मूलक (रिजल्ट ओरियन्टेड) काम आप और मैं नहीं करते हैं, हम न्यायाधीश हैं, हमारा काम सत्य से साक्षात्कार है, हमें मात्र यह देखना है कि जो हमारे सामने है, जो साक्षात् खड़ा हुआ है, वह सत्य है या नहीं। हम किसी आदमी को इस बात का एश्योरेन्स नहीं दे सकते कि जो मैंने किया है, वही सत्य है। हम सिर्फ उसको एक एश्योरेन्स दे सकते हैं कि मैंने जितनी बुद्धि मुझमें है, उसके द्वारा अपनी पूरी ईमानदारी से जो निर्णय दिया है, मेरे न्यायालय के लिए वही सत्य है। एक जज ने मात्र यह मानकर चलना चाहिए।

कामये राज्यं न सुखं न पुनर्भवम्।
कामये दुःख तप्तानां केवलं आर्तिनाशनम।। (युधिष्ठिर)

मुझे राज्य की आकांक्षा नहीं, किसी सुख की लालसा नहीं, बार–बार जन्म लेने की मुझे कोई चाह नहीं है। मैं तो मात्र यह चाहता हूं कि इस संसार में वे समस्त दुःख संतप्त (आर्त) प्राणी जिनके दुःख मैं दूर कर सकता हूं, उनके दुःख दूर करूं। एक न्यायाधीश के नाते इससे ज्यादा आप और मैं कुछ नहीं कर सकते।

दोस्तो, जब भी कोई व्यक्ति सत्ता में आता है, चाहे वह सत्ता राजनीति की हो, परिवार की हो, धन की हो या न्यायिक अधिकारों की हो, तब कहीं न कहीं हम उसमें सुख ढूंढने का प्रयत्न करते हैं और जब उसमें हमें कोई सुख नहीं मिलता है, तब हम दुखी हो जाते हैं। अरे हम क्या सोचकर आए थे, हम क्या बनना चाह रहे थे और क्या बन गए। मैं भी कहता हूं कि भाई लाखों रुपये की वकालत चलती थी मेरी और मैं आज यहां 30, 35 हजार रुपये कमा रहा हूं। एक दिन में 100 मुकदमों पर दस्तखत करता हूं, 100 मुकदमे पढ़कर आता हूं। 100 मुकदमों में आदेश पारित करता हूं, दुःख होता है और सबसे ज्यादा दुख तब होता है, जब एक मुकदमा मैं घर से पढ़कर आया हूं और उसमें तारीख बढ़ जाती है। लेकिन इसके बाद कहीं न कहीं संतुष्टि तो है, सुख नहीं तो संतोष तो है और यदि हमें इस बात का संतोष है कि जो हमने किया, वही ठीक है और कम से कम हमारे आचरण पर कोई उंगली न उठा पाये, तो इससे बड़ा सुखी जीवन और क्या होगा।

दोस्तो ! कुर्सी पर बैठकर न जाने क्यों हम भूलने लगते हैं कि अब हम साधारण मानव नहीं हैं, कुछ बड़े हो गये हैं, महा मानव हो गये हैं। हमारे सामने आदमी हाथ जोड़कर खड़ा है, न्याय की भिक्षा मांगता है, प्रार्थना करता है, निवेदन करता है, इसलिए हम बड़े हैं। यह तो सिस्टम है, कानून तो यह कहता है कि यदि उसका अधिकार है, तो बिना उसकी प्रार्थना के उसे दीजिए। आपका काम यह नहीं है कि जब कोई प्रार्थना

करेगा, तभी न्यायदान करेंगे। आपके सामने एक आदमी खड़ा है, 60 दिन या 90 दिन में चालान पेश नहीं हुआ, न जाने क्यों हम डरते हैं कि वकील साहब अर्जी तो आपने दी ही नहीं, मैं कैसे छोड़ दूं, चालान नहीं पेश हुआ, तो क्या करेंगे। कानून कहता है और कानून हम समझते हैं, 60 दिन या 90 दिन में यदि चालान पेश नहीं हुआ, तो धारा 167 दं.प्र.सं. कहती है कि उसे छोड दो। यह आपका कर्तव्य है, उसका अधिकार है। लेकिन हम इसका उल्टा समझते हैं, कि कर्तव्य उसका है कि वह एक प्रार्थनापत्र दे तभी हम अपने अधिकार का उपयोग करेंगे। क्या हम शीतनिद्रा (हाइबरनेशन) में चले गये हैं, क्या कोई हमें जगाएगा, क्या हम बुद्धि से धृतराष्ट्र हो चुके हैं, क्या हम भूल चुके हैं कि हम न्यायाधीश हैं। एक न्यायाधीश के नाते हमारा कर्तव्य है कि हम हर उस आदमी को न्याय दें, जो हमारे सामने है, मांगे न मांगे, जहां मुझे क्षेत्राधिकार है, जहां मुझे विवेकाधिकार है।

दोस्तो! जीवन में एक सबसे बडी बात है, कुर्सी कितनी ही बड़ी हो, पैर जमीन पर टिके होने चाहिए। यदि पैर कुर्सी से उठ जाएंगे, तो कुर्सी हटते ही हम जमीन पर गिर जाएंगे। किसी छोटे बच्चे को उस कुर्सी पर बैठाइये, यदि उसके पैर जमीन पर नहीं टिकते हैं, तो वह भयाक्रांत रहता है, डरता है, घबरा जाता है कि संभवतः मैं गिर जाऊँगा। उसी कुर्सी पर एक बड़े आदमी को बिठाइये, जिसके पैर जमीन पर टिके हों, बड़े आराम से बैठता है। उसमें सुख महसूस करता है। हम कुर्सी पर बैठते हैं और उस कुर्सी का कद संभवतः हमें अपने से बड़ा लगने लगता है। हम भूल जाते हैं कि जो पेड़ जमीन छोड़ देता है वह गिर जाता है। आज नहीं आज से 25 साल, 30 साल, 35 साल ब़ाद आप सब को इसी वास्तविक धरातल पर लौटना है। कितने ऐसे न्यायाधीश हैं, जो रिटायरमेंट के बाद सुपरएन्यूएशन के बाद वही सम्मान पाते हैं, जो तब पाया, जब कुर्सी पर थे। उन्होंने अपनी जमीन छोड दी है, उनका कद छोटा और कुर्सी बड़ी को गई। जिस दिन कुर्सी हटी वह उन लोगों के सामने गिर पड़े उनके पैरों में गिर पडे, जो कल तक कुर्सी के सामने खड़े थे। आज उस आदमी का कद बड़ा है, क्योंकि वह खड़ा है और हमारी कुर्सी हट गई है।

विवेकाधिकार और क्षेत्राधिकार, हम कहीं न कहीं इसके बीच में मतिभ्रम कर लेते हैं, अपने आपको कन्फ्यूज कर लेते हैं। हमारा क्षेत्राधिकार क्या है और हमारा विवेकाधिकार क्या है, यह दो बातें अलग–अलग हैं। हमारा क्षेत्राधिकार हमारे चारों तरफ बना हुआ एक गोल घेरा है। जब तक हमारे दोनों पैर उस गोल घेरे में हैं, हमारी किसी कार्यवाही को कोई आदमी चुनौती नहीं दे सकता। एक पैर अंदर, और एक पैर बाहर निकालकर हम अपने निर्णय अपने कार्य को अभी भी न्यायिक ठहरा सकते हैं यह कहते हुए कि मैंने मेरे क्षेत्राधिकार में अपने विवेकाधिकार का उपयोग किया है। मैं चाहता तो यह कर सकता था, मै चाहता तो यह कर सकता था। इसलिए मैंने एक बात की। लेकिन जब दोनों पैर उस गोल वृत के बाहर निकल आते हैं, तब हमारे पास न

क्षेत्राधिकार है और न विवेकाधिकार और उस स्थिति में हमारे हर कार्य को, हमारे हर निर्णय को हर आदमी गलत ठहराता है। (कृपया अन्त में रेखाचित्र देखें।)

एक छोटा सा उदाहरण लें, एक मां ने अपने भूखे बेटे को कुछ खिलाने के लिए एक रोटी चुराई, एक पिता ने अपने बच्चे की फीस भरने के लिए कुछ पैसा चुराया, एक शराबी ने शराब पीने के लिये पैसे चुराए। तकनीकी रूप से तीनों ने चोरी की। हमारे क्षेत्राधिकार में है कि हम तीनों को एक जैसी सजा दे दें, लेकिन यदि हम उन तीनों को एक जैसी सजा देंगे, तब हमारे क्षेत्राधिकार में होते हुए भी लोग हमें गलत ठहरायेंगे व इसलिए जब इस प्रकार का उपयोग किया जाता है, तब कहीं न कहीं हमारा विवेक हमारा गुरू बन जाता है। हमारा विवेक हमारा पथप्रदर्शक बनता है और कहता है कि नहीं, क्षेत्राधिकार होने के बाद भी अपने विवेक का उपयोग करें और संभवतः तभी हम उस मां को डांट–फटकार कर छोड़ देते हैं, हम कहते हैं कि भविष्य में ऐसा मत करना। उस पिता को संभवतः कोर्ट उठने तक की सजा दे देते हैं। हमें मालूम है कि किसी गरीबी और मजबूरी के कारण तूने यह किया है, लेकिन उस शराबी को तो हम सजा देते हैं। हमने क्षेत्राधिकार में विवेकाधिकार का उपयोग किया और जब इस आधार पर हमने अपना निर्णय दिया, तब हमारे इस निर्णय को कोई ग़लत नहीं ठहराता।

एक साधारण गृहिणी जानती है कि अच्छी चाय बनाने के लिए उसमें दूध, शक्कर, चाय–पत्ती और पानी का कितना अनुपात होना चाहिए। क्या एक न्यायिक विवेक के अंदर हम इस अनुपात का उपयोग नहीं करेंगे, क्या हम मात्र यह मानकर चलेंगे कि मेरा अधिकार रहे इसलिए मैं जो चाहूं कर सकता हूं। मैं राजा हूं, मैं न्यायाधीश हूँ कौन, मुझे गलत ठहरा सकता है।

दोस्तो ! विवेक हमारा पथप्रदर्शक है। आप और मैं सब जानते हैं कि सही क्या है। लेकिन भयाक्रांत है, डरे हुए हैं, डरे हुए हैं, अपने आपसे समाज से, विधि से, अपने से बड़ी अदालत से नहीं। हम इस बात से डरे हुए हैं कि संभवतः कहीं न कहीं मझसे गलती तो नहीं हो गई और निर्णय के सभ्रम में हम पल रहे हैं, इनडिसाइसीवनेस में है हम, हम यह नहीं तय कर पाते कि यह गिलास आधा खाली है या आधा भरा। एक जज के लिए एक किलर इंस्टिंक्ट (कुछ कर गुजरना) होना चाहिए जिस तरह से एक कातिल, एक सिपाही किसी दुश्मन को मार गिराता है, उस तरीके से डिसिसीवनेस, प्रिसाइसिवनेस हमारे में होना चाहिए। हमने तय कर लिया कि यह सही है, हमारा निर्णय उस अनुरूप होना चाहिए। हम तय नहीं कर पाते हैं कि सही क्या है और निर्णय लिखना शुरू कर देते हैं और जब निर्णय के कुछ चरणों के पश्चात हमको मतिभ्रम होता है, तब हम सोचने लगते हैं कि क्या मालूम कहां गलती हो गई। तय तो कर लें पहले। एक साधारण गांव वाला अनपढ़ और गंवार अपने घर से जब निकलता है, तो उसे मालूम है कि मुझे कहां जाना है, उस डेस्टिनेशन, उस स्टेशन का वह टिकिट लेता है। हम पढ़े

लिखे लोग बिना जाने कि हमारा डेस्टिनेशन क्या है, हमें क्या करना है, कहां पहुंचना है, हमारी यात्रा प्रारंभ कर देते हैं। कहीं न कहीं डिसिसीवनेस तो होना चाहिए और यदि डिसिसीवनेस नहीं है, तो हम अपने निर्णय को संपूर्ण नहीं बना पाते। जहां भी हमें लगता है कि कुछ गलत है या संभवतः हम किसी बात को समझ नहीं पा रहे हैं, समझा नहीं पा रहे हैं, किसी तथ्य का परिमार्जन नहीं कर पा रहे हैं, तब हम उस बात को छोड़ देंगे कि छोड़ो जो है, सो ठीक है।

दोस्तो ! कमल सूर्योदय के साथ खिलता है, सूर्यास्त के साथ बंद हो जाता है। हम यह कहें कि कमल सूर्य की रोशनी में खिलता है और उसका प्रकाश अस्त होते ही बंद हो जाता है, तो बात गलत होगी। कितने भी घने गहरे बादल हों, व सूर्य छिप जाये, लेकिन कमल खिलता रहता है, लेकिन जब उस सूर्य को ग्रहण लगता है, तब क्या मालूम क्यों उस कमल को समझ में आ जाता है कि मेरे को उस उष्मास्त्रोत का ग्रहण लग चुका है, वह दिन में भी बंद हो जाता है। मात्र सूर्य के निकलने से ही यदि कमल का खिलना हो, तो फिर हर कली को समय के पहले ही खिल जाना चाहिए, लेकिन वह कली नहीं खिलती। एक विशेष समय पर वह कली खिलती है। कहीं न कहीं इससे एक बात हमको यह मालूम पड़ जाएगी कि उस कली में जो अभी नहीं खिली है, सूर्य को उष्मा को संजोने का, प्राप्त करने का, समझने का अभी कोई माद्दा नहीं है। जिस दिन उसमें सूर्य की उष्मा को ग्रहण करने की शक्ति आ जाएगी, वह सूर्य से अपने योग, **संयोग, तादात्म्य स्थापित कर लेगी। उस दिन वह अपने आप खिल जाएगी। सूर्य का आकाश में दिखना, न दिखना इससे कली का कोई संबंध नहीं है। कहीं न कहीं संबंध है, तो इस बात का कि उस कली में क्या यह क्षमता है कि सूर्य की उष्मा को ग्रहण करें और यदि सूर्य की उष्मा को उस कली ने ग्रहण कर लिया, तो ऐसा कुछ नहीं है, जो इस कली को शुष्क बनने से रोक सके।**

दोस्तो, हमारे पास क्या वह उष्मा है, क्या उस सत्य को स्वीकार करने का साहस है या हम मात्र यह मानकर चल रहे हैं कि जो नहीं दिख रहा है, वह अस्त है और जो, दिख रहा है, वही सत्य है। क्या हम उस कमल से भी गए बीते हैं। हम उस सूर्य को, उस सत्य को उस सत्य की उष्मा को स्वीकार क्यों नहीं कर पाते हैं, क्यों नहीं समझ पा रहे हैं कि हम उस कमल से गए बीते नहीं हैं, जो सूर्य के बारे में समझता है कि इसके सामने बादल आया है या इसको ग्रहण लग गया है, क्यों हम अपने अंदर की उष्मा को संजोने का साहस इकट्ठा नहीं कर पाते।

दोस्तो, जब तक हमारे अंदर सत्य को स्वीकार करने की, सत्य को देखने की समझने की क्षमता नहीं है, तब तक हम कुछ नहीं कर पाएंगे। हम मात्र निर्णय देते रहेंगे, हम अपनी नौकरी करते रहेंगे, एक न्यायाधीश के नाते आप और मैं मात्र निर्णय नहीं देते हैं, हम लोगों के भाग्य, भविष्य तय कर देते हैं और भाग्य और भविष्य तय करने का

अधिकार ऊपर वाले के हाथ में है "टू डिसाइड इज डिवाइन" न्याय करना एक दैविक कर्तव्य और कार्य है। हम देवता हैं, लोगों ने मान लिया और कहीं न कहीं यही बात हमारे अन्तर्मन में गहरे तक पैठ चुकी है, तो फिर हम देवता बनें, हम निर्दयी हों, कठोर हों, दयालु हों, सब हो सकता है लेकिन यदि भगवान बेईमान नहीं है, तो हम बेईमान नहीं हैं। कभी किसी ने सुना कि भगवान बेईमान है, हम यह कहते हैं कि भगवान बड़ा ही निर्दयी और अन्यायी है, लेकिन बेईमान नहीं है। आपका निर्णय कठोर हो सकता है, लेकिन बेईमानी का नहीं। आग अन्तर्मन में जलना चाहिए, क्योंकि आग ही तो हमको जिन्दा रखती है। यदि वह आग हमारे अंदर बुझ गई, तो फिर आग क्या, वह तो राख हो गई और राख पुराने जमाने में सिर्फ बर्तन मांजने के काम आती थी। हम ऊंचे हैं, इससे हम लोगों को यह समझा सकते हैं कि हमारे अन्तर्मन में जो आग धधक रही है, न्याय के लिए न्याय प्रक्रिया के लिए उस आग का सदुपयोग करना आपका काम है। आप यदि इस आग को उचित रीति से नहीं संभाल पायेंगे, तो यह आग आपको जला देगी और इस आग को उचित रीति से आप संभालेंगे, तो यही आग आपके घर में खाना पकाएगी, यही आग आपके अंधेरे रास्तों को पथ प्रदर्शित करेगी, यही आग आपके जीवन को सरल बनायेगी। कहीं न कहीं हम अपनी उस आग को जिन्दा तो रखते हैं लेकिन अब क्या जाने क्यों उस पर राख चढ़ने लग गई है। मैं यह नहीं कहता कि हम उस आग को हमेशा ही प्रदर्शित करना चाहिए, मालूम सिर्फ यह होना चाहिए कि मुझ में आग है। And if you mishandle me I burn you and if you handle me properly I am very useful to you. एक न्यायाधीश आग है, लेकिन ऐसी आग जो अपने आप में जलती रहती है, किसी और में नहीं।

दोस्तो एक न्यायाधीश का जीवन मात्र एक मोमबत्ती जैसा है और ऐसी मोमबत्ती जो अन्याय के अंधेरे में उदासीन लोगों को तड़पते हुए, लोगों को उजाला देने का प्रयत्न करती है, (वह पीड़ितों को अंधेरे में उजाले का विश्वास दिलाती है। हम पिघलते हैं, जलते हैं, व प्रकाश देते हैं। समय के साथ हम बुझ जाते हैं। हम अपने आप को मिटा देंगे, जला देंगे लेकिन तुम्हारे साथ अन्याय नहीं होने देंगे।)

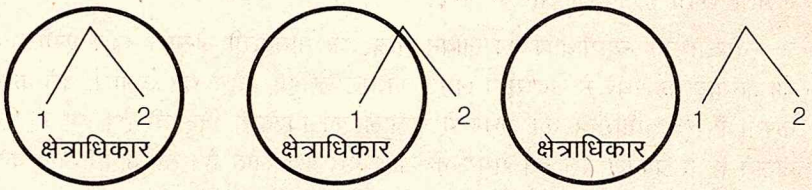
("मैं नहीं कर सकता" इसके पीछे मंतव्य क्या है नहीं करना चाहते हो या नहीं आता। हम सांस लेना नहीं छोड़ते तो सीखना क्यों छोड़ दें। तुम सीखो। मैं आशा कर सकता हूं कि बच्चा उसके अनुभव के रूप में तो कार्य कर सकता है सीखने की भावना है तो आकाश ही सीमा है। लेकिन समझते हुए भी हम नहीं कर सकते हैं तो हमारे घरों में बच्चों को दंड की जो प्रक्रिया है वही अपनाते हैं। यह व्यवहार हम अपने बाबत् क्यों नहीं कर सकते। काम कर लेना एवं अच्छे से काम कर लेना दो बातें हैं। आंख में आंख डालकर देख लें, आत्म परीक्षण कर लें।

सूर्य को पीठ के पीछे कर देते हैं तो परछाईं आगे हो जाती है। तब हम आत्म

परीक्षण नहीं कर रहे हैं परछाईं से ही हम अपना मूल्यांकन कर रहे हैं। दोपहरी में हमारी परछाईं पैरों के नीचे आ जाती है। तुम्हारी परछाईं तुम्हारे से बड़ी नहीं है। हमें परछाईं नहीं दिखाई देती तब हमें साक्षात्कार होता है अनंत से जैसे ही अन्याय का अंधकार होता है, कहीं न कहीं वह आदमी जो व्यक्ति है, न्यायालय में आता है, न्यायालय से प्रार्थना करता है कि मुझे दीजिए, मुझे न्याय दीजिए और हम एक न्यायाधीश के रूप में पिघलते हैं, गलते हैं, जलते हैं, उसके अंधेरे को दूर करने का प्रयास करते हैं प्रकाश से उस सत्य से, उस अनंत से) तब हम समझ पाते हैं कि वास्तव में प्रकाश क्या है और हम कुछ नहीं है। जब तक हम अपनी परछाईं से, अपनी परछाईं के प्रलोभन से, अपनी परछाईं के लालच से बाहर नहीं निकलेंगे, सत्य से साक्षात्कार नहीं कर सकते। हम एक ही बात कहते हैं कि हमारे हाथ में सत्ता नहीं है, हम सिर्फ वहीं निर्णय देंगे जो प्रकरण हमारे सामने आएगा। हम यह क्यों भूल जाते हैं कि हमारे हाथ में सत्य की सत्ता है और सत्य की सत्ता जिस आदमी के हाथ में है, वह तो कभी नहीं डरता। प्रकाश के स्त्रोत को, सूर्य को अपने सामने रखें, भूल जायें कि आपका कद कितना बड़ा है। आपकी परछाईं कितनी बड़ी है, उस प्रकाश को आपके साथ करें और यह समझें कि सत्य क्या है और हम कितना समझ पाएं। धन्यवाद,

श्री विजय सिंह स्टेनो, जिला न्यायालय जबलपुर द्वारा टेप के आधार से टंकित। उनका आभार

न्यायिक अधिकार का प्रयोग कैसा हो



विवेकाधिकार का प्रयोग क्षेत्राधिकार में रहते	क्षेत्राधिकार के साथ विवेकाधिकार का प्रयोग यथा योग्य अवसर पर अधिकार से बाहर जाकर किया जाना	क्षेत्राधिकार से बाहर जाकर विवेकाधिकार का प्रयोग नहीं होता है। मनमानी, स्वेच्छाचारिता होती है।

निर्देश 1. क्षेत्राधिकार का पाया - पैर

2. विवेकाधिकार का पाया - पैर

CHARACTER IS THE MOST PRECIOUS GIFT OF EDUCATION

वादों का संस्थित किया जाना

पुरूषोत्तम विष्णु नामजोशी

नवनियुक्त व्यवहार न्यायाधीशों को जो मूलभूत बातों का, प्रक्रिया का तथा विषयों का ज्ञान होना चाहिए उसमें वादों के संस्थित किए जाने संबंधी प्रक्रिया का ज्ञान अति आवश्यक है। व्यवहार प्रक्रिया संहिता दो भागों में विभाजित है। प्रथम भाग धाराओं का है तो दूसरा भाग आदेश तथा नियमों का है। प्रथम भाग में प्रावधानों का वर्णन है तो दूसरे भाग में प्रक्रिया संबंधी विस्तृत उल्लेख है।

धारा 26 व्य.प्र.स. के प्रावधान इस प्रकार हैं :–

धारा 26- वादों का संस्थित किया जाना

हर वाद वाद–पत्र को उपस्थित करके, या ऐसे अन्य प्रकार से, जैसा विहित किया जाए संस्थित किया जाए।

इस प्रावधान की संक्षिप्त व्याख्या यह होगी की वाद स्वयं पक्षकार या उसके अधिवक्ता द्वारा उपस्थित होकर प्रस्तुत करना होगा। दूसरी बात अन्य प्रकारों के विषय में है। पोस्ट से, डाक से वाद संस्थित करने का प्रावधान व्य.प्र.स. में नहीं है। आदेश 33 व्य.प्र.स. के अंतर्गत अपवादों को छोड अकिंचन द्वारा वाद स्वयं उपस्थित होकर न्यायालय के पीठासीन अधिकारी के सम्मुख प्रस्तुत करना अनिवार्य है। आ. 32 के अंतर्गत अवयरक की ओर से प्रस्तुत होने वाला वाद उसके अनन्य मित्र अथवा अधिवक्ता के द्वारा प्रस्तुत होना पर्याप्त है।

सामान्य रूप से वाद हमेशा न्यायालय के सामने ही प्रस्तुत होना चाहिए। लेकिन धारा 26 सहपठित आदेश 04 व्य.प्र.स. के अंतर्गत यह भी प्रक्रिया है कि उपर उल्लेखित आ. 33 के अपवादो को छोडकर समस्त वाद न्यायालय द्वारा प्राधिकृत लिपिक वर्गीय अधिकारी के सामने भी प्रस्तुत किया जा सकता है। लेकिन इसका यह अर्थ नहीं है कि न्यायालय के पीठासीन अधिकारी द्वारा अधिकृत लिपिक वर्गीय अधिकारी को अधिकार देने के पश्चात पीठासीन अधिकारी अपने अधिकारों से वंचित हो जाता है। विपरीत इसके पीठासीन अधिकारी ने यदि अपने अधिकार किसी को प्रत्यायोजित (Delegate) किए है तो इसका अर्थ ही यह है कि प्रत्यायोजित अधिकारी अपने अधिकार सुरक्षित रखते हुए दूसरे को भी प्रत्यायोजित अधिकारों का प्रयोग करने हेतु अधिकृत करता है। ऐसा अधिकार प्रत्येक पीठासीन अधिकारी ने लिखित में देना ही चाहिए। यथा आदेश एवं नियम (म.प्र. व्यवहार न्यायालय नियम 1961) 37 के प्रथम पंक्ति में ही कहा है कि "वाद पत्र न्यायालय अथवा ऐसे अधिकारी, जिसे कि न्यायालय ने लिखित रूप में इस आशय के लिए नियुक्त (आदेश 4 नियम) किया हो के समक्ष...."

यहीं पर एक बात और बताना जरूरी है वो यह कि वाद–पत्र प्रस्तुति की पावती मांगने पर पावती देना अनिवार्य है। पावती हेतु निर्धारित विवरण युक्त प्रपत्र प्रस्तुत करने पर पावती दी जाना चाहिए। इस संबंध में नियम 40 स्पष्ट रूप से प्रावधान करता है। जो लिपिक वर्गीय अधिकारी वादों को प्राप्त करता है। उसके प्रभाग (सेक्शन) को अभिग्राही प्रभाग (Receiving Section) कहते हैं।

उक्त प्रभाग में वाद संस्थित होने के पश्चात अभिग्राही अधिकारी के क्या कर्तव्य हैं यह भी नियम 37–38 में एवं 39 में दर्शाया है। संक्षिप्त में यदि बताया जावे तो चार मुख्य मुद्दों पर प्रभाग द्वारा जांच होती है। वाद का अवधि में होना, कोर्टफीस एवं वाद का मूल्यांकन न्यायालय की अधिकारिता एवं वादों का उचित रूप से लिखा जाना। लिपिक वर्गीय अधिकारी का ऐसा कार्य न्यायिक कार्य नहीं है अतः उसका यह अभिमत मात्र होता है जो उसने न्यायालय की सहायार्थ किया है। न्यायालयों को न्यायिक कार्य में यह अभिमत बंधनकारी नहीं होता है। इसीलिए नियम 39 में अभिग्राही अधिकारी अपनी 'राय' (opinion) मात्र दे रहा होता है न कि न्यायिक निष्कर्ष। वास्तविक कर्तव्य तो पीठासीन अधिकारी का होता है जब वाद–पत्र अभिग्राही प्रभाग से संबंधित न्यायालय में पंजीयन हेतु आता है।

यहां यह बताना समीचीन होगा कि जिस प्रकार आ. 4 नि. 1 व्य.प्र.स. के अंतर्गत वादपत्र अभिग्राही प्रभाग में प्रस्तुत होता है उसी प्रकार अपील (आ. 41 नि. 01) प्रवर्तन आ. 21 नि. 10 व्य.प्र. स. के अंतर्गत प्रस्तुत होते है। यह बात भी नियम 37 में बताई है।

वाद–पत्र के संस्थित होने पश्चात संबंधित अभिग्राही अधिकारी नियम 38 के अंतर्गत उसकी जांच करेगा व संबंधित न्यायालय को नियम 39 के अंतर्गत अपना अभिमत प्रथम आदेशिका (Order Sheet) पर अंकित करके भेजेगा। यह समस्त कार्यवाही वाद–पत्र के उपस्थित होने से तीसरे दिन के अंदर पूर्ण होना चाहिए। नियम 37 (अ) में "प्रस्तुति की दिनांक से दो कार्य दिवस" शब्द का प्रयोग किया है। नियम 37 अ में न्यायिक अधिकारियों का कर्तव्य भी बताया है कि अभिग्राही अधिकारी की ओर से कोई देरी तो नहीं हो रही है इस बात की जांच भी समय समय पर होती रहना चाहिए।

पीठासीन अधिकारीगणों को दावे के उत्तरवाद के अभिकथन कैसे होना चाहिए इसकी समग्र माहिती होना चाहिए। मुझे सन 1994–1997 एवं सन् 2000 के अधिकांश नवनियुक्त व्यवहार न्यायाधीशों के संबंध में यह अनुभव रहा है कि उन्हें 'अभिकथन' (Pleading) के संबंध में जानकारी नहीं थी न जानकारी को समझने का गंभीरता से प्रयत्न किया गया मानो यह उनके कर्तव्य का अंग नहीं है या बन चुके की मुद्रा में उन्होंने अपने आपको प्रस्तुत किया।

अभिग्राही प्रभाग से जब वाद पत्र न्यायालय में आता है तब पीठासीन अधिकारी को वाद–पत्र के पंजीयन का आदेश देना होता है। उसके पूर्व पीठासीन अधिकारी ने स्वयं सरसरी रूप से उक्त वाद–पत्र का अवलोकन कर लेना चाहिए। (नोट : इस संबंध में माननीय न्यायाधिपति श्रीमान के.के. वर्मा (सेवानिवृत्त) ने भी एक लेख लिखा था जो **ज्योति 1998 खंड चार भाग पांच (अक्टूबर) पृष्ठ 8, 9, 10** पर प्रकाशित हुआ है उसके कुछ अंश त्वरित संदर्भ हेतु यहां प्रकाशित कर रहा हूं जो इस लेख पश्चात दिए हैं कृपया उस सम्पूर्ण लेख को भी अवश्य पढ़ लें, अत्यंत उपयोगी है।)

अभिग्राही प्रभाग से न्यायालय में वाद–पत्र प्राप्त होने के पश्चात आ. 6 एवं आ. 7 व्य.प्र.स. के प्रावधानों के अनुरूप वाद–पत्र है या नहीं यह देख लें। जो पदाधिकारी न्यायालय को, अपने पदीय कार्यकाल में जवाबदेह नहीं है उनके विरूद्ध तो वाद प्रस्तुत नहीं किया है यह देख लें। यदि ऐसा है तो उनके विरूद्ध वाद पंजीकृत नहीं होना हैं। वाद का पंजीयन होने के पूर्व विशेष रूप से निम्न तथ्यों को दावे के अभिकथनों के आधार से जांच कर लेना चाहिए।

(एक) अधिकारिता धारा 9 व्य.प्र.स. के अंतर्गत

(दो) दावे का कारण आ. 7 नि. 11 व्य.प्र.स. के अंतर्गत एवं पोषणीयता

(तीन) दावा अवधि में होना।

आ. 7 नि. 6 व्य.प्र.सं. के अनुरूप अभिकथन किए है या नहीं। यथा दावे के लिए मर्यादाकाल का अंतिम दिन रविवार है तो अथवा ग्रीष्म या शीत कालीन अवकाश के बाद दावा प्रस्तुत हुआ है तो अभिकथनों में ऐसा खुलासा होगा कि "यह कि दावा प्रस्तुत करने हेतु मर्यादा के दृष्टिकोण से अंतिम दिन कल दि. 29.10.2000 था लेकिन उस रोज रविवार का सार्वजनिक अवकाश होने से यह दावा आज दि. 30.10.2000 को प्रस्तुत किया जा रहा है जो धारा 4 मर्यादा अधिनियम सपठित आ. 7 नि. 06 व्य.प्र.स. के प्रावधानों के अनुरूप अवधि में है।" ऐसा सुस्पष्ट खुलासा हो।

(चार) आ. 7 नि. 3 के अनुसार दावा अंतर्गत (विवादित) संपत्ति का वर्णन या तो अभिकथन के रूप में हो या संपत्तियाँ ज्यादा हो तो दावे के अंग के रूप में परिशिष्ठ हो।

(पांच) कोर्ट फी व दावे के मूल्यांकन का अभिकथन एवं कितनी कोर्टफीस दी है इसका खुलासा हो। एक से अधिक सहायता चाहने पर धारा 17 कोर्ट फीस अधिनियम के प्रावधानों के अंतर्गत कोर्ट फीस देय होती है। यदि धारा 35 कोर्ट फीस अधिनियम के तहत कोर्ट फी देने से छूट है या अकिंचन होने की मांग करते कोर्ट फीस से छूट चाही है तो दावे में नीचे अनुसार अभिकथन होना चाहिए।

"यह कि वादी वाद का मूल्यांकन दावे के लिए एवं न्यायालय की अधिकारिता के लिए रूपये (जो भी रकम) करता है व उस पर रूपये (जो भी) कोर्ट फीस देय होती है लेकिन वादी यह वाद अकिंचन के रूप में आ. 33 नि. 1 के अंतर्गत प्रस्तुत कर रहा है अतः उक्त कोर्ट फीस न देते हुए अकिंचन के रूप में कार्यवाही करने हेतु निर्धारित आवेदन पत्र शुल्क रुपये (जो भी) कोर्ट फीस के रूप में दे रहा है। यदि धारा 35 कोर्ट फीस के अंतर्गत छूट चाही है तब मूल्यांकन व देय कोर्ट फीस का उपर अनुसार खुलासा करके यह लिखा जाएगा कि वादी उक्त निर्धारित कोर्ट फीस देने के लिए दायी नहीं है क्योंकि राज्य शासन द्वारा निर्गमित अधिसूचना (नोटिफिकेशन) क्रमांक (विस्तृत खुलासा होना ही चाहिए) के अंतर्गत कोर्ट फीस नहीं दे रहा है।

उपर उल्लेखित समस्त विशिष्ट कथनों को गंभीरता पूर्वक देख लें तथा जहां कहीं त्रुटि हो वहां वादी/आवेदक के अधिवक्ता से संशोधन करवा ले। ऐसे संशोधन हेतु आवेदन पत्र देने की आवश्यकता नहीं होती है क्योंकि वाद को पंजीकृत करने का आदेश नहीं दिया है। ये समस्त कार्यवाही पंजीयन के पूर्व कर लेने से भविष्य में होने वाली कठिनाईयों से अनावश्यक न्यायिक प्रक्रिया की कष्टदायक परिस्थितियों से बचा जा सकता है।

ध्यान रहे आ. 7 नि. 11 'सी' तथा 'डी' एवं आ. 7 नि. 10 व्य.प्र.स. के अंतर्गत कार्यवाही करने में अनावश्यक रूप से जल्दी या उतावलापन मत दर्शाना। कारण यह है कि ऐसे अधिकार का प्रयोग करने के पूर्व वादी को अथवा यथास्थिति वादी एवं प्रतिवादी को विधिवत सुनकर गुणदोष पर आदेश देना होता है। यदि एक दम दावा पंजीयन करने का आदेश देने के पूर्व ही आप सुनिश्चित, समाखरत (कॉक शुअर) है व आप त्वरित तुरंत फुरंत आ.7–नि. 10 या कि आ. 7 नि. 11 'सी' या 'डी' के अंतर्गत कार्यवाही करते है तब भी दावा पंजीयन हेतु आदेश अवश्य दे तथा आदेशिका में लिखे कि यह दावा केवल सांख्यिकीय (Statistical) उद्देश्य से पंजीकृत किया जा रहा है व वादी को इस कारण कोई अधिकार प्राप्त नहीं होगा। ऐसे पंजीयन का मुख्य उद्देश्य भविष्य में इस प्रकार के दावों के संदर्भ के लिए उपयोगी होगा। अभिलेखागार से यह रेकार्ड बुलाना हो या संदर्भ देखना हो तो दावे की पंजी से ऐसा संदर्भ देखा जा सकेगा। वैसे आ. 7 नि. 11 व्य.प्र.स. के अंतर्गत कब व कैसी कार्यवाही होती है यह बात **(2000) 2 ज्योति पृष्ठ 146 एप्रिल** में विस्तार से बताई है। तत्पश्चात् न्यायालय द्वारा आदेशिका लिखना होती है। यह आदेशिका ठीक उस आदेशिका के नीचे लिखी जाएगी जिस आदेशिका के साथ (नियम 39) वाद–पत्र अभिग्राही प्रभाग से प्राप्त हुआ है। उक्त आदेशिका में नीचे अनुसार लिखना श्रेयस्कर ही होगा अनुचित या अवैध नहीं।

01.11.2000

वादी द्वारा श्री ए.बी. शर्मा अधिवक्ता

2 प्रकरण आज सुनवाई हेतु अभिग्राही प्रभाग से प्राप्त हुआ। वाद–पत्र का अवलोकन किया (यदि त्रुटियां ज्ञात होती हैं तो उसमें सुधार किया जावे व उसमें क्या सुधार किया खुलासा हो)।

3. वाद पत्र प्रथम दृष्टा उचित रूप से लिपिबद्ध किया जाना ज्ञात होता है (देखें आ. 6 नि. 2 व्य.प्र.स.)। प्रकरण अवधि में होकर, उचित कोर्ट फीस देना प्रतीत होता है एवं इस न्यायालय के श्रवणाधिकार का भी ज्ञात होना पाया जाता है।

4. प्रकरण विधिवत दावों की ए/बी पंजी में/ या लघुवाद पंजी में पंजीकृत हो। (देखें नियम 369 अनुक्रमांक 1 एवं 2)

ध्यान रहे ऐसा कार्य यदि आप प्रशिक्षण काल में ही करते रहें या जिन्हें अभी तक ऐसा करने की उत्कंठा उत्पन्न न हुई हो वे भी यदि कुछ दिन नियमित रूप से ऐसा कर लेंगे तो उन्हें ऐसा करने का अभ्यास (आदत) हो जाएगा व भविष्य में जैसे ही वाद–पत्र प्रस्तुत होता है सरसरी रूप से वाद–पत्र पर दृष्टि डालते ही सहज रूप से वाद–पत्र चेक हो जावेगा।

दावे में पता फार्म, लेख्य सूची, लिस्ट ऑफ रिलायन्स (लेख्य सूची जो लेख्य पक्षकार के आधिपत्य में नहीं है जिन पर वह विश्वास करता है) भी प्रस्तुत होती है। लेख्य सूची की बारीकी से सूक्ष्मता से (मायन्यूटली) जांच रीडर से करवा कर लेख्य सूची में जहां लेखों के अनुक्रमांक समाप्त होते हैं उसके ठीक एकदम नीचे रिमार्क लगवा लें। क्योंकि यह महत्वपूर्ण कार्य होता है। लेख्य सूची में मूल विलेख लिख दिया गया हो एवं उसकी नकल ही प्रस्तुत हुई हो अथवा दिनांक कुछ हो तथा सूची में कुछ और ही लिखा हो, चार ही लेख प्रस्तुत किए हों लेकिन छह की सूची बना दी हो अथवा वास्तविक लेख संख्या के बाद ठीक नीचे अधिवक्ता ने हस्ताक्षर न किए हो एवं एकदम अंतिम किनारे पर हस्ताक्षर हो व प्रकरण के लंबित होते लेख्य सूची में तत्पश्चात छल कपट द्वारा कूट रचना भी की जा सकती है। अतः इस संदर्भ में सतर्क रहना आवश्यक होता है।

यहां यह बताना सुसंगत होगा कि जो लेख्य छोटे छोटे होते है जैसे पोस्ट ऑफिस से रजिस्ट्री करने के बाद मिलने वाली रसीद आदि उन्हें बड़े कागज पर बीच में चिपकाकर प्रस्तुत करने हेतु कहें। फोटो एवं उसकी निगेटिव को भी लिफाफे में बंद करके प्रस्तुत करने को कहें जिससे बार बार फाइलिंग के कारण उनका क्षरण नहीं होगा। फोटो के किनारे धार धार होने से लिफाफा अपने आप कट जाता है अतः उन्हें पहले एक बड़े कागज में घड़ी करवाकर लिफाफे में रखें तथा लिफाफे पर उपर नीचे आल्पीन लगवा दें जिससे लिफाफा फटने की संभावना कम होगी। लिफाफे पर न्यायालय का नाम, प्रकरण क्रमांक व पक्षकारों के नाम लिखवा लें व फोटो पर भी वैसा

ही करें। निगेटिव पर ग्लास पेन से लिखा जाता है। ध्यान रहे शादी ब्याह ग्रीटिंग आदि के लिफाफे हमेशा सम्हालकर रखा करें। काम आते हैं।

मित्रो! धारा 5 मर्यादा अधिनियम के प्रावधान आ. 21 व्य.प्र.स. के आवेदन पत्रों के लिए एवं दावों के लिए लागू नहीं होते हैं अतः पीठासीन अधिकारी के निवास स्थान पर भी मर्यादाकाल के अंतिम दिन कार्य अवधि पश्चात ऐसे दावे आदि आ सकते हैं उन्हें घर पर लेना चाहिए एवं दावे पर रिमार्क लगाएं कि आज दि. (उल्लेख करें) को यह वाद–पत्र/आवेदन पत्र निवास स्थान पर अमुक–अमुक ने प्रस्तुत किया जो कल न्यायालय में प्रस्तुत होगा एवं हस्ताक्षर करें। उसके साथ आदेशिका लगाकर ऐसा ही लिखें व पीठासीन अधिकारी अपने हस्ताक्षर करें एवं संबंधित पक्षकार अथवा/ एवं अधिवक्ता के, जैसी भी स्थिति हो, हस्ताक्षर करा लें। घर पर दावे अथवा आवेदन पत्र प्रस्तुत होने पर ग्रहण करना चाहिए यह बात व्यवहारिक है (Rule of Prudence)। लेकिन न्याय दृष्टांतों के कारण ही हम विश्वास करेंगे ऐसा मेरा अटूट विश्वास है अतः ये न्याय दृष्टांत भी देख लें। **ए. आय. आर. 1925 मद्रास 201, ए.आय.आर. 1937 बॉम्बे 25 एवं 1938 एन.एल.जे. 44** विस्तृत अध्ययन हेतु व्य.प्र.स. के आ. 4 नि. 1 एवं 2 की टिप्पणी, अच्छे लेखक की पुस्तक से, पढ़ने का कष्ट कर सकते हैं।

कभी–कभी अर्जेन्ट दावे अधिवक्ता सीधे न्यायालय में प्रस्तुत करते हैं। अतः उनसे एक आवेदन पत्र भी लें कि यह दावा अर्जेन्ट प्रकृति का है जो सुनवाई हेतु आज ही लिया जावे। ऐसे आवेदन पत्र के आधार से आप आदेशिका प्रारम्भ करें। उसमें अन्य बातों के अलावा यह लिखें कि चूंकि यह प्रकरण न्यायालय के दृष्टि से त्वरित सुनवाई का है अतः अभिग्राही प्रभाग को निर्देशित किया जाता है कि वाद–पत्र को आज ही ग्रहण कर इस न्यायालय को तुरंत भेजे। सम्बन्धित आवेदन पत्र पर पीठासीन अधिकारी अपने हाथों से पृष्ठांकित करें कि आज दिनांक को श्री ..... अधिवक्ता ने प्रस्तुत किया। ऐसी आदेशिका व आवेदन पत्र अभिग्राही विभाग में भेज दे। उस आदेशिका पत्र पर ही अभिग्राही विभाग आवश्यक कार्यवाही करके वाद–पत्र आपके यहां भेज देगा। ऐसा करने से अभिग्राही विभाग में वाद–पत्र से सम्बन्धित प्रविष्टी, कोर्ट फी का विवरण आदि अंकित होगा। आपके आदेश के पालन में तीन दिन के बजाय उसी दिन दावा आपके यहां विधिवत आ जाएगा। यह कार्य इस प्रकार से विधिवत होगा। किसी को मनमानी करने का कारण शेष नहीं रहेगा।

मित्रों सामान्य प्रक्रिया का वर्णन आपके सामने प्रस्तुत है। नियम 37 से 41 तक त्वरित संदर्भ हेतु आपको यही प्रकाशित किए जा रहे है एवं माननीय श्री के.के. वर्मा महोदय के लेख के अंश भी आपके लिए प्रकाशित किए हैं। शेष जो रह जाता है वह हम आपको करना है। वह ऐच्छिक है अनिवार्य नहीं। जो ऐच्छिक है वह व्यवहार में नहीं किया जाता है जिसे हमें ठीक से करना है। आप करो घटित होगा, यह सुनिश्चित।

म.प्र. व्यवहार न्यायालय नियम
वाद-पत्रों की जांच तथा प्रस्तुति, पंजीयन आदि
(PRESENTATION, REGISTRATION, ETC, AND EXAMINATION OF PLAINTS)

इस अध्याय के नियम व्यवहार प्रक्रिया संहिता के आदेश 4 व 7 से संबंधित हैं तथा इन नियमों में वाद–पत्र की जांच, उनकी प्रस्तुति, उनका पंजीयन, उनकी वापसी तथा उनकी अस्वीकृति आदि संबंधी प्रावधान है। यह नियम भी विज्ञप्ति क्र. 1924 के द्वारा दिनांक 19–6–61 से प्रभावशील हुए हैं।

नियम 37. वाद–पत्र न्यायालय अथवा ऐसे अधिकारी, जिसे कि न्यायालय ने लिखित रूप में इस आशय के लिये नियुक्त (आदेश 4 नियम 1) किया हो के समक्ष, नियम 1 द्वारा निर्धारित न्यायालय के समय में प्रस्तुत किये जाना चाहिये। इस प्रकार नियुक्त किया जाने वाला लिपिक–वर्गीय अधिकारी, आदेश 7 नियम 9 (4) के आशयों के लिये मुख्य लिपिक वर्गीय–अधिकारी (Chief Ministerial Officer) होगा।

नोट (1) सिविल जिले के मुख्यालय के स्थान पर इस प्रकार नियुक्त किया जाने वाला अधिकारी या तो न्यायालय अधीक्षक (Clerk of Court) या न्यायालय उपअधीक्षक (Deputy Clerk of Court) अथवा कोई ऐसा अन्य अधिकारी जिसे जिला न्यायाधीश उचित समझें, होगा। यह ध्यान रखा जावे कि इस आशय के लिये प्रत्येक व्यक्तिगत न्यायालय पृथक आदेश लिखित रूप में लिपिबद्ध करेगी, तथा जिला जज द्वारा एक सामान्य आदेश पर्याप्त नहीं होगा।

नोट (2) यह नियम, अपील के ज्ञापन (Memoranda of Appeal) तथा आवेदनपत्रों को भी लागू होगा [आदेश 41 नियम (1) तथा आदेश 21 नियम (10)]

37. (अ) उस अधिकारी को जिसका कि कर्तव्य वाद–पत्र, आवेदन–पत्र आदि प्राप्त करना है, उनकी जांच तत्क्षण ही करने का प्रयत्न करना चाहिये तथा उसी समय आवश्यक दुरूस्ती, यदि कोई हो तो, करवा लेना चाहिये। यदि परिस्थितियोंवश तत्काल जांच न हो सके तो उसे प्रस्तुत कर्ता को रोकना नहीं चाहिये, बल्कि उसे उपस्थित होने के लिये दिनांक एवं समय की सूचना दे देना चाहिये। यह दिनांक, उन वाद–पत्रों आदि की दशा में जिन में कि हिसाबों की जांच होना है, के अतिरिक्त, प्रस्तुति की दिनांक से दो कार्य दिवस से अधिक आगे की नहीं होना चाहिये। ऐसी दशा में नियत दिनांक या तो कार्य दिवस के अन्दर की होगी या अधिक से अधिक उस सप्ताह के अंतिम कार्य दिवस की होगी। यदि दिनांक एवं समय नियत किये जाते हैं तो उनका इन्द्राज, प्रस्तुत लेख के साथ संलग्न, आदेश–पत्र (Order sheet) पर किया जाना चाहिये। बाह्य स्थानों (Out-stations) पर पीठासीन न्यायाधीश को, तथा मुख्यालयों पर इस आशय

हेतु नियुक्त न्यायाधीश को चाहिये कि यह देखने के लिये कि, कहीं विलम्ब तो नहीं किया जाता है, इस नियम के अंतर्गत सप्ताह में कम से कम एक या दो बार न्यायालय के उठने के समय उन लेखों जो प्राप्तकर्ता अधिकारी के पास विचाराधीन पड़े हों, का निरीक्षण करें तथा इस निरीक्षण का तथ्य अपनी न्यायिक दैनंदिनी (Judicial Diary) में लेख करें।

यह वर्जित है कि, प्राप्तकर्ता अधिकारी को जो वाद-पत्र, आवेदन पत्र आदि प्रस्तुत किये जाते हैं उन्हें वह इस आधार पर लेने से इन्कार करें कि वे उनकी जांच उस समय करने में असमर्थ हैं।

38. प्राप्तकर्ता अधिकारी वाद–पत्र की जांच, यह प्रतीत करने के लिये करेगा कि, विधान की सभी आवश्यकताओं का पालन किया गया है या नहीं। यह जांच अन्य बातों के अलावा, निम्न बातों के निर्धारण की दिशा में होना चाहिये :–

(1) क्या वाद–पत्र में निर्धारित मूल्यांकन के अनुसार, उस पर उचित मुद्रा–पत्र लगाया गया है (इस संबंध में भाग 5 के अनुलग्न 2 के अनुदेश देखिये)।

(2) क्या वह उचित रूप से हस्ताक्षरित तथा सत्यापित है (आदेश 6 नियम 14 तथा 15)

(3) क्या वह आदेश 7 के नियम 1 से 8 की आवश्यकताओं की पूर्ति करता है?

(4) क्या, भूमि की प्राप्ति के प्रकरण में उसमें दावाकृत (Claimed) भूमि के पर्याप्त विवरण वर्णित किये गये हैं, जैसे कि यदि कोई पूरा भूखण्ड या खेत, जिसका कि पृथक से मानांक निर्धारित है, दावाकृत है, तो, वाद–पत्र में उसका मानांक (Survey Number) तथा क्षेत्रफल वर्णित है, अथवा यदि ऐसी किसी मानांक का केवल कोई भाग दावाकृत है, तो क्या वाद–पत्र में दावाकृत क्षेत्रफल विशेष रूप से सीमांकित किया गया है तथा उसकी स्थिति एवं सीमायें वाद–पत्र के साथ प्रस्तुत मानचित्र में स्पष्ट रूप से दर्शायी गई हैं?

(5) क्या उसके साथ वाद–पत्र की आवश्यक प्रतिलिपियां तथा आदेशिका शुल्क दिये गये हैं?

(6) यदि कोई लेख–पत्र भी वाद–पत्र के साथ संलग्न किये गये हैं। तो क्या उनके साथ निर्धारित प्रारूप (आदेश 7 नियम 9 (1) में सूची दी गई है ?

(7) क्या उसके साथ आदेश 7 नियम 19 (म.प्र. संशोधन) द्वारा आवश्यक वादी का पंजीकृत पता दिया गया है?

(8) क्या अल्पवयस्क वादियों एवं प्रतिवादियों की दशा में, आदेश 32 नियम 1 एवं 3 की आवश्यकताओं का पालन किया गया है, तथा आवश्यक प्रार्थना–पत्र एवं उसके समर्थन में अल्पवयस्क प्रतिवादी के प्रस्तावित वाद–कालीन अभिभावक (Guardianad litem) की उपयुक्तता को सत्यापित करते हुये शपथ–पत्र दिया गया है?

(9) क्या वाद न्यायालय के प्रादेशिक एवं आर्थिक (Territorial and Pecuniary) क्षेत्राधिकार के अन्दर का है?

(10) क्या दावा, प्रत्यक्षतः अवधि अन्दर है?

(11) क्या प्रतिनिधि--पत्र (वकालत नामा) अभिभाषक द्वारा नियमानुसार स्वीकृत एवं पृष्ठांकित (Endorse) है, तथा क्या अनाक्षर निष्पादक की दशा में उसे नियम 9--अ के अनुसार प्रमाणित किया गया है?

टिप्पणी :- उपरोक्त नियम 38 (1) में जो भाग 5 के अनुलग्न 2 का उल्लेख है वह पहिले के नियमों के संदर्भ में है। वर्तमान नियमों के साथ कोई अनुलग्न विज्ञापित नहीं हुआ है। वह अनुलग्न (2) इस पुस्तक के पृष्ठ 301 पर संलग्न क्र.3 के रूप में उद्धृत किया गया है।

वाद--पत्र में अनुमानित वाद धन बताया जाना आवश्यक है (***अंबिका प्रसाद वि. शिवशंकर, 1963 म.प्र. लॉ जर्नल 86, ए.आई.आर. 1963 म.प्र. 194***)। वादग्रस्त भूमि की सीमा निश्चित की जा सके ऐसा वर्णन होना चाहिये (***लक्ष्मीचंद वि. नेमीचंद, 1960 म.प्र. लॉ जर्नल 687***)।

39. वाद--पत्र की जांच के पश्चात अधिकारी अपनी राय निम्नलिखित रूप में अंकित करेंगे।

"दिनांक ..... को श्री .....

द्वारा प्रस्तुत, उचित रूप में लिखित है, प्रत्यक्षतः अवधि अन्दर है, तथा उचित रूप से मुद्रांकित है।"

उसके पश्चात् वह उसकी प्रविष्टि जहां आवश्यक हो, अपने वाद--पत्र एवं आवेदन पत्रों की प्राप्ति की पंजी (क्र. II 78) में करेंगे तथा उसे संबंधित न्यायालय में भेज देंगे।

नोट (1) यह नियम आवेदन--पत्रों तथा अपील के ज्ञापनों पर भी लागू होगा।

(2) यह पंजी, उसमें की अंतिम प्रविष्टि के 3 वर्ष बाद नष्ट कर दी जावेगी।

(3) जांच करने वाला अधिकारी किसी कारण से वाद--पत्र को वापसी या अस्वीकृति (Rejection) योग्य समझता है तो उसे वह आदेश हेतु न्यायाधीश के पास भेजेगा।

40. कोई वादी, यदि वह चाहे तो वाद पत्र के साथ निम्न प्रारूप में पावती चिट्ठी (Acknowledgement) उसके स्तंभ (खाना) क्र. 1 से 3 भर कर लगा सकता है। वाद--पत्र प्राप्त करने वाला अधिकारी खाना नं. 1 से 3 की प्रविष्टियों की जांच करके, खाना नं. 4 में आवश्यक प्रविष्टि करेगा, तथा वह चिट्ठी तत्काल वाद--पत्र प्रस्तुत करने वाले व्यक्ति को वापिस कर देगा। न्यायालय के पीठासीन अधिकारी, समय--समय पर

इस बात का संतोष करेंगे कि यह चिट्ठियां (Slips) पक्षकारों को अवलिंब लौटाई जाती है।

पावती चिट्ठी

वाद-पत्र, अपील का ज्ञापन या आवेदन-पत्र प्रस्तुतकर्ता का नाम एवं पता।	प्रस्तुत लेख का विवरण तथा पक्षकारों का नाम।	न्यायालय का विवरण जिसमें कि यह लेख पेश किया गया है।	उस लेख को प्राप्त करने वाले अधिकारी के हस्ताक्षर तथा प्राप्ति की दिनांक।

41. वाद–पत्र स्वीकार किये जाने पर उसे व्यवहार वादों की पूंजी (Register of Civil Suits) में पंजीकृत किया जावेगा तथा उसकी प्रविष्टि न्यायिक दैनंदिनी (Judicial Diary) तथा प्रकरणों की सूची (Cause List) में किया जायेगा। सामान्यतया, स्वीकृत किये जाने के दिनांक से दो दिन के अन्दर उसका पंजीयन हो जाना चाहिये।

टिप्पणी :- इस अध्याय में वाद की जांच के तथा प्रस्तुति कें संबंध में प्रावधान है। वाद–पत्र, न्यायालय अथवा न्यायालय द्वारा इस आशय हेतु नियुक्त सक्षम अधिकारी के समक्ष प्रस्तुत किया जाना चाहिये। यही प्रावधान व्यवहार प्रक्रिया संहिता के आदेश 4 नियम 1 में है। आदेश 4 नियम 1, के मध्यप्रदेश संशोधन में यह भी आवश्यक रखा गया है कि वाद–पत्र के साथ प्रतिवादीगण को दिये जाने हेतु प्रतिलिपियां तथा उनकी तलवी हेतु आह्वान–शुल्क भी दिया जाना चाहिये। वाद–पत्र की जांच में नियम 83 की सभी बातों का ध्यान रखा जाना आवश्यक है। नियम 38 (3) में जो आदेश 7 के नियम 1 से 8 तक का उल्लेख है, उसमें तात्पर्य निम्न बातों से है :–

(1) वाद–पत्र में न्यायालय का नाम, पक्षकारों के नाम, पते, निवास स्थान, वाद कारण (Cause of Action) उत्पन्न करने वाले तथ्य, विक्षिप्त अथवा अल्पवयस्क पक्षकारों का विवरण, न्यायालय का अधिकार क्षेत्र प्रदर्शित करने वाले तथ्य, वादी द्वारा चाही गई सहायता, वादी द्वारा स्वीकृत प्रति–प्राप्य (Set-off) धन की राशि, वादी द्वारा छोड़े गये (Relinquished) धन की राशि, यदि कोई हो, न्याय–शुल्क एवं अधिकार क्षेत्र हेतु वाद के विषय का मूल्य, स्पष्टतः वर्णित होना चाहिये (आदेश 7, नियम 1)।

(2) यदि वाद किसी धन की वसूली का है तो धन की निश्चित राशि वर्णित की जानी चाहिये, तथा यदि वाद अन्तःकालीन लाभ धन (Mesne profits), या ऐसे धन का है जिसकी राशि का निर्धारण हिसाबों के निश्चित होने पर ही हो सकता है, तो वाद–पत्र में अंदाजन धन राशि (Approximate Amount) वर्णित किया जाना चाहिये (आदेश 7, नियम 2)।

(3) यदि वाद का विषय कोई अचल संपत्ति है तो उसकी सीमायें, उसकी जानकारी हेतु पर्याप्त विवरण, मानांक, व्यवस्थापन अभिलेख के क्रमांक, आदि बताना चाहिये (आदेश 7, नियम 2)।

(4) यदि वादी ने वाद प्रतिनिधि के रूप में (Representative character) किया है तो यह बतायेगा कि उसका उस विषय में वर्तमान हित है तथा उसने इस प्रकार का वाद लाने हेतु इस संबंध में आवश्यक उपाय, यदि कोई हो, प्रयोग में लाये हैं (आदेश 7, नियम 4) (यहां आदेश 1 नियम 8 का भी ध्यान रखना आवश्यक है)।

(5) वादी यह भी बतावेगा कि वाद विषय में प्रतिवादी का हित है या वह अपना हित होना बताता है तथा उस पर वादी की मांग के संबंध में उत्तर देने का दायित्व है (आदेश 7, नियम 5)।

(6) यदि विधान में निर्धारित अवधि के पश्चात वाद प्रस्तुत किया गया है तो ऐसे विधान से मुक्ति चाहने के लिये आधारों (Grounds of Exemption) का उल्लेख वाद–पत्र में होना चाहिये (आदेश 7, नियम 5)।

(7) वाद–पत्र में साधारणतया तथा वैकल्पिक रूप में चाही गई सहायताओं का भी स्पष्ट उल्लेख होना चाहिये (आदेश 7, नियम 7)।

(8) यदि वाद–पत्र में भिन्न भिन्न एवं पृथक आधारों पर आधारित कतिपय पृथक दावों (Claims) या वाद कारणों के संबंध में सहायता चाही है तो उनका उल्लेख जहां तक हो सके पृथक पृथक होना चाहिये (आदेश 7, नियम 8)।

वाद–पत्र की स्वीकृति, वापिसी एवं अस्वीकृति संबंधी प्रावधान, आदेश 7, नियम 9,10, 11 तथा 12 में है

साभार : प्रकाशक चांदुरकर प्रकाशन एवं लेखक श्री शांतिकुमार जैन से.नि. जिला न्यायाधीश

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प्रक्रिया विधि संबंधी विवरण

के.के. वर्मा
पूर्व न्यायाधिपति

वाद-पत्र का प्रारंभिक परीक्षण

1. वादी को अपना वाद पत्र न्यायालय में न्यायाधीश के समक्ष या न्यायाधीश के लिखित आदेश से इस हेतु प्राधिकृत न्यायालयीन कर्मचारी के समक्ष न्यायालयीन कार्य के लिये निर्धारित घंटों में प्रस्तुत करना चाहिए। (देखें धारा 26, आदेश–4, नियम–1, उपनियम (1) तथा नियम 37, नियम एवं आदेश (सिविल)।

2. न्यायालयीन कार्य करने के समय के बाद वाद–पत्र न्यायाधीश के निवास स्थान पर

भी प्रस्तुत किए जाने पर न्यायाधीश द्वारा लिए जा सकते हैं। (देखें ए.आर.आर. 1925 मद्रास 20, ए.आय.आर. 1937 बॉम्बे 25 एवं 1938 एन.एल.जे. 44)

3. इस प्रक्रिया के बाद वाद का प्रारंभिक परीक्षण दो अवसरों पर किया जावेगा। पहले अवसर पर न्यायाधीश को, या उसके द्वारा प्राधिकृत न्यायालयीन कर्मचारी को यह परीक्षण उसी दिन करना चाहिये। यदि परिस्थिति ऐसी हो कि उसी दिन परीक्षण संभव न हो तो वादी या उसके वकील को उक्त परीक्षण के लिए एक अन्य तारीख, जो आगामी दो कार्य दिवस के बाद की न हो और उस समय एक आर्डरशीट में लिखकर विनिश्चित कर सूचित करना चाहिए।

4. प्रथम प्रारंभिक परीक्षण में निम्नलिखित 11 बिन्दुओं पर नियम एवं आदेश सिविल के नियम 10, 12, 14 (1), (2) 15 (1) तथा 16 से 38 और 39 (2) को देखकर ध्यान देना चाहिए :–

   1. वाद के मूल्यांकन के अनुसार ठीक कोर्ट की स्टाम्प पर वाद पत्र लिखा गया है, या ठीक मूल्य के चिपकाने वाले कोर्ट–फी टिकिट लगाये गये हैं।
   2. क्या वाद पत्र पर सत्यापन (व्हेरीफिकेशन) के उपर वादी/वादीगणों के हस्ताक्षर हैं (देखें आदेश–6, नियम–14 व्य.प्र.सं.) और उक्त हस्ताक्षर के नीचे सत्यापन आदेश–6 नियम 15 (1) (2) और (3) के अनुसार हुआ है।
   3. क्या वादपत्र आदेश 7 के नियम 1 से 8 के अनुसार लिखा गया है।
   4. क्या भूमि का कब्जा वापस पाने के मामले में वादपत्र में वादग्रस्त भूमि का पूर्ण वर्णन किया गया है। याने यदि सरकारी लेखों में वादग्रस्त भूमि को कोई खसरा नं. या प्लाट नं. दिया गया हो तो उस नंबर का तथा उस भूमि के क्षेत्रफल का उल्लेख हुआ है या ऐसे किसी खसरा नंबर या प्लाट नंबर में से किसी खंड के लिए दावा हुआ हो तो उस अंश के निम्नलिखित विवरण दर्शित नाप के आधार पर बनाए गए नक्शा वादपत्र के साथ संलग्न है।

विवरण

   1. विवादग्रस्त भूमिखंड का क्षेत्रफल
   2. संबंधित सर्वे नंबर या प्लाट नंबर में विवादित भूमिखंड की स्थिति, उत्तर, दक्षिण पूर्व, पश्चिम में या केन्द्र या कोने में।
   3. भूमिखंड की चारों भुजाओं की लंबाई/चौड़ाई (देखें आदेश–7 नियम–3 व्य. प्र.सं.)
   5. क्या वादपत्र के साथ उसकी उतनी सत्यप्रतिलिपियां हैं, जितने प्रतिवादी हैं, और उन प्रतिवादियों की उपसंजाती के उचित प्रोसेस फीस संदाय हुई है (देखें आदेश–7 नियम–9 उपनियम (1) और उपनियम (1–क) व्य.प्र.सं.)

6. क्या वादपत्र के साथ प्रस्तुत डाकुमेन्ट्स के साथ ऐसी लिस्ट पेश है जिसमें उन डाकुमेन्ट्स का पूर्ण विवरण है (आदेश–7, नियम–9 उपनियम (1)

7. क्या वादपत्र के साथ वादी ने अपना रजिस्टर्ड पता प्रस्तुत किया है (देखें आदेश–6, नियम 14–क व्य.प्र.सं.) तथा नियम 113 (नियम एवं आदेश सिविल)

8. यदि वादी अवयस्क या असंतुलित मस्तिष्क का है, उसके वादमित्र (नेक्स्ट फ्रेन्ड) के विषय में तथा प्रतिवादी अवयस्क है तो उसके वाद संरक्षक (गार्जियन फार द सूट, संक्षेप और जी.ए.एल.) की नियुक्ति के विषय में, आदेश 32 नियम 1,3,4,5 तथा 15, व्य.प्र.सं. का पालन हुआ है?

   (अवश्य देखें नियम 111 से 115 नियम व आदेश सिविल)

9. क्या वाद न्यायालय के 'पिक्यूनरी' (आर्थिक) तथा (भौतिक) क्षेत्रीय अधिकारिता के अन्तर्गत है।

10. क्या दावा (क्लेम) प्रथम दृष्टया (अॅपरंटली) समयावधि में प्रस्तुत हुआ है।

11. क्या वकील पत्र को वकील ने नियमोचित ढंग से स्वीकार व पृष्ठांकित किया है और अनपढ पक्षकारों के वकील पत्र पर अटेस्टेशन हुआ है? (देखें आदेश–3, नियम–4, उपनियम (1), (2), (4) व्य.प्र.सं.)

5. जब वाद पत्र के प्रथम प्रारंभिक परीक्षण में यह समाधान हो जावे कि सब ठीक है तो न्यायाधीश या प्राधिकृत न्यायालयीन कर्मचारी वादपत्र पर यह कथन पृष्ठांकित करेगा और उसके नीचे हस्ताक्षर करेगा और तारीख लिखेगा।

   वादी (नाम) ..... / एडवोकेट (नाम) .....

   द्वारा तारीख ..... को प्रस्तुत वादपत्र ठीक ढंग से लिखा गया है, वाद प्रथम दृष्टया समयावधि में है और वादपत्र पर समुचित कोर्टफीस है (देखें नियम–30 (1) नियम एवं आदेश सिविल)

   उस दिन की आर्डर शीट में उपयुक्त परीक्षण का जिक्र करके वादी/अभिभाषक को एक तारीख दी जावेगी जिस पर न्यायालय द्वारा वादपत्र स्वीकृति करने या न करने की कार्यवाही अपेक्षित है इस आर्डरशीट पर न्यायाधीश के हस्ताक्षर होंगे।

6. बढाई गयी तारीख पर न्यायाधीश वादपत्र का इस दृष्टि से अतिरिक्त परीक्षण करेंगे कि वादपत्र (पंजीयन के लिए) और अग्रिम सुनवाई कि लिए स्वीकृत किए जाने योग्य है या नहीं। यह कर्तव्य इसलिए है कि यह बात प्रारंभिक अवस्था में वादपत्र के प्रकथनों पर प्रथम दृष्टया देखी जा सके कि वाद (1) उनके न्यायालय के क्षेत्राधिकार में है या अन्य किसी न्यायालय के क्षेत्राधिकार में प्रस्तुत होना था और

उर्पयुक्त दूसरी स्थिति में वादपत्र आदेश–7 नियम–10 (व्यवहार प्रक्रिया संहिता) के अन्तर्गत वादपत्र वादी को उपर्युक्त न्यायालय में प्रस्तुत करने के लिए वापस किया जा सके।

7. यदि वाद जिस न्यायालय में वादपत्र प्रस्तुत हुआ हो उसी न्यायालय में ही सुनवाई के योग्य पाया जाए तो भी यह वादपत्र के प्रकथनों का परीक्षण किया जाना अभिप्रेत है कि कहीं वादपत्र आदेश–7 नियम–11 (व्यवहार प्रक्रिया संहिता) के चार अनुबंधों में वर्णित दोषों के कारण अस्वीकृत तो नहीं किये जाने का पात्र है।

8. यदि वादपत्र आदेश--7 के नियम 10 या 11 (व्यवहार प्रक्रिया संहिता) के अंतर्गत वादी को लौटाए जाने या अस्वीकृत किए जाने का पात्र नहीं दिखता तो न्यायालय यह आदेश पारित करेगी कि वादपत्र स्वीकृत किया जाता है, वाद का (न्यायालय की व्यवहार वाद पंजी) में पंजीयत हो इस आदेश के बाद दो कार्य दिवसों में वाद का व्यवहार वाद पंजी में पंजीयन होना चाहिए। (देखें नियम 41 नियम व आदेश सिविल तथा आदेश 4 नियम 2 व्यवहार प्रक्रिया संहिता।

9. उर्पयुक्त आदेश के साथ न्यायालय प्रतिवादी को न्यायालय में उपस्थित होकर दावे का उत्तर देने के लिए सूचित करने के लिए समंस निकालने का आदेश देगा (देखें आदेश 5 नियम 1 से 6 व्य.प्र.सं. तथा नियम 42 से 45 तथा नियम (1) नियम व आदेश सिविल)

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आदेश 4

वादों का संस्थित किया जाना

नियम 1. वादपत्र द्वारा वाद प्रारंभ होगा

(1) हर वाद न्यायालय को या उसके द्वारा इस निमित्त नियुक्त किसी अधिकारी को वादपत्र उपस्थित करके संस्थित किया जाएगा।

(2) हर वाद पत्र आदेश 6 और 7 में अन्तर्विष्ट नियमों का वहां तक अनुपालन करेगा जहां तक वे लागू किए जा सकते हैं।

नियम 2. वादों का रजिस्टर

न्यायालय हर वाद की विशिष्टियों को, उस प्रयोजन के लिए रखी गई पुस्तक में जो सिविल वादों का रजिस्टर, कहलाएगी, प्रविष्ट कराएगा। ऐसी प्रविष्टियां हर वर्ष उसी क्रम में संख्यांकित होंगी जिसमें वादपत्र ग्रहण किए गए हैं।

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आज से बेहतर कल हो

जागृत रखने के लिए जागते रहो स्तंभ का सिलसिला चालू रहना जरूरी है। रोडवेज की बस में बैठकर. सुस्ताते समय कभी आजू वाले के तो कभी बाजूवाले के कंधे पर सिर लुड़कता है। पड़ोस का यात्री कुछ देर सहन करता है फिर जगा देता है लेकिन फिर सर लुड़का देता है तो दूसरा व्यक्ति अपने ही कंधे को धीरे से झटका दे देता है तो सुस्ताने वाला व्यक्ति कुछ देर के लिए ही सही जाग जाता है। यह सिलसिला तब तक चलेगा जब तक नौकरी की बस चलेगी एवं यात्री के रूप में हम आप सुस्ताएंगे।

यह सर्व विदित है कि न्यायालय का समन्स प्रकाशन का न्यूनतम व्यय लगभग एक हजार रुपये लगता है। यह व्यय पक्षकार करता है। समन्स न्यायालय के पीठासीन अधिकारी के हस्ताक्षर से निर्गमित होता है। सर्वसाधारण व्यक्ति पढ़ता है व विधि क्षेत्र के लोग भी पढ़ते हैं। दो बातें तो निश्चित रूप से सामने आती हैं। पीठासीन अधिकारी का न्यायालयीन कार्यवाही पर क्या नियंत्रण है तथा उसके न्यायालय के प्रशासन पर क्या नियंत्रण है। आम व्यक्ति न्यायालयीन कार्यवाही का मूल्यांकन भी करता रहता है। इस संस्था ने **ज्योति खंड तीन भाग दो अप्रैल 1997 पृष्ठ 47 व 48** में "प्रति स्थापित निर्वाह" के माध्यम से विस्तार से इस विषय पर लेख भी लिखा था एवं प्रशिक्षण शिविरों में बार–बार इसी बात को दोहराया भी जाता रहा है **ज्योति खंड पांच भाग छह दिसम्बर 1999** में पुनः दोहराया है। लेकिन इस विषय पर पत्रिका के माध्यम से पुनः बताने का अवसर आया है। अच्छा है,

करत करत अभ्यास के जड़मति होत सुजान।
रसरी आवत जात है सिल पर पड़े निसान।।

एक समन्स का सारभूत भाग यहां प्रकाशित कर रहा हूं जो इस प्रकार है–

x x x

"क्योंकि अपीलार्थी ने उपर लिखित मुकदमें में आदेश 5 नियम 17 सी.पी.सी. का आवेदन प्रस्तुत किया है।

इसलिए तुम्हें नोटिस दिया जाता है कि तुम खुद या मार्फत किसी वकील के जिसे मुकदमें का हाल अच्छी तरह समझा दिया गया हो तारीख (मैंने छोड़ दी) को दिन 11 बजे से अदालत में हाजिर होकर दरख्वास्त के खिलाफ सबब बतलाओ नहीं तो तुम्हारी गैर हाजिरी में प्रकरण की सुनवाई कर फैसला किया जावेगा।"

x x x

अब इस समन्स को तसल्ली से पढ़ें। समन्स' निर्गमित करने का कारण यह है कि अपीलार्थी ने आ. 5 नि. 17 सी.पी.सी. का आवेदन पत्र प्रस्तुत किया है। यदि उस आवेदन पत्र के विरूद्ध उत्तरवादी न्यायालय में आकर कारण नहीं बताएगा तो उक्त आवेदन का फैसला नहीं किया जावेगा अपितु अपील का ही फैसला कर दिया जाएगा। अपील की विषय वस्तु का ज्ञान कराने का दायित्व न्यायालय का नहीं है क्या? अब देखें कि उक्त आ. 5 नि. 17 क्या कहता है। आ. 5 नि. 17 के अंतर्गत जब प्रतिवादी समन्स को प्रतिग्रहित करने से मना कर देता है अथवा वह उपलब्ध न हो तो प्रक्रिया दर्शाई है। विषयांकित सूचना पत्र से, जो प्रकाशित हुआ है, उसका क्या अर्थ इस परिस्थिति में लगाया जावेगा? मानों इस प्रकाशन के पालन में भी उत्तरवादी नहीं आता है तो न्यायालय क्या कर लेगा? समन्स में लिखा है कि वो नहीं आएगा तो अपील का अंतिम निराकरण कर दिया जाएगा। याने उत्तरवादी को सूचना पत्र आ. 5 नि. 17 के आवेदन पत्र के प्रस्तुति की सूचना दी है तथा वह न आने पर वास्तव में न्यायालय ने आ. 5 नि. 17 के आवेदन पत्र का निराकरण मात्र करना चाहिए न कि अपील का। अब यदि उत्तरवादी को समन्स के प्रकाशन द्वारा निर्वाह हो जाने पर भी नहीं आता है तो, अपील का निराकरण कर दिया जाता है व बाद में उक्त प्रकरण के एक पक्षीय निर्णय को अपास्त करने हेतु इसी आधार पर आवेदन पत्र आता है तो न्यायालय क्या करेगा? ये बात तो हो गई न्यायिक नियंत्रण की। दूसरी बात सामने आती है वह प्रशासनिक नियंत्रण की। ऐसी भूलें क्यों होती हैं? पूर्व में भी एक ऐसे न्यायिक अधिकारी से मेरा वार्तालाप हुआ था। उनके न्यायालय के समन्स की भाषा भी ऐसी ही थी जैसी इस समन्स की। वे स्वयम् उच्च हिन्दी का व मानक हिन्दी का प्रयोग करते हैं। उनसे पूछने पर उन्होंने तपाक से उत्तर दिया कि क्या करें स्टाफ मानता ही नहीं। अर्थात ऐसे मामलों में भी स्टाफ के मानने न मानने की बात आ जाती है। अर्थात मामला कुछ भी हो ले दे के स्टाफ पर जिम्मेदारी डाल दो। अर्थात पीठासीन अधिकारी का कोई दायित्व नहीं है। यदि इसी विश्लेषण को जारी रखा जावे तो निष्कर्ष यह भी निकल सकता है कि न्यायालय का सम्पूर्ण काम काज चलाने की जिम्मेदारी स्टाफ की है। जिस दिन ऐसा निष्कर्ष निकालना अनिवार्य ही हो जावे तो परिणाम महाभयंकर होगा। यदि ऐसे कृत्य वरिष्ठ न्यायालयों द्वारा होते हैं जिनका दायित्व कनिष्ठ अधिकारियों को भी मार्गदर्शनात्मक आदर्श प्रस्तुत करने का हो तो क्या स्थिति होगी? कल्पना भी नहीं की जा सकती। और इन सबके होते हुए भी हमारा व्यवहार, न्यायालयों में ऐसा होता है कि हम ही सब कुछ बाकी सब तुच्छ, तो क्या कहने। न्यायिक अधिकारियों से पुनः विनम्रता पूर्वक निवेदन है कि उपर उल्लेखित ज्योति के लेख को पुनः पढ़ें व चरितार्थ करते रहें। शिष्टतापूर्ण व्यवहार का गुण कई भूलों एवं समस्याओं का निदान करेगा। हमारे स्टाफ को भी हम धीरे धीरे अच्छे से समझाएंगे तो उनकी

योग्यता बढ़ेगी। यह धारणा गलत होगी कि उनको (ही) सब कुछ आना अपेक्षित है। सत्य संभवतः विपरीत हो (भी) सकता है।

और अब एक और वरिष्ठ न्यायिक अधिकारी की बात। जैसा कि उपर उल्लेखित समन्स की भाषा है उसी प्रकार मुहावरें व कहावतों की भाषा को भी देख लें। हिन्दी भाषा में भी तथा अंग्रेजी भाषा में भी लिखते समय मुहावरों कहावतों का उपयोग होता है लेकिन निर्णय की भाषा कैसी हो यह भी नियम एवं आदेश में बताया है। एक बात ध्यान रखना चाहिए कि मुहावरें एवं कहावतें तथा बोलचाल की भाषा, गांव ठान की भाषा (Slang) में प्रस्तुत कथित मुहावरें–कहावतें समान रूप से मूल्यांकित नहीं होना है। Slang शब्द का अर्थ भी यहां बता देना समीचीन होगा।

Slang :- Slang consists of words, expressions, and meanings that are informal and are used by people who know each other very well or who have the same interest. (from cobuild Dictionary)

Slang :- Very informal words and expressions that are more common in spoken language and are not thought suitable for formal situations. Slang is sometimes restricted to one particular group of people, for example soldiers or children. (from Oxford Advanced Learner's Dictionary)

धारा 302 भा.द.वि. का प्रकरण था। निर्णय से ऐसा अभ्यास होता है कि साक्षी पक्ष विरोधी है। लेकिन इसका यह अर्थ नहीं है न अपराधिक प्रकरणों से संबंधित आदेश एवं नियम (234 से 258) एवं दंड प्रक्रिया संहिता कहती है कि तब उन प्रकरणों में उड़न छू चलताऊ निर्णय दिया जावे लेकिन निराकरण के यूनिट्स पूरे लिए जावें। भाषा की बानगी देखें। 'फिर भी यदि एक निगाह मारी जाय' 'घास में सुई ढूंढने जैसा प्रयास'। संभवतः एक भी निगाह नहीं मारी गई न घास में सुई ढूंढने का कोई प्रयास किया गया ऐसा लगता है। पक्ष विरोधी साक्षी भी हो तब भी साक्ष्य का विवेचन तो करना ही होगा। यह भी ध्यान रखा जाना है कि यदि तुच्छ बात भी साक्ष्य के रूप में है तो साक्ष्य का विश्लेषण एवं विधि प्रावधानों के आधार से चिंतन तो होना ही चाहिए। वह इसलिए भी कि यह निर्णय प्रारंभिक न्यायालय (ट्रायल कोर्ट) का है। एक छोड़ शेष साक्षियों के नाम तक नहीं लिखे हैं। जिसका नाम है उसका अभियोजन साक्षी क्रमांक क्या है यह भी उल्लेखित नहीं है। निर्णय लिखने के संबंध में नियम एवं आदेशों का पालन नहीं है। धारा 428 द.प्र.सं. का विवरण नहीं है। इस प्रकार मन में सहज एक भाव स्पर्श कर गया कि धारा 302 भा.द.वि. के अंतर्गत निर्णय करने वाले न्यायालयों का यह स्तर है तो आगे चलकर उनका क्या होगा जो अभी नए हैं या जो अभी रमे नहीं हैं। संभवतः एक भी प्रशिक्षण वर्ग ऐसा नहीं गया होगा जहां वरिष्ठ या हम जैसों ने विस्तार से न बताया होगा। फिर भी हम ऐसा क्यों करते हैं उत्तर नहीं मिलता। होटल में ज्यादा ग्राहक आते हैं। इसलिए

होटल वाला चलताऊ खाना बनाकर प्रस्तुत नहीं करेगा व ऐसा करेगा तो उसका होटल बंद हो जाएगा। क्या पक्षकारों की ऐसी मजबूरी है कि ऐसे फैसले सहन कर लें? क्या हम आप या हमारे नातेदार ऐसे ही किसी प्रकरण में अंर्तग्रस्त हो तो क्या ऐसा कार्य हमें अच्छा लगेगा। यही बात हमने तब भी अपने अंतरमन से पूछ लेना चाहिए जब हम न्यायाधीश तथा संविधानिक कृत्यकारी (Constitutional Functionaries) होते हुए भी भय के कारण हम प्रतिभूति आवेदन पत्र स्वीकार करते हैं या अस्वीकार करते हैं। ऊपर से ये भी कहते है कि जमानत लेकर अपनी नौकरी जाने से बेहतर है कि अभियुक्त जेल में जाएं। दूरदर्शन, आकाशवाणी व समाचार पत्रों के माध्यम से सुनने को मिला कि भय के कारण वीरप्पन के मामलों में कर्नाटक व चेन्नई के न्यायालयों ने प्रतिभूति पत्र स्वीकार कर लिए ऐसी टिप्पणी सर्वोच्च न्यायालय ने की। क्या यह स्थिति भयावह नहीं लगती। इसका उत्तर हम यह भी दे सकते हैं कि स्थिति भयावह नहीं लगती, हमें तो नौकरी प्यारी लगती है।

इस प्रकार यदि नव नियुक्त व्यवहार न्यायाधीश वर्ग 2 एवं न्यायिक दंडाधिकारी द्वितीय श्रेणी कुछ भूल करता है तो क्या अंतर पड़ेगा। धारा 325 दं.प्र.सं. के अंतर्गत निर्णय लिखकर आरोपी को किसी अपराध में सिद्ध दोष (Guilty) पाते हुए प्रकरण मुख्य न्यायिक दंडाधिकारी को नहीं भेजा एवं आदेशिका में ही कुछ लिखकर भेज दिया तो क्या फरक पड़ा।

एक और तथ्य देखिए। इन्हीं नव नियुक्त व्यवहार न्यायाधीशों के एक सत्र के प्रशिक्षुगणों को प्रशिक्षण के प्रथम दिन ही एक फाईल तैयार कर के दी थी। पर्याप्त मार्गदर्शन पूर्ण सामग्री थी तथा कुछ गृहकार्य (होमवर्क) था। लेकिन प्रशिक्षण के सातवें दिन तक इन भाई लोगों ने फाईल के पन्ने तक पलटने की इच्छा नहीं हुई। विद्यार्थी जीवन पश्चात वकील या वकील एवं एपीपी के माध्यम से बनें व्यवहार न्यायाधीशों के पांव यदि इसी तरह पालने में दिख रहे होंगे तो भविष्य क्या होगा मेरे दोस्तो? हम आप सोचते हैं, जैसे तैसे समय काटो लेकिन समय बिना आहट के हमें काट देता है।

अंग्रेजी कवि लॉंगफेलो की प्रसिद्ध कविता Psalm of Life (जीवन महिमा) की अंतिम चार पंक्तियां यदि हम आप पढ़ें और ध्यान करें तो संभव है हम जिस मार्ग को आक्रमित करते चल रहे हैं उससे ठीक विपरीत दिशा में उन्नति की ओर अग्रसित हो सकेंगे।

Not enjoyment, and not sorrow is our destined end or way;
but to act, that each Tomorrow find us farther than to day.

सुख दुख का, भोग विलास का जीवन यह लक्ष्य नहीं है।
आज से बेहतर कल हो ऐसा काम हमें वो करना है।।

TIT-BITS

1. **ADMINISTRATIVE LAW : JUDICIAL REVIEW**
(2000) 4 SCC 108
MUNICIPAL COMMISSIONER, CALCUTTA Vs. SALIL KUMAR BANERJEE

Post-hearing objection regarding constituion of the Tribunal not maintainable after having submitted to the jurisdiction of the Tribunal and having taken a chance of a favourable order. Question of estoppel.

Paragraph 4 of the judgment is reproduced :

In the first place, by reason of Section 631 (3), the Tribunal that heard the first respondent's appeal was properly constituted. That sub-section expressly made provision that the procedure of the 1980 Act would be followed in respect of proceedings that related to contraventions of the 1951 Act. This provision was overlooked by the High Court. The High Court also overlooked the fact that it was the first respondent, the writ petitioner before it, who had filed the appeal under the 1980 Act before the Tribunal and had at no stage before the Tribunal ever contended that it was improperly constituted. Even assuming that it ought to have consisted of three or more Members, had that objection been taken at the initial stage of the hearing of the appeal before the Tribunal, that position could have been rectified. Certainly, in circumstances such as these, the High Court ought not to have exercised its discretion in favour of the first respondent.

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100. ADMINISTRATIVE LAW : SUBORDINATE LEGISLATION:-
(2000) 5 SCC 742
UNION OF INDIA Vs. CHARANJIT S. GILL

Notes and administrative instructions issued in the absence of statutory authority have no force of law and cannot supplement any Act, Rules and Regulations framed thereunder. Hence they cannot take away the rights vested in a person governed by the Act.

ADMINISTRATIVE INSTRUCTIONS :-

Government has power to fill up the gaps in supplementing the rules by issuing instructions if the rules are silent on the subject provided they are not inconsistent with the existing rules. Such administrative instructions and notes to the Rules can be issued to supplement the Rules where there are gaps. But unless they are referable to any statutory authority, they cannot have the effect of taking away the rights vested in a person governed by the Act.

●

40. ADVOCATES ACT, SECTION 35 : PROFESSIONAL MISCONDUCT: NATURE OF THE CHARGE OF, AND MANNER AND NATURE OF PROOF :-
(2000) 6 SCC 721
H.V. PANCHAKSHARAPPA Vs. E.G. ESHWAR

Since it is a quasi criminal charge hence must be proved beyond doubt in the manner of proving a criminal charge.

IMPROPER CONDUCT :- Improper conduct not amounting to professional misconduct. What is. Concealment of information from plaintiff client about his having conducted a suit on behalf of the defendant. Advocate filing a suit on behalf of Siddaramma Shetty for partition of suit property and obtaining injunction against defendants therein. Subsequently, the same advocate filing a suit for another person, who was not a party to the said former suit, against Siddaramma Shetty for recovery of a certain amount and getting the said property attached. However, the advocate not disclosing to the said other person about his having been engaged by Siddaramma Shetty in former suit. Withholding of the said information, although not a professional misconduct, held, did not speak well of the conduct of the said advocate, He should have, according to best traditions of the Bar, disclosed the said fact to his subsequent client.

●

94. AGE OF PROSECUTRIX : DETERMINATION OF :-
2000 (3) M.P.H.T. 275
KOMAL CHAND Vs. STATE OF M.P.

As per school certificate date of birth is 9-6-1968. Incident took place on 25.1.1985. Report of Radiological examination revealed the age over 17 years and below 19 years. Marginal error in age ascertained to be 2 years either side. The trial Court has taken the age of prosecutrix as 18 years. Version of the father of the prosecutrix and the school certificate has been wrongly discarded by the trial Court. She was below 18 years of age on the date of incident. ***Jaya Mala Vs. Home Secretary,* Government of J & K, AIR 1982 SC 1297** referred to.

Paragraph 10 and 11 of the judgment is reproduced :-

The important point for determination so as to find out the guilt of the accused persons is what was the age of the prosecutrix on 25-4-1985. From the prosecution evidence, it is apparent that in Ex p-4, the date of birth of Neeta Khare is mentioned as 9-6-1968. Thus, she was aged 16 years 10 months and 16 days on the date of the incident. on 1-12-1987 the report of Radiological examination of Neeta was accepted by the accused persons as admitted document and was marked by the Court as Ex. P-16. It has been mentioned in Ex. P-16 that "epiphysis of upper end radius and olecranon process fused hence age over 15 years; epiphysis of lower end

radius and ulna fused hence age over 15 years; epiphysis of lower end radius and ulna fused hence age over 17 years; epiphysis of iliac crest not fused hence age below 19 years".

The trial Court has taken the view that Neeta has been proved to be 18 years of age, hence offence of kidnapping is not made out and charge under Section 366-A was not framed. The doctor who gave opinion regarding age was not examined in the case for the reason that the accused had accepted the Radiologist's medical opinion. It may be seen that in the case of ***Jaya Mala Vs. Home Sect. Govt. of J & K, AIR 1982 SC 1297,*** it has been held that in the case of radiological test, margin of error in age ascertained is two years on either side. In the present case, there was absolutely nothing on record to discard the version of the father of the prosecutrix that her date of birth was 9-6-1968. Thus, the School certificate has been wrongly discarded by the trial Court.

NOTE:- Judicial Officers are requested to go through the whole judgment as it is of general importance.

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5. ARBITRATION ACT (OLD), SECTION 34 : SUBMITTING TO THE JURISDICTION OF THE CIVIL COURT :
(1999) 1 SCC 703
HOMBANANA NAGAPPA Vs. F.C.I.

Since no steps had been taken under S. 34 of the Arbitration Act, 1940 defendant should be deemed to have submitted to jurisdiction of civil court.

NOTE:- Judicial Officers are requested to go through the Ruling ***Bansidhar Narayan Jee Vs. E.B. Sukhia, 1957 JLJ 70*** in which it was held that orally asking time to file written statement is taking step in the proceeding. It is well said by the Authorities that taking any step in the proceedings means some step which indicates an intention on the part of a party to the proceedings that he desires that the action should proceed and has no desire that the matter should be referred to arbitration. Making even an oral application for time to file a written statement is taking step in the proceedings.

Judicial Officers are requested to go through the whole judgment of that case also.

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119. ARBITRATION AND CONCILIATION ACT, 1996, SECTIONS 7 AND 8 : REFERENCE TO ARBITRATION AT APPEAL STAGE, LAW STATED :-
(2000) 4 SCC 539
P. ANAND GAJAPATHI RAJU Vs. P.V.G. RAJU

The Court in appeal can refer parties to arbitration under S. 8 even

where arbitration agreement is entered into during pendency of the appeal, so long as the agreement meets the requirements of S. 7 However, in the absence of an arbitration agreement, there is no provision in the Act whereby court may refer the matter to arbitration.

ARBITRATION AND CONCILIATION ACT, SECTIONS 8 AND 85 : EFFECT OF ARBITRATION DURING TENDENCY OF A CASE :-

Once the matter is referred to arbitration, proceedings in civil action stand disposed of. There is no question of stay of such proceedings pending the conclusion of arbitration. After reference all rights, obligations and remedies of parties would be governed by the new Act, including the right to challenge award.

ARBITRATION AND CONCILIATION ACT, Ss. 2 (E). 8, 34 AND 42 :- CHALLENGE OF AWARD BEFORE WHOM :-

The Court as defined under S. 2 (e) and not the court to which application under Section 8 was made is competent to decide the award challenged.

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85. ARBITRATION ACT, 1940, SECTION 14 (2), 17 AND 30 : NOTICE OF AWARD TO THE PARTIES :-
2000 (2) JLJ 61
RAMESHWAR Vs. UNION OF INDIA

Notice of award need not be given in writing. Oral notice to the counsel for parties is sufficient. Once the notice was given regarding filing of award to the parties no application for setting aside the award filed within 30 days as provided under S. 30, the award becomes final and judgment has to be pronounced upon it. If objection is filed within time opportunity of hearing should be given to the parties. If there is no application for setting aside the award passed before the prescribed time, the Court is justified in passing judgment and decree under S. 17. Such judgment cannot be termed as ex-parte judgment.

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24. ARBITRATION ACT, 1940, SECTIONS 8 AND 39 : DEATH OF CO-ARBITRATOR EFFECT :-
2000 (4) M.P.H.T. 35
CHANDMAL Vs. JHAMAKLAL

Surviving arbitrator continuing arbitration proceedings on death of co-arbitrator and passing award individually. The High Court held that the award would be nullity.

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86. **COURT FEES ACT, SECTION 7 (IV) (C) (D) AND 7 (V) : SUIT FOR DECLARATION OF TITLE AND PREVENTIVE INJUNCTION:-**
2000 (2) JLJ 75
SHANTI DEVI (SMT.) Vs. RADHESHYAM

Relief of injunction not consequential to the declaration. Suit falls under these provisions. Advalorem court-fees not payable. Person in settled possession filing suit for declaration of title and injunction. Provisions under S. 7 (iv) (c) not applicable. The party may put any valuation. The relief claimable independently. It is not consequential. The land was in possession of Tahsildar. Suit by public trust by declaration of its right to possession, ad-volorem Court-fees need not be paid, 1991 JLJ 471 relied on.

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30. **CONSUMER PROTECTION ACT, SECTIONS 2 (1) (c), (d), (g), (o), 3, 11, TO 14, 17, 21, 22 : DEFICIENCY IN SERVICE :-**
(2000) 4 SCC 91
PATEL ROADWAYS LTD. Vs. BIRLA YAMAHA LTD.

Complaint before consumer disputes redressal agencies against common carrier alleging loss of or damage to goods entrusted to it for transpiration is maintainable. Proceedings before National Commission comes within the term suit.

WORDS AND PHRASES : WORD "SUIT" EXPLAINED : CARRIERS ACT, SECTION 9 :-

Proceedings under the Act applicable before the Redressal Agencies. The word "suit" in Section 9 of the Carriers Act includes such proceedings.

The principle of law discussed in the preceding paragraph is applicable in a proceeding before the consumer disputes redressal agency, particularly the National Commission. The contention that the use of the term "suit" in Section 9 of the Carriers Act shows that the provision is applicable only to cases filed in a civil court and does not extend to proceedings before the National Commission which is a forum to decide complaints by consumers following a summary procedure cannot be accepted. The term "suit" is a generic term taking within its sweep all proceedings initiated by a party for realisation of a right vested in him under law. The meaning of the term "suit" also depends on the context of its user which in turn, amongst other things, depends on the Act or the rule in which it is used. No doubt the proceeding before a National Commission is ordinarily in summary proceedings and in an appropriate case where the Commission feels that the issues raised by the parties are too contentious to be decided in a summary proceeding it may refer the parties to a civil court. That does not mean that the proceeding before the commission is to be decided ignoring the express statutory provisions of the Carriers Act (Section 9) in a proceeding in which a claim is made against a common carrier as defined in

the said Act. Accepting such a contention would defeat the object and purpose for which the Consumer Protection Act was enacted. A proceedings before the National Commission comes within the term "suit".

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27. **CONSTITUTION OF INDIA, DUTY OF THE APPELLATE COURT : ARTICLE 226 : / SUMMARY DISMISSAL/ORDER BY THE HIGH COURT :-**
(2000) 4 SCC 34
SUDARSHAN NATH Vs. STATE OF PUNJAB

Even where Hihg Court approves of a detailed and properly- reasoned lower court judgment, High Court ought to disclose its own mind and give a speaking order. High Court ought not to merely reject the writ petition in a laconic and cryptic order.

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53. **CONSTITUTION OF INDIA, ARTICLE 32 AND 214 : BENCHES OF HIGH COURTS IN OTHER DISTRICTS OF THE STATE- DEMAND BY BAR ASSOCIATIONS :- MAINTAINABILITY OF WRIT PETITION:-**
(2000) 6 SCC 715
FEDERATION OF BAR ASSOCIATIONS IN KARNATAKA Vs. UNION OF INDIA

Writ petition cannot be maintained if there is no infringement of any Fundamental Right. Petitioner, the Federation of Bar Associations in Karnatak in an accredited representative of litigants of Karnataka, seeking writ of mandamus to Union of India for establishing a Bench of High Court at a suitable place in northern Karnataka apart from its principal seat at Bangalore. Whether a Bench outside the principal seat of the High Court should be established or not opinion of Chief Justice of High Court regarding, is of prime importance. He has to form his opinion after considering the views of colleague Judges. Plea of distance for the litigants not decisive. Burden on the exchequer and functional efficiency of the High Court cannot be ignored. Precedent of Benches in other High Courts also not decissive.

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121. **CONSUMER PROTECTION ACT, 8. 2 (1) (D) AND CARRIERS ACT, Ss. 6, 8, AND 9 AND CONTRACT ACT, Ss. 151 AND 152 : DEFECT IN SERVICE :-**
(2000) 4 SCC 553
NATH BROS. EXAM INTERNATIONAL LTD. Vs. BEST ROADWAYS LTD.

Goods entrusted to common carrier for transportation. Question of liability of common carrier, it was held, would be governed by Carriers Act. Sections 151 and 152 of the Contract Act are not applicable.

With the courtesy of Eastern Book Company, Lucknow, the following portion is reproduced :

Liability is same as that of an insurer. Carrier has to take due care of the goods as he would have taken of his own goods. He would be liable for the loss or damage cause to the goods due to his own negligence or criminal act or that of his agent or servants, notwithstanding any special contract limiting his liability as envisaged under S. 6 of the Carrier Act. Even if the foods were booked with the carrier "at owner's risk", that would not exempt the carrier from his own negligence or that of his agent or servants. In a suit filed for recovery of damages, burden will not lie on the plaintiff owner to prove that the loss or damage to the goods was caused owing to negligence or criminal act of the carrier or his agent or, servants by virtue of S. 9 of Carriers Act. Only exception to the carrier's liability is where the loss or damage is caused due to an act of God or enemies of the State. Goods booked by appellant with respondent common carrier "at owner's risk" for transportation. Goods while stored in godown destroyed by fire. Claim petition was filed by appellant before National Commission alleging deficiency in service. National Commission not giving its findings on several disputed questions of fact which were relevant in deciding the case. commission dismissing the petition of the appellant taking the view that respondent would not be liable as it had taken all possible care which was expected of it as a carrier. It was held, this was not the correct approach. Case was remanded to National Commission for disposal afresh.

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122. CONSUMER PROTECTION ACT, SECTIONS 14 (1) (D) AND 2 (G) AND CARRIERS ACT, SECTION 9 : NEGLIGENCE ON THE PART OF THE COMMON CARRIER :-
(2000) 5 SCC 78
ECONOMIC TRANSPORT ORGANISATION Vs. DHARWAD DISTT. KHADI GRAMUDYOG SANGH

Negligence on the part of the common carrier, whom goods entrusted for transportation. There was a complaint before the District Forum seeking compensation. The burden of proof was explained by the Supreme Court. The common law principle underlying S. 9 of Carriers Act would apply. Accordingly the complainant can discharge the initial onus, even if it is laid on him under S. 14 (1) (d) by relying on S. 9 of the Carriers Act. The burden of proof would then shift on the carrier, who would be required to prove absence of negligence.

The whole judgment is reproduced:

1. The petitioner is a common carrier governed by the Carriers Act, 1865. It contends that under Section 14 (1) (d) of the Consumer Protection Act. 1986 the Consumer Fora can direct payment of compensation to

the consumer for loss or injury suffered by the consumer due to the "negligence" of the opposite party and hence the burden of proof is on the complainant. It is contended that Section 9 of the Carriers Act which imposes burden on the defendant or the common carrier to prove absence of negligence cannot therefore be applied so as to shift the onus to the carrier to prove absence of negligence.

2. In view of the recent judgment of this Court dated 28-3-2000 in ***Patel Roadways Ltd. V. Birla Yamaha Ltd. (2000) 4 SCC 91*** we are of the view that the liability of the common carriers is that the insurer. It was held there that Section 9 of the Carriers Act, 1865 applies to matters before the Consumer Fora under the Consumer Protection Act. It was also held that the principle underlying Section 9 of the said Act relating to burden of proof is a principle of common law and has been incorporated in Section 9 of the Carriers Act. Even assuming that Section 9 of the Carriers Act, 1865 does not apply to the cases before the Consumer Fora under the Consumer Protection Act, the principle of common law above-mentioned gets attracted to all these cases coming up before the Consumer Fora. Section 14 (1) (d) of the Consumer Protection Act has to be understood in that light and the burden of proof gets shifted to the carriers by the application of the legal presumption under the common law. Section 14 (1) (d) has to be understood in that manner. The complainant can discharge the initial onus, even if it is laid on him under Section 14 (1) (d) of the Consumer Protection Act, by relying on Section 9 of the Carriers Act. It will therefore be for the carrier to prove absence of negligence. It has been held in like circumstances that a defendant in a suit on the basis of a negotiable instrument can discharge the onus lying on him under Section 118 of the Negotiable Instruments Act by relying on another presumption under Section 114 of the Evidence Act under which if a plaintiff does not produce the accounts in his personal custody an adverse inference can be drawn against the plaintiff. (***Kundan Lal Rallaram v. Custodian, Evacuee Property AIR 196L SC 1316).***

3. With the above observations and following the abovesaid judgment in the case of Patel Roadways we dismiss the special leave petitions accordingly.

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123. CONSUMER PROTECTION ACT, SS. 2 (1) (O) AND 2 (1) (D) : THE WORDS "SERVICE" AND "CONSUMER", SCOPE OF :-
(2000) 5 SCC 122
VIMAL CHANDRA GROVER Vs. BANK OF INDIA

The granting of over draft facilities to its customer by a bank amounts to providing of service. A customer pledging shares with the bank to get overdraft facilities is a "consumer" and implementation of his request to the

bank to sell part of the pledged shares for clearing the overdraft. when agreed to by the bank, it was held, became part of such service.

CONSUMER PROTECTION ACT, SECTION 2 (1) (G) & (O), 14 AND 18 : DEFICIENCY IN SERVICES EXPLAINED :-

Delay in acting upon pledger's request to sell the pledged articles resulting in loss. Bank sanctioning to the appellant an overdraft limit against pledge of shares worth Rs. 200 each. Subsequently, the value per share rising to Rs. 2400. At this stage, in order to liquidate the overdraft, the appellant requesting the Bank, which in turn agreeing, to sell part of the pledged shares. However, the Bank selling the shares after a delay of several months (nine months in this case) and by that time the value per share dropping to Rs. 700 each and resulting in a huge loss (amounting to Rs. 5,09,037.47 in this case) to the appellant. In such circumstances it was held there was deficiency of service on account of negligent conduct of the Bank. Hence, the Bank directed to pay within 4 weeks the said amount with interest @ 11% p.a. from the first day of month immediately following the date of sale with further direction that in case of default the Bank would be liable to pay further interest @ 18% p.a. Moreover, since timely sale of the shares would have enabled the appellant to clear his overdraft account, the Bank restrained from recovering interest on the balance in this account from the date of filing of complaint by the appellant before the National Commission. Under Sections 172 to 177 it was held Banks must process requests of its customers within a reasonable time. Diligence and promptness are necessary.

CONSTITUTION OF INDIA, ARTICLE 136 : PLEADINGS/NEW PLEA, PERMISSIBILITY :-

It was held that it can be allowed to be raised if it involves a pure question of law going to the root of the case, but not if it is in respect of the jurisdiction of the court below.

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98. C.P.C., SECTION 73 (3) : DOCTRINE OF PRIORITY AND CONSTITUTION OF INDIA, ARTICLE 372 (1) :-
(2000) 5 SCC 694
DENA BANK Vs. BHIKABHAI PRABUDAS PAREKH & CO.

Rule of common law that the Crown or State's right to recover arrears of tax due to it is to be given priority over the right of private persons to recover private debts from an assessee. The word 'law in force' explained.

The principle of prioirty of government debts is founded on the rule of necessity and of public policy. The basic justification for the claim for prioirty of State debts rests on the well-recognised principle that the State is entitled to raise money by taxation because unless adequate revenue is received by the State, it would not be able to function as a sovereign Govern-

ment at all. It is essential that as a sovereign, the State should be able to discharge its primary governmental functions and in order to be able to discharge such functions efficiently. it must be in possession of necessary funds and this consideration emphasises the necessity and the wisdom of conceding to the State, the right to claim priority in respect of its tax dues. The arrears of tax due to the State can claim priority in respect of its tax dues. The arrears of tax due to the State can claim priority over private debts and this rule of common law amounts to law in force in the territory of British India at the relevant time within the meaning of Article 372 (1) of the Constitution of India and therefore continues to be in force thereafter. On the very principle on which the rule is founded, the priority would be available only to such debts as are incurred by the subjects of the Crown by reference to the State's sovereign power of compulsory exaction and would not extend to charges for commercial services or obligation incurred by the subjects to the State pursuant to commercial transactions.

Builders Supply Corpn. v. Union of India, AIR 1965 SC 1061 : (1965) 56 PTR 91, followed ***Collector of Aurangabad v. Central Bank of India, AIR 1967 SC 1831 : (1968) 21 STC 10,*** relied on by implication

Bank of India v. John Bowman, AIR 1955 Bom 305; Manickam Chettiar v. ITO, **AIR 1938 Mad 360 : ILR 1938 Mad 744 (FB);** ***People Bank of Northern India Ltd. v. Secy. of State for India, AIR 1935 Sind 232; Vassan Bai Topandas v. Radhabai Tirath Das, AIR 1933 Sind 368,*** approved

However, the Crown's preferential right to recovery of debts over other creditors is confined to ordinary or unsecured creditors. The common law of England or the principles of equity and good conscience (as applicable to India) do not accord the Crown a preferential right for recovery of its debts over a mortgagee or pledgee of goods or a secured creditor. It is only in cases where the Crown's right and that of the subject meet at one and the same time that the crown is in general preferred. Where the right of the subject is complete and perfect before that of the King commences, the rule does not apply, for there is no point of time at which the two rights are at conflict, nor can there be a question which of the two ought to prevail in a case where one, that of the subject, has prevailed already.

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4. C.P.C., SECTION 11, RES JUDICATA : CONSTRUCTIVE RES JUDICATA :-
(1999) 1 SCC 693
VIJAYABAI Vs. SHRIRAM TUKARAM

It is not permissible for parties to raise an issue inter so where such issue is/was already decided in earlier proceeding under the same statute. Even if res judicata in the strict sense be not applicable, its principle would be applicable. Parties who are disputing now, if they were parties in an

early proceeding under this very Act raising the same issue, would be stopped from raising such an issue both on the principle of estoppel and constructive res judicata.

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11. C.P.C., SECTION 11 EXPLN. VIII AND INDIAN SUCCESSION ACT, SECTIONS 373, 381 AND 387 : RES JUDICATA : DECISION OF A COURT OF LIMITED JURISDICTION : EFFECT OF :-
(2000) 6 SCC 301
MADHAVI AMMA Vs. KUNJIKUTTY

Decision regarding grant of succession certificate made in proceedings under S. 373 of Succession Act would not bar any party to the said proceedings to raise the same issue in a suit for partition filed in a civil court. Such decision is not final between the parties and Section 387 of Succession Act takes the decision outside the purview of Expln. VIII to Section 11. The Res Judicata is based on the decision on an issue and not mere finding on an incidental question to reach such decision, which operates as res judicata.

Findings incidentally records on issues not raised, held, not covered. Decision regarding grant of succession certificate under, held, cannot be construed as final decision on the issue between the parties. The word "good faith" appearing in Section 381 of the Succession Act was explained by the Supreme Court.

Any adjudication made under part X which includes S. 373 does not bar raising of the same question between the same parties in any subsequent suit or proceedings.

Sections 381 and 387 of the Indian Succession Act are reproduced for ready reference:

SECTION 381 : EFFECT OF CERTIFICATE :-

Subject to the provisions of this Part, the certificate of the District Judge shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any contravention of section 370, or other defect, afford full indemnity to all such persons as regards all payment made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted.

SECTION 387 : EFFECT OF DECISIONS UNDER THIS ACT, AND LIABILITY OF HOLDER OF CERTIFICATE THEREUNDER :-

No decision under this Part upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this Part shall be construed to affect the liability of any person who may receive the

whole or any part of any debt or security, or any interest or dividend on any security, to account therefore to the person lawfully entitled thereto.

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91. C.P.C., SECTIONS 151, 152 AND 153 READ WITH M.V. ACT, 1988 :- 2000 A.N.J. 389 (S.C.)
UNITED INDIA INSURANCE CO. LTD. Vs. RAJENDRA SINGH

Claims Tribunal awarded Rs. 3,55,000 to father & Rs. 1,52,000 to son on the finding that driver of car was negligent awards become final as no appeal was filed by owner of car and Insurance Company. After inquiry sub inspector of police filed a report that claimants received injuries when a trailor tractor slipped into a pit and not in a car accident. On the basis of report insurance company filed petition praying for recall of award. Petition dismissed. Writ petition also dismissed by High Court as not maintainable. The Supreme Court held that no Court or Tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such dimension as would affect the very basis of the claim.

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93. C.P.C., O. 22, R. 10 AND SECTION 115 R/W O. 22 R. 3 AND O. 22 R. 4 AND T.P. ACT, SECTION 109 : RIGHT TO OWN, POSSESS AND ENJOY THE GOODS IN CASE OF SELLER PURCHASER : LIMITATION, NO LIMITATION :-
2000 (3) M.P.H.T. 272
SITARAM DUA Vs. SARASWATI DEVI

Paragraph 5 of the judgment is reproduced:-

5. Order 22, Rule 10 provides for substitution or for correction of the records in case of assignment, creation or devolution of any interest during the pendency of the suit. Order 22, Rule 3 C.P.C. says that if the right to sue survives in favour of the remaining plaintiff/plaintiffs or the L.Rs. of the deceased plaintiff, then the suit can be continued by such L. Rs. Order 22, Rule 4 provides that if the plaintiff has a living right and the right to sue survives in his favour against the remaining defendants and/or against the L.Rs. of the deceased defendant, then they can continue with the suit after substitution of the names of the L.Rs. Order 22, Rule 10 C.P.C. talks of a different situation. Order 22, Rule 10 is not dependent upon the death of a plaintiff or a defendant. It simply provides that in cases of assignment, creation or devolution of any interest during the pendency of the suit, the suit may be continued by such assignee of the rights with the permission of the Court. If provisions of Order 22, Rule 10 C.P.C. are appreciated in their true perspective, it would clearly appear that if certain rights are assigned in favour of somebody or an interest is created or an interest devolves

upon a person in the property, then such person can continue with the suit with the leave of the Court. In the present case, right to own, possess and enjoy the property has been assigned by Gurudeosingh in favour of the present applicant. The right would certainly include the interest for which deceased Gurudeosingh was contesting before the Civil Court. During the lifetime of Gurudeosingh, these assignees could always come to the Court and seek leave of the Court to continue with the suit. The fact would hardly make any difference if such persons who come to the Court after the death of Gurudeosingh. Unlike Order 22, Rule 3 or Rule 4 C.P.C. which provide for 90 days' limitation, Order 22, Rule 10 C.P.C. does not provide for any limitation. It is the choice and sweet will of the assignee of the right to come and contest. If he comes and makes an application for his being joined as a party in the suit, the Court may grant the leave, but if he does not come and join the proceedings, then the Court cannot compel the original plaintiff to bring them on record. The Court may dismiss the suit because at that stage, the plaintiff before the Court who had already assigned his rights, would have no cause of action or interest in the property to continue with the suit. In the instant case, before the suit could be dismissed, the present non-applicants came to the Court and made an application for their substitution on the strength of the assignment. If they are the real assignees, they are certainly entitled to be brought on record under O. 22, R. 10 CPC.

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10. C.P.C., O. 12 R. 6 (1) AND O. 8 R. 5 (1)
2000 (2) JLJ 233
MUNIR VS. RAMESH UTWAL

The Trial Court should not have relied on O. 12 R. 6 (1) CPC for passing a decree. This was not a case where the decree could be passed straightway by referring and relying on O. 12 R. 6 (1). This was fit case where despite the written statement being that of mostly admission, the trial Court should have exercised its powers conferred under Order 8 Rule 5 (1) proviso and called upon the plaintiff to prove the case independent to that of written statement.

TORT : DAMAGES : PROOF REQUIRED :-

Claim of damages for malicious prosecution. Plaintiff has to prove case by cogent oral and documentary evidence. The whole judgment is reproduced :

1. The defendant has felt aggrieved by the impugned judgment and decree dt. 28-11-90 passed in C.S. No. 37-B/90. By impugned judgment the learned trial judge has passed a decree for Rs. 1 lac. The background under which the impugned decree came to be passed need mention to appreciate the grievance urged.

2. Respondent (plaintiff) is a sweeper working in one hospital at Indore on a monthly salary of Rs. 325. He belongs to schedule cast.

3. Respondent (plaintiff) filed a suit against the appellant (defendant) in forma pauperise claiming compensation/damages of Rs. 1 lac. It was alleged in the plaint that appellant (defendant) alongwith one Chandu Rokde lodged on 20-8-87 one false complaint against the respondent (plaintiff) purporting it to be under section 341. 394. 506-B. 323. 426 IPC. It was alleged that this complaint was filed by Chandu but it was done with the help of appellant (defendant). It was further alleged that respondent (plaintiff) fearing his arrest had to apply for anticipatory bail and obtained the same under section 438 of CrPC.

4. It is then alleged that as a result of filing of aforesaid FIR a case was registered against the respondent (plaintiff) in the Court of Magistrate but ultimately on 24.4.90 the respondent (plaintiff) was acquitted of charges.

5. It is alleged that due to filing of false FIR and false case the respondent (plaintiff) suffered mental pain and agony. His image in the society got damaged considerably due to which his status was affected.

6. On the aforesaid pleading the respondent (plaintiff) founded his cause of action to file suit for claiming damages for the loss of his reputation society. According to respondent (plaintiff) he has become entitled to claim a sum of Rs. 1 lac. for the loss of his reputation and damage that he suffered due to filing of false complaint by Chandu and the appellant (defendant).

7. The appellant (defendant) filed a written statement and perusal of written statement indicates that it was almost a written statement admitting the claim. In other words there was no specific denial of allegations made in the plaint.

8. No issues were framed. The plaintiff (respondent) did not enter into witness box. The trial Court relying on order 12 rule 6 (1) CPC decreed the suit by observing following.

   प्रतिवादी ने अपना वादौत्तर सिविल प्रक्रिया संहिता के आदेश 12 नियम 6 (1) के अन्तर्गत स्वीकारोक्ति का वादोत्तर प्रस्तुत किया तथा वादी के पूरे वाद को मंजूर किया तथा उसने यही प्रगट किया कि उसके विरूद्ध जयपत्र दे दिया जावे। ऐसी स्थितियों में वादी का वाद पत्र अविश्वास करने का कोई कारण नहीं है और वादी ने अपना वादा सफल सिद्ध किया है।

   फलस्वरूप वादी का वाद डिक्री किया जाता है और वादी के हक में प्रतिवादी के विरूद्ध नीचे लिखे अनुसार जयपत्र पारित किया जाता है।

9. It is this decree the defendant challenges it by filing the appeal. The defendant expressed his inabilities to pay adveloram court fees on

memo of appeal and hence filed this appeal under order 44 of CPC. This Court made inquires with a view to find out whether appellant can be allowed to prosecute this appeal as indigent person and whether he has a capacity to pay adveloram court fees. This Court by its order dt. 15-10-92 exempted the appellant from payment of court fees.

10. Heard. Shri Solanki, L.C. for the appellant (defendant) and Shri Ganesh Verma. L.C. for respondent (plaintiff) who has filed his submissions in writing on 27-4-2000.

11. Having heard the counsel and perused the record of the case as also the written submission. I am of the view that this appeal must be allowed and the impugned decree must be set-aside.

12. In my opinion, the trial Court should not have relied on order 12 Rule 6 (1) **ibid** for passing a decree This was not a case where the decree could be passed straight way by referring and relying on order 12 Rule 6 (1) **ibid**. This was a fit case where despite the written statement being that of mostly admission. the trial Court should have exercised its powers conferred under order 8 Rule 5 (1) proviso and called upon the plaintiff to prove the case independent to that of written statement. Perusal of plaint allegations even **prima facie** do not make out a case of claiming damages muchless to the extent of 1 lakh nor do they even make out a case of malacious prosecution as accepted in torts. In order to claim damages in a case sought to set up by the respondent (plaintiff). it is obligatory upon the plaintiff to prove by cogent evidence both oral as also documentary irrespective of fact whether defendant has joined issue or not.

13. In the present case virtually there was no trial. Issues were not framed, plaintiff did not care to enter in witness box. He did not even file single document alongwith the plaint or even during pending suit. He even did not file the copy of so-called judgment which resulted in his acquittal and on which the entire suit was founded. The trial Court just by referring to order 12, rule 6 in one paragraph referred supra proceded to decree the suit.

14. In my opinion. this is a case where the party and in particular the respondent (plaintiff) has simply tried to abuse the judicial process for his selfish purpose. It is amply clear the way the entire suit was prosecuted which led to passing of impugned decree. The misconceiveness in the plaint is writ large in its mere reading. The basic allegations in the plaint are against one Chandu. He is not sued nor made party. The plaintiff claims to be a sweeper drawing a monthly salary of Rs. 350/- I fail to appreciate the grievance of respondent (plaintiff) in the entire allegations which does not make out any case entitling him to claim damages for the loss of his reputation which can be valued at Rs. 1 lakh.

15. The submission of LC for the respondent (plaintiff) that the appellant be called upon to pay court fees on memo of appeal is not acceptable in view of the fact that this issue is already decided against the respondent (plaintiff) and in favour of appellant (defendant) by this Court on 15-10-92 as referred supra. Coming to other issues urged by the respondents in his written submission they are dealt with by me supra and decided against the respondent (plaintiff). No other issues are urged except those referred.

16. In view of aforesaid discussion. I am constrained to set aside the impugned judgment and the decree and allow the appeal. As a necessary consequence, the suit filed by the respondent stands dismissed. Since both respondent as also the appellant contested this litigation in forma pauperise. No cost to either.

NOTE:- The Judicial officers are requested to go through JOTI JOURNAL 2000 Pt. 1 page 33 "अभिकथों के आदार से दावा पारित करना" and Tit Bit No. 1 ***Balaraj Vs. Sunil (1999) 8 SCC 396*** appearing on page 37 of the JOTI JOURNAL. Judicial Officers are further requested to refer JOTI JOURNAL 2000 Pt. 1 page 20 "एक पक्षीय प्रकरणों में विचारणीय बिन्दु"

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14. Cr.P.C. SECTIONS 227 AND 228 : FRAMING OF CHARGE :- (2000) 6 SCC 338-DOCUMENT TO BE SEEN BY COURT
STATE OF M.P. Vs. MOHANLAL SONI

At this stage court has to be only prima facie satisfied about existence of sufficient ground for proceeding against the accused. For this limited purpose, court can evaluate material and documents on record. But it cannot appreciate the evidence. In the present circumstances it was held accused-respondent's application for production of documents relating to income tax returns or income tax assessment orders which were collected during course of investigation conducted pursuat to complaint under Section 13 (1) (e) r/w Section 13 (2) of Prevention of Corruption Act were wrongly rejected by trial court in view of relevance of those documents in reaching court's prima facie satisfaction.

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111. Cr. P.C., SECTION 432 : SENTENCE, ADEQUATE AND SPECIAL REASONS FOR IMPOSING SENTENCE LESS THAN MINIMUM, EXPLAINED :-
(2000) 4 SCC 502
KAMAL KISHORE Vs. STATE OF H.P.

Please refer to ***State of Punjab Vs. Gurumith Singh, (1996) 2 SCC 384*** and ***State of Karnataka Vs. Krishnappa, (2000) 4 SCC 75.*** The extracts of those judgments referred to in this judgment in paragraphs 19 and 20 are redproduced.

Thus paragraphs 19 to 24 are reproduced :

19. In order to support the said reasoning. learned counsel for the accused relied on the following observations of a two-Judge Bench of this Court in the ***State of Punjab v. Gurmit Singh (1996) 2 SCC 384.***

> "So far as the sentence is concerned, the court has to strike a just balance. In this case the occurrence took place on 30-3-1984 (more than II years ago). The respondents were aged between 21-24 years of age at the time when the offence was committed. We are informed that the respondents have not been involved in any other offence after they were acquitted by the trial court on 1-6-1985. more than a decade ago. All the respondents as well as the prosecutrix must have by now got married and settled down in life. These are some of the factors which we need to take into consideration while imposing an appropriate sentence on the respondents."

20. But recently in the ***State of Karnataka v. Krishnappa (2000) 4 SCC 75*** a three Judge Bench of this Court, after referring to the above decision. restored the sentence of imprisonment for 10 years fixed by the trial court for the offence under Section 376 of the IPC. The victim in that case was aged 7-8 years. The High Court in that case had reduced the sentence of imprisonment to 4 years. Dr A.S. Anand, C.J. who authored the judgment of the Bench, had stated thus : (SCC p. 83, para 18)

> "The High Court justified the reduction of sentence on the ground that the accused-respondent was 'unsophisticated and illiterate citizen belonging to a weaker section of the society'; that he was ' chronic addict to drinking' and had committed rape on the girl while in a state of 'intoxication' and that his family comprising of 'an old mother, wife and children' were dependent upon him. These factors, in our opinion, did not justify less than the prescribed minimum. ***These reasons are neither special nor adequate.*** The measure of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. The socio-economic status. religion. race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. Protection of society and detering the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence."

This Court in the said decision noted that :

"There are no extenuating or mitigating circumstances available on the record which may justify imposition of any sentence less than the prescribed minimum on the respondent."

21. As Parliament has disfigured the sentence to plummet below the minimum limit prescribed Parliament used the expression "shall not be less than" which is peremptory in tone. The court has, normally, no-discretion even to award a sentence less than the said minimum. None-theless Parliament was not oblivious of certain very exceptional situations and hence to meet such extremely rare contingencies it made a departure from the said strict rule by conferring a discretion on the court subject to two conditions. One is that there should be "adequate and special reasons", and the other is the such reasons should be mentioned in the judgment.

22. The expression "adequate and special reasons" indicates that it is not enough to have special reasons, nor adequate reasons disjunctively. There should be a conjunction of both for enabling the court to invoke the discretion. Reasons which are general or common in many cases cannot be regarded as special reasons. What the Division Bench of the High Court mentioned (i.e. occurrence took place 10 years ago and the accused might have settled in life) are not special to the accused in this case or to the situations in this case. Such reasons can be noticed in many other cases and hence they cannot. Such reasons can be noticed in many other cases and hence they cannot be regarded as special reasons. No catalogue can be. prescribed for adequacy of reasons nor instances can be cited regarding special reasons, as they may differ from case to case.

23. As the reasons advanced by the Division Bench of he High Court could not be supported as adequate and special reasons, learned counsel for the accused projected an alternative profile in order to support his contention that there are adequate and special reasons, He submitted the following; Shishna Devi (PW 2) had since been married to another person and she is now mother of children and is well-settled in life. The accused was aged 23 when the offence was committed and now he is 34, but he remains unmarried. He says that on two occasions his marriage had reached the stage of engagement but both had to be dropped off before reaching the stage of marriage due to the social stigma and disrepute which surrounded him. These are the reasons which he advanced for extending the benefit of the proviso.

24. Those circumstances pleaded by him are not special reasons for tiding over the legislative mandate for imposing the minimum sentence. We, therefore, enhance the sentence for the offence under Section 376 IPC to imprisonment for 7 years.

112. Cr. P.C., SECTION 354, MENTION OF SECTION IN JUDGMENT EXPLAINED :-
(2000) 4 SCC 603
NARINDER SINGH Vs. STATE OF PUNJAB

Mention of the particular section of the statute (S. 34 IPC in this case) not necessary to convict a person. If ingredients of the section are present, conviction can be made.

I.P.C. SECTION 34 :- Mention of this section in the Judgment is not the requirement of law for conviction if the ingredients of the section are present.

I.P.C., SECTION 34 AND 302:- DEATH CAUSED BY STABBING:-

Death caused by stabbing. For bringing a case under S. 34 it is not relevant as to who in fact inflicted the fatal blow. While one accused holding the deceased, the other accused stabbing with kirpan on neck of the deceased resulting in his death. Accused who actually inflicted the injury convicted under S. 302 while the accused who had held the deceased convicted under Ss. 302/34. It was held that the conviction was justified.

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18. Cr.P.C., SECTION 164, CONFESSION RECORDING OF - INFLUENCE :-
(2000) 6 SCC 269
STATE OF MAHARASHTRA Vs. DAMU

Merely because a person is produced from police custody before Magistrate for recording confession, held, such confession cannot be discredited. Magistrate is not to record the confession until the lapse of such time, as he thinks necessary to extricate the accused's mind completely from fear of the police to have the confession in his own way by telling the Magistrate the true facts. The geographical distance between the sub-jail and police station, mere fact that the sub-jail, in which the accused was interred, was located adjacent to the police station, held not sufficient to infer police control over the accused. The CJM had not nominated the Judicial Magistrate of the Taluk where the accused was locked up in sub-jail and instead nominated another Judicial Magistre, held, not sufficient to vitiate the recording of confession. There could have been a variety of reasons for the CJM for choosing a particular Magistrate to do the work. It is not relevant, Source from which investigating officer came to know about the accused's willingness to make confession. I.O. can have different sources to know the facts and is not obliged to state in court the same, particularly in view of the ban contained in S. 162 Cr.P.C.

EVIDENCE ACT, SECTION 28 : RETRACTED CONFESSION EFFECT

An accused can be convicted on the basis of his confession recorded under Section 164 even though he retracted in later on. Ratio of the deci-

sion in ***Kashmir Singh Vs. State of M.P., AIR 1952 SC 159*** that confession cannot be made the foundation of conviction was rendered in the context of considering the utility of that confession as against a co-accused in view of Section 30 of the Evidence Act. However, usually courts require some corroboration to the confessional statement. Supreme Court distinguished **Kashmir Singh's** case and followed ***Sarwan Singh Vs. State, AIR 1957 SC 637*** and ***Kehar Singh Vs. State (1988) 3 SCC 609 : 1988 SC 1883.***

APPRECIATION OF EVIDENCE : CRIMINAL TRIAL : WITNESSES :-

Even a related minor incident from the past may revive in his mind when later he hears about the occurrence of the crime. It is possible to recall old minor incidents on later stage realising their possible consequences. Playmate aged 11 years deposing as to last time she played together with the deceased three years ago. Not improbable since the body of the deceased was recovered thereafter.

CIRCUMSTANTIAL EVIDENCE :- CRIMINAL TRIAL : CIRCUMSTANCES PROVIDING LINK :-

Blood found sticking on the outer side of the article which was recovered from the house of the accused. When examination under Section 313 Cr. P.C., the accused simply denied even the recovery of the article. It was held that when it was known that there was blood on the pitcher, it was for the accused to explain how it was there and when he denied even the seizure of the pitcher, such denial would be sufficient to provide a missing link to the chain of circumstances.

EVIDENCE ACT, SECTION 21 : OPINION OF ACCUSED RELEVENCY OF

"Fact... discovered" does not comprehend recovery of object. It comprehends the place from which the object was produced and the knowledge of accused about it. Information to be admissible must distinctly relate to the fact discovered. S.27 is based on the doctrine of confirmation by subsequent events. Subsequent to recovery of the dead body from a canal, statement made by accused before investigating officer that the dead body was carried by him and the co-accused on the latter's motorcycle and thrown in the canal. Recovery of other articles in such case I.O. said to have discovered the fact that accused carried the dead body to the canal on the motor cycle of the accused and therefore the opinion given by the accused in that regard was admissible.

EVIDENCE ACT, SECTION 10 : CONSPIRACY:-

Condition for applicability of. Provision based on principle of agency. When on the basis of confession made by one of the four accused there appear reasonable grounds to believe that all the accused persons had conspired together to commit the alleged offence, then whatever the co-

accused said and did in reference to their common intention, as stated in the confessional statement. would be relevant under S. 10 as against the co- accused also.

PENOLOGY :- QUANTUM OF SENTENCE : REAREST OF RARE CASES : MURDER TRIAL :-

Abduction and triple infanticide for the blood of the deceased kids to propitiate the gods to reveal the spot beneath which a treasure trove was believed to have been embedded. Looking at the horrendaus acts committed by the accused, it can doubtlessly be said that this is an extremely rare case. Nonetheless, a factor which looms large in this case is that the accused genuinely believed that a hidden treasure trove could be winched to the surface by infantile sacrifice ceremonially performed. It is germane to note that none of the children were abducted or killed for ransom or for vengeance or for committing robbery. It was due to utter ignorance that these accused became so gullible to such superstitious thinking. Of course, such thinking was also motivated by greed for gold. Even so, the normal punishment prescribed for murder as for these accused would be preferable. Accordingly, while restoring the sentence passed by the trial court in respect of other counts of offences, it is ordered that the accused shall undergo imprisonment for life for the offence under Section 302 read with S. 34 IPC.

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28. Cr.P.C., SECTION 299 (1) AND EVIDENCE ACT, SECTION 33 : EVIDENCE OF WITNESSES RECORDED IN ABSENCE OF ACCUSED : EFFECT :-
(2000) 4 SCC 41
NIRMAL SINGH VS. STATE OF HARYANA

Evidence of witnesses recorded in the absence of the accused under Section 299 (1) is an exception to Section 33 of the Evidence Act and therefore, all the conditions precedent for utilising such evidence viz. (1) accused absconding; and (2) "deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured..." must be established by the prosecution. First condition proved by prosecution in this case as regards the second condition, prosecution case was that summons were issued but process-server reported that the deponents were dead. The trial Court did not record its conclusion that on material it was satisfied that the deponents were dead. However, High Court, having regard to the original records, finding that the factum of death of the deponents was proved. In view of the appellate court's finding, it was held by the Supreme Court that the pre-conditions of S. 299 (1) satisfied.

NOTE:- Judicial Officers are requested to go through the provisions of Section 299 and in particular the terminology regarding the opening sen-

tence of Section 299 Cr.P.C., "If it is proved that an accused person has absconded...." Therefore, it is for the Court to satisfy on the proof available. Please go through the commentary of Section 299 (1) written in Sohani's The Code of Criminal Procedure.

STATUTE LAW : EXCEPTIONS :- CONDITIONS TO BE COMPLIED WITH CIVIL AND CRIMINAL PRACTICE :-

All conditions prescribed by the statute law must be satisfied.

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115. Cr.P.C., SECTION 311 : RECALLING OF WITNESSES :-
2000 (3) M.P.H.T. 136
Smt. REKHA SHARMA Vs. RAMESH CHANDRA SHARMA

The respondents were facing trial for offence under Ss. 406 and 420 I.P.C. The petitioner is the complainant. The prosecution filed an application under S. 311 Cr.P.C. for recalling the petitioner to examine her signature on the original document. The Magistrates thought it fit that her recalling is necessary but the application was rejected on the ground that prosecution could not produce evidence within stipulated time as observed by the Supreme Court in Raj Deo Sharma's case. Magistrate also closed the prosecution case. It was held that powers under S. 311 Cr.P.C. are not curtailed by Raj Deo Sharma's case. These can be invoked by the prosecution even if prosecution evidence is closed. The petition was allowed and the Court was directed to reconsider the matter.

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116. Cr.P.C. SECTION 227 : FRAMING OF CHARGE, CONSIDERATION:-
2000 (3) M.P.H.T. 164 (SC)
STATE OF M.P. Vs. S.B. JOHARI

The basic principle is "evidence even if accepted on its face value when does not disclose existence of alleged offences, then only charge can be quashed". But evidence need not be appreciated or weighed to decide whether it is sufficient or not for conviction. Limited inquiry should be made to find out whether prima facia case exists. In a criminal conspiracy inference is to be drawn on the circumstantial evidence available on record. The order of the High Court was set aside. ***Niranjan Singh Karam Singh Punjabi etc. Vs. Jitendra Bhimraj Bijjayya and others etc., (1990) 4 SCC 76*** referred to.

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117. Cr.P.C. SECTION 197 : SANCTION, CONSIDERATIONS FOR AND WHEN REQUIRED LAID DOWN :-
(2000) 5 SCC 15
GURU SHANKAR PRASAD Vs. STATE OF BIHAR

Sanction for prosecution of public servant. Conditions precedent for

invoking it under S. 197. Whether he committed an offence while acting or purporting to act in discharge of his official duty. Test to determine is whether the alleged action which constituted an offence has a reasonable and rational nexus with the official duties required to be discharged by the public servant. If answer is in affirmative then sanction for his prosecution is required to be obtained. Appellant in his official capacity as Sub-Divisional Magistrate going to the place of the complainant for the purpose of removal of encroachment from Govt.. land and in exercise of such duty he allegedly entering the chamber of the complainant, using filthy language and dragging him out of his chamber. It was held, the act alleged had a reasonable nexus with the official duty of the appellant. Hence no criminal proceedings could be initiated against the appellant without obtaining sanction.

Paragraphs 7, 8 and 14 are reproduced :-

Section 197 Cr.P.C. affords protection to a Judge or a Magistrate or a public servant not removable from his office save by or with the sanction of the Government against any offence which is alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. The protection is provided in the form that no court shall take cognizance of such offence except with the previous sanction of the Central Government or the State Government as the case may be. The object of the section is to save officials from vexatious proceedings against Judges, Magistrates and public servants but it is no part of the policy to set an official above the common law. If he commits an offence not connected with his official duty he has no privilege. But if one of his official acts is alleged to be an offence, the State will not allow him to be prosecuted without its sanction. Section 197 embodies one of the exceptions to the general rules laid down in Section 190 Cr.P.C., that any offence may be taken cognizance of by the Magistrate enumerated therein. Before this section can be invoked in the case of a public Before this section can be invoked in the case of a public servant two conditions must be satisfied i.e. (1) that the accused was a public servant who was removable from his office only with the sanction of the State Government or the Central Government ; and 92) he must be accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty.

What offences can be held to have been committed by a public servant while acting or purporting to act in the discharge of his official duties is a vexed question which has often troubled various courts including this Court. Broadly speaking, it has been indicated in various decisions of this Court that the alleged action constituting the offence said to have been committed by the public servant must have a reasonable and rational nexus with the official duties required to be discharged by such public servant.

Coming to the facts of the case in hand, It is manifest that the appellant was present at the place of occurrence in his official capacity as Sub-Divisional Magistrate for the purpose of removal of encroachment from government land and in exercise of such duty, he is alleged to have committed the acts which form the gravamen of the allegations contained in the complaint lodged by the respondent. In such circumstances, it cannot but be held that the acts complained of by the respondent against the appellant have a reasonable nexus with the official duty of the appellant. It follows, therefore, that the appellant is entitled to the immunity from criminal proceedings without sanction provided under Section 197 Cr.P.C. Therefore, the High Court erred in holding that Section 197 Cr.P.C. is not applicable in the case.

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38. Cr.P.C., SECTIONS 374 (2) AND 437 : GRANTING OF BAIL IN LONG PENDENCY OF TRIAL :-
(2000) 4 SCC 178
SHAILENDRA KUMAR Vs. STATE OF DELHI

Bail during pendency of trial justified.

Paragraphs 2 and 3 of the judgment are reproduced :

This is a petition for being released on bail while the appellant-applicant's appeal against his conviction under Sections 304-B and 498-A IPC is pending in the High Court of Delhi. The appellant-applicant has been sentenced to 7 years' rigorous imprisonment under Section 304-B and two years' rigorous imprisonment under Section 498-A IPC.

Having heard the learned counsel for the parties and taking into account the fact that the appellant-applicant is in custody for more than three years and there is no likelihood of the appeal being heard early, we direct that the appellant-applicant be released on bail to the satisfaction of the Additional Sessions Judge, New Delhi.

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118. CRIMINAL TRIAL AND EVIDENCE ACT, SECTION 8 ; MOTIVE :-
(2000) 4 SCC 515
STATE OF U.P. Vs. BABU RAM

It is equally relevant where case is based on direct evidence as well as where case is based on circumstantial evidence. If prosecution proves existence of some motive its failure to show how it developed in the mind of the accused impelling him to commit the crime would not be fatal to the prosecution case.

Please refer to the following statements to know how to consider the intention, knowledge and motive of circumstantial evidence :

Disinterment of dead bodies from the place pointed out by accused. It

was held that it is a relevant circumstance. It cannot be disbelieved merely on some fragile and flimsy grounds such as particulars of that place or some other details was not given in the site plan prepared by investigating of ficer or mud or wooden planks from that place had not been taken into custody by him.

Murder of parents and brother. Accused first trying to mislead the people by saying that the deceased persons had gone to attend temple festival. Merely because such explanation given for disappearance of the deceased appears incredible to the listeners, it cannot be said that accused could not have said so and on that ground it cannot be rejected as a relevant circumstances.

Recovery of crime article on the basis of statement of accused. It was held that cannot be disbelieved merely on ground that accused was not interrogated on the spot where he was present and instead he was interrogated later on and then on the basis of his statement the articles were recovered.

TIME OF DEATH, EXPLAINED :- Prosecution fixing time of murder as 11 p.m. on surmise. Postmortem report indicating that stomachs of deceased persons were empty. large and small intestines contained faecal matter and gases. It was held. actual time of murder would have been later in the night or the last meal would have been consumed by deceased much earlier. But that would not falsify the prosecution case by claiming that murder must have taken place very early in the morning and not in the night.

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20. CRIMINAL PRACTICE AND PROCEDURE : ABSENCE OF ACCUSED HEARING OF APPEAL DUTY OF THE COURT :-
2000 (4) M.P.H.T. 14 (NOC)
GABBU SINGH Vs. STATE OF M.P.

The appeal cannot be decided on merits without appointing a Counsel at State cost for the appellant/accused and also without giving hearing on merits of the appeal.

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97. CRIMINAL TRIAL : APPRECIATION OF EVIDENCE : MINOR DISCREPENCIES : PART OF EVIDENCE NOT RELIABLE :-
(2000) 5 SCC 668
SWARAN SINGH Vs. STATE AND OTHER ALLIED CASE

Merely because there are minor discrepancies in the testimony of I.O. due to delayed trial. It was held that in the circumstances it was not likely that he would not remember the details of the investigation. On facts discrepancies did not affect credibility of the prosecution case. Merely because one portion of evidence of eyewitnesses is disbelieved does not mean that court is bound to reject all of it. Non-acceptance of eyewitnesses'

account regarding involvement of the co-accused in the offence would not render their evidence in respect of involvement of the accused suspect.

CRIMINAL TRIAL : WITNESSES : PROBLEM FACED BY THE WITNESSES STATED AND SUGGESTION MADE- UNWARRANTED ADJOURNMENTS :-

Paragraph 36 of the judgment is reproduced :-

36. A criminal case is built on the edifice of evidence, evidence that is admissible in law. For that, witnesses are required whether it is direct evidence or circumstantial evidence. here are the witnesses who are harassed a lot. A witness in a criminal trial may come from a far-off place to find the case adjourned. He has to come to the court many times and at what cost to his own self and his family is not difficult to fathom. It has become more or less a fashion to have a criminal case adjourned again and again till the witness tires and gives up. It is the game of unscrupulous lawyers to get adjournments for one excuse or the other till a witness is won over or is tired. Not only is a witness threatened, he is abducted, he is maimed, he is done away with, or even bribed. There is no protection for him. In adjourning the matter without any valid cause a court unwittingly becomes party to miscarriage of justice. A witness is then not treated with respect in the court. He is pushed out from the crowded courtroom by the peon. He waits for the whole day and then he finds that the matter is adjourned. He has no place to sit and no place even to have a glass of water. And when he does appear in court, he is subjected to unchecked and prolonged examination and cross-examination and finds himself in a helpless situation. For all these reasons and others a person abhors becoming a witness. It is the administration of justice that suffers. Then appropriate diet money for a witness is a far cry. Here again the process of harassment starts and he decides not to get the diet money at all. High Courts have to be vigilant in these matters. Proper diet money must be paid immediately to the witness (not only when he is examined but for every adjourned hearing) and even sent to him and he should not be left to be harassed by the subordinate staff. If the criminal justice system is to be put on a proper pedestal, the system cannot be left in the hands of unscrupulous lawyers and the sluggish State machinery. Each trial should be properly monitored. Time has come that all the courts, district courts, subordinate courts are linked to the High court with a computer and a proper check is made on the adjournments and recording of evidence. The Bar Council of India and the State Bar Councils must play their part and lend their support to put the criminal system back on its trail. Perjury has also become a way of life in the law courts. A trial Judge knows that the witness is telling a lie and is going back on his previous statement, yet he does

not wish to punish him or even file a complaint against him. He is required to sign the complaint himself which deters him from filing the complaint. Perhaps law needs amendment to clause (b) of Section 340 (3) of the Code of Criminal Procedure in this respect as the High Court can direct any officer to file a complaint. To get rid of the evil of perjury, the court should resort to the use of the provisions of law as contained in Chapter XXXVI of the Code of Criminal Procedure.

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25. EVIDENCE ACT, SECTIONS 26 AND 27- WORDS AND PHRASES : "CUSTODY" AND "ARREST" MEANING OF :-
2000 (4) M.P.H.T. 39
BALRAM SINGH Vs. STATE OF M.P.

Custody has different meanings than arrest. Custody means immediate charge and control exercised by a person or an authority. The terms are not synonymous. In every arrest there is a custody, but not vice versa.

EVIDENCE ACT, SECTION 45 : MEDICAL OPINION :-

Medical opinion is an opinion and it is for the Court to accept it. Medical jurisprudence is not an exact science.

Cr.P.C., SECTIONS 357 (1) AND 357 (3) :-

Section 357 (1) provides power to award compensation to victims out of sentence of fine imposed on accused. Section 357 (3) is independent and is an important provision. It empowers Court to award compensation to victims while passing judgment of conviction. ***Hari Kishan Vs. State of Haryana, AIR 1988 SC 2127*** followed.

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110. EVIDENCE ACT, SECTION 24 : EXTRA JUDICIAL CONFESSION AND MEDICAL TERMINATION OF PREGNANCY ACT, 1971, SS. 3 AND 4 : PRINCIPLES EXPLAINED :-
2000 (1) JLJ 383
SURENDRA CHAUHAN Vs. STATE OF M.P.

Extra-judicial confession of accused to the mother of deceased is sufficient to base the conviction.

Pregnancy not terminated in accordance with provisions under law. Medical practitioner is liable to be punished under IPC if death is caused.

Paragraph 11 of the judgment is reproduced :-

Under Section 34 a person must be physically present at the actual commission of the crime for the purpose of fecilitating or promoting the offence, the commission of which is the aim of the joint criminal venture. Such presence of those who in one way or the other fecilitate the execution of the common design is itself tantamount to actual participation in the

criminal act. The essence of Section 34 is simultaneous consensus of the minds of persons participating in the criminal action to bring about a particular result. Such consensus can be developed at the spot and thereby inteded by all of them. ***Ramaswami Ayhangar and Ors. Vs. State of Tamil Nadu (1976) 3 SCC 779.*** The existence of common intention can be inferred from the attending circumstances of the case and the conduct of the parties. No direct evidence of common intention is necessary. For the purpose of common intention even the participation in the Commission of the offence need not be proved in all cases. The common intention can develop even during the course of an occurrence. ***Rajesh Govind Jagesha Vs. State of Maharashtra. (1999) 8 SCC 428.*** To apply Section 34 IPC apart from the fact that there should be two or more accused, two factors must be established; (i) common intention and (ii) participation of the accused in the commission of an offence. If a common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and a common intention is absent, Section 34 cannot be invoked. In every case, it is not possible to have direct evidence of a common intention. It has to be inferred from the facts and circumstances of each case.

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42. EVIDENCE ACT, SECTIONS 65 (c) & (f) AND 74 : SECONDARY EVIDENCE :-
(2000) 6 SCC 735
MARWARI KUMHAR Vs. BHAGWANPURI GURU

Secondary evidence of judgment whose original and certified copy both lost. It was held that an ordinary copy of such judgment may be adduced in evidence. Clause (c) permitting secondary evidence is independent of clause (f) stipulating the filing of a certified copy of a public document as defined under S. 74. Therefore secondary evidence of public documents may be adduced if the conditions laid down in clause (c) that the original has been destroyed or lost are fulfilled. Appellant-plaintiff in suit for possession adducing in evidence ordinary copy of judgment and certified copy of decree in earlier suit between same parties, affirming appellant's title to suit property. Contention that original of judgment was no longer available in the records of the court and that certified copy was lost. Respondent-defendants never denying that title of appellant had been affirmed by judgment in question. Also never contending that copy was not correct. Trial court decreeing appellant's suit. First appellate court setting aside decree and finding that ordinary copy of judgment, a public document was inadmissible in evidence.

ADVERSE POSSESSION : PROOF OF :-

In absence of proof as to time and manner in which possession (as a

pujari in this case) got converted to open, hostile and adverse possession, it was held that the claim to adverse possession cannot be upheld.

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50. EVIDENCE ACT, SECTION 32 (1) : DYING DECLARATION : RELEVANCY - REMOTENESS CAUSE OF DEATH :
(2000) 6 SCC 671
SUDHAKAR Vs. STATE OF MAHARASHTRA

Statement of the deceased is admissible only to the extent of proving the cause or circumstances of the transaction which resulted in death of the deceased. Statement should have close nexus with the actual transaction. The prosecution relying upon the statement should prove the making of it as a fact by producing the scribe in court if it is in writing or by examining the person who heard the deceased making it if it is oral.

NOTE :- Please refer the judgment

Statement of deceased giving circumstances in which she was allegedly raped by two accused, recorded by police 11 days after the occurrence. She committed suicide about 5½ months after the occurrence. At the time of making the statement, there was nothing indicating the deceased's mind for committing suicide on account of humiliation suffered by her due to rape, nor the circumstances stated in statement suggesting that a person making such statement would under normal circumstances commit suicide after a lapse of 5½ months. Therefore, in the circumstances of the case the statement did not constitute a dying declaration.

NOTE :- Judicial Officers are requested to go through the whole judgment. The whole law relating to dying declaration has been explained in the judgment and in particular the leading case ***Pakla Narayan Swami Vs. the Emperor, AIR 1939 PC 47.***

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114. FOREST PRODUCE TRANSPORTATION RULES, 1961, RULES 3, 5 AND 16 AND INDIAN FOREST ACT, SECTIONS 41, 42 AND 52 AND Cr.P.C., SECTIONS 401, 452, 453 AND 454 :-
2000 (3) M.P.H.T. 38 (NOC)
ASRAR KHAN Vs. STATE OF M.P.

The truck in question was seized by the Police connection with offences under Section 379 of IPC read with the Rules and Act as referred above relating to the forest. The Magistrate directed to release of the truck on supurdnama of the owner. But this order was set aside by the sessions Judge. It was held that since the Forest Department had already started confiscation proceedings under S. 52 of the Forest Act of which notice was sent to the Magistrate. Therefore, release of truck on supurdnama was not proper.

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41. GOVERNMENT SAVINGS CERTIFICATES ACT, 1959, SECTIONS 6, 7, AND 8 r/w SECTION 370 INDIAN SUCCESSION ACT, SECTION 39 INSURANCE ACT AND SECTION 10 (2) EMPLOYEES' PROVIDENT FUNDS AND MISC. PROVISIONS ACT :- RIGHT OF NOMINEE TO GET DESPATCHES ETC. QUESTION OF NOMINEE'S ENTITLEMENT WHETHER HE GETS EXCLUSION OF OTHER HEIRS
(2000) 6 SCC 724
VISHIN N. KHANCHANDANI Vs. VIDHYA LACHMANDAS

The nominee is entitled to receive the sum due on the savings certificates, yet he retains the same for the persons entitled to it under the relevant law of succession. The contention that the non obstante clause in S. 6 entitles the nominee to utilise the sum so received by him, in the manner he likes was rejected. No doubt that by the non obstante clause the legislature devises means which are usually applied to give overriding effect to certain provisions over some contrary provisions that may be found wither in the same enactment or some other statute. To attract the applicability of the phrase, the whole of the section, the scheme of the Act and the objects and reasons for which such an enactment is made have to be kept in mind. In view of the provisions of Section 8 (2) of the Act and the Statement of Objects and Reasons necessitating the passing of the Act read with Sections 8 (1) and 7, though the nominee of the National Savings Certificates has a right to be paid the sum due on such savings certificates after the death of the holder, yet he retains the said amount for the benefit of the persons who are entitled to it under the law of succeesion applicable in the case, however, subject to the exception of deductions mentioned in Section 8 (2).

The respondents (widow and daughter of the deceased) would, however, not be entitled to directly receive the amounts payable on account of debts payable under the National Savings Certificates. The appellants are entitled to receive the sum due on the aforesaid National Savings Certificates in which they are the nominees upon furnishing the undertaking in terms of Section 8 (2) in the Court of Civil Judge. The amount so received by the appellants shall be payable to the respondents after deduction of the amounts of debts or other demands lawfully paid or discharged, if any.

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47. GUARDIANS AND WARDS ACT, SECTION 17 : WELFARE OF THE MINOR : CUSTODY ORDERS :-
(2000) 6 SCC 598
JAI PRAKASH Vs. SHYAM SUNDER AGARWALLA

The order remain in force for substantial periods to avoid unnecessary disrtuption of child's education. Custody orders by their very nature can never be final. However, before a change is made, it must be proved to be in the paramount interest of the child. In the present case, the mother gave

child in adoption to her father, the appellant. Affluence of party seeking guardianship held cannot be the sole criterion for making the appointment. Mother who gave child in adoption could not reclaim guardianship.

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12. HINDU SUCCESSION ACT, SECTIONS 14 (i) AND 14 (ii) 7 HINDU ADOPTIONS AND MAINTENANCE ACT, SECTIONS 19 (1) (a) AND 22 (2) r/w S. 21 (vi) :-
(2000) 6 SCC 310
BALWANT KAUR Vs. CHANAN SINGH

Appellant No. 1 Balwant Kaur is the widowed daughter of Shyam Singh, the testator, who was the sole owner of the land in dispute. He had no other issue. The appellant Balwant Kaur had no estate of her deceased husband or her father-in-law of fall back upon for claiming dependency benefit, nor had she any other source of income. She had no issues and was living with her father Shaym Singh. She being a destitute and solely dependent upon him for her maintenance. Shyam Singh executed a will dated 21-8-1959. The recitals in the will indicate that the testator father was worried about her maintenance and that is why he even enjoined his brother and other legatees under will to look after the daughter. By will executed conferring full ownership in 2/3rd of the testator's property on his two brothers and creating life interest in 1/3rd of his property in favour of his destitute widowed daughter by way of her maintenance. It was held that life interest in a part of the testator's property was conferred on his destitute widowed daughter in recognition of her preexisting right to maintenance under the Hindu Adoptions and Maintenance Act from the estate of her father during his lifetime as well as after his death when the estate would pass in favour of his testamentary heirs. Hence sub-section (1) rather than sub-section (2) of S. 14 would be attracted as a result of which after coming into operation of the will her life interest in 1/3rd of the deceased's property would get enlarged into full ownership.

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15. HINDU MARRIAGE ACT, 1955, SECTIONS 5 (I), 10, 11, 13, AND 17 : MUSLIM LAW, MARRIAGE : I.P.C., SECTION 494; Cr.P.C., SECTION 198 : CONSTITUTION OF INDIA, ARTICLES 21, 25, 44, 136, 137, 141 : DISSOLUTION OF MARRIAGE BY CONVERTION: CHANGE OF RELIGION FOR GETTING MARRIAGE : EFFECT :-
(2000) 6 SCC 224
LILY THOMAS Vs. UNION OF INDIA

Feigning conversion or mockingly adopting another religion permitting polygamy in order to escape from rule of monogamy and penal consequences of bigamous marriage, held cannot be permitted. Religion is not a commodity to be exploited. Under Hindu Law marriage is a sacrament and in every personal law is a sacred institution which must be preserved

and respected. Conversion does not automatically dissolve first marriage. It was held that since bigamous marriage is prohibited under HMA, 1955 Act and is an offence under Section 17 of the Act, any marriage solemnised by the husband during the subsistence of his Hindu Marriage would be void under S. 11, and an offence triable under S. 17 r/w S. 494 IPC, regardless of such husband's conversion to another religion permitting polygamy, Mere conversion does not dissolve the original marriage automatically. Apostate husband and first wife continue to be "husband and wife". Conversion is only a ground for divorce under S. 13 or judicial separation under S. 10 HMA, 1955. However, the Supreme Court vacated the stay in criminal cases against the husband.

"PERSON AGGRIEVED" EXPLAINED :-

Cognizance of offence of bigamy under S. 494 IPC is taken only on complaint of person aggrieved as specified in S. 198. Therefore, person having right to make complaint would have to be identified on basis of the personal law applicable to the complainant and accused respondent. The important words in S. 494 IPC are "marries in any case in which such marriage is void by reason of its taking place during the life of such husband and wife". They indicate that the offence can be said to be constituted only where second marriage is shown to be void for the reason that it has taken place in the lifetime of the original husband or wife. The words "husband" or "wife" are important because they indicate that personal law applicable to them would continue to be applicable as long as their marriage subsists. Contention that decision in ***Sarla Mudgal Vs. Union of India, (1995) 3 SCC 635*** is violative of rights guaranteed under Art. 21 is misconceived. Apprehension that in view of judgment in Sarla Mudgal, men having undergone second marriage under Muslim law after conversion would be liable to be convicted without any further proof. It was held to be without substance as complainant must prove all the ingredients of offence, including proper solemnisation of second marriage. Conviction cannot be based on mere admission made outside the Court.

In Muslim law plurality of mariage is not unconditionally conferred upon the husband. Capacity to do justice between co-wives is a condition precedent. Therefore, it would be unjust to Islamic law to conclude that a convert is entitled to practise bigamy notwithstanding the subsistene of his marriage under another personal law, by which he was governed before the conversion, enjoining monogamy.

JUDICIAL PROCESS : INTERPRETATION OF LAW : RETROSPECTIVE EFFECT :-

Interpretation of a legal provision relates back to the date of law itself. It cannot be prospective because courts do not legislate. The Courts only interprete the law.

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103. I.P.C., SECTIONS, 96, 100, 103 AND 104 : RIGHT OF PRIVATE DEFENCE EXCEEDED, EXCEEDED DEFENCE WILL BE RESPONSIBLE FOR HIS INDIVIDUAL :-
2000 (1) JLJ 336
KRISHNA KUMAR AND OTHERS Vs. STATE OF M.P.

The right of private defence of person and property is available when more reasonable apprehension is enough to put the right of private defence in operation. Person in possession of property has a right to protect his possession as well as property when there is actual invasion of his right. He can defend his person and property by force.

I.P.C. SECTIONS 302/34 :

Act of causing death not attributable to any particular individual. Other persons cannot be made liable under S. 302 r/w S. 34. Private defence of person and property exceeded by causing death. Offence under Section 304 Pt. I made out.

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104. I.P.C. SECTIONS 375 AND 376 : RAPE : APPRECIATION OF EVIDENCE :-
(2000) 5 SCC 30
STATE OF RAJASTHAN Vs. N.K. THE ACCUSED

Testimony of the prosecutrix should be appreciated on the basis of probabilities like testiomony of any other witness and conviction can be based solely on such testimony. But if court finds it difficult to accept her testimony, it may seek assurance to her testimony, which may be sort of corroboration, from other evidence.

CONSENTING PARTY :- Rape of girl of above 16 years age. The question is whether she was consenting party? Evidence of the prosecutrix that she was forcibly subjected to sexual intercourse should normally be believed unless there is material leading to an inference of her consent. Absence of marks of external injuries on the person of the prosecutrix by itself not sufficinet to draw an inference of consent of the prosecutrix.

INJURIES :- The absence of marks of external injuries on the person of the prosecutrix by itself not sufficient to draw an inference of consent of the prosecutrix having regard to the fact that the prosecutrix was a teenaged girl while accused was an able-bodied youth along with other facts. It was held that the testimony of the prosecutrix that she was subjected to rape was credible. Failure to produce independent witnesses is not in itself fatal in view of the remaining (available) evidence.

RELATED WITNESSES :- Father of prosecutrix would not ordinarily subscribe to false story of rape on his daughter and thereby invite ignominy.

SENTINCE :- Part of paragraph 21 of the judgment is reproduced

Now remains the question of sentence. The incident is of the year 1993. The accused was taken into custody by the police on 3-11-1993. He was not allowed bail. During the trial as also during the hearing of the appeal by the High Court he remained in jail. It is only on 11-10-1995 when the High Court acquitted him of the charge that he was released from jail. Thus he had remained in jail for a little less than two years. Taking into consideration the period of remission for which he would have been entitled and the time which has elapsed from the date of commission of the offence. We are of the opinion that the accused-respondent need not now be sent to jail. It would meet the ends of justice if he is sentenced to undergo imprisonment for the period already undergone by him and to a fine of Rs. 2000 with further simple imprisonment of one year and nine months in default of payment of fine as passed by the trial court.

BENEFIT OF DOUBT :- High Court while acquXitting the accused on benefit of doubt should be cautious to see that the doubt should be a reasonable doubt. It should not reverse the findings of guilt on the basis of irrelevant circumstance or mere technicalities. No person should be allowed to escape unpunished once guilt against him is proved.

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105. I.P.C. SECTION 376 PROVISO : RAPE : AGE OF MINOR VICTIM, ADEQUATE AND SPECIAL REASONS FOR IMPOSING LESS SENTENCE THAN PRESCRIBED, EXPLAINED :-
(2000) 4 SCC 502
KAMAL KISHORE Vs. STATE OF H.P.

Where evidence indicated some discrepancy as regards age of victim and ossification or other pathological test not carried out. Finding of Sessions Court on the issue relying on the statement of the mother, not interfered with by Supreme Court.

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113. I.P.C., SECTIONS 302 AND 120-B : MURDER : CIRCUMSTANTIAL EVIDENCE:-
(2000) 5 SCC 7
KULDEEP SINGH Vs. STATE OF RAJASTHAN

Motive existing apart from other proved circumstances, bloodstained clothes recovered from a hidden place at the instance of two of the four accused persons for which the accused could not offer any explanation. False explanation given by another accused for her conduct providing a missing link in the circumstances. All the circumstances taken together, the Supreme Court held that the guilt was conclusively established against accused Nos. 1,2 and 4.

CRIMINAL TRIAL : CIRCUMSTANTIAL EVIDENCE :- False explanation offered by accused provides additional link in the circumstances.

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6. **I.P.C. SECTION 295-A: SANCTION : CR.P.C. SECTION 196 (1) : WANT OF SANCTION:**
(1999) 1 SCC 728
MANOJ RAI Vs. STATE

Paragraph 2 of the judgment is reproduced:

Since the learned counsel for the State fairly states on instructions that no sanction was given in accordance with Section 196 (1) of the Criminal Procedure Code to prosecute the appellants for the offence under Section 295-A of the Indian Penal Code, we allow this appeal and quash the impugned proceedings. Let the written instructions revived by the learned counsel for the respondent-State in this regard be kept on record as desired by him.

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32. **I.P.C., SECTIONS 314/34 : MISCARRIAGE AND COMMON INTENTION :-**
(2000) 4 SCC 110
SURENDRA CHAUHAN Vs. STATE OF M.P.

Common intention to cause miscarriage which resulted in death. Accused having illicit relations with the deceased. Accused took the deceased to the clinic of a doctor with the intention to cause her miscarriage. Doctor was not qualified for terminating pregnancy nor was his clinic equipped and approved by Government as required under Rule 4 of Medical Termination of Pregnancy Rules. Deceased died in the clinic either due to shock or due to non-application of anaesthesia while undergoing abortion. It was held that accused rightly convicted under Sections 314/34.

Common intention, that is, consensus of mind of the persons participating in the crime essential. It can be inferred from the facts and circumstances of each case.

It is not possible to accept the contention that the appellant could not be convicted with the aid of Section 34 IPC. To apply Section 34 IPC, apart from the fact that there should be two or more accused, two factors must be established : (i) common intention, and (ii) participation of the accused in the commission of an offence. If a common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and a common intention is absent, Section 34 cannot be invoked. Under Section 34 a person must be physically present at the actual commission of the crime for the purpose of facilitating or promoting the offence, the commission of which is the aim of the joint criminal venture. Such presence of those who in one way or the other facilitate the execution of the common design is itself tantamount to actual participation

in the criminal act. The essence of Section 34 is simultaneous consensus of the minds of persons participating in the criminal action to bring about a particular result. Such consensus can be developed at the spot and thereby intended by all of them. The existence of a common intention can be inferred from the attending circumstances of the case and the conduct of the parties. No direct evidence of common intention is necessary. For the purpose of common intention even the participation in the commission of the offence need not be proved in all cases. The common intention can develop even during the course of an occurrence. In every case, it is not possible to have direct evidence of a common intention. It has to be inferred from the facts and circumstances of each case.

Moreover, having regard to the provisions of the Medical Termination of Pregnancy Act and Rules, Surendra Chauhan was certainly not competent to terminate the pregnancy of the deceased nor his clinic had the approval of the Government. Even the basic facilities for abortion were not available in his clinic. The appellant took the deceased to the clinic of Surendra Chauhan with interest to cause her miscarriage and then her death was caused by Surendra Chauhan while causing abortion, which act was done by Surendra Chauhan in furtherance of the common intention to both Surendra Chauhan and the appellant. There is no escape from the conclusion that the appellant had been rightly convicted under Section 314/ 34 IPC.

Cr.P.C., SECTION 313 : EXPLANATION OF ACCUSED IN STATEMENT UNDER SECTION 313, APPRECIATION OF :-

When inconsistent with the conduct and appears to be palpably false, it cannot be accepted.

There is no reason for not taking into consideration the extra-judicial confession of the appellant made to the deceased's mother to base his conviction. It was quite natural in the circumstances. It is not possible to believe the defence version that the deceased just died lying on the table in the clinic of Surendra Chauhan. She was a normal girl. No explanation is forthcoming either from the appellant or Surendra Chauhan as to in what circumstances the deceased died. It was something within their knowledge. The court in normal circumstance does accept the explanation of the accused consistent with his innocence even though he has not been able to prove his defence by positive evidence. But when the explanation offered by the accused or the defence set up by him is not only inconsistent with his conduct but is palably false, it cannot be worth consideration. When examined under Section 313 Cr.P.C., the appellant as well as Surendra Chauhan were asked if they wanted to say anything in their defence, but the defence set up by them were not true and had to be rejected.

37. **I.P.C. SECTION 415 : CHEATING DISTINGUISHED FROM BREACH OF CONTRACT :-**
(2000) 4 SCC 168
HRIDAYA RANJAN PRASAD Vs. STATE OF BIHAR

Definition of cheating contemplates two separate classes of acts viz. deception by fradulent or dishonest inducement and deception by intentional, but not fradulent or dishonest inducement. In the second case intentional deception must be shown to exist right from the beginning of the transaction.

Transaction of sale of land by appellants to Respondent 2 Society. Cheques issued by Respondent 2 in favour of appellant dishonoured by bank because of insufficiency of amount in the account of drawer. FIR lodged under Ss. 406, 420 and 120-B IPC. As a counter blast complaint filed by Respondent 2 against appellant alleging offences under Ss. 418, 420, 423, 504 and 120-B IPC. Appellants filing petition for quashing of the complaint/ FIR filed by Respondent 2. Allegations in the complaint read as a whole not indicating, expressly or impliedly, any intentional deception on the part of the appellants right from the beginning of the transaction. Thus prima facie the allegations made by Respondent 2 not constituting offence punishable under S. 420 or allied offences mentioned in the complaint It was held that continuing the criminal proceedings against the appellants would amount to an abuse of process of the Court. High Court erred in refusing to quash the complaint and the proceedings.

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9. **INDIAN STAMP ACT, SECTIONS 10 AND 11 AND M.P., STAMPS RULES, 1942 RULE NOS. 17 AND 18 :-**
PROMISSORY NOTE : NATURE OF STAMP DUTY : THE STAMPS TO BE USED FOR PROMISSORY NOTE SHOULD BE "REVENUE" AND NOT "SPECIAL ADHESIVE":-
ISMAIL KHAN Vs. RAM PRAKASH

The Promissory Note executed on special adhesive stamp was held inadmissible.

NOTE:- Judicial Officers are requested to kindly go through the following law also.

In ***Kailash Vs. Laxmichand, 1982 Weekly Note 423,*** it was held that promissory note duly stamped with adhesive stamps bear word "Revenue" inscription of can be proved in evidence, be validly stamped. In ***Harbans Singh Vs. Adamali, 1976 JLJ S.N. 85*** it was held that under Art. 49 (1) of Section 1-A of the Stamp Act it is required to be affixed with Stamp of 10 paisa. Rule 13 of the M.P. Stamp Rules, 1942, is merely an enabling provision which provides that in cases specified therein adhesive stamps may be used. That rule cannot be construed to mean that if in cases enumer-

ated in rule 13 documents are executed on impressed stamps of proper value, then the document is rendered inadmissible in evidence for want of adhesive stamps. The finding of the trial Court that the promissory note in question was inadmissible in evidence is clearly contrary to law. Judgment and decree are set aside and case remanded with direction to admit the promissory note in evidence.

In ***Kesrimal Vs. Mulchand, 1981 (1) Weekly Note 133,*** it was held that having heard learned counsel for the parties, I have come to the conclusion that this petition deserves to be allowed. The trial Court has held by its order dated 9th December 1978 that the promissory note in question was not admissible as it was not properly stamped. The Promissory note is alleged to have been executed for a consideration of Rs. 450/- and bears revenue stamps of 20 p. which is more than the amount required by the provisions of Art. 49 (a) (ii) of the Stamp Act. (M.P. Amendment) Learned counsel for the opponent, therefore, conceded that the trial Court erred in law in holding that the promissory note was inadmissible in evidence on the ground that it was not properly stamped. The order passed by the trial Court in that behalf cannot be sustained in law.

In ***Ganapath Singh Vs. Gurucharan Singh, 1972 M.P.L.J. 616,*** it was said that Stamp Rules, 1942 read with Section 10 of the Stamp Act Stamps Marked as "Madhya Bharat" or "Bharat" are not ultravires. Further it was held that Rules 3 and 13 (f) and Stamp Act, Sch. I, Art. 49 (a) (iii) adhesive stamp is permitted in respect of an instrument required to be stamped in accordance with the Art. 49 (a) (iii).

In ***Mohammed Vs. Sagarmal, 1971 JLJ 680,*** it was held that Rule 3 and 13 (f) and the amendment made on 26-6-1970, Stamps marked "Bharat" or "India" deemed to be issued by the State Government are valid.

In ***Kailash Chandra Vs. Veerendra Singh 1978 M.P.L.J. S.N. 27*** it was held that (Section 10 of Stamp Act) stamps affixed to pronote bearing the word "M.B." pronote is not invalid. Use of former "M.B." stamp in the State of M.P. is legal.

STAMP ACT, SECTION 11 : USE OF ADHESIVE STAMPS:-

The following instruments may be stamped with adhesive stamps, namely:-

(a) Instruments chargeable with a duty not exceeding ten naye paise except parts of bills of exchange payable otherwise than on demand and drawn in sets;

(b) bills of exchange, and prmissory notes drawn or made out of India;

(c) entry as an advocate, vakil or atrorney on the role of a High Court;

(d) notarial acts; and

(e) transfers by endorsement of shares in any incorporated company or other body corporate.

SECTION 12 OF STAMP ACT : CANCELLATION OF ADHESIVE STAMPS:-

(1) (a) Whoever affixes any adhesive stamp to any instrument chargeable with duty which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again; and

(b) whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

(2) Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall, so far as such stamp is concerned, be deemed to be unstamped.

(3) The person required by sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials or the name of initials of his firm with the true date of his so writing, or in any other effectual manner.

Attention of the Judicial Officers is also drawn to Proviso 'C' to sub-section (3) of Section 32:

Though the Courts and the Stamp Collector has the jurisdiction to validate and endorse the document in some cases but there are certain instruments imposed on both authorities. The proviso says that provided that nothing in this section shall authorise the Collector to endorse

(c) any instrument chargeable with a duty not exceeding ten naye paise or any bill of exchange or promissory note when brought to him, after the drawing or execution thereof on paper not duly stamped.

Judicial Officers are also requested to go through the following M.P. Stamp Act Rules, 1942 :

RULE 12 : CERTAIN INSTRUMENTS TO BE STAMPED WITH LABELS :

(1) Instruments executed out of the state and requiring to be stamped after their receipts in this state (other than instruments which under section 11 or Rule 13, may be stamped with adhesive stamps) shall be stamped with impressed labels.

(2) Where any such instrument as aforesaid is taken to the Collector under Section 18, sub-section (2), the Collector shall send the instrument to the proper officer, remitting the amount of duty paid in respect thereof; and the proper officer shall stamp the instrument in the manner prescribed by rule 11, and return it to the Collector for delivery to the person by whom it was produced.

CHAPTER III OF ADHESIVE STAMPS

RULE 13 : USE OF ADHESIVE STAMPS ON CERTAIN INSTRUMENTS :-

The following instruments may be stamped with adhesive stamps namely :

(a) Bills of exchange payable otherwise than on demand and drawn in sets, when the amount of duty does not exceed ten naye paise for each part of the set;

(b) Transfers of debentures of public companies and associations.

(c) Copies of maps or plans, printed copies and copies of or extracts from, registers given on printed forms chargeable with duty under article 24 of Schedule I-A.

(d) Instruments chargeable with stamp duty under Article 1, 5 (a) and (b), 19, 28, 36 and 43 of Schedule 1-A.

(e) Instruments chargeable with stamp duty under Article 47 of Schedule I.

(f) Instruments chargeable with stamp duty under Articles 37, 49 (a) (ii) and (iii) and 52 of Schedule I and

(g) Bonds executed under any law relating a central duty of excise or any rules made thereunder.

ARTICLE 49 OF THE STAMP ACT : PROMISSORY NOTE (AS DEFINED BY SECTION 2 (22) :-

(a)	When payable on demand-	
	(i) When the amount or value does not exceed Rs. 250;	Ten naye paise
	(ii) When the amount or value exceeds Rs. 250 but does not exceed Rs. 1,000;	Fifteen naye paise.
	(iii)in any other case	Twenty-five naye paise
(b)	When payable otherwise than on demand	The same duty as a Bill of Exchange (no. 13) for the same amount payable otherwise than on demand.

NOTE : Current rate of Stamp duty not stated.

RULE 18: SPECIAL ADHESIVE STAMPS TO BE USED IN CERTAIN CASES :-

The following instruments when stamped with adhesive stamps shall be stamped with the following descriptions of such stamps, namely:-

(a) Bills of exchange, cheques and promissory notes drawn or made out of British India and chargeable with a duty or more than one anna; with stamps bearing the words "Foreign Bill".

(b) Separate instruments of transfer of shares and transfers of debentures of public companies and associations; with stamps bearing the words "Share Transfer".

(c) Ommitted.

(d) Noterial acts : with foreign bill stamps bearing the word "Notarial".

(e) Copies of maps or plans, printed copies and copies of, and extracts from, registers given on printed forms, certified to be true copies : with court fee stamps.

(f) Instruments chargeable with stamp duty under Articles 5 (a) and (b) or 43 of Schedule I-A : with stamps bearing the words "Agreement", or "Broker's Note", respectively.

(g) Instruments chargeable with stamp duty under Article 47 of Schedule I : with stamps bearing the word "Insurance".

(h) Bonds executed under any law relating to a Central duty of excise or any rules made thereunder: with court fee stamps.

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1. INTERPRETATION OF STATUTES : SUBSIDIARY RULES - EXPRESSO UNIUS EST EXCLUSIO ALTERIUS :-
(1999) 1 SCC 657
SHRIRAM MANDIR SANSTHAN Vs. VATSALABAI

An express provision in an Act which excludes the operation of certain provisions cannot be made nugatory by resorting to general law.

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16. JURISPRUDENCE: CONSTITUTION OF INDIA, ARTICLE 141 : PRECEDENTS :-
(2000) 6 SCC 224
LILY THOMAS Vs. UNION OF INDIA

Ruling of larger benches be followed and those of co-ordinate benches of equal strength not be differed from and the principle must be followed.

JUSTICE :- Justice is a virtue which transcend all garrisons and the Rules of Procedure and technicalities of law cannot stand in the way of administration of justice. Rules of Procedure are the hand mades of justice and not mistress of justice.

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36. JURISPRUDENCE : JURISTIC PERSON : EXPLAINED :-
(2000) 4 SCC 146
SHIROMANI GURDWARA PRABANDHAK COMMITTEE, AMRITSAR Vs. SOM NATH DASS

Guru Granth Sahib is juristic person. Guru Granth Sahib though cannot be equated with the idol is yet a Juristic person. Guru Granth Sahib

installed in a gurdwara and is worshipped by Sikhs as a living Guru. It cannot be equated either with other sacred book such as Geeta, Bible or Quran or with an idol. Gurdwara and Guru Granth Sahib are not two separate juristic persons but one integrated whole. Therefore, the status of Guru Granth Sahib as a juristic person is not affected merely because of non-appointment of a manager for acting on its behalf.

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109. LIMITATION ACT, SECTION 27 AND ARTICLE 65 : PERMISSIVE POSSESSION AS LESSEE OR UNDER BETAI AGREEMENT :-
2000 (1) JLJ 368
ROOP SINGH Vs. RAM SINGH

Permissive possession as a lessee or under Betai agreement, then it is for the claimant to prove when it become adverse to the real owner. Mere possession for a long time does not result in converting permissive possession into adverse possession. Plea of possession under agreement to sell and plea of adverse possession are inconsistent with each other.

EVIDENCE ACT, SECTION 91:-

If document of sale or agreement to sell not produced on record, mere saying of party cannot be considered.

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3. LIMITATION ACT, SECTIONS 14 AND 2 (h) : LIMITATION - COMMENCEMENT OF
(1999) 1 SCC 685
RAM UJAREY Vs. UNION

Returned plaints. Limitation runs from the date the plaint is returned and not from the date of the order by which the plaint is directed to be returned/under O. 7 Rr. 10 and 10-A, C.P.C.

NOTE:- During training period several lectures were given on this subject insisting that once the Court orders that the case be returned for presentation to the proper Court under O.7 R. 10-A and does not exercise powers under O.7 R. 10-A it is not sufficient to write in the order-sheet that the plaint be returned for presentation to the proper Court. What is required is the party (plaintiff) or the advocate for the plaintiff should be summoned before the Court and the plaint be tendedred to him and it is immaterial whether the plaintiff or the Advocate for plaintiff is willing to receive the plaint or not. What is material is the actual tendering of the plaint to the counsel or the party. If the party or the counsel refuses to receive it, the Court may state the fact in the order/sheet and this will be sufficient compliance with the provision. It is further requested that the endorsement should be put at the time of returning the plaint as required by Sub-clause

(2) to R. 10 of O.7. Not putting endorsement may be irregularity but some High Court held that it is mandatory.

Judicial Officers are requested to go through ***Brij Mohan Das Vs. Narsinha Das, AIR 1971 MP 243 (DB), Fathelal Vs. Fulchand, 1961 JLJ 1412, Ram Naresh Sharma Vs. Ram Shia Shivhare, 1970 JLJ S.N. 121.*** The High Court held in **AIR 1971 MP 243** that the plaintiff was entitled to exclude all the period from 28-9-1954, the date of the institution of suit, till 22-4-1963, the date on which the plaint was returned, after due endorsement and that suit was thus not barred by limitation. In this case the suit was filed on 28-9-1954 and on 18-3-1963, the Court said that it had no territorial jurisdiction and directed the plaint to be returned to the plaintiff. On 22-4-1963 the plaintiff applied to the Court for the plaint being returned and the same was returned on that very day after the necessary endorsement was made there on. The arguments of the counsel for appellant/plaintiff was that there is no rule making incumbent on the plaintiff who apply the Court for making the necessary endorsements and the plaintiff cannot be held to be guilty of laches if he does not move the application to the Court immediately for that purpose.

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99. LIMITATION ACT, ARTICLES 72 AND 113 : APPLICABILITY :- (2000) 5 SCC 712
STATE OF A.P. Vs. CHALLA RAMKRISHNA REDDY

Articles 72 and 113 are applicable to different situations. In order to attract Article 72, it is necessary that the suit must be for compensation for doing or for omitting to do an act in pursuance of any enactment in force at the relevant time. That is to say, the doing of an act or omission to do an act for which compensation is claimed must be the act or omission which is required by the statute to be done. If the act or omission complained of is not alleged to be in pursuance of the statutory authority, this article would not apply. This article would be attracted to meet the situation where the public officer or public authority or, for that matter, a private person does an act under power conferred or deemed to be conferred by an Act of the legislature by which injury is caused to another person who invokes the jurisdiction of the court to claim compensation for that act. Thus, where a public officer acting bonafide under or in pursuance of an Act of the legislature commits a "tort", the action complained of would be governed by this article which, however, would not protect a public officer acting malafide under colour of his office. The article, as worded, does not speak of "bonafide" or "malafide" but it is obvious that the shorter period of limitation, provided by this article, cannot be claimed in respect of an act which was malicious in nature and which the public officer or authority could not have committed in the belief that the act was justifiable under any enactment.

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17. LIMITATION ACT, ARTICLE 136 : COMMENCEMENT OF PERIOD OF LIMITATION :-
(2000) 6 SCC 259
DEEP CHAND Vs. MOHAN LAL

Decree itself directing its execution only after execution of sale deed in favour of decree-holder. Period of limitation of 12 years will start running from the date of execution of the sale deed in favour of decree holder.

PRACTICE : DUTY OF THE COURT IN EXECUTION CASES :-

Unless it is clearly established that the application for execution of decree was beyond the period of limitation, executing court should not find ways to dismiss the application as barred by time. Where language of the decree is capable of two interpretations, one which assists the decree-holder to have the fruits of the decree should be preferred. A rational view has to be taken keeping in view the prolonged litigation.

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13. LAND ACQUISITION ACT, 1894, SECTION 23 : COMPENSATION, DETERMINATION OF : MODE STATED : MARKET VALUE : CAPITALISATION METHOD : APPROPRIATE MULTIPLIER :
(2000) 6 SCC 326
EXECUTIVE DIRECTOR Vs. SARAT CHANDRA BISOI

Where there are no sales of comparable land, held, one of the methods which may be used is to assess the annual income from the land which owner has been deriving or is expected to derive and then capitalise such income by adopting a multiplier. Where annual yield of cultivated land was found to be Rs. 2000 per acre (in Orissa in this case), held High Court rightly applied a multiple of 16.

BELTING METHOD :

Categorisation of acquired land (barren in this case) into (i) land near national highway; (ii) land lying alongside Gram Panchayat road; and (iii) land not bordering any road, held, deserved approval since it made a distinction between categories which would obviously have different market values.

REASONABLE SOLUTION APPROACHED :-

Where evidence adduced by landowners and findings of trial court suffered from non-fatal infirmities (in this case acquired land was in large tracts, transactions related to small pieces of land; satisfactory evidence as to location of subject matter of transactions not adduced) held, a reasonable solution would be found and litigation brought to an end if the figures relating to value arrive at by the High Court were to be discounted by 25% approximately.

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57. **M.B. ZAMINDARI ABOLITION ACT (SAMVAT 2008), SECTION 4 (2):-**
2000 (2) M.P.L.J. 197
DAYARAM Vs. MANPAL

Predecessor of appellants-defendants not in possession of suit land on the relevant date i.e. 2-10-1951. Therefore he was not protected under section 4 (2) of the M.B. Zamindari Abolition Act.

JURISDICTION:-

If finding is given regarding jurisdiction and instead of the suit being returned for being presented to the proper forum or Court or plaint being rejected, the suit is dismissed on merit, then unless challenged in appeal, the findings on merit become binding.

NOTE:- Judicial Officers are requested to remember that under O. 7 R. 10 the plaint is returned for presentation before proper forum or Court and in case of O. 7 R. 11 it is rejected. That is to say in cases of O. 7 R. 10 the plaint is neither rejected not the suit is dismissed.

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106. **MEDICAL JURISPRUDENCE : AGE :-**
(2000) 5 SCC 30
STATE OF RAJASTHAN Vs. N.K. THE ACCUSED

Assessment by doctor on the basis of X-ray of left elbow and arm of a rape victim. No other evidence available. It was held that merely on the basis of X-ray plates it cannot be positively stated that the girl was aged below 16 years. In this regard the facts were as under :

According to the doctor X-ray of the left elbow and arm of the prosecutrix were taken in his presence for assessing her age. The technician who had actually X-rayed that prosecutrix and prepared the X-ray plates has not been examined in the Court. Based on the X-ray plates he had drawn deductions, formed an opinion based on standard textbooks and prepared the report on the question of age. He further stated that there was no need for the prosecutrix being referred to a radiologist inasmuch as what a radiologist could have read from the X-ray plates could also have been done by him as he had done. The doctor found that top radial was fully ossified. Olecranon of ulna was also fully ossified. Distal end of radial and ulna were not completely ossified. On the basis of such date he inferred the age of the prosecutrix to be about 15 years. However, during cross-examination he admitted that the age of the prosecutrix could be 15 or 16 years because a variation of 3 on plus or minus side as described by Modi in his Medical Jurisprudence was possible. It was urged that non-ossification of the distal ends or radial and ulna was a positive indicator of the prosecutrix having not crossed the age of 15 years and in support of his submission he referred to certain passages and tables from Modi's Medical Jurisprudence.

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34. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969, SECTION 36-A : UNFAIR TRADE PRACTICE EXPLAINED :- (2000) 4 SCC 120

PRASHANT KUMAR SHAHI Vs. GHAZIABAD DEVELOPMENT AUTHORITY

In case of non performance of contract by the complainant it cannot be said that there was unfair trade practice where complainant had not tendered scheduled instalment amounts for purchase of a plot of land, held respondent authority was within its rights not to deliver possession and to demand penal interest on the balance payments from the due dates of the instalments. The complainant could not deny his liability to pay the balance along with penal interest. In the circumstances no case of unfair trade practices was made out against the respondent Authority.

RENT CONTROL AND EVICTION : "HABITUAL" DEFAULT : MEANING OF :- (2000) 4 SCC 126

"Habitual" default means default is more than a single, isolated act and means repeated or persistent dereliction of the duty to pay rent.

WORDS AND PHRASES : "HABITUAL" MEANING OF :-

The meaning to the words "habit" and "habitually" as given in the Law Lexicon (2nd Edn.) by P. Ramanatha Aiyar is :

"Habit - Settled tendency or practice, mental constitution. The word 'habit' implies a tendency or capacity resulting from the frequent repetition of the same acts. The words by 'habit' and 'habitually' imply frequent practice or use.

"Habitual- Constant ; customary ; addicted to a specified habit".

This Court in ***Vijay Narain Singh Vs. State of Bihar, (1984) 3 SCC 14*** considered the question of a habitual criminal and in para 31 the expression "habitually" was explained as follows :

> "The expression 'habitual' means 'repeatedly' or 'persistently'. It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit."

Therefore, the expression "habitual" would mean repeatedly or persistently and implies a thread of continuity stringing together similar repeated acts. An isolated default of rent would not mean that the tenant was a habitual defaulter.

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35. MOTOR VEHICLES ACT, 1988, SECTIONS 146, 149 (2) AND 173 : INTER-PRETATION OF : PROVISION LIMITING INSURER'S RIGHT OF APPEAL UNDER SECTION 149 (2) OF THE ACT IN CASE OF THIRD PARTY RISK :-
(2000) 4 SCC 130
CHINNAMA GEORGE Vs. N.K. RAJU

The Court must give effect to the real purpose of the provisions of law in respect of award of compensation to accident victims. Thus it cannot permit the insurer the right to defend or appeal on grounds not available to it under the law. Insurer cannot be allowed to make a mockery of the provisions under S. 149 (2) by associating in its appeal the owner or driver of the motor vehicle concerned, when such owner or driver is not an aggrieved person.

M.V. ACT, 1988, SECTIONS 149 (2) : INSURER'S RIGHT TO APPEAL : GROUNDS :-

Quantum of compensation is not a ground available to the Insurer for the purposes of filing an appeal.

●

107. MOTOR VEHICLES ACT, 1988, SECTION 140 : PASSING OF INTERIM AWARD :-
2000 (1) JLJ 343
MAHESH KUMAR Vs. MUNNALAL

Passing of interim award. No defence can be considered but final award can be modified accordingly. It is a statutory liability and does not depend upon any liability of negligence. It is an absolute liability making a departure from common law. If two vehicles are involved in an accident no fault liability is to be discharged by both. No pleading on any fault is necessary. The intention is to give immediate relief to the victims.

Two vehicles involved in accident. One vehicle's driver/owner died. No L. Rs. joined. Insurer of this vehicle cannot object non-joinder without showing his L. Rs. It is also liable along with insurer of the other vehicle. ***National Insurance Company Vs. Thaqlu singh Vishwanath Gond and other, 1994 MPLJ 663*** relied on.

WORDS AND PHRASES : 'USE OF MOTOR VEHICLE' :-

This word should be given wider connotation. It covers the accident when it occurs while vehicle is in motion or it is stationary.

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108. MOTOR VEHICLES ACT, 1939, SECTION 95 (1) (b) (ii) AND MOTOR VEHICLES ACT 1988, SECTIONS 140 AND 149 :-
2000 (1) JLJ 401
NATIONAL INSURANCE CO. LTD. Vs. BINIYA BAI

The deceased passenger travelling in truck after payment of fare to the driver. Insurer is not liable. It is a breach of insurance policy. ***Mallawwa Vs. Oriental Insurance Co. Ltd. AIR 1999 SC 589*** and ***United India Insurance Company Ltd Vs. Gian Chand and others (1997) 7 SCC 558*** followed.

If the amount of interim award is paid by the insurer, in final award if the insurer is not found liable and exonerated amount of interim award has to be refunded.

●

54. MOTOR VEHICLES ACT, 1939, Ss. 110-A AND 110-CC (S. 166 AND 171 OF ACT 59 OF 1988) : QUANTUM OF COMPENSATION AND AWARD OF INTEREST:-
1999 (3) TAC 778 (SC)
K.S.R.T.C. Vs. SETHURAM

Injured working as Mechanical Engineer in U.S.A. and drawing Dollers 2,000 i.e. Rs. 15,000/- p.m. as salary Sustained serious injuries including fractures of bone. Tribunal awarded an amount of Rs. 23,32,900/- as compensation. Whether there is any scope of inference? held, No. Award upheld.

Tribunal awarded interest at 6% p.a. High Court enhanced rate of interest to 12% p.a. Whether enhancement in rate of interest is sustainable, held, no. Accident took place in 1982. There was no justification to enhance rate of interest. Injured held entitled to interest at 6% p.a. as awarded by Tribunal.

●

55. M.P. CATTLE (CONTROL) ACT, 1978 : EFFECT OF ENFORCEMENT OF THIS ACT AND THE NOTIFICATION SUBSEQUENT TO THE PENDING OF S.L.P.:-
2000 (3) M.P.H.T. 23 (F.B.) (SC)
RAMJI PATEL Vs. NAGRIK UPBHOKTA MARG DARSHAK MANCH

Dairies cannot be established and cattle cannot be kept in contravention to the provisions of the Act within the municipal limits of Jabalpur city, also including villages coming within the municipal limits, except in villages specified in the list of "expected villages" given in the notification issued under the Act.

Notification issued under the Act taking out certain villages (Gwarighat and Lalpur villages in the present case) from the list of excepted villages. Such notification issued when S.L.P. proceedings were pending in the Supreme Court and the petitioners in S.L.P. proceedings had also obtained stay in their favour. It was held, the petitioners in S.L.P. proceedings could not be allowed to challenge the validity of the notification by making oral

submissions. They have to institute appropriate independent proceedings for the purpose before the High Court.

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56. M.P. VAN UPAJ (VYAPAR VINIYAMAN) ADHINIYAM, 1969, Ss. 15 (1) (iii) AND 19 (1) (b) : CONFISCATION OF SEIZED TRUCK:- (2000) 1 SCC 323
DINESH KUMAR KARTIKE Vs. STATE OF M.P.

Before passing an order of confiscation forest officer should consider the question of the release of the truck under S. 19 (1) (b) and pass appropriate order in the facts and circumstances of the case.

Paragraphs 2 to 4 of the judgments are reproduced:-

After hearing the counsel on both sides and after going into the facts, we are of the view that the following order would meet the end of justice.

The appellant challenges an order of confiscation of truck bearing No. MPQ 6789. Notice was issued by this Court on 16-11-1998 calling upon the respondent to show cause why an appropriate order in terms of Section 19 (1) (b) of the Madhya Pradesh Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969 should not be passed Section 19 (1) (b) of the Act reads as follows:-

"19. COMPOSITION OF OFFENCES:- (1) The State Government may, by notification, empower a Forest Officer:

(a) * * *

(b) when any property other than a specified forest produce has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer."

On perusal of the SLP paper-book, we find that the Forest Officer concerned had not focussed his attention on the enabling provision of Section 19 (1) (b) of the Act. We therefore, direct the Forest Officer concerned to consider the question of release of the truck already confiscated under Section 19 (1) (b) of the Act and pass appropriate orders in the facts and circumstances of the case. The appeal is disposed of accordingly. No orders as to costs.

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58. M.P. MUNICIPAL CORPORATION ACT S. 127-A (2) (b) PROVISIO IS ULTRA VIRES THE CHARGING SEC. A.I.R. 2000 S.C. 109
MATHURARAM AGRAWAL Vs. STATE OF M.P. **PARA 9,14,15, 16-17 REPRODUCED.**

9. On a fair reading of the proviso to Section 127 (A) (2) (b) it is clear that in respect of any building or land whose letting value is less than Rs. 1800 which is owned by a person who owns any other building or land

in the same municipality, the annual letting value of such building or land shall be deemed to be the aggregate annual letting value of all buiildings or lands owned by him in the municipality. The provision also makes it clear that this exception is meant for the purpose of this clause i.e. clause (b) of sub-section (2). It follows, therefore, that the exemption to the levy under sub-section (1) of section 127 (A) will not be available to it in a situation to which the proviso applies.

14. In ***Administrator, Municipal Corporation. Bilaspur v. Dattatraya Dahankar, Advocate, (1992 AIR SCW 2081 : AIR 1992 SC 1846)*** (supra) this Court while accepting the position that each building is a unit for the purpose of taxation and that there is no provision for taxation in respect of a building having annual letting value less than Rs. 1800 and that the deeming proviso to clause (b) of sub-section (2) as expressly stated is "for the purpose of this clause", held that since the aggregation of annual letting value of all buildings or lands is permitted. then, all such buildings or lands have to be taken as one unit for the purpose of taxation. The Court was of the view that any other construction would render the proviso nugatory and defeat the object of the Act.

15. This construction, in our considered view, amounts to supplementing the charging section by including something which the provision does not state. The construction placed on the said provision does not flow from the plain language of the provision. The proviso requires the exempted property to be subjected to tax and for the purpose of valuing that property alone the value of the other properties is to be taken into consideration. But, if in doing so. the said property becomes taxable, the Act does not provide at what rate it would be taxable. One cannot determine the ratable value of the small property, by aggregating and adding the value of other properties, and arrive at a figure which is more than possibly the value of the property itself. Moreover, what rate of tax is to be applied to such a property is also not indicated.

16. Take, for instance, a case where a person owns 10 buildings, 8 of which are small ones fetching annual rental value of Rs. 1,500 each and the other 2 fatch annual rental value of Rs. 60,000 each : then applying the ratio of Administrator Municipal Corportation, Bilaspur **(1992 AIR SCW 2081 : AIR 1992 SC 1846)** (supra) the annual rental value of each of the small buildings will come to Rs. 1,32,000 and the owner will have to pay tax according to the highest slab for each building Such an intention on the part of the legislature cannot be accepted. particularly in the absence of specific provision in the charging section.

17. In view of the discussions in the foregoing paragraphs the proviso to clause (b) of sub-section (2) of Section 127-A of the Act being contrary to the charging section is struck-down as ultra vires.

Administrator, M.C. Bilaspur Vs. Dattatraya Dahankar, Advocate 1992 AIR S.CW. 2081/- AIR. 1992 SC. 1846. over ruled. M.P. No 2188 of 1993 dt. 13-10-93 (M.P.) Reverses.

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59. **M.P. MUNICIPAL CORPORATION ACT, SECTION 401(1): NON SERVING OF NOTICE AND REJECTION OF PLAINT UNDER O. 7 R. 11: SUIT FOR INJUNCTION:-**
2000 (2) M.P.H.T. 288
MUNICIPAL CORPORATION, KATNI Vs. LALCHAND JAISWAL

Suit for injunction filed against Municipal Corporation not served with notice under S. 401 (1) . Suit barred for non-compliance of Section 401 (1) and the plaint was rejected.

Suit was filed by the non-applicant for declaration and mandatory injunction requiring the Municipal Corporation Katni, as a licensing authority to renew his FL-3 licence for the period between 1-4-1999 to 31-3-2000. Looking to the urgent nature of the case, the plaint was filed after obtaining permission of the court dispensing with the notice. The Municipal Council Challenged the order.

It was held that it is mandatory to serve notice under S. 401 (1) of the M.P. Municipal Corporation Act prior to filing of the suit. There is no provision in the Act that in case of emergency and where an injunction is sought a suit could be filed without serving a notice under Section 401 (1) of the Act. There is no provision for taking permission of the court for relaxation of notice under section 401 (1) of the Act. It appears that under the Act, no relaxation has been given for a suit instituted under section 38 of the Specific Relief Act. The delegation of powers to renew licence under the Rules of 1996 cannot be apart from the powers of the Municipal Corporation under the Act. The conferral of power to grant or renewal of licence is covered by Section 68 (1) of the Act read with item No. 7 of the Schedule. Therefore, any act or omission on the part of the Municipal Corporation shall be covered by section 401(1) of the Act. It will be directly applicable and no suit could be filed against the corporation without serving notice under Section 401 (1) of the Act. The service of notice under section 401 (1) of the Act to the Municipal Corporation, Katni is mandatory for the reason that the Municipal Corporation derives its authority, under the Act. Its constitution is under the Act and it can have no power whatsoever apart from the Act. The delegation of powers to renew licence under the Rules of 1996 cannot be apart from the powers of Municipal Corporation under the Act. It is obvious that such a suit without complying with section 401 (1) of the act shall be barred and that the plaint was liable to be rejected as such.

NOTE: Judicial Officers are requested to go through the citation ***Nagar***

Palika Parishad Vs. Sarvadaman, 1973 JLJ S.N. 13 relating to 'Notice" under Section 319 Municipalities Act which is reproduced here for ready reference:

"A suit was instituted by the plaintiff against Municipal Council seeking a remedy of declaration of title and permanent injunction on the ground that the land belongs to him and not to Municipality; and therefore, it be restrained from disturbing his possession and removal of construction. The Municipality-defendant urged as no notice was served under section 319, the suit was not maintainable; which was rejected by the lower Court. The Court while interpreting the provisions of section 319 and holding in complete agreement with Dixit, C.J. reported ***Kanahiyalal Vs. Nagar Palika, Dewas*** that no notice was necessary when a combined suit is filed seeking two reliefs of declaration and injunction in the same suit. To such case, provisions of section 319 (1) of the act will not apply. Merely because a notice by a Counsel was given, it cannot be termed as an act done. The assertion of title to the property cannot be said to be giving any act or purporting to do an act; and as such the suit filed by the plaintiff cannot be said to be one for any act done or purporting to be done under the Act by the Municipal Council or any officer. Merely because a suit for injunction was also filed it will be merely an ancilliary relief to the declaration of title. Revision dismissed."

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60. M.P. SAMAJ KE KAMJOR VARGON KE KRISHI BHUMI .... ADHINIYAM, 1977, S. 5 AND LIMITATION ACT, SECTION 5: 2000 (2) M.P.L.J. 131
VIJAY SINGH Vs. SHYAMLAL

An application under Section 5 of the M.P. Samaj Ke Kamjor Vargon Ke Krishi Bhumi.....Adhiniyam is also in the nature of suit, i.e. what is prayed is declaration, the transaction entered into between the parties was void by virtue of the operation of Act 3 of 1977 and should be declared as null and void. Therefore, it is in the nature of a declaratory suit. Provisions of Section 5 of the Limitation Act are not applicable to original proceedings.

Sub-section (2) of Section 29 of the Limitation Act provides that the provisions of sections 4 to 29 of the Limitation Act will be applicable to all proceedings except where they are specifically excluded by a local enactment. There is no provision in the M.P. Samaj Ke Kamjor Vargon Ke Krishi Bhumi ..... Adhiniyam of 1977 which excludes the provisions of Limitation Act. Section 5 of the Limitation Act is not applicable to the application filed under Section 5 of the Act 3 of 1977, because they are original proceedings.

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95. **M.P. ACCOMMODATION CONTROL ACT, SECTION 12, 38 AND 45 : JURISDICTION OF CIVIL COURT IN CASES PENDING :**
2000 (3) M.P.H.T. 303
PARAM LAL BURMAN Vs. RAVI KUMAR SHARMA

Cutting off electricity supply. Power to give direction for the supply of electricity. It was held that Civil Court has no power to pass orders directing supply of electricity. Such powers conferred on the Rent Controlling Authority under S. 38 of the M.P. Accommodation Control Act. Civil Court is barred to adjudicate the same, under Section 45 of the Act. Exclusive jurisdiction of the same lies with the Rent Controlling Authority. It was further held that pendency of the suit is not the test for exercise of power under S. 38 of the Act.

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21. **M.P. ACCOMMODATION CONTROL ACT, SECTION 12 (1) (c) : NUISANCE : PLADING AND ISSUES NECESSITY OF**
2000 (4) M.P.H.T. 16 (NOC)
GAJRAJ SINGH Vs. RAMJIYAWAN

No issue framed by the trial Court on the point of nuisance. There was no express pleading regarding nuisance in the pleading. First appellate Court gave finding about nuisance based on examination-in chief of plaintiff/respondent and ignored contrary evidence in his cross-examination, of the plaintiff. It was held that the finding regarding proof of nuisance is perverse needs to be interfered. Judgment and decree of eviction of First Appellate Court set aside.

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22. **M.P. LAND REVENUE CODE, SECTIONS 250 & 257 : JURISDICTION OF CIVIL COURT : SETTLED VIEW - NOT TO BE UPSET**
2000 (4) M.P.H.T. 5 (SC)
ROHINI PRASAD Vs. KASTURCHAND

Conferral of Bhumiswami rights on occupancy tenants. Co - Bhumiswamis granting lease of agricultural land to appellant for the year 1975-76 and selling the said land on 12-9-1977 to the respondent Kasturchand and others. Lessee succeeding in Revenue Courts in obtaining Bhumiswami right on the base of cultivating the said land for two years on lease basis. The respondents obtained decree for possession on the strength of title in the Civil Court. The question of jurisdiction of civil court was raised before the Supreme Court. Relying on **1976 Revenue Nirnay 146 (*Ram Gopal Vs. Chetu*)** Supreme Court held that Civil Court has jurisdiction to decide question of title and unless there is express provision to the contrary, exclusion of the jurisdiction of Civil Court cannot be assumed or implied. Consistent findings of High Court holding field for 24 years, that Civil Court has jurisdiction to hear the suit for possession based on title. It is not desir-

able for the Supreme Court to give different interpretation and upset the settled position of law.

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23. M.P. MUNICIPALITIES ACT, SECTIONS 86 AND 89 : CIVIL POST-WHAT IS IT?
2000 (4) M.P.H.T. 12 (F.B.)
SURESH CHANDRA SHARMA Vs. STATE OF M.P.

The High Court said that the post of Chief Municipal Officer is a civil post under the State Government because Municipalities while levying and collecting taxes and fees perform functions which are essentially of the State and also because the State Government has right to select for appointment, right to appoint, right to terminate the employment and the right to take other disciplinary action coupled with the right to prescribe conditions of service in case of the post of Chief Municipal Officer.

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88. M.V. ACT, 1939, SECTION 103A AND M.V. ACT, 1988, SECTION 157 :-
2000 (3) M.P.H.T. 197 (F.B.)
Smt. VIMLA DEVI Vs. DAYARAM

The matter referred to the Full Bench was whether in the absence of any intimation to the Insurance Company and the consequent non-transfer of policy, as envisaged under Section 103A of the Act, the policy relating to the vehicle lapses and as a logical corollary the insurer gets absolved from indemnifying the owner in respect of a third party? The reference was answered as; Insurance policy remains effective in respect of third party risks, but not in respect of the transferee's risks even if there has been absence of application intimation as stipulated under S. 103A of the Act.

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89. N.D.P.S. ACT, SECTIONS 20 (b) (i) AND 50 READ WITH SECTION 27 EVIDENCE ACT : ADMISSIBILITY OF STATEMENT UNDER SECTION 27 OF EVIDENCE ACT :-
2000 (3) M.P.H.T. 228
JITENDRA SINGH Vs. STATE OF M.P.

Police recovering Ganja in consequence of the information given by the accused that he had kept the Ganja in the house. Conduct of the accused in point out the house where Ganja had been stored, admissible under Section 8 of the Evidence Act. Statement of accused admissible under Section 27 of the Act. Evidence of Bhumiswami that, the land and the house had been taken on lease by the accused, fortifying the circumstances about accused's possession. It was held Ganja found in that house was in possession of the accused. It was further held that as Ganja was recovered from that house. Section 50 of the NDPS Act not applicable.

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90. N.D.P.S. ACT, SECTION 20 (b) (i) AND 50:-
2000 (3) M.P.H.T. 237
SUNIL KUMAR Vs. STATE OF M.P.

This section applies to personal search only and not applicable to the search of baggage of the accused. On the same parity of reasoning, provision not applicable to search of a vehicle.

N.D.P.S. ACT, SECTION 60 (3) : CONFISCATION :-

The words "Shall be liable to confiscation" could not be interpreted to mean that the Court has no discretion in the matter but to confiscate the conveyance. Confiscation is permissive and not obligatory. It depends upon the facts of each case, whether to confiscate the vehicle or not. Where punishment given was found to be adquate in proportion to little quantity of Ganja recovered confiscation of new scooter held to be highly disproportionate. ***State of M.P. Vs. M/s Azad Bharat Finance Company, AIR 1967 SC 276*** followed and ***Ganga Hira Purchase Pvt. Ltd. State of Punjab and others, (1999) 5 SCC 670*** distinguished.

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64. N.D.P.S. ACT, SECTION 50 (1) : PURPOSE OF : REASONABLE SAFEGUARD FOR THE ACCUSED EXPLAINED:-
(2000) 1 SCC 300
T. HAMZA Vs. STATE OF KERALA

Section 50 provides a reasonable safeguard to the accused before a search of his person is made by an officer authorised under Section 42 to make it. The provision is also intended to avoid criticism of arbitrary and high-handed action against authorised officers. The legislature in its wisdom considered it necessary to provide such a statutory safeguard to lend credibility to the procedure keeping in view the sever punishment prescribed in the statute.

State of Punjab vs. Baldeo Singh, (1999) 6 SCC 172 referred.

N.D.P.S. ACT, SECTION 50 (1) READ WITH SECTION 42: PRIOR INFORMATION BEFORE SEARCH PROCEDURE LAID DOWN:-

Officer duly authorised under S. 42, when acting on prior information is about to search a person, is obliged under S. 50 (1) to inform that person of his right of being taken to the nearest gazetted officer or Magistrate for making the search and if he so opts to conduct the search before the gazetted officer or Magistrate. Failure to do so would render the illicit article suspect and vitiate the conviction and sentence of that person, where conviction is solely based on possession of the illicit article pursuant to the search in violation of S. 50 (1). Whether or not S. 50 complied with to be determined by court on the basis of evidence of trial. Trial court in the present case finding that police officer, who effected the search of the ap-

pellant as a result of which 1750 mg brown sugar was alleged to have been recovered, had not asked the appellant whether he should be searched in presence of a gazetted officer or Magistrate. Prosecution case of illegal possession of the contraband article based entirely on the search of the person of the accused leading to recovery of the article and no other evidence in support of the charge. Held, S. 50 (1) not complied with before effecting the search and seizure. Therefore the search and seizure thus effected cannot be relied upon by the prosecution. Conviction of the appellant unsustainable.

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120. N.D.P.S. ACT, SECTIONS 2 (xviii), (xvii) AND 15 : "POPPY HUSK":-
(2000) 4 SCC 510
AJAIB SINGH Vs. STATE OF PUNJAB AND OTHER LINKED CASES

"Poppy husk" falls within the definition of "poppy straw" under S. 2 (xviii). The act of producing, possessing, transporting etc. of poppy husk in contravention of any provision of the Act, rule, order or condition of licence would constitute offence under S. 15. Whether it contains more than 0.2 percent of morphine juice extracted not relevant for offence under S. 15.

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65. N.D.P.S. ACT, S. 21 R/W S. 8(c): EVIDENCE OF WITNESSES WHO DEPOSED CORRECTLY:-
(2000) 1 SCC 329
MOHD. HUSSAIN FARAH Vs. UNION OF INDIA

Conviction under, for possession of heroin in contravention of provisions of the Act. PWs deposing correctly and consistently about the manner in which, the time at which and the place from where accused-appellant was apprehended by DRI officers. On facts, conviction upheld.

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66. NEGOTIABLE INSTRUMENTS ACT, SECTION 138 : CHEATING:-
AIR 2000 SC 27
SUNIL KUMAR Vs. M/S ESCORTS YAMAHA MOTORS LTD.

Averments in F.I.R. not disclosing necessary ingredients of offence of cheating or criminal breach of trust. Circumstances manifestly indicated that F.I.R. was lodged to pre-empt the filing of the criminal complaint against the informant under Section 138 of the N.I. Act. The quashing of F.I.R. held justified.

Facts of the case are as under:-

Appellant filing FIR under Section 420/406/468 I.P.C. alleging therein that respondents by an act of conspiracy committed criminal breach of trust by presenting for encashment of blank cheques signed by appellants for a

purpose other than that for which the cheque had been given to them, and thereby causing to the appellant loss of a certain amount. Apart from the fact that the said allegation did not make out the allegation of cheating or criminal breach of trust, attendant circumstances manifestly indicating that FIR was lodged to pre-empt the filing of complaint under Section 138 of the Negotiable Instruments Act against the appellant.

NOTE: PLEASE refer **(1999) 8 SCC 468.**

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61. NEGOTIABLE INSTRUMENTS ACT, SECTIONS 138, PROVISO (b) AND 139 : THE MEANING OF THE WORDS "INSUFFICIENT FUNDS" EXPLAINED: NOTICE OF DEMAND:-
2000 (2) M.P.H.T. 411 (SC)
SUMAN SETHI Vs. AJAY

The Respondent No. 1, who was the holder of cheque, had claimed in addition to cheque amount, the incidental and notice charges.In his notice "said amount", i.e. cheque amount separately indicated. Question of validity of such notice challenged. It was held that if in a notice any other sum is indicated in addition to the "said amount", the notice cannot be faulted. Other claims for interest, cost etc. would be superflous. It was further held that for recovery of other demands as compensation, costs, interest etc., a civil proceeding will lie. Appeal dismissed. ***M. Narayanan Vs. State of Kerala, AIR 1963 SC 1116, Dyke Vs. Elliot (1872) L.R. 4 AC 184*** and ***Central Bank Vs. M/s Saxons Firms, AIR 1999 SC 3607*** relied on.

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62. NEGOTIABLE INSTRUMENTS ACT, SECTION 138 PROVISO (b): OBJECT OF SERVICE OF NOTICE:-
2000 (1) VIBHA 294 (SC)
CENTRAL BANK OF INDIA Vs. SAXONS FARMS

Service of notice is essential for initiation of an action under Section 138. The object of service of notice is to give a chance to the drawer of cheque to rectify his omission. The notice under the proviso served with information of cheques unpaid, demand of money made to avoid unpleasant action. Notice is valid.

A cheque can be presented any number of times within the period of validity. The cognizance of offence under Section 138 can alone be taken on private complaint only. If cheque is returned unpaid police can also investigate the offence under Penal Code as such offences are cognizable.

NOTE:- Please see ***M/s Madan & Co. Vs. Wazir Jaivir Chand, AIR 1989 SC 630.***

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63. NEGOTIABLE INSTRUMENTS ACT, SECTIONS 138 AND 141 AND 139:-
AIR 2000 145= (2000) 1 SCC 1
ANIL HADA Vs. INDIAN ACRYLIC LTD.

Company and its Directors arrayed as accused. Prosecution against company, however, dropped because of winding up of company. Prosecution is maintainable against Directors.

NEGOTIABLE INSTRUMENTS ACT, SECTION 139: PRESUMPTION REBUTTABLE:-

Presumption was that cheque was towards antecedent liability. Drawer company and its Directors both arrayed as accused. Presumption can be rebutted by any one of the accused. Complaint against company dropped pursuant to winding up orders passed by Court. Director can adduce evidence to rebut presumption.

Prosecution of drawer company held not prerequisite for prosecution and conviction of its directors, officers and persons in charge under S. 141 (1) and (2). Finding that drawer company in fact committed offence under S. 138 however, essential. Even though where drawer of cheque is a company such company is the principal offender under S. 138 and other categories of persons mentioned in S. 141 (1) and (2) only become liable if such company has in fact committed the offence, held, it is not necessary that company itself be prosecuted. However, the finding that offence was committed by the company is the sine qua non for convicting the other person. Such persons cannot escape penal liability simply because the company is not prosecuted as a result of some legal impediment.

Presumption under Section 139 held may be rebutted by any of the accused.

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87. N.I. ACT, SECTION 138 AND CPC, SECTION 10 : STAY OF CIVIL PROCEEDINGS WHILE CRIMINAL CASE IS PENDING, PRINCIPLE OF APPLICABILITY : DISHONOUR OF CHEQUE :-
2000 (3) M.P.H.T. 194
NEMICHAND Vs. HARISH KUMAR

The petitioner/ plaintiff filed a complaint under Section 138 of the N.I. Act for prosecuting the defendant. But, plaintiff did not get the payment of outstanding amount in question. Hence, plaintiff filed the suit for recovery of amount against the defendant. The defendant/respondant moved an application under Section 10, CPC for stay of suit. The trial Judge stayed the suit. The High Court held that it is well settled that a suit filed for recovery of amount covered under the dishonoured cheques should not be stayed

under Section 10, CPC solely on the ground that criminal proceedings under Section 138 of the Act has been instituted.

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67. O. 39 Rr. 1 AND 2: INJUNCTION: SETTLED POSSESSION:-
2000 (2) M.P.L.J. 316
GAJENDRA SINGH Vs. MANSINGH

If the plaintiff proves his possession as settled possession then even without title his possession can be protected as against a true owner till he is evicted by any lawful order or by due process of law. **AIR 1968 SC 702, (1954) 5 SCC 547** referred.

NOTE:-

The word settled possesion is explained in the case of ***Krishna Kumar Vs. State, 2000 (1) JLJ 336.***

The word "settled possession" means clear and effective possession of a person even if he is a tresspasser he gets right to defend his property under criminal law. Such right is available even against the true owner.

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68. PAYMENT OF GRATUITY ACT, SECTION 4 AND HINDU MARRIAGE ACT, SECTION 16: PAYMENT OF GRATUITY TO THE CHILDREN BORN TO THE DECEASED FROM SECOND WIFE:-
2000 (3) M.P.H.T. 60 (SC)
RAMESHWARI DEVI Vs. STATE OF BIHAR

Dispute between two wives of deceased employee regarding payment of family pension and death-cum-retirement gratuity. Deceased employee had married with second wife while the appellant/first wife was still alive. Children born to deceased employee from the wedlock of second wife. Question as to who is entitled to the family pension and death-cum-retirement gratuity on the death of employee arose. On this the Supreme Court held that children born to deceased employee from the wedlock of second wife are entitled to share in family pension and gratuity. But, second wife would not be entitled to anything. ***Badri Prasad Vs. Dy. Director of Consolidation, (1978) 3 SCC 527, State of Karnataka Vs. T. Venkataramanappa, (1996) 6 SCC 455,*** and ***State of W.B. Vs. Prasenjit Dutta, (1994) 2 SCC 37*** referred to.

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101. PRACTICE AND PROCEDURE : RIGHT TO APPEAL : LOCUS STANDI :-
(2000) 5 SCC 765
PIARA SINGH Vs. STATE OF PUNJAB

Auction sale of land where an order issuing a corrigendum as to area

of land sold to a particular party affects land rightfully in possession of another party. It was held that such other party has locus standi to file appeal or revision against the order.

NATURAL JUSTICE : AUCTION SALE UNDER C.P.C. : AUDI ALTERAM PARTEM :-

Before setting aside a sale, appropriate authority ought to give the highest bidder notice and allow him a hearing as his rights would be adversely affected by the setting aside of the sale.

Paragraph 16 and 17 of the judgment are reproduced :

Further, the Chief Settlement Commissioner ought to have considered the fact that the appellant was in possession of the land as he was inducted as a tenant since 1978. Therefore he was having locus standi to file an appeal against the so called corrigendum granting additional land which was in the possession of the Respondent 2.

Lastly, we find much force in the contention raised by the learned counsel for the appellant that the Tahsildar (Sale) erred in passing the order dated 30-1-1985 (Annexure 'I') setting aside the auction- sale dated 30-12-1982 on the ground of defective proclaimation without issuing any notice to the appellant. The Tahsildar (Sales) ought to have heard the appellant, whose bid was highest and was accepted on 30-12-1982 before passing the impugned order after three years. In the present case, the appellant was in possession of the land as a tenant. His bid was accepted and if that bid was to be set aside, his (appellant's) rights would be certainly adversely affected, therefore, he was required to be heard. Since no such opportunity was afforded to the appellant before passing such order, it requires to be quashed. ***Surinder Singh Vs. Central Govt. (1986) 4 SCC 667.***

●

96. PARTITION ACT, SECTION 4 : PRE-EMPTION (THE PREFERENTIAL RIGHT) AND HINDU SUCCESSION ACT, SECTION 22 :- (2000) 5 SCC 662
BABU LAL Vs. HABIBNOOR KHAN

Transfer of share to a non-member of the undivided family. Filing of suit by such stranger-transferee for partition and separate possession of the undivided share transferred to him essential for operation of S. 4. In the absence of such suit, application filed under S. 4 by owner of another portion of the house undertaking to buy the share of the stranger-transferee would not be maintainable.

Paragraphs 9 and 10 of the judgment are reproduced :

Therefore, one of the basic conditions for applicability of Section 4 as laid down by the aforesaid decision and also as expressly mentioned in the section is that the stranger transferee must sue for partition and separate

possession of the undivided share transferred to him by the co-owner concerned. It is, of course, true that in the said decision it was observed that even though the stranger-transferee of such undivided interest moves an execution application for separating his share by metes and bounds it would be treated to be an application for suing for partition and it is not necessary that a separate suit should be filed by such stranger-transferee. All the same, however, before Section 4 of the Act can be pressed into service by any of the other co-owners of the dwelling house, it has to be shown that the occasion had arisen for him to move under Section 4 of the Act because of the stranger-transferee himself moving for partition and separate possession of the share of the other co-owner which he would have purchased. This condition is totally lacking in the present case. To recaptulate, Respondent 1 decree-holder himself, after getting the final decree, had moved an application under S. 4 of the Act. The appellant, who was a stranger-purchaser has not filed any application for separating his share from the dwelling house, either at the stage of preliminary decree or final decree or even thereafter in execution proceedings.

Only on this short ground, therefore, the application under Section 4 of the Partition Act has to be treated as not maintainable as held by the trial Court. The decision of the Orissa High Court in **Alekha Mantri case, AIR 1971 Ori 127** relied upon by the learned Single Judge also cannot be of any avail in view of the settled legal position discernible from the aforesaid decision of this Court in the case of **Ghantesher Ghosh, (1996) 11 SCC 446.**

NOTE:- Please refer to ***Ram Dayal Vs. Manak Lal, 1973 M.P.L.J. 650, Narayan Vs. Mahadeo, 1971 M.P.L.J. 239, Harmir Singh Vs. Jhal Khan, 1995 M.P.L.J. Note 23 and Vilas Rao Vs. Ram Lal, 1997 (1) JLJ 381.***

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69. PREVENTION OF CORRUPTION ACT, 1947, SECTIONS 5(1)(e)/5(2): ANTI CORRUPTION : DISPROPORTIONATE PROPERTIES, NATURE OF PROOF: & EVIDENCE ACT, SECTION 3,154 AND 155 HOSTILE WITNESS, APPRECIATION OF EVIDENCE:-
2000 (2) M.P.H.T. 59
SUBHASH KHARATE Vs. STATE OF M.P.

There was a charge against Subhash under Section 5 and allied sections regarding disproportionate properties to be known sources of appellant's income. Alleged that a plot was purchased benami by the appellant in the name of his wife and constructed a house thereon. Trial court found the apellant guilty for the offence and sentenced him. Appeal preferred to the High Court which was held that the prosecution failed to discharge the burden of proof that the appellant has acquired such properties which are disproportionate to his legal source of income. The sentence passed was set aside. ***Kaliram Vs. State of Himachal Pradesh, AIR 1973 SC 2773***

and *Mansingh Vs. Delhi Administration,* AIR 1979 SC 1455 followed.

Merely because a witness is hostile, statement of witness cannot be thrown out in limine, only on the ground that witness turned hostile. ***Sat Paul Vs. Delhi Administration , AIR 1976 SC 294*** followed.

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70. PREVENTION OF CORRUPTION ACT, SECTIONS 5 (1)(d) AND 5(2) AND I.P.C., SECTION 161:-
2000 (2) M.P.H.T. 333 (SC)
SMT. MEENA Vs. STATE OF MAHARASHTRA

It was alleged that the appellant alleged and accepted Rs. 20/- as gratification for doing an official act of sending the relevant records to the copying section. The Trial Judge held the charges proved. She was convicted and sentenced. In appeal, the High Court also affirmed the findings recorded by the trial Judge. Against it, this appeal by special leave was preferred. It was held that materials produced are not sufficient to record a verdict of guilt. Currency note was not recovered from the person or from the table drawer. It was found only on the pad on the table-PW-1 attempted to thrust the currency note in her hands. She refused by pushing with her hand. Thus, currency note came into contact with her and fell on the pad. Hence, more recovery of the currency note cannot be held to be proper or sufficient proof of the acceptance of the bribe. Prevaricating type of evidence of PW-1 and Pw-3 who seem to have strong prejudice against the appellant. Conviction cannot be based upon their testimony. Two material witnesses were withheld. Materials on record not sufficient to prove guilt of the appellant.Hence, conviction and sentence set aside. Appeal allowed.

The judgment of the Courts below suffer from serious infirmites and manifest errors on account of unwarranted inferences liberally drawn by the Courts below against the appellant, overlooking the fundamental principle of presumption of innocence of an accused till the charge levelled and his guilt is established beyond all reasonable doubt. The Courts below have failed to consider the adverse impact on the prosecution case from the evidence of PW-2 and the withholding of the lady constable and Jagdish Bokade, two material witnesses. The appellant cannot be, on the basis of available evidence, held to have tactly accepted the illegal gratification as alleged. The materials on record in this case are not sufficient to bring home the guilt of the appellant.

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71. PREVENTION OF CORRUPTION ACT, SECTIONS 13 (1)(e) AND 17 AND Cr.P.C., SECTION 397 READ WITH SECTIONS 401 AND 482: SPECIAL JUDGE CAN HEAR AND DISPOSE THE CASE:-
2000 (3) M.P.H.T. 16
RAMNARESH PRASAD Vs. STATE

The Special Judge granted permission to C.B.I. for investigating a case against the petitioner under Section 17 of the Act. The petitioner's contention is that since the Special Judge granted permission, therefore, he has participated in the investigation and cannot try the case. The High Court held that merely because a Judge grants permission to investigate he does not become part of the investigating authority.

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72. PRACTICE AND PROCEDURE : ADVOCATE:- DUTY OF
(2000) 1 JLJ 20
NARENDRA KUMAR JAIN Vs. STATE OF M.P.

Learned counsel for the petitioner is not prepared with the case and has not looked into the provision of law which is applicable to his case. It is not fair to the Court that the counsel comes to the Court without preparation of the case and without bringing books with him.

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73. PRACTICE AND PROCEDURE : ADVOCATE:-DUTY OF
2000 (1) JLJ 22
B.R. NIKUNJ, CIVIL JUDGE CLASS I Vs. VIPIN TIWARI, ADVOCATE

An act of a lawyer attacking the reputation and character of a Judge is as grave an offence worthy of condemnation as of a priest in a temple defacing and defiling the deity installed in it, because by such act he not only destroys the very institution from which he derives status and sustenance but does a greater general damage by shaking faith of the devotees and hurting the feelings and sentiments of the worshippers who through his mediation and assistance seek spiritual gain and contentment.

It is also not disputed that on the basis of the complaint made by the contemner to the Chief Justice, an enquiry through vigilance cell of the High Court was made through the District Judge, Raipur, after holding an enquiry submitted a report that the complaint is false and indicative. Thereafter, the District Judge on the report of the concerned Judge issued a show cause to the contemner calling upon him to substantiate his allegations against the Judge or explain why a reference for initiating contempt proceedings be not made to the High Court under Section 10 of the Act.

The provisions of Section 6 of the Act is aimed at advancing general public interest of administration of justice. In order to have a proper control and check over the administration of justice, it is but expedient that a citizen is not dissuaded by the threat to prosecution for contempt from making a bonafide complaint to the High Court against the presiding officer of a subordinate Court. Presumably with this purpose by section 6 immunity is provided to a citizen making a complaint to the higher Court or the High Court against the presiding officer of the Subordinate Court provided the complaint is made in good faith. **See in this respect case of Ram Piara Comrade. 1973 Cr. Law Journal 1106** (Punjab & Haryana High Court).

As held in the case of **Guljarilal, Advocate of Ambah,** (1968 JLJ 678= 1968 MPLJ 725) "the object for contempt proceedings is not to afford protection to Judges personally from imputations to which they may be exposed as individuals. It is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party, the authority of the Court is lowered and the sense of confidence which people have in the administration of justice by it is weakened".

The learned presiding Judge and the District Judge in the reference made to this Court has stated that only because the contemner's father was convicted and sentenced in criminal case, the contemner actuated by revengeful attitude made a false complaint against the presiding Judge containing very general and wild allegations reflecting on his conduct and integrity. Such complaint on ill based information is gross contempt because it shakes the confidence of the public in Courts particularly in a small place like Balodabazar where there are only few Judges functioning in the Court, Similar attempt of maligning and scandalizing a Judge of a Court in a rural area by issuing pamphlets against him came up for severe criticism by the Supreme Court in the case of ***Rama Dayal Murkarha v. State of M.P.*** (AIR 1978 SC 921), in which similar defence and protection under section 6 was not accepted and the lawyer was held guilty of contempt and punished although with a token fine.

The circumstances brought on record go to show that because the contemner's father was convicted and punished with sentence of imprisonment and fine by the Presiding Judge, the contemner made a complaint against his honesty and integrity. He has failed to substantiate it either on the administrative side or judicial side of the High Court.

On the facts and circumstances discussed above, it cannot be held that the action of the contemner was in good faith. He made no attempt to ascertain the correctness or truth of the information alleged to have been given to him by the two senior members of the bar. The contemner has not filed any statement or affidavit of the two senior members of the bar on whose information he made the complaint. On the other allegations, nothing has been produced before us to indicate that there were any reasonable grounds for the contemner to make a complaint against the Judge. The complaint has not only been made to the District Judge and the High Court which alone would have protected his action under section 6 of the Act but copies of such complaint were sent to Chief Justice of India. Registrar of the High Court and to the President of the Bar Council. There was thus an attempt on the part of the contemner to make a complaint against the Judge. The complaint has not only been made to the District Judge and the High Court which alone would have protected his action under section 6 of the Act but copies of such complaint were sent to Chief Justice of India. Registrar of the High Court and to the President of the Bar Coun-

cil. There was thus an attempt on the part of the contemner to malign and harm the Judge and as a result it has not only caused embarrasment and harrasment to the Judge but has done a greater public damage by shaking confidence of the people in administration of justice. He has not expressed regrets nor apologised. In the circumstances, we hold him guilty of contempt, Guided by the Supreme Court decision in the case of **Rama Dayal Markarha** (supra) we are also of the opinion that for a lawyer imposition of a token fine of Rs. 1 (one) and in default to suffer simple imprisonment for a day should meet the ends of justice and deter him from committing such acts of contempt in future. It is ordered accordingly, In the circumstances, the contemner shall pay Rs. 500/- (five hundred) as costs to be deposited in the High Court to defray the office expenses.

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84. PROBATION OF OFFENDERS ACT, SECTIONS 3, 4, 5 AND 6:-
2000 (2) JLJ 52
MANOJ KUMAR Vs. STATE OF M.P.

Offender below the age of 21 years. Offence not punishable with life imprisonment. Court is bound to call for the report of Rrobation Officer. It is also bound to record reasons if no benefit of S. 3 or S. 4 is given to offender.

Please see Section 357 Cr.P.C. also.

Paragraphs 4, 5 and 6 are reproduced :-

Section 6 of the Act provides that "when any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment but not with imprisonment for life, the Court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, if would not be desirable to deal with him under Section 3 or Section 4, and if the Court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so."

Sub-section 6 further provides that "for the purpose of satisfying itself whether it would not be desirable to deal under Section 3 or Section 4 with an offender referred to in Sub-section (1), the Court shall call for a report from the probation officer and consider the report, if any, and other information available to it relating to the character and physical and mental conditions of the offender".

5. Section 6 in its terms is mandatory. The Court is bound to extend the benefit of the provisions of Section 3 or Section 4 on a person who is found guilty and is below of 21 years of age, The discretion is given to the Court to not deal with the said persons either under Section 3 or

under Section 4 of the Act but before passing on order of imprisonment the Court shall be duty bound to call for a report from the Probation Officer and consider the report. After taking into consideration the report of the Probation Officer, the Court would still be bound to give the reasons for not extending the benefit of Section 3 or Section 4 of the Act to the assused.

6. Undisputedly Section 323 is not punishable with life imprisonment. The records of the Court below do not show that the learned trial Court before refusing to extend the benefit of the Act to the accused either called for the report from the Probation Officer or made any enquiry itself, In paragraph-12, the learned trial Court has observed that complainant has suffered as many as seven injuries on his persons and as the said complainant belonged to a Scheduled Tribe, the benefit under the Act could not be extended. The reasons projected by the learned trial Court are not germane. When the law requires that the Court has to deal with a person either under Section 3 or under Section 4 of the Act, then the Court is bound to do so unless it has called for a report from the Probation Officer or has recorded the legal reasons for refusal. In the present case, the learned trial Court was swayed away by the number of the injuries and by the fact that the complainant belonged to the Scheduled Tribe. In the opinion of this Court both the facts were irrelevant because for the injuries the appellants would be convicted under Section 323 and simply because a person belongs to a particular caste or tribe the benefit under the probation of Offenders Act cannot be refused unless the man is convicted under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. In the present case, the learned Court below has recorded acquittal of the appellants for the offence punishable under Section 3 (i) (x) of t he Atrocities Act. The reasons given by the learned trial Court are patently illegal.

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74. P.F.A. ACT S. 16 AND R 4 (3), (4) NON COMPLIANCE OF RULES *A.J.R. 1999 S.C. 1539 JAGADISH Vs. STATE*

Appellant found to be selling adulterated curd- Certificate of public analyst and CFL confirming same Mentioning in certificate that sample was intact being not necessary, non-mentioning would not amount to non-compliance of R.4 (3) and No leniency could be shown on ground that offence had been committed more than a decade ago. Offence proved. Conviction upheld, minimum sentence imposed.

1. Challeging his conviction under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1955. Both the Courts have concurrently found that it was the appellant who had sold curd which was

found to be adulterated. The certificate issued by the Public Analyst and subsequently by the Central Food Laboratory show that the curd was deficient in respect of milk fat and milk solids of non fat. We see no reason to differ from the findings recorded by both the Courts below and. therefore, the conviction of the appellant has to be confirmed.

2. It was submitted by the learned counsel for the appellant that Rules 4 (3) and 4 (4) of the Prevention of Food Adulteration Rules were not complied with in this case. This contention has been dealt with by the High Court and it has found that they were complied with. Learned counsel was not able to point out how Rule 4 (3) or Rule 4 (4) have not been complied with in this case. His submission that it is not mentioned in the certificate that the sample was intact and therefore there was non-compliance does not deserve any consideration because there is no requirement that in the Certificate of Analysis itself it should be stated that the sample when received by the Central Food Laboratory was found intact.

3. It was also submitted by the learned counsel that the offence had taken place in 1979 and the appellant's father, who was the owner of the shop has now died and, therefore, some leniency should be shown to him. We cannot accept this submision because once the **offence is held proved, the minimum sentence has to be imposed.**

4. As we find no substance in this appeal, it is dismissed. The appellant is directed to surrender to custody to serve out the remaining sentence.

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19. PREVENTION OF FOOD ADULTERATION ACT, SECTIONS 13 & 20 (1) r/w SECTION 13 (2), (2-B), (2-D), (3), (5) : TWO DIFFERENT REPORTS, TWO DIEFERENT VIEWS REGARDING ADULTERATION OF TOOR DAL : QUESTION OF SANCTION :-
(2000) 6 SCC 348
FOOD INSPECTOR, ERANKULAM Vs. P.S. SREENIVASA SHENOY

Fresh consent to institute prosecution and recommence the proceedings on the basis of the new facts revealed in the certificate of the Director not required. Sanction is required only at the stage of institution of prosecution on the basis of report of Public Analyst and not at post-institutional stage when the certificate of the Director, CFL can be brought in evidence. With the courtesy of Supreme Court cases Eastern Book company following portion is reproduced.

The appellant Food Inspector Purchased toor dal from the grocery of the respondent for the purpose of taking sample. One of the three parts of the sample was sent to the Public Analyst who, after analysis, sent a report stating that the sample contained kesari dal and hence it was adulterated.

Thereupon the complaint was filed on the premise that the respondent committed the offence under Section 16 (1-A) of the Act read with Section 2 (i-A) (h) and Section 7 (i) of the Act. The Additional Chief Judicial Magistrate before whom the complaint was filed issued process to the respondent as accused. After entering appearance in the case the respondent moved an application for sending a second part of the sample to the Director of Central Food Laboratory.It was sent accordingly and upon the same being analysed at the Central Food Laboratory, the Director thereof sent a certificate to the trial court stating that the sample was adulterated as it contained synthetic coal tar dye (tartrazine). On receipt of the said certificate the trial Magistrate converted the case from summary trial to a warrant case trial. After examining three witnesses for the prosecution the trial Magistrate framed a charge against the accused under Sections 2 (i-a) (h) and 7 (i) read with Section 16 (1-A) (i) of the Prevention of Food Adulteration Act. The respondent filed a revision before the High Court in challenge of the order framing charge. A Single Judge of the High Court accepted the respondent's contention that the complainant had not obtained sanction under Section 20 of the Act on the strength of the new facts revealed in the certificate issued by the Director of Central Food Laboratory and hence a fresh sanction is necessary for proceeding with the case. It was, therefore, directed that the Magistrate, before proceeding further, should give the prosecution an opportunity to place the certificate of the Director of Central Food Laboratory before the appropriate authority for consideration and consent for continuance of the prosecution and in the event of no such consent of the appropriate authority being obtained and produced, the Magistrate should discharge the accused and drop the proceedings. The Food Inspector who instituted the prosecution as well as the State have filed this appeal by special leave against the said order of the High Court. Allowing the appeal, the Supreme Court held that.

It is not necessary to deal with the question whether the prosecution was instituted with the written consent envisaged in Section 20 of the Act or whether it was instituted under a general authorisation made by the State Government. It is proposed to proceed on the assumption, without prejudice to the contention that the appellant instituted the prosecution proceedings on the strength of the written consent of one of the authorities concerned.

When the certificate of the Director, Central Food Laboratory superseded the report of the Public Analyst the latter stands sunk to the bottom and in that place the certificate alone would remain on the surface of evidence and hence that certificate alone can be considered as for the facts stated therein regarding the sample concerned. Thus the real contention posed is whether a fresh consent of the authority concerned is required when the said certificate has taken the place of the report of the Public Analyst.

The certificate of the Director of the Central Food Laboratory can be brought in evidence only in the post-institutional stage of a case, whereas the report of the Public Analyst can be obtained during pre-institution stage of the prosecution. There is no scope for countenancing a situation when prosecution proceedings can be instituted with the certificate of the Director of the Central Food Laboratory. What was in evidence in the form of report of the Public Analyst stands substituted, during the evidence stage, by the certificate of the Director of Central Food Laboratory, In other words, after evidence stage commences a new document would take the place of an existing material already admitted in evidence. Thereafter no legal provision requires the case to be switched back to the pre-institution stage.

It is the court's function to despatch the other part of the sample to the Director of the Central Food Laboratory. What is the need for obtaining a fresh consent when the certificate of the Director of the Central Food Laboratory has reached the court ?

State of Bombay v. Purushottam Kanaiyalal, AIR 1961 SC 1 : (1961) 1 Cri J 170 ; A.K. Roy v. State of Punjab, (1986) 4 SCC 326 : 1986 SCC (Cri) 443: (1986) 3 FAC 66, relied on

There is no good reason for making two different categories of cases with the help of certificates issued by the Central Food Laboratory. Report of the Public Analyst alone is contemplated for instituting the prosecution and consent or sanction is necessary only for such institution, and that a post-institutional development while exercising a statutory right conferred on the accused for challenging the report of the Public Analyst during trial is not a premise for turning the key backwards for a fresh institution of the prosecution, whatever be the result of the analysis made by the Central Food Laboratory.

State of Gujarat v. Ambalal Maganlal, (1978) 2 FAC 53 (Guj) (DB) : Prahladbhai Ambalal Patel v. State of Gujarat, (1984) 2 FAC 27 : 1984 Cri LJ 1642 (Guj) (FB). approved

Rattan lal v. State of H.P., (1989) 2 FAC 190 (HP) (FB) : S.M. Anwar & Co. v. State of W.B. 1994 FAJ 592 (Cal), overruled.

It is also not possible to countenance the contention based on Section 216 (5) CrPC. What is intended by that provision is that a prosecution, which requires previous sanction, cannot be started without such sanction even by way of amending the charge midway the trial. If the amended charge includes a new offence for which previous sanction is necessary then prosecution for such new offence cannot be started without such sanction. However, the second limb of the sub-section makes it clear that if sanction was already obtained for prosecution on the same facts as those on which the new or altered charge is founded then no fresh sanction is necessary.

The facts on which prosecution is founded under the Act were broadly that the accused had sold adulterated toor dal to the Food Inspector. Variation regarding the reasons or the data by which two different analysts had reached the conclusion that the sample is adulterated is not sufficient to hold that the basic facts on which the prosecution is founded, have been altered. Hence Section 216 (5) of the Code would not improve the position of the accused for the purpose of obtaining fresh consent on the facts of this case.

It must, therefore, be held that if the prosecution has been validly instituted, neither any new data nor any added reasons contained in the certificate issued by the Director of the Central Food Laboratory would be sufficient to annul the sanction already obtained with which the prosecution was already instituted. The trial has to proceed with the certificate on record which superseded the report of the Public Analyst.

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49. PARTNERSHIP ACT, SECTION 69 : APPLICABILITY, ITS EXTENT TO : ARBITRATION ACT, SECTION 14 (2) : DEFENDING PERSONS:- (2000) 6 SCC 659

KAMAL PUSHP ENTERPRISES Vs. D.R. CONSTRUCTION CO.

Section 69 of the Partnership Act is confined only to enforcement of a right arising from a contract by an unregistered firm by instituting a suit or other proceedings in court. Arbitration proceedings cannot be treated as suit or other proceedings to enforce any rights arising under a contract. Section 69 does not prohibit an unregistered firm, respondent, from defending an arbitration proceedings initiated by the opposite party, appellant, itself by seeking to appoint the arbitrator in terms of the arbitration clause contained in the contract between the parties and to make reference of dispute between them to the arbitrator. After the arbitrator passed award in favour of the respondent firm, rights of the parties were crystalized and when the arbitrator suomotu filed the award before trial court under S. 14 (2) of the Arbitration Act. IT was held appellant was not entitled to raise a preliminary objection based on Section 69. That was not a jurisdictional issue in respect of the arbitrator's power, authority and competency itself so as to enable the appellant to raise the same at any stage.

NOTE : Please refer to **AIR 1996 MP 139 = 1996 MPLJ 240 = 1996 JLJ 225.**

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75. REGISTRATION ACT: SECTION 71: DUTY OF THE REGISTRAR:- 2000 (1) VIBHA 288

SHIVSHAKTI LAND AND FINANCE CO. Vs. STATE OF M.P.

Section 71 of the Registration Act provides that if the document is presented for registration Sub-Registrar has to accept and register the same.

He cannot refuse the registration but in case of some legal flaw he has to comply with provisions under. In case of refusal he has to pass a reasoned order hearing. ***Kailash Mohan Vs. Sub-Registrar, 1985 MPLJ 395*** relied on.

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76. REGISTRATION ACT, SECTION 49:-COLLATERAL-PURPOSE
1999 RN 407 (HC)
THEPALI Vs. DADDI

Sale deed registrable but not registered can still be relied on for purpose of delivery of possession to seller.

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2. REPRESENTATION OF PEOPLES ACT : ELECTION RULES : AFFIDAVIT :
(1999) 1 SCC 666
L.R. SHIVARAMAGOWDA Vs. T.M. CHANDRASHEKAR

Affidavit accompanying the election petition alleging corrupt practice must disclose source of information and clearly state which allegations are based on personal knowledge and which on information received. Otherwise affidavit cannot be held to be in confirmity with Form No. 25 prescribed under Rule 94-A. Affidavit with the verification that contents "are true to the best of my knowledge and belief and information" was a defective affidavit.

Paragraph 16A of the judgment is reproduced :-

We have already extract paras (f) and (g) of the affidavit filed along with the election petition. It does not disclose the source of information. Nor does it get out which part of the election petition was personally known to the petitioner and which part came to be known by him on information. Significantly, paras (a) to (e) of the affidavit sate that the averments therein are true to his information. Para (f) is silent on this aspect of the matter. Para (g) refers to all the 42 paragraphs in the petition. The affidavit is not in conformity with the prescribed Form No. 25. Thus there is a failure to comply with Rule 94-A of the Conduct of Election Rules. It is a very serious defect which has been overlooked by the High Court.

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39. RENT CONTROL AND EVICTION : TENANCY, APPRECIATION OF EVIDENCE : DELHI RENT CONTROL ACT, SECTIONS 14 (1) (a), (c) & (k) :-
(2000) 4 SCC 214
MOHINDER KAUR Vs. KUSAM ANAND

With the Courtesy of the publishers Supreme Court Cases, Eastern Book Company following portions are reproduced :-

The appellant landlord was convicted under Sections 29 (2) and 14 of the Delhi Development Act, 1957 on the ground of user of the suit building. which was situated in a residential area of Delhi, for non-residential purposes by the then lessee. Thereafter, the appellant initiated eviction proceedings under Section 14 (1) (a), (c) and (k) against the then lessee. In that proceedings, the appellant appointed D, an employee of the appellant's firm, as power of attorney. Consequently, the then lessee vacated the suit building on 31-8-1977. Thereafter on 28.10.1977 the respondent wrote a letter to the appellant, who resided in Calcutta, for confirmation of letting out the suit building to the respondent at a rent of Rs. 3000 per month. However, there was no such confirmation by the appellant. Thereafter on 16-11-1977. the respondent paid a sum of Rs. 3000 to D as advance rent of the suit building and obtained a receipt from D. On 29-12-1977, the appellant's son visited the property and found the same to have been occupied by the respondent. He asked the respondent to remove her belongings from the property but she declined to do so. Hence, he issued notice by telegram on 31-12-1977 and lodged FIR for criminal trespass. The appellant filed a suit for eviction of the respondent on the ground that the defendant was a trespasser in the suit premises and for mesne profits @ Rs 3000 per month w.e.f. 1-1-1978. The suit was decreed by a Single Judge of Delhi High Court but the decision was reversed by a Division Bench. The appellant approached the Supreme Court. The respondent contended that the receipt given by D would clearly establish the case of the defendent that the premises were let out to her by accepting an advance rent of Rs 3000. The respondent added that as the appellant had not produced the copy of the power of attorney executed by the appellant in favour of D for conducting the eviction proceedings against the former lessee. adverse inference should be drawn against the appellant and D should be held to have powers to let out the premises. Rejecting the contentions and allowing the appeal. the Supreme Court held.

If D had any power of attorney for letting out the premises. there was no necessity of writing the letter dated 28-10-1977 to the plaintiff-appellant for having confirmation of letting out the premises at the monthly rent of Rs. 3000. Further, it was open to the defendant-respondent to get a certified copy of the power of attorney, which was executed by the plaintiff in favour of D for conducting the suit against the former tenant, from that suit proceedings. In the present case there is no question of presuming under Illustration (g) of Section 114 of the Evidence Act that the plaintiff-appellant was in possession of the power of attorney executed in favour of D. Therefore, it is difficult to draw an adverse inference that she was withholding the power of attorney which was in her possession. In evidence, the plaintiff has specifically denied that she has executed any such power of attorney in favour of D. Further, the plaintiff appellant was not asked to produce the copy of the power of attorney executed in favour of D in evic-

tion proceedings against the former tenant. Moreover, the respondent- defendant had nowhere stated that before paying Rs 3000 to D she had seen or verified the power of attorney executed in his favour by the plaintiff appellant.

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48. RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993 : (RECOVERY OF DEBTS ACT, FOR SHORT) SECTIONS 1 (4), 2 (g), 17, 18, 31, 31-A AND 34 : TRANSFER OF CASES FROM THE CIVIL COURT TO DEBTS RECOVERY TRIBUNALS :
(2000) 6 SCC 655
PUNJAB NATIONAL BANK Vs. CHAJJU RAM

Where the decree for a sum exceeding the minimum prescribed by Section 1 (4) was passed in favour of a Bank by a Civil Court prior to the application of Act, but remained unexecuted till the establishment of Debts Recovery Tribunal, the jurisdiction to entertain an application for execution of such decree was held to be possessed by the said Tribunal and not by the Civil Court. The amount of interest payable and the principal amount have to be taken into consideration.

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78. SAMAJ KE KAMJOR VARGON KE KRISHI BHUMI DHAARKON ..... ADHINIYAM, 1976 (M.P.)
PREAMBLE AND SECTIONS 5 AND 6:- ELABORATES THE NEED FOR ENACTING THE ADHINIYAM:-
2000 (1) VIBHA 190
PRABHUBAI Vs. ADDL.COLLECTOR

Enactment is for purposes of protecting members of weaker section of society. They are likely to become the 'prey' for their land grabers.

Civil Suit dismissed in default of evidence. Application under is not barred. Application can be filed even after withdrawal of suit. The Authorities have to be vigilent to implement the provisions of the Act.

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92. SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, SECTION 3 (2) (V):-
2000 A.N.J. 377
MASUMSHA HASANASHA MUSALMAN Vs. STATE OF MAHARASHTRA

Offence under IPC committed against a person of scheduled caste whether the act comes under the provisions of section 3 (2) (v) of Act? It was held 'No'. To attract the provisions of Section 3 (2) (v) of the Act the sina qua non is that the victim should be a person who belongs to a scheduled caste or a scheduled tribe and that the offence under the Indian Pe

nal Code is committed against him on the basis of such a person belongs to a scheduled caste or a scheduled tribe in absence of such ingredients, no offence under section 3 (2) (v) of the Act arises.

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44. SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, 1985 : SECTIONS 17 (3), 18 (2), 22 AND 22-A : BAR OF SUIT : PROCEEDINGS AGAINST GUARANTORS ALSO APPLIES :- (2000) 6 SCC 545

PATHEJA BROTHERS Vs. ICICI LTD.

Without the requisite sanction, for enforcement of any guarantee in respect of any loan or advance granted to the industrial company, applicable even to such a suit filed against the guarantors. Contention that the bar would apply only when the company itself was the guarantor or was sued by a guarantor on subrogation was rejected by the Supreme Court.

With the courtesy of Eastern Book Company, SCC publishers, the following portion is reproduced:

The respondent filed a suit against the appellant Company for recovery of the loans outstanding against the latter. The guarantors also were impleaded as defendants and the guarantees were sought to be enforced. By an interim order, the trial court directed the Court Receiver to take possession of the properties mentioned in the exhibit to the plaint. A few days later the appellant's reference for being declared a sick under taking within the meaning of the Sick Industrial Companies (Special Provisions) Act, 1985 ("the said Act") was registered. Hence, the trial court vacated the interim order in respect of the properties belonging to the guarantors. The trial court took the view that Section 22 of the said Act was not applicable to guarantors. The trial court's order was confirmed by a Division Bench of the High Court. The Supreme Court held that the words of Section 22 are crystal clear. There is no ambiguity therein. It must, therefore, be held that no suit for the enforcement of a guarantee in respect of a loan or advance granted to the industrial company concerned will lie or be proceeded with, without the sanction of the Board or the appellate authority under the said Act. It is not possible to read the relevant words in Section 22 as meaning that only a suit against the industrial company will not lie without such consent. There is no requirement in Section 22 that, to be covered thereby, a suit for the enforcement of guarantee in respect of a loan or advance to the industrial company should be against the industrial company.

When the words of a legislation are clear, the court must give effect to them as they stand and cannot demur on the ground that the legislature must have intended otherwise.

Moreover, the scheme prepared under section 17 (3) would provide for the repayment of the loan or advance and, therefore, would take within its ambit the claim on the guarantee: the question of proceeding with the suit

against the guarantor would not arise. On the other hand, if the industrial company cannot be revived by a scheme, the embargo under Section 22 would cease to operate.

Section 22 provides that the suit would lie or be proceeded with after the consent of the Board has been obtained. It would, therefore, be open to the claimant on a guarantee to obtain such consent from the Board.

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77. SERVICE LAW: CONSTITUTION OF INDIA, ART. 227: EXECUTIVE ORDERS BINDING EFFECT OF:-
2000 (2) M.P.H.T. 9 (NOC)
Dr. HASHMUKH VERMA Vs. STATE OF M.P.

Executive orders of the Government can have no force and cannot be followed in view of the express provision relating to seniority in the Rules, which have been framed under Art. 309 of the Constitution and have the force of law.

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52. SERVICE LAW, PROMOTION : SELECTION OF POST : DETERMINATION AND CRITERION FOR SELECTION :-
(2000) 6 SCC 698
UNION OF INDIA Vs. L.T. GEN. RAJENDRA SINGH.

Selection for promotion is based on different criteria depending upon the nature of the post and requirements.

NOTE :- Judicial Officers are requested to go through the whole judgment because the entire law relating to selection of post, promotion, test to determine and criteria and etc. etc. is explained.

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45. SERVICE LAW : FAMILY PENSION : "FAMILY" : SCOPE : PUNJAB CIVIL SERVICE RULES
(2000) 6 SCC 560
PUNJAB STATE ELECTRICITY BOARD Vs. RAM RAKHI

Widowed sister is also covered, hence could also claim family pension in Punjab Civil Services Rules. In order to be eligible to family pension one must prove that there is no nomination by the deceased and that she was dependent on the deceased.

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79. SPECIFIC RELIEF ACT, SECTION 31 AND WORDS AND PHRASES: THE WORDS "IF LEFT OUTSTANDING MAY CAUSE HIM SERIOUS INJURY", THE RELEVENT WORDS UNDER SECTION 31 S.R. ACT EXPLAINED AND THE WORD "PREJUDICE' EXPLAINED:-
2000 (1) VIBHA 160
L.P.SHRIMALI Vs. SHRI MADHUSUDAN

Paragraph 7 of the judgment is reproduced:-

So far as the first submission is concerned this is found on the scope of section 31 of the Specific Relief Act. Section 31 of the Specific Relief Act is extracted below:

"WHEN CANCELLATION MAY BE ORDERED:-

(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the Court shall send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."

Section 31 itself speaks that a person against whom a written instrument is void or voidable and who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury. The relevant words are "if left outstanding may cause him serious injury". Here the pronote and the receipt if left outstanding would not cause any serious injury to the petitioners as it is for the defendants in the suit to whom the injury would be caused if they do not utilise the documents within the time provided by law. The documents are agreements and may come in the category of contract between the parties. Section 31 confers the equitable jurisdiction. On the facts of the present case, it is clear that there can be no danger that the lapse of time deprives the party of whole means of defence. Here the documents to be utilised against the petitioners and on utilisation of documents, i.e. seeking relief in the Court of law, the present petitioners would not be deprived of their right of defence. It is not the case that such documents as are the subject matter in the present case throw a cloud over the right or title of the petitioners and it is not the case where it should be said that if such documents left outstanding may cause serious injury to the petitioners.

Word "prejudice" is of wider amplitude depending upon facts and circumstances of each case.

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33. SPECIFIC RELIEF ACT, SECTION 6 : SUIT BY PERSON DISPOSSESSED OF IMMOVABLE PROPERTY : QUESTION OF GRATUITOUS POSSESSION :-
(2000) 4 SCC 119
ANIMA MALLICK Vs. AJOY KUMAR ROY

The owner has the right to reclaim possession even without the knowl-

edge of the person in possession. The respondent was using garage owned by appellant, his sister. Appellant dispossessed respondent. The trial Court ordered for restoration of possession. The District Court allowed the appellants's revision under Section 115-A CPC. The Supreme Court held the High Court erred in allowing respondent's petition under Art. 227 of the Constitution of India and affirmed the order of the trial Court. The Supreme Court allowed the revision.

The whole order running from paragraph 2 to 4 is reproduced :-

2. These proceedings arise from a suit filed under Section 6 of the Specific Relief Act which was filed by the respondent as per the judgment of the High Court. The respondent in his suit stated that he was using the garage owned by the appellant, his sister. The contention was that he had been dispossessed from the garage by his sister.

3. The trial court ordered possession to be restored but on an application filed under Section 115-A of the Civil Procedure Code, the District Judge allowed the said application filed by the applicant (appellant herein). The order of the trial court was set aside. This order was sought to be challenged by a petition under Article 227 of the Constitution of India in the Calcutta High Court and the decision of the trial court had been restored.

4. Without going into the question of law we are of the opinion that under Article 227 the High Court ought not to have exercised its discretion and interfered with the judgment of the District Judge. It is evident that the respondent was using the garage of the appellant on permission having been granted by the sister to the brother. According to the judgment of the High Court the respondent was claiming no legal interest in the said garage as he was not claiming its ownership because he was not claiming to be a tenant or even a licensee. His possession was purely gratuitous and even if without the knowledge of the respondent the appellant has reclaimed the possession. it was not a fit case for the High Court to have interfered under Article 227 of the Constitution.

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46. SPECIFIC RELIEF ACT, SECTION 16 (c) : READINESS AND WILLINGNESS TO PERFORM OBLIGATIONS UNDER THE AGREEMENT-PLEADING AND PROOF :-
(2000) 6 SCC 566
AJAIB SINGH Vs. TULSI DEVI

Supreme Court held that on facts it appears that this factum could not be said to have been proved where the record clearly showed that respondent-plaintiff had not made all the necessary instalment payment under the agreement. More so, when respondent plaintiff had made averments without regard to the truth.

Agreement in this case (i) was for transfer to respondent of one part of suit property, which was originally allotted to appellant by Government, : transfer to be carried out after full payment to Government from funds supplied by respondent : (ii) provided for loan to appellant to pay for the second part of property; and (iii) included a condition that second part of property would also be transferred to respondent in case loan or any instalment not repaid. The fact that Government did not terminate the contract on account of non-payment, it was held would have no bearing on the fact of respondent not having performed her obligations under the agreement. High Court erred in affirming the decree for specific performance awarded by the trial court to the respondent.

EQUITY : EQUITABLE RELIEF - Person making averments as per convenience without regard for truth, held, would be precluded from getting equitable relief.

EVIDENCE ACT, SECTION 114 : PRESUMPTION ABOUT RECEIPT :-

Where a party has the receipts for payments made, it was held that it may be presumed that such party made the payment.

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29. TORT : NUISANCE, SPECIFIC RELIEF ACT, SECTION 38 : INJUNCTION : FUTURE NUISANCE APPREHENDED, INJURY LIKELY TO CAUSE BY NUISANCE : QUIA TIMET ACTION (BECAUSE IT IS FEARED) IN SUCH CASES FOR PRECAUTIONARY JUSTICE, EXPLAINED :-

(2000) 4 SCC 50

KULDIP SINGH Vs. SUBHASH CHANDER JAIN

Future nuisance distinguished from actually existing nuisance. Future nuisance must be either imminent or likely to cause irreparable injury if allowed to occur.

PRIVATE NUISANCE :- Quia timet action.

Remedy by way of injunction when available. The activity should be iherently dangerous or injurious and the injury should be present or impending and such as by reason be adequately compensated in damages. A quia timet (because it is feared) action is a bill in equity. It is an action preventive in nature and a specie of precautionary justice intended to prevent apprehended wrong or anticipated mischief and not to undo a wrong or mischief when it has already been done. In such an action the court, if convinced. may interfere by appointment of receiver or by directing security to be furnished or by issuing an injunction or any other remedial process.

A nuisance actually in existence stands on a different footing than a possibility of nuisance or a future nuisance. An actually existing nuisance

is capable of being assessed in terms of its quantum and the relief which will protect or compensate the plaintiff consistently with the injury caused to his rights is also capable of being formulated. In case of a future nuisance, a mere possibility of injury will not provide the plaintiff with a cause of action unless the threat be so certain or imminent that an injury actionable in law will arise unless prevented by an injunction. The court may not require proof of absolute certainty or a proof beyond reasonable doubt before it may interfere : but a strong case of probability that the apprehended mischief will in fact arise must be shown by the plaintiff. In other words, a future nuisance to be actionable must be either imminent or likely to cause such damage as would be irreparable once it is allowed to occur. There may be yet another category of actionable future nuisance when the likely act of the defendant is inherently dangerous or injurious such as digging a ditch across a highway or in the vicinity of a children's school or opening a shop dealing with highly inflammable products in the midst of a residential locality.

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80. TRANSFER OF PROPERTY ACT, SECTION 113, ILLUSTRATION (a): WAIVER:-
2000 (2) M.P.L.J. 69
MURLI SHRI DEO RADHA MADHAWLAL JEE GEDA TRUST, SAGAR Vs. PRADEEP KUMAR NAYAK

The plaintiff, determined the lease of the defendant by a notice to quit from 30-6-1988 but accepted the rent from 1987 to 31-5-1990 and filed the suit for eviction on 11-6-1990.

It was held that the rent which had been accepted by the plaintiff was for the period after the notice. There was consensus ad-idem to continue the old contractual tenancy in spite of the notice. ***M.C. Sharma Vs. R.K. Sharma, AIR 1996 SC 869, Nagar Nigam Vs. Rajeshwar, 1996 M.P.L.J. 97, Bhawanji Vs. Himatlal, AIR 1972 SC 819 and R.V. Bhupal Prasad Vs. State of A.P., (1995) 5 SCC 698*** referred to.

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81. TRANSFER OF PROPERTY ACT: SECTION 53 A : RIGHT TO CLAIM BACK POSSESSION ON FAILURE OF DEFENDANTS TO CLAIM SPECIFIC PERFORMANCE:-
2000 (2) M.P.L.J. 140
GURUVACHAN SINGH Vs. MANJIT SINGH

Under an agreement of sale defendant was put in possession who had paid Rs. 5,000/- as advance. No steps were taken by the defendant for specific performance of contract but instead, he made interpolation in agreement adding clause that he would be getting sale deed executed after making necessary construction. Defendant could not remain in posses-

sion of suit house and fore-feited his right to recover Rs. 5,000/- paid by him to plaintiff/respondent. The trial Court was justified in granting decree for possession in favour of plaintiff/respondent in the circumstances of case. ***Smt. Chand Rani (dead) by LRs. Vs. Smt. Kamal Rani (dead) by LRs., AIR 1993 SC 1742, K.S. Vidhyanandam Vs. Vairavan, AIR 1997 SC 1750 and Mohan Lal (deceased) through his LRs. Kachru and others Vs. Mira Abdul Gaffar and another, AIR 1996 SC 910*** referred to.

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133. TRANSFER OF PROPERTY ACT, SECTION 53-A : THE REQUIREMENTS IN THE MATTER OF DEFENCE OF PART PERFORMANCE:-
2000 (2) M.P.L.J. 460
RAM LAL Vs. MANGAL SINGH

The necessary conditions for application of section 53-A of the Transfer of Property Act are : (1) Contract to transfer immovable property by owner (2) For consideration; (3) By writing signed by him or on his behalf; (4) The transferee takes possession in part performance of the contract of property or part thereof or being already in possession continues so in part performance of the contract and does something in furtherance of the contract; (5) the transferee is willing to perform his part of the contract. If these conditions are fulfilled then inspite of defect of registration or other defect in the deed, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and person claiming under him any right in respect of the property of which the transferee has taken or continued in possession other than a right expressly provided by the term of the contract. Unlawful entry in possession cannot be accepted by courts for applying the doctrine of part performance under Section 53-A of Transfer of Property Act which is a doctrine equity.

NOTE : Judicial Officers are requested to go through the whole ruling as it is of general importance.

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102. TRASFER OF PROPERTY ACT, SECTIONS 55, 58 AND 58 (c) : 'MORTGAGE BY CONDITIONAL SALE' AND 'SALE WITH A CONDITION TO REPURCHASE' ARE TWO DIFFERENT TRANSACTIONS : EXPLAINED :-
2000 (1) JLJ 327 (SC)
MUSHIR MOHAMMED KHAN Vs. SMT. SAJEDA BANO

'Mortgage by conditional Sale' and 'sale with a condition to repurchase' are two different transactions. The nature of sale or mortgage cannot be decided only on the basis of recitals of the deed. Other circumstances established on record are also to be taken into account.

Paragraphs 7, 9, 10, 12, 13, 14, 16 and 17 are reproduced:-

The question whether there was a transaction of mortgage or sale between the parties is to be decided, not only in the light of the recitals made in the deed, but also in the light of other circumstances which are established on the record. It is true that there is a difference between a "mortgage by conditionsal sale" and a "sale with a condition to repurchase", the basic fact remains that the form of transaction is not always the final test and the true test is the intention of the parties in entering into the transaction.

Proviso to this Clause was added by Act XX of 1929 so as to set at rest the conflict of decisions on the question whether the conditions, specially the condition relating to reconveyance contained in a separate document could be taken into consideration in finding out whether a mortgage was intended to be created by the principal deed. The Legislature enacted that a transaction shall not be deemed to be a mortagage unless the condition for re-conveyance is contained in the document which purports to effect the sale.

The proviso was considered on ***Chunchun Jha Vs. Edabat Alt and Anr., AIR 1954 SC 345= 1955 (1) SCR 174,*** and came to be considered again in ***Bhaskar Woman Joshi (D) and Ors. Vs. Shrinarayan Rambilas Agarwal (D) and Ors. , AIR 1960 SC 301= 1960 (2) SCR 117,*** in which it was explained as under :

"But it does not follow that if the condition is incorporated in the deed effecting or purporting to effect a sale a mortgage transaction must of necessity have been intended. The question whether by the incorporation of such a condition a transaction, ostensibly of sale may be regarded as a mortgage is one of intention of the parties to be gathered from the language of the deed interpreted in the light of the surrounding circumstances. The circumstance that the condition is incorporated in the sale deed must undoubtedly be taken into account, but the value to be attached thereto must vary with the degree of formality attending upon the transaction".

The view expressed by this Court in **Bhaskar's case** was repeated in the same words in ***P.L. Bapuswami Vs. N. Pattay Gounder. AIR 1966 SC 902.***

"The question whether by the incorporation of such a condition a transaction ostensibly of sale may be regarded as a mortgage is one of intention of the parties to be gathered from the language of the deed interpreted in the light of the surrounding circumstances. The definition of a mortgage by conditional sale postulates the creation by the transfer of a relation of mortgagor and the mortgagee, the price being charged on the property conveyed. In a sale coupled with an agreement to reconvey there is no relation of debtor and creditor not is the price charged upon the property conveyed but the sale is subject to an obligation to retransfer the prop-

erty within the period specified. The distinction between the two transactions is the relationship of debtor and creditor and the transfer being a security for the debt. The form in which the deed is clothed is not decisive. The question in each case is one of determination of the real character of the transaction to be ascertained from the provisions of the documents viewed in the light of surrounding circumstances. If the language is plain and unambiguous it must in the light of the evidence of surrounding circumstances be given its true legal effect. If there is ambiguity in the language employed, the intention may be ascertained from the contents of the deed with such extrinsic evidence as may by law be permitted to be adduced to show in what manner the language of the deed was realted to existing facts."

These decisions were considered again in ***Vidhyadhar Vs. Manikrao and Anr., AIR 1999 SC (1st) supp. 1441 = (1999) 3 SCC 573*** and it was observed as under :

"47. The basic principle is that the form of transaction is not the final test and the true test is the intention of the parties in entering into the transaction. If the intention of the parties was that the transfer was by way of security it would be a mortgate. The Privy Council as early as in ***Balkishan Das Vs. Legge, (1899) 27 Ind. Appl. 58,*** had laid down that, as between the parties to the document, the intention to treat the transaction as an out and sale or as a mortgage has to be found out on a consideration of contents of document in the light of surrounding circumstances. The decision of this Court in ***Bhaskar Woman Joshi Vs. Shrinarayan Rambilas Agarwal, AIR 1960 SC 301=(1960) 2 SCR 117*** and ***P.L. Bapuswami Vs. N. Pattay Gounder, AIR 1960 SC 902 : (1996) 2 SCR 918,*** are also to the same effect.

48. The contents of the document have already been considered above which indicate that defendant No. 2 had executed a mortgage by conditional sale in favour of defendant No. 1. He had promised to pay back Rs. 1500/- to him by a particular date failing which the document was to be treated as a sale deed. The intention of the parties is reflected in the contents of the document which is described as a mortgage by conditional sale. In the body of the document, the mortgage money has also been specified. Having regard to the circumstances of this case as also the fact that the condition of repurchase is contained in the same document by which the mortgage was created in favour of defendant No. 1, the deed in question cannot but be treated as a mortgage by conditional sale. This is also the finding of the courts below."

Applying the principles laid down above, the two documents read together would not constitute a 'mortgage' as the condition of re-purchase is not contained in the same documents by which the property was sold. Proviso to Clause (c) of Section 58 would operate in the instant case also and

the transaction between the parties cannot be held to be a "mortgage by conditional sale".

We are unable to accept the reasoning of the High Court. We have already seen above that the three documents read together do not constitute a mortgage or mortgage by conditional sale in as much as the condition to repurchase was not contained in the sale deed itself. If the documents cannot be treated as creating a mortgage on account of the prohibition contained in the Proviso to Clause (c) of Section 58, it is difficult to accept that these documents would create a mortgage of another kind. The basic fact which has been ignored by the High Court is that though in a usufructuary mortgage, the possession has necessarily to be delivered to the mortgagee, an agreement for reconveyance is not obtained from him. While recording a finding on the question of usufructuary mortgage, the High Court did not take into consideration the second document which represented an agreement between the parties that if the amount in question, namely, the price money for which the sale was executed by the plaintiff in favour of the defendant was returned within the time stipulated by that agreement, the defendant would reconvey the property to the plaintiff. An agreement of reconveyance does not normally constitute part of the transaction by which usufructuary mortgage is created where the parties executed three documents almost contemporaneously, all the three documents have to be taken into consideration to find out the true nature of the transaction.

Learned counsel for the plaintiff referred to the decision of this Court in ***Smt. Indira kaur and others Vs. Shri Sheo Lal Kapoor, AIR 1988 SC 1074,*** and contended that in that case too, the property was sold and a separate agreement of reconveyance was executed by which the purchaser had promised to reconvey the property to the seller on return of the consideration money for which the sale deed was executed. The seller had also executed a rent note in favour of the purchaser and thus continued to occupy the property as tenant. The Court held, on consideration of all the circumstances, the transaction to be a mortgage and not an out and out sale in favour of the purchaser. It is contended that since in the instant case also the property was sold and a deed of reconveyance was executed by the defendant in favour of the plaintiff and possession was delivered to the defendant only symbolically inasmuch as the plaintiff had executed a rent note under which he had promised to pay rent every month to the defendant, the transaction should also be treated as mortgage. It is no doubt true that this Court in Smt. Indira Kaur's case had held, on considering the facts of that case, the transaction to be a mortgage. The Court had also relied upon its earlier decision in ***Govind Prasad Chaturvedi Vs. Hari Dutt Shastri, 1977 (2) SCR 877= AIR 1977 SC 1005,*** in which the facts were almost similar and in which too, it was held that the transaction was a

mortgage. But the learned counsel did not notice the relevant observations which are reproduced below :

"These factors clearly spell out the real intention of the parties that it was a transaction of mortgege to secure the sum of Rs. 7000/- at approximately 13½%. But then it is not necessary to examine this dimension of the matter in asmuch as the plaintiff has not prayed for redemption though in the plaint an averment has been made that the real intention of the parties was to create a mortgage. As the plaint stands, and as the plaintiff himself has preferred to enforce the agreement for specific peformance, it is not necessary to examine the question as to whether or not the real nature of the transaction of a sale. For the same reason we need not examine the question as to whether or not S. 58 (c) of the Transfer of Property Act would have disabled the plaintiff from claiming the relief of redemption on the basis that the real intention of the parties was to create a mortgage and not an absolute sale coupled with an agreement of reconveyance. This question will have to be dealt with at appropriate time having regard to the fact that there is an increasing tendency in recent years to enter into such transactions in order to deprive the debtor of limitation. In fact, very often the mortgagee in place of getting a mortgage deed executed in lieu of a loan obtains an agreement to sell in his favour from the mortgagor so as to bring pressure on the mortgagor by seeking to enforce specific performance to enable the mortgagee to obtain possession of the property for an amount smaller than the real value of the property. We need not however probe the matter any further for the purpose of disposing of the present appeal for the reasons stated earlier".

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51. TRANSFER OF PROPERTY ACT, SECTION 3 EXPLN. II : "NOTICE" AND "KNOWLEDGE" EXPLAINED : SPECIFIC RELIEF ACT, SECTIONS 9, 19-B AND 20 (2) : DEEMED NOTICE OF TITLE OF PERSON IN ACTUAL POSSESSION :-
(2000) 6 SCC 685
RAM NIWAS Vs. BANO

Under Section 3 of the T.P. Act, the word "Notice" is of wider importance than the word "knowledge". A person not having actual knowledge of a fact may yet have notice of it in view of the definition of the expression "a person is said to have notice". Therefore, if a purchaser of immovable property does not inquire into the real nature of tenant's possession he cannot escape the consequences deemed notice under Expln. II to S. 3, despite the legal right he acquires on the basis of the sale deed executed by him. The respondent purchasers would be deemed to have notice of the agreement to purchase entered into by the appellant tenant with the vendor.

Specific performance is not to be enforced against bonafide purchaser for value without notice.

NOTE :- Please also see Section 53-A of the Transfer of Property Act which also speaks about "Provided that nothing in this Section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance there of."

The Expln. 2 to Section 3 of the T.P. Act is reproduced here for ready reference.

Expln. 2 to Section 3 : Any person acquiring any immovable property there in share or interest in any such property shall be deemed to have notice of the title if any, **of any person who is for the time being in actual possession there of.**

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44. TRIAL BY SPECIAL JUDGE WHO HAPPENS TO BE SESSIONS JUDGE- CHARGE U/S 376. NO CHARGE FRAMED UNDER SEC. 3 OF SPECIAL ACT (S.C. ST (P.C) ACT 1989) EFFECT OF DE- NOVO TRIAL NOT REQUIRED.
JT 2000 (1) SC. 276
STATE OF HIMACHAL PRADESH VS. GITARAM.

Sec. 465 Cr.P.C. Application of- Any Objection To Be Raised IT SHOULD BE AT THE **Earliest Stage.**

Paragraphs 2 to 7 Reproduced As under :-

2. By the impugned judgment a Single Judge of the High Court ordered a redo of the whole laborious exercise once completed in full measure at great cost of time and energy, solely on a technical ground.

3. Respondent was chargesheeted for the offences under Section 376 of the Indian Penal Code and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. 1989 (for short 'the Act').

4. A **Magistrate committed the case to the Sessions Court who was specified as a Special Court to try** the offences under the Act. A charge was framed by the said Sessions Court against the respondent only for the offence under Section 376 IPC. After trial, the said Sessions judge convicted the respondent for the offence under Section 376 and sentenced him to undergo imprisonment for seven years. Respondent filed an appeal before the High Court challenging the conviction and sentence. A learned Single Judge of the High Court set aside the said conviction and sentence on one technical ground i. e. the trial judge had no jurisdiction as he was only the Special Court specified under the Act. The case was committed to that court and

resultantly that court has no jurisdiction to try an offence under Section 376 of the IPC. separately, according to the High Court. The operative portion of the High Court judgment reads thus.

> "Consequently, the appeal is allowed. Conviction and sentence is set aside. Since the very commitment of the case to the Special Court by the learned Magistrate, vide order dated 23-3-1998 was illegal as he could not have taken cognizance of the offence under the Act of 1989, the learned trial court shall return the record of the case to the learned Magistrate for being returned to the prosecution for being presented to the competent court".

5. This court has considered the question whether the Sessions Court specified as a Special Court under the provisions of the Act will cease to be a Sessions Court, or whether he would continue to be the Sessions Judge (Vide ***Gangula Ashok v. State of Andhra Pradesh*** **[JT 2000 (1) SC 379= 2000 (2) SCC 503]**. This Court found that even after such specification the Sessions Court would continue to be the Sessions Court and a trial before that court can be held only in accordance with the provisions contained in Chapter XVII of the Code of Criminal Procedure. The following is the dictum laid down by this Court.

> "It is clear from Sections 14 and 2 (1) (d) of the Act that it is for trial of the offences under the Act that a particular Court of Sessions in each district is sought to be specified as a Special Court. Though the word "trial" is not defined either in the Code or in the Act it is clear distinguishable from inquiry. inquiry must always be a forerunner to the trial. Thus the Court of Sessions is specified to conduct a trial and no other court can conduct the trial of offences under the Act. Evidently the Legislature wanted the Special Court to be a Court of Session. Hence, the particular Court of Session, even after being specified as a Special Court, would continue to be essentially a Court of Session and designation of it as a Special Court would not denude it of its character or even powers as a Court of Session. The trial in such a Court can be conducted only in the manner provided in Chapter XVIII of the Code which contains a fasciculus of provisions for 'trial before a Court of Session".

6. We are distressed to note that learned Single Judge was not told by the government advocate of the fall out of such a view, if taken by the Single Judge, that it means all the witnesses once examined in full should be called back again, and the whole chief-examination, cross-examination, re-examination and questioning of the accused under Section 313 of the Code, hearing arguments, then examination of defence witnesses further again final arguments to be heard and preparation of judgment once again. **The very object underlined in Sec-**

tion 465 of the Code is that, if on any technical ground any party to the criminal proceedings is aggrieved, he must raise the objection thereof at the earliest stage. If he did not raise it at the earliest stage he cannot be heard on that aspect after the whole trial is over.

7. The premise adopted by the learned Single Judge of the High Court is patently erroneous. **The Sessions Court which tried the case for the offence under Section 376. IPC continued to have jurisdiction to try the same, and the order of committal was legally valid.** The appeal filed before the High Court could only be disposed of on marits and not on the premise erroneously taken by the learned Single Judge. He has not considered the appeal on merits. We, therefore, set aside the impugned judgment. We remit the case back to the High Court for disposal of the appeal afresh on merits.

NOTE :- The humble submission for Judicial Officers is this that the cases should invariably be committed to the Sessions Court who in turn will make over the same to the Special Judge (if any) and thus the compliance of the provisions of Sections 193 and 194 Cr.P.C. "regarding cognizance of offences by Court of Sessions" and "Additional and Assistant Sessions Judges to try cases made over to them" will be absolutely complied with. It is further to note that there is only one sessions judge in one sessions Division under S. 9 (2) of Cr.P.C. and the remaining Judges who are appointed as additional district judges and empowered with the powers of the Additional Sessions Judges under Section 9 (3) of the Cr.P.C Additional Session Judges. Even a senior most Sessions Judge of one division if required to work in another sessions divisions in addition to his own duties he works as an Additional Sessions Judge in another division. This has nothing to do with the pay grades and the seniority. Therefore, my submission would be it will not be correct to commit the case to the Special Judge whether he is posted in that division as Sessions Judge or Special Judge having powers of additional sessions judge. The duty of the Magistrate in committing the case is to commit the same to the Sessions Judge irrespective of the fact he may or may not be Special Judge.

(There is no Provision under the Cr.P.C. or under Special Act which empowers the Magistrate to commit the case to Special Judge. The words used u/s 193 are "Court of Sessions".)

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26. WORDS PHRASES : "ISSUED" AND "DESPATCHED" EXPLAINED: 2000 (4) M.P.H.T. 69

SMT. BHULIN DEWANGAN Vs. STATE OF M.P.

Notice to every member of the panchayat "shall be despatched seven days before the meeting". Use of the word "despatched" cannot be used as

notice by the members of the panchayat. The literal words of the word "issued" is analogous to the word "despatched".

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82. WORDS AND PHRASES: DEFINITION OF TERMS 'WAGES' AND 'PRODUCTION INCENTIVE SCHEME':-
2000 (2) M.P.H.T. 145 (SC)
M/S WHIRLPOOL OF INDIA LTD. Vs. EMPLOYEES'STATE INSURANCE CORPORATION

Payments towards production incentive made by the applicant to its workers quarterly under the said Scheme. Employees' State Insurance Act, Section 2 (22) does not fall within the scope and ambit of the 'wages' as defined in Section 2(22). Payment of production incentive does not fall either under the first part or last part of the definition of term 'wages'.

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83. WORDS AND PHRASES:WORD "SUPERSESSION" EXPLAINED: SUBORDINATE LEGISLATION - POWERS - RETROSPECTIVE EFFECT:-
2000 (1) VIBHA 239
BARJI Vs. STATE

The word "Suspersession" is used in the sense of 'repeal and replacement'. It does not have effect of wiping out liabilities accrued under previous provisions. ***State of Orissa Vs. Titaghur Paper Mills, AIR 1985 SC 1293*** followed, in which it was held that,

"The word 'supersession' in the Orissa Govt. Notification SRO Nos. 900/77 and 901/77 dated Dec. 29, 1977 is used in the same sense as the words 'repeal and replacement' and, therefore, does not have the effect of wiping out the tax liability under the previous notification. All that was done by using the words 'in supersessions of all previous notification' in the Notification dated Dec. 29, 1977, was to repeal and replace previous notifications and not to wipe out any liability incurred under the previous notificiations."

Subordinate legislation in the shape of Rule, Bye-law or Notification made by State Government are made by exercising delegated power, cannot be made retrospectively unless so authorised. Principles of Statutory Interpretation by Justice G.P. Singh, 6th Edn. 1996, Chap. 12 relied on.

NOTE:- This relates to Section 36 of N.D.P.S. Act.

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124. WORDS AND PHRASES : "WRONGFUL USER" AND "CHANGE OF USER" :-
(2000) 5 SCC 44
JAGDISH LAL Vs. PARMANAND

Change of user only for a short period followed by reversion to original purpose for which suit property was let, it was held by the Supreme Court that would not amount to change of user entailing liability of eviction. Where new business is linked, or allied, or ancillary to the original business permitted under the lease, it was held that switching, to such new business would not amount to change of user.

Paragraphs 18 and 19 are reproduced :

On a consideration of these decisions, it comes out that where the new business started by the tenant in the premises let out to him was an allied business or a business which was ancillary to the main business, it would not amount to change of user. It is true that where a premises is let out for commercial purposes, carrying on of a new business activity therein would not change the nature of the building and it would still remain a commercial building. But that is not enough. Having regard to the provisions of the Act and the intendment of the legislature in providing that the tenant would not use the premises for a purpose other than that for which it was let out, the new business should either have some linkage with the original business, which under the agreement of lease the tenant was permitted to carry on, or it should be an allied business or ancillary to that business. Where local laws provide a specific prohibition in respect of the use of the premises under the rent legislation and that provision has been interpreted in a particular manner by the High Court consistently, it would not be proper to disturb the course of decisions by interpreting that provision differently.

In the instant case, the premises in question was let out to the appellant for "maniyari" ((general merchant) ready-made & cloth merchant) business. The setting up of a restaurant therein and serving tea and cold drinks would, in the circumstances of this case, amount to change of user within the meaning of Section 13. The redeeming feature, however, is that the appellant has reverted back to his original business during the tendency of the eviction petition before the Rent Controller and for many years now has been carrying on the original business. In these circumstances, where the change of business was only for a very short period and the appellant, during the tendency of the eviction proceedings reverted to the original business which he is carrying on since then, and more particularly because all other grounds, namely, arrears of rent, structural alterations made in the premises in question and bonafide requirement of the landlord, on which the eviction of the appellant was sought, have been negatived, we feel that the ends of justice would be better served if the appellant is allowed to stay in the premises in question as a tenant, subject, however, to his paying rent at the rate of Rs. 1500 p.m. than the original rent of Rs. 600 p.m.

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मध्यप्रदेश अधिनियम

क्रमांक 22 सन् 2000

मध्यप्रदेश आबकारी (संशोधन) अधिनियम, 2000

विषय-सूची

धाराएं :

(दिनांक 29 जुलाई, 2000 को राष्ट्रपति की अनुमति प्राप्त हुई; अनुमति "मध्यप्रदेश राजपत्र (असाधारण)" में दिनांक 4 अगस्त, 2000 को प्रथमबार प्रकाशित की गई)

मध्यप्रदेश आबकारी अधिनियम, 1915 को और संशोधित करने हेतु अधिनियम

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

1. **संक्षिप्त नाम** : इस अधिनियम का संक्षिप्त नाम मध्यप्रदेश आबकारी (संशोधन) अधिनियम, 2000 है

2. **धारा 10 का संशोधन** : मध्यप्रदेश आबकारी अधिनियम, 1915 (क्रमांक 2 सन् 1915) (जो इसमें इसके पश्चात् मूल अधिनियम के नाम से निर्दिष्ट है) की धारा 10 में विद्यमान परन्तुक का लोप किया जाए।

3. **धारा 34 के स्थान पर नई धारा का स्थापन** : मूल अधिनियम, की धारा 34 के स्थान पर, निम्नलिखित धारा स्थापित की जाए, अर्थात :–

विधि विरूद्ध विनिर्माण, परिवहन, कब्जा, विक्रय आदि के लिए शास्ति

"34 (1) जो कोई, इस अधिनियम के किसी उपबंध के या उसके अधीन बनाए गए किसी नियम, जारी की गई किसी अधिसूचना या किए गए किसी आदेश के,

या इस अधिनियम के अधीन मंजूर की गई किसी अनुज्ञप्ति, अनुज्ञापत्र या पास की किसी शर्त के उल्लंघन में,

(क) किसी मादक द्रव्य का विनिर्माण, परिवहन, आयात, निर्यात, संग्रहण करेगा या उसे कब्जे में रखेगा, या

(ख) उन मामलों के सिवाय जिनके लिए धारा 38 में उपबंध किया गया है कोई मादक–द्रव्य बेचेगा, या

(ग) भांग की खेती करेगा ; या

(घ) ताड़ी उत्पन्न करने वाले किसी वृक्ष से ताड़ी का व्यावन करेगा या उससे ताड़ी निकालेगा; या

(ङ) किसी आसवनी, मद्य निर्माण शाला या शराब की दुकान का सन्निर्माण करेगा या उसे चलाएगा , या

(च) ताड़ी से भिन्न किसी मादक–द्रव्य का विनिर्माण करने के प्रयोजन के लिए किसी सामग्री, भभका, पात्र, उपकरण या साधित्र को उपयोग में लाएगा, रखेगा या अपने कब्जे में रखेगा; या

(छ) इस अधिनियम के अधीन अनुज्ञप्त की गई, स्थापित की गई या चलाई जा रही किसी आसवनी, मद्य निर्माण शाला, शराब की दुकान या भाण्डागार से किसी मादक–द्रव्य को हटाएगा, या

(ज) किसी मदिरा को बोतलों में भरेगा,

वह उपधारा (2) के उपबन्धों के अध्यधीन रहते हुए प्रत्येक ऐसे अपराध के लिए कारावास से, जिसकी अवधि एक वर्ष तक की हो सकेगी और जुर्माने से, जो पांच सौ रुपये से कम का नहीं होगा किन्तु जो पांच हजार रुपये तक हो सकेगा, दण्डनीय होगा:

परन्तु जब कोई व्यक्ति इस धारा के अधीन किसी अपराध के लिए दूसरी बार या पश्चात्वर्ती समय पर सिद्धदोष ठहराया जाए तो वह प्रत्येक ऐसे अपराध के लिए कारावास से, जिसकी अवधि दो मास से कम की नहीं होगी किन्तु जो चौबीस मास तक की हो सकेगी तथा जुर्माने से, जो दो हजार रुपये से कम का नहीं होगा किन्तु जो दस हजार रुपये तक का हो सकेगा, दण्डनीय होगा।

(2) उपधारा (1) में अन्तर्विष्ट किसी बात के होते हुए भी यदि कोई व्यक्ति उपधारा (1) के खण्ड (क) या खण्ड (ख) के अन्तर्गत आने वाले किसी अपराध के लिए सिद्धदोष ठहराया जाए तथा अपराध का पता लगाते समय या उसके दौरान पाए गए मादक–द्रव्य मदिरा की मात्रा पचास बल्क लिटर से अधिक हो, तो वह कारावास से जिसकी अवधि एक वर्ष से कम की नहीं होगी किन्तु जो तीन वर्ष तक की हो

सकेगी तथा जुर्माने से, जो पच्चीस हजार रुपये से कम का नहीं होगा किन्तु जो एक लाख रुपये तक का हो सकेगा, दण्डनीय होगा :

परन्तु जब कोई व्यक्ति इस धारा के अधीन किसी अपराध के लिए दूसरी बार या पश्चातवर्ती समय पर सिद्धदोष ठहराया जाए तो वह प्रत्येक ऐसे अपराध के लिए कारावास से, जिसकी अवधि दो वर्ष से कम की नहीं होगी किन्तु जो पांच वर्ष तक की हो सकेगी और जुर्माने से, जो पचास हजार रुपये से कम का नहीं होगा किन्तु जो दो लाख रुपये तक का हो सकेगा, दण्डनीय होगा।

(3) जब उपधारा (1) के खण्ड (क) या खण्ड (ख) के अधीन कोई अपराध किया जाए और जहां ऐसे अपराध का पता लगाते समय या उसके दौरान पाई गई मदिरा की मात्रा पचास बल्क लीटर से अधिक हो, तो वे समस्त मादक–द्रव्य वस्तुएं, उपकरण, पात्र, सामग्री प्रवहण आदि जिसके संबंध में या जिनके द्वारा अपराध किया गया हो अभिगृहीत किए जाने और अधिहरण किए जाने के दायित्वाधीन होंगे, यदि ऐसा कोई अपराध, किसी ऐसे व्यक्ति की ओर से या उसके द्वारा किया जाए जो इस अधिनियम के अधीन विक्रय के लिए उस मदिरा का विनिर्माण करने या संग्रहण करने या उसका भण्डारण करने के लिए अनुज्ञप्ति धारण करता है, जिस पर विहित दर पर शुल्क का संदाय नहीं किया गया है, तो धारा 31 में अन्तर्विष्ट किसी बात के होते भी यथा पूर्वोक्त अपराध के लिए सिद्धदोष ठहराए जाने की दशा में उसे मंजूर की गई अनुज्ञप्ति रद्द कर दी जाएगी।

(4) मादक–द्रव्यों, वस्तुओं, उपकरणों, पात्रों सामग्रियों तथा प्रवहणों का अभिग्रहण या अधिहरण और ऊपर उपधारा (2) में यथा उपबंधित अनुज्ञप्ति का रद्दकरण ऐसी किसी अन्य कार्रवाई के अतिरिक्त तथा उस पर प्रतिकूल प्रभाव डाले बिना होगा जो इस अधिनियम या उसके अधीन बनाए गए नियमों के किन्हीं उपबन्धों के अधीन की जा सके"

4. धारा 46 का संशोधन : मूल अधिनियम की धारा 46 में

(एक) उपधारा (1) के स्थान पर निम्नलिखित उपधारा स्थापित की जाए, अर्थात :–

"(1) जब कभी कोई अपराध जो इस अधिनियम के अधीन दण्डनीय है किया जाता है तो वह मादक–द्रव्य, सामग्री, भभका, पात्र, उपकरण या साधित्र जिसकी बावत् या जिसके द्वारा ऐसा अपराध किया गया है तथा कोई भी पात्र, पैकेज और आवेष्टक जिसमें कोई भी ऐसा मादक–द्रव्य, सामग्री, भभका, पात्र, उपकरण या साधित्र पाया जाए या पाए जाएं और पात्रों या पैकेजों की ऐसी अन्य अन्तर्वस्तुएं, यदि कोई हैं, जिनमें वह पाया जाए या वे पाए जाएं तथा उनको ले जाने में प्रयुक्त पशु, गाड़ी जलयान, बेड़ा या अन्य प्रवहण भी अधिहरण के दायी होंगे."

(दो) उपधारा (2) के विद्यमान परन्तुक का लोप किया जाए

5. **धारा 47 का संशोधन** : मूल अधिनियम की धारा 47 की उपधारा (1) के स्थान पर निम्नलिखित उपधारा तथा परन्तुक स्थापित किया जाए अर्थात :–

"(1) जहां मजिस्ट्रेट अपने द्वारा विचारण किए गए किसी मामले में यह विनिश्चय करे कि कोई वस्तु धारा 46 के अधीन अधिहरण के दायी है तो वह उसके अधिहरण का आदेश देगा

परन्तु जहां धारा 47–क की उपधारा (3) के खण्ड (क) के अधीन कोई सूचना मजिस्ट्रेट द्वारा प्राप्त की जाए तो वह अधिहरण के संबंध में यथापूर्वोक्त कोई आदेश तब तक पारित नहीं करेगा जब तक कि धारा 47–क के अधीन कलेक्टर के समक्ष वस्तु की बाबत् लंबित कार्यवाहियां निपटा न दी जाएं, और यदि कलेक्टर ने धारा 47–क की उपधारा (2) के अधीन उसके अधिहरण का आदेश दिया है, तो मजिस्ट्रेट इस संबंध में कोई आदेश पारित नहीं करेगा".

6. **नई धारा 47-क, 47-ख, 47-ग और 47-घ का अन्तःस्थापन** : मूल अधिनियम की धारा 47 के पश्चात् निम्नलिखित धाराएं अन्तःस्थापित की जाएं, अर्थात :–

अभिगृहित किये गए मादक-द्रव्यों, वस्तुओं, उपकरणों, पात्रों, सामग्रियों, प्रवहणों आदि का अधिहरण

"47-क(1)जब कभी धारा 34 की उपधारा (1) के खण्ड (क) या (ख) के अन्तर्गत आने वाला कोई अपराध किया जाए और अपराध का पता लगाते समय या उसके दौरान पाई गई मदिरा की मात्रा पचास बल्क लीटर से अधिक हो तो धारा 52 के अधीन सशक्त प्रत्येक अधिकारी, अधिनियम की धारा 34 की उपधारा (2) या धारा 52 के अधीन किन्हीं मादक–द्रव्यों, वस्तुओं, उपकरणों, पात्रों, सामग्रियों, प्रवहणों आदि का अभिग्रहण करते समय अभिगृहीत की गई सम्पत्ति पर एक चिन्ह यह उपदर्शित करते हुए कि वह इस प्रकार अभिगृहीत की गई है और बिना असम्यक विलंब के अभिगृहीत की गई संपत्ति को या तो राज्य सरकार द्वारा अधिसूचना द्वारा, इस निमित्त प्राधिकृत उस अधिकारी (जो इसमें इसके पश्चात प्राधि कृत अधिकारी के नाम से निर्दिष्ट है) के समक्ष पेश करेगा जो जिला आबकारी अधिकारी के पद से निम्न पद का न हो या जहां इसकी मात्रा या बल्क या कोई अन्य वास्तविक कठिनाई को ध्यान में रखते हुए इस प्रकार किया जाना समीचीन नहीं है, वहां वह अभिग्रहण के बारे में समस्त ब्यौरे अन्तर्विष्ट करते हुए उसे एक विस्तृत रिपोर्ट देगा।

(2) जब कलेक्टर का, यथास्थिति, मादक–द्रव्यों, वस्तुओं, उपकरणों, पात्रों, सामग्रियों, प्रवहणों आदि के उसके समक्ष प्रस्तुत किए जाने पर या ऐसे अभिग्रहण के बारे में रिपोर्ट प्राप्त होने पर, यह समाधान हो जाए कि धारा 34 की उपधारा (1) के

खण्ड (क) या खण्ड (ख) के अन्तर्गत कोई अपराध किया गया है, और जहां ऐसे अपराध का पता लगाते समय या उसके दौरान पाई गई मदिरा की मात्रा पचास वल्क लीटर से अधिक है, तो वह लिखित रूप से अभिलिखित किए जाने वाले आधारों पर, इस प्रकार अभिगृहीत किए गए मादक--द्रव्यों, वस्तुओं, उपकरणों, पात्रों, सामग्रियों, प्रवहणों आदि का अधिहरण करने का आदेश कर सकेगा, वह कार्यवाहियों के लंबित रहने के दौरान अधिहरण किए गए मादक--द्रव्यों, वस्तुओं, उपकरणों, पात्रों, सामग्रियों, प्रवहणों आदि की अभिरक्षा, व्ययन आदि के लिए अंतरिम प्रकृति का कोई ऐसा आदेश, जैसा कि उस मामले की परिस्थितियों में से आवश्यक प्रतीत हो, भी पारित कर सकेगा।

(3) उपधारा (2) के अधीन तब तक आदेश नहीं किया जाएगा जब तक कि कलेक्टर ने

(क) अभिगृहीत किए गए मादक--द्रव्यों, वस्तुओं उपकरणों, पात्रों, सामग्रियों प्रवहणों आदि के अधिहरण के लिए कार्यवाहियों को प्रारंभ करने के बारे में, आबकारी आयुक्त द्वारा विहित किए गए प्रारूप में कोई प्रज्ञापना, उस अपराध जिसके मुद्दे अभिग्रहण किया गया है, पर विचारण की अधिकारिता रखने वाले न्यायालय को न भेज दी हो;

(ख) उस व्यक्ति को, जिससे ऐसे मादक–द्रव्यों, वस्तुओं, उपकरणों, पात्रों, सामग्रियों, प्रवहणों आदि को अभिगृहीत किया गया है और इन्हें रखने का दावा करने वाले किसी व्यक्ति को और ऐसे अधिकारी के समक्ष उपसंजात हो सकने वाले किसी अन्य व्यक्ति को जिसका उसमें हित है, लिखित सूचना जारी न कर दी हो।

(ग) ऊपर खण्ड (ख) में निर्दिष्ट व्यक्तियों को, प्रस्तावित अधिहरण के विरूद्ध अभ्यावेदन करने का अवसर प्रदान न किया हो,

(घ) उपधारा (1) के अधीन अधिग्रहण करने वाले अधिकारी की तथा उस व्यक्ति या व्यक्तियों, जिन्हें खण्ड (ख) के अधीन सूचना दी गई है, की सुनवाई न कर ली हो।

अधिहरण के आदेश के विरूद्ध अपील

47–ख (1) धारा 47–क की उपधारा (2) के अधीन पारित अधिहरण के किसी आदेश से व्यथित कोई भी व्यक्ति, ऐसे आदेश के तीस दिन के भीतर संबंधित जिले के कलेक्टर को या राज्य सरकार द्वारा, अधिसूचना द्वारा, प्राधिकृत किसी अन्य अधिकारी (जो इसमें इसके पश्चात अपील प्राधिकारी के नाम से निर्दिष्ट है) को अपील प्रस्तुत कर सकेगा, ऐसी अपील के ज्ञापन के साथ उस आदेश की जिसके विरूद्ध अपील की गई है की प्रमाणित प्रति संलग्न की जाएगी।

(2) अपील प्राधिकारी, अपील का ज्ञापन पेश किए जाने पर, अपीलार्थी को, तथा किसी भी अन्य व्यक्ति को, जिस पर अपील में पारित किए जा सकने वाले आदेश का प्रतिकूल प्रभाव होना संभाव्य है, एक सूचना जारी करेगा।

(3) अपील प्राधिकारी, अपील के पक्षकारों की सुनवाई करने के पश्चात् अधिहरण करने के उस आदेश की, जिसके विरूद्ध अपील की गई है, पुष्टि करते हुए या उसे उपान्तरित करते हुए आदेश पारित करेगा।

परन्तु वह अपील के लंबित रहने के दौरान, अधिहरण की गई वस्तुओं की अभिरक्षा, व्ययन आदि के लिए अंतरिम प्रकृति का ऐसा आदेश पारित कर सकेगा जैसा कि उसे मामले की परिस्थितियों में न्याय संगत या उचित प्रतीत हो किन्तु उसे अपील के लंबित रहने के दौरान अधिहरण के आदेश को, जिसके कि विरूद्ध अपील की गई है, स्थगित करने की शक्ति नहीं होगी।

अपील प्राधिकारी के आदेश के विरूद्ध सेशन न्यायालय के समक्ष पुनरीक्षण

47–ग(1) अपील प्राधिकारी द्वारा धारा 47–ख की उपधारा (3) के अधीन पारित किए गए अंतिम आदेश से व्यथित अपील का कोई भी पक्षकार ऐसे आदेश से तीस दिन के भीतर उस सेशन खंड के भीतर, सेशन न्यायालय में केवल ऐसे आदेश की अवैधता के आधार पर ही पुनरीक्षण के लिए याचिका प्रस्तुत कर सकेगा।

(2) सेशन न्यायालय, यदि अपील प्राधिकारी के आदेश में कोई अवैधता पाता है तो वह अपील प्राधिकारी द्वारा पारित आदेश की पुष्टि कर सकेगा, उसे उलट सकेगा या उससे उपांतरित कर सकेगा।

परन्तु सेशन न्यायालय को उसके समक्ष पुनरीक्षण के लिए प्रस्तुत की गई याचिका के लंबित रहने के दौरान, अपील प्राधिकारी द्वारा पारित अधिहरण के आदेश को स्थगित करने की शक्ति नहीं होगी।

कतिपय परिस्थितियों के अधीन न्यायालय की अधिकारिता का वर्जन

47–घ, इस अधिनियम या तत्समय प्रवृत्त किसी अन्य विधि में अन्तर्विष्ट किसी प्रतिकूल बात के होते हुए भी, धारा 34 की उपधारा (1) के खंड (क) या (ख) के अंतर्गत आने वाले किसी अपराध के जिसके मुद्दे ऐसा अभिग्रहण किया गया है, विचारण करने की अधिकारिता रखने वाला न्यायालय, अभिगृहीत सम्पत्ति का अधिहरण करने के लिए कार्यवाहियों को शुरू करने के बारे में धारा 47–क की उपधारा (3) के खंड (क) के अधीन कलेक्टर की ओर से उसे प्राप्त हुई किसी प्रज्ञापना के पश्चात अभिगृहीत किए गए मादक–द्रव्यों, वस्तुओं, उपकरणो, पात्रों, सामग्रियों, प्रवहणों आदि के व्ययन, अभिरक्षा आदि के बारे में कोई भी आदेश नहीं करेगा।

7. **धारा 49-ख का लोप** : मूल अधिनियम की धारा 49–ख का लोप किया जाए।

8. **धारा-52 का संशोधन :** मूल अधिनियम की धारा 52 की उपधारा (1) के स्थान पर, निम्नलिखित उपधारा स्थापित की जाए, अर्थात :–

"(1) कोई भी आबकारी अधिकारी, या कोई भी पुलिस अधिकारी जो ऐसे पद से निम्न पद का न हो, जैसा कि राज्य सरकार, अधिसूचना विहित करे, या इस निमित्त राज्य सरकार की अधिसूचना द्वारा, सम्यक् रूप से सशक्त किया गया राजस्व विभाग का कोई भी एक अधिकारी या अधिकारियों का वर्ग, ऐसे निर्बन्धनों के अध्ययीन रहते हुए, जैसा कि राज्य सरकार विहित करे, तथा इस निमित्त राज्य सरकार की अधिसूचना द्वारा सम्यक् रूप से सशक्त कोई भी अन्य व्यक्ति,–

(क) किसी भी ऐसे व्यक्ति को, जो धारा 23–ए, 34, 35, 36, 36–ए 36–बी, 36–सी, 37, 38–ए, 40 या 49–क के अधीन दण्डनीय अपराध करता हुआ पाया जाए, वारंट के बिना गिरफ्तार कर सकेगा; और

(ख) किसी मादक--द्रव्य या अन्य वस्तु का, जिसके संबध में उसके पास यह विश्वास करने का कारण है कि वह इस अधिनियम के या आबकारी राजस्व के संबंधित तत्समय प्रवृत्त किसी अन्य विधि के अधीन अधिहरण के लिए दायी है, अधिग्रहण करेगा तथा उन्हें निरुद्ध करेगा; और

(ग) किसी भी व्यक्ति को जिस पर तथा किसी भी जलयान, बेड़ा, यान, पशु, पैकेज पात्र या आवेष्टक जिसमें या जिस पर किसी ऐसी वस्तु होने के संदेह का उसके पास युक्तियुक्त कारण है, निरुद्ध कर सकेगा तथा उसकी तलाशी ले सकेगा।"

9. **धारा 59 का संशोधन :** मूल अधिनियम की धारा 59 की उपधारा (1) के स्थान पर, निम्नलिखित उपधारा स्थापित की जाए, अर्थात :–

"(1) धारा 59–क में विनिर्दिष्ट अपराधों के सिवाय, इस अधिनियम के अधीन दण्डनीय समस्त अपराध, दण्ड प्रक्रिया संहिता, 1973 (1974 का सं. 2) के अर्थ के अन्तर्गत जमानतीय होंगे"

10. **धारा 59-क का अन्तःस्थापन :** मूल अधिनियम की धारा 59 के पश्चात् निम्नलिखित धारा अन्तःस्थापित की जाए, अर्थात :–

अधिनियम के अधीन कतिपय अपराध अजमानतीय होंगे

"59–क दण्ड प्रक्रिया संहिता, 1973 (1974 का सं. 2) या इस अधिनियम की धारा 59 में अन्तर्विष्ट किसी बात के होते हुए भी,–

(एक) धारा 49--क के अधीन दण्डनीय किसी अपराध में अभियुक्त किसी व्यक्ति के संबध में या ऐसे व्यक्ति के संबंध में जो ऐसा व्यक्ति नहीं है जो इस अधिनियम या उसके अधीन बनाए गए नियमों के अधीन अनुज्ञप्ति धारण कर रहा है और जो धारा 34 की उपधारा (1) के खण्ड (क) या खण्ड (ख) के अन्तर्गत आने वाले

किसी अपराध में अभियुक्त है, के संबंध में और जहां ऐसे अपराध का पता लगाते समय या उसके दौरान पाई गई मदिरा की मात्रा पचास बल्क लीटर से अधिक है, किसी भी न्यायालय द्वारा अग्रिम जमानत का कोई भी आवेदन ग्रहण नहीं किया जाएगा।

(दो) धारा 49–क के अधीन दंडनीय किसी अपराध में अभियुक्त किसी व्यक्ति को या ऐसे व्यक्ति, को जो ऐसा व्यक्ति नहीं है, जो इस अधिनियम या उसके अधीन बनाए गए नियमों के अधीन अनुज्ञप्ति धारण कर रहा है और जो धारा 34 की उपधारा (1) के खण्ड (क) या खंड (ख) के अन्तर्गत आने वाले किसी अपराध में अभियुक्त है, को जहां ऐसे अपराध का पता लगाते समय या उसके दौरान पाई गई मदिरा की मात्रा 50 बल्क लीटर से अधिक हो, जमानत पर या स्वयं उसके बंधपत्र पर, तब तक निर्मुक्त नहीं किया जाएगा जब तक कि लोक अभियोजक को ऐसी निर्मुक्ति के आवेदन का विरोध करने का अवसर न दे दिया गया हो और उस मामले में ऐसे आवेदन का लोक अभियोजक द्वारा विरोध किया जाए तथा जब तक कि न्यायालय का यह समाधान नहीं हो जाए कि यह विश्वास करने के युक्तियुक्त आधार हैं कि अभियुक्त ऐसे अपराध का दोषी नहीं है और यह कि जब वह जमानत पर हो तब यह संभावना नहीं है कि वह कोई अपराध करेगा।

परन्तु कोई भी न्यायालय ऐसे व्यक्ति को, जहां वह धारा 34 की उपधारा (1) के खंड (क) या खण्ड (ख) के अन्तर्गत आने वाले किसी ऐसे अपराध से संबंधित है जिसमें उस अपराध का पता लगाते समय या उसके दौरान पाई गई मदिरा की मात्रा 50 बल्क लीटर से अधिक है, 60 दिन से अधिक की कुल कालावधि के लिए तथा जहां वह धारा 49–क के अधीन किसी अपराध से संबंधित हैं, वहां 120 दिन से अधिक की कुल कालावधि के लिए अभिरक्षा के निरूद्ध रखने के लिए कोई आदेश पारित नहीं करेगा तथा यथास्थिति 60 दिन या 120 दिन की ऐसी कालावधि का अवसान हो जाने पर और रिपोर्ट या शिकायत न किए जाने की दशा में अभियुक्त को जमानत प्रस्तुत करने पर निर्मुक्त कर दिया जाएगा।

(तीन) जमानत मंजूर करने के लिए खण्ड (दो) में विनिर्दिष्ट परिसीमा दण्ड प्रक्रिया संहिता, 1973 (1974 का सं. 2) या जमानत मंजूर करने से संबंधित तत्समय प्रवृत्त किसी अन्य विधि के अधीन विहित परिसीमाओं के अतिरिक्त हैं"

म.प्र. राजपत्र असाधारण दि. 04 अगस्त 2000 में प्रकाशित। अंग्रेजी पाठ अक्टूबर 2000 की जोति में पृष्ठ 602 पर प्रकाशित किया है।

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THE INDIAN MAJORITY ACT, 1875 HAS BEEN AMENDED BY THE PARLIAMENT AND RECEIVED THE ASSENT OF THE PRESIDENT ON 16TH DECEMBER, 1999. IT WAS PUBLISHED IN THE GAZETTE OF INDIA (EXTRAORDINARY) PART II SECTION 1 DATED 16TH DECEMBER, 1999 PAGES 1-2 (S.NO. 46).

An Act to amend law respecting the age of Majority. WHEREAS, in the case of persons domiciled in India it is expedient to specify the age of Majority; it is hereby enacted as follows :-

1. **Short Title :-** This Act may be called the Indian Majority (Amendment) Act, 1999.

2. **Amendment of Preamble :-** In the Indian Majority Act, 1875 (9 of 1875) (hereinafter) referred to as the principal Act) in the preamble, for the words "to prolong the period of nonage, and attain more uniformity and certainly respecting the age of majority that now exists," the words "to specify the age of majority" shall be substituted.

3. **Amendment of Section 1 :-** In Section 1 of the Principal Act, the word "Indian" shall be omitted.

4. **Substitution of New Section For Sections 3 And 4 :-** For Sections 3 and 4 of the principal Act, the following section shall be substituted, namely:-

   "**3: Age of Majority of Persons Domiciled In India :**

   (1) Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.

   (2) In computing the age of any person, the day on which he was born is to be included as a whole day and he shall be deemed to have attained majority at the beginning of the eighteenth anniversary of that day."

NOTE:- For ready reference please refer to page No. 656 of Vol. 33 of the A.I.R. Manual, 5th Edition 1989 for old Act, The Indian Majority Act, 1875. The illustrations from Section 4 of the Old Act are reproduced to understand the amended section.

(a) Z is born in (India) on the first day of January 1850, and has (an Indian domicile). A guardian of his person is appointed by a Court of Justice. Z attains majority at the first moment of the first day of January 1871.

(b) Z is born in (India) on the twenty-ninth day of February 1852, and has (an Indian domicile). A guardian of his property is appointed by a Court of Justice. Z attains majority at the first moment of the twenty-eighth day of February, 1873.

(c) Z is born on the 1st day of January, 1850. He acquires a domicile in (India). No guardian is appointed of his person on property by any Court of Justice, nor is he under the jurisdiction of any Court of Wards. Z attains majority at the first moment of the first day of January, 1868.

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धारा 506 भा.द.वि का अपराध जमानतीय घोषित

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

अधिसूचना

क्रमांक 17 (ई) 76/99/21–ब) दो :– दण्ड विधि संशोधन अधिनियम, 1932 (1932 का सं. 23) की धारा 10 की उपधारा (2) द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए, राज्य सरकार, एतद् द्वारा इस विभाग की अधिसूचना क्रमांक 33207–एफ–एन, ओ–6– 59–74– बी– इक्कीस, दिनांक **19 नवम्बर, 1975** में निम्नलिखित संशोधन करती है, अर्थात :–

उक्त अधिसूचना में, शब्द और अंक **"या 506"** का लोप किया जाय।

निर्गमित दिनांक 09 अक्टूबर 2000

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,

No. 17/E/76/99/xx1-B (II) In exercise of the powers conferred by sub-section (2) of Section 10 of the Criminal Law (Amendment) Act, 1932 (No. 23 of 1932), the State Government hereby make the following amendment in this department Notification No. 33207-F- No.-O-6-59-74 B- XXI dated the 19th November, 1975, namely :-

In the said notification, the word and figures "or 506" shall be omitted.

Date of issuance of notification
09 th August 2000

नोट :- न्यायिक अधिकारीगणों से निवेदन है कि उक्त अधिसूचना की एक प्रति टंकित कर के ज्योति खंड छह भाग पांच अक्टूबर 2000 के पत्रिका में पृष्ठ 659 पर चिपका दें जहां पूर्व की अधिसूचना प्रकाशित हुई है एवं पृष्ठ 658 पर अध्याय 22 में आवश्यक प्रविष्टि भी सुधार लें ताकि पत्रिका की सामग्री अद्यतन हो जाएगी।

संपादक

संशोधन

माह अक्टूबर 2000 की ज्योति में कुछ त्रुटियां अक्षर संयोजन की हुई है। संशोधन विवरण इस प्रकार है। अपनी–अपनी प्रतियों में उचित संशोधन कर लें।

(1) पृष्ठ क्र. 530 नीचे से पांचवी पंक्ति में **का** के स्थान पर **या** लिखना।

(2) पृष्ठ क्र. 532 नीचे से तीसरी पंक्ति में **Fight** के बजाय **Flight** पढ़ना।

(3) पृष्ठ क्र. 534 अंतिम चरण में चौथी पंक्ति **ट्रिव्यूनल** के बजाय **ट्रिब्यूनल** पढ़ना।

(4) पृष्ठ क्र. 564 अंतिम चरण में दूसरी पंक्ति में **रूप** शब्द के स्थान पर **एवं** पढ़ें।

(5) पृष्ठ 629 टिट बिट नं. 18 के शीर्षक में **Circumstances** के स्थान पर **Evidence** पढ़ें।

(6) पृष्ठ क्र. 660 नीचे से छठी पंक्ति **प्रक्रिया** के स्थान पर **प्रतिक्रिया** पढ़ना।

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LIST OF JOS' WHO HAVE BEEN RETIRED COMPULSORILY OR REMOVED FROM SERVICES..

1. Shri Murit Ram Jolhey, Retired Compulsorily w.e.f. 4-9-2000 AN
2. Shri Daya Ram Rahul, Rtd. Compulsorily w.e.f. 5-9-2000 AN
3. Shri Mahesh Narayan Tiwari, Rtd. Compulsorily w.e.f. 4-9-2000AN
4. Shri Govind Singh Thakur, **Removed** from service w.e.f. 7-9-2000
5. Shri Shiv Shankar Tiwari, **Removed** from service w.e.f. 2-9-2000
6. Shri Sant Ram Nag, Rtd. Compulsorily, w.e.f. 4-9-2000 AN
7. Shri Kamal Narayan Dube, Rtd. Compulsorily, w.e.f. 2-9-2000 AN
8. Shri Mazhar Yar Khan, Retd. Compulsorily w.e.f. 6-9-2000
9. Shri Kishori Lal Kori, Rtd. Compulsorily w.e.f. 11-9-2000
10. Smt. Bina Tiwari, Rtd. Compulsorily w.e.f. 22-9-2000
11. Shri R.C. Bansal, Rtd. Compulsorily w.e.f. 11-9-2000 AN
12. Smt. Kumud Bathma, **Removed** from Service w.e.f. 2-9-2000 AN