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JUDICIAL OFFICERS' TRAINING & RESEARCH INSTITUTE

HIGH COURT OF MADHYA PRADESH, JABALPUR - 482 007

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We are thankful to the publishers of SCC, AIR, MPLJ, MPJR, MPHT and MPWN for using some of their material in this Journal.

- Editor

FROM THE PEN OF THE EDITOR

A.K. SAXENA
Director

In This 'Editorial' at the outset, I think it requisite to quote a paragraph from the report of First National Judicial Pay Commission Volume II. It reads thus:

> "The nature and scope of judicial education depends upon the function of the judge in a given society. Broadly speaking, the function of every judge, trial or appellate, is to decide the cases brought before him according to law and in a manner accepted by society as just, fair and reasonable. The credibility and legitimacy of judicial decisions depend not only on its merit and soundness in law, but also on public perception of impartiality and objectivity of the procedure adopted by the judge. This is a delicate task which judges have to internalise when they assume the role of judging."

What I intend to say in this editorial is, based on the expectations of higher Courts, litigant public and different sections of society.The service and duties of the Judicial Officers cannot be equated with other services. The power and functions of Judicial Officers are quite different from power and functions of the Executive Officers. The Supreme Court has observed in the case ***All India Judges' Association and others Vs. Union of India and others as under :-***

> "Subordinate Judiciary is the foundation of the edifice of the judicial system. The weight on the judicial system essentially rests on the subordinate judiciary. There should be no equation or parity between the Judicial Services and the Executive. The earlier approach of comparison between the service conditions of the Judges and those of the Administrative Executives has to be abandoned and the service conditions of the Judges which are recently linked to those of Administrative Executives have to be revised to meet the special needs of the judicial service."

Judiciary is one of the most important wings of our country and we are an inseparable part of it. A Judge is expected to be an expert in all areas of law and his duty demands knowledge and skill of such range and variety which no other profession requires. Perhaps, that is the reason why it is called a sacrosanct and divine duty. It is also so as we, as men, judge our fellow men.

At present, the burning topic in our system is delay in the disposal of cases. At one place, the Fourteenth Report of Law Commission of India has stated:

> "The problem of efficient judicial administration, whether at the level of superior courts or the subordinate courts is largely the problem of capable and competent judges and judicial officers. Delay in the disposal of cases and the accumulation of arrears are in a great measure due to the inability of the judicial officers to arrange their work methodically and to appreciate and apply the provisions of Procedural Codes..."

No doubt, there are number of causes for delay in the disposal of cases and the Apex Court has considered all the aspects of delay in **All India Judges' Association** case. We know that the Judicial Officers of Madhya Pradesh are doing their best for the early disposal of pending cases but my emphasis is on delivery of justice to liti-

gant public. When litigants come before the Court with their grievances, they certainly expect an early disposal of their case and rightly so, at the same time they are also entitled to just adjudication. While dealing with a case, a judicial officer must always bear in mind that he has to do justice to the litigant public and should not forget that he is sitting on a seat which represents "God" in the eyes of litigants and, therefore, it is his foremost duty to render justice to them and not to give unwarranted emphasis on disposal as disposal alone by no stretch of imagination, would be either an acceptable or permissible substitute in the realm of justice. There is immense difference between delivery of judgment and dispensation of justice. A judge is not supposed to pronounce judgements mechanically. He is expected to delve deep into the dispute prevailing between the parties. He is duty bound to find out the truth and without having good and deep knowledge of variety of subjects, he will not be able to find out the truth.

In the above context, I would like to remind that we are the members of a noble service and we cannot escape from our duty. If one does not work according to legal and factual position of a case, it would certainly have an adverse impact on our services. It is our duty to defend the interest of a truthful person and it casts a great responsibility on our shoulders. Rendering justice to litigant public in quite promptitude should be our motto and it cannot be achieved without deep knowledge of different subjects. One should remember that there cannot be an island of prosperity in the midst of ocean of poverty and the said metaphor is applicable in the truest sense to acquisition of knowledge and profundity or justice delivery system. If, one does not possess reading habit then, he has to cultivate it and for this purpose the age or post is no impediment. We possess some regular habits in our life. When a person cannot live without food and sheep, then how can a judge deliver justice to litigant public without good knowledge of different subjects? Certainly, the answer is "No".

A good knowledge of different fields is the backbone of the judicial officers and a judicial officer cannot stand with his head high in his service life without the knowledge. Good knowledge is the heart or essence of the life of a judge. It is very difficult to find out where the law is, but without having knowledge of the the difficulty would be emmence as that would amount to roaming aimlessly in darkness. To make it easy, one has to cultivate reading habit of good and standard books. This will certainly increase the commonsense of judicial officers, as the commonsense is the bedrock of law. This is very essential to become a judge in true sense. Deep knowledge of different fields is the only key to render justice to litigant public and one should not try to search for another key.

I hope all the judicial officers will take it seriously and then you would find that you have gained a lot of confidence in discharge of you duties. If my hope comes true, then as Director of the Institute, I will be put to a great difficulty to choose the topics for your training but don't worry about my difficulty.

Rest in the next issue.

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Those who take pride in narrating the importance of morality,
It is hard to believe that they do actually think in terms of marality.

Smt. Suprama Mishra
Author of 'Thus I Speak'

PART - I

SPEECH DELIVERED BY HIS EXCELLENCY DR. A.P.J. ABDUL KALAM PRESIDENT OF INDIA AT THE INAUGURATION OF THE NATIONAL JUDICIAL ACADEMY, BHOPAL SEPTEMBER 5, 2002

BEST JUDICIARY WILL DO THE BEST FOR INDIA

I am indeed delighted to be here in the inaugural function of the National Judicial Academy, Bhopal. I would like to congratulate the Law Commission, Ministry of Law, Chief Justice of India and all others who were instrumental for evolving and establishing the National Judicial Academy. I am sure that this Academy's focus will be to impart judicial and its administrative knowledge based on experience and the needs of emerging India and its billion people. Also the Academy has to build the capability of continuous research with the abundant database accumulated so for, which will assist to enhance the faculty's knowledge and thereby improving teaching and research capabilities. Such type of intensive experience and research based training will not only increase the quality of judiciary Officers but also will reduce the number of pending court cases and the time of dealing with future cases. I was thinking what topic I can share with you in such an important quality gathering. The topic I have selected is "Best Judiciary will do the Best for India."

When I was reading the speeches of the first President of the country Dr. Rajendra Prasad, in the Rashtrapati Bhavan Library, I was inspired and got the message for all of us in our country and of various constitutional functionaries including the judiciary. One such speech delivered by Dr. Rajendra Prasad as Chairman of the Constituent Assembly on 26th November 1949 when it met to approve the draft constitution prepared by Dr. Ambedkar. Dr. Rajendra Prasad, in his concluding speech, observed that they had been able, on the whole, to draft a good constitution which he trusted would serve the country well. He added : "If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective constitution. If they are lacking in these, the constitution cannot help the country. After all, a constitution like a machine is a lifeless thing. It acquires life because of men who control it and operate it and India needs today nothing more than a set of honest men who will have the interest of the country before them."

Can this Academy transform officers into good human beings who can manage with a sense of purpose towards judiciary and judicial administration? Can this Academy become a beacon light for all other constituents of the Constitution? Fortunately we have a proven constitution with experience of over five decades.

LAW, IS IT UNIVERSAL?

Law and judiciary have a very important role in development of a society. Law essentially plays a balancing role and enables justice and fair play when new opportunities and challenges are opening up in a developing society. In the earlier phase of Indian history before foreign invasions, the laws were basically catering to maintain the then prevailing social order, good morality and upliftment of all segments of society. With time, the social system has gradually become more and more complex. In the present period such complexities have further grown rapidly with modern industrialisation, tremendous increase in population and resultant increase in scarcity of natural resources. As the law has to address the imbalances in society and protection of all the people, gradually, in all countries, laws have progressively become more and more national and specialised in character.

Today we have well-conceived laws in various areas which were earlier unheard of, or some of them were unimaginable in the previous centuries. We already have Laws of the Sea, Laws of Air and Laws on Environment. The Intellectual Property Laws and also Cyber Laws will get a new shape. Our constitution demands defending air, land and water, we have laws on them. There is a need of a law for protection of Indian space above 30 kms altitude as the International Law on space may not be sufficient. As new scientific and technological knowledge as in bio-technology, brain research, sensors and high performance computing systems come into operation, new laws to balance the interest of the people of today and the future generations as well as present and future interests of the nation have to be brought about.

LAWS DRIVEN BY NATIONAL PRIORITIES

In all times and in all countries, laws have been driven by the social, technological and national goals and priorities and usually reflect the best of human thoughts and their own consideration about the weak and the poorest of society. Laws are framed to ensure equality of opportunities to all and fair practice in trade and related dealings. India is now on the path of rapid industrial and technological advancements.

Our laws have to provide adequate protection in this national endeavour. The Government has adopted policies of techno-economic liberalisation which are attracting corporations of the other parts of world. They see India as the greatest untapped business opportunity. India's market is one of the most attractive, and fast growing. India is one of the world's largest economies, seventh largest land area and second largest rail system, in addition to being the second largest population with young people in high percentage. India is a democratic country with very strong and independent legal set-up. Thus, they perceive India as very attractive and a safe market for their goods and technologies. Further, India may attract increased amount of Foreign Direct Investment. We are also getting networked into the global economy.

This brings for us the opportunities for rapid industrial and economic growth and at the same time, the problems related to fierce trade competition and corporate mergers and take-overs. Many tiny and small sectors of industries and even artisanal goods will be facing the forces of modernisation in the form of market forces, tech-

nologies and other forms of public information systems including advertisements. There are major issues of protecting the local and global environment.

Every human activity has many sided effects on society, people, economics, culture, politics and therefore law and judiciary. Let us look at science and technology which has emerged as a strong force during the current period of human history. Basically science and technology is driven by human curiosity and in its best sense aimed at spreading benefits to all people. They are basically universal in outlook. Similarly, laws are meant to protect people, their rights and make them feel secure in society. I think this is the common meeting ground of Law, Science and Technology, People and Society.

In addition the modern forces of business briefly described above and globalising aspects would need to be harnessed in the best interest of our people, those living now and the future generations. This cannot be achieved by economic activities and science and technology alone. Legal Instruments to maximise the benefits of our people and nation are necessary to be put in place and would need to be made to work for our people and our nation.

LAWS TO PROMOTE TECHNOLOGICAL SELF-RELIANCE

India is today making rapid strides in certain technological fronts. India has been successful in establishing a good network of dams, power stations, railways, communications and a large industrial infrastructure. We are self-sufficient in agricultural food production and even export food grains and processed food products. We have also succeeded in developing our own indigenous satellites with launch capabilities; nuclear power reactors; sophisticated telephone exchanges; radar systems and satellite communication systems, many medicines and drugs which save lives and remove pains and suffering etc. In recent years, with the successful development of state-of-the art surface to surface missiles, our scientists and engineers have demonstrated that we are capable of developing world class technological systems. The above successes have attracted mixed response from our friends in the developed world. Our drive for technological self-reliance contributes to our national prosperity, but reduces other countries' exports to India.

Thus our increased strength in this direction has an adverse impact on the sale of their goods and techniques. Also self reliance in critical technologies will enable independent foreign policy. Law and judiciary must play the balancing role so that our technological growth can continue in a manner beneficial to our people and nation, free from any undue interferences or unfair practices by any party with vested interests, domestic or foreign.

With the revolutionary advancements in the fields of information technology, communications, transportation and travel coupled with good international network of banking and financial services, the markets and economies of most of the world countries are becoming more closely linked with each other. Gains of one country may lead to certain losses for another country sometimes in a catastrophic manner. Industrially developed countries are trying to make laws and treaties to protect their own national interests and priorities, instead of working for win-win partnerships. India should work for Win-Win situations even in business and trade with ethics.

RESTRICTIVE/DISCRIMINATORY LAWS BY DEVELOPED COUNTRIES

Many developed countries have made laws to restrict/deny export of certain class of state-of-the art goods and technologies, in selective manner, to developing countries, even while making international laws which make it mandatory for developing countries to open their markets to access by foreign entities with very little restrictions. Our country has successfully faced such technology denial measures adopted by certain countries. When our laboratories needed a certain type of alloy steel to develop indigenous defence systems, certain countries imposed a ban on export of such alloy steel to India. While we were not allowed import of vital raw material, but we could get the ready-built full system from those countries. As soon as we succeeded in the development of that particular alloy steel or high performance computers, the ban on export of that steel or supercomputers was lifted. But such an unbalanced world order is something on which our legal luminaries may have to think, while framing our commitments to international treaties.

IMPACT OF NATIONAL LAWS ON INTERNATIONAL EQUATIONS

The post World War-II saw steady escalation of cold war tensions and a vigorous use of the UN Security Council forum where the two superpowers used the 'veto power' to protect their respective interests, friends and allies. A predictable state of bi-polar world order was getting established with the UN forum providing the necessary platform for maintaining a sense of balance between the nation states of the world. The discriminatory or restrictive laws of the developed nations seemed justified on the basis of denial of technology to the enemy. However, after the collapse of the Soviet Union this East-West axis has taken a North-South orientation and the export controls and technology denial regimes now are directed mainly at the developing nations including India, to maintain the techno-economic superiority of the advanced countries. This is again the place where the universality of scientific approach to the life and the universal principles of equality and natural justice have to meet and play a key role.

SECOND VISION FOR THE NATION

Let me now address another crucial issue before our people and nation. After 50 years of progress, the aspirations are mounting that India should become a developed country and our people and especially children are restive. This is about the second vision for the nation. How we can prepare ourselves for this challenge? To become a developed India, the essential needs are :

(a) India has to be economically and commercially powerful, at least to be one of the four top nations in terms of size of the economy. Our target should be a GDP growth of 9% annually and have the number of people below poverty line reduced to nil or a very small part. There should be large opportunities for all our people to have a prosperous life.

(b) Near self-reliance in defence needs of weapon, equipment with no umbilical attached to any outside world; and

(c) India should have a rightful place in world forums.

Technology Vision 2020 is a pathway to realise this cherished mission. The Technology Vision 2020 consisted of 17 technology packages in the core sectors

such as agriculture, food and food processing, education and healthcare, infrastructure and strategic industries. The Task Teams with nearly 500 experts of our country worked for two years, deliberated national status of various branches of national development and generated 25 documents detailing the steps to be taken for creating wealth for the nation and the well being of our people. "Technology" is a vital key for achieving the goals. The vision deals with electric power, civil aviation, waterways, engineering industries, life sciences and bio-technology, service industries and materials and processing. There are number of complex linkages between each of the technology package. As I have elaborated before Technology, Judiciary and Society form a mutually interactive system in executing this complex and important task of realizing the Vision of a Developed India.

OUR LAWS TO SUIT OUR NATIONAL PRIORITIES

Laws, technologies, nation's priorities and people's well-being are inter-dependent and have multi-faceted relationships. Laws must protect the indigenous technologies and trade to the extent they impact peoples living and their welfare as well as to ensure national interest.

A number of our laws were framed on the basis of similar laws already in force in the colonizing countries- in our case Britain. Those laws had been framed by them keeping in view their particular societal and industrial structure. Now certain international treaties influence our national laws. There is need to innovate on new laws to suit the Indian environment so as to be able to solve our specific problems and to accelerate the overall development of the nation. We need to frame the special laws in areas of economic growth, trade and technological developments.

Signing of international trade treaties, which has brought the World Trade Organisation (WTO) into being, has also brought certain challenges and opportunities, which have to be addressed by our law. India, as a signatory to the agreement, is under obligation to amend the laws on Intellectual Property Rights (IPR) including Patent Laws to bring it in conformity with the laws of the developed countries who are at the moment sitting at the height of technological advancement.

India is a signatory to the Washington Treaty on Integrated Circuits but is yet to frame laws in this field. Trade Related aspects of Intellectual Property Rights (TRIPS) also makes it obligatory for the member countries to frame laws for intellectual property protection of genetically modified micro-organisms and microbiological processes. The TRIPS also warrants the member countries to develop their own (sui-generis) system by the year 2005, for protection of new, distinct and stable varieties of plants. Patenting of Software is another area, which will offer fresh challenges as well as opportunities to lawmakers and practitioners in the near future. These are the fields which have to be researched and laws have to be framed to meet international obligations under the TRIPS. I feel it will become necessary very soon in our country to set up suitable systems to deal with such cases with knowledgeable judges who will build on their experience to innovate with interests of our nation and people.

Social development largely depends on economic growth of a country. Both economic growth and social development cannot be achieved in countries where the judicial system fails to be effective, un-biased, timely and conscious. For a country to become a developed nation, judicial officers functioning with efficiency will play a major role.

This Academy may aim at developing necessary attitudinal changes to improve judicial integrity and efficiencies. One of the recommendations that interest me from the report made by the Review Commission on the Working of Constitution headed by Justice M.N. Venkatachaliah is: "to cope up with the workload of cases at the lower level and also curtail arrears and delay, the States should appoint honorary judicial magistrates selected from experienced lawyers on the criminal side to try and dispose less serious and petty cases on part-time basis which would relieve the load on regular magistracy". This Academy can perhaps be a training, orientation centre for experienced lawyers before appointing them as such honorary judicial magistrates. In addition to recommending/appointing judges, the National Judicial Commission has properly thought of having a very important mission of providing intensive training packages for judges at various levels and brainstorming sessions on quality and quantity of judgements given and their impact on the Indian socio-economic structure.

MAJESTY OF LAW AND JUSTICE

Every citizen in the country has a right to live with dignity; every citizen has a right to aspire for distinction. Availability of a large number of opportunities to resort to just and fair means in order to attain that dignity and distinction, is what democracy is all about. That is what our Constitution is all about. And that is what makes life wholesome and worth living in a true and vibrant democracy.

At this point, I would like to remind all of us that at social levels it is necessary to work for Unity of Minds. The increasing intolerance for views of others and increasing contempt about ways of lives of others or their religions or the expressions of these differences through lawless violence against people cannot be justified in any context. All of us have to work hard and do everything to make our behaviour civilised to protect the rights of every individual. That is the very foundation of the democratic values, which believe is our civilisations heritage and is the very soul of our nation. Judiciary is the guardian of civilised life. Wherever life exists in our planet, no life, by anybody can be allowed to be devalued. Particularly, the judiciary cannot be a mute witness to this in-human act.

Judiciary is the Angel and the Marshal that ensures that such a democracy survives. Judiciary is not simply making judicial pronouncements or enforcing law in a case. Judiciary is the whole process of interpreting the social, political, economical and human environment to ensure that that wholesome life with dignity and distinction is sustained. The edifice of justice thus stands exalted, high on a pedestal that the whole Nation looks up to. The fundamental and over-riding importance of the system cannot be overstated and the need for constantly maintaining its purity not forgotten. There cannot be any erosion of values, corrosion of quality or any cobwebs in the procedure. The majesty of law and justice has to be maintained with magnanimity and magnificence. The members of the judiciary therefore become inviolable role models, the perfect incorruptible ideals of a civilized society. It is this that we have to strive for, attain and sustain.

If this Academy takes a step forward in that direction I shall sit back with satisfaction that the efforts that have gone into making this Academy possible have not been in vain.

Jai Hind.

राष्ट्रीय न्यायिक अकादमी, भोपाल के उद्घाटन के अवसर पर

महामहिम डॉ. भाई महावीर

राज्यपाल मध्यप्रदेश का अभिभाषण

सितम्बर 5, 2002

महामहिम राष्ट्रपति श्री ए.पी.जे. अब्दुल कलाम साहब, उच्चतम न्यायालय के मुख्य न्यायाधिपति न्यायमूर्ति श्री बी.एन. कृपाल साहब, विभिन्न राज्यों के सम्माननीय मुख्य न्यायाधीशगण, मुख्यमंत्री श्री दिग्विजय सिंह जी, देश के वरिष्ठ न्यायविद्, अधिवक्तागण, उपस्थित देवियो और सज्जनों,

भोपाल में राष्ट्रीय न्यायिक अकादमी के नव निर्मित भवन के उद्घाटन अवसर पर मुझे आप सब विद्वतजनों के बीच उपस्थित होने का अवसर मिला है इसके लिए मैं सभी न्यायविदों के प्रति कृतज्ञ हूँ। न्यायिक अकादमी का नया भवन बन जाने से इस संस्था में और अधिक सुव्यवस्थित ढंग से तथा अधिक सुगमता से विधि तथा न्याय जैसे अत्यन्त महत्वपूर्ण विषय के अध्ययन और अध्यापन की सुविधाएँ उपलब्ध हो गयी हैं। आज इस प्रतिष्ठापूर्ण आयोजन में भाग लेने का मुझे जो अवसर मिला है, मैं इस अवसर का लाभ उठाते हुए उपस्थित विद्वतजनों के साथ वर्तमान न्याय प्रशासन और विधि विषय के अध्ययन और अध्यापन की पद्धति के संबंध में अपने विचार रखना चाहता हूँ।

भारत के संविधान ने स्वीकारा है कि लोकतांत्रिक व्यवस्था में सामाजिक न्याय का सार्थक महत्व है और इसके लिए मौलिक अधिकारों का समावेश कर उनकी रक्षा हेतु "कवच" के रूप में न्यायपालिका की व्यवस्था कायम की गई है। इससे प्रत्येक नागरिक को सम्मानजनक जीवन जीने और जरूरत पड़ने पर इन्साफ पाने के "हक" की गारंटी भी दी गई है। यानी प्रत्येक नागरिक को कानून के समक्ष समानता से वंचित न रहना पड़े और उसे देश के किसी भी कोने में समान रूप से कानून का संरक्षण मिले। संविधान ने राज्य को यह जिम्मेदारी भी सौंपी है कि वह यह सुनिश्चित करे कि कोई भी नागरिक अर्थाभाव अथवा अन्य किसी असमर्थता की वजह से न्याय से वंचित न रह जाये, बल्कि उसे समान अवसर के आधार पर न्याय सुलभ हो।

यह सार्वभौम सत्य है कि समाज विधि की परिधि में ही रहकर जीवित रह सकता है। विधि का शासन विशुद्धतः विधि का ही होता है, जिसमें किसी भी व्यक्ति विशेष की दखलन्दाजी नहीं होती। इसलिए प्रजातांत्रिक सत्ता के सुचारू संचालन के लिए विधि ज्ञान का अत्याधिक महत्व है और इस परिप्रेक्ष्य में राष्ट्रीय विधिक अकादमी कानून की शिक्षा, विधिक ज्ञान और सामान्य विधिक बोध के प्रसार में महती भूमिका निभायेगी। समाज में आज एक ऐसा प्रभावशाली,

मुखर, शिक्षित एवं जागरूक वर्ग तैयार हो चुका है, जिसमें लोकतांत्रिक लक्ष्यों और आकांक्षाओं के प्रति गहन और व्यापक चेतना उत्पन्न हो चुकी है। यह वर्ग अपने मौलिक अधिकारों जिनमें "न्याय पाने का अधिकार" भी शामिल है, को अच्छी तरह समझने लगा है। अब जरूरत इस बात की है कि उसे यह हक मिले, लेकिन वह कम खर्चीला हो तथा शीघ्र और आसानी से मिलने वाला हो।

संभवतः मेरे साथ ही आप सब लोग भी यह अनुभव करते होंगे कि पिछले एक दशक से न्यायालयों में बड़ी संख्या में जनहित याचिकाएं निर्णय के लिए आ रही हैं। जनहित याचिकाओं में हुई इस बढ़ोत्तरी के पीछे क्या कारण हो सकते हैं, इस पर विचार करना बहुत आवश्यक है। मेरी समझ में जनहित याचिकाओं में हुई बढ़ोत्तरी का पहला कारण तो यह हो सकता है कि आम आदमी की वर्तमान न्यायिक प्रणाली के प्रति आस्था बढ़ी है। आम आदमी जब शासन–प्रशासन अर्थात व्यवस्थापिका और कार्यपालिका में विद्यमान कमियों और विसंगतियों से परेशान हो जाता है, तो वह न्यायालय का सहारा लेता है। दूसरा कारण यह भी हो सकता है कि आम आदमी में अन्याय का प्रतिकार करने का सामर्थ्य आ गया है। इसके पीछे एक और कारण हो सकता है, वह है आजादी के बाद देश में हुआ शिक्षा प्रसार और लोगों में अपने अधिकारों के प्रति बढ़ी जागरूकता। बहरहाल कारण कितने भी हों, इन सबके पीछे एक बात तो बिल्कुल साफ–सुथरी है कि अब आम आदमी कार्यपालिका और व्यवस्थापिका की तुलना में न्यायपालिका पर अधिक भरोसा करने लगा है। मैं कामना करता हूँ कि न्यायपालिका, लोगों के इस बढ़े हुए विश्वास को बनाये रखेगी। इसके अलावा एक बात मैंने यह भी महसूस की है कि पिछले 55 वर्षों में जिस गति से देश की आबादी बढ़ी है, उस अनुपात में संभवतः हम लोग न्यायिक प्रशासन को नहीं बढ़ा सके हैं। वजह बिल्कुल साफ है कि आबादी बढ़ेगी तो उसी अनुपात में विवाद और अपराध भी बढ़ेंगे और उसी अनुपात में न्यायालयों में काम का बोझ बढ़ना भी स्वाभाविक है। अगर न्याय प्रशासन का समुचित प्रबंध नहीं होगा तो न्यायालयों में प्रकरणों की संख्या बढ़ेगी और इसका परिणाम होगा विलम्बित न्याय। यह सर्वमान्य सत्य है कि विलंबित न्याय से फरियादी को कोई लाभ नहीं होता और उनमें असंतोष फैलता है। संभवतः इस स्थिति में हमारी न्याय प्रणाली अपने उद्देश्यों की पूर्ति में प्रभावित होती है। मेरा विचार है कि न्याय प्रशासन के आकार को कम से कम इतना बड़ा करना चाहिए जिससे फरियादियों को यथासमय न्याय मिल सके।

इन सब बातों से ऊपर उठकर मैं इस कार्यक्रम में उपस्थित अभिभाषकों से भी यह आग्रह करना चाहूंगा कि वे फरियादियों की पीड़ा को समझें, क्योंकि अभिभाषक स्वयं भी न्याय प्रशासन का एक महत्वपूर्ण अंग हैं। इसलिए उनसे यह आग्रह करना संभवतः अप्रासंगिक भी नहीं होगा कि अभिभाषकों के यथोचित ध्यान न देने अथवा कम ध्यान देने के कारण भी लोगों को न्याय मिलने में विलम्ब होता है। अभिभाषक अपने इस पवित्र पेशे की महत्ता को समझें और दीन–दुखियों के दुःखों में सहभागी बनकर न्याय दिलाने की इस प्रक्रिया को सेवा समझकर करें तो मैं समझता हूं कि इसमे हम सबका कल्याण निहित है।

न्यायालयों में प्रकरणों को तेज गति से निपटाने और उनकी संख्या में कमी करने के लिए एक सुझाव मैं यह भी देना चाहूंगा कि अनेक छोटे–मोटे मामलों को कमजोर अभियुक्त, धन और साधनों की कमी के कारण अपना पक्ष न्यायालयों में नहीं रख पाते हैं। इसका नतीजा यह होता है कि उन्हें उस अपराध के लिए जितना दण्ड मिलना चाहिए, उससे अधिक सजा वे ट्रायल के दौरान ही भोग लेते हैं। लेकिन फिर भी न्यायालय में प्रकरण एकतरफा विचाराधीन होने के कारण ऐसे परीवीक्षाधीन अपराधी भी लम्बे समय तक कारावास में रहने के लिए विवश होते हैं। ऐसे छोटे–मोटे अपराधों के मामलों में लोक अभियोजन विभाग को समय–समय पर समीक्षा करते रहना चाहिए। मैं केन्द्र सरकार को इस बात की बधाई देता हूँ कि अब ऐसे छोटे मामलों की नियमित समीक्षा करने की कार्रवाई प्रभावी रूप से शुरू की गई है।

पिछले साल ही केन्द्र सरकार ने देश के प्रत्येक जिले में फास्ट ट्रेक अदालतों की स्थापना का जो निर्णय लिया है, वह भी त्वरित न्याय की दिशा में मील का पत्थर साबित होगा, ऐसी मुझे उम्मीद है।

गरीब, असहाय, निरक्षर और कम पढ़े लिखे लोगों को भी न्यायिक सुविधा उपलब्ध हो, उनके लिए निःशुल्क विधिक सहायता और सलाह की भी एक योजना सभी जिलों में लागू है। लेकिन इस योजना के भी सकारात्मक और ठोस परिणाम मिलते हुए परिलक्षित नहीं हुए हैं। निःशुल्क विधिक सहायता वाले मामलों में प्रायः वादी अथवा प्रतिवादी की यह शिकायत रहती है कि न्यायालय में उन्हें अत्यन्त कम अनुभव वाले अधिवक्ताओं को उनकी पैरवी करने के लिए मुकर्रर किया जाता है। परिणामस्वरूप ये नवोदित अभिभाषक अपने मुवक्किलों को समुचित और उपयुक्त न्याय नहीं दिला पाते हैं। इस व्यवस्था में भी बदलाव की बहुत आवश्यकता है।

मैं इसके पहले भी एक बात कह चुका हूँ कि शिक्षा के प्रसार के साथ आम आदमी में अन्याय का प्रतिकार करने का सामर्थ्य बढ़ गया है। मैं अपने इसी पक्ष को पुनः दोहराते हुए आप सब विद्वतजनों के बीच वर्तमान में पारिवारिक कलह की बढ़ती समस्या और उसके कारण समाज में बढ़ रही संबंध विच्छेद की प्रवृत्ति की ओर भी आपका ध्यान आकर्षित करना चाहता हूँ। हमारी समाज व्यवस्था में पहले महिलाएं केवल घर–परिवार तक ही सीमित होती थीं, लेकिन अब इस व्यवस्था में बदलाव आया है। अब पढ़ी–लिखी महिलायें परिवार की आर्थिक दशा को सुदृढ़ करने के लिए रोजगारों में लगने लगी हैं। इस सामाजिक व्यवस्था के बदलाव से अब महिलायें भी समानता का अधिकार मांगने लगी हैं। महिलाओं को समाज और परिवार में समानता का दर्जा मिले, इस बात से मैं समझता हूँ कि किसी भी प्रबुद्ध और संवेदनशील व्यक्ति को ऐतराज नहीं होगा। परन्तु इस कारण परिवार में महिला और पुरूष के अहं की टकराहट के कारण परस्पर विवाद की स्थितियां निर्मित होने लगी हैं। पिछले एक दशक से मैंने यह अनुभव किया है कि पुलिस और अदालतों में पति–पत्नि के झगड़ों के मामले भी बड़ी संख्या में आने लगे हैं। इन

स्थितियों में सबसे अधिक बुरा असर यदि किसी पर पड़ता है तो वो हैं उस दम्पत्ति के बच्चे। पारिवारिक कलह के ये विवाद न्यायालयों में भी बड़ी संख्या में और बहुत अधिक समय तक विचाराधीन रहते हैं। यद्यपि हाल ही में कुटुम्ब न्यायालयों की अलग से स्थापना की गई है, लेकिन यह व्यवस्था सभी जिलों में न होने के कारण संभाग स्तर पर एक कुटुम्ब न्यायालय में प्रकरणों की संख्या बहुत अधिक हो जाती है और ये मामले लम्बे समय तक लंबित रह जाते हैं। इस मामले में स्त्री और पुरूष की तेजी से बढ़ती हुई उम्र बड़ी चिन्ता का मामला रहता है। विवादग्रस्त दोनों पक्ष असमंजस की स्थिति में रहते हैं। कुटुम्ब न्यायालयों की संख्या में या तो बढ़ोत्तरी होना चाहिए अथवा ऐसी कोई व्यवस्था होनी चाहिए कि पारिवारिक विवाद विशेषकर दाम्पत्य कलह के मामलों का त्वरित निराकरण हो सके।

मैं एक और बात के लिए केन्द्र सरकार के विधि मंत्रालय को साधुवाद देता हूं। मुझे ज्ञात हुआ है कि अब न्यायालय एक निश्चित संख्या और समय सीमा तक ही प्रकरणों में सुनवाई के लिए अग्रिम तिथियां दे सकेंगे। पहले तो इस मामले में इतनी खराब स्थितियां थी कि दोषी व्यक्ति दंड से बचने के लिए येन–केन–प्रकारेण बार–बार लम्बी तिथि लेकर न्याय प्रक्रिया में अड़ंगे पैदा करता था। न्यायिक प्रणाली में यह भी एक शुभ संकेत हैं कि पूर्व में जिस प्रकार प्रतिवादी को लम्बे समय तक समन तामील नहीं हो पाते थे, उसके लिए अब विधि मंत्रालय ने पुलिस और प्रशासन के वरिष्ठ अधिकारियों पर जिम्मेदारियां निर्धारित कर दी हैं। उम्मीद है कि इस व्यवस्था से दोषी व्यक्ति अधिक समय तक अपने आपको बचा नहीं सकेंगे।

बंधुओं! भोपाल में स्थापित राष्ट्रीय विधि अकादमी से निश्चय ही होनहार अभिभाषक और भावी न्यायाधीश तैयार होकर निकलेंगे। इन सब न्यायधीशों पर न्याय प्रणाली को सुदृढ़ करने की जिम्मेदारी रहेगी। सामाजिक मूल्यों में आयी गिरावट से सार्वजनिक जीवन का कोई भी क्षेत्र अब अछूता नहीं रहा है। इस गिरावट के दुष्प्रभाव न्याय प्रणाली पर भी पड़े हैं। मेरी अपेक्षा है कि आप कीचड़ में कमल के रूप में खिलें तथा अपने ज्ञान का लाभ जरूरतमंद और पीड़ित व्यक्तियों को पहुंचायें। इस अकादमी से लाभान्वित होने वाले विधि स्नातक न्यायपालिका की छवि को संवारने और निखारने में निश्चित ही अपनी महती भूमिका निभायेंगे और ये लोग न्यायपालिका की गरिमा को बनाए रखने और उसे और अधिक सुदृढ़ बनाने के लिए कृत संकल्प होंगे जिससे कि आमजन की आस्था और विश्वास न्यायपालिका के प्रति और अधिक मजबूत हो।

आपने मुझे इस उद्देश्यपूर्ण कार्यक्रम में आमंत्रित किया, मेरे विचार सुने, इसके लिए मैं आप सबके प्रति कृतज्ञ हूँ।

धन्यवाद।

जयहिन्द

WELCOME ADDRESS DELIVERED BY HON'BLE SHRI JUSTICE B.N. KRIPAL CHIEF JUSTICE OF INDIA AT THE INAUGURATION OF THE NATIONAL JUDICIAL ACADEMY, BHOPAL SEPTEMBER 5, 2002

Your Excellency, Dr. A.P.J. Abdul Kalam, President of India, Dr. Mahavir Bhai, Governor and Shri Digvijay Singh, Chief Minister, Madhya Pradesh, former Chief Justices of India, present and past brother Judges of the Supreme Court of India, present and past Chief Justices and Judges of various High Courts, Prof. Ann Stewart from U.K., Trainer and Trainee-Judicial Officers from various High Courts, other distinguished Guests; Ladies and Gentlemen:

Today is Teachers Day and I deem it a great privilege to welcome you all on this historical occasion of inauguration of the National Judicial Academy. I call it a historical and special day since a new era in the legal and judicial history of this country is going to dawn today when the Academy is dedicated to the nation.

Under the scheme of the Constitution of India, judiciary has been assigned a very significant place. For a meaningful existence and development of a democracy it must have an independent, dynamic, efficient and effective judicial system. No society can survive without enforcement of the rule of law. It, therefore, becomes the onerous obligation of the judiciary to be so competent, efficient as to win over the faith of the general public and to achieve that salutary goal, a country must have such a judicial system which can render qualitative, inexpensive, speedy and unpolluted justice. In this connection, I need to quote the following words of a great Judge, Benjamin N. Cardozo:

> **"It is truism that the quality of justice depends upon more on the quality of men who administer the law than the content of the law, they administer".**

In this background, the need of legal education and training of the judicial officers at various levels and more particularly at the recruitment stage has assumed greater importance in the present scenario where fresh law graduates are eligible to enter the judicial service there being no requirement of practical knowledge and practice at the Bar.

If we peep into the history of the Indian legal system it would reveal that ancient India claimed of having highly developed principles of jurisprudence with qualified judges, well-versed with the system and hence there was no arrangement for specialized legal education and training. However, judicial training of officers was considered relevant and useful only at the recruitment stage. The need to impart training to the judicial officers during the judicial service had not received its due recognition and was, therefore, not considered useful and relevant till recently. It was assumed that standing at the Bar for certain number of years, before entering judicial service, would provide adequate training to enable a judicial officer to preside over the Court. However, after the independence, in the post-Constitution period it has now come to

be unanimously accepted that training of judicial officers during service is not only desirable but has become the need of the day.

The importance of training to Judicial Officers was highlighted in several Reports of the Law Commission. It observed that working knowledge of all the disciplines is essential for a judicial officer and recommended for setting up of a Central Academy at All India level for providing intensive training to new entrants in the judicial service. Prior to this also various forums had emphasized for such a need. A resolution to this effect was passed at the Chief Justices' Conference held in 1988.

The issue came to be discussed on the judicial side before the Hon'ble Supreme Court in All India Judges' Association vs. Union of India (AIR 1992 SC 165) where it took stock of the situation, sensed the urgency and directed that an all India Institution for imparting training to higher judicial officers and other members of the subordinate judiciary be set up.

The Government of India by its Resolution dated December 9, 1992 accordingly decided to set up this Academy as a Society registered under the Societies Registration Act, 1860.

The First National Judicial Pay Commission, set up to examine, inter alia, conditions of service of judicial officers, while highlighting importance of the training to the judicial officers stressed on the imperative need for organized programme of judicial education and training not only at the time of selection and appointment, but at different intervals during service.

The most challenging and intimidating problem faced by the judiciary today is of staggering number of cases pending before various courts at different levels all over the country. Two of the factors responsible for the huge arrears of cases are the lack of manpower to tackle the problem and archaic procedural laws.

Role of the judiciary due to the development of laws relating to new subjects like environment, information technology, intellectual property, human rights etc., has become more challenging and demanding. To meet the new challenges, the Judges are expected to update themselves of the latest and current trends and developments in the field of law including important judgment, write-ups and legal views; and also to equip themselves to handle the newly developed laws to render qualitative, speedy and inexpensive justice to the litigants. It is in this context that the Academy will play an important role in strengthening the justice delivery system in the country and will meet the expectations of the society. It will also help the fresh law graduates, with no practical experience, who join judicial services to equip themselves with court functioning and other related matters for better administration of justice.

It is the all round growth and development of law that makes the training imperative or rather indispensable for the judicial officers. Participation in training by newly recruited judicial officers and orientation programmes by in-service judicial officers has the effect of sharpening their adjudicator skills. Training not only improves quality of judicial officers but enthuses in them ideals and sense of service which goes a long way in achieving the ultimate goal of effective and efficient dispensation of justice. In fact, one of the important purposes for imparting training to judicial officers is to imbibe in them all the qualities of a good judge. It is difficult to define what exactly a "good judge" is. It means different things to different people. According to some, it means to be a judge worthy of his office. A judge has to ac-

quire a personality by imbibing some basic qualities which can be enumerated, though not exhaustively, as integrity, impeccable character, impartiality, commitment to the cause of justice, good knowledge of law, positive attitude and progressive approach, high degree of openness, judicial restraint and discipline etc.

While discussing about training of judicial officers, it would be important to discuss as to what should be the contents and subjects of the training courses. Selecting the appropriate subject areas is perhaps the most fundamental question confronting any organization assigned with the task of imparting training to the judiciary. Any training scheme to be effective, useful and result-oriented, must have a comprehensive syllabus. Drawing up a comprehensive syllabus by a body composed of non- academics is a challenging task. Training courses may be divided in broad sections like judicial duties and ethics; refresher courses, courses in new legislation; specialist's courses and inter-disciplinary courses.

The sum and substance of what I want to convey is that training must be comprehensive enough to equip a fresh young entrant to judicial service with all such qualities as would make him an ideal and useful judicial officer. While there can be repetition of core subjects like judicial, discipline, conduct and ethics etc., the Academy can think of changing the content of courses by including new subjects dealing with latest and current law related issues confronting the society, in every successive training programme. The Academy should also pay attention to the quality and content of the study material circulated to the officers participating in the training courses.

SELECTION OF APPROPRIATE FACULTY MEMBERS

Equally important aspect of training that requires attention is the selection of competent faculty for conducting training courses in the Academy of All India level is of vital importance. To train and produce competent judicial officers the Academy has to assemble highly qualified members of the faculty to be drawn from outstanding legal academies, senior judges of the High Courts and Supreme Court, senior and outstanding members of the Bar.

It is my earnest hope and firm belief that setting of this Academy would go a long way in strengthening the justice delivery system in the country.

The Academy has come to see the light of the day after about nine years from its registration in 1993. The Booklet of the Academy contains all the relevant information pertaining to the Academy, viz., its background, topographical features, aims and objects, facilities going to be provided by it as also the training programmes proposed to be organized here in the times to come. One information which the booklet will not give you is as to who is the Director of the Academy. Getting clearance from the Government is no easy task. Despite a name having been recommended on 28th May, 2002 no approval, or even rejection, is forthcoming. Rather than waiting any further for such approval we decided to go ahead with the inauguration today by H.E. Dr. A.P.J. Abdul Kalam, the President of India on this the Teachers Day. The members of the Governing Council are indeed beholden to you, Sir, for having kindly agreed to come and inaugurate an educational establishment of national importance.

With these words, I on behalf of the National Judicial Academy and on my own behalf welcome all the distinguished guests here today. With your blessings I am sure National Judicial Academy will be able to fulfill the object for which it has been established.

SPEECH DELIVERED
BY
HON'BLE SHRI JUSTICE BHAWANI SINGH
CHIEF JUSTICE, HIGH COURT OF MADHYA PRADESH
AT THE INAUGURATION CEREMONY OF THE
NATIONAL JUDICIAL ACADEMY, BHOPAL
SEPTEMBER 5, 2002

His Excellency Dr. A.P.J. Abdul Kalam, President of India, His Excellency Dr. Bhai Mahavir, Governor of Madhya Pradesh, Hon'ble Shri Justice B.N. Kirpal, Chief Justice of India, Hon'ble Shri Justice G.B. Pattnaik, Hon'ble Shri Justice V.N. Khare, Hon'ble Shri Justice R.C. Lahoti, Judges, Supreme Court of India, S/Shri Justice A.M. Ahmadi, Justice M.M. Punchhi, Justice A.S. Anand, Former Chief Justices, Supreme Court of India, Hon'ble Shri Digvijay Singh, Chief Minister of Madhya Pradesh, Hon'ble Chief Justice of High Courts in India, Hon'ble Judges, High Courts in India, Members, General Body and Governing Council National Judicial Academy, Honble Ministers, Members of Parliament, Members of State Assembly, And other distinguished guests.

The establishment of **National Judicial Academy** is a historical occasion. It is the Apex Institute in the country for judicial studies and training of members of Judiciary. It is the fulfilment of a long cherished vision, dedicated to the nation by **His Excellency Dr. A.P.J. Abdul Kalam, President of India.**

Justice, at all times in history, has been the highest and the most important function of the State, whatever its nature and complexion. Edmund Burk describes 'justice' as 'the aim of all law and Government' and 'the standing policy of the civil society'. It is this, which raises man above the brute and brings him into communication with his maker. The function and the ability to administer justice which Justinian defined as 'the constant and perpetual will to give every man his due' is an attribute imposed and everyone who has successfully acquired virtue of a truly judicial man is worthy of highest respect in the society. No nation can be happy if its standards of justice are low. In order that spirit of justice may prevail in the society, existence of good judges, good lawyers and availability of good laws and good government is essential.

'Legal Justice' is one of the facets of social and economic justice so fundamental to our Constitution. Social justice would include legal justice which means that system of administration of justice must provide a cheap, expeditious and effective instrument for realisation of justice for all sections of the people irrespective of their social or economic position or their financial resources, said the Apex Court in **Babu vs. Raghunathji** (AIR 1976 S.C. 1734). Socio-economic justice is achievable through judicial process wherever exploitation of justice is found. Judiciary can play

significant role in this direction provided it has expertise in this field. Way back in 1958, the Law Commission said :

> "The importance of training seems to be ever greater presently than it was thirty years ago. Not only the volume and variety of the work has increased but the base at which a Munsif has to perform his duties has quickened and without proper training unbusiness like habits, may be acquired preventing a judicial officer from becoming an efficient judge."

The Law Commission reiterated the need for training judicial officers in the year 1973. In 117th Report (1986), the Law Commission said :

> "... The need for imparting training to the members of the Judiciary at every level with a view to improving performance and efficiency can not be over emphasised. The training can significantly upgrade the capability to discharge his duties. It is all the more so important in the case of judicial officers, because sociology of law is acquiring new and added significance in the development of the Society."

With regard to the existing training programme through some judicial training institutes, the Law Commission observed :

> "...Broadly stated, the institutes give short term pre-service training in the conduct of proceedings in the Court and allied matters as also the management of office. No refresher course is being held at these institutes, with the result the training begins and ends at the pre-service level and it is of a short duration... The basic aim of training briefly spelt out is to equip the trainees not only with tools to execute their work, but also to endow them with the vision as to what is expected of the system which they serve. What is meant by justice? What is decision- making process? What are the goals of the Constitution? What is the direction in which law must move? What does the dictum 'justice according to law' imply? etc."

The Law Commission suggested new courses for training apart from changes in the conventional themes of litigation.

The Joint Conference of Chief Justices, Chief Ministers and Law Ministers also understood immediate need for establishing institute or academy for training of judicial officers by Central Government, with Chief Justice of India Chairman of the Governing Body. The Apex Court vehemently emphasised the need for comprehensive training of judicial officers in **All India Judges' Association** case. Thereafter accepting the Shetty Commission report, High Courts have been asked to establish judicial Training Institutes. These continuous exhortations over the years were necessary to make the Judges ready for fast changes in laws, judicial system and the developing society. It could be possible by integrated and systematic programme of judicial studies from time to time to sensitise the Judges to new environment, new technologies and new laws. Otherwise, by short duration pre-service training, Judges

were not trained to deal with backlog of cases, adopt modern technology for court management and understand numerous complex laws framed from time to time. Therefore, apart from pre-service training, in-service training is necessary to improve the quality of judicial work and to reduce pressure on Judges so that they become and remain effective and responsive to the changing legal and social factors which have an impact on their judicial work.

Various High Courts have Judicial Officers Training Institutes for pre-service and in-service training of judicial officers. They are conducting conferences, seminars and refresher courses from time to time. However, establishment of National Judicial Academy is a significant development for judicial study and training programmes to judicial officers. **Bhopal** is a proper place for the Academy. Its convenient geographical location apart from the excellent infrastructure facilities being offered, beautiful landscape around the location, unpolluted environment, architectural supremacy, extension of facilities by State Government, its curriculum for study and training and faculty of the institute would enhance its utility and prestige.

The District and subordinate judiciary form back-bone of the administration of justice in India. Maximum number of cases are filed and adjudicated at this level. How to deal with backlog of cases, how to deal with fresh cases and how to understand complexities of laws and manage the Court affairs should also form part of judicial studies and training at the institute where judicial officers of the country will be able to discuss the problems they face and will have to face in discharging their duties through participatory discussions and find solutions so that justice delivery system in the country becomes effective and dynamic meeting the challenges of changing society so that we are in a position to deliver justice to the satisfaction of the people.

One can hope that this Institute, with its research and training facilities and scientifically organised curriculum will be able to inculcate in our judicial officers the requisite temperament and professional expertise. I wish for the future growth and progress of this institute so that it is able to achieve the noble cause for which it has been established.

We are grateful to the President of India for coming to Bhopal to inaugurate the National Judicial Academy despite heavily immersed in affairs of the nation and speak on many matters of great importance. We get opportunity to be with him and present our views.

We also extend our thanks to Hon'ble Shri Justice G.B. Pattnaik, Hon'ble Shri Justice V.N. Khare and Hon'ble Shri Justice R.C. Lahoti, Judges of Supreme Court of India for participating in this function.

We are also thankful to former Chief Justices of India- Shri Justice M.N. Venkatachalaiah, Shri Justice J.S. Verma, Shri Justice M.M. Punchhi, Shri Justice A.S. Anand. But for their consistent and persistent endeavours, establishment of this

academy could not be possible. Above all, we express our gratitude to Hon'ble Shri Justice B.N. Kirpal, Chief Justice of India who set September 5, 2002 for inauguration of this institute and the First Session of Training Methodology **'Gender and Law'** he chaired and the completion of the project followed at fantastic speed.

We are grateful to His Excellency Dr. Bhai Mahavir, Governor of Madhya Pradesh for participating in this function.

We are thankful to Hon'ble Shri Digvijay Singh, Chief Minister of Madhya Pradesh for participating in this function. But for his efforts, establishment of National Judicial Academy could not be possible. We further hope that the State Government continues helping the Institute in future as well to enable it to reach further heights and distinctions.

We also extend our thanks to Cabinet Ministers of Madhya Pradesh Government for participating in this function and directing their departments for making all arrangements for visiting dignitaries and making their stay at Bhopal comfortable and memorable.

We are thankful to Hon'ble Chief Justices- **Shri Justice R. Dayal** (Sikkim), **Shri R.S. Dhavan** (Patna), **Shri Justice A.R. Lakshman** (Andhra Pradesh), **Shri Justice S.K. Sen** (Allahabad), **Shri Justice N.K. Jain** (Karnataka), **Shri Justice W.A. Shishak** (Himachal Pradesh), **Shri Justice V.K. Gupta** (Jharkhand), **Shri Justice A.A. Desai** (Uttaranchal), **Shri Justice S.B. Sinha** (Delhi), **Shri Justice B.N. Srikrishna** (Kerala), **Shri Justice B.S. Reddy** (Madras), **Shri Justice Arun Kumar** (Rajasthan), **Shri Justice P.K. Balasubramanyan** (Orissa), **Shri Justice K.H.N. Kuranga** (Chhattisgarh), **Shri Justice D.S.Sinha** (Gujarat), **Shri Justice B.C.Patal** (Jammu & Kashmir), **Shri Justice P.P. Naolekar** (Gauhati), and **Shri Justice G.D. Patil** (Acting) (Bombay) for participating in this function.

We also thank Judges Incharge of respective High Court Judicial Academies for their participation.

We also extend our thanks for whole-hearted co-operation by the State Administration and Judicial Officers of the State Judiciary in making arrangements in this function.

On this day, we extend our thanks to the Engineers, Contractors and the workmen who had been engaged in the construction and completion of this project, which, but for their untiring efforts, could not have been possible.

Finally, we extend our thanks to distinguished members of print and electronic media for participating in this function.

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PUNISHMENT UNDER SECTION 363 AND 366 OF THE I.P.C. AND ITS LEGALITY

A.K. SAXENA
Director

Many a times a question arises whether an accused who stands charged under Section 363 and 366 of the I.P.C. (hereinafter referred to as the 'Act') and the charges have been duly proved beyond reasonable doubt by the prosecution, can he be punished under both the sections? To answer this question we have to go through the relevant provisions of Indian Penal Code.

Kidnapping is of two kinds; kidnapping from India, and kidnapping from lawful guardianship. Sections 360 and 361 provide as under :-

"360. Kidnapping from India.- Whoever conveys any person beyond the limits of India without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from India."

"361. Kidnapping from lawful Guardianship.- Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

EXPLANATION.- The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

EXCEPTION.- This section does not extend to the act of any person who in good faith believes to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose."

The offence of kidnapping of any person from India or from lawful guardianship is punishable under Section 363 of the 'Act' whereas, the offence of kidnapping or abducting a woman with intent that the she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be, forced or seduced to illicit intercourse, is punishable under Section 366 of the 'Act'. The provisions of both these sections clearly show that as far as women are concerned, all the ingredients of offence under Section 363 have also been included in Section 366 but the ingredient of motive or intention under Section 366 is missing from the offence under Section 363 of the 'Act'.

There is no legal bar of framing of charges under both these sections. When the charges under both the sections have been framed and it is proved that the accused had kidnapped a woman with any of the intentions as pro-

vided under Section 366 then, he is liable for punishment under Section 366 only and not under Section 363 as the offence under Section 366 is merely aggravated form of offence punishable under Section 363. Here it may be made clear that if it appears prima facie from the record of the case that the accused kidnapped a woman with any intentions as provided under Section 366 then, only the charge under Section 366 can be framed against the accused and in that case there would be no need to frame a charge under Section 363 as all the ingredients of Section 363 come under the ingredients of Section 366.

The motive or purpose or intention of accused behind the kidnapping is entirely out of question under Section 363 whereas, the intention of the accused is the basis of the offence under Section 366. In other words, kidnapping is an offence under Section 363 irrespective of any intent with which it is committed, whereas, the intention of the accused is the main ingredient of an offence punishable under Section 366. The pronouncement of our High Court in Criminal Appeal No. 756/2002, decided on 16-9-2002 ***(Bhajanlal Kahar Vs. State of M.P., 2002 (4) M.P.H.T. 324),*** is very much relevant on the point in issue. In this case the trial Court had framed the charges under Sections 363, 366, 376 and 506-B, I.P.C. against the accused and he was convicted under all these sections and sentenced to rigorous imprisonment for five years, five years, seven years and two years, respectively, with a fine of Rs. 100/- on each count. Although the conviction and sentence under Sections 376 and 506 (Part II), I.P.C. were set aside by Hon'ble the High Court as these offences could not be proved beyond reasonable doubt but the conviction and sentence under Section 363 was also set aside as it was found that the offence under Section 366 is only an aggravated form of the offence under Section 363 of the 'Act' and therefore, there could not be conviction under both the sections. Considering above legal aspect, the conviction was maintained under Section 366 only. It has been held in this citation that where a girl, over sixteen and under eighteen years of age and in lawful custody consents to an act of illicit intercourse with a man and is persuaded to elope with him for that purpose, he is guilty of an offence under Section 366 and not only under Section 363 of the 'Act'.

We should keep in mind that the offence under Section 366 is only an aggravated form of the offence under Section 363 and, therefore, an accused cannot be punished under both these sections even if he has been charged under both the sections. If there was any intention behind kidnapping as provided by law then, he can be punished under section 366 only and not under Section 363 of the 'Act'.

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DEVOLUTION OF COPARCENARY PROPERTY UNDER HINDU SUCCESSION ACT, 1956

BY VED PRAKASH
Addl. Director

Hindu Succession Act, 1956, hereinafter referred to as 'the Act', heralded a new era in the field of law relating to succession among Hindus. It revolutionised the traditional Hindu Law in several respects. Riding over the wave of gender equality, this enactment for the first time conferred equal status upon female members of the family in respect of their right of inheritance along with the male members of the family. At the same time the noble and unique concept of coparcenary was also retained, though with certain modifications, so as not to hinder the progressive march towards gender equality. This article attempts to examine and explore various aspects of law relating to devolution of coparcenary property under the provisions of 'the Act'. Section 6 of 'the Act', which deals with the devolution of interest in coparcenary property, runs as under :-

> **6. Devolution of interest in coparcenery property-** When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act :
>
> Provided that, if the deceased had left him surviving a female relative specified in class one of the Schedule or a male member specified in that Class claiming through such female relative, the interest of the deceased in the mitakshara coparcenary property shall devolve by testamentary or intestate succession as the case may be, under this Act and not by survivorship.
>
> **EXPLANATION 1 :-** For the purpose of this section, the interest of the Hindu mitakshara coparcenary shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.
>
> **EXPLANATION 2 :-** Nothing contained in the proviso to the section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein.

Before going into the finer aspects of the issue it is worthwhile to point out twin legal aspects relating to the applicability of 'the Act'. Firstly, as explained in ***Gouribai Ramnarayan Vs. Ranidan Askaran Golcha, 1977 MPLJ 456*** 'the Act' is not retrospective in its operation, meaning thereby, that it does not unsettle or alter any succession which took place before 'the Act' came into force. Secondly, though section 4 of 'the Act' provides in explicit terms its overriding effect but the same is only in respect of the matters provided in 'the Act'. Therefore, 'the Act', as explained in **Gouribai's case (Supra).** does not affect the law relating to joint family or partition, as such the traditional Hindu law continues to operate in such matters.

COPARCENARY PROPERTY AND SEPARATE PROPERTY :-

As laid down in ***State of Maharashtra Vs. Narayan Rao, AIR 1985 SC 716,*** coparcenary is a narrower body than the joint Hindu family. In includes sons, grandsons and great grandsons of the holder of the property who have an interest by birth in the coparcenary property. Coparcenary property means the property which consists of ancestral property or of joint acquisitions or of property thrown into common stock of the coparcenary. In contrast separate property means self acquired property of a coparcener. See : ***P.N. Venkata Subramaniam Aiyer Vs. P.N. Aiyer, AIR 1966 Mad 266.***

While section 6 of 'the Act' deals with the devolution of interest in coparcenary property, section 8 deals with the succession of separate property of a male Hindu. In this respect three well-settled legal propositions may be taken note of:

FIRSTLY : The property devolving on a person under section 8 of 'the Act' would not be Hindu undivided family property in his hands vis-a-vis his own sons. In this respect the observations made by the Apex Court in ***Commissioner of Wealth Tax Vs. Chandra Sen, AIR 1986 SC 1753*** may be usefully referred which are to the effect that when son inherits the property in a situation contemplated under section 8 of 'the Act' he does not take it as karta of his own undivided family. Similarly it has been held in ***Yudhister Vs. Ashok Kumar, AIR 1987 SC 558*** that the property which devolved on a Hindu under section 8 would not be HUF property in his hands vis-a-vis his own sons.

SECONDLY : Section 6 of 'the Act' does not apply to property received by a member of a joint family on partition. It applies only to those cases where a Hindu dies after the commencement of 'the Act' having at the time of his death an interest in mitakshara coparcenary property.***Refer : Ramchandra Pillai Vs. ArunschaThammal And Ors., (1971) 3 SCC 874.***

THIRDLY : Section 6 of 'the Act' will come into play only where there are at least Two coparceners and one of them dies leaving behind the other coparcener. In this respect the observations made in ***Ganta Appalanaidu Vs. Ganta Narayanamma And Ors., AIR 1972 AP 258*** may be usefully referred.

SECTION 6- AMBIT AND SCOPE :-

The opening part of section 6 incopoorates the traditional rule of devolution of coparcenary interest by survivorship among the surviving members of the coparcenary. The proviso in section 6 engrafts an exception to the aforesaid general rule and lays down, that if the deceased coparcener has left him surviving a female relative specified in class one of the Schedule or a male relative claiming through such female relative then the interest of the deceased shall devolve by testamentary or intestate succession under 'the Act' and not by survivorship. Here, it may be stated that proviso of section 6 deals with intestate as well as testamentary succession. The later is expressly provided by section 30 of 'the Act' and a legatee's interest in its very nature crystalises and quantifies at the moment of the testator's death.

INTEREST OF THE COPARCENER- ASCERTAINMENT :-

For the ascertainment of the interest of the deceased coparcener explanation

1 to section 6 provides a notional formula to the effect that the interest of the deceased coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death.

The notional partition visualised in explanation 1 is one which ought to have taken place just before the death of the deceased coparcener. Here it may be taken not of that according to the traditional law of partition, which as pointed out earlier, still prevails, mother and widow are also entitled to a share each in the coparcenary property whenever there is a partition among the male members of the coparcenary. This is also the view taken by the learned author Mulla in his commentary on Hindu Law (Sixteenth Edition page 403 para 352 and 353). This view has been quoted with approval by the Apex Court in ***Gurupad Khandappa Vs. Hirabai Khandappa, AIR 1978 SC 1239.***

This brings us to the pertinent question regarding the process of notional partition and its real implications. This point in its vividity was considered by a three-Judge Bench of the Apex Court in **Gurupad Khandappa's case (Supra).** In this case the deceased coparcener left behind him tow sons, three daughters and a widow. The widow filed Suit for her share in the Coparcenary property claiming 1/4th Share in notional partition (1/4th each to deceased, widow and two Sons) and 1/6th out of the interest of the deceased (i.e.1/6th of 1/4th), Thus 7/24th share of the total property. The Apex Court accepted here contention and explained the effect of explanation 1 as under :-

> "Explanation 1 to section 6 resorts to the simple expedient, undoubtedly fictional, that the interest of the Hindu mitakshara coparcener "shall be deemed to be" the share in the property that would have been allotted to him if a partition of their property had taken place immediately before his death. what is therefore, required to be assumed is that a partition had in fact taken place between the deceased and his coparceners immediately before his death. That assumption, once made, is irrevocable. In other words, the assumption having been made once for the purpose which the statute requires to be made that a partition had in fact taken place must permeate the entire process of ascertainment of the ultimate share of the heirs, through all its stages. To make the assumption at the initial stage for the limited purpose of ascertaining the share of the deceased and then to ignore it for calculating the quantum of the share of the heirs is truly to permit one's imagination to boggle. All the consequences which flow from a real partition had to be logically worked out, which means that the share of the heirs must be ascertained on the basis that they had separated from one another and had received a share in the partition which had taken place during the lifetime of the deceased. The allotment of this share is not a processual step devised merely for the purpose of working out some other conclusion. It has to be treated and accepted as a concrete reality, something that cannot be recalled just as a share allotted to a coparcener in the actual partition cannot generally be recalled. The inevitable corollary of this position is that the heir will get his or her share in

the interest which the deceased had in the corparcenary property at the time of his death, in addition to the share which he or she received or must be deemed to have received in the notional partition".

Gurupad Khanda ppa's case (supra.) clearly demonstrates how on the death of a coparcener having an interest in coparcenary property and leaving behind specified heirs, the share of the heirs in the coparcenary property should be ascertained and determined. The view taken by the Apex Court in this case was further reiterated in ***Smt. Raj Rani Vs. Chief Settlement Commission of Delhi. AIR 1984 SC 1234.***

From the above it clearly follows that the ascertainment and allotment of share in a notional partition is a concrete reality and the heirs take it along with the share in the interest of the deceased coparcener. Nonetheless as explained by the Apex Court in the case of **State of Maharashtra (Supra.),** the family, even after the death of the coparcener continues to be joint. As a corollary to this it was laid down by our own High Court in ***Shrimant Rajmata Vijaya Raje Scindia Vs. Jyotiraditya Scindia, AIR 1993 MP 184*** that though the widow's share gets ascertained under Section 6 Proviso when succession opens, her interest like interest of other coparceners is subject to Karta's ordinary right of management and representation until actual partition takes place by meets and bounds as there is no disruption of the joint family on notional partition.

EXPLANATION 2 AND ITS IMPACT :

Form the provisions of section 6 it is clear that where a mitakshara coparcener dies leaving behind specified heirs then his interests shall devolve upon the personal heirs ennumerated in the Schedule as Class-I heirs. But explanation 2 of section 6 makes an exception to this course by providing that nothing contained in the proviso to section 6 shall be construed as enabling a person who had separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestatacy a share in the interest of the deceased. This may well be demonstrated by an example. Suppose a mitakshara coparcenary consists of A, his three sons S1, S2 S3 and two daughters D1 and D2, S1 separated himself in the lifetime of A taking away his one-forth share in the coparcenary property and leaving behind three-fourth with the remaining members of the coparcenary who continued to remain joint. Thereafter A dies leaving behind the three sons and two daughters. A's interest in the coparcenary property will be one-third (father and the two sons S2 and S3 each taking one-third share). In this one-third interest the two sons and two daughters who remained joint shall have one-fourth share each. S1 will stand excluded because he is a separated heir. Suppose S1 dies leaving behind his son SS. SS too cannot claim any share in the interest of A because he is the son of a separated son.

The aforesaid legal position emerging from various pronouncements indicates that the operation of survivorship rule had started degenerating and in all probabilities shall have minimal application in future because it would be rare occasion when a male coparcener would die without leaving a female heir of class I. The coparcenery property thus would be broken into pieces. The ultimate impact of section 6 would be to reduce the application of rule of survivorship to ashes.

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ADOPTIONS UNDER THE HINDU ADOPTIONS & MAINTENANCE ACT, 1956 AND ITS PROOF

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C.J.II, Manasa, Neemuch,

Adoption changes the course of succession, depriving the natural heirs of their rights and it transfers property to comparative strangers. No son has a right to choose a father but sonship has had a great importance in Hindu law and every Hindu was enjoined to have his own natural born son, failing which he could have an adopted son. The law relating to adoptions is amended and codified by The Hindu Adoption & Maintenance Act, 1956 (hereinafter referred as "the Act").

OVERRIDING EFFECT OF THE ACT :

Section 4 of "the Act" gives an overriding effect to the provisions contained in it and extinguishes all customary laws inconsistent with the provisions of the Act. In ***Laxmi Vs. Krishna, A.I.R. 1968 Mysore 288*** it is held that if any rule of Hindu law of adoption is not covered by the provisions of "the Act" then such rule will still be enforceable. If "the Act" provides for adoption then there is no room for customary adoption. ***(Kartar Vs. Surjan Singh, A.I.R. 1974 S.C. 2161).*** Section 5 of 'the Act' provides that all adoptions by or to a Hindu shall be governed by the provisions of 'the Act'. Adoptions made in contravention of the provisions of 'the Act' are void. In ***M. Muttaiah Vs. Controller of Estate Duty, A.I.R. 1986 S.C. 1863*** it is verdicted that 'the Act' does not apply to adoptions made prior to commencement of the Act.

CONDITIONS OF VALID ADOPTIONS :

Section 6 of 'the Act' says that adoption can be made by competent and capable persons. Both, person adopting and one giving in adoption should be capable of doing so. Under section 7 of 'the Act' a major and sane Hindu can adopt a son or daughter with his wife's consent. Consent of all wives, if more than one, is necessary. A bachelor, widower or divorcee, if sane and of sound mind can make adoption. Section 8 of the Act empowers an unmarried or widow or divorcee woman of sound mind and major to take a son or daughter into adoption. A married woman whose husband is alive has no right to make an adoption. The natural parents or guardian are entitled to give a child in adoption. The guardian is required to take District Court's permission before giving a child in adoption. The Family Court has no jurisdiction to accord such permission ***(Canara Bank Relief Vs. Welfare Society, A.I.R. 1991 karnataka 6).*** Step-mother can not give step-son into adoption ***(Dhanraj Vs. Suraj, A.I.R. 1973 Rajasthan 7).*** An orphan can be adopted only if such adoption is permitted. ***(Sukhbir Vs. Mangeisai, A.I.R. 1927 Allahabad 251).***

Section 10 of 'the Act' provides qualifications of the child to be adopted. The child to be adopted must be Hindu, unmarried, not already adopted and should be below fifteen years. The adoption of a total stranger is held to be valid in ***Chandra Shekar Vs. Kulandaivela, A.I.R. 1963 S.C. 185.*** Adoption of an only son is held to

be valid in ***Waman Raghupati Vs. Krishnaji Kashiraj, I.L.R. 22 Madras 398*** whereas in ***A. Raghavamma Vs. A. Chanchamma, A.I.R. 1964 S.C. 136*** it is pointed out that an only son is neither given nor taken in adoption. The child to be adopted must be actually given and taken. The age difference between the child and adoptive parents should at least be 21 years.

PROOF OF ADOPTION:

Adoption must be established like any other question of fact ***(Raghavamma Vs. Chanchamma, A.I.R. 1964 S.C. 136).*** School record is held to be relevant for proving adoption in ***Babulal Vs. Dwarikabai, 1963 J.L.J. 196*** but the school record is not conclusive for proving adoption as per the verdict in ***Narain Singh Vs. Sunderlal, 1996 J.L.J. 158.*** The Court can take into consideration the circumstances either prior or subsequent to adoption ***(Govind Vs. Chimabai, A.I.R. 1968 Mysore 309).*** The evidence to support adoption must be free from all suspicions of fraud ***(Kishorilal Vs. Mt. Chattibai, A.I.R. 1959 S.C. 504).*** When old adoption is challenged the variety of transactions of open life and conduct on the footing of adoption has to be considered ***(Gouranga Vs. Bhaga Sahu, A.I.R. 1976 Orrisa 43).*** It is settled that the person who seeks to displace natural succession by alleging adoption must prove the factum of adoption as well as its validity.

CONSEQUENCES OF ADOPTION:

Under Hindu law, both old and new, adoptions means that the child is totally uprooted from the natural family and transplanted into new family. If a Dayabhaga coparcener is given in adoption, he would continue to retain his share in the coparcenary property ***(Vasant Vs. Lattu, A.I.R. 1987 S.C. 398).*** The adopted child is deemed to be child of adopter for all purposes ***(Kesharpal Vs. State of Maharashtra, A.I.R. 1981 BOM. 115).*** The doctrine of Relating Back makes the deceased husband as an adoptive father of the child adopted by his widow ***(Sawan Ram Vs. Kalawati, A.I.R. 1967 S.C. 1761).*** The copacenary interest is vested interest and so remains alive even after adoption as held in ***Y. Nayudamma Vs. Government of A.P., A.I.R. 1981 A.P. 19.*** The adopted son cannot divest property vested in others before his adoption ***(Kishan Baburao Vs Suresh Sadhu, A.I.R. 1996 Bom. 50).*** Adopted person can institute a suit for partition and possession of separate share as held in ***D.S. Angalawe Vs. R.M. Agalave, A.I.R. 1988 S.C. 854.*** Section 13 of the Act recognises rights of adoptive parents to dispose of their properties. The adoptive father has full right to hold and dispose of his property ***(Nandkishore Vs. Bipindra, A.I.R. 1966 Calcutta 181).*** If the adoptive father makes an agreement to the contrary it may operate as a restriction on his power to transfer his properties ***(Chirangilal Vs. Jasjit Singh, A.I.R. 2001 S.C. 266).*** The adopted son is not prevented from challenging an improper alienation made by his adoptive father ***(Tarachand Vs. Ramavtar, A.I.R. 1975 P & H 20).*** If the adoptive father has more than one wife the senior most wife (senior by marriage and not by age) becomes the adoptive mother and rests become step-mothers.

Section 15 provides that adoption can not be cancelled and adopted child cannot return to the family of his or her birth. An adoption made before the commencement of 'the Act', is governed by the old law and so can be cancelled ***(Dyniraj VS.***

Chandra Prabha, A.I.R. 1975 S.C. 784, See also ***Gopal Vs. Kanta, A.I.R. 1972 M.P. 193).*** Section 16 of 'the Act' says if a registered deed of adoption is executed the court shall presume that an adoption has taken place in compliance with the provisions of 'the Act'. The presumption U/s 16 of 'the Act' is held to be mandatory in ***Sushil Chandra Vs. Rupkuwar, A.I.R. 1977 Allahabad 441.*** The presumption can be rebutted by evidence of fraud, undue-influence and non-performance of essential ceremonies ***(Ramjagat Vs. Kanchiedi, A.I.R. 1984 Allahabad 44).*** Mere absence of registered deed of adoption is not sufficient to reject adoption as held in ***Chandrani Vs. Pradeep, A.I.R. 1991 M.P. 286.*** The recital of adoption made in a proved will is admissible for proving the fact of adoption ***(Banwarilal Vs. Trilok Chand, A.I.R. 1980 S.C. 419).*** Section 17 of 'the Act' prohibits the passing of any type of consideration for adoption from either side.

Summing up after the commencement of 'the Act', 1956 the old Hindu law is codified and statutory provisions are made for adoption. 'The Act,' 1956 finally settles the requirements of valid adoption and capabilities of persons to participate in the ceremony of adoption.

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The line between firmness and harshness, between discipline and vindictiveness is very fine, but it has to be drawn.

'The Wings of Fire'
A.P.J. Abdul Kalam

Courts and camps are the only places to learn the world in.

Lord Chesterfield

There is enough in the world for everyone's need, but not enough for everyone's greed.

Frank Buchman

PART - II

NOTES ON IMPORTANT JUDGMENTS

133. M.P. ACCOMMODATION CONTROL ACT, 1961- Section 12 (1) and 23-A Scope of Section 23-A- One of the several co-owners coming within the category of Section 23-J may file suit before R.C.A. with or without joining other co-owners as plaintiff-Vice-versa- Other co-owners may file suit before civil Court.

(ii) Interpretation of statutes- When the statute does not provide the path and precedents abstain to lead, logic, reasoning, common sense and urge of public good must prevail.

(iii) One of the co-owners can alone file suit for ejectment.

Dhannalal Vs. Kalawatibai And Ors.

Judgment dated 8-7-02 by Supreme Court in Civil Appeal No. 3652/02, reported in (2002) 6 SCC 16

Held :

Where a claim for eviction is filed by a landlord, or a co-landlord, belonging to any one of five categories defined in Section 23-J of the Act, as the sole applicant without objection by other co-landlords who have not joined as co-applicants and the nature of claim for eviction is covered by Section 23-A (b) of the Act, the proceedings would lie only before the Rent Controlling Authority.

(ii) Where a claim for eviction is filed by a landlord or by such a co-landlord who does not belong to any of the categories defined by Section 23-J and the other co-landlord/landlady falling in one of the categories defined in Section 23-J is not joined as a co-plaintiff, the claim shall have to be filed only by way of a suit instituted in a Civil Court.

(iii) If the Proceedings are initiated by such co-owner landlords, one or more of whom belong to section 23-J category while some others are those not falling within the definition of "landlord" under Section 23-J and the requirement pleaded provides a cause of action collectively to all the landlords arrayed as plaintiffs or applicants, the choice of forum lies with the landlords. They may file an application before RCA under Chapter III-A or may file civil suit in a Civil Court under Section 12 of the Act, in either case the proceedings would be competent and maintainable.

(ii) Procedural law cannot betray the substantive law by submitting to subordination of complexity. Courts equipped with power to interpret law are often posed with queries which may be ultimate. The judicial steps of the Judge then do stir to solve novel problems by neat innovations. When the statute does not provide the path and precedents abstain to lead, then sound logic, rational reasoning, common sense and urge for public good play as guides of those who decide. Wrong must not be left unredeemed and right not left unenforced. Forum ought to be revealed when it does not clearly exist or when it is doubted where it exists. When the law-procedural or substantive-does not debar any two seek-

ers of justice from joining hands and moving together, they must have a common path. Multiplicity of proceedings should be avoided and same cause of action available to two at a time must not be forced to split and tried in two different fora as far as practicable and permissible.

(iii) It is well settled by at least three decisions of the Apex Court, namely, **Sri Ram Pasricha Vs. Jagannath, (1976) 4 SCC 184, Kanta Goel Vs. B.P. Pathak, (1977) 2 SCC 814 and Pal Singh Vs. Sunder Singh, (1989) 1 SCC 444** that one of the co-owners can alone and in his own right file a suit for ejectment of the tenant and it is no defence open to the tenant to question the maintainability of the suit on the ground that the other co-owners were not joined as parties to the suit. When the property forming the subject-matter of eviction proceedings is owned by several owners, every co-owner owns every part and every bit of the joint property along with others and it cannot be said that he is only a part-owner or a fractional owner of the property so long as the property has not been partitioned. He can alone maintain a suit for eviction of the tenant without joining the other co-owners if such other co-owners do not object.

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134. CONSUMER PROTECTION ACT, 1986- Section 13 (2) (a)
Prescribed time limit for filing opposite party's reply-Provision is directory, not mandatory.
Topline Shoes Ltd. Vs. Corporation Bank
Judgment dated 8-7-02 by the Supreme Court in Civil Appeal No. 3654/02 reported in (2002) 6 SCC 33

Held :

A reading of clause (a) of sub-section (2) of Section 13 no doubt makes it clear that the District Forum would give time of 30 days to the opposite party for the purpose of giving its version. An extension of time for filing reply could be granted but not exceeding 15 days. Thus, the total period during which the reply can be filed is 45 days after extension of fifteen days is granted. The question which however arises is as to whether the provision prescribing limit for filing reply is mandatory or directory in nature.

Thus the intention to provide a time-frame to file reply, is really meant to expedite the hearing of such matters and to avoid unnecessary adjournments to linger on the proceedings on the pretext of filing reply. The provision, however, as framed, does not indicate that it is mandatory in nature. In case the extended time exceeds 15 days, no penal consequences are prescribed therefor. The period of extension of time "not exceeding 15 days", does not prescribe any kind of period of limitation. The provision appears to be directory in nature, which the Consumer Forums are ordinarily supposed to apply in the proceedings before them. We do not find force in the submission made by the appellant-in-person, that in no event, whatsoever, the reply of the respondent could be taken on record beyond the period of 45 days. The provision is more by way of procedure to achieve the object of speedy disposal of such disputes. It is an expression of "desirability" in strong terms. But it falls short of creating any kind of substantive right in favour of the complainant by reason of which

the respondent may be debarred from placing his version in defence in any circumstances whatsoever. It is for the Forum or the Commission to consider all facts and circumstances along with the provisions of the Act providing time-frame to file reply, as a guideline, and then to exercise its discretion as best as it may serve the ends of justice and achieve the object of speedy disposal of such cases keeping in mind the principles of natural justice as well. The Forum may refuse to extend time beyond 15 days, in view of Section 13 (2) (a) of the Act but exceeding the period of 15 days of extension, would not cause any fatal illegality in the order.

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135. SERVICE LAW :

Equal pay for equal work- Not a fundamental right but a constitutional goal.

State of Haryana and Anr. Vs. Haryana Civil Secretariat Personal Staff Association

Judgment dated 10-7-02 by the Supreme Court in Civil Appeal No. 3518/97, reported in (2002) 6 SCC 72

Held :

It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter, several relevant factors, some of which have been noted by this Court in the decided cases, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. The Courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter. Even in a case where the court holds the order passed by the Government to be unsustainable, ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order.

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136. CRIMINAL TRIAL :

Appreciation of evidence- Rule of proof beyond reasonable doubt-Maxim 'Let hundred guilty persons be acquitted but not a single innocent be convicted'- Meaning.

(ii) Multiple murders- Proof by evidence of solitary witness-Rule of Evidence.

Krishna Mochi And Ors. Vs. State of Bihar

Judgment dated 15-4-02 by the Supreme Court in Cr. Appeal No. 761/2001, reported in (2002) 6 SCC 81

Held :

Thus in a criminal trial a prosecutor is faced with so many odds. The court while

appreciating the evidence should not lose sight of these realities of life and cannot afford to take an unrealistic approach by sitting in an ivory tower. I find that in recent times the tendency to acquit an accused easily is galloping fast. It is very easy to pass an order of acquittal on the basis of minor points raised in the case by a short judgment so as to achieve the yardstick of disposal. Some discrepancy is bound to be there in each and every case which should not weigh with the court so long it does not materially affect the prosecution case. In case discrepancies pointed out are in the realm of pebbles, the court should tread upon it, but if the same are boulders, the court should not make an attempt to jump over the same. These days when crime is looming large and humanity is suffering and the society is so much affected thereby, duties and responsibilities of the courts have become much more. Now the maxim "let hundred guilty persons be acquitted, but not a single innocent be convicted" is, in practice, changing the world over and courts have been compelled to accept that "society suffers by wrong convictions and it equally suffers by wrong acquittals. I find that this Court in recent times has conscientiously taken notice of these facts from time to time. In the case ***Inder Singh Vs. State (Delhi Admn.), (1978) 4 SCC 161,*** Krishna Iyer, J. laid down that: (SCC P. 162, Para 2) "Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes." In case of ***State of U.P. Vs. Anil Singh, AIR 1988 SC 1998,*** it was held that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform. In the case of ***State of W.B. Vs. Orilal Jaiswal, (1994) 1 SCC 73*** it was held that justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice, according to law. In the case of ***Mohan Singh Vs. State of M.P. (1999) 2 SCC 428*** it was held that the Courts have been removing chaff from the grain. It has to disperse the suspicious cloud and dust out the smear of dust as all these things clog the very truth. So long chaff, cloud and dust remain, the criminals are clothed with this protective layer to receive the benefit of doubt. So it is a solemn duty of the Courts, not to merely conclude and leave the case the moment suspicions are created. It is the onerous duty of the court, within permissible limit to find out the truth. ***It means, on one hand no innocent man should be punished but on the other hand to see no person committing an offence should get scot-free.*** If inspite of such effort suspicion is not dissolved, it remains writ at large, benefit of doubt has to be credited to the accused.

(ii) ***Masalti case, AIR 1965 SC 202,*** cannot be said to have laid down any rule of universal application as contended by learned counsel for the accused-appellants that conviction cannot be made on the basis of a single witness's evidence, as large number of accused persons are on trial. It is a well-settled principle in law that evidence is to be considered on the basis of its quality and not the quantity. Section 134 of the Indian Evidence Act, 1872 is a pointer in that regard. This provision follows the maxim that evidence is to be weighed and not counted. In Masalti case the desirability to have at least two witnesses

has been stated to be a matter of prudence. Such a requirement can never be said to be inviolable, as would be culled out from ***Anil Phukan Vs. State of Assam, (1993) 3 SCC 282*** and ***Maqsoodan Vs. State of U.P., (1983) 1 SCC 218.*** Appreciation of evidence cannot conceive of any rule of universal application and is certainly not to be treated as a theorem, and there can be no empirical formula. The evidence on the facts of each case has to be analysed and conclusions drawn, and there cannot be pigeonholing of evidence on any set formula.

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137. LIMITATION ACT, 1963- SECTION 14 (1) and 14 (3) r/w/s. 23 (2) C.P.C.
Exclusion of time of proceeding in Court without jurisdiction- Scope of Section 14 (1)- Term 'good faith' as used in Section 14 (1) means exercise of 'due care and attention-Suit pursued without impleading necessary party resulting in Judgment by trial Court not a case of 'good faith'.
Deena (dead) through LRs. Vs. Bharat Singh (dead) through LRs. and Ors.
Judgment dated 29-7-2002 by the Supreme Court in Civil Appeal No. 2965/92, reported in (2002) 6 SCC 336

Held :

From the provisions of Sec. 14 it is clear that it is in the nature of a proviso to Order 23 Rule 2. The non obstante clause provides that notwithstanding anything contained in Rule 2 of Order 23 of the Code of Civil Procedure the provisions of sub-section (1) of section 14 shall apply in relation to a fresh suit instituted on permission granted by the Court under Rule 1 of Order 23. For applicability of the provision in sub-section (3) of Section 14 certain conditions are to be satisfied. Before Section 14 can be pressed into service the conditions to be satisfied are: (1) both the prior and subsequent proceedings are civil proceedings prosecuted by the same party: (2) the prior proceeding had been prosecuted with due diligence and good faith: (3) the failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature; (4) the earlier proceeding and the later proceeding must relate to the same matter in issue; and (5) both the proceedings are in a court.

The main factor which would influence the court in extending the benefit of Section 14 to a litigant is whether the prior proceeding had been prosecuted with due diligence and good faith. The party prosecuting the suit in good faith in the court having no jurisdiction is entitled to exclusion of that period. The expression "good faith" as used in section 14 means "exercise of due care and attention". In the context of section 14 the expression "good faith" qualifies prosecuting the proceeding in the court which ultimately is found to have no jurisdiction. The finding as to good faith or the absence of it is a finding of fact.

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138. PARTITION ACT, 1893- Section 4
Section 4- Scope and applicability.
Srilekha Ghosh (Roy) And Anr. Vs. Partha Sarathi Ghosh
Judgment dated 9-7-02 by the Supreme Court in Civil Appeal No. 3660/02 reported in (2002) 6 SCC 359

Held :

On a plain reading of the section it is clear that there are certain conditions for its application, such as -

(1) the dwelling house must belong to an undivided family;

(2) the transfer must be made to a stranger;

(3) the transferee has filed the suit for partition, and

(4) the shareholder claims and undertakes to buy the share of the stranger.

The condition for application of the statutory provision is that a dwelling house belonging to an undivided family must have been transferred to a person ***who is not a member of such family*** and ***such transferee sues for partition.*** If this precondition is satisfied then if any member of the family being a shareholder undertakes to buy the share of such transferee the court is to make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder.

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139. DOCUMENT :

Document- Material alteration-Addition of marginal witnesses in the sale agreement- Whether material altercation? No.
Ram Khilona And Others Vs. Sardar And Ors.
Judgment dated 16-7-02 by the Supreme Court in Civil Appeal No. 238-39 of 1997 reported in (2002) 6 SCC 375

NOTE : In respect of alteration which amounts to material alteration the Apex Court quoted with approval the following from the Halsbury's Laws of England.

Held :

In Halsbury's Laws of England, 4th Edn., Vol. 12 at pp. 552-53, para 1378 it is observed:

"A material alteration is one which varies the rights, liabilities, or legal position of the parties as ascertained by the deed in its original state, or otherwise varies the legal effect of the instrument as originally expressed, or reduces to certainty some provision which was originally unascertained and as such void, or which may otherwise prejudice the party bound by the deed as originally executed.

The effect of making such an alteration without the consent of the party bound is exactly the same as that of cancelling the deed."

In para 1383, at p. 555 it is observed.

"An alteration made in a deed, after its execution, in some particular which is not material does not in any way affect the validity of the deed; and this is equally the case whether the alteration was made by a stranger or by a party to the deed. Thus the date of a deed may well be filled in after execution; for a deed takes effect from the date of execution, and is quite good though it is undated. So, also, the names of the occupiers of land conveyed may be inserted in a deed after its execution, where the property assured was sufficiently ascertained without them. It appears that an alteration is not material which does not vary the legal effect of the deed in its origi-

nal state, but merely expresses that which was implied by law in the deed as originally written, or which carries out the intention of the parties already apparent on the face of the deed, provided that the alteration does not otherwise prejudice the party liable under it." Such alteration, assuming that it was made subsequently, did not bring about any change in the validity and enforceability of the agreement of sale.

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140. EVIDENCE ACT, 1872- Section 24 to 28 and Section 164 Cr.P.C. Confession- Failure to comply with Section 164 (3)- Effect- Confession- Evidentiary value and its use against co-accused- Confession recorded within short time after accused was produced from police custody- Value

(ii) Testimony of child witness- Value
State of M.P. Vs. Bhagwan Singh
2002 (3) MPLJ 67

Held :

The Hon'ble Supreme Court in the case of ***Dagdu and others etc. Vs. State of Maharashtra*** reported in ***AIR 1977 SC 1579,*** has observed that the failure to comply with section 164 (3), of Criminal Procedure Code or with the High Court circulars will not render the confession inadmissible in evidence. If a confession does not violate any one of the conditions operative under Section 24 to 28 of the Evidence Act, it will be admissible in evidence. But as in respect of any other admissible evidence, oral or documentary, so in the case of confessional statements which are otherwise admissible, the Court has still to consider whether they can be accepted as true. If the facts and circumstances surrounding making of confession, appear to cast a doubt on the veracity or voluntariness of the confession, the Court may refuse to act upon the confession even if it is admissible in evidence.

It has also been made clear by the Apex Court in the case of ***Surjan Singh and another Vs. State of Haryana,*** reported in ***(1998) 2 SCC 301,*** that under Section 30 of the Evidence Act, 1872, a confession of an accused is relevant and admissible against a co-accused if both are jointly facing trial for the same offence.

In the case of ***Haroom Haji Abdulla Vs. State of Maharashtra, reported in 1970 MPLJ 537=AIR 1968 SC 832,*** where in a joint trial, co-accused who had made confessional statement, died during trial, it was observed that the law as to accomplice evidence is well settled. The Evidence Act in Section 133, provides that an accomplice is a competent witness against an accused person and that a conviction is not illegal merely because, it proceeds upon the uncorroborated testimony of an accomplice. To this there is a rider in illustration (b) to section 114 of the Act, which provides that the Court may presume that accomplice is unworthy of credit unless he is corroborated in material particulars. This cautionary provision incorporates a rule of prudence because, an accomplice, who betrays his associates, is not a fair witness and it is possible that he may, to please the prosecution, weave false details into those which are true and his whole story appearing true, there may be no means at hand to sever the false from that which is true. It is for this reason that Courts, before they act on accomplice evidence, insist on corroboration in material respects

as to the offence itself and also implicating in some satisfactory way, however, small, each accused named by the accomplice. In this way, the commission of the offence is confirmed by some competent evidence other than the single or unconfirmed testimony of the accomplice and the inclusion by the accomplice of an innocent person is defeated.

Where the Magistrate, had started recording confession within a short time after accused was produced before him, the Hon. Apex Court in the case of ***Amini and others Vs. State of Kerala,*** reported in ***(1998) 2 SCC 301,*** expressed a view that merely because, confession was recorded within a short time, after accused was produced before him, it could not be inferred that the confession was not voluntarily made. Confession retracted four days after the accused was released on bail. No such complaint made while he was in judicial custody for about a fortnight, merely because the accused while retracting the confession and during his examination under Section 313 Criminal Procedure Code alleged that he made the confession under pressure and force from the police, it cannot be concluded that the confession was not voluntarily made.

II. Hon'ble Supreme Court in case of ***Suryanarayan Vs. State of Karnataka*** reported in ***2001 AIR SCW 81*** after taking into consideration implications arising under the various decisions in the case of ***State of U.P. Vs. Ashok Dixit*** *reported in* ***2000 AIR SCW 548, Panchhi Vs. State of U.P.*** reported in ***1998 AIR SCW 2777, Dattu Ramarao Sakhre (supra), Rajaram Yadav Vs. State of Bihar*** reported in ***1996 AIR SCW 1882, Baby Kandyanathi Vs. State of Kerala*** reported in ***1993 AIR SCW 2192*** and ***Prakash Vs. State of M.P.*** reported in ***1992 AIR SCW 2582,*** has held that the evidence of child witness must be evaluated more carefully and with greater circumspection because, child is susceptible to be swayed by what others tell him and thus, an easy prey to tutoring. The evidence of the child witness must find adequate corroboration before it is relied upon as the rule of corroboration is of practical wisdom than of law. However, where child witness to occurrence aged 4 years, making statement that accused had inflicted fatal blows on body of deceased with knife when she had gone with deceased to lake to wash clothes and standing test of cross-examination, mere fact that words spoken to by child witness were not in language which child witness knew, is not a ground to reject her testimony.

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141. EVIDENCE ACT, 1872- Section 92

Document-Oral evidence in respect of-Allegation that the document is nominal and sham-Oral evidence is admissible to prove the same.

Satish Kumar Mathura Prasad Shrivastava Vs. Jagdamba Prasad 2002 (3) MPLJ 88

Held :

Despite bar of section 92 of the Evidence Act it is well settled that oral evidence is admissible to prove that a document though executed was a nominal or sham document **Ishwar Das Jain Vs. Sohanlal, AIR 2000 SC 426,** relied upon the decision in **Gangabai Vs. Chhabubai, AIR 1982 SC 20,** for the proposition that it is

permissible for a party to a deed to contend that deed was not intended to be acted upon but was only a sham document. D.A. Desai, J. in later case was quoted:

> "the bar imposed by section 92 (1) applies only when a party seeks to rely upon the document embodying the terms of the transaction and not, when the case of a party is that the transaction recorded in the document was never intended to be acted upon at all between the parties and that the document is a sham. Such a question arises when the party asserts that there was a different transaction altogether and what is recorded in the document was intended to be of no consequence whatever. For that purpose oral evidence is admissible to show that the document executed was never intended to operate as an agreement but that some other agreement altogether, not recorded in the document, was entered into between the parties."

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142. EVIDENCE ACT- Sections 6, 8, 32 and 157
I.P.C.- Sections 306 and 376
Suicide by a girl of 14 years after being subjected to rape by the accused- Her statement to her mother regarding commission of rape on her- Held relevant u/s 6, 8, 32 and 157 Evidence Act.
Sunil Kumar Vs. State of M.P., 2002 (3) MPLJ 101

Held :

The statement of Deepa to her mother regarding commission of rape on her immediately after the incident is covered by sections 6 and 32 of the Evidence Act. The statement made by her was immediately after the incident. That must be held to be contemporaneous with the transaction in issue. Deepa was under the influence of what befell her and her declaration was spontaneous and natural. The principle of law embodied in section 6 of the Evidence Act is usually known as the rule of res gestae. In ***Gentela Vijayavardhan Rao Vs. State of A.P., AIR 1996 SC 2791*** it has been held that the essence of the doctrine of res gestae is that a fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction" becomes relevant by itself. This rule is, roughly speaking an exception to the general rule that hearsay evidence is not admissible. The rationale in making certain statement on fact admissible under Section 6 of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it is necessary that such fact or statement must be part of the same transaction. In the wods, such statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. In the present case Deepa made the statement to her mother immediately after she returned from the shop of the accused when she was still under the stress of the crime committed with her and, therefore, her statement is relevant piece of evidence under Section 6 of the Evidence Act. That is also relevant under sections 8 and 157 of the Evidence Act.

The statement of Deepa to her mother immediately after the incident is also

covered by Section 32 of the Evidence Act and that is substantive piece of evidence. The Supreme Court has held in ***Sharad Vs. State of Maharashtra, AIR 1984 SC 1622,*** that Section 32 is an exception to the rule of hearsay and makes admissible the statement of a person who dies, whether the death is homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect as indicated above, the Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of Section 32 to avoid injustice. Following this decision it has been clarified by the Supreme Court in ***Kans Raj Vs. State of Punjab, AIR 2000 SC 2324*** that the death referred to in Section 32 (1) of the Evidence Act includes suicidal death also. The same proposition has been laid down in ***Sudhakar Vs. State of Maharashtra, AIR 2000 SC 2602*** in which it has been reiterated that the statement of the victim who is dead is admissible insofar as it refers to cause of his death or as to any circumstances of the transaction which resulted in his death.

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143. INDIAN SUCCESSION ACT, 1925- Section 373

Succession Certificate- Order granting such certificate is of summary nature- May be questioned by a suit in Civil Court.

Ashish Kumar and another Vs. Leela Bai (Dead) through L.Rs. 2002 (3) MPLJ 110

Held :

It is well settled that the enquiry under section 373 of the Indian Succession Act is of a summary nature. That is borne out from the language of section 373 (3) of the Act. Section 387 of the Act further provides that 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 therefor to the person lawfully entitled thereto.

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144. REGISTRATION ACT, 1908 - Section 17 (1) (a) and 49 :

Arbitral award regarding immovable property of value exceeding Rs. 100/- -Not duly registered- Can be used for collateral purposes.

Ramavtar Kedarnath Gupta Vs. Ramgopal (Dead) through L.Rs., 2002 (3) MPLJ 118

Held :

It is true that Ex. D.1 award affected or purported to affect the right, title or interest in immovable property of value exceeding Rs. 100/- and the same must have been registered under Section 17 (1) (e) of the Registration Act, 1908, ***Lachhman Das Vs. Ramlal, AIR 1989 SC 1923,*** the same being not an arbitral award made on reference by a Court in a suit. However, filing of an unregistered award requiring registration was not prohibited under Section 49 of the Registration Act. ***Champalal***

Vs. Mst. Samrath Bai, AIR 1960 SC 629. Thus, the reliance on the same for the collateral purpose under the proviso to Section 49 of the Registration Act as has been done by the Courts below has not been erroneous. ***Mattapalli Chelmayya Vs. Mattapalli Venkataratnam, AIR 1972 SC 1121.***

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145. OATHS ACT, 1969 - Section 3

The Act does not contain any provision for special oath- Statement made on special oath- Effect- It is evidence on oath- If not rebutted ought to be accepted.

Puhap Singh @ Shambhu (dead) through L.Rs. Vs. Nainsingh and others, 2002 (3) MPLJ, 136

Held :

The Oaths Act, 1873 had been repealed long back and the Oaths Act, 1969 does not contain any provision for special oath. The offer of the defendants in para 6 of the written statement was de hors provisions of the Oaths Act which was in force in 1975.

It has been held by a Division Bench of the High Court of ***Punjab and Haryana in Thakur Singh Vs. Inder Singh, AIR 1976 P. & H. 287,*** that the only effect of exclusion of Sections 9 and 12 of the Oaths Act, 1873 by Oaths Act, 1969 is that if any party to any judicial proceeding offers to be bound by any special oath and the court thinks it fit to administer such an oath to the other party consenting there to and such oath is taken by the other party, the evidence given on such oath as against persons who offered to be bound as aforesaid would no more be conclusive proof of the matter stated in such deposition. After the statement on oath made by Parvatibai the defendant No. 2 expressly stated that he does not wish to lead any evidence on that point. That rendered the statement of Parvatibai wholly unrebutted and it became of unimpeachable character. In ***J.A.M. Naidu Vs. K.S.P.T. Chettier, AIR 1977 Mad. 273,*** a Division Bench of Madras High Court has also held that though Section 11 of the Oaths Act, 1873 had been repealed, what was stated under special oath would not deprive its status as evidence.

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146. SERVICE LAW

Compulsory retirement- Broad principle which need to be considered.

State of M.P. and another Vs. Noor Jama Khan and another
2002 (3) MPLJ 147

Held :

Recently in the case of ***State of Gujarat Vs. Umedhbhai M. Patel (2001) 3 SCC 314*** their Lordships after taking note of series of decisions in the field culled out the principles relating to compulsory retirement in paragraph 11 which reads as under :-

"11. The law relating to compulsory retirement has now crystalised into definite principles, which could be broadly summarized thus:-

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is mere desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure."

The order of compulsory retirement is not to be passed as short cut to avoid departmental enquiry and the order is to be passed after having due regard to the entire service record of the officer. It also follows that an order has to be tested on the touch stone that no reasonable person would form requisite opinion on the given material. To elucidate, the order should not smack of perversity or based on no material or prima facie mala fide. Quite apart from the above the Apex Court has expressed the view that if the officer has been given promotion despite adverse entries made in the confidential record that goes in favour of the officer concerned.

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147. MOTOR VEHICLES ACT, 1988- Section 149 (2)

Insurance against third party risk- Transfer of the vehicle- Intimation of transfer not given to insurer-Still insurer liable for third party.

New India Assurance Company Ltd. Vs. Azeem Khan and others, 2002 (3) MPLJ 171

Held :

Undisputedly the appellant is the insurer of the offending vehicle truck No. CIR 8412, and that the policy of insurance was effective at the time of the accident. It appears that intimation of transfer of ownership by the insured namely Ashok Deep Association Private Limited in favour of the respondent No. 3, was not given to the insurer the appellant. However, it would not make any difference so far as the rights of third party i.e. the claimant/respondent No. 1 are concerned.

Reference in the above connection may be made to ***G. Govindan Vs. New India Assurance Company Limited and others, (1999) 3 SCC 754,*** wherein it was held that both under old Act as well as under the new Act, the intent of the legislature was to protect third party interest. It was further observed that the heading of Chap-

ter VIII of the 1939 Act read as "Insurance of Motor Vehicle against Third-Party Risks", and that its provisions clearly indicate that the legislature made insurance of motor vehicles compulsory against third-party (victims) risk. Since insurance against third party risk is compulsory, once the insurer Company had undertaken liability of third parties incurred by the persons specified in the policy, the third parties' right to recover any amount under or by virtue of the provisions of the Act is not affected by any condition in the policy. It was further held that a victim or the Legal Representatives of the victim cannot be denied the compensation by the insurer on the ground that the policy was not transferred in the name of transferee. Reference in the above context may also be made to ***New India Assurance Company Limited Vs. Sheela Rani, (1998) 6 SCC 599.***

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148. MOTOR VEHICLES ACT, 1988- Sec. 163-A, 166, 168 and Sch. II Determination of compensation-Multiplier method-Use of appropriate multiplier-Deviation from scheduled multiplier-Principles explained. United India Insurance Co. Ltd. And Ors. Vs. Patricia Jean Mahajan And Ors.

Judgment dated 8.7.2002 by the S.C. in Civil Appeal No. 3655/2002 reported in (2002) 6 SCC 281

NOTE : para 13, 14, 15, and 16 reproduced:-

13. We may refer to the decision in ***G.M., Kerala SRTC Vs. Susamma Thomas (1994)2 SCC 176.*** In this case while considering the law on the subject, it was observed in para 13 of the report as follows :(SCC p.183)

> "The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed up over the period for which the dependency is expected to last."

14. It was reiterated in para 16 that the multiplier method is logically sound and legally well established as compared to other methods indicated in the other decisions in which different methods of computation were applied. It was observed that those cases cannot be said to have laid any principal of computation of compensation. The Court then further observed as follows :

(SCC p. 185, para 16)

> "The proper method of computation is the multiplier method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principal, lack of uniformity and an element of unpredictability for the assessment of compensation. Some judgments of the High Courts have justified a departure from the multiplier method on the ground that Section 110-B of the Motor Vehicles Act, 1939 insofar as it envisages the compensation to be 'just', the statutory determination of a

'just', compensation would unshackle the exercise from any rigid formula. It must be borne in mind that the multiplier method is the accepted method of ensuring a 'just' compensation which will make for uniformity and certainty of the awards. We disapprove these decisions of the High Courts which have taken a contrary view. We indicate that the multiplier method is the appropriate method, a departure from which can only be justified in rare and extraordinary circumstances and very exceptional cases."

15. In another decision in ***U.P. SRTC V. Trilok Chandra (1996) 4 SCC 362*** the view taken in the case of Susamma Thomas has been reiterated. It has been held that in the case of Susamma Thomas maximum multiplier which could be applied was found to be 16 which according to this case can now be up to 18, in view of the second schedule. This part of the judgment has also been particularly relied upon by the learned counsel for the claimants. The Court has also agreed with the observations made in the case of Susamma Thomas that there should be no departure from the multiplier method, particularly on the ground of awarding just compensation, as it was provided under Section 110-B of the Motor Vehicles Act, 1939 corresponding to the present section 168 of the Motor Vehicles Act, 1988. It is further observed that multiplier method is the accepted method for determining just compensation, which also brings about uniformity and certainty of award. In para 18 it has however, been observed about the second schedule that neither the tribunals nor the court can go by the ready reckoner, it can only be used as a guide. The court has emphasized that in no case a multiplier should exceed 18 years' purchase factor. It is however, observed as follows : (SCC p. 371, para 18)

"It can only be used as a guide. Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependants are his parents, age of the parents would **also be relevant in the choice of the multiplier.**" (emphasis supplied)

16. What thus emerges from the above decisions is that the court must adhere to the system of multiplier in arriving at the proper amount of compensation, and also with a view to maintain uniformity and certainty. Use of higher multiplier has been deprecated and it is emphasized that it cannot exceed 18. The multiplier, as would be evident from the observations quoted earlier, may differ in the peculiar facts and circumstances of a particular case as according to the example cited, where a bachelor dies at the age of 45, the age of his dependent parents may be relevant for selecting a proper multiplier. Meaning thereby that a multiplier less than what is provided in the Schedule could be applied in the special facts and circumstances of a case. In the later cases also this court has taken the same view that multiplier system is a more appropriate and proper method for calculating the amount of compensation. ***Lata Wadhwa v. State of Bihar (2001) 8 SCC 187*** may be referred to.

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149. Cr.P.C. - Section 309

Examination of witnesses- Once begun must continue till all the witnesses in attendance have been examined-Adjournment- Inconvenience of Advocate not a 'special reason' for adjournment.

State of U.P. Vs. Shambhu Nath Singh

Judgment dated 29-3-01 by the Supreme Court in Cr. Appeal No. 392/01 reported in AIR 2001 SC 1403

Held :

Thus, the legal position is that once examination of witnesses started the Court has to continue the trial from day to day until all witnesses in attendance have been examined (except those whom the party has given up). The Court has to record reasons for deviating from the said course. Even that is forbidden when witnesses are present in Court, as the requirement then is that the Court has to examine them. Only if there are "special reasons", which reasons should find a place in the order for adjournment, that alone can confer jurisdiction on the Court to adjourn the case without examination of witnesses who are present in Court.

Now, we are distressed to note that it is almost a common practice and regular occurrence that trial Courts flout the said command with immunity. Even when witnesses are present cases are adjourned on far less serious reasons or even on flippant grounds. Adjournments are granted even in such situations on the mere asking for it. Quite often such adjournments are granted to suit the convenience of the Advocate concerned. We make it clear that the legislature has frowned at granting adjournments on that ground. At any rate inconvenience of an Advocate is not a "Special reason" for bypassing the mandate of Section 309 of the Code.

If any Court finds that the day to day examination of witnesses mandated by the legislature cannot be complied with due to the non co-operation of accused or his counsel the Court can adopt any of the measure indicated in the sub-section i.e. remanding the accused to custody or imposing cost on the party who wants such adjournments (the cost must be commensurate with the loss suffered by the witnesses, including the expenses to attend the Court). Another option is, when the accused is absent and the witness is present to be examined, the Court can cancel his bail, if he is on bail (unless an application is made on his behalf seeking permission for his counsel to proceed to examine the witnesses present even in his absence provided the accused gives an undertaking in writing that he would not dispute his identity as the particular accused in the case.)

It is no justification to glide on any alibi by blaming the infrastructure for striking the legislative mandates embalmed in Section 309 of the Code. A judicious judicial officer who is committed to his work could manage with the existing infrastructure for complying with such legislative mandates. The precept in the old homily that a lazy workman always blames his tools, is the only answer to those indolent judicial officers who find fault with the defects in the system and the imperfections of the existing infrastructure for his tardiness in coping up with such directions.

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150. Motor Vehicles Act, 1988- Section 15 and 149 (4)

(i) Renewal of fake driving licence-Cannot transform it into a valid one- What was originally forgery would remain null and void for ever.

(ii) Fake Driving Licence- Vehicle duly insured- Course to be adopted regarding liability to pay compensation.

New India Assurance Co. Vs. Kamla and Ors. Judgment dated 27-3-2002 by the Supreme Court in Civil Appeal No. 2387/01 reported in AIR 2001 SC 1419

Held :

As a point of law we have no manner of doubt that a fake licence cannot get its forgery outfit stripped off merely on account of some officer renewing the same with or without knowing it to be forged. Section 15 of the Act only empowers any licensing authority to "renew a driving licence issued under the provisions of this Act with effect from the date of its expiry". No licensing authority has the power to renew a fake licence and, therefore, a renewal if at all made cannot transform a fake licence as genuine. Any counterfeit document showing that it contains a purported order of a statutory authority would ever remain counterfeit albeit the fact that other persons including some statutory authorities would have acted on the document unwittingly on the assumption that it is genuine.

(ii) A reading of the proviso to sub-section (4) as well as the language employed in sub-section (5) would indicate that they are intended to safeguard the interest of an insurer who otherwise has no liability to pay any amount to the insured but for the provisions contained in chapter XI of the Act. This means, the insurer has to pay to the third parties only on account of the fact that a policy of insurance has been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy.

To repeat, the effect of the above provisions is this : When a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.

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151. EVIDENCE ACT- Section 106

Abducted person later on murdered- Court can presume that abductors are responsible for murder unless they explain as to what they did with the person abducted.

Sucha Singh Vs. State of Punjab

Judgment dated 22-3-01 of the Supreme Court in Criminal Appeal No. 24/ 2001 reported in AIR 2001 SC 1436

Held :

The abductors alone could tell the Court as to what happened to the deceased after they were abducted. When the abductors withheld that information from the Court there is every justification for drawing the inference, in the light of all the preceding and succeeding circumstances adverted to above, that the abductors are the murderers of the deceased.

Recently this Court has held in ***State of West Bengal Vs. Mir Mohammad Omar, 2000 AIR SCW 3230: AIR 2000 SC 2988 :*** **(2000 Cri LJ 4047) (supra)**, that the principle embodied in Section 106 of the Evidence Act can be utilised in a situation like this. Shri U.R. Lalit pleaded for reconsideration of the said legal position. According to him, the ratio laid down in that decision is not in tune with the well accepted principle of criminal law that the accused is entitled to keep his tongue inside his mouth as the burden is always on the prosecution to prove the guilt of the accused. To meet the said contention it is appropriate to extract the following observations from that decision (Para 31 of AIR, Cri LJ) :

"The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pendantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty."

Learned Senior Counsel contended that Section 106 of the Evidence Act is not intended for the purpose of filling up the vacuum in prosecution evidence. He invited our attention to the observations made by the Privy Council in ***Attygalle vs. The King, AIR 1936 PC 169 : (1936 (37) Cri LJ 628)*** and also in ***Stephen Seneviratne Vs. The King,*** **AIR 1936 PC 289: (1936 (37) Cri LJ 963).** In fact the observations contained therein were considered by this Court in an early decision authored by Viven Bose, ***J. in Shambhu Nath Mehra Vs. State of Ajmer, AIR 1956 SC 404 : (1956 Cri LJ 794).*** The statement of law made by the learned Judge in the aforesaid decision has been extracted by us in ***State of West Bengal Vs. Mir Mohammad Omar, 2000 AIR SCW 3230 : AIR 2000 SC 2988 : (2000 Cri LJ 4047)*** **(supra)**. It is useful to extract a further portion of the observations made by us in the aforesaid decision (Para 33 of AIR, Cri LJ) :

"Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the Court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the Court to presume the existence of any fact which it thinks likely to have happened. In that process the Court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case."

We pointed out that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to offer any explanation which might drive the Court to draw a different inference.

We are mindful of what is frequently happening during these days. Persons are kidnapped in the sight of others and are forcibly taken out of the sight of all others and later the kidnapped are killed. If a legal principle to be laid down is that for the murder of such kidnapped there should necessarily be independent evidence apart from the circumstances enumerated above, we would be providing a safe jurisprudence for protecting such criminal activities. India cannot now afford to lay down any such legal principle insulating the marauders of their activities of killing kidnapped innocents outside the ken of others.

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152. LIMITATION ACT, 1963- Sec. 5

Delay by State-Condonation of delay u/s. 5- Scope- Concept of sufficient cause includes pragmatic problems and situations that are faced by the Govt. while preferring appeal/revision.

State of M.P. Vs. Mohd. Jabbar Khan reported in 2002 (3) MPLJ 438

Held :

It is a well known fact that the state is required to look after collective and larger public interest. An individual interest ordinarily has to succumb and yield into the larger interest of the State. When the concept of more public good is involved lesser individual consideration has to give in. When the State is put to loss for some reason or other it is the society as a whole suffers and such suffering becomes a part of suffering of each individual and at that singular individual suffering cannot be given priority when it is tested on a higher social spectrum. Law and order are to prevail in an organised and civilized society. He who creates a dent in social order is booked by the State to face criminal trial for the Simon pure reason that no person can be convicted without trial but, a significant one, should he be discharged because of the callousness and carelessness of a public officer, an individual who stands in contradistinction to the collective. In this context I may profitably refer to the decision rendered in the case of ***G.Ramegowda, Major etc. Vs. The Special Land Acquisition Officer, Bangalore, AIR 1988 SC 897*** wherein Venkatachalliah, J. (as his lordship then was) laid down as under:

"In litigations to which Government is a party there is yet another aspect which perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective the institutional decisions and do not share the characteristics of decisions of private individuals.

The law of limitation is, no doubt, the same for a private citizen as for Governmental authorities. Government, like any other litigant must take responsibility for

the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it.

Therefore, in assessing what, in a particular case, constitutes 'sufficient cause' for purposes of section 5 it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the "Government, Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural redtape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have a little play at the joints. Due recognition of these limitations on Governmental functions of course, within a reasonable limit is necessary if the judicial approach is not rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters....."

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153. ARBITRATION ACT, 1940-Sec. 14 (2) and 30

Filing of award in the court-Arbitrator can suo motu file it in the Court.

(ii) Interest- Arbitrator is competent to award interest for the period commencing with the date of award till date of decree or date of realisation.

State of M.P. and others Vs. Jaiswal Tractors reported in 2002 (3) MPLJ 460

Held :

It may be noticed that in ***State of M.P. Vs. M/s. Saith and Skelton (P) Ltd. and others, AIR 1972 SC 1507.*** The Supreme Court referred and expressed its agreement, to the observations with the pronouncement by the Nagpur High Court in ***Narayan Bhawu Vs. DewaJibhawu, 1945 NLJ 169=AIR 1945 Nagpur 117*** to the effect that there is nothing in section 14 (2) of the Act, which precludes the arbitrator from filing the Award suo motu and it is not correct to say that the Award should be filed only if the parties make a request to the arbitrator to file the Award or make an application to the Court for that purpose. It was laid down that there is no prohibition in the arbitrator filing the award suo motu without the request of parties or direction of the Court in that regard. It has been observed that :

"It is not correct to say that the Award should be filed only if the parties make a request to the arbitrator to file the Award or make an application to the Court for that purpose especially when there is no prohibition in the Act, particularly in Section 14 (2) against the arbitrator filing suo motu his Award in Court."

(ii) It is noticed that the arbitrator has awarded interest from the date of filing of the suit. Thus, pendente lite interest has been awarded. In ***Hindustan Construction Co. Ltd. vs. State of Jammu*** and ***Kashmir, AIR 1992 SC 2192*** it has been held that the arbitrator is competent, to award interest for the period commencing with the

date of award to the date of decree or date of realisation, whichever is earlier. It has further been held that while award of interest for the period prior to an arbitration entering upon the reference is a matter of substantive law, the grant of interest for the post-award period is a matter of procedure. Section 34 of Civil Procedure Code, provides both for awarding of interest pendente lite as well as for the post-decree period and the principle of Section 34 is applicable to proceedings before the arbitrator, though the section as such may not apply.

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154. Prevention of Corruption Act, 1988- Sec. 19

Prosecution for offence u/s 7 and 13 (2) of the Act and Sec. 409/120-B I.P.C.- Discharge of petitioners due to lack of valid sanction- Prosecution of petitioners on same facts after obtaining fresh sanction- Held, permissible.

Shiv Kumar Pal Vs. State of M.P. Reported in 2002 (3) MPLJ 485

Held.

It is found dictated by their Lordships of Supreme Court in ***State of Tamil Nadu Vs. M.M. Rajendran 1998 SCC 1000,*** that if in prosecution, under Prevention of Corruption Act, 1988, the order of sanction is found to be invalid finding on merits about prosecution case, are impermissible and hence proper course would be to drop the proceedings. It is further found explained by their Lordships that under such situation, it would be open to the State to proceed afresh after obtaining necessary sanction.

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156. DIVORCE ACT, 1869 AS AMENDED BY DIVORCE (AMENDMENT) ACT OF 2001- Sec. 10,17 and 22

Divorce (Amendment) Act of 2001- Effect- Decree passed by the District Judge no more requires confirmation by the High Court u/s 17 of the Act- Grounds of divorce also altered.

Mary G. Sunny Vs. Sunny George reported in 2002 (3) MPLJ 497 FB

Held :

The Indian Divorce Act, 1869 (4 of 1869) has been amended by the Indian Divorce (Amendment) Act, 2001. Sub-section (2) of Section 1 of the amended Act provides for coming into force of Indian Divorce (Amendment) Act, 2001 on such date as the Central Government may, by notification in the Official Gazette, appoint. Notification by Ministry of Law, Justice and Company Affairs (Legislative Department) dated October 3, 2001, published in the Gazette of India (Extraordinary) Part -II -Section 3-Sub-section (2) appoints 3rd Day of October, 2001, as the date on which the Act comes into force.

5. The result is that High Court loses jurisdiction under section 17 of the Act for confirmation of the order passed by the District Judge, under section 10/22 of the Act. The question is whether the amendment would apply to pending proceedings. This question should not detain us for long since Section 10 of the amended Act 2001 provides for dissolution of marriage solemnized before or

after the commencement of the Indian Divorce (Amendment) Act, 2001 on a petition presented to the District Court either by the husband or the wife, on any ground mentioned therein. Under the old provision, the decree for divorce could be sought on proof of adultery with cruelty otherwise for cruelty alone judicial separation could be ordered **(see: Prem Prakash Rubin vs. Sarla Rubin, 1989 MPLJ 571),** but Amendment Act gives right to the spouse to seek divorce on the ground that he/she had been treated with such cruelty as to cause reasonable apprehension in his/her mind that it would be harmful or injurious for him/her to live with other. The order passed by the District Judge has no force till it is confirmed by the High Court under the old Act, therefore, proceedings are taken to be pending on commencement of the Amendment Act, 2001.

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156. CIVIL PROCEDURE CODE- Sec. 34 (1)

'Principal sum adjudged' as used in Sec. 34 (1)- Meaning of- It is the outstanding loan plus interest due on the date of filing of the suit.

(ii) Grant of interest u/s 34 (i)- May be at the rate which the Court considers reasonable.

Union Bank of India. Vs. Chhatarpur Siliment Sales Corporation reported in 2002 (3) MPLJ 521

Held :

In ***Central Bank of India Vs. Ravindra, 2001 AIR SCW 4468*** the Supreme Court has considered the question of capitalisation of interest till date of suit and its conversion into principal sum. After consideration and survey of judicial opinion, it has been laid down therein that 'the principal sum adjudged' in Section 34 (1) of Civil Procedure Code, would include the amount of interest charged on periodical rests and capitalised with the principal sum actually advanced, so as to become an amalgam of principal. It was thus laid down that 'the principal sum adjudged' would be a sum actually loaned plus the amount of interest with periodical rests, which according to the contract between the parties or the established banking practice has stood capitalized and that interest pendente lite and future interest shall be awarded on such 'principal sum'.

14. In view of above, it is clear that the principal sum would mean and constitute outstanding loan as capitalised on the date of suit including the balance of loan amount remaining unpaid as well as the interest accrued thereon at the contractual rate, till date of suit. Interest pendente lite from the date of suit as also future interest shall therefore be payable on such capitalised sum which would constitute 'principal sum adjudged' within the meaning of the said term under section 34 (1) of Civil Procedure Code, and not only on the balance amount outstanding towards the principal sum loaned.

(ii) It is clear from plain reading of Section 34 (1) of the Civil Procedure Code that the interest on the 'principal sum adjudged' can be granted from the date of suit to the date of the decree at such rate as the Court deems reasonable and that further interest from the date of decree till payment at such rate not exceeding 6% per annum as the Court deems reasonable on the principal sum. Proviso to

Section 34 (1) of Civil Procedure Code lays down that, in case liability in relation to the sum adjudged had arisen out of Commercial transaction, the rate of such interest may exceed 6% per annum, but shall not exceed the contractual rate of interest or in the absence of contractual rate, the rate at which moneys are lent or advanced by the nationalised bank in relation to commercial transaction.

It is therefore clear that interest pendente lite would be awarded at the rate which the Court considers reasonable. Future interest from the date of suit till payment would ordinarlily not exceed the rate of 6% per annum, but in case of commercial transaction, rate of such interest could exceed the rate of 6% per annum, but shall not exceed the contratual rate or where there is no contractual rate of interest then the rates at which money is lent or advanced by nationalised Banks in relation to commercial transaction. However, the provision as above does not mean and imply that the Court is obliged and should mandatorily grant interest at the contractual rate, either from the date of suit till the date of decree or from the date of decree till payment thereof as has been contended on behalf of the appellant/Bank.

In the case of ***Central Bank of India Vs. Ravindra*** (Supra), it has been observed by the Supreme Court in clause (8) of para 55, that:

"Award of interest, pendente lite and post-decree is discretionary with the court as it is essentially governed by Section 34 of the Civil Procedure Code de hors the contract between the parties. In a given case if the Court finds that in the principal sum adjudged on the date of the suit the component of interest is disproportionate with the component of the principal sum actually advanced the Court may exercise its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline awarding such interest. The discretion shall be exercised fairly, judiciously and for reasons and not in an arbitrary or fanciful manner"

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157. MOTOR VEHICLES ACT, 1988- Secs. 2 (47), 2 (16), 2 (17) and 3
Transport vehicle included both, 'heavy goods vehicle' and 'heavy passenger motor vehicle'- Driving licence for 'heavy goods vehicle' is valid for 'heavy passenger motor vehicle'.
Kusumlata Vs. Lalaram & Others reported in 2002 (3) MPLJ 546

Held :

Giving serious consideration to the submissions advanced for consideration by learned counsel for parties, we find that fundamental difference is between 'heavy passenger motor vehicle' and 'heavy goods vehicles' and weight of both kinds of vehicles exceeds 12,000 kg. distinction being the nature of use and either of the vehicles can be adopted for use to which they may be put. 'Transport vehicle' defined under section 2 (47) of the Act means a public service vehicle, goods carriage, an educational institution bus or a private service vehicle. It falls under both sub-sections (16) and (17) of Section 2 of the Act, read with section 3 under Chapter II, providing for licensing of drivers of motor vehicles. Section 3 provides that no person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle and no person shall so

drive a transport vehicle..... unless his driving licence specifically entitles him so to do. We have noticed transport vehicle includes both kinds of vehicles, namely 'heavy goods vehicle' and 'heavy passenger motor vehicle'. Consequently, conjoint reading of the provisions referred to and discussed would demonstrate that licence possessed by Karansingh was valid and effective driving licence for driving the bus in question.

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158. CRIMINAL PROCEDURE CODE, 1973- Sec. 154

F.I.R.- Scope of use.

Bharat Singh Vs. State of M.P. reported in 2002 (3) MPLJ 552

Held :

It is well established that F.I.R. is not a substantive evidence. It can be used either for corroboration under section 157 or for contradiction under section 145 of the Evidence Act of the reporter. It can only be used as substantial evidence when the reporter is dead and it amounts to his dying declaration within the meaning of Section 32 (1) of the Evidence Act. It can be used to look into the conduct of informant under Section 8 also. ***Shankar Vs. State of U.P., AIR 1975 SC 757, Nisar Ali Vs. State of U.P., AIR 1957 SC 366, Hasib Vs. State of Bihar, AIR 1972 SC 283, Inchan Vs. Emperor, AIR 1943 Calcutta 647,*** prohibits its use as substantive evidence. ***George Vs. State of Kerala, AIR 1988 SC 1376*** prohibits its use as substantive evidence to discredit testimony of other witness. ***State of Orissa Vs. Chakradhar, AIR 1964 Orissa 262*** holds that in case informant dies long after the occurrence and F.I.R. does not relate to the cause of informant's death, the same is not admissible either under section 32 (1) of section 8 of Evidence Act.

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159. HINDU SUCCESSION ACT, 1956- SEC. 8

Succession to property u/s 8 of the Act by father- Son has no right by birth in that property-Such property is not joint Hindu family property in the hands of father.

Chandrakanta and Anr. Vs. Ashok Kumar and ors. reported in 2002 (3) MPLJ 576

Held :

The Supreme Court has considered the impact of Hindu Succession Act, 1956 in its judgment in the case of ***Commissioner of Wealth-tax, Kanpur etc. Vs. Chander Sen. etc., AIR 1986 SC 1753,*** and had held as under :-

"19. It is necessary to bear in mind the Preamble to the Hindu Sucession Act, 1956. The Preamble states that it was an Act to amend and codify the law relating to intestate succession among Hindus.

20. In view of the Preamble to the Act i.e., that to modify where necessary and to codify the law, in our opinion it is not possible when schedule indicates heirs in class I and only includes son and does not includes son's son on but does includes son of a predeceased son, to say, that when son inherits the property in the situation contemplated by Section 8 he takes it as karta of his own undividied family. The

Gujarat High Court's view noted above, if accepted, would mean that through the son of a predeceased son and not the son of a son who is intended to be excluded under section 8 to inherit, the latter would be applying the old Hindu law get a right by birth of the said property contrary to the scheme outlined in Section 8."

The Supreme Court in its judgment in the case of **Yudhishter Vs. Ashok Kumar, AIR 1987 SC 558,** has again considered the question and has held as under :-

"10. This question has been considered by this Court in ***Commr. of Wealth Tax,* Kanpur Vs. Chander Sen, (1986) 3 SCC 567 : AIR 1986 SC 1753,** where one of us (Sabysachi Mukhariji, J) observed that under the Hindu Law, the moment a son is born, he gets a share in father's property and becomes part of the coparcanary. His right accrues to him not on death of the father or inheritence from the father but with the very fact of his birth. Normally, therefore, whenever the father gets a property from whatever source from the grandfather or from any other source, be it separate property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. This Court observed that this position has been affected by Section 8 of the Hindu Succession Act 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by Section 8, he does not take it as kar of his own undivided family but takes it in his individual capacity."

7. In view of the aforesaid pronouncements, it is clear that after coming into force of the Hindu Succession Act, the theory of birthright does not exist and son gets share in the property only after death of his father.

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160. CONSUMER PROTECTION ACT, 1986-Secs. 2 (1) and 12

Share broker- Relationship between the seller and the broker- It is a relationship of providing services for consideration, hence covered by the Act.

Anand Kumar Jain Vs. District consumer Dispute Redressal Forum, Bhopal reported in 2002 (3) MPLJ 594

Held :

The term 'consumer' relates to the person who hires any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and include a beneficiary of such services. A complaint can be filed by a consumer. If the exposition of facts is appreciated in proper perspective it is quite vivid that the respondent No. 4 asked the petitioner to purchase the shares certificates to sell and for such an activity the Petitioner charged the commission upto 2%. It is to be taken note of the fact that the petitioner is a share broker and was involved in the activitiy of selling and purchasing of shares. The contract between the seller and broker are on the basis of the principal to principal. It can irrefragably be stated that while selling or purchasing the shares a sell or purchase price in its ambit covers the concept of commission. It is not the case of the petitioner that he had undertaken the responsibility in a gratutious manner. The respondent No. 4 had placed reliance on the petitioner as the concept of commission was a basic ingredient in the transaction. The respondent No. 4 did not accept to

earn any benefit under any fortutous circumstances and the commitment given by the petitioner was neither gratutious nor an act of benevolence. He cannot be termed as a good Samaritan. The petitioner was indubitably engaged in rendering financial services by accepting the commission. Acceptance of commission is definitely an act of methodical business and engulfs rendering of services in its conceptual eventuality. It can be stated with certitude that the relationship between the seller and the broker is a relationship providing services for consideration, that is charges of commission. Charging of commission becomes the bedrock of such a transaction which in its connotative expanse includes the factum of rendering of services and thereby metamorphoses the legal relationship between the petitioner and the respondent No. 4.

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161. M.P. ACCOMMODATION CONTROL ACT, 1961- SEC. 12 (i) (f)
Ground of bonafide requirement- Is a recurring cause of action.
Ram Sewak Vs. Dr. Chakresh Kumar
reported in 2002 (3) MPLJ 604

Held :

The Supreme Court has recently held in ***N.R. Narayan Swamy Vs. B. Francis Jagan, AIR 2001 SCW 2765*** that in eviction proceedings under the Rent Act the ground of bona fide requirement or non-payment of rent is a recurring cause and, therefore, landlord is not precluded from instituting fresh proceeding. In an eviction suit on the ground of bona fide requirement the genuineness of the said ground is to be decided on the basis of requirement on the date of the suit. Further, even if a suit for eviction on the ground of bona fide requirement is filed and is dismissed it cannot be held that once a question of necessity is decided against the landlord he will not have a bonafide and genuine necessity ever in future. In the subsequent proceedings, if such claim is established by cogent evidence adduced by the landlord, decree for possession could be passed.

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162. CODE OF CIVIL PROCEDURE- Sec. 9
Jurisdiction of Civil Court- Bar of- Principles governing the determination of issue.
Dhruv Green Field Ltd. Vs. Hukum Singh
Judgment dt. 5.8.2002 by the S.C. in Civil
Appeal No. 4565/2002 reported in 2002 (6) SCC 416

Held :

In the light of the above discussion, the following principles may be restated :

(1) If there is express provision in any special Act barring the jurisdiction of a Civil Court to deal with matters specified thereunder the jurisdiction of an ordinary Civil Court shall stand excluded.

(2) If there is no express provision in the Act but an examination of the provisions contained therein leads to a conclusion in regard to exclusion of jurisdiction of a Civil Court, the Court would then inquire whether any adequate and effica-

cious alternative remedy is provided under the Act; if the answer is in the affirmative, it can safely be concluded that the jurisdiction of the Civil Court is barred. If, however, no such adequate and effective alternative remedy is provided then exclusion of the jurisdiction of the Civil Court cannot be inferred.

(3) Even in cases where the jurisdiction of a civil court is barred expressly or impliedly the court would nonetheless retain its jurisdiction to entertain and adjudicate the suit provided the order complained of is a nullity.

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163. NEGOTIABLE INSTRUMENTS ACT, 1881- Sec. 138

Cheque issued by the guaranter towards payment of dues outstanding against the principal debtor- Dishonour of- Held, Sec. 138 is applicable in such situation.

I.C.D.S. Ltd. Vs. Beena Shabeer And Anr.

Judgment dt. 12.8.02 by the S.C. in Cr. Appeal No. 797/02 reported in 2002 (6) SCC 426

Held :

The commencement of the Section stands with the words "where any cheque". The above noted three words are of extreme significance, in particular, by reason of the user of the word "any"- the first three words suggest that in fact for whatever reason if a cheque is drawn on an account maintained by him with a banker in favour of another person for the discharge of **any debt or other liability,** the highlighted words if read with the first three words at the commencement of Section 138 leave no manner of doubt that for whatever reason it may be, the liability under this provision cannot be avoided in the event the same stands returned by the banker unpaid. The legislature has been careful enough to record not only discharge in whole or in part of any debt **but the same includes other liability as well.**

The language of the statute depicts the intent of the law-makers to the effect that wherever there is a default on the part of one in favour of another and in the event a cheque is issued in discharge of any debt or other liability there cannot be any restriction or embargo in the matter of application of the provisions of Section 138 of the Act. "Any cheque" and "other liability" are the two key expressions which stand as clarifying the legislative intent so as to bring the factual context within the ambit of the provisions of the statute. Any contra-interpretation would defeat the intent of the legislature.

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164. MOTOR VEHICLES ACT, 1988-Sec. 168

Contributory negligence- Connotation of.

Pramod Kumar Rasikbhai Jhaveri Vs. Karmasey Kunvargi Tak And Ors.

Judgment dt. 5.8.02 by the S.C. in Civil Appeal No. 5436/94 reported in 2002 (6) SCC 455

Held :

The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage

caused, and is of such a nature that it may properly be described as "negligence". Negligence ordinarily means breach of a legal duty to care, but when used in the expression "contributory negligence" it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an "author of his own wrong".

Subject to non-requirement of the existence of duty, the question of contributory negligence is to be decided on the same principle on which the question of the defendant's negligence is decided. The standard of a reasonable man is as relevant in the case of a plaintiff's contributory negligence as in the case of a defendant's negligence. But the degree of want of care which will constitute contributory negligence, varies with the circumstances and the factual situation of the case.

It has been accepted as a valid principle by various judicial authorities that where, by his negligence, if one party places another in a situation of danger, which compels that other to act quickly in order to extricate himself, it does not amount to contributory negligence if that other acts in a way, which, with the benefit of hindsight, is shown not to have been the best way out of the difficulty.

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165. CRIMINAL PROCEDURE CODE, 1973-Sec. 357 (3)

Grant of compensation u/s 357 (3)- Scope and applicability.
Rachhpal Singh and Anr. Vs. State of Punjab
Judgment dt. 23.7.02 by the S.C. in Cr. Appeal. No. 767/01 reported in (2002) 6 SCC 462

Held :

In such cases where the court does not award a fine along with a substantive sentence, Section 357 (3) comes into play and it is open to the Court to award compensation to the victim or his family.

The compensation in question should commensurate with the capacity of the accused to pay as also other facts and circumstances of that case like the gravity of the offence, the needs of the victim's family etc.

●

166. CRIMINAL TRIAL :

Appreciation of evidence- General principles regarding, explained.
Harijana Thirupala and Ors. Vs. Public Prosecutor, High Court of A.P.
Judgment dt. 1.8.02 by the S.C. in Cr. Appeal. No. 725/01 reported in 2002 (6) SCC 470

Held :

In our administration of criminal justice an accused is presumed to be innocent unless such a presumption is rebutted by the prosecution by producing the evidence to show him to be guilty of the offence with which he is charged. Further if two views are possible on the evidence produced in the case, one indicating to the guilt of the accused and the other to his innocence, the view favourable to the accused is to be

accepted. In cases where the court entertains reasonable doubt regarding the guilt of the accused the benefit of such doubt should go in favour of the accused. At the same time, the court must not reject the evidence of the prosecution taking it as false, untrustworthy or unreliable on fanciful grounds or on the basis of conjectures and surmises. The case of the prosecution must be judged as a whole having regard to the totality of the evidence. In appreciating the evidence the approach of the court must be integrated not truncated or isolated. In other words, the impact of the evidence in totality on the prosecution case or innocence of the accused has to be kept in mind in coming to the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses. It must be added that ultimately and finally the decision in every case depends upon the facts of each case.

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167. I.P.C.- SEC. 300

Sec. 300 3rdly- Death by Single blow- When amounts to murder- Principle stated.

Dhupa Chamar and Ors. Vs. State of Bihar

Judgment dt. 2.8.02 by the S.C. in Cr. Appeal. No. 1087/2000 reported in 2002 (6) SCC 506

Held :

Thus, a question arises as to when death is caused by a single blow, whether clause thirdly of Section 300 of the Penal Code is attracted. The ingredient "intention" in that clause is very important and that gives a clue in a given case whether the offence involved is murder or not. Clause thirdly of Section 300 of the penal Code reads thus :

"3rdly.- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or" -

Intention is different from motive. It is the intention with which the act is done that makes a difference, in arriving at a conclusion whether the offence is culpable homicide or murder. Therefore, it is necessary to know the meaning of the expression "intention" as used in these provisions. In this connection we may usefully refer to the high authority of Vivian Bose, J., with whom Jafer Imam and P.B.-Gajendragadkar, JJ. agreed in the case of ***Virsa Singh v. State of Punjab AIR 1958 SC 465.*** In that case, appellant Virsa Singh was convicted under Section 302 of the Penal Code which was upheld by this Court although there was only one injury which was attributed to him which was caused as a result of spear thrust. It was contended in that case that as it was a case of solitary injury, it could not be inferred that there was intention to inflict a bodily injury that was sufficient to cause death in the ordinary course of nature as such act of the offender did not amount to murder. After analysing clause thirdly, it was laid down in that case where Vivian Bose, J. Speaking for the Court, observed thus, at p. 467 : (AIR p. 467, paras 12-13)

"12. To put it shortly, the prosecution must prove the following facts before it can bring a case under section 300 'thirdly';

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; these are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further, and

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

13. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under section 300, 'thirdly'.. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional".

●

168. CRIMINAL TRIAL :

Appreciation of evidence- Non-examination of another eye witness when one has been examined- Held, is of no consequence.
Babu Ram And Anr. Vs. State of U.P. and Ors.
Judgment Dt. 1.8.02 by the S.C. in Cr. Appeal No. 255/01 reported in 2002 (6) SCC 518

Held :

It is settled law that non-examination of an eyewitness cannot be pressed into service like a ritualistic formula for discarding the prosecution case with a stroke of the pen. An effort should be made at appreciating the worth of such evidence as has been adduced. If the evidence coming from the mouth of the eyewitnesses examined in the case is found to be trustworthy and worth being relied on as to form a safe basis for recording a finding of guilt of the accused persons then non-examination of yet another witness who would have merely repeated the same story as has already been narrated by other reliable witnesses would not cause any dent or infirmity in the prosecution case.

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169. CRIMINAL PROCEDURE CODE, 1973- Sec. 197

Bar under Section 197- Scope and applicability- Question whether accused acted in course of performance of his duties- Held, can properly be examined during the course of trial after giving an opportunity to both the parties to establish their case.

Raj Kishore Roy Vs. Kamleshwar Panday and Anr.

Judgment dt. 5.8.02 by the S.C. in Cr. Appeal No. 755/02 reported in 2002 (6) SCC 543

Held:

The law on the subject is well settled. It has been held by this Court in the case of ***P.P. Unnikrishan V. Puttiyottil Alikutty, (2000) 8 SCC 131*** that under Section 197 of the Criminal Procedure Code no protection has been granted to the public servant if the act complained of is not in connection with the discharge of his duty or in exercise of his duty.

8. In the case of ***P.K. Pradhan v. State of Sikkim, (2001) 6 SCC 704*** it has been held that the legislative mandate engrafted in Sub-Section (1) of Section 197 is a prohibition imposed by the statute form taking cognizance. It has been held that the offence alleged to have been committed must have something to do or must be related in some manner, with the discharge of official duty. It has been held that the only point for determination is whether the act was committed in discharge of official duty. It has been held that there must be a reasonable connection between the act and the official duty. It has been held that for invoking protection under Section 197 of the code, the acts of the accused, complained of, must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, and the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. It has been held that if the case as put forth by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. It is held that the question of sanction under Section 197 of the code can be raised any time after the cognizance; may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. It is held that there can be cases when it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. It has been held that the claim of the accused, that the act that he did was in course of the performance of his duty, was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. It has been held that in such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial.

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170. PRECEDENTS :

Doctrine of prospective overruling- What amounts to.
Kailash Chandra Sharma Vs. State of Rajasthan
Judgment dt. 30.7.02 by the S.C. in Civil Appeal. No. 4417/02 reported in 2002 (6) SCC 562

Held :

The sum and substance of this innovative principle is that when the Court finds or lays down the correct law in the process of which prevalent understanding of the law undergoes a change, the Court, on considerations of justice and fair deal, restricts the operation of the new-found law to the future so that its impact does not fall on the past transactions. The doctrine recognises the discretion of the Court to prescribe the limits of retroactivity of the law declared by it. It is a great harmonizing principle equipping the Court with the power to mould the relief to meet the ends of justice. Justification for invoking the doctrine was also found in Articles 141 and 142 which as pointed out in **Golak Nath case, AIR 1967 SC 1643** are couched in such wide and elastic terms as to enable this court to formulate legal doctrines to the ends of justice.

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171. HINDU MARRIAGE ACT, 1955- Sec. 13 (1) (ia)

Cruelty as a ground for divorce-Concept of and proof of.
Praveen Metha Vs. Inderjit Mehta
Judgment dt. 11.7.02 by the SC in Civil Appeal
No. 3930/2002 reported in AIR 2002 SC 2582

Held :

Cruelty for the purpose of S.13 (1) (ia) is to be taken as a behaviour by one spouse towards the other which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioral pattern by the other. Unlike the case of physical cruelty the mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the fact and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.

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172. CONSUMER PROTECTION ACT, 1986- Sections 11, 13, 18, 22 and Order 7 Rule 14 C.P.C.

(i) Medical negligence- It is not proper to direct the consumer to approach Civil Court- Issue of medical negligence may be decided under the Act.

(ii) Avoidence of delay- Heavy costs may be imposed to secure expedious disposal.

Dr. J.J. Merchant and Others Vs. Shrinath Chaturvedi

Judgment dated 12-8-2002 by the Supreme Court in Civil Appeal No. 7975/01 reported in (2002) 6 SCC 635

Held :

Under the Act the National Commission is required to be headed by a retired Judge of this Court and the State Commission is required to be headed by a retired High Court Judge. They are competent to decide complicated issues of law or facts. Hence, it would not be proper to hold that in cases where negligence of experts is alleged, consumers should be directed to approach the civil court.

It was next conteded that such complicated questions of facts cannot be decided in summary proceedings. In our view, this submission also requires to be rejected because under the Act, for summary or speedy trial, exhaustive procedure in conformity with the principles of natural justice is provided. Therefore, merely because it is mentioned that the Commission or Forum is required to have summary trial would hardly be a ground for directing the consumer to approach the civil court. For the trial to be just and reasonable, long-drawn delayed procedure, giving ample opportunity to the litigant to harass the aggrieved other side, is not necessary. It should be kept in mind that the legislature has provided alternative, efficacious, simple, inexpensive and speedy remedy to the consumers and that should not be curtailed on such ground. It would also be a totally wrong assumption that because summary trial is provided, justice cannot be done when some questions of facts are required to be dealt with or decided. The Act provides sufficient safeguards.

(ii) For avoiding the delay the District Forum or Commissions can evolve a procedure of levying heavy cost where adjournment is sought by a party on one or the other ground. This would have its own impact on disposing of the complaints, appeals or revisions within the stipulated or reasonable time. For avoiding delay in disposal of cases, the procedure and the time-limit prescribed under the Act and the Rules are required to be strictly adhered to and followed. If there is proper mindset to do so on the part of all concerned, delay in disposal to a large extent could be avoided.

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173. PRESS AND REGISTRATION OF BOOKS ACT, 1867- Sec. 7

Defamatory news- Presumption u/s 7 of the Act- Nature of- If is against Editor but not against Chief Editor, Resident Editor or Managing Editor- Still complainant can allege and prove that they were responsible for defamatory news.

K.K. Mathew Vs. K.A. Abraham & Ors.

Judgment dt. 23.8.02 by the S.C. in Cr. Appeal. No. 701/98 reported in (2002) 6 SCC 670

Held :

The provisions contained in the Act clearly go to show that there could be a presumption against the Editor whose name is printed in the Newspaper to the effect that he is the Editor of such publication and that he is responsible for selecting the matter for publication. Though, a similar presumption cannot be drawn against the Chief Editor, Resident Editor or Managing Editor, nevertheless, the complainant can still allege and prove that they had knowledge and they were responsible for the publication of the defamatory news item. Even the presumption under Section 7 is a rebuttable presumption and the same could be proved otherwise. That by itself indicates that somebody other than editor can also be held responsible for selecting the matter for publication in a newspaper.

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174. EVIDENCE ACT, 1872- SEC. 32

Dying declaration- Mental fitness of the maker-Doctor's Certificate is not a sine qua non-Voluntary and truthful nature of the declaration can be established otherwise.

Laxman Vs. State of Maharashtra

Judgment dt. 27.8.02 by the S.C. in Cr. Appeal. No. 608/01 reported in (2202) 6 SCC 710

NOTE : In ***Koli Chunilal Savji Vs. State of Gujarat (1999) 9 SCC 562*** it was held by a three Judge Bench of the Supreme Court that the ultimate test is whether the dying declaration can be held to be a truthful one and voluntarily given. It was further held that before recording the declaration the officer concerned must find that the declarant was in a fit condition to make the statement in question. In ***Paparambaka Rosamma V. State of A.P. (1999) 7 SCC 695*** another three Judge Bench of the Supreme Court held that "In the absence of medical certification that the injured was in a fit state of mind at the time to making the declaration, it would be very much risky to accept the subjective satisfaction of a Magistrate who opined that the injured was in a fit state of mind at the time of making a declaration". A five Judge Bench of the Apex Court in the above case after considering both the above pronouncements held that the law laid down in Paparambaka's case has been too broadly stated and is not the correct enunciation of law. The Apex Court observed that it is indeed a hypertechnical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind especially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answer elicited was satisfied that the patient was in a fit state of mind whereafter he recorded the dying declaration. Therefore, the judgment of the Court in ***Paparambaka Rosamma V. State of A.P.*** (Supra) must be held to be not correctly decided and we affirm the law laid down by this Court in ***Koli Chunilal Saviji V. State of Gujarat*** **(Supra).**

The Court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion.

But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable.

What is essentially required is that the person who records dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and, therefore, the voluntary and truthful nature of the declaration can be established otherwise.

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175. CRIMINAL TRIAL :

Circumstance of last seen together-Evidentary Value of.
Mohibur Rahaman and Anr. Vs. State of Assam
Judgment dt. 21.8.02 by the S.C. in Cr. Appeal No. 550/2001 reported in (2002) 6 SCC 715

Held :

The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. There may be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide.

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176. CIVIL PROCEDURE CODE- Sec. 51

Arrest and detention of Judgment debtor-Object and scope of Sec. 51.
Prakash Bhagwani Vs. Sammati Food Products Pvt. Ltd. reported in 2002 (3) MPLJ 344

Held :-

Section 51, Civil Procedure Code provides that one of the modes of the execution of a decree is "arrest and detention" of the judgment-debtor in civil prison. The proviso to this section restricts the power of the executing Court to direct the arrest and detention of the Judgment-debtor in execution of the decree for payment of money. The object of the proviso is to afford protection to indigent and honest debtors. Therefore, mere non-payment of the amount of the decree is not enough to send the judgment-debtor to prison. But if the conduct of the judgment-debtor is dishonest or contumacious he is liable to be arrested and detained. The judgment-debtor is not protected if there is element of bad faith in his conduct. If he has the means to pay and still he refuses or neglects to honour his obligation under the decree, he becomes

liable to imprisonment under section 51, Civil Procedure Code. In short, honest judgment-debtors must be protected and dishonest ones can be punished.

The leading case on the point is the decision of the Supreme Court in ***Jolly George vs. Bank of Cochin, AIR 1980 SC 470*** where it has been laid down while interpreting section 51, Civil Procedure Code that the simple default to discharge is not enough. There must be some element of bad faith beyond mere indifference to pay, some deliberate or recusant disposition in the past or, alternatively, current means to pay the decree or a substantial part of it. The provision emphasizes the need to establish not mere omission to pay but an attitude of refusal on demand verging on dishonest disowning of his obligation under the decree. In this decision section 51, Civil Procedure Code providing for arrest and detention as one of the modes of the execution of the decree has been held to be constitutionally valid even in face of Article 21 of the Constitution and Article 11 of the International Covenant on Civil and Political Rights which provides that no one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.

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177. LAND ACQUISITION ACT- Sec. 5-A

Land acquired for one public purpose may be diverted for another public purpose.

Rambharose And Ors Vs. State of M.P. And Ors. reported in 2002 (3) MPLJ 378

Held :

It is urged that the land was initially acquired for industrial housing colony of BHEL, workers and thereafter it could not have been handed over to the M.P. Housing Board. The aforesaid submission is totally devoid of merit inasmuch as the land acquired for a particular purpose can always be diverted to another public purpose. It is well settled in law that construction of houses for allotment of the same to various sections of the society is a public purpose and the land can be acquired for the same.

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178. M.P. MADHYASTHAM ADHIKARAN ADHINIYAM, 1983-SEC. 2(i), 7 and 20

'Works Contract'- Meaning and connotation of- Kamini Malhotra Vs. State of M.P. and Ors. reported in 2002 (3) MPLJ 389

Held :

It is clear that the word 'any' in section 2 (i) of the Adhiniyam appears to have a very wide spectrum, because it relates to the execution of any work relating to construction, repairs or maintenance of 'any' building or superstructure, tank, canal, reservoir, etc. The repetition of word 'any' in the said definition prior to the word 'Work' as well as before the nature of construction, e.g. building, superstructure, etc., clearly indicates the intention of legislature to provide for its wide amplitude and application. Therefore, it appears that the definition of 'Works Contract' as given in section 2(i) of the Act, applies to all works of construction, repairs or maintenance of all types of buildings, superstructures, reservoirs, tanks, etc.

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179. N.D.P.S. ACT, 1985- Sec. 50

Chance recovery from the person of the accused-Held, Sec. 50 not applicable.

Vikram Vs. State of M.P.

2002 (3) MPLJ 383

Held :

As the opium was found on the person of the accused it was no doubt a case of "personal search". But it was a case of chance recovery. The Station Officer had no prior information that the accused was coming with the opium in his possession. The Constitution Bench of the Supreme Court has held in ***State of Punjab vs. Baldev Singh, AIR 1999 SC 2378*** in para 12 : "However, if the empowered officer, without any prior information as contemplated by section 42 of the Act makes a search or causes arrest of person during the normal course of investigation into an offence or suspected offence and on completion of that search, a contraband under the NDPS Act is also recovered, the requirements of section 50 of the Act are not attracted." To the same effect was the law laid down by the Supreme Court in the earlier decision in ***State of Punjab vs. Balbir Singh, AIR 1994 SC 1872.***

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180. SERVICE LAW :

Departmental enquiry- Record of preliminary enquiry need not be supplied to the delinquent employee.

Shrikishan Mittal Vs. UCO Bank and others, 2002 (4) MPLJ 39

Held :

As far as supplying the records of preliminary enquiry is concerned, the preliminary enquiry was conducted only for the purpose of prima facie assessment of case. After the chargesheet was issued the report of preliminary enquiry, the statement of witnesses were not at all considered. The proceedings of the preliminary enquiry were not part of the departmental enquiry. The enquiry officer has not considered the same and has recorded the finding on the basis of the material produced before him. As the records of the preliminary enquiry were not part of the enquiry proceedings it was not necessary to supply the same to the petitioner.

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181. EVIDENCE ACT - SECTION 32

Dying Declaration- Admissibility- Imminent expectation of death not a condition of admissibility- Infection developing into the injuries caused to the deceased resulting in his death- Held, infection might have accelerated death, still death was due to injuries.

Roop Singh Vs. State of M.P.

2002 (4) MPLJ 136

Held :

Section 32 of the Evidence Act which is relevant for the present purposes provides that the statement of a relevant fact made by a person who is dead is itself a relevant fact when the statement is made by a person as to the cause of his death, or

as to any of the circumstances which resulted in his death, in cases in which the cause of that person's death comes into question. Such statement is relevant whether the person who made it was or was not, at the time when it was made, under expectation of death. Thus according to law engrafted in this section it is not required that the maker of the statement should be in expectation of imminent death. It is well settled that if the Court is satisfied that the dying declaration is true and voluntary it can form the basis for conviction. The statement of the deceased showing the circumstances under which the injuries came to be inflicted is admissible in evidence. It is true that where the a injury alleged to have been caused by the accused to the deceased is not shown to have "proximal connection" with the death of the deceased, the statement of the deceased cannot be said to be a statement as to the cause of death or as to any of the circumstances which resulted in his death. If the death is due to a cause de hors the injuries the statement of the deceased as to the injuries may not come with in the ambit of section 32. But simply because there was infection in the injuries sustained at the hands of the accused it would not take the case out of its ambit. The infection might have been due to the injuries and could not have been controlled by surgical intervention or medical treatment but that would not be an independent cause of death. Such infection might have accelerated the death. But in such a case the nexus or the proximal connection between the injuries and death is not lost or snapped. The infection may be the natural consequence of the injuries. The surgical intervention is needed to prevent the infection and to save the life of the deceased but if the surgery or medical treatment does not work the cause of death would still be the injuries at the hands of the accused.

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182. PRACTICE AND PROCEDURE :

Disposal of two separate suits by common judgment- Held, the Court has no such jurisdiction unless parties have agreed for such a course.
Nathuram Rakhabdas and others Vs. Ramesh Chand
2002 (4) MPLJ 146

As a matter of fact trial court has no jurisdiction to pass such a judgment and decree in two separate civil suits by common judgment and decree after reading and considering the pleading of parties and evidence adduced in both the civil suits by reading the evidence of one case in another case and therefore, the common judgment and decree passed by trial court in both the Civil Suits Nos. 13-A/99 and 14-A/99 decided on 20th November, 2000 are without jurisdiction. The Supreme Court has long back ruled in ***Mitthulal and another Vs. State of M.P., 1975 MPLJ 137 (SC)= 1975 JLJ 432 as under :-***

(1) Practice- Case should be decided on the evidence recorded in that case-evidence recorded in another case-cannot be considered either in Civil or Criminal case.

The High Court could not decide the appeal before it by taking into account evidence recorded in another case, even though it might be what is loesely called a cross case. It is elementary that each case must be decided on the evidence recorded in it and evidence recorded in another case cannot be taken into account in

arriving at the decision. ***Even in civil cases this cannot be doen unless the parties are agreed that the evidence in one case may be treated as evidence in the other.*** Much more so in criminal cases would this be impermissible. It is doubtful whether the evidence recorded in one criminal case can be treated as evidence in the other, even with the consent of the accused.

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183. CRIMINAL PROCEDURE CODE, 1973-Section 357 (3)
Award of compensation- State cannot be directed to pay compensation awarded against accused.
Mangalia Vs. State of M.P.
2002 (4) MPLJ 166

Held :

In the scheme contemplated under Section 357, Criminal Procedure Code there appears no scope for direction to the State to pay the amount of compensation that has been awarded against the accused. If the learned trial Court was convinced and satisfied accepting the arguments of the learned defence counsel in the trial Court that the accused had no means to pay fine, it could have taken notice of this fact. This aspect of inability of the accused for want of means to pay the compensation was a relevant fact and circumstance for determination of the amount of compensation. If the accused himself was not in a position to pay a huge amount of Rs. 25,000/- a lesser amount of compensation should have been determined, but it does not appeal to any logic that an amount should have been awarded which the accused was not in a position to pay and therefore, a direction to the State to pay amount to the victim and then to realize and recover from the accused.

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184. PREVENTION OF CORRUPTION ACT, 1947- Section 5 (1) (d), 5 (2) and General Clauses Act- Section 6 (a) and 6 (e)
Framing of charge- Offence committed when old Act was in force- Framing charges under old Act after its repeal by Prevention of Corruption Act, 1988- Not illegal.
(ii) Exoneration from departmental enquiry is inconsequential if there is sufficient ground for proceeding against the accused.
Amrit Lal Vs. State of M.P.
2002 (4) MPLJ 183

In the case of ***P.V. Mohammad Bermay Sons Vs. Director of Enforcement AIR 1993 SC 1188*** similar question was raised before the Supreme Court which has been answered in negative. The relevant paragraph is as under :-

> "Sri Tulsi, learned Addl. Solicitor General placing reliance in ***O. Abdual Aziz Vs. Addl. Director of Enforcement, AIR 1983 Mad 59 and AKL Labbi Thambi Maraicar Vs. Govt. of India, Enforcement Directorate, AIR 1983, Madras 102,*** contended that in view of section 81 (2) of the Act read with section 6 of the General Clauses Act, the power of the respondents to investigate and enforce the liability or penalty incurred under the repealed Act is saved, though the Act 7 of 1947 has been repealed under

sub-section (2) of section 81 of the Act. The contention of the respondent that the Repealed Act after the Act had come into force in 1973, the Repealed Act is a dead corpse and no life into it could be blown with the aid of section 81 (2) of the Act or section 6 of the General Clauses Act. We find no force in the contention. The effect of the repealed Act by operation of clause (e) of the General Clauses Act read with sub-section (2) of section 81 is that though the Act obliterates the operation of Act 7 of 1947, ***despite its repeal, the penalty, liability, forfeiture or prosecution for acts done while the repealed Act was in force were kept alive, though no action thereunder was taken when the repealed Act was in force.*** The rights acquired or accrued or the liabilities incurred or any penalty. forfeiture or punishment incurred during its operation are kept alive. Investigations to be made or any remedy which may have been available before the repeal be enforced are also preserved. Such rights, liabilities, penalty, forfeiture, or punishment due to repeal "shall not lapse". The saving clause thus aimed to preserve the legal effect and consequences of thing done though those effects and consequences projected to post repealed period. The things done adumbrated in section 81 (2) of section 6 of the General Clauses Act or penalty, or punishment incurred would envisage that the things already done or liability, penalty, punishment or forfeiture incurred though happened before the Act came into force. Section 81 (2) of the Act empowers to effectuate the liabilities, penalties etc, as if they have been in existence and amenable to be pursued under the Act or under the Repealed Act by operation of section 6 of General Clauses Act. What is unaffected by repeal of the Act 7 of 1977 is a right accrued etc. There is distinction between legal proceeding for enforcing a right acquired or accrued or liability, penalty, forfeiture, punishment incurred and the legal proceedings for acquisition of right, the former is saved whereas the latter is not. In spite of repeal the right to investigation or to take legal proceedings remain unaffected and preserved as if the old Act continues to be operative. What remains to be done after the Act came into force, is the quantification, if necessary after due investigation and legal proceedings and if proved to impose the penalty, forfeiture or punishment. The Court takes congnizance of the offence and not the offender or the acts done. What the Court is to enquire into is whether the Act is incompatible with the repealed Act and whether it manifested any contrary intentions to the repealed Act. Unless a different intention has been manifested in the Act, the Repealed Act would continue to be operative. Even in a case of bare repeal accompanied by a fresh legislation on the same subject, ***the provisions of the new Act will have to be looked into to find where and how far the new Act envisages a contrary intention affecting the operation of section 6 of the General Clauses Act. Unless such contrary intention is manifested, liabilities, penalties, forfeiture or punishment under the Repealed Act will continue to exist and remain in force by operation of section 6 of the General Clauses Act."***

(ii) With regard to exoneration from the departmental enquiry, in the submission of the learned counsel, there is no force in the arguments. In the case of ***Superintendent of Police (CBI) Vs. Deepak Coudhari and Ors., 1996 Cr.L.J. 405*** the Supreme Court has held that Departmental exoneration by the Disciplinary Authority is also not relevant. What is necessary and material is whether the facts collected during investigation would constitute the offence for which sanction has been sought for. The Supreme Court in the case of ***State of M.P. Vs. Shriramsingh, AIR 2000 SC 870*** has held in paragraphs 9 and 10 that it is a social legislation defined to curb illegal activities of the public servants and is designed to be liberally construed so as to advance its object. Procedural delay and technicalities of law should not be permitted to defeat the object sought to be achieved by the Act. The overall public interest and the social object is required to be kept in mind while interpreting various provisions of the Act and decided cases under it.

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185. CRIMINAL TRIAL :

Murder Case- Recovery of dead body- Not an essential Ingredient to establish murder.

(ii) Murder case- Implicitly otherwise proved- Absence of motive will not hamper safe conviction.

(iii) Murder case- False answer by accused regarding an inculpatory circumstances- It provides a missing link in completing the chain.

Mani Kumar Thapa Vs. State of Sikkim

Judgment dt. 19.8.02 by the S.C. in Cr. Appeal No. 958/ reported in (2002) 7 SCC 157

Held :

It is a well-settled principle in law that in a trial for murder, it is neither an absolute necessity nor an essential ingredient to establish corpus delicti. The fact of the death of the deceased must be established like any other fact. Corpus delicti in some cases may not be possible to be traced or recovered. There are a number of possibilities where a dead body could be disposed of without a trace, therefore, if the recovery of the dead body is to be held to be mandatory to convict an accused, in many a case the accused would manage to see that the dead body is destroyed which would afford the accused complete immunity from being held guilty or from being punished. What is therefore required in law to base a conviction for an offence of murder is that there should be reliable and plausible evidence that the offence of murder like any other factum of death was committed and it must be proved by direct or circumstantial evidence albeit the dead body may not be traced.

(ii) If the prosecution is able to establish beyond all reasonable doubt from other circumstantial evidence that it is the accused (including the appellant) alone who could have committed the murder, the absence of the motive will not hamper a safe conviction.

(iii) This Court in the case of ***State of Maharashtra V. Suresh (2000) 1 SCC 471,*** has held that a false answer offered by the accused when his attention was drawn to any inculpating circumstance would render such circumstances as capable of inculpating him. The Court also held that in such a situation a false answer can also be counted as providing "a missing link" in completing the chain.

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186. CRIMINAL TRIAL :

Identification of dead body, cause of death and recovery of weapon are important factors to the established case otherwise established by prosecution- Non-establishment of the aforesaid factors not fatal to prosecution case.

Lakshmi And Ors. Vs. State of U.P.

Judgment dt. 29.8.02 by the S.C. in Cr. Appeal No. 619/2000 reported in (2002) 7 SCC 198

Held :

Undoubtedly, the identification of the body, cause of death and recovery of weapon with which the injury may have been inflicted on the deceased are some of the important factors to be established by the prosecution in an ordinary given case to bring home the charge of offence under Section 302 IPC. This, however, is not an inflexible rule. It cannot be held as a general and broad proposition of law that where these aspects are not established, it would be fatal to the case of the prosecution and in all cases and eventualities, it ought to result in the acquittal of those who may be charged with the offence of murder. It would depend on the facts and circumstances of each case. A charge of murder may stand established against an accused even in the absence of identification of the body and cause of the death.

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187. INDIAN PENAL CODE, 1860-Sec. 96 and 97

Right of private defence- Exercise of- Use of force, extent of- Can not be weighted in Golden Scale.

Subramani and Ors. Vs. State of Tamil Nadu

Judgment dt. 28.8.02 by the S.C. in Cr. Appeal No. 1225/01 reported in (2002) 7 SCC 210

Held :

While it is true that in exercise of the right of private defence only such force may be used as may be necessary, but it is equally well settled that at a time when a person is faced with imminent peril of life and limb of himself or other, he is not expected to weigh in golden scales the precise force needed to repel the danger. Even if he, in the heat of the moment, carries his defence a little further than what would be necessary when calculated with precision and exactitude by a calm and unruffled mind, the law makes due allowance for it.

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188. INDIAN PENAL CODE, 1860- Sec. 149

Vicarious liability u/s 149- Ambit and Scope.

(ii) Constructive liability u/s 34- Can be fastened even in absence of specific charge if connecting facts are within knowledge of the accused.

Shiva Shankar Pandey and Ors. Vs. State of Bihar

Judgement dt. 9.9.02 by the S.C. in Cr. Appeal. No. 871/ 2000 reported in (2002) 7 SCC 229

Held :

The anatomy and ingredients of section 149 have been laid bare and its functional parameters set down in a series of pronouncements of this Court. Vicarious liability of the members of an unlawful assembly arises where the offence is committed by another member or members of the unlawful assembly if the commission of such offence is the common object of that assembly OR if the members of the unlawful assembly knew that the offence of the nature committed was likely to be committed though the common object may be something different. It is worth recapitulating the exposition of law in a recent decision of this Court in ***Umesh Singh V. State of Bihar (2000) 6 SCC 89.*** One of us (Rajendra Babu, J.) speaking for the Court summarized the scope and implications of the provision as under : (SCC pp. 92-93, para 4)

> "4. Vicarious liability, we may state, as rightly contended for the state by *Shri. B.B. Singh relying upon the decisions of this Court in* ***Shamshul kanwar V. State of U.P., (1995) 4 SCC 430*** *and* ***Bhajan Singh V. State of U.P., (1974) 4 SCC 568,*** extends to members of unlawful assembly only in respect of acts done in pursuance of the common object of the unlawful assembly or such offences as the members of the unlawful assembly are likely to commit in the execution of that common object. An accused whose case falls within the terms of section 149 IPC as aforesaid cannot put forward the defence that he did not with his own hand commit the offence committed in prosecution of the common object of the unlawful assembly or such as the members of the assembly knew to be likely to be committed in prosecution of that object. Everyone must be taken to have intended the probable and natural results of the combination of the acts in which he had joined. It is not necessary in all cases that all the persons forming an unlawful assembly must do some overt act. Where the accused had assembled together, armed with guns and lathis, and were parties to the assault on the deceased and others, the prosecution is not obliged to prove which specific overt act was done by which of the accused. Indeed the provisions of Section 149 IPC, if properly analysed will make it clear that it takes an accused out of the region of abetment and makes him responsible as a principal for the acts of each and all merely because he is a member of an unlawful assembly. We may also notice that under this provision, the liability of the other members for the offence committed during the continuance of the occurrence rests upon the fact whether the other members knew beforehand that the offence actually committed was likely

to be committed in prosecution of the common object. Such knowledge can reasonably be intended (sic inferred) from the nature of the assembly, arms or behaviour, at or before the scene of action. If such knowledge may not reasonably be attributed to the other members of the assembly then their liability for the offence committed during the occurrence does not arise."

(ii) The absence of a specific charge under Section 34 IPC cannot be said to have caused any prejudice to the two appellants as the fact giving rise to constructive criminal liability were well known to them from the beginning and the case which they have to meet under Section 34 is substantially the same as the prosecution put forward. The ruling of this Court in ***Bhoor Singh V. State of Punjab, (1974) 4 SCC 754*** is quite relevant in this context.

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189. CRIMINAL TRIAL :

Appreciation of evidence- Factors to be seen.
Hardeep Vs. State of Haryana and another
Judgment dt. 16.8.02 by the S.C. in Cr. Appeal No. 257/01 reported in (2002) 7 SCC 11

Held :

It may be observed, in criminal cases the Court cannot proceed to consider the evidence of the prosecution witnesses in a mechanical way. The broad features of the prosecution case, the probabilities and the normal course of human conduct of a prudent person are some of the factors which are always kept in mind while evaluating the merit of the case. No fixed formula can be adopted that in case some of the accused persons implicated by the eyewitnesses have been acquitted, therefore, others must also be necessarily acquitted nor that whatever be the facts and circumstances of the case but in case an eyewitness states to have seen the occurrence sans contradictions in his own statement, must always be believed and acted upon. More particularly, where the circumstances warrant application of due care and caution in appreciating the statements of the witnesses.

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190. CRIMINAL TRIAL :

Circumstantial evidence- Essential ingredients to prove guilt by circumstantial evidence.
Vithal Tukaram More & Ors Vs. State of Maharashtra
Judgment dt. 23.7.02 by the S.C. in Cr. Appeal No. 801/01 reported in (2002) 7 SCC 20

Held :

In the case of ***State of U.P. V. Dr. Ravindra Prakash Mittal, (1992) 3 SCC 300,*** this Court has held that the essential ingredients to prove guilt of an accused by circumstantial evidence are :

(a) the circumstances from which the conclusion is drawn should be fully proved; (b) the circumstances should be conclusive in nature; (c) all the facts so established

should be consistent only with the hypothesis of guilt and inconsistent with innocence; (d) the circumstances should to a moral certainty, exclude the possibility of guilt of any person other than the accused.

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191. CIVIL PROCEDURE CODE, 1908-Sec. 9

Order of the Civil Court- Question of lack of Jurisdiction- Proper course- The aggrieved individual or authority should approach the Civil Court inviting its attention to relevant provision of law.

Prakash Narian Sharma Vs. Burmah Shell Cooperative Housing Society Ltd.

Judgment. dt. 21.8.02 by the S.C. in civil No. 5180/02 reported in (2002) 7 SCC 46

Held :

It will be a dangerous proposition to be laid down as one of law that any individual or authority can ignore the order of the civil court by assuming authority upon itself to decide that the order of the civil court is one by coram non judice. The appropriate course in such case is for the person aggrieved first to approach the Civil Court inviting its attention to the relevant provisions of law and call upon it to adjudicate upon the question of its own jurisdiction and to vacate or recall its order if be one which it did not have jurisdiction in law to make. So long as this is not done, the order of the competent court must be obeyed and respected by all concerned. A judicial order, not invalid on its face, must be given effect to entailing all consequences, till it is declared void in a duly constituted judicial proceedings.

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192. CIVIL PROCEDURE CODE, 1908- O. 21, Rules 97, 99 And 101

Execution of decree- Resistance to delivery of possession by third person- Separate civil suit by the third person for declaration against the decree- Proper course- The Executing Court should decide the objections of the third person.

Tanzeem-E-Sufia Vs. Bibi Haliman and ors. Judgment dt. 3.9.02 by the S.C. in Civil Appeal No. 5457/02, reported in (2002) 7 SCC 50

Held :

We find that in the case in hand the appellant is claiming its independent right over the property and asserts its possession thereof. Order 21 Rule 101 clearly provides that all questions relating to right, title or interest in property relevant to the adjudication of the application, shall be dealt with the application and not by a separate suit. The High Court therefore, erred in refusing to hear the appellant on the ground that it has already filed a suit for declaration of its title and for declaration that the decree passed in Title Suit No. 8 of 1983 is not binding on it. The provision contained under Order 21 Rule 101 CPC seems to have escaped the notice of the High Court while passing the order. We would also like to observe that the reasoning given by the executing court while rejecting the application of the appellant as indicated in the order of the High Court, that the remedy of the appellant would only lie

by moving an application under Order 21 Rule 99 CPC is also erroneous as in the case of ***Brahmdeo Chaudhary, (1998) 4 SCC 543*** it has been held that it should not be insisted that possession be delivered first and the objector may later on move the court under Order 21 Rule 99 CPC.

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193. INDIAN PENAL CODE, 1860- Sec. 149, 302 and 302/149

Accused Charged u/s 302/149- Can be convicted u/s 302 simpliciter- Charge u/s 302/149 can be converted in to one u/s 302/34 if criminal act by persons less then five in furtherance of common intention is proved.

Nallabothu Venkaiah Vs. State of A.P. Judgment dt. 20.8.02 by the S.C. in Cr. Appeal No. 517/2000 reported in (2002) 7 SCC 117

Held:

On an analytical reading of a catena of decisions of this Court, the following broad proposition of law clearly emerges: (a) the conviction under Section 302 simpliciter without aid of Section 149 is permissible if overt act is attributed to the accused resulting in the fatal injury which is independently sufficient in the ordinary course of nature to cause the death of the deceased and is supported by medical evidence; (b) wrongful acquittal recorded by the High Court, even if it stood, that circumstances would not impede the conviction of the appellant under Section 302 read with Section 149 IPC (c) charge under Section 302 with the aid of Section 149 could be converted into one under Section 302 read with Section 34 if the criminal act done by several persons less than five in number in furtherance of common intention is proved.

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194. M.P. ACCOMMODATION CONTROL ACT, 1961

Sec. 12 (1) (f) and 12 (1) (c)-Eviction on the ground of bonafide requirement- Proof of ownership-The concept of ownership in landlord-tenant litigation differs from the one in title suit.

(II) Disclaimer of title-When a ground for eviction under section12 (1)(c).

Sheela And Ors. Vs. Firm Prahlad Rai Prem Prakash reported in 2002 (II) MPJR 354 SC

Held :

Clause (f) contemplates a claim for eviction being maintained by a owner-landlord and not a landlord merely. Though of course, we may hasten to add, that the concept of ownership in a landlord- tenant litigation governed by Rent Control Law has to be distinguished from the one in a title suit. Ownership is a relative term the import whereof depends on the context in which it is used. In Rent Control Legislation, the landlord can be said to be owner if he is entitled in his own legal right, as distinguished from for and on behalf of someone else, to evict the tenant and then to retain, control, hold and use the premises for himself. What may suffice and hold good as proof of ownership in a landlord tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in a title suit. In ***M.M. Quasim Vs. Manoharlal Sharma-(1981) 3 SCC 36,*** it was held that an 'owner-landlord' who can seek eviction on the ground of his personal requirement is one who has a right

against the whole world to occupy the building in his own right and exclude anyone holding a title lesser than his own. In ***Dilbagrai Punjabi Vs. Sharad Chandra (1988) Supp SCC 710,*** this Court held that it was essential to sustain a claim of eviction under Section 12 (1) (f) of the Act to establish that the plaintiff was the owner of the premises. However, the Court upheld the ownership of the landlord having been proved on the basis of an admission of the ownership of the plaintiff made by the defendant in reply to notice given before the institution of the suit and the recital of the name of the plaintiff as the owner of the property contained in the receipts issued by the landlord to the tenant over a period of time. Thus, the burden of proving ownership in a suit between landlord and tenant where the landlord- tenant relationship is either admitted or proved is not so heavy as in a title suit and lesser quantum of proof may suffice than what would be needed in a suit based on title against a person setting up a contending title while disputing the title of the plaintiff. Nevertheless pleading and proving ownership, in the sense as it carries in Rent Control Law, is one of the ingredients of the ground under section 12 (1) (f) of the Act.

(ii) In our opinion, denial of landlord's title or disclaimer of tenancy by tenant is an act which is likely to effect adversely and substantially the interest of the landlord and hence is a ground for eviction of tenant within the meaning of clause (c) of sub-section (1) of Section 12 of M.P. Accommodation Control Act, 1961. To amount to such denial or disclaimer, as would entail forfeiture of tenancy rights and incur the liability to be evicted, the tenant should have renounced his character as tenant and in clear and unequivocal terms set up title of the landlord in himself or in a third party. A tenant bona fide calling upon the landlord to prove his ownership or putting the landlord to proof of his title so as to protect himself (i.e. the tenant) or to earn a protection made available to him by Rent Control Law but without disowning his character of possession over the tenancy premises as tenant cannot be said to have denied the title of landlord or disclaimed the tenancy. Such an act of the tenant does not attract applicability of Section 12 (1) (c) abovesaid. It is the intention of the tenant, as culled out from the nature of the plea raised by him, which is determinative of its vulnerability.

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195. S.C. AND S.T. (PREVENTION OF ATROCITIES) RULES, 1995-Rule 7
Investigation in terms of rule 7- Investigation by Sub-Inspector who was not complaint to do so- Held, defect is incurable-Proceedings quashed.
Chunnilal Vs. State of M.P.
reported in 2002 (II) MPJR 399

Held :

On due consideration of the rival submissions, I am of the opinion that the investigation has been done by a Police Officer who was not competent to do so and the said defect is incurable, which rather goes to the root of the matter. The Andhra Pradesh High Court in the matter of ***E. Seshaiah Vs. State of A.P. and another 2001 Cr.L.J. NOC 10 (A.P.),*** held that the investigation done and witnesses examined by S.I. of Police, even in the face of verification of the said investigation by the Sub-Divisional Police Officer and chargesheet filed under his signature, was not a

sufficient compliance of Rule 7. Further the Madras High Court in the matter of ***Chinnasamy vs. State*** also took a similar view relying on an earlier decision of the Andhra Pradesh High Court in the matter of ***D. Ramalinga Reddy Vs. State of Andhra Pradesh (1999 Cr.L.J. 2918=1999 (2) Crimes 343).***

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196. CRIMINAL PROCEDURE CODE, 1973- Sec. 397 (2)
Revisional jurisdiction- Order- Refusing to allow question in cross-examination-Not a revisable order.
Sunder Lal Patwa Vs. Shri Digvijay Singh & Anr.
reported in 2002 (II) MPJR 401

Held :

This Court can not tread upon the jurisdiction of the trial magistrate and monitor recording of evidence by interfering with an order which appears to be even less than interlocutory in nature, simply because the parties to the case are important political personalities.

The other aspect of the case which this Court is to have regard include the twin duties of the trial Court in the course of recording of evidence, namely, to search for truth and deliver justice. The permissible and impermissible conducts of a trial Judge for his effective intervention during recording of evidence have been precisely laid down in clean clear terms by the Hon'ble Apex Court in the matter of ***Makhan Lal Bengal Vs. Manas Bhunia & others (AIR 2001 SC 490), as :***

> "... needs to effectively control examination, cross- examination and re-examination of the witnesses so as to exclude such questions being put to the witnesses as the law does not permit and to relieve the witnesses from the need of answering such questions which they are not bound to answer."
>
> 7. The Hon'ble Apex Court has further observed that :
>
> "the power to disallow questions should be effectively exercised by reference to Ss. 146, 148, 150, 151 and 152 of the Evidence Act by excluding improper and impermissible questions. The examination of the witnesses should not be protracted and the witness should not be harassed. The cross-examiner must not be allowed to bully to take unfair advantage of the witness..."

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197. CIVIL PROCEDURE CODE, 1908 - O-39, R 1 and 2
Interlocutory injunction- Test to be applied for grant of interim injunction.
Hindustan Petroleum Corpn. Ltd. Vs. Sriman Narayan & Anr.
Judgment dt. 9.7.02 by the S.C. in Civil Appeal. No. 3661/02 reported in (2002) 5 SCC 760

Held :

It is elementary that grant of an interlocutory injunction during the pendency of the legal proceeding is a matter requiring the exercise of discretion of the Court. While exercising the discretion the Court normally applies the following tests :

(i) Whether the plaintiff has a prima facie case,

(ii) Whether the balance of convenience is in favour of the plaintiff; and

(iii) Whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.

8. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the exercise of the legal right asserted by the plaintiff and its alleged violation are both contested and remain uncertain till they are established on evidence at the trial. The relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before which that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience" lies. ***(See Gujarat Bottling Co. Ltd. v. Coca Cola Co., (1995) 5 SCC at p. 574.)***

9. In ***Dorab Cawasji Warden v. Coomi Sarab Warden (1990) 2 SCC 117*** this Court, discussing the principles to be kept in mind in considering the prayer for interlocutory mandatory injunction, observed : **(SCC pp. 126-27, paras 16-17)**

> "16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are :
>
> (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.
>
> (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
>
> (3) The balance of convenience is in favour of the one seeking such relief.

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198. CRIMINAL PROCEDURE CODE, 1973- Sec. 319

Trial of an accused summoned u/s 319- Import of phrase 'could be tried together with the accused'- Held, this requirement is directory, not mandatory but denovo trial is a mandatory requirement.

Shashikant Singh Vs. Tarkeshwar Singh And Anr. Judgment dt. 24.4.02 by the S.C. in Cr. Appeal No. 547/02 reported in (2002) 5 SCC 738

NOTE : Para 7,8, and 9 of the report reproduced in toto:

Held :

7. The effect of the conclusion of the trial against the accused who was being proceeded with when the order was passed under Section 319 (1) for proceeding against the newly added person, is to be examined in the light of sub-section (4) of Section 319 which stipulates a de novo trial in respect of the newly added persons and certain well-settled principles of interpretation.

8. When a statute is passed for the purpose of enabling something to be done, and prescribes the way in which it is to be done, it may be either an absolute enactment or a directory enactment. The difference being that an absolute enactemnt must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially. No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed. (Craies on Statute Law, 7th Edn., pp. 260-62.)

9. The intention of the provision here is that where in the course of any enquiry into, or trial of, an offence, it appears to the court from the evidence that any person not being the accused has committed any offence, the court may proceed against him for the offence which he appears to have committed. At that stage, the court would consider that such a person could be tried together with the accused who is already before the court facing the trial. The safeguard provided in respect of such person is that, the proceedings right from the beginning have mandatorily to be commenced afresh and the witnesses reheard. In short, there has to be a denovo trial against him. The provision of de novo trial is mandatory. It vitally affects the rights of a person so brought before the court. It would not be sufficient to only tender the witnesses for the cross-examination of such a person. They have to be examined afresh. Fresh examination-in-chief and not only their presentation for the purpose of the cross-examination of the newly added accused is the mandate of Section 319 (4). The words "could be tried together with the accused" in Section 319(1), appear to be only directory. "Could be" cannot under these circumstance be held to be "must be" . The provision cannot be interpreted to mean that since the trial in respect of a person who was before the court has concluded with the result that the newly added person cannot be tried together with the accused who was before the court when order under Section 319 (1) was passed, the order would become ineffective and inoperative, nullifying the opinion earlier formed by the court on the basis of the evidence before it that the newly added person ap-

pears to have committed the offence resulting in an order for his being brought before the court.

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199. M.P. ACCOMMODATION CONTROL ACT, 1961- Sec. 12 (1) (a)
Tender of rent- Mere posting of cheque to landlord not suffice to discharge legal obligation of tender of rent.
Gopichand Gupta Vs. Jain Plastic Industry
Judgment dt. 30.4.02 by the S.C. in Civil Appeal No. 3199/02 reported in 2002 (II) MPWN Note 110

Held :

This Court in the case of ***M.K. Mukunthan V. M. Pasupathi (2001) 6 SCC 13*** has held that the mere fact that the tenant has sent a cheque towards the rent by post would not by itself suffice to hold that the tender in question was legal. In the said judgment, this Court held that the Court will have to take surrounding circumstances to find out whether such postage of cheque was genuine and with an intention of paying the rent due. In the said case, taking into consideration the facts and circumstances of the case, this Court has held that the fact that the tenant had posted the cheque to the landlord which was returned back to the tenant with an endorsement "addressee not found" by itself was not sufficient to hold the tender legal because of the fact that the posting of cheque to the landlord was not in the normal course.

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200. CRIMINAL PROCEDURE CODE, 1973- Sec. 154 and 156 (1)
Head Constable while on patrolling duty arresting the accused and after recovery of unlicenced gun and cartridge from his possession registering FIR against him- Head Constable neither can be treated as complainant nor an aggrieved person- Investigation by him not illegal.
Jujhar Vs. State of M.P. reported in 2002 (4) MPHT 94

Held :

In criminal cases, at so many occasions, the offences are being detected by police personnel and party without having any FIR or complaint by any body in the Police Station as per provisions under Section 154 of the Cr.P.C. but, under that situation, the police party or personnel are required to take up the matter immediately and also investigate the same as per provisions of Section 156 (1) and (2) of the Cr.P.C. and after taking all steps required to be taken in investigation immediately at the spot, return to the police station and lodge or record the First information Report for registering the offence and give crime number. In this situation, they are writing at the column of complainant their own name and if the analogy as drawn in the case of ***Meghasingh Vs. State of Haryana (1995 Cr. L.J. 3988)*** is applied in all such cases the police party/personnel would be the complainant and investigation done by them would become illegal. But this is not the correct interpretation keeping in view the factual situation about the meaning of complaint which is clear from the facts and legal position decided by the Supreme Court in ***Bhagwansingh Vs. State of M.P., AIR 1976 SC 985.***

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PART - III

CIRCULARS / NOTIFICATIONS

MINISTRY OF HEALTH & FAMILY WELFARE (DEPARTMENT OF HEALTH) NOTIFICATION NO. G.S.R. 382 (E) DATED THE 28TH MAY 2002. PUBLISHED IN THE GAZETTE OF INDIA (EXTRAORDINARY) PART II SECTION 3 (i) DATED 28-5-2002 PAGES 2-3.

In exercise of powers conferred by Section 23 of the **Prevention of Food Adulteration Act, 1954 (37 of 1954),** the Central Government, after consultation with the Central Committee for food Standard, hereby makes the following rules further to **amend the Prevention of Food Adulteration Rules, 1955**, namely:-

1. (1) These rules may be called the **Prevention of Food Adulteration (3rd Amendment) Rules, 2002.**

(2) They shall come into force after three months from the date of their publication in the Official Gazette.

2. In the Prevention of Food Adulteration Rules, 1955 (hereinafter called as said rules) in rule 3, in sub-rule (2),-

(a) for the Table I, the following Table shall be substituted, namely:-

Name of the Central Food Laboratories (1)	Local Areas (2)
1. Central Food Laboratory, Kolkata-700016.	Arunachal Pradesh, Assam, Chhattisgarh, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Sikkim, Tripura, Uttaranchal and Union Territories of Andaman and Nicobar Island and Lakshadweep.
2. Central Food Laboratory, Mysore-570013.	Gujarat, Haryana, Himachal Pradesh, Maharashtra, Punjab, Uttar Pradesh and Union Territory of Chandigarh.
3. Central Food Laboratory, Pune-411001.	Andhra Pradesh, Delhi, Jammu and Kashmir, Karnataka, Kerala, Rajasthan and Tamil Nadu.
4. Central Food Laboratory, Ghaziabad-201001.	Bihar, Goa, Jharkhand, Madhya Pradesh, West Bengal, Union Territories of Dadar and Nagar Haveli, Daman and Diu and Pondicherry";

(b) in Table II,-

(i) against entry relating to the Central Food Laboratory, Kolkata, in column (2), in item 1, the following shall be added at the end, namely,-

"(xiv) Jharkhand";

(ii) against entry relating to the Central Food Laboratory, Ghaziabad, in column (2),

(A) in item 1, the following shall be added at the end, namely,-

"(x) Chhattisgarh;

(xi) Uttaranchal";

(B) in item 2, the following shall be added at the end, namely,-

"(vi) Uttaranchal";

3. In rule 4, of the said rules, after sub-rule (7), the following shall be inserted, namely,-

"(8) The fee payable in respect of analysis of samples of imported food analysed in any designated laboratory shall be Rs. 3000/- per sample payable by the importer".

4. In rule 43A of the said rules, in the Explanation, for the words "by means of any light, sound, smoke or gas", the words,- "by means of any light, sound, smoke, gas, print, electronic media, interent or website" shall be substituted.

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NOTIFICATION NO. F-16-927-2002- B-1-II DATED THE 12TH AUGUST 2002.-

Whereas, the State Government is of the opinion that having regard to the prevailing conditions in the State of Madhya Pradesh, it is necessary and expedient in the public interest that the acquisition, possession and carrying of arms and weapons of following description in public places in the whole of the State of Madhya Pradesh except at religious places and in purely religious processions and functions should be regulated :-

Trishul (Trident).- Shape with sharp Blades more than 4 (Four) inches long and 1½ (one and half) inches wide.

Now therefore, in exercise of the powers conferred by Section 4 of the **Arms Act, 1959 (No. 54 of 1959),** read with the Government of India, Ministry of Home Affairs, Notification No. G.S.R. 1309, dated the 1st October 1962, the State Government hereby directs that the said Section shall apply with effect from the date of publication of this Notification in the "Madhya Pradesh Gazette" to all the public places in the whole of the State of Madhya Pradesh except at religious places and in purely religious procession and function in respect of acquisition, possession or carrying weapon of following description in public places only, namely :-

Trishul (Trident).- Shape with sharp Blades more than 4 (Four) inches long and 1½ (one and half) inches wide.

[Published in M.P. Rajpatra (Asadharan) dated 12.8.2002 Page 766]

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PART - IV

LATEST IMPORTANT AMENDMENTS IN CENTRAL/STATE ACT

THE INDIAN STAMP (MADHYA PRADESH AMENDMENT) ACT, 2002 NO. 12 OF 2002*

[Received the assent of the Governor on the 8th August, 2002; assent first published in the "Madhya Pradesh Gazette (Extra-ordinary)" dated the 12th August, 2002].

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

Be it enacted by the Madhya Pradesh Legislature in the Fifty-third year of the Republic of India as follows:-

1. Short title and commencement.- (1) This Act may be called the Indian Stamp (Madhya Pradesh Amendment) Act, 2002.

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

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

3. Substitution of Schedule 1-A.- For Schedule 1-A to the Principal Act, the following Schedule shall be substituted, namely :-

"SCHEDULE-1A

Stamp Duty on Instruments

(See section 3)

Description of Instrument (1)	Proper Stamp Duty (2)
1. Acknowledgement of a debt exceeding five hundred rupees in amount or value, written or signed by or on behalf of debtor in any book (other than a banker's pass book) or on a separate piece of paper when such book or paper is left in the creditor's possession.	Two rupees.
2. Administration-Bond, including a bond given under sections 291, 375 and 376 of the Indian Succession Act, 1925 (39 of 1925) and Section 6 of the Government Saving's Bank Act, 1873 (5 of 1873).	The same duty as a bond (No. 12) for such amount.
3. Adoption Deed, that is to say, any instrument (other than a will) recording an adoption or conferring or purporting to confer an authority to adopt.	Five hundred rupees.

* Published in M.P. Rajpatra (Asadharan) dated 12-8-2002 Pages 754 (20-37).

Description of Instrument (1)	Proper Stamp Duty (2)
4. Affidavit. that is to say, a statement in writing purporting to be a statement of fact, signed by the person making it and confirmed by him on oath or, in the case of persons by law allowed to affirm instead of swearing, by affirmation. **Exemption.**- Affidavit or declaration in writing when made :- (a) as a condition of enrolment under the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950); (b) for the sole purpose of being filed or used in any Court or before the officer of any Court. (c) for the sole purpose of enabling any person to receive any pension or charitable allowance.	Ten rupees.
5. Agreement or memorandum of an agreement :-	
(a) If relating to the sale of bill of exchange.	One rupee for every rupees 10,000 or part thereof.
(b) (i) If relating to the purchase or sale of a Government Security.	One Rupee for every rupees 10,000 or part thereof of the value of the security at the time of its purchase or sale, as the case may be, subject to a maximum of rupees one thousand.
(ii) If relating to the purchase or sale of shares, scrips, bonds, debentures, debenture-stocks or any other marketable security of a like nature in or of any incorporated company or other body corporate.	One rupee for every rupees 10,000 or part thereof of the value of the security at the time of its purchase or sale, as the case may be.
(c) If relating to a permission granted by a manufacturer or owner of a business, knowhow, brand name, trademark or the like to another person to carry on business or other activity using the grantor's knowhow, brand name, trademark etc. i.e. the agreement of franchise.	Ten Thousand rupees.
(d) If relating to the construction of a building on a land by a person other than the owner or lessee of such land and having a stipulation that after	Two percent of the market value of the land.

Description of Instrument (1)	Proper Stamp Duty (2)
construction, such building shall be held jointly or severally by that other person and the owner or the lessee, as the case may be, of such land, or that it shall be sold jointly or severally by them or that a part of it shall be held jointly or severally by them and the remaining part thereof shall be sold jointly or severally by them.	
(e) If relating to sale of immovable property :-	
(i) When possession of the property is delivered or is agreed to be delivered without executing the conveyance.	The same duty as a 'conveyance (No. 20) on the market value of the property.
(ii) When possession of the property is not given.	One percent of the total consideration of the property set forth in the agreement or memorandum of agreement.
(f) If relating to hire-purchase of immovable property.	Five hundred rupees.
(g) If not otherwise provided for.	One hundred rupees.
Exemption.- Agreement or memorandum of an agreement :-	
(a) for or relating to the sale of goods or merchandise exclusively, not being a Note or Memorandum chargeable under article-41.	
(b) made in the form of tenders to the Central Government for or relating to any loan.	
6. Agreement relating to deposit of title deeds, pawn, pledge or hypothecation, that is to say, any instrument evidencing an agreement relating to :-	
(a) the deposit of title deeds or instrument constituting or being evidence of the title to any property whatever (other than a marketable security), where such deposit has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt.	0.5 percent of the amount secured by such deed, subject to a maximum of fifty thousand rupees.
(b) the pawn, pledge or hypothecation of movable property, where such pawn, pledge, or hypothecation has been made by way of security for the repayment of money advanced, or to be	

Description of Instrument (1)	Proper Stamp Duty (2)
advanced by way of loan or an existing or future debt :-	
(i) If such loan or debt is repayable on demand or more than three months from the date of the instrument, evidencing the agreement.	One percent of the amount secured, subject to a maximum of two lac rupees.
(ii) If such loan or debt is repayable not more than three months from the date of such instrument.	Half the duty payable under sub-clause (i) of Clause (b) of this article.
Explanation.- For the purposes of clause (a) of this article, notwithstanding anything contained in any judgement, decree or order of any court or order of any authority, any letter, note, memorandum or writing relating to the deposit of title deeds whether written or made either before or at the time when or after the deposit of title deeds is affected, and whether it is in respect of the security for the first loan or any additional loan or loans taken subsequently, such letter, note, memorandum or writing shall, in the absence of any separate agreement or memorandum of agreement relating to deposit of such title deeds, be deemed to be an instrument, evidencing an agreement relating to the deposit of title deeds.	
Exemption :-	
(a) Letter of hypothecation accompanying a bill of exchange.	
(b) Instrument of pawn or pledge of agriculture produce if unattested.	
7. Appointment in execution of a power, whether of trustees or of property, moveable or immoveable, where made by any writing not being a will.	One hundred rupees.
8. Appraisement or valuation, made otherwise than under an order of the court in the course of a suit.	One hundred rupees.
Exemptions :-	
(a) Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.	
(b) Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.	

Description of Instrument (1)	Proper Stamp Duty (2)
9. Apprenticeship deed, including every writing relating to the service or tuition of any apprentice, clerk or servant, placed with any master to learn any profession, trade or employment. **Exemption :-** Instrument of apprenticeship by which a person is apprenticed by or at the charge of any public charity.	Fifty rupees.
10. Articles of Association of a Company :-	
(a) where the company has no share capital.	One thousand rupees.
(b) where the company has nominal share capital or increased share capital.	0.15 precent of such nominal or increased share capital subject to a minimum of one thousand rupees and a maximum of five lac rupees.
Exemption.- Articles of any Association not formed for profit and registered under section 25 of the Companies Act, 1956 (1 of 1956).	
11. Award, that is to say, any decision in writing by an arbitrator or umpire, on a reference made otherwise than by an order of the Court in the course of a suit, being an award made as a result of a written agreement to submit present or future differences to arbitration and not being an award directing a partition.	Twenty rupees for every one thousand rupees or part thereof, of the amount or value of the property to which the award relates.
12. Bond, not being a debenture (No. 27) and not being otherwise provided for by this Act or by the Court Fees Act, 1870 (7 of 1870). **Exemption.-** Bond when executed by any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem.	Four percent of the amount or value secured.
13. Bottomry Bond, that is to say, any instrument whereby the master of a sea going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage.	The same duty as a Bond (No. 12) for the same amount.
14. Cancellation- Instrument of, if attested and not otherwise provided for. **Exemption.-** Instrument of cancellation of a will.	One hundred rupees.

Description of Instrument (1)	Proper Stamp Duty (2)
15. Certificate of Enrolment, under section 22 of the Advocates Act, 1961 (25 of 1961) issued by the State Bar Council of Madhya Pradesh.	Two hundred and fifty rupees.
16. Certificate of Practice as Notary, under sub-section (1) of Section 5 of the Notaries Act, 1952 (No. 53 of 1952), or endorsement of renewal of such certificates under sub-section (2) of the said section.	Five hundred rupees.
17. Certificate of Sale (in respect of each property put up as a separate lot and sold), granted to the purchaser of any property sold by public auction by a Civil or Revenue Court or Collector or other Revenue Officer.	The same duty as a conveyance (No. 22) for a market value equal to the amount of purchase money only.
18. Certificate or other document, evidencing the right or title of the holder thereof, or any other person, either to any shares, scrip or stock in or of any incorporated company or other body corporate, or to become proprietor of shares, scrip or stock in or of any such company or body.	One rupee for every one thousand rupees or a part thereof, of the value of the shares, scrip or stock.
19. Charter-Party, that is to say, any instrument (except an agreement for the hire of tug steamer) whereby a vessel or some specified principal part thereof is let for the specified purposes of the charterer, whether it includes a penalty clause or not.	Ten rupees.
20. Clearance List :-	
(a) If relating to the transactions for the purchase or sale of Government securities submitted to the clearing house of a stock exchange.	One rupee for every rupees 10,000 or part thereof in respect of each of the entries in such list on the value of securities calculated at the making up price or the contract price, as the case may be, subject to a maximum of rupees one thousand.
(b) If relating to the transactions for the purchase or sale of share, scrip, stock, bond, debenture, debenture-stock or other marketable security of a like nature in or of an incorporated company or other body corporate, submitted to the clearing house of a stock exchange.	One rupee for every rupees 10,000 or part thereof in respect of each of the entries in such list on the value of the securities calculated at the making up price or the contract price, as the case may be.

Description of Instrument (1)	Proper Stamp Duty (2)
21. Composition deed, that is to say, any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business under the supervision of inspectors nominated by the creditors or under letters of licence for the benefit of his creditors.	Five hundred rupees.
22. Conveyance, not being a transfer charged or exempted under No. 56.	Eight percent of the market value of the property which is the subject matter of conveyance: Provided that :- (a) where an instrument relates to the amalgamation or reconstruction of companies under the orders of High Court under section 394 of the Companies Act, 1956 (1 of 1956), or under the order of the Reserve Bank of India under section 44A of the Banking Regulation Act, 1949 (10 of 1949), the duty chargeable shall not exceed an amount equal to 7% of the market value of the immovable property transferred which is located within the State of Madhya Pradesh; or an amount equal to 0.7% of the aggregate of the market value of the shares issued or allotted in exchange or otherwise and the

Description of Instrument (1)	Proper Stamp Duty (2)
	amount of consideration paid for such transfer, whichever is higher.
	(b) when an instrument relates to an assignment of a debt the rate of duty applicable shall be 0.5 per cent on the amount of the debt assigned.
	(c) where an agreement to sell an immovable property is stamped with advalorem duty required for a conveyance and a sale deed in pursuance of such agreement is subsequently executed, the duty on such sale deed shall be the duty payable under the article less the duty already paid, subject to a minimum of Rs. 100.
	(d) where a power of attorney authorising the agent to sell immovable property is stamped with advalorem duty required for a conveyance and a sale deed is executed in pursuance of power of attorney between the executant of attorney and the person in whose favour it is executed, the duty on the sale deed shall be the duty payable un-

Description of Instrument (1)	Proper Stamp Duty (2)
	der the article less the duty already paid, subject to a minimum of Rs. 100.
	(e) where a mortgage deed is stamped with advalorem duty required for a mortgage under article 38 and a court decree in pursuance of a suit filed against the mortgaged property is executed, the duty payable on the decree shall be the duty payable under the article less the duty already paid under article 38 on the mortgage deed, subject to a minimum of Rs 100.
Exemption- Assignment of copyright under the Copyright Act, 1957 (14 of 1957).	
23. Copy or Extract, certified to be a true copy or extract by or order of any public officer under section 76 of the Indian Evidence Act, 1872 (1 of 1872) and not chargeable under the law for the time being in force relating to court fees.	Ten Rupees.
Exemptions :-	
(a) Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose.	
(b) Copy of, or extract from, any register relating to births, baptisms, namings, dedications, marriages, divorces, deaths and burials.	
24. Counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.	One hundred rupees.
Exemption.- Counterpart of any lease granted to a cultivator when such lease is exempted from duty.	

Description of Instrument (1)	Proper Stamp Duty (2)
25. Customs Bond or Excise Bond, that is to say, any bond given pursuant to the provisions of any law for the time being in force or to the directions of any officer of Custom or Excise for, or in respect of, any duties of Customs and Excise or for preventing frauds or evasions thereof or for any other matter or thing relating thereto.	One hundred rupees.
26. Delivery order in respect of goods, that is to say, any instrument entitling any person therein named or his assigns or the holder thereof, to the delivery of any goods lying in any dock or port or in any warehouse in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being executed by or on behalf of the owner of such goods, upon the sale or transfer of the property therein when such goods exceed in value hundred rupees.	Two rupees.
27. Divorce, instrument of, that is to say, any instrument by which any person effects the dissolution of his marriage.	Two hundred rupees.
28. Entry of certificate of marriage, in the register under the Special Marriage Act, 1954 or any other law for the time being in force.	Five rupees.
29. Exchange of Property.- Instrument of.	The same duty as a conveyance (No. 22) on the market value of the property of greater value which is the subject matter of Exchange.
30. Further Charge.- Instrument of, that is to say, any instrument imposing a further charge on mortgaged property:-	
(a) when the original mortgage is one of the description referred to in clause (a) of Article No. 38 (that is with possession).	The same duty as a conveyance (No. 22) for a market value equal to the amount of further charge secured by such instrument.
(b) when such mortgage is one of the description referred to in clause (b) of Article No. 38 (that is, without possession.)	

Description of Instrument (1)	Proper Stamp Duty (2)
(i) If at the time of the execution of the instrument of further charge, the possession of the property is given or agreed to be given under such instrument.	The same duty as a conveyance (No. 22) for a market value equal to the total amount of charge (including the original mortgage and any further charge already made) less the duty already paid on such original mortgage and further charge.
(ii) If possession is not so given.	The same duty as a Bond (No. 12) for the amount of the further charge secured by such instrument.
31. Gift.- Instrument of, not being a settlement (No. 52) or will or transfer (No. 56).	The same duty as a conveyance (No. 22) on the market value of the property which is the subject matter of the gift.
32. Indemnity Bond.	The same duty as security-bond (No. 51) for the same amount.
33. Lease, including an under lease, or sub-lease and any agreement to let or sub-let or any renewal of lease:-	
(a) Where by such lease, the rent is fixed and no premium is paid or delivered:-	
(i) where the lease purports to be for a term less than one year.	The same duty as a Bond (No. 12) for the whole amount payable or deliverable under such lease.
(ii) where the lease purports to be for a term of not less than one year but not exceeding five years.	The same duty as a Bond (No. 12) for the amount of average annual rent reserved.
(iii) where the lease purports to be for a term exceeding five years but not exceeding ten years.	The same duty as a conveyance (No. 22) for a market value equal to the amount or value of one and half times the average annual rent reserved.

Description of Instrument (1)	Proper Stamp Duty (2)
(iv) where the lease purports to be for a term exceeding ten years but not exceeding twenty years.	The same duty as a conveyance (No. 22) for a market value equal to three times the amount or value of the average annual rent reserved.
(v) where the lease purports to be for a term exceeding twenty years but not exceeding thirty years.	The same duty as a conveyance (No. 22) for a market value equal to five times the amount or value of the average annual rent reserved.
(vi) where the lease purports to be for a period exceeding thirty years or in perpetuity or does not purport to be for a definite period.	The same duty as a conveyance (No.22) on amount equal to the market value of the property.
(b) When the lease is granted for a fine or premium or for money advanced or to be advanced and where no rent is fixed.	The same duty as a conveyance (No. 22) for a market value equal to the amount or value of such fine or premium or advance as set forth in the lease: Provided that when the lease purports to be for a term exceeding thirty years or in perpetuity or does not purport to be for a definite period, the duty on such lease shall be chargeable as a conveyance (No. 22) on the market value of the property leased.
(c) Where the lease is granted for a fine or premium or for money advanced or to be advanced in addition to rent fixed.	The same duty as conveyance (No. 22) for a market value equal to the amount or value of such fine or premium or advance as setforth in the lease, in addition to the duty which would have been payable on such lease, if no fine or

Description of Instrument (1)	Proper Stamp Duty (2)
	premium or advance has been paid or delivered: Provided that where the lease purports to be for a term exceeding thirty years or in perpetuity or does not purport to be for a definite period, the duty on such lease shall be chargeable as a conveyance (No. 22) on the market value of the property leased: Provided also that :-
Explanation.- When a lessee undertakes to pay any recurring charge, such as Government revenue, the landlord's share of cesses or the owner's share of municipal rates or taxes which is by law recoverable from the lessor, the amount so agreed to be paid by the lessee shall be deemed to be part of the rent.	(a) when an instrument of agreement to lease is stamped with the advalorem stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed one hundred rupees.
Exemption.- Lease executed in case of a cultivator and for the purposes of cultivation (including a lease of trees for the production of food or drink) without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees.	(b) where a decree or final order of any Civil Court in respect of a lease is stamped with advalorem duty required for a lease and an instrument of lease is subsequently executed, the duty on such lease deed shall be the duty payable under the article less the duty already paid, subject to a minimum of one hundred rupees.

Description of Instrument (1)	Proper Stamp Duty (2)
	(c) an agreement to lease where the right to collect tolls is given in lieu of the amount spent by the lessee in construction of roads, bridge etc, under the Build, Operate and Transfer (B.O.T.) scheme, shall be chargeable at the rate of two percent on the amount likely to be spent under the agreement by the lessee.
34. Letter of allotment of Shares, in any company or proposed company or in respect of any loan to be raised by any company or proposed company.	Two rupees.
35. Letter of Guarantee.	Two hundred fifty rupees.
36. Letter of licence, that is to say, any agreement between a debtor and his creditors that the later shall for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion.	Five hundred rupees.
37. Memorandum of Association of company :-	
(a) If accompanied by articles of association under section 26 of the Companies Act, 1956 (1of 1956).	Five hundred rupees.
(b) If not so accompanied.	The same duty as is chargeable on Articles of Association under Article 10, according to the share capital of the company.
Exemption.- Memorandum of any association not formed for profit and registered under section 25 of the Companies Act, 1956 (1 of 1956).	
38. Mortgage deed, not being an agreement relating to the deposit of title deeds, Pawn, Pledge or hypothecation (No.6), Bottomry Bond (No. 13), Mortgage of a crop (No. 39), Respondentia Bond (No. 50), or a Security Bond (No. 51) :-	

Description of Instrument (1)	Proper Stamp Duty (2)
(a) When possession of the property or any part of the property comprised in such deed is given by mortgagor or agreed to be given.	The same duty as a conveyance (No. 22) for a market value equal to the amount secured by such deed.
(b) When possession is not given or agreed to be given as aforesaid.	The same duty as a Bond (No. 12) for the amount secured by such deed.
Explanation.- A mortgagor who gives to the mortgagee a power of attorney to collect rents of a lease of the property mortgaged or part thereof, is deemed to give possession within the meaning of this article.	
(c) When a collateral or auxiliary or additional or substituted security, or by way of further assurance for the above mentioned purpose, where the principal or primary security is duly stamped.	One hundred rupees.
Exemption.- Instrument executed by persons taking advances under the Land Improvement Loans Act, 1883 (19 of 1883) or the Agriculturist's Loans Act, 1884 (12 of 1884) or by their sureties as security for the repayment of such advances.	
39. Mortgage of a Crop, including any instrument evidencing an agreement to secure the repayment of a loan made upon any mortgage of a crop whether the crop is or is not in existence at the time of the mortgage.	Two rupees.
40. Notarial Act, that is to say, any instrument, endorsement, note, attestation, certificate or entry not being a protest (No. 46) executed by a Notary public in the execution of the duties of his office, or by any other person lawfully acting as a Notary public.	Ten rupees.
41. Note or Memorandum, sent by a broker or agent to his principal intimating the purchase or sale on account of such principal :-	
(a) of any goods exceeding in value one hundred rupees;	Two rupees.
(b) of any share, scrip, stock, bond, debenture, debenture-stock or other marketable security of a like nature exceeding in value one hundred rupees not being a Government Security.	One rupee for every rupees ten thousand or part thereof, of the value of security at the time of its purchase or sale, as the case may be.

Description of Instrument (1)	Proper Stamp Duty (2)
(c) of a Government Security.	One rupee for every rupees ten thousand or part thereof, of the value of the security, at the time of its purchase or sale, as the case may be, subject to maximum of one thousand rupees.
Exemption.- Note or Memorandum sent by a broker or agent to his principal intimating the purchase or sale on account of such principal or a Government Security or a share, scrip, stock, bond, debenture, debenture-stock or other marketable security of like nature in or of any incorporated company or other body corporate, an entry relating to which is required to be made in clearance lists described in clauses (a) and (b) of article 20.	
42. Note of Protest by the master of a ship.	Ten rupees.
43. Partition.- Instrument of	The same duty as a Bond (No. 12) for the amount of the market value of the separated share of shares of the property. **Note.-** The largest share remaining after the property is partitioned (or if there are two or more shares of equal value and not smaller than any of the other share, then one of such equal shares) shall be deemed to be that from which the other shares are separated: Provided that :- (a) when an instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such

Description of Instrument (1)	Proper Stamp Duty (2)
	agreement, the duty chargeable upon the instrument effecting such a partition shall be reduced by the amount of duty paid in respect of the first instrument, but shall not be less than one hundred rupees.
	(b) where the instrument relates to the partition of agricultural land exclusively, the market value for the purpose of duty shall be calculated at hundred times the annual land revenue.
	(c) where a final order for effecting a partition passed by any Revenue authority or Civil Court or an award by an arbitrator directing a partition, is stamped with the stamp required for an instrument of partition and an instrument of partition in pursuance of such order or award is subsequently executed, the duty on such instrument shall not exceed one hundred rupees.
44. Partnership :-	
A. Instrument of :	
(a) where there is no share of contribution in partnership or where such share of contribution does not exceed Rs. 50,000.	One thousand rupees.

Description of Instrument (1)	Proper Stamp Duty (2)
(b) where such share of contribution is in excess of Rs. 50,000.	Two percent of the shares contributed, subject to a maximum of rupees five thousand.
B. Dissolution of partnership or retirement of a partner:-	
(a) Where on dissolution of partnership or on retirement of a partner, any immovable property is taken as his share by a partner other than a partner who brought in that property as his share of contribution in the partnership.	The same duty as a conveyance (No. 22) on the market value of such property.
(b) In any other case.	Two hundred fifty rupees.
45. Power of attorney [as defined by section 2 (21], not being a proxy:-	
(a) when authorising one person or more to act in single transaction, including a power of attorney executed for procuring the registration of one or more documents in relation to a single transaction or for admitting execution of one or more such documents;	Fifty rupees.
(b) when authorising one person to act in more than one transaction or generally; or not more than ten persons to act jointly or severally in more than one transaction or generally;	One hundred rupees.
(c) when given for consideration and authorising the agent to sell any immovable property.	The same duty as a conveyance (No. 22) on the market value of the property.
(d) when given without consideration to a person other than the father, mother, wife or husband, son or daughter, brother or sister in relation to the executant and authorising such person to sell immovable property situated in Madhya Pradesh.	Two percent on the market value of the property which is the subject matter of power of attorney.
(e) in any other case.	Fifty rupees for each person authorised.
Explanation I.-For the purpose of this article, more persons than one when belonging to the same firm shall be deemed to be one person.	

Description of Instrument (1)	Proper Stamp Duty (2)
Explanation II.- the term 'registration' includes every operation incidental to registration under the Registration Act, 1908 (16 of 1908).	
46. Protest of Bill or Note, that is to say, any declaration in writing made by a Notary public, or other person lawfully acting as such, attesting the dishonour of a Bill of Exchange or Promissory Note.	Ten rupees.
47. Protest by the Master of a Ship, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against the charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such.	Ten rupees.
48. Reconveyance of Mortgaged Property	Two hundred rupees.
49. Release, that it to say, any instrument (not being such a release as is provided for by section 23-A) whereby a person renounces a claim up on another person, or against any specified property.	The same duty as a bond (No. 12) on the consideration or market value of the share of the property over which the claim is relinquished, whichever is higher.
50. Respondentia Bond, that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship and making repayment contingent on the arrival of the cargo at the port of destination.	The same duty as a Bond (No. 12) for the amount of the loan secured.
51. Security Bond or Mortgage deed, where such security bond or mortgage deed is executed by way of security for the due execution of an office or to account for money or other property received by virtue thereof, or executed by a surety to secure the due performance of a contract, or in pursuance of an order of the Court or public officer, not being otherwise provided for by the Court Fees Act, 1870 (7 of 1870).	Two hundred and fifty rupees.
Exemptions.- Bond or other instrument when executed :-	
(a) by any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital	

Description of Instrument (1)	Proper Stamp Duty (2)
or any other object of public utility shall not be less than a specified sum per mensem;	
(b) by persons taking advances under the Land Improvement Loans Act, 1883 (19 of 1883) or the Agriculturists' Loans Act, 1884 (12 of 1884) or by their sureties as security for the repayment of such advances.	
(c) by officers of the Government or their sureties to secure the due execution of an office or the due accounting for money or other property received by virtue thereof.	
52. Settlement :-	
A.Instrument of (including a deed of dower);	The same duty as a Bond (No. 12) on the amount of market value of the property settled: Provided that, where an agreement to settle is stamped with the stamp required for an instrument of settlement and an instrument of settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed one hundred rupees.
Exemption.- Deed of dower executed on the occasion of marriage between muhammadans, whether the deed was executed before or after the marriage.	
B. Revocation of.	One hundred rupees.
53. Share warrants, to bearer issued under the companies Act, 1956 (1 of 1956).	One and a half times duty payable on a conveyance (No. 22) for a market value equal to the nominal amount of the shares specified in the warrant.
Exemption.- Share warrant when issued by a Company in pursuance of the Companies Act, 1956 (1 of 1956), Section 114, to have effect only upon payment, as composition for that duty to the Collector of Stamp-revenue, of:-	

Description of Instrument (1)	Proper Stamp Duty (2)
(a) one and a half percentum of the whole subscribed capital of the company; or (b) if any company which has paid the said duty of composition in full, subsequently issues an addition to its subscribed capital-one and a half percentum of the additional capital so issued.	
54.Shipping order, for or relating to the conveyance of goods on board of any vessel.	Two rupees.
55. Surrender of lease **Exemption.-** Surrender of lease, when such lease is exempted from duty.	One hundred rupees.
56. Transfer :-	
(a) of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8;	Fifty paise for every hundred rupees or part thereof of the consideration amount of debentures.
(b) of any interest secured by a bond, mortgage deed or policy of insurance;	The same duty as a Bond (No. 12) for such amount or value of the interest subject to a maximum of one hundred rupees.
(c) of any property under section 22 of the Administration's General Act, 1963 (45 of 1963).	One hundred rupees.
(d) of any trust property without consideration from one trustee to another trustee or from a trustee to a beneficiary.	Two hundred rupees.
Exemption.- Transfers by endorsement:- (a) of a bill of exchange, cheque or promissory note; (b) of a bill of lading, delivery order, warrant for goods, or other mercantile document of title to goods; (c) of a policy of insurance; (d) of securities of the Central Government.	
57. Transfer of lease, by way of assignment and not by way of underlease.	The same duty as a conveyance (No.22) on the market value of the property which is the subject matter of the transfer.

Description of Instrument (1)	Proper Stamp Duty (2)
	Explanation.- In case of assignment of a mining lease, the market value shall be equal to the amount or value calculated under article 33 (a) depending upon the period of the lease assigned.
Exemption.- Transfer of any lease exempt from duty.	
58. Trust.	
A. **Declaration of-** of or concerning any property when made by any writing not being a will -	
(a) where there is disposition of property;	The same duty as a Bond (No. 12) on the market value of the property settled.
(b) in any other case;	Five hundred rupees.
B. **Revocation of-** of or concerning any property when made by any instrument other than a will.	Two hundred and fifty rupees.
59. Warrant for Goods, that is to say, any instrument evidencing the title of any person therein named, or his assigns or the holder thereof to the property in any goods lying in or upon any dock, warehouse or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be.	Two rupees.".

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THE LEGAL SERVICES AUTHORITIES (AMENDMENT) ACT, 2002

NO. 37 OF 2002 *

{Received the assent of the President on 11th June, 2002 and Act Published in Gazette of India (Extraordinary) Part II, Section 1 dated 12-6-2002 Pages 1-4 [S. No. 40]}.

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An Act further to amend the Legal Services Authorities Act, 1987.

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

1. Short title.- This Act may be called the Legal Services Authorities (Amendment) Act, 2002.

2. Amendment of section 11A.- In the Legal Services Authorities Act, 1987 (39 of 1987) (hereinafter referred to as the principal Act), in section 11A, in sub-section (2), in clause (a), for the words "senior Civil Judge", the words "senior-most Judicial Officer" shall be substituted.

3. Amendment of section 22.- In section 22 of the principal Act, for the words "Lok Adalat", wherever they occur, the words "Lok Adalat or Permanent Lok Adalat" shall be substituted.

4. Insertion of new Chapter VIA.- After Chapter VI of the principal Act, the following Chapter shall be inserted, namely:-

CHAPTER VIA
Pre-Litigation Conciliation and Settlement

22A. Definitions.- In this Chapter and for the purposes of sections 22 and 23, unless the context otherwise requires,-

(a) "Permanent Lok Adalat" means a Permanent Lok Adalat established under sub-section (1) of section 22B;

(b) "public utility service" means any-

(i) transport service for the carriage of passengers or goods by air, road or water, or

(ii) postal, telegraph or telephone service; or

(iii) supply of power, light or water to the public by any establishment; or

(iv) system of public conservancy or sanitation; or

(v) service in hospital or dispensary; or

(vi) insurance service,

and includes any service which the Central Government or the State Government, as the case may be, may, in the public interest, by notification, declare to be a public utility for the purposes of this Chapter.

22B. Establishment of Permanent Lok Adalats.- (1) Notwithstanding anything contained in section 19, the Central Authority or, as the case may be, every State Authority shall, by notification, establish Permanent Lok Adalats at such places and for exercising such jurisdiction in respect of one or more public utility services and for such areas as may be specified in the notification.

(2) Every Permanent Lok Adalat established for an area notified under sub-section (1) shall consist of-

(a) a person who is, or has been, a district judge or additional district judge or has held judicial office higher in rank than that of a district judge, shall be the Chairman of the Permanent Lok Adalat; and

(b) two other persons having adequate experience in public utility service to be nominated by the Central Government or, as the case may be, the State Government on the recommendation of the Central Authority or, as the case may be the State Authority.

appointed by the Central Authority or, as the case may be, the State Authority, establishing such Permanent Lok Adalat and the other terms and conditions of the appointment of the Chairman and other persons referred to in clause (b) shall be such as may be prescribed by the Central Government.

22C. Cognizance of cases by Permanent Lok Adalat.- (1) Any Party to a dispute may, before the dispute is brought before any court, make an application to the Permanant Lok Adalat for the settlement of dispute:

Provided that the Permanent Lok Adalat shall not have jurisdiction in respect of any matter relating to an offence not compoundable under any law:

Provided further that the Permanent Lok Adalat shall also not have jurisdiction in the matter where the value of the property in dispute exceeds ten lakh rupees:

Provided also that the Central Government, may, by notification, increase the limit of ten lakh rupees specified in the second proviso in consultation with the Central Authority.

(2) After an application is made under sub-section (1) to the Permanent Lok Adalat, no party to that application shall invoke jurisdiction of any court in the same dispute.

(3) Where an application is made to a Permanent Lok Adalat under sub-section (1), it-

(a) shall direct each party to the application to file before it a written statement, stating therein the facts and nature of dispute under the application, points or issues in such dispute and grounds relied in support of, or in opposition to, such points or issues, as the case may be, and such party may supplement such statement with any document and other evidence which such party deems appropriate in proof of such facts and grounds and shall send a copy of such statement together with a copy of such document and other evidence, if any, to each of the parties to the application;

(b) may require any party to the application to file additional statement before it at any stage of the conciliation proceedings;

(c) shall communicate any document or statement received by if from any party to the application to the other party, to enable such other party to present reply thereto.

(4) When statement, additional statement and reply, if any, have been filed under sub-section (3), to the satisfaction of the Permanent Lok Adalat, it shall con-

duct conciliation proceedings between the parties to the application in such manner as it thinks appropriate taking into account the circumstances of the dispute.

(5) the Permanent Lok Adalat shall, during conduct of conciliation proceedings under sub-section (4), assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner.

(6) It shall be the duty of every party to the application to cooperate in good faith with the Permanent Lok Adalat in conciliation of the dispute relating to the application and to comply with the direction of the Permanent Lok Adalat to produce evidence and other related documents before it.

(7) When a Permanent Lok Adalat, in the aforesaid conciliation proceedings, is of opinion that there exist elements of settlement in such proceedings which may be acceptable to the parties, it may formulate the terms of a possible settlement of the dispute and give to the parties concerned for their observations and in case the parties reach an agreement on the settlement of the dispute, they shall sign the settlement agreement and the Premanent Lok Adalat shall pass an award in terms thereof and furnish a copy of the same to each of the parties concerned.

(8) Where the parties fail to reach at an agreement under sub-section (7), the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the dispute.

22D. Procedure of Permanent Lok Adalat.- The Permanent Lok Adalat shall, while conducting proceedings or deciding a dispute on merit under this Act, be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice, and shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) and the Indian Evidence Act, 1872 (1 of 1872).

22E. Award of Permanent Lok Adalat to be final.- (1) Every award of the Permanent Lok Adalat under this Act made either on merit or in terms of a settlement agreement shall be final and binding on all the parties thereto and on persons claiming under them.

(2) Every award of the Permanent Lok Adalat under this Act shall be deemed to be a decree of a civil court.

(3) the award made by the Permanent Lok Adalat under this Act shall be by a majority of the persons constituting the Permanent Lok Adalat.

(4) Every award made by the Permanent Lok Adalat under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding.

(5) The Permanent Lok Adalat may transmit any award made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.'.

5. Amendment of section 23.- In section 23 of the principal Act, for the words "members of the Lok Adalats", the words "members of the Lok Adalats or the persons constituting Permanent Lok Adalats" shall be substituted.

6. Amendment of section 27.- In section 27 of the principal Act, in sub-section (2), after clause (1), the following clause shall be inserted, namely:-

"(la) the other terms and conditions of appointment of the Chairman and other persons under sub-section (2) of section 22B;".

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■ ***A good student could learn more from a bad teacher than a poor student from even a skilled teacher.***

'The Wings of Fire'
Dr. A.P.J. Abdul Kalam

■ ***They know enough who know how to learn.***

The Education of Henry Adams

■ ***It is meaningless to think***
that what was truth yesterday,
will remain so even tomorrow;
it is impossible to search for truth
by mere wistful thinking.

Smt. Suprama Mishra
Author of 'Thus I Speak'

■ ***What's the use of worrying?***
It never was worth while,
So, pack up your troubles in your old kit-bag,
And smile, smile, smile.

George Asaf