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असतो मा सद्गमय

साथियो,

इस संस्था की द्विमासिक मुख्य पत्रिका "जोति" इस अंक के साथ चौथे वर्ष में प्रवेश कर रही है। आप सब के सहयोग के कारण ही यह पत्रिका प्रगति पथ पर अग्रसर करने का प्रयत्न किया जा रहा हैं। हमारी ओर से अभिनंदन। पत्रिका का कलेवर उसका आकार बदलने का प्रस्ताव कई न्यायिक अधिकारीगणों ने दिया है, उस विषय पर प्रयास किया जाएगा। वर्तमान में शासन की ओर से जो कागज प्रदाय होता है उसके आकार के आधार से पत्रिका का आकार निर्धारित हो रहा है ताकि कागज का एक छोटा टुकड़ा भी व्यर्थ न जावे। पत्रिका को और अधिक उपयोगी बनाने हेतु अक्टूबर 1995 एवं दिसंबर 1995 (वर्ष –1) तथा फरवरी 1996 से दिसंबर 1996 तक (वर्ष –2) के लिए वार्षिक अनुक्रमणिका तथा फरवरी 1997 से दिसंबर 1997 तक (वर्ष –3) हेतु वार्षिक अनुक्रमणिका (इंडेक्स) तैयार हो गया है एवं उचित प्रक्रिया पश्चात् उसे भी प्रकाशित किया जा सकेगा जिससे न्यायिक अधिकारीगणों को पत्रिका की उपयोगिता बढ़ जाएगी, उसे जिल्द (बाइंडिंग) भी किया जा सकेगा।

व्यवहार न्यायाधीश वर्ग -2 के रूप में कुछ नियुक्तियां हो चुकी हैं, कुछ की नियुक्तियां शेष हैं, जो निकट भविष्य में होने की संभावना है। अधिकांश नव–नियुक्त व्यवहार न्यायाधीशों का प्रथम प्रशिक्षण सत्र पूर्ण होकर द्वितीय सत्र प्रगति पर है। उन्हें नियमानुसार यथा समय पृथक न्यायालय का भार भी सौंपा जा सकेगा। उन्हें व्यवहारिक रूप से विधि प्रक्रिया सम्बन्धी कार्य में सुगमता हो तथा सुविधा से कार्य निराकरण हो सके इसलिए प्रयास यह है कि आरोप–पत्र के प्रारूप, नमूने के वाद प्रश्न आदि भी संस्था के इस मुखपत्र के माध्यम से प्रकाशित किए जावें। ऐसी सामग्री सभी न्यायिक अधिकारी वर्ग को सुविधायुक्त हो सकेगी व कार्यक्षमता व दक्षता बढ़ाने में सहायक भी होगी।

इस पत्रिका की सफलता पारस्परिक व अन्योन्याश्रित हैं। पत्रिका में उपयोगी सामग्री को संकलित किया जाना है तो उपयोगी सामग्री का उपयोग न्यायिक कार्य सफलतापूर्वक किये जाने में भी किया जाना है। अतः यह कार्य पारस्पारिक निर्भरता पर टिका हुआ है। इस निर्भरता की पूर्णता आपसी सजगता और पूर्ण समग्रता पर निर्भर है। विचारों की लयबद्ध अखंडता सफलता की जननी हो सकती है। हम आपके अस्तित्व की संचालन व्यवस्था बाह्य शक्ति द्वारा नहीं होना है अपितु इसके

लिए एक मात्र संभावना हैं आंतरिक तारतम्य, अंतर्संगति एवं अंतश्चेतना। वेदों में विभिन्न सूत्रों का प्रतिपादन किया है। उसमें दो सूत्र यहां समीचीन है। तमसो मा ज्योतिर्गमय अर्थात् मुझे अंधकार से प्रकाश की ओर ले चलो। असतो मा सद्गमय अर्थात् मुझे असत्य से सत्य की ओर ले चलो। चूंकि हम ने अपनी इच्छा से न्यायदान हेतु न्यायपालिका के क्षेत्र का चयन किया है इस लिए हमें अपने क्षेत्र में प्रवीणता प्राप्त करना चाहिये। अंधकार से प्रकाश की ओर अग्रसर होना अथवा असत्य से सत्य का मार्ग अवलंबित करना इसका अर्थ मात्र ये हो सकता है कि हमने स्वयं के लिए जो क्षेत्र चुना है उसमें पूर्णता की ओर मार्ग आक्रमित करते रहना है।

ऐसा तब ही संभव होगा जब हमारी अभिरुचि, अनुराग विधिक ज्ञान के क्षेत्र में विस्तार प्राप्त करे। अभिज्ञता का परिचय दे, एवं समझदारी से प्रत्येक पांव आगे बढ़ाएँ। समय–समय पर विधि पुस्तकें न्याय दृष्टांत व वरिष्ठजनों के अनुभवों का लाभ लेकर स्वयं को अपने क्षेत्र में पोषित करें, परिष्कृत करें एवं संवर्धित करें। हमारी अनभिज्ञता अथवा हमारा अज्ञान हमारे प्रगति में तब बाधक नहीं बनेगा जब हमारे पास स्वयं को परिवर्तित करने की पहल शक्ति उद्गमित होगी। दंभ, आत्मश्लाघा, मिथ्या अभिमान, अहमन्यता, दुराग्रह तथा महत्वोन्माद से मुक्त होंगे। हमें न्याय निष्ठा एवं सत्य निष्ठा का अनुचर बनकर कार्य करना होगा। कार्य में सहजता सफलताओं को प्रशस्त करती है। यदि कर्म (पुरुषार्थ) लोहा है तो परिश्रम पारस है तथा कर्म को परिश्रम का स्पर्श होते ही सफलता का स्वर्ण सहज रूप से प्राप्त होगा। जोनॉस सॉक का एक वाक्य चरितार्थ किया जा सकता है कि अच्छे ढंग से निष्पादित कार्य का पुरस्कार होगा काम करने का एक और अवसर। ***उतिवायो सततो याहि*** (हे कर्मशील मानव! तू सोने वाले आलसी पुरुषों को लांघ जा।)

पुरुषोत्तम विष्णु नामजोशी

The heights by great men reached and kept,
were not attained by Sudden flight-
But they, While their companions slept
were toiling upwards in the night

W.H. Longfellow

न्यायिक मर्यादाएँ

व्यवहार न्यायाधीश वर्ग–2 के 1997 के चयनित न्यायिक अधिकारियों के तीसरे बैच का प्रशिक्षण शिविर दिनांक 04-1-98 से 18-1-98 तक चला जिसमें 20 प्रशिक्षु अधिकारी सम्मिलित हुए। माननीय मुख्य न्यायाधिपति महोदय श्रीमान ए. के. माथुर साहेब सत्र के उद्घाटन भाषण में अत्यंत प्रभावी व ओजस्वी शब्दों में प्रंखरतापूर्वक यह अभिव्यक्त किया कि न्यायिक अधिकारी के रूप में न्यायपालिका ने समाज से जो श्रद्धा व विश्वास अर्जित किया है, उसे बनाकर रखना है। न्यायिक अधिकारी समाज के प्रति न्यासी के रूप में कार्य करते है। आपने आगे यह भी कहा कि न्यायिक जीवन मे फूँक–फूँक कर कदम रखे जाना है। कोई एक कदम भी संपूर्ण जीवन हेतु घातक हो सकेगा। प्रकरणों के निर्णय पक्षकारों के लिए सर्वोपरि है। ईश्वर की असीम कृपा से न्यायिक अधिकारी का पद मिला है अतः इस बात को ध्यान रखकर कार्य करना है। माननीय मुख्य न्यायधिपति महोदय ने अपने संबोधन में यह भी कहा कि न्यायमार्ग से विचलित होना पाप कर्म होगा, न्यायिक सेवा में निष्ठा को ध्यान में रखना होगा। आपने न्यायिक अधिकारीगणों को सचेत करते हुए आह्वान किया कि यदि सत्ता, धन व भौतिक सुखों की हवस हो तो अविलंब पदमुक्त हो जाना चाहिये। पद का नशा अधिकारी के सर पर न चढ़े ऐसा बताते हुए आगे कहा कि न्यायिक अधिकारीगणों को उचित रूप से इस प्रकार स्वयं को ढालना चाहिये जिससे किसी भी मोह से मुक्त हो सके। एक महत्वपूर्ण सूत्र रूप में आपने ये भी कहा कि भूलें एवं गलतियाँ अंत तक होती रहेंगी अतः सुधार की प्रवृत्ति को अंगीकार करना होगा। असीमित ज्ञान की बात को व्यक्त करते कहा कि सतत् रूप से ज्ञानार्जन करते रहना होगा और ऐसा ज्ञान संयमित रूप से मार्गदर्शित करते रहना होगा। न्यायालयीन कार्य में अधिवक्तागण पक्षकारगण के साथ संयत व्यवहार की अपेक्षा आपने की तथा कहा कि न्यायालय के बाहर भी सार्वजनिक व्यवहार में शिष्टता व न्यायिक मर्यादाओं को सतत् रूप से ध्यान रखना होगा। सामाजिक संबंधों को न्यूनतम सीमा तक करने की बात भी कही गई। माननीय मुख्य न्यायाधिपति महोदय ने यह भी कहा कि न्यायालय में समय पर आने जाने के नियम कों कठोरता से पालन करना चाहिये, गणवेश उचित रूप से तथा अनिवार्य रूप से पहनना चाहिये। वरिष्ठजनों का आदर एवं सम्मान किया जावे शिष्ठता से व्यवहार करना चाहिये।

1997 के नव–नियुक्त व्यवहार न्यायाधीशगणों का पुनः प्रशिक्षण सत्र प्रारम्भ हो गया है। प्रथम सत्र का आयोजन दिनांक 28 जनवरी से 4 फरवरी 1998 तक किया गया। दिनांक 29 को माननीय प्रशासनिक न्यायाधिपति महोदय श्रीमान एस. के. दुबे महोदय ने सत्र के प्रारम्भिक मार्गदर्शन स्वरुप बोध वचन से सत्र प्रारम्भ हुआ। सुबोध एवं सहजरूपता लिए इस उद्‌बोधन में उन्होंने कहा कि नव–नियुक्त व्यवहार न्यायाधीशों हेतु दीर्घ व अच्छी जीवनवृत्ति उपलब्ध है उसका उपयोग न्यायदान के लिए किया जाना चाहिये। सफल जीवनवृत्ति हेतु अच्छे आचरण व व्यवहार की आवश्यकता है। इस देश में विधि कार्य जनता में अटूट विश्वास उत्पन्न किए हुए है। जनता इसे न्याय मंदिर मानती है। अतः जहां मंदिर की भावना हो वहां हर एक का आचरण निर्मल, स्वच्छ व निष्फल होना अपेक्षित है। ऐसा होने से आस्थाओं का सतत् प्रवाह बना रहेगा व जनता का अटूट विश्वास सुदृढ़ होगा। न्यायिक समर्पण को परिभाषित करते हुए माननीय श्री दुबे ने यह अभिव्यक्त किया कि अध्ययन निष्ठापूर्वक हो आचरण निष्पक्ष हो व ईमानदारी पूर्वक न्यायादान हो।

न्यायिक कार्य में पूर्णता को कोई प्राप्त नहीं कर सकता है लेकिन जो जैसा कार्य आप करेंगे वह अध्ययन करके करें। सारवान तथा विधि के प्रावधान, न्याय सिद्धांत व न्याय दृष्टांत का अध्ययन करके करें जिससे इस बात से मन को संतोष प्राप्त हो कि हमने जो कार्य किया है वह पूर्ण लगन व परिश्रम से किया है किसी भी पक्षकार को यह अनुभव नहीं होना चाहिये कि वह न्यायालय में न्याय से वंचित हो गया है।

न्यायालयीन व्यवहार पर सटीक टिप्पणी करते हुए श्रीमान दुबे महोदय ने यह अभिव्यक्त किया कि न्यायालय में पक्षकार अधिवक्ता एवं कर्मचारी वृंद के साथ शिष्टतापूर्वक सतत् रूप से व्यवहार होता रहे। न्यायिक अधिकारी हो जाने से अशिष्टता का व्यवहार करने का अधिकार प्राप्त नहीं होता है अपितु विपरीत इसके विनम्रताभाव उत्पन्न होना चाहिये। उन्होंने यह भी कहा कि केवल पैसे खाना मात्र ही भ्रष्टाचार नहीं है अपितु न्यायिक भ्रष्टता भी भ्रष्टाचार का अंग है। अर्थात कर्त्तव्य निर्वाह न करना, समग्र रुप से चिंतन न करना भी भ्रष्टाचार है। अधिवक्ता बंधुओं का उल्लेख करके माननीय दुबे महोदय ने ये कहा कि अधिवक्तागण अपनी योग्यता के अनुरूप प्रकरण की तैयारी करके प्रस्तुतिकरण करते है। उनकी तैयारी, उनके प्रस्तुतिकरण को उपेक्षा की दृष्टि से न देखें क्योंकि उनके तर्क विचार भी अनुभव के आधार से होते है। अतः उन्हें शांतभाव से पूर्णचित से सुनकर विचार करें।

माननीय न्यायाधिपति श्री दुबे महोदय ने यह भी विचार व्यक्त किया कि विश्व संकुचित हो रहा है, अंतर्राष्ट्रीय क्षेत्र में एक राष्ट्र दूसरे राष्ट्र से विभिन्न प्रकार से

आर्थिक व्यवहार कर रहे हैं तथा परिवर्तन इतनी तेजी से हो रहा है कि विधि क्षेत्र कहीं पीछे न रह जावे, इसलिए यह जरूरी हो गया है कि न्यायालय ने विधि सम्बन्धि निर्वचन, विधि प्रावधानों का गहन अध्ययन करके करना चाहिये। सूत्रबद्धता के रूप मे उन्होंने अपने कथन में कहा कि जो न्यायाधीश अत्याधिक व्यस्त होगा उसी के पास कार्य करने हेतु समय रहेगा क्योंकि सतत् कार्य करते रहने से उसके पास कार्य न करने के लिए कोई समय ही नहीं रहेगा।

न्यायिक प्रबन्धन की ओर ध्यान आकृष्ट करके माननीय न्यायाधिपति महोदय ने कहा कि न्यायिक प्रबन्धन के लिए आदेश 10 व आदेश 11 व 12 की प्रक्रिया का सतत् रुप से पालन होता रहना चाहिये। न्यायालयीन आदेशिकाओं निर्देश देकर न्यायिक अधिकारी कर्त्तव्यमुक्त नहीं होता है। अपितु उसका कर्त्तव्य उसके पश्चात् चालू होता है कि निर्देशों के आधार से उसका पालन करवाया जावें। यदि ऐसा होता है तो समय की बचत होगी व कार्य द्रुतगति से संपादित करने हेतु पर्याप्त समय मिलेगा। (The busiest men have the most leisure.)

माननीय मुख्य न्यायाधिपति श्रीमान माथुर साहेब दिनांक 04-02-98 को पुर्नप्रशिक्षण सत्र में पधारे थे। उन्होंने समस्त प्रशिक्षु न्यायिक अधिकारीगणों से अन्योन्य क्रिया व पारस्पारिक वार्तालाप (इंटर ॲक्शन) के माध्यम से जानना चाहा कि कार्य करने में व्यवहारिक कठिनाइयाँ क्या–क्या होती है। विभिन्न अधिकारियों से चर्चा करने के पश्चात् श्रीमान माथुर महोदय ने कहा कि अधिवक्तागणों द्वारा बार–बार प्रकरणों में साक्ष्य लिपिबद्ध करने हेतु समय मांगना अथवा साक्षियों के उपस्थिति पश्चात् आरोपी को या पक्षकार को भगा देना या किसी भी बहाने साक्ष्य लिपिबद्ध करने से टालने की प्रवृत्ति का परिहार किया जाना है। ऐसा करने हेतु दृढ़तापूर्वक कार्यवाही करने में संकोच नहीं करना चाहिये। लेकिन मर्यादा, न्यायालयीन शिष्टाचार व मृदु व्यवहार को खोना भी नहीं है। (An Iron hand in Velvet Gloves). माननीय मुख्य न्यायाधिपति महोदय ने यह भी कहा कि प्रत्येक जिला स्तर पर प्रबोधन बैठकें (मॉनिटरिंग सेल) जिला न्यायाधीश के नेतृत्व में होती है। उसमें विचार करने हेतु विशिष्ट प्रकरण खुलासेवार रखे जाने चाहिये ताकि समन्स का निर्गमित न होना, साक्षियों का उपस्थित न होना सहायक/जिला लोक अभियोजक का न आना जैसे अनेक विषयों पर गंभीरतापूर्वक चिंतन मनन करके निदान करने का प्रयत्न हो सकता है। आपने यह भी कहा कि जिला न्यायाधीश के स्तर पर इन विषयों पर गंभीरता से चिंतन होना चाहिये।

लेकिन इन समस्याओं के होते हुए भी हार मानने की आवश्यकता नहीं है ऐसा कहकर यह आव्हान किया कि न्यायिक अधिकारीगणों ने स्वयं प्रकरणों का गंभीरतापूर्वक

अध्ययन करना चाहिये ताकि लोक अभियोजक के अभाव में भी न्यायालय स्वयं अपनी ओर से साक्षियों का विधि प्रक्रिया का पालन कर परीक्षण कर सके। (कृपया साक्ष्य अधिनियम की धारा 165 देखें). आपने अपने मार्गदर्शक उद्‌बोधन में यह भी कहा कि विपरीत स्थितियों का सामना करना पड़ेगा। लेकिन उसमे कोई समझौता नहीं होना है। न्याय, न्यायिक अधिकारीगणों को करना है, उनकी यह जिम्मेदारी है। अतः स्वयं पर भी पूर्ण नियंत्रण रखे, अनुशासन में रहे, समय बद्धता को ध्यान रखे, न्याय, निष्ठा व ईमानदारी को पूर्णरुप से बनाएं रखे तथा प्रकरणों पर नियंत्रण रखें तो कार्य गतिशील रुप से अग्रसर होता रहेगा। न्यायिक अनुशासन पर बल देते आपने कहा कि व्यवहारिक़ कठिनाइयाँ है, लेकिन इसका अर्थ यह नहीं है कि इनके कारण हम कार्य नहीं करेंगे अपितु इन्हें लांघकर कार्य करने हेतु सतत् प्रयत्न करना होंगे व ऐसा करने हेतु हम आप को सक्रिय भी होना है। माननीय मुख्य न्यायाधिपति महोदय श्रीमान माथुर साहेब ने अपने सम्बोधन को पूर्णता देते हुए कहा कि आस्था को बनाएं रखों सफलता अवश्य मिलेगी

माननीय मुख्य न्यायाधिपति महोदय ने दिनांक 10-02-98 को 1997 के द्वितीय बैच के पुर्नप्रशिक्षण शिविर में अपने मंगलाचरण व्याख्यान पर न्यायिक अधिकारीगणों से पारस्परिक चर्चा के समय कहा कि साक्षियों का न आना, अधिवक्ताओं द्वारा बार–बार समय लेना अथवा पुलिस एजेंसी द्वारा समन्स का निर्वाह न करना, साक्षियों का पक्ष विरोधी घोषित हो जाना ये सब बातें होते हुए भी स्वयं को जागृत व साक्षात रखते कार्य करना है। इसके लिए माननीय मुख्य न्यायाधिपति महोदय ने इस तथ्य से अवगत कराया कि न्यायिक अधिकारीगण ने स्वयं ही प्रकरणों के अभिकथनों को, वादप्रश्नों को अग्रिम रूप से पढ़कर रखना होगा। प्रकरणों का अवलोकन क़रना होगा। जिससे साक्ष्य लिपिबद्ध करते समय यदि पक्षकारों के अधिवक्ता साक्ष्य के संचालन करने मे उपेक्षा अथवा लापरवाही करेंगे तब भी हर तथ्य न्यायालय के ज्ञान में होने से प्रकरणों पर प्रभावी नियंत्रण रहेगा।

माननीय माथुर साहेब ने अंत में यह भी कहा कि हर विपरीत स्थिति में भी मार्ग निकालना ही है व मार्ग प्रशस्त होगा ही। न्यायिक अधिकारीगणों को आव्हान कर कहा कि उन्होंने न्यायालय के बाहर व अंदर गरिमा को बनाए रखना है व ईमानदारी व न्यायनिष्ठा को हर स्थिति में धारण कर के रखना है It is better to wearout than to rustout (उचित यह है कि हम कर्म कर के मिट जाएं बजाए इसके कि आलसी बने रहकर सड़ जाएँ)

LET TRUTH AND JUSTICE CONQUER

ऐसा क्यों ?

कुछ दिन पूर्व एक माननीय न्यायाधिपति महोदय ने मुझे उनके विश्राम कक्ष में बुलाया। उन्होंने एक प्रकरण का उल्लेख किया। बताया कि जिला एवं सत्र न्यायाधीश के स्तर के व्यक्ति यदि बिना विधि प्रावधानों को देखे निर्णय दें तो क्या होगा ? ऐसा प्रश्न अचानक पूर्व कल्पना के सुनकर प्रथमतः हतप्रभ हो गया कि मुझसे क्या जानना चाहते हैं। मैंने केवल यह कहा कि सर ! समझ में नहीं आ रहा है कि आप क्या जानना चाहते हैं। फिर उन्होंने विस्तार से बात बताई व पूछा कि आप इस विषय पर न्यायिक अधिकारियों को कैसे बता सकोगे। इस संस्था की द्विमासिक पत्रिका "जोति" हम आप के बीच सशक्त माध्यम है जिसके द्वारा विचारों का आदान–प्रदान प्रभावी रूप से हो सकता है।

हम न्यायिक अधिकारियों से ऐसी–ऐसी त्रुटियाँ होती हैं जिनके पीछे आशय न हो लेकिन कार्य के प्रति उपेक्षा होती है। यह उपेक्षा कभी कभार घातक सिद्ध होती है यहां तक की हमारी सेवाओं को भी विपरीत रूप से प्रभावित करती है। उक्त माननीय न्यायाधिपति महोदय की यह अपेक्षा थी कि निर्णय को अंतिम रूप देने के पूर्व सम्बन्धित विधि प्रावधानों को समग्र रूप से पढ़ लेना चाहिये, गंभीरता पूर्वक मनन करना चाहिये जिससे त्रुटि की संभावना कम से कम हो।

संस्था के इस मुख पत्र के माध्यम से ऐसे मुद्दों पर विचारों की अभिव्यक्ति करने का यह प्रयास होगा जिससे हम–आप अपने कार्य के प्रति सचेत हो जावें, उसके प्रति उपेक्षा न हो व कर्म तथा परिश्रम में लेश मात्र आलस न हो। हम अंदाज से कार्य न करें, हमने विधि परीक्षा उत्तीर्ण की उस समय की धुंधली कल्पनाओं को मात्र कायम न रखकर उस में गुणात्मक वृद्धि करें। वैचारिक धरातल पर हमारे विचारों में अष्ट पहलू वाली हीरे की बात हो न कि कांच के विषय में चिंतन।

माननीय न्यायाधिपति महोदय ने सुस्पष्ट भूल (ग्लेअरिंग मिस्टेक) की ओर जब ध्यान आकृष्ट किया तो मेरे मुंह से सहजभाव से शब्द निकल पड़े कि हम न्यायिक भ्रष्टता करते हैं, कार्य के प्रति लापरवाह हैं, उपेक्षा वृत्ति रखते हैं तथा कर्त्तव्यों के प्रति लेश मात्र गंभीरता नहीं है। मैंने यह भी कहा कि हम लोग और अच्छा बनने का प्रयत्न करेंगे व पत्रिका के माध्यम से भूलों का सुधार करने का

ईमानदारी पूर्ण प्रयत्न करेंगे। भविष्य में भी इसी मंच से विभिन्न बिन्दुओं पर हम–आप अपनी भूलों को निरुपित करके उसका निराकरण करेंगे तथा हमारे वरिष्ठजनों को इस बात से आश्वस्त करेंगे कि हमारे कार्य में कोई कमी या खोट न हो।

एक प्रकरण था धारा 366 एवं धारा 376 भा.द.वि के अंतर्गत। उक्त प्रकरण में सत्र न्यायालय ने क्रमशः 02 वर्ष एवं 03 वर्ष के कारावास से अभियुक्त को दंडित किया। अभियुक्त को दंड के विषय पर सुनने के पश्चात् पीठासीन अधिकारी ने यह लिखा कि बालिका एवं अभियुक्त के बीच शिक्षक एवं विद्यार्थी के सम्बन्ध थे एवं उक्त बालिका को व्यापहरित/अपहरित किया एवं बलात्संग किया जाना गंभीर प्रकृति का अपराध है अतः दया दर्शाना उचित नहीं है अतः धारा 366 भा.द.वि. के अंतर्गत दो साल के कारावास एवं धारा 376 भ.द.वि. के अंतर्गत तीन साल के कारावास से दंडित किया।

माननीय न्यायाधिपति महोदय ने यह व्यक्त किया कि एक ओर पीठासीन अधिकारी प्रकरण की गंभीरता व अभियुक्त का नृशंस कृत्य की आलोचना करके अपराध की गुरूतारता को प्रदर्शित कर रहा है तो दूसरी ओर धारा 376 भा.द.वि. के अंतर्गत न्यूनतम से भी कम कारावास की सजा दे रहा है। ऐसा इसलिए कर रहा है कि निर्णय अंदाज से लिखाया गया एवं निर्णय लिखने के पूर्व पुस्तक का उपयोग नहीं किया। फिर मुझसे माननीय न्यायाधिपति महोदय ने लॉ ऑफ क्राइम्स द्वारा रतनलाल 1988 का प्रकाशन की धारा 376 पढ़वाई। उससे ज्ञात हुआ कि धारा 376 (1) के अंतर्गत न्यूनतम कारावास की सजा सात वर्ष है तथा विशिष्ट कारणों को दर्शाकर सात साल से कम का कारावास दिया जा सकेगा।

उक्त प्रकरण में ऐसा कुछ भी नहीं किया गया था। यह सब संभवतया हम आप के कर्म के प्रति उपेक्षा, पुस्तक खोलकर न पढ़ने की प्रवृत्ति के कारण होता होगा। जो भी कारण हो हमें बहुत ज्यादा सचेत जाग्रत रहकर दायित्व बोध से कार्य करना है। यह इसलिये भी कि सर्वसाधारण व्यक्ति हमारे से यह अपेक्षा करता है कि हमें विधि सबंधित अच्छे से जानकारी है। बात सही भी है। जो कार्य नैमित्तिक रूप से किये जाते है उसमें तो भूलें न हो तथा न्यूनतम दोष हो। हमारा प्रयत्न सतत् रूप से ऐसा हो यह प्रयास हमें करना चाहिये।"To depend on Memory only is injuries to Judicial health" अर्थात् केवल स्मरणशक्ति पर निर्भर रहना न्यायिक स्वास्थ्य के लिये हानिकारक है।

प्रारम्भिक तैयारी

पुरुषोत्तम विष्णु नामजोशी

यह कल्पना कि न्यायिक अधिकारीगणों ने न्यायालयीन कार्य घर पर नहीं करना है, भ्रमपूर्ण एवं न्यायिक औचित्य के विपरीत है। विपरीत रूप से यह बात पूर्ण सत्य है कि घर पर यदि न्यायिक अधिकारी कार्य करेगा तो ही वह न्यायालय में सफलतापूर्वक कार्य कर सकेगा। यह कदापि संभव नहीं है कि न्यायिक अधिकारी न्यायालय में उसी दिन के लिए निर्धारित निर्णय, आदेश, अभियुक्त परीक्षण चार्ज एवं वाद प्रश्नों जैसे (मूलभूत कार्य) को न्यायालय में योग्यतापूर्वक कर सकेगा व अन्य कार्य, जो न्यायालय में साक्ष्य लिपिबद्ध करने के रूप में हो अथवा तर्क सुनने के रूप मे हो अथवा अंतरिम आवेदन पत्रों की सुनवाई का हो, कर सकने में सफल होगा। नितांत असंभव बात को संभव बनाने का प्रयत्न भी हम आपके सेवाकाल पर व स्वास्थ्य पर विपरीत प्रभाव डालेगा। यह बात अरस्तु के आदर्श राज्य के स्वप्न (यूटोपिअन) जैसी भी नहीं है कि ऐसा संभव नहीं है। यह विचार परलौकिक नहीं है इसी लोक में सफलतापूर्वक कार्य करने की कुंजी हो सकती है। यदि एक निश्चित पद्धति द्वारा कार्य किया जावे तथा सतत् एवं नियमित रूप से उक्त प्रक्रिया का पालन होता रहे तो हर बात संभव है। न्यायिक अधिकारी से यह अपेक्षा भी है व उसका कर्तव्य भी है कि उक्त मूलभूत कार्य निर्धारित तिथि पर ही करे।

वास्तव में यदि हम निर्धारित तिथि पर ही वाद प्रश्न एवं चार्ज निर्मित कर देते हैं अथवा अभियुक्त परीक्षण हेतु प्रश्नावली तैयार कर लेते हैं एवं विविध आदेशों को समय पर पारित करते है तो हमारे पास विपुल मात्रा मे कार्य उपलब्ध होगा जिससे न्यूनतम से कई अधिक कार्य निराकरण हम कर सकेंगे। कई बार माननीय मुख्य न्यायाधिपति महोदय ने यह बात समय–समय पर बताई है कि कार्य निराकरण की न्यूनतम निर्धारित मात्रा तक का कार्य; कार्य निराकरण गुणवत्ता की कसौटी नहीं है अपितु वह तो न्यूनतम आवश्यकता मात्र है। वह तो अर्हता की शर्त मात्र है गुणवत्ता नहीं। निर्णय समय पर लिखकर पारित न करना न केवल अक्षमता मात्र है अपितु न्यायिक अधिकारी के विरुद्ध कई शंकाओं को जन्म देती है।

यह सहज संभव है कि हम मूलभूत कार्य समय पर कर सकेंगे। ऐसा नहीं है कि पूर्व में ऐसा कार्य न्यायिक अधिकारीगणों ने नहीं किया है अथवा आज नहीं कर रहे है। बहुत ही आसान प्रक्रिया इस कार्य को करने हेतु प्रचलित की जा सकती है। उसमें

ज्यादा परिश्रम भी नहीं लगता व द्रुतगामी रूप से कार्य निराकरण होता चला जाता है। हम आप को ही निर्णय, आदेश देना होते है तो आरोपी परीक्षण हेतु प्रश्न तैयार करना होते हैं। वादप्रश्न अथवा चार्ज भी हमें ही लगाना होते हैं। अर्थात ये मूलभूत कार्य हमें ही करना होते है। यदि ये सब कार्य हमें ही करना है तो इससे संबंधित फाइलें भी हमारे पास ही होना चाहिये। जिस दिन हम इस प्रकार के कार्य के लिए तिथि निर्धारित करते हैं उसी दिन आपने सोच विचार कर तारीख का निर्धारण करना चाहिये कि आपके पास ऐसा कार्य कितना है। हम पर्याप्त रूप से उचित अंतराल की तिथि निर्धारित कर लें लेकिन हम आप अपने रीडर को निर्देशित करें की वह फाईल संध्याकाल को घर जाते समय हमारे बक्से में रखे। इस प्रकार समस्त कार्य जो स्वयं पीठासीन अधिकारी को करना है उसके पास ही रहेगा व घर पर उक्त कार्य करने का अवसर आज नहीं तो कल मिलेगा। फुरसत के क्षण घर में सदा उपलब्ध रहेंगे तब धीरे–धीरे फाईलों को पढ़कर होमवर्क घर पर कर लें। घर पर चार्ज फार्म, आरोपी परीक्षण के फार्म, जजमेन्ट पेपर, कोरे कागज आदि स्टेशनरी रख लें। जिस विविध कार्य को आप अपने हाथों से आसानी से लिख सकते हैं उन्हें हाथ से ही लिख लें व बाकी कार्य की पूर्ण तैयारी रखें, नोटिंग तैयार रखें ताकि जब शाम के समय कोर्ट-कार्य के समाप्ति पश्चात् या कार्य प्रारम्भ होने के पूर्व निपटाया जा सकेगा।

इस प्रकार हमारे द्वारा निराकृत किये जाने वाला कार्य, जो हम आपको ही निराकृत किये जाने का कर्तव्य है, आसानी से हो सकेगा। एक तर्क यह दिया जाता रहा है कि यदि समय पर वादप्रश्न एवं चार्ज निर्मित कर दिए जाएंगे तो साक्ष्य का कार्य बहुत अधिक हो जाएगा। इस तर्क को सही मानते कुछ न्यायिक अधिकारी एक आसान काम करते है। जैसे 1-1, 2-2 साल तक वादप्रश्न ही मत बनाओ, अथवा चार्ज ही मत लगाओ जिससे साक्ष्य बुलाने की परेशानी से वे बच सकें। वे इस बात में विश्वास करते हैं कि पूर्व पीठासीन अधिकारियों द्वारा निर्मित वादप्रश्न, चार्ज के प्रकरणों में ही साक्ष्य लें व यदाकदा चार्ज अथवा वादप्रश्न निर्मित करें। ऐसा यदि किया जाता है तो परिणाम यह होता है कि एक समय ऐसा आता है कि न्यायिक अधिकारी के पास कार्य निराकरण के लिए कार्य नहीं रहेगा व न्यूनतम स्तर तक का कार्य करके भी वह नहीं दे पाएगा एवं अधिकांश प्रकरण अनिर्णित रहेंगे। सतत् रूप से हम आधारभूत कार्य करते रहेंगे तो भाविष्य में कोई असुविधा नहीं होगी।

एक अन्य युक्ति अथवा उपाय का अविष्कार हम आप करते है। वो यह कि वादप्रश्न बनाने के नाम पर पक्षकारों को समय देते रहते हैं कि पक्षकारगण प्रस्तावित वादप्रश्न प्रस्तुत करने हेतु समय चाहते हैं, अथवा वे लेख प्रस्तुत करने हेतु समय चाहते हैं। आदेशिकाओं में यह लिखते हैं कि अन्य कार्य में व्यस्त होने के कारण वाद प्रश्न नहीं

बनाये जा सके या चार्ज निर्मित नही किया जा सका। साक्ष्य निर्धारित तारीख (सेटलिंग डेट) के सम्बन्ध मे सालों साल तक यह लिखते हैं कि पक्षकारगण साक्ष्य सूची एवं साक्षी भत्ता प्रस्तुत करने हेतु समय चाहते हैं, समय दिया गया। लेकिन स्थिति यह है कि आदेश 16 नि. 1 व्य. प्र. स. के अंतर्गत साक्ष्य निर्धारण की तिथि 15 दिन से अधिक की नहीं दी जा सकती। यदि उक्त तिथि के अंदर पक्षकारगण ऐसा नहीं करते है तो अपनी जिम्मेदारी पर साक्ष्य प्रस्तुत या आहूत करने के संबंध में प्रावधान उपलब्ध है।

आरोपी परीक्षण हेतु प्रश्नावली न बनाना भी हम आप का एक सामान्य उपक्रम है। हम ऐसा करते हैं व हमारे इस कृत्य का औचित्य भी यह लिखकर सिद्ध करते है कि अन्य कार्य में व्यस्त होने से तारीख बढ़ाई गई। यदि हम सभी अन्य कार्य में व्यस्त हैं तो मुख्य कार्य जो शेष है वह कब करेंगे। ऐसा भी नहीं होता कि प्रत्येक दिन साक्षीगणों का अम्बार न्यायालय में होता है जिस कारण हम आधारभूत कार्य नहीं कर सकते। ध्यान रहे कि मूलभूत कार्य हमें करना है। वकील इसमें दखल नहीं देते हैं। अतः हम यह नहीं कह सकते कि वकील कार्य नहीं करते हैं।

वास्तविकता यह अनुभव होती है कि हम कोई नया कार्य करने हेतु आधारभूत कार्य अग्रिम रूप से तैयार नहीं करना चाहते। पूर्व अधिकारियों द्वारा छोड़ी गई फाईलों में से ही हम अपना कार्य करने का प्रयत्न करते रहते हैं। मूलधन का भोग करने से पूंजी नहीं बढ़ती है।

हम बार बार यह कहते हैं कि कार्य निराकरण का मानक प्रतिशत बहुत कठोर है, अथवा वकील कार्य नहीं करते इसलिए निर्धारित निराकरण का लक्ष्य प्राप्त नहीं होता है। लेकिन हमने आत्मावलोकन के लिए यह भी देखना चाहिये कि हम ने कार्य निराकरण हेतु कितनी पूर्व तैयारी की है। एक सुगृहिणी यदि खाना बनाने की पूर्व तैयारी, जैसे चांवल, दाल, गेंहू आदि बीनकर रखना, मिर्च मसाले आदि साफ–सूफ करके रखना, चौका–चूल्हा तैयार रखना, पानी की व्यवस्था आदि करके नहीं रखेगी तो परिवारजनों को अन्न कब तैयार करके खिलाएगी। मुख्य भूमिका तो घर की सुगृहिणी की है व सहायक भूमिकाएँ शेष परिवारजनों की है। अतः न्यायालयीन परिवार में सुगृहिणी की भूमिका हमें निभाना है। यदि ऐसा हुआ तो कार्य में गतिशीलता निश्चित रूप से आएगी व कार्य निराकरण आसान हो जाएगा। लेकिन यदि हम अतिथि का व्यवहार करें तो आपकी थाली पर कोई भी वस्तु परोसी नहीं जाना है। न्यायालय मेरा है व सर्वोत्तम व्यवस्था मैं करूंगा यह भावना विकसित होगी तो हम आप सफल होंगे।"
THE PEOPLE'S GOOD IS THE HIGHEST LAW" *EICERO.*

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SEXUAL HARASSMENT

V.K. SHRIVASTAVA
D.J. Durg

1. A most sensitised constitution of ours, protects the rights of women and allows them not only equal even better status in society but for various factors the desired effect of its has not yet been achieved. Fundamental right to freedom as enumerated under Article 19 protects our certain rights regarding freedom of speech, etc. and under sub-head (g) allows all citizen the right to " practise any profession or to carry on any occupation, trade or business, " but women as a whole are deprived of their rights for want of availability of a safe working environment. Art 14 and 15 of our constitution allows gender equality and specifically 15 (3) allows state to make special provisions for women so as to enable them to combat with any type of discrimination. On international level the convention on the elemination of all forms of discrimination against women was adopted and all types of unequality have been recognised in Art. 1 to 16 and for elimination state parties decided that they will take appropriate measures towards it. CEDAW in its 11 th sessions made many recommendations recognising violence against women in all forms and also recognised the same to be human rights.
2. The Govt. of India on 25 th day of June 1993 ratified the following resolution of CEDAW

   " Violence and equality in employment :"

   22. Equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the work place.
   23. Sexual harassment includes such unwelcome sexually degermined behaviour as physical contacts and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment. Effective complaints procedures and remedies, including compensation, should be provided.
   24. States should include in their reports information about sexual harassment, and on measures to protect women from sexual harassment and other forms of violence of coercion in the work place.
3. At Beijing Conference Govt. of India made commitment to formulate and operationalize a national policy on women and to set up a commission for women's rights to act as a public defender of women's human rights.

4. It was obligatory on the part of Govt. of India to set in motion a legislation in conformity with those International conventions to which we agreed to implement. Art 51 and 253 of our constitution also cast duty on our Govt. to have a law in accordance with those conventions not inconsistent with the fundamental rights, and in harmony with its spirit so as to enlarge the meaning and contents of rights to work with human dignity and the safeguard against sexual harassment. But neither parliament nor the union under its executive power to curb the evil of sexual harassment made any law so-far.

5. The absence of enacted law to provide for effective enforcement of the basic human right of Gender equality and guarantee against sexual harassment and more particularly against sexual harassment at work place. Hon'ble the supreme Court of India felt compelled to resort to some innovative judicial law making and while passing judgment in ***Writ Petition (Criminal) No. 666-70 of 1992 Vishaka & others Vs. State of Rajasthan & others,*** in exercise of power available under Art. 32 of the constitution for enforcement of the fundamental rights ordained guidelines and norms and declared the same the law of land under Art. 141 of constitution until suitable legislation is enacted to occupy the field of Gender equality of the working women.

6. Salient features are as under:

1. Definition :

For this purpose, sexual harassment includes such unwelcome sexually degermined behaviour (whether directly or by implication) as:

(a) physical contact and advances;

(b) a demand or request for sexual favours;

(c) sexually coloured remarks;

(d) showing pornography;

(e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances where-under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

2. **Preventive Steps:**

All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

(a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.

(b) The Rules/Regulations of Government and public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender;

(c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

(d) Appropriate Work Conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

3. **Criminal Proceedings :**

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

4. **Disciplinary Action :**

Where such conduct amount to mis-conduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

5. **Complaint Mechanism :**

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

6. **Complaints Committee:**

The complaint mechanism, referred to in (5) above, should be adequate to provide, where necessary, a Complaints Committee, a special

counsellor or other support service, including the maintenance of confidentiality.

The complaints Committee should be headed by a woman and not less than half of its member should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government department concerned of the complaints and action taken by them.

The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

7. **Worker's Initiative :**

Employees should be allowed to raise issues of sexual harassment at worker's meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

8. **Awareness :**

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

9. **Third Party Harassment:**

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

10. The Central/State Government are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.

11. These guidelines will not prejudice any rights available under the Protection of Human Rights Act. 1993.

7. Although the guidelines and norms are binding and enforceable in law yet violation of these direction being not punishable under any penalogly the difficulties of enforcement will remain and the only sanction for their breach is resort to the contempt jurisdiction of the apex Court

8. Dircections & norms as aforesaid not only requires compliance by Employer of Public or Private Sector but also needs compliance by Judicial administration in its capacity as Employer and heavy burden rest with us being part of judicial administration to enjoin those directions in a correct way so as to achieve the goal of Gender equality in its real sense.

SUIT FOR DECLARATORY DECREE OR ORDER COURT FEES AND VALUATION

SANJEEV KALGAONKAR
Civil Judge Class II
Chhindwara (M.P)

Section 7 (Iv) (c) of the Court fees Act 1870 lays down that

"In suits for a declaratory decree or order, where consequential relief is prayed, the plaintiff shall state the amount at which he values the relief sought."

Thus, when consequential relief is prayed with the declaratory decree then only the suit comes within the ambit of Sec. 7 (iv) (c) of the Court fees Act 1870.

" A Consequential relief means the relief which flows directly from the substantive relief of declaration and which cannot be claimed independently of it" [Kindly see- ***Balwant Singh Vs. Nandlal 1985 JLJ 560; Madanlal Vs. Bhavarlal 1979 part I MPWN Note No. 7 ; Ratan singh Vs. Siddhanath 1979 (I) MPWN Note No. 212; Ashok Vs. Narsinghrao AIR 1975 MP 39***] Also all the decision hereinafter mentioned]

In order to decide whether a suit is governed by a particular section or Article of the Court fees Act. One must look at the substance and nature of the claim and not to the language or the form in which relief claimed is framed.

[Kindly See - ***Ratansingh Vs. Raghurajsingh AIR 1946 NAG 30***]

Even if the plaint discloses the necessity for the Plaintiff to ask for further relief then mere declaration, the court cannot compel the plaintiff to seek further relief as consequential upon the declaration. It is for the plaintiff to decide Whether he will amend the plaint and seek the further relief as suggested or face the possibility of the suit being dismissed under Section 42 of the Specific relief Act. (New S. 34)

[Kindly see - ***Manoharsingh Vs. Parmeshari AIR 1849 Nag 211; AIR 1953 SC 28; AIR 1967 MP 221***]

In ***Punjabrao Vs. State of M.P. 1971 JLJ SN 69*** it was held that Although Court fee is payable on the claim as framed in the plaint and not on the claim as it ought to be framed because the question of Court fee is distinct and separate from the question of maintainability of the suit as framed. In order to decide whether consequential relief is claimed or not or suit is covered by clause (iv)(c) of Section 7 or by Art. 17(III) of Schedule II, the Court must look to the substance and nature of the claim and not the language or form in which relief claimed is framed. No doubt, the Court fees Act is a fiscal enactment and has, therefore, to be construed strictly and any ambiguity or doubt arising out of interpretation has to be resolved in favour of the subject that does not prevent the court from looking to the substance and not the very form of a suit. It logically follows that the suit as framed for a declaration simpliciter under Sec. 42 of the Specific Relief Act would not be maintainable unless the plaintiff

were further to claim the grant of a perpetual injunction to restrain the State government from recovering the amount due. In the circumstances the claim would be governed by Sec. 7 (iv)(c) of the Court fees Act.

In ***Shamsher Singh Vs. Rajinder Prashad AIR 1973 SC 2384,*** Hon'ble the Supreme Court has said "While the Court fee payable on a plaint is certainly to be decided on the basis of the allegations and the prayer in the plaint and the question whether the plaintiff's suit will have to fail for failure to ask for consequential relief is of no concern to the court at stage, the court in deciding the question of Court fee should look into the allegation in the plaint to see what is the substantive relief that is asked for. Mere astuteness in drafting the plaint will not be allowed to stand in the way of the court looking at the substance of the relief asked for."

In ***Omprakash & others Vs. Sooratram & Others 1994 MPLJ Page 201,*** it has been held by the Hon'ble M.P. High Court that - The question of Court fees has to be determined on the plaint as framed and not on the plaint as it ought to have been framed, unless by astuteness in drafting plaint the plaintiff conceals outwardly the substantive relief asked for by him.

Kindly Also see - ***Gangaram Vs. Ramsarup 1978 JLJ Note 47***

Thus, it is the duty of the Court to look into the allegations in the plaint to decide the substance of the relief for determining the question of Court fees.

Court fees are payable on the plaint as framed and not on a plaint as it ought to have been framed. ***1967 MPLJ 242= 1967 JLJ 350, Baldeo Singh Vs. Gopal Singh.***

VALUATION OF RELIEF BY PLAINTIFF

Valuation of relief for the purpose of jurisdiction and court fees -

The aggregate effect of section 7 (iv) of the Court Fees Act and section 3 & 8 of the Suit Valuation Act is that valuation of relief for the purpose of court fees and jurisdiction shall be the same. Valuation of relief for the purpose of jurisdiction shall follow the valuation of relief for the purpose of court fees.

[Kindly see - ***S. Rm. Ar. S. Sp. Sathappa Chettiar Vs. S.Rm.Ar.Rm. Ramnathan Chettlar AIR 1958 SC 245***]

Generally speaking, in suits for a declactory decree with consequential relief plaintiff is at liberty to put his own valuation to the relief sought.

It is now a settled proposition that- "In a suit for declaration with consequential relief falling under Sec. 7 (iv) (c), the plaintiff is free to make his own estimation of the reliefs sought in the plaint and such valuation both for the purpose of court fees and jurisdiction has to be ordinarily accepted. It is only in cases where it appears to the court on a consideration of the facts and circumstances of the case that the valuation is arbitrary, unreasonable and the plaint has been demonstratively undervalued, the court can examine the valuation and can revise the same. The plaintiff must endeavour to fix a fair value, bearing a relation to the right litigated. There should be a reasonable nexus be-

tween estimation of relief by plaintiff and the thing actually affected by his action. If the plaintiff's valuation is arbitrary and unreasonable and disparity is so great as to show that the plaintiff has not endeavoured to fix a fair value at all, the court can correct the valuation, Court can exercise the powers under O 7 R - 11 of the code of civil procedure."

[Kindly see - ***Idol Shri "Shriji" and others Vs. Chaturbhai Mangalbhai Patel and others AIR 1964 MP Page 4; Sureshkumar Vs. State of M.P. AIR 1975 MP Page 30; Meenakshisundaram Chettlar Vs. Venkatchalam Chettlar AIR 1979 SC 989; S.Rm.Ar.S.Sp. Sathappa Chettlar Vs. S.Rm.Ar.Rm. Ramanathan Chettlar AIR 1958 SC 245; Md. Alam Vs. Gopal Singh and others air 1987 Patna 156(FB); Smt. Taradevi Vs. Shri. Thakur Radha Krishana Maharaj AIR 1987 SC 2086; Nana Vs. Sundarbai 1980 (2) MPWN Note No. 102; Babukhan Vs. Aloo 1984 MPWN Note No. 189; AIR 1968 MP 269; Madanlal Vs. Bhavarlal 1970 (i) MPWN Note No. 7***]

Where the relief sought itself has a real money value which can be effectively ascertained then that value is the value of the relief and any other value described to the relief would be arbitrary and unreasonable if objective standard of valuation or a positive material is available for valuation, they should not be ignored or concealed by the plaintiff.

[Kindly see - ***State of M.P. Vs. Kanhaiyalal Bhuvanilal AIR 1964 MP page 9; M/s Commercial Aviation and Travel Company and others Vs. Mrs. Vimala Pannalal AIR 1988 SC 1636; Bhaiyaiji Vs. Dagadusa 1981 (i) MPWN Note 85; Usha Singhai Vs. Nirmal Singhai 1983 MPWN Note 15.***]

APPLICATION OF SEC. 7 (IV) (C) TO DECLARATORY SUITS

(1) Suit for declaration and Possession -

Where the relief for possession of suit property is consequential upon the relief for declaration the suit would be within the ambit of Cl. (iv) (c) of Sec. 7 of the Court fees Act. If by reading the plaint as a whole it is clear that the relief for declaration is not redundant and that the suit is not for possession only, the suit shall be governed by cl. (iv) (c) of Sec. 7. Where the plaintiff cannot obtain a decree for possession without a declaratory order or some sort of declaration, the Court fee has to be paid under Sec. 7 (iv) (c) and not by cl. (v) of Sec. 7 of the Court fees Act. [Kindly See ***Durga Singh Vs. Ramkali 1982 JLJ Note 72; Kachrulal Vs. State Bank of Indore 1989 (i) MPWN Note 124***]

But where suit property is in "Custodia - legis" and possession of property is held by the Court through receiver for the benefit of the party which is ultimately found to be entitled to it, the relief of possession or injunction is incidential or distinct and separate and as such the suit is not governed by Sec. 7 (iv) (c) of the Court fees Act. Plaintiff is not required to value the suit ad-valorum for relief of possession not being a consequential relief.

[Kindly see - ***Balwant Singh Vs. Nandlal 1988 MPLJ 246; 1991 MPLJ 863***]

(2) Suit to set - aside liability, decree or transaction -

The underlying principle which governs all such suits is laid down by the ***full Bench of Hon'ble High Court of M.P. in the case of Santosh Chandra Vs. Gyansunderbal 1970 MPLJ 363 (FB)*** - "Where it is necessary for the plaintiff to avoid an agreement or a decree or a liability imposed, it is necessary for him to avoid that and unless he seeks the relief of having that decree, agreement, document or liability set-aside, he is not entitled to a declaration simpliciter." In such cases the question of court - fees has to be determined under S-7 (iv)(c) of the Act.

However, where a plaintiff is not a party to such a decree, agreement, instrument or liability and he cannot be deemed to be a representative in interest of the person who is bound by that decree, agreement, instrument or liability, he can sue for a declaration simpliciter provided he is also in possession.

All the same if the plaintiff is not bound by that decree or agreement or liability and if he is not required to have it set aside, he can claim to pay Court-fees under any of the clauses of Art 17 Schedules II of the Court fees Act.

Thus, if a decree, agreement, instrument or liability is void ab-initio or wholly void, a mere declaration that it is so, is sufficient and it is not necessary for the plaintiff to seek further relief of setting aside something which has no existence in law. In that case valuation of suit does not fall within the ambit of section 7 (iv) (c) of the Act, hence ad-valorum court fees is not required. In such case plaintiff does not prays for a relief of setting aside such agreement but for as simple declaration that it is void-ab-initio for there is no need to avoiding something which is void-ab-initio.

[Kindly see - ***Pratap Vs. Puniyabai 1976 JLJ 703; Durg Singh Vs. Ramkali 1982 JLJ SN. 72; Johanram Vs. Dasmat 1982 MPWN 464; Bishaheen Vs. Mehtar 1983 MPLJ Note No. 31; Linmat Jagannath Sahu Vs. Purushottam 1985 MPLJ 748; Thumribai Vs. Mankibai 1981 (i) MPWN Note No. 63; Pannalal Vs. Smt. Mulliyabali 1986 (ii) MPWN Note No. 5; 1963 JLJ page 150***]

But, if the decree, agreement, transaction or liability is voidable then the further and consequential relief of avoiding that decree, agreement, transaction or liability is necessary and suit would fall under section 7 (iv) (c) of the Act requiring the plaintiff to value ad-valorum. In such cases plaintiff is praying for a relief to avoid a burden legally created.

[Kindly see - ***Deepchand Vs. State of M.P. 1957 MPLJ 46 (DB); Ashok Vs. Narsinghrao AIR 1975 M.P. 39; Smt. Ratanbai Vs. Mangilal 1986 (i) MPWN 220; Krishana Electricals Vs. Oriental Power Cables, Kota 1979 (ii)MPWN Note No. 243; Gangaram Vs. Ramsarup 1978 JLJ Note 47; Kuntidevi Vs. Roshanlal 1987 MPLJ 25; Kunwar Shivsingh Vs. Rustamji 1987 (i) MPWN 52; Kanchanmal Vs. Salim 1988 (ii) MPWN Note 70; Dheeraj Singh Vs. Madan Singh 1978 (ii) MPWN 200***]

APPLICATION OF AFORESAID PRINCIPLE

(A) To the suits for cancellation of document :

If the plaintiff is not party to the document, then he is not required to have it set-aside. Payment of fixed court fees under Art 17 Schedule II is sufficient.

[Kindly see - ***Pannalal Vs. Mulliyabai 1986 II MPWN 5***]

But if the plaintiff is party to the document then it has to be decided from allegation in plaint that whether the transaction in dispute is void or merely voidable. If the transaction is void then plaintiff is required to pay fixed court fees under Art 17 of Schedule II for relief of declaration simpliciter. If the transaction is voidable, as aforesaid ad-valorum court fees would be payable under Section 7 (iv)(c) of the Act. Generally, Suits for declaration only that transaction is void and not binding on plaintiff come to the court where plaintiff alleges that his signature was obtained by fraud or by fraudulent misrepresentation.

According to Section 19 of the Indian Contract Act "Where consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused."

In respect of fraudulent misrepresentation which led to execution of document, Hon'ble the Supreme Court had reiterated the common law defence of ***"non-est-factum"*** as follows in the case of ***Ningawa Vs. Byrappa Hirekunrabar and other AIR 1968 Sec 956 -*** A contract or other transaction induced or tainted by fraud is not void but only voidable at the option of the party defrauded. The legal position will be different if there is a fraudulent misrepresentation not merely as to the content of the document but as to its character. With reference to the former, the transaction is void while in the case of the later it is merely voidable.

Thus, where plaintiff alleges that he was infact, misrepresented as to effect and content of document, transaction is void because he never intended to sign the document and therefore in contemplation of law never did sign the contract to which his name is appended. Therefore in such cases, plaintiff is not required to have it set aside and pay ad-valorum court fee.

In ***Pratap Kunji Vs. Puniyabai 1976 MPLJ 627,*** the plaintiff alleged that defendant Pratap who was the brother in law after having gained her confidence and under pretext of helping her in protecting her property from heirs of her husband took her thumb mark on a document which she later learnt was a sale deed in favour of defendant Pratap. She therefore used for a declaration that the sale-deed was fraudulently obtained and was void and for confirmation of her possession. It was held that plaintiff was fraudulently misrepresented as to character and content of document therefore the transaction was void and it was not necessary to get it set-aside and ad-valorum Court fees is not required.

In ***Durg Singh Vs. Ramlal 1982 JLJ-SN-72,*** Plaintiff instituted suit for declaration of her title and possession of suit property and also sought the

declaration that the sale-deed obtained by defendant from her father is nullity as it was obtained by misrepresenting her father during illness in pretext of treatment. On facts of case, it was held that relief for declaring the document to be a nullity is not necessary, as plaintiff's father was misrepresented as to character and content of document.

In ***Linmat Vs. Purushottam 1985 JLJ-747;*** Plaintiff executor of sale-deed was an old, sick and infirm person. He was never told that a sale-deed is being executed but was told that the document was required for ensuring proper management of this lands. In such a case, fraudulent misrepresentation would be not merely as to the contents of the document but also to is character. Such a sale-deed would be wholly void and not merely voidable. The plaintiff was not required to seek the relief of setting it aside.

In ***Johan Ram Vs. Dasmat Bai 1982 MPWN Note 464,*** Plaintiff alleged that her signature were obtained by fraud and misrepresentation by misguiding her that it was hospital form for registration of the name as a patient for treatment. It was held that plaintiff was misrepresented as to character and content of document therefore the transaction is wholly void and plaintiff is not found to pay ad-valorum Court fees.

But it should be very carefully scrutinised on the basis of allegations in plaint that whether infact plaintiff is fraudulently misrepresented as to the character and content of the document or not. Since Hon'ble Supreme Court has given new dimensions to the defence of "non-est-factum" in ***Bisimllah Vs. Janeshwar Prasad AIR 1990 SC 543*** it was held that the defence of "non-est-factum" is not lightly to be allowed where a person of full age and capacity had signed a written document embodying contractual terms. In exceptional circumstances the plea is available so long as the person signing the document has made a fundamental mistake as to the character and effect of the document. But the mistake must be radical, essential, fundamental and very substantial otherwise it would make the transaction valid till it is not avoided.

[Kindly Also see - ***Bihar State Electricity Board Vs. Green Rubber Industries AIR 1990 SC 699***]

(B) To Suit for setting aside decree -

In such suits, the underlying principle is same i.e. if the plaintiff is not party to the suit in which decree is passed and if he cannot be deemed to be representative in-interest of the person who is bound by the decree, ad-valorum court fees and valuation under section 7(iv)(c) is not required.

Is the settled proposition of Hindu law that a son is under a pious obligation to pay off the debt of his father. If a decree is passed on a debt incurred by the father, not only the interest of the father in the joint family property including the share of the sons is liable to sale. An alienation, however stands on a different footing. An alienation in order it may be binding on the interest of the sons must be for legal necessity or for the payment of antecedent debt of their

father. If it is neither for legal necessity not for the payment of antecedent debt, it is not binding on the sons and therefore the sons are not bound by that debt.

[Kindly see - ***AIR 1947 Nag-37; Laxminarayan Vs. Ram Sarup AIR 1957 MP 173, Ashok Vs. Narsinghrao AIR 1975 MP 39; Sitaram Vs. M.G. Deo AIR 1974 MP 173 (DB)***]

In ***Santosh Chandra Vs. Gyansunderbal 1970 MPLJ 333 F.B.*** - it was held that "The minor son of a person who claims to have received some property from his grand father by virtue of a family arrangement and whose interest cannot have been represented by his father in a partition suit between his father and grandmother and who was not impleaded as a party, is not bound by the partition decree obtained by his grandmother against his father. Consequently, it is not necessary for him to have the decree set aside and he can claim the relief of declaration simpliciter without seeking the relief of injunction for restraining the grandmother from claiming partition."

In ***Shamsher Singh Vs. Rajinder Prasad AIR 1973 SC 2384,*** it was a suit by a Hindu son against his father and mortgagee decree-holder for a declaration that the mortgage executed by the father in respect of the joint family property was null and void for want of legal necessity and consideration, though couched in declaratory form, is in substance a suit either for setting aside the decree or for a declaration with a consequential relief of injunction restraining the decree-holder from executing the decree against the mortgaged property and the plaintiff is liable to pay ad-valorum court fee under Section 7 (iv)(c). A mortgage decree against father is a good decree against the son and unless the decree is set-aside it would remain executable against the son and it would be essential for son to ask for setting aside the decree.

[Note - Earlier view of Hon'ble M.P. High Court in AIR 1967 MP 221 (DB) should be read in light of Hon'ble Supreme Court's decision in Shamsher Singh Vs. Rajinder Prasad AIR 1973 SC 2384]

(C) To the suits for avoiding monitary liability

Again the underline principle is the same, that if the plaintiff is bound by the transaction and the transaction is not void ab-initio, the plaintiff is liable to set-it aside and therefore required to pay ad-valorum Court fees.

Where a plaintiff seeks to avoid any liability the value of the relief is the extent of loss to which but for the suit the plaintiff would be subjected and from which he want to be relieved. The Court fees in such case would be payable on the amount sought to be avoided.

[Kindly see - ***Badrilal Bholaram Vs. State of M.P. 1963 JLJ 674(DB); Shriram trading corporation Vs. M.P.E.B. Indore 1981 (Volume 2) MPWN - Note 63; Ramchandra Vs. State of M.P. 1986 (Volume 2) MPWN- Note 93; Babulal Jain Vs. M.P.E.B. 1982 MPLJ Note 66***]

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ATTENTION PLEASE

JUVENILE JUSTICE ACT, 1986
S. 32 AND 2(4) ENQUIRY TO BE MADE
(1997) 8 SCC 720- AIR 1998 S.C. 236
BHOLA BHAGAT VS. STATE AND OTHER CASES

When a plea is raised on behalf of an accused that he was "Child" within the meaning of the definition of the expression under the Act. it becomes obligatory for the Court, in case it entertains any doubt about the age as claimed by the accused, to hold an inquiry itself for determination of the question of age of the accused or cause an enquiry to be held and seek a report regarding the same. if necessary. by asking the parties to lead evidence in that regard. Keeping in view the beneficial nature of the socially oriented legislation, it is an obligation of the Court where such a plea is raised to examine that plea with care and it cannot fold its hands and without returning a positive finding regarding that plea, deny the benefit of the provisions to an accused. The Court must hold an enquiry and return a finding regarding the age. One way or the other.

When a plea is raised on behalf of an accused that he was a "child" within the meaning of the definition of the expression under the Act. it becomes obligatory for the court, in case it entertains any doubt about the age as claimed by the accused, to hold an inquiry itself for determination of the question of age of the accused or cause an enquiry to be held and seek a report regarding the same, if necessary, by asking the parties to lead evidence in that regard. Keeping in view the beneficial nature of the socially-oriented legislation, it is an obligation of the court where such a plea is raised to examine that plea with care and it cannot fold its hands and without returning a positive finding regarding that plea, deny the benefit of the provisions to an accused. The court must hold an enquiry and return a finding regarding the age, one way or the other. The High Courts and the subordinate courts are expected to deal with such cases with more sensitivity as otherwise the object of the Acts would be frustrated and the effort of the legislature to reform the delinquent child and reclaim him as a useful member of the society would be frustrated. The High Courts may issue administrative directions to the subordinate courts that whenever such a plea is raised before them and they entertain any reasonable doubt about the correctness of the plea, they must as a rule, conduct an inquiry by giving opportunity to the parties to establish their respective claims and retum a finding regarding the age of the accused concerned and then deal with the case in the manner provided by law.

In the instant case since the plea had been raised in the High Court and because the correctness of the estimate of their age has not been assailed, it would be fair to assume that on the date of the offence, each one of the appellants squarely fell within the definition of the expression "child". The court can-

not ignore and overlook the beneficial provisions of the Acts on the technical ground that there is no other supporting material to support the estimate of ages of the appellants as given by the trial court, though the correctness of that estimate has not been put in issue before any forum.

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CUSTODY

MEANING OF (439 CR.P.C.)

M.Cr.C. No. 7067/97, M.P. High Court, Jabalpur Bench decided on 14.1.1998.

(Not yet published in any other magazine)

VINOD KUMAR VS. STATE

Order By Hon'ble Shri Justice Dipak Misra

it is lucidly clear that while an accused remaining under the protective umbrella of the anticipatory bail order appears before the competent court and moves for regular bail it would be deemed that he is in custody and his bail application can be considered on merits. Even if his application for grant of regular bail is rejected at the court of first instance he can move the higher court under Section 439 of the code and he would be deemed to be in custody if the protective order passed under Section 438 of the Code is in continuance.

In view of the preceding analysis the impugned orders passed by the courts below are indefensible and deserve to be set aside and accordingly I set aside them. The competent courts were required to consider the bail applications on merits, as at the time the bail applications were moved, the petitioners were under the umbrella of anticipatory bail passed by this court. In fact, at the relevant time they were in custody as understood in law. As they should not suffer for the illegal orders passed by the competent courts, I am inclined to direct that the interim protection granted in their favour on earlier occasions in all five applications would remain effective till 7-2-98 within which they shall appear physically before the competent court and move for regular bail and the competent court shall decide the matter of regular bail on their own merits as expeditiously as possible.

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SECTION 149-173 M.V. ACT 1988

M.A. No. 320/96, M.P. High Court, Jabalpur. Judgment delivered on 23-1-1998 by the Division Bench after reference being answered.

(Not yet published in any other magazing)

UNITED INDIA INSURANCE COMPANY LIMITED

VS. PAREKHIN BAI AND OTHERS

Reference answered by Hon'ble shri Justice D.M. Dharmadhikari on

conflicting opinions expressed by Division Bench of the M.P. High Court.

The Claims Tribunal by an award granted compensation to the non-appellants Parekhin Bai and others. The owner of the vehicle, who is a firm, sent the vehicle for carrying goods of the firm. The owner had given a written standing instruction to the driver not to allow any passenger to travel in the vehicle. However, the driver allowed the deceased to travel in the "Dala" of the vehicle. The contention of the appellant was that the Insurance Company is not liable to pay compensation for the death of a gratuitous passenger or unauthorised occupant of vehicle insured as a goods vehicle. The appellant however, contended that as per the terms of the insurance also the risk of such an unauthorised passenger on a goods vehicle is not covered. Award was also granted against the owner of the vehicle.

Following are the extracts from the order of reference :-

"as the insured did not commit any breach of the terms of the policy, the insurer cannot avoid its liability".

"In the present case, a joint award was passed against the driver, owner and insurance company. The owner has taken a specific plea that it is not vicariously liable because the driver acted in a wholly unauthorised manner and contrary to his instructions. The Tribunal yet passed an award against the owner. The owner has not preferred any appeal and the award as against the owner has become final. The insurance company alone has come up in appeal and, as has been mentioned above, its defences are limited by the specific provisions contained in Section 149 (2) of the Act of 1988. As has been held above, the breach of the conditions of the policy having not been committed by the owner, the insurance company has no defence based on the terms of the policy. It is, however, necessary to clarify that had the owner preferred appeal against the award denying its vicarious liability. It would have been possible for this Court to absolve the insured of its liability and consequently the insurer. It is only when the insured is liable that the insurer becomes liable to satisfy the award of compensation in terms of Section 149 (1) of the Act."

"The plea that the owner is not vicariously liable for the acts of his servant is a defence available only to the owner of the vehicle and such defence is not available to the insurance company."

"it is not possible at all for the insurer and insured to avoid the liability on the plea that the driver acted in a wholly unauthorised manner and contrary to the instructions of the owner. It would have been possible for this Court to take a different view in favour of the insurer, had the insured also preferred an appeal separately or jointly with the insurer."

"For the reasons aforesaid, had an appeal against the award been preferred also by the owner of the vehicle, it was possible for this Court to hold that as the owner is not vicariously liable, the in-

surance company as insurer is also not liable. Here, the appeal preferred is only by the insurance company having limited defences. The defence based on absence of vicarious liability of the owner being not available to the insurer. It is not possible for this Court to absolve the insurer of its liability."

CASES AND BOOKS REFERRED IN THIS CASE :-

1. Skandia Insurance Co. Vs. Kokilaben A.I.R. 1987 A.C.J. 411 S.C.
2. Sohanlal Pasi Vs. P. Sesh Reddy, A.I.R. 1996 S.C. 2627.
3. B.V. Nagraju Vs. Oriental Insurance Co. Ltd., A.I.R. 1996 S. C. 2054.
4. Oriental Insurance Co. Ltd. Vs. Smt. Raiharani and others M.A. No. 1221 of 1996 decided by S.K. Dubey & Dipak Misra JJ
5. Commentary on Tort by Ratanlal & Dhirajlal 23rd. Ed. 1997, edited by Justice G.P. Singh, Pages 136-139.
6. Clerk & Lindsell on Torts, 16th Edition, paras 3-18 at page 211.
7. Fridman on Torts, Ist Edition 1990 at page 61.
8. Twine Vs. Bean's Express Ltd. (1946 - 62 T.L.R. - 458).
9. Conway Vs. George Wimpey Ltd. (1951) K.B. 266.
10. Salmon and Heuston on Torts.
11. Charlesworth and Percy on Negligence 18th Edition page 9 to 15 and 706.

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AMBIT OF SECTION 37 (1) (B) WITH REFERENCE TO SECTION 20 (B) (I) N.D.P.S. ACT

MCrc No. 2710/97 Munnalal Vs. State and 4 other cases decided on 16-1-1998.

The following reference was answered by Hon'ble Shri Justice S.K. Dubey and Hon'ble Shri Justice Rajeev Gupta.

(Not yet published in any other magazing)

The accused applicants moved an application under Section 439 of the Cr. P.C. They were arraigned as accused under Section 20 (b) (i) of the N.D.P.S. Act. In view of the cleavage of opinion of the different High Courts Hon'ble Shri Justice Dipak Misra was of the opinion that the matter calls for a authoritative pronouncement by a larger bench. Hence this matter come up before the Division Bench of the M.P. High Court. The High Court answered the reference in the following manner.

The extract of the Paragraph 15 of the judgment is as under :-

"As a result of aforesaid discussion we are of the opinion that the limitations of section 37 (1) (b) of the NDPS Act are applicable while considering the application for grant of bail to a person who has charged for an offence under Section 20 (b) (i) of the NDPS Act."

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JUDGE

To a Judge his reputation is too (So) precious an attribute, hence attack on it is beyond his endurance. He may suffer criticism of lacking in knowledge and diligence but lack of integrity is taken by him as the gravest charge which may put him 'off' completely. Such charge should not readily be made merely by believing complaints against him or only on finding his work upto the standard. The nature of duties of a Judge is such that it readily exposes him to charge of favouritism and even sometime of corruption because one of the parties or its counsel in the litigation before him, who loses the case is likely to feel disgruntled and may even adopt vindictive attitude. That however, is occupational hazzer of a Judge. The higher judiciary which has to assess his work and performance, therefore, has to be more cautious in raising inference of lack of integrity even where his judgments are found to contain grave errors of law or legis.

Judicial integrity or honesty does not merely mean discharging duties unmindful of gain or loss, fear or favour, affection or illwill. In another sense it demands discharge of duties with complete intellectual honesty. Where law is overlooked, its language is strained and logic is taken aid of to achieve the desired result suited to one's own prediliction and liking, criticism of want of integrity may be levelled against the decision maker. See the following observations of Justice Frank Further of the United States in the case of ***Public Utilities Commission of the District of Columbia Vs. Franklin S.Pallock, (343 US 451 at 465-466). (1996 Law Edition 1968 and 1979) as quoted in the case of Bhajan Lal Vs. Jindal (AIR 1994 SCW 3905).***

> "the judicial process demands that a Judge should move within the frame work of relevant legal rules and the covenanted modes of thought for ascertaining them. He must think dispassionately and submerge private feeling on every aspect of a case."

- Excerpts from the Judgment of High Court of M.P. Vs. R.C. Chandel 1997 (2) JLJ 379. Judgment delivered by Hon'ble D.M. Dharmadhikari and Hon'ble Usha Shuklal, JJ.

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SECTION 154 CR. P.C. & SECTIONS 8 AND 13 OF EVIDENCE ACT 1997 (2) JLJ 415

SUKKA VS. STATE

F.I.R. lodged by accused cannot be completely discarded. Confessional part of such F.I.R. is not admissible. Non-confessional part may be used against accused as evidence of conduct, motive and relation of accused with deceased, F.I.R. by the accused being an admission in favour of the accused may be taken into account and be used particularly when there is no direct evidence. (A.I.R 1994 SC 610, followed).

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TIT BITS

1. TERRITORIAL JURISDICTION OF CIVIL COURT
1997 (2) M.P.L.J. 305
BAWLESHWAR FILMS VS. DINESH SINGH

There was an agreement which contained the clause to the effect that, "This agreement is subject to the approval of our principals and also subject to only Indore jurisdiction". There was an agreement entered into between distributor and exhibitor to make available a print of cinema film. The distributor failed to deliver that print. Therefore that film could not be exhibited. The trial court granted mandatory injunction for delivery of one print to exhibitor for exhibiting film in particular theatre.

It was held that this clause relating to territorial jurisdiction was too vague and ambiguous. Therefore the trial court was justified in holding that Gwalior Court has jurisdiction in the matter.

It was further held that when there is unambiguous agreement for jurisdiction to vest in a particular court such agreement is not hit by Sections 23 and 28 of the Contract Act. When there is unambiguous conferring jurisdiction to a particular court, the other courts had no jurisdiction and such an agreement ousting jurisdiction of the normal court is neither unlawful nor void.

It was further held that the act of non supplying print of cinema film for exhibition amounted to harming good-will and reputation of cinema hall to exhibitor and causing irreparable loss to him. Such type of loss could not be assessed in terms of damages. Trial Court was justified in granting mandatory injunction.

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2. EXECUTION PROCEEDINGS : OBJECTION BY JUDGMENT DEBTOR RELATING TO AMOUNT RECEIVED THROUGH D.I.C.G.C. BY BANK
1997 (2) M.P.L.J. 316
BALAJI INDUSTRIES VS. STATE BANK OF INDIA

The decree was passed in favour of bank. The bank filed an execution for recovery of money. The judgment debtor objected the execution on the ground that decree holder bank had already recovered substantial part of decretal liability from D.I.C.G.C. (Deposit Insurance and Credit Guarantee Corporation) on strength of premium paid from judgment debtors account and bank cannot be permitted to recover the said amount form them again and indulge in undue enrichment. The High Court rejected the objection holding that the D.I.C.G.C. was not party to the proceedings and the order by the trial court was passed on firm foundation. The trial court had held that there was no contract between the decree holder and the creditor that if the bank could recover the amount from D.I.C.G.C. the decree holder will be barred from recovering the same from judgment debtor.

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3. EXERCISE OF POWERS UNDER ORDER 8 RULE 10 CPC
1997 (2) M.P.L.J. SHORT NOTE 22
LAIK KHAN VS. SHRI NARAYAN

Suit for mandatory injunction. Defendant failed to file written statement. Under Order 8 Rule 10 Civil Procedure Code there is option with the Court either to decree the suit or ask the plaintiff to lead evidence. Trial Court exercised option directing plaintiff to lead evidence. In the situation, trial court could not decree the suit without recording evidence. It would be just and proper to permit defendants to file written statement subject to payment of costs of Rs. 1,000/- .

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4. ORDER 9 RULE 13 CPC; RIGHT OF PERSON NOT PARTY TO THE PROCEEDINGS
1997 (2) MPLJ 423
RAGHUNATH VS. M.P. ELECTRICITY BOARD

The plaintiff obtained an exparte decree while decreeing the suit. The Court directed that the defendant M.P.E.B. shall remove the lines providing electricity connection to some other person not party to the proceedings and also directed to provide him with electricity connection through the alternative route. Said person was not arrayed as defendant despite his rights being affected by the decree. He had a right to file an application under Order 9 Rule 13 CPC.

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5. ABATEMENT OF SUIT : PROCEDURE AND POWERS
1997 (2) M.P.L.J. SHORT NOTE 15
OMPRAKASH VS. BANARASI DEVI

In an ejectment suit death of sole plaintiff occurred Legal representatives of deceased filed an application under Order 22. Rule 3, Order 22, Rules 9 and 10 Section 151 Civil Procedure Code for setting aside abatement and another application under Section 5 of Limitation Act on lapse of 90 days period. Trial Court found sufficient cause for allowing applications. Even though application under Order 22, Rule 9 had not been separately registered as M.J.C. in compliance of Rule 372 (4) of M.P. Civil Court Rules, no prejudice was caused to defendant. Recording of evidence as such was not found to be absolutely necessary. It cannot therefore be said that trial Court had committed any illegality in allowing said applications. ***AIR 1955 SC 425, AIR 1985 SC 606, was relied on.***

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6. ABATEMENT : DELAY IN BRINGING L.Rs. ON RECORD
1997 (2) M.P.L.J. 567
KALUA VS. SUSHILA

(1) Limitation Act S-5 :

The delay in matter of bringing legal heirs on record by the State Government. State Government is also a litigant but a liberal approach should by taken.

2. **Who Can File Appeal :**

Civil Procedure Code, O. 41. R.4 and 0. 22. R.4 :-

Suit for possession of land which had been allotted by Bhudan Yagya Board alleging that plaintiff had never donated the said land. Suit decreed. Appeal by State. Plaintiff died during pendency of appeal. Application for bringing his heirs on record dismissed as barred by limitation. On dismissal of appeal as having abated no further appeal filed by State. Allottee of land who was likely to lose the land in case he was not heard on merits entitled to maintain appeal against the order holding appeal to have abated. Objection by opponent rejected. ***AIR 1976 All. 121 Rel.***

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7. **M.P. CIVIL COURT ACT: JURISDICTION OF CIVIL COURT ARTER AMENDMENT OF SECTION 6 OF THE ACT**
1997 MPLJ (2) 586
PANDIT GOPAL KRISHNA VS. PANDIT BAGIRATH PRASAD

A suit was pending before the Additional District Judge. The valuation of the suit was below 50,000/-. By M.P. Civil Court Amendment the jurisdiction of Civil Judge Class I was increased from Rs. 20,000/- to Rs. 50,000/-, the date on which the suit was instituted. It was instituted in the Court of lowest grade competent to try the suit (Section 15). Therefore by virtue of the amount in the Act powers of the Court of District Judge are not varied. Clause (C) of Section 6 not amended. The legislature was silent in respect of pending suits and the legislature has also not provided that pecuniary jurisdiction of the District Judge shall only be above Rs. 50,000/-. By virtue of the amendment in the Act the powers of District Judge and A.D.J. to try and decide suit without any restriction as to value not varied and this was position even if provision of retrospective operation was applied.

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8. **SECTION 161 CR.P.C. AND BINDING EFFECT UNDER MOTOR VEHICLE ACT**
1997 (2) JLJ 399
LAKSHMI GONTIA VS. NANDLAL

The statements recorded under Section 161 Cr.P.C. are not binding in claim cases. A reference was made to ***1993 JLJ 788 Dhanwanti Vs. Kulwant (D.B.).*** In the case of ***Sabbir Ahmed Vs. M.P.S.R.T.C. AIR 1984 M.P. 173 (D.B.)*** was referred. In that case it was held that the evidence of criminal cases cannot be used as a basis for discarding the testimony of witnesses recorded before the Tribunal. The member of the Tribunal disbelieved the evidence of a witness merely because he was shown to be at a distance of 225 feet from the place of accident in the spot map, which was inadmissible. Mere production of a certified copy of the judgment of the Criminal Court containing a reference to such a spot map having been prepared by the Magistrate was no evidence by itself

unless it is proved as a fact. Therefore such evidence should have been excluded from consideration by the Tribunal. ***1970 JLJ 626 Ram Dulare Vs. M.P.S.R.T.C. was relied on.***

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9. SECTION 173 CR.P.C. : FINAL REPORT AND ORDER FOR REINVESTIGATION

(1997) 7 SCC 614
UNION PUBLIC SERVICE COMMISSION VS. S. PAPAIAH

Magistrate must give notice and opportunity of hearing to the informant before accepting the final report and closing the case.

In the present case no notice was issued by the Magistrate to the appellant before accepting the final report submitted by the CBI and deciding not to take cognizance and drop the proceedings. This omission vitiates the order of the court accepting the final report. The issuance of a notice by the Magistrate to the informant at the time of consideration of the final report is a "must".

The issuance of notice by the CBI to the appellant was not a substitute for the notice which was required to be given by the Magistrate. The Magistrate could not in any event "delegate" to the investigating agency its function of issuing notice. Moreover, when law requires a particular thing to be done in a particular manner, it must be done in that manner and in no other manner.

Thus the Magistrate was not justified in accepting the final report of the CBI and closing the case without any notice to the appellant and behind its back.

Final report was submitted by the investigating agency after reinvestigation of the case. Shortcomings necessitating reinvestigation pointed to the investigating agency by the informant (UPSC) not brought to the notice of the court while resubmitting the final report. Held, acceptance of the final report and closure of the case by Magistrate bad. Withholding of such vital information creates a doubt about the fairness of the investigation.

Power of Magistrate to direct further investigation after acceptance of final report and closure of the case. Shortcomings necessitating reinvestigation brought to the notice of the Magistrate by the informant but he refused to direct reinvestigation holding that he had no power to review the earlier order. Held the Magistrate failed to exercise jurisdiction vested in him by law. He was not required to review the order but to order further investigation into the case which he was competent to do under S. 173 (8).

Case referred : *(1985) SCC 537 Bhagwat Singh Vs. Commissioner.*

The Judicial Officers are requested to kindly go through the provisions of Rule 101 and 102 of the Rules and Orders (Criminal) which are reproduced here for their ready reference:

101: When the final report, under Section 169 and 173 of the Code, discloses facts which afford good prima facie grounds for believing a case to be

false, or the have been instituted through mistake on the part of the complainant as to the criminal liability of the accused, the District Magistrate (Now C.J.M.) may order the case to be expunged from the Crime Register. Similar of the accused is sent up for trial under Section 170 and is acquitted or discharged on the ground that no offence was committed, the court(subject in the case of a court of a magistrate to the orders of the District Magistrate) Now C.J.M. may direct the expunging of the offence.

Note: Applications to have cases expunged should ordinarily be made by the District Superintendent of Police in English and such applications should be confined to important cases.

102: In doubtful cases an offence should not be expunged. Mere failure to elicit confirmatory evidence will not justify the expunging of a complaint once registered. Some positive evidence inducing a reasonable certainty that the offence was not committed is needed. On the other hand a court should not refuse to make such an order merely on the ground that there is no strictly legal evidence before it on which it can declare the charge to be false or erroneous. Final Report (F.R.) has two meanings. One is submitting Final Report (Charge-Sheet, Challan) in the Court and secondly submitting final report closing the case by police as it does not want to proceed further in the matter. E.R. means Expuning the Report.

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10. COURT : DUTY OF
1997 (2) JLJ 399

The Court is charged with responsibility of guiding the procedure and apprising parties of their duties.

The Court is charged with the responsibility of guiding the procedure and apprising the parties whenever necessary of their duties. As legal procedure is full of traps; if a litigant happens to stumble, the Courts should discharge its responsibility except when this is the result of an attempt to be clever and over-reach the Court or to do something inequitable to the other side. In the latter event the party concerned should be dealt with severly. ***1960 JLJ 1184 and 1962 JLJ 604*** relied on.

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11. MAGISTRATE : TO RECORD MEMORANDUM OF EVIDENCE

A Magistrate is not entitled to attend to other work during the hearing of the case and to plead that other work as the reason for his inability to make a memorandum of the substance of the evidence himself. ***AIR 1937 Oudh 126 (127) : 38 Cri LJ 150.***

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12. (1997) 6 SCC 241 : A.I.R. 1997 SC 3011
VISHAKA VS. STATE

This judgment relates to sexual harassment to women.

If the law for effective enforcement is absent relating to gender equality and guarantee against sexual harassment and abuse more particularly of working women, Supreme Court can in exercise of powers under Article 32 lay down guidelines and norms and Supreme Court has laid down guidelines and norms and directed that these be treated as law declared under Article 141 of the Constitution of India. It is made applicable to both public and private sectors.

It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law. In the absence of domestic law occupying the field to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Arts. 14,15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning an content thereof, to promote the object of the constitutional guarantees. This is implicit from Art. 51 (c) and the enabling power of the Parliament to enact laws for implementing the International Conventions and norms by virtue of Art. 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution.

(For details please refer to the text of the Judgment.)

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13. MAINTENANCE TO DAUGHTER UNDER SECTION 20 OF HINDU ADOPTIONS AND MAINTENANCE ACT
1997 (2) M.P.L.J. 530
RISHIKESH DARSHANLAL SHARMA VS. SAROJ RISHIKESH SHARMA

The husband filed an application for divorce against the wife. The wife filed an application under Section 26 of Hindu Marriage Act for grant of maintenance to daughter though such application was not maintainable under that provision of law. Such maintenance can be granted in view of Section 20 of the H.A.M. Act. The parents are bound to maintain their children. The objection of the husband was dismissed.

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14. SECTION 27 HINDU MARRIAGE ACT : PRESENTATION AT OR ABOUT THE TIME OF MARRIAGE
1997 (2) MPLJ 403 : (1997) 7 SCC 500, AIR 1997 SC 3562
BALAKRISHNA VS. SANGEETA

Property presented at or about the time of marriage. 'At or about the time or marriage' contemplates not only property presented at the time of marriage but also that presented before or after the marriage provided it is relatable to the marriage. Claim regarding presentation of such property has to be estab-

lished on the basis of evidence. Where in a matrimonial proceeding, relief is claimed under S. 27, if presentation of such property is established by evidence, an order under S. 27 has to form part of the decree which is to be passed in the matrimonial proceeding. Matter remitted to family court for determination of the wife's claim on merits.

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15. SECTION 8 JUVENILE JUSTICE ACT : JURISDICTION OF SESSIONS COURT
1997 (2) MPLJ 400
PINKU KUMARI VS. STATE

Pending trial before the Sessions Court. Accused moved an application for transfer of the case to the Juvenile Court on ground that on the date of the occurrence of the offence he was below 16 years of age. The Sessions Judge has jurisdiction to conduct enquiry under Section 8 of the Act to form an opinion as to whether a person brought before him as an accused is juvenile or not.

The Sessions Judge relied on electoral roll prepared under Representation of People Act and recorded a finding that accused is not juvenile. Person whose name recorded in the electoral roll is deemed to be of 18 years or above.

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16. SECTION 32 AND 39 OF JUVENILE JUSTICE ACT
1997 (2) MPLJ S.N. 28

The trial court conducted the enquiry regarding the age of the juvenile but was limited to consideration of medical certificate and affidavit. Proper opportunity was not given to the accused to read evidence in compliance of mandatory provisions of Sections 32 and 39 of the Act and thereby resulting in prejudice to the accused. The matter was remanded to conduct enquiry by giving opportunity to the accused to read evidence.

A.I.R. 1982 SC 1299, 1992 (1) M.P.W.N. 113, 1992 Cr.L.J. 2759 Relied on.

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17. ORDER 5 RULE 2 CPC AND ORDER 9 RULE 6 CPC
A.I.R. 1997 SIKKIM 1
LAKPA SHERPA VS. TEMPA SHERPA

Summons of hearing : There is a requirement of sending the summons with a copy of the plaint. Defendant not showing any interest to receive copy of the plaint on date fixed for supply of copy of plaint or on any subsequent date. Date longer than date fixed for supply of copy given for ex-parte evidence. Ex-parte order was passed even after some more days. Held plea that summons must be accompanied by copy of plaint is not entertainable in the present case.

Exparte hearing : There was a notice to the defendant and the case was adjourned also no duty is cast upon the court to inform party of adjournment.

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18. ORDER 1 RULE 10 CPC
AIR 1997 KARNATAKA 370
SMT. PARVATAMMA VS. A. MUNIYAPPA

1. In a partition suit preliminary decree was passed. Appeal against, by a co-sharer. Application by the daughter of appellant co-sharer for impleading her to be a party to the case. She claimed to be daughter of appellant co-sharer. She claimed herself to be legitee of her maternal grandfather. Application at appellate stage not maintainable when no suit is pending and when she was not necessary party to the suit.
2. **Section 97 Order 20 Rule 18 (2) CPC :** A partition suit was decreed and a preliminary decree was passed. No appeal filed against the preliminary decree. The rights determined there in become final and conclusive which cannot be questioned in final decree.
3. **Will; Proof of :** Mode of proving will is accordance with Section 59 and 63 of the Succession Act read with Sections 67 and 68 of the Evidence Act.

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19. ORDER 22 RULE 9& 10-A CPC
AIR 1997 CALCUTTA 386
SMT. MENATI SEN VS. KALIPADA GANGULI

Death of original defendant caused during the pendency of the suit. The date of death was not supplied by the counsel for the deceased defendant. Application for substitution without any prayer for setting aside abatement was made (under Order 22 Rule 4 CPC). The application was alleged to bring the L.Rs. on record. The action was held not illegal. Application for substitution in such case ought to have been recorded as an application for substitution after setting aside abatement. It was more so in view of Order 22 Rule 10-A of the CPC which caused duty of advocate appearing for deceased party to intimate court about the date of death or party representated by him. Please see ***K.K. Silk Vs. S.G. Bhandar, A.I.R. 1994 A.P. 131*** in which it was held that when an application for setting aside the abatement or dismissal under sub rule (2) of Rule 9 is made within the time allowed by law, i.e. within 60 days from the date of abatement along with a formal application for bringing on record the legal representatives, there is no further need to file an application for condoning the delay in filing an application for bringing on record the legal representatives of the deceased party.

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20. CRIMINAL TRIAL : NON SEIZURE OF PROPERTY
AIR 1997 SC 3427
B. SUBBA RAO VS. PUBLIC PROSECUTOR

1. The prosecution claimed that witnesses saw the incident in light of hurricane lamp burning at place of accident, i.e. where the revenue

office was situated. One of the eye witnesses, a revenue officer alleged to be working and engaged in issuing copies of voters list etc. etc. Merely because the hurricane lamp was not seized from the place of occurrence would not become material as it could be legitimately inferred in such case that there must be some source of light to enable the said officer to perform his job.

2. **Sections 154 and 162 Cr.P.C. :** The police started investigation. Report sent by one of the eye witnesses to police station subsequent to beginning of investigation. Such report is not F.I.R. but a statement under Section 162 Cr.P.C.

3. **Delay in F.I.R. Section 154 :** Witnesses seeing ghastly murder committed by their rival in night but took shelter in fields in the darkness to save their lives. F.I.R. recorded in small hours of the following day. It was held that there was no delay in lodging F.I.R.

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21. SECTION 157 CR.P.C. : DELAY IN SENDING OCCURRENCE REPORT
AIR 1997 SC 3527
MADRU SINGH VS. STATE OF M.P.

Evidence of witness who lodge F.I.R. was very emphatically stated that the witness saw the entire incident and she herself went to police station in matador along with the dead body of victim and lodged F.I.R. on the very day. The copy of the F.I.R. under Section 157 was received by the Magistrate 3 days after the incident. No conclusion can be drawn on such ground that F.I.R. was lodged on the same day.

Appreciation of Evidence: Presence of eye witnesses at the place of occurrence. Injuries were on the person of the witness. Medical evidence reveals that injuries were not self-inflicted that eye witness gives all necessary details regarding assault, weapons and role played by each accused. It was also corroborated that the other eye witnesses were also present but they were hostile. Therefore evidence of eye witnesses (not hostile) and her presence at the place of the occurrence cannot be doubted on the basis of some trivial conditions.

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22. SECTION 168 M.V. ACT
AIR 1997 M.P. 248 (D.B.)
M.P.S.R.T.C. VS. ABDUL REHMAN

The concept of contributory negligence cannot be made applicable to a child. A child functions according to his own reasoning and his intelligence. Logicality and rationality are not expected from a child as a child of tender age has no continuous thinking process and is governed by his impulse instinct and innocence. One cannot how ever conceive that a child if would have been aware of the peril, would ever commit an Act which is dangerous or hazardous for him because a child's action is child like and really innocent. It has been

said, " The maker of the stars and sea become a Child earth for me ?"

A child remains a child inspite of all training and directions and if anything sparkles it is the glory of his innocence which makes him not indifferent to the risks which an adult apprehends and pays attention.

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23. SECTION 110,13 (2) (19) M.V. ACT (4 OF 1939) LIABILITY OF HIRER
AIR 1997 SC 3444
RAJASTHAN STATE ROAD TRANSPORT CORPORATION VS. KAILASH NATH

The definition of "owner" under Section 2 (19) of the Act is not exhaustive. It has, therefore to be construed, in a wider sense, in the facts and circumstances of a given case. The expression 'owner' must include, in a given case, the person who has the actual possession and control of the vehicle and under whose directions and commands the driver is obliged to operate the bus. To confine the meaning of 'owner' to the registered owner only would in a case where the vehicle is in the actual possession and control of the hirer, not be proper for the purpose of fastening of liability in case of an accident. The liability of the "owner" is vicarious for tort committed by its employee during the course of his employment and it would be a question of fact in each case as to on whom can vicarious liability be fastened in the case of an accident.

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24. SECTION 166 M.V. ACT
1997 (2) TAC 138
SHASTRI BALA VS. SIRI NIWAS

Accident: Two versions regarding the manner in which accident took place. Court should accept the version which is more convincing. Version of independent witness accepted.

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25. SECTION 126 CONTRACT ACT
BANK GUARANTEE
AIR 1997 SC 3450
FENNER (INDIA) LTD. VS. P.N.S. BANK

The defendant has a right to enforce the bank guarantee and the amount stipulated there in. In this case the supreme Court held that, "In view of the expression up to Rs. 30,00,000/- whatever amount advanced and if it is repaid on committing breach there of. The appellant is entitled to avail of and enforce the bank guarantee to the extent of amount advanced. Thereby, to sum of Rs. 20,00,000/- admittedly was advanced. The appellant is entitled to recover the some by invoking the same by bank guarantee with interest from the date of the suit". Enforcement cannot be refused on ground that a maximum amount stipulated was not advance.

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26. SECTION 10 DIVORCE ACT
AIR 1997 BOMBAY 349
MRS. PRAGATI VARGHESE VS. SYRIL GEORGE

The different treatment which is accorded to Christian woman under S. 10 of the Act is based merely on grounds of sex. Similarly, if one compares the provisions of the other enactments on the subject of divorce, it would be clear that Christian wives are discriminated and have been treated differently as compared to wives who are governed by the other enactments. The discrimination is, therefore, based merely on grounds of religion. The aforesaid discrimination in the circumstances, is violative both, of Art. 14 and Art. 15 of the Constitution. Similarly, if one has regard to the dealing with protection of life and personal liberty, it would be clear that the decree holder for possession. Therefore the order was challenged before the High Court.

(Cases referred : *1982 M.P.L.J. 560 Bata Shoe Company Vs. Preetam Das)*

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27. RULE 443, TELEGRAPH RULES, 1951
READ WITH SECTION 7 OF TELEGRAPH ACT
1997 (2) M.P.L.J. 523
CHAND DATTA VS. UNION OF INDIA

The subscriber of a telephone failed to pay of the dues. The department disconnected the separate telephone of his wife for default of payment of dues of the telephone connection of the husband. Such action is impermissible in law. The High Court quashed the action in the matter of disconnection. It was held that the department again exercised such powers so as to include a relation of such defaulter subscriber. It was further held that for the default for payment of telephone bills of telephone of petitioner's husband, the disconnection of telephone services provided to the petitioner is not permissible. Hence the action of the disconnection of the petitioner's telephone is illegal and cannot be sustained.

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28. INTERPRETATION OF STATUTES
WORDS "SHALL" AND "MUST"
1997 (7) SCC 622
MANSUKHLAL VITHALDAS VS. STATE

Nature of a duty laid down in a statute where it is mandatory or directory. Inference of, how to be drawn. Use of the words "shall" and "must" prima facie indicate mandatory character of the duty but this is not conclusive because sometimes they are interpreted as "may". Whether a duty under a statute is obligatory, mandatory or directory has to be ascertained from the scheme of the statute. Even if duty is not set out clearly and specifically in a statute, it may be implied as co-relative to a right.

Mandamus which is a discretionary remedy under Article 226 of the Constitution is issued, inter alia, to compel performance of public duties which may be administrative, ministerial or statutory in nature. Statutory duty may be either directory or mandatory. Statutory duties, if they are intended to be mandatory in character, are indicated by the use of the words "shall" or "must" but this is not conclusive as "shall" and "must" have, sometimes, been interpreted as "may". What is determinative of the nature of duty, position of Christian women, has been rendered most demeaning as compared to Christian husbands, as also wives governed by other enactments. The provisions contained in S. 10 in the circumstances, are violative of Art. 21 also. And therefore the High Court quashed the offending portion holding that it will not amount to redrafting Section 10.

(B) Section 16, 17 and 20 Divorce Act : Requirement of confirmation of the decision of District Judge by a Bench of High Court consisting of three Judges is arbitrary and unreasonable.

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29. SECTION 397 (2) CR. P.C.
1997 (2) JLJ 276
KHAGESH KUMAR GOEL VS. STATE OF M.P.

In this case in addition to other Rulings special reference was made to ***1997 Cr.L.J. (SC) 2185 Amarnath Vs. State*** and ***A.I.R. 1978 SC 47 Mudhulimaye Vs. State.*** Reference was also made to ***AIR 1949 FC 1 Kuppu-Swamy Rao Vs. The King*** in which it was observed that if the objection of the accused succeeded, the proceedings could not have ended but not vice versa. In the present case it was held as under :-

In the aforesaid background of law it has to be seen as to whether framing of charge is an interlocutory order or final order. In the aforesaid Amarnath's case an order of summoning of the accused was held to be not an interlocutory order, whereas in Madhu Limaye's case an order challenging the jurisdiction of the Court to proceed with trial was also held to be not an interlocutory order, but in V.C. Shukla's case with reference to the Section 11 (1) of the Special Courts Act, it was ruled that an order of framing the charge was purely an interlocutory orders it did not terminate the proceedings but the trial goes on culminating in acquittal or conviction.

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30. SECTION 28 SPECIFIC RELIEF ACT;
SPECIFIC PERFORMANCE - ACTUAL POSSESSION
SRI KRISHNA VS. SITARAM
1997 (2) M.P.L.J. 501

In a suit for specific performance of property suit was decreed. There was no reference in the judgment that possession was also to be delivered to the successful plaintiff. It was held that the person in whose favour decree of specific performance is passed is entitled to possession also. In execution pro-

ceedings the trial court rejected the prayer of the whether it is obligatory, mandatory or directory, is the scheme of the statute in which the duty has been set out. Even if the duty is not set out clearly and specifically in the statute, it may be implied as co-relative to a right.

If in the performance of this duty, the authority in whom the discretion is vested under the statute, does not act independently and passes an order under the instructions and orders of another authority, the Court would quash the order and issue a mandamus to that authority to exercise its own discretion.

The word "Sanction" implies application of mind, sanction issued by an authority on the directions of the High Court was invalid because there was no independent application of mind by that authority.

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31. SECTION 24 HINDU MARRIAGE ACT : MAINTENANCE OF WIFE AND CHILDREN
1997 (7) SCC 7
JASVEER KAUR VS. DISTRICT JUDGE

Section 24 of the Act no doubt talks of maintenance of wife during the pendency of the proceedings but this Section cannot be read in isolation and cannot be given restricted meaning to hold that it is the maintenance of the wife alone and no one else. Since the wife is maintaining the eldest unmarried daughter her right to claim maintenance would include her own maintenance and that of her daughter.

(Please see Section 20 of Hindu Adoptions and Maintenance Act.)

No set formula can be laid for fixing the amount of maintenance. It has, in the very nature of things, to depend on the facts and circumstances of each case. Some scope for leverage can, however, be always there. The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments and deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate. Where divorce claims were made by the parties an element or conjecture and guess work does enter for arriving at the income of the husband. It cannot be done by in mathematical precision.

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32. EXPERTS OPINION; DOCTOR
1997 (7) SCC 156
TANVIBEN VS. STATE

Conflict of opinion of two doctors. Opinion of doctor who actually examine

the injuries are held post-mortem examination must be preferred to the expert opinion of the doctor who gave his opinion only on the basis of injury report, X-ray report, post-mortem report, etc.

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33. EXPERT'S OPINION; HAND WRITING EXPERT'S OPINION SECTIONS 73, 45 AND 47 EVIDENCE ACT (1997) 7 S.C.C. 110

Comparision of disputed signature with admitted signature. Court has power to compare the disputed signature with the admitted signature.

Section 73 does not specify by whom the comparison shall be made. However, looking to the other provisions of the Act, it is clear that such comparison may either be made by a handwriting expert under Section 45 or by anyone familiar with the handwriting of the person concerned as provided by Section 47 or by the Court itself.

As a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature or handwriting and in the event of the slightest doubt, leave the matter to the wisdom of experts. But this does not mean that the Court has not the power to compare the disputed signature with the admitted signature as this power is clearly available under Section 73 of the Act.

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34. ORDER 8 RULE 6-A CPC
(1997) 8 SCC 174
SANTI RANI VS. DINESH CHANDRA DAY

The right to file counter-claim being referable to date of accrual of cause of action, if the cause of action had arisen before or after the filing of the suit, and such cause of action continued up to the date of filing written statement or extended date of filing written statement, such counter-claim can be filed even after filing the written statement. Please refer to Section 3 (2) (B) (I & II) of the Limitation Act in which it is stated that any claim by way of a set off or a counter-claim shall be treated as a separate suit and shall be deemed to have been instituted; (I) In the case of set off on the same date as the suit in which the set off is pleaded; (II) In the case of a counter claim on the date on which the counterclaim is made in the Court.

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35. ORDER 22 RULE 4 CPC
(1997) 8 SCC 58
HAMALBARI VS. NASIRUDDIN

When a licensor seeks possession from the alleged licensee though in a summary manner, he seeks restoration of the estate of immovable property which was permitted to be utilised by the licensee during the currency of the licence. Once the licence is put to an end, the right of reversion survives for

the licensor and whoever intermeddles with the property after the death of the licensee would be liable to answer the claim of the licensor and in these proceedings it cannot be said that such a cause of action is personal against the licensee and dies with him. Therefore, it is not possible to agree with the view that once summary proceedings are initiated against the alleged licensee by the licensor under Section 41 of the presidency Small causes court Act, 1882 and if the licensee dies pending the proceedings, his heirs cannot be proceeded against and the proceedings abate. This view runs counter to Section 306 of the Succession Act.

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36. SECTION 24 EVIDENCE ACT
EXTRA-JUDICIAL CONFESSION
(1997) 8 SCC 158
PAKKIRISAMY VS. STATE

Appreciation of Evidence : It is a rule of caution that the court would generally look for an independent reliable corroboration before placing any reliance upon an extra-judicial confession. It is no doubt true that extra-judicial confession by its very nature is rather a weak type of evidence and it is for this reason that a duty is cast upon the court to look for corroboration from other reliable evidence on record. Such evidence requires appreciation with a great deal of care and caution. If such an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and consequently it loses its importance. In the facts and circumstances of the case the courts below committed no error in relying upon the extra judicial confession which is corroborated from several other proved circumstances.

Evidence Act, 1872-S. 24 : Extra-judicial confession Evidentiary value of. Corroboration is Necessity. Confession recorded by Village Assistant in the presence of Village Administrative Officer. Village Assistant testifying that the appellant came on his own to his office and confessed his guilt which was recorded verbatim. Village Assistant an independent witness holding a responsible post. His testimony found trustworthy. Extra-judicial confession corroborated by several other proved circumstances. Held, in the facts and circumstances of the case, the courts below committed no error in relying upon such extra-judicial confession.

Evidence Act, 1872-S. 24 - Extra-judicial confession-Retraction. If, on facts, the confession was retracted at the opportunity Extra-judicial confession recorded by Village Assistant in the presence of Village Administrative Officer. Accused making no reference to such confession in his statement recorded by the CJM under S. 164 Cr.P.C. He merely saying that he was innocent and had not committed any offence. Held, this cannot be called retraction.

Criminal Trial - Circumstantial evidence - Circumstances establishing guilt of the accused. Appellant in need of money to celebrate marriage of his sister. Extra-judicial confession made in the presence of Village Administrative Of-

ficer and Village Assistant. Recovery of jewels and other valuable articles belonging to the deceased pursuant to a disclosure statement made by the appellant. Appellant absconding for about 4 days indicating his guilty mind. Held, in the circumstances of the case guilt established.

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37. FREE FIGHT
CRIMINAL TRIAL
(1997) 8 SCC 340
TANAJI VS. STATE

If a sudden unpremedited free fights take place between two groups the members there of cannot be said to have formed an unlawful assembly within the meaning of Section 141 I.P.C. In such a case each of them would be liable for their individual acts and not for acts of others.

Please refer ***AIR 1973 SC 2505 Lalji Vs. State, AIR 1976 SC 912 Pooran Vs. State, A.I.R. 1976 SC 2423 Ishwar Singh Vs. State, Gajanan Singh Vs. State AIR 1954 SC 695, Dharman Vs. State A.I.R. 1957 SC 324, K.N. Virji Vs. State AIR 1970 SC 219, Vishwas Vs. State AIR 1978 SC 414, Chaman Singh Vs. State AIR 1979 SC 1114, Madhav Vs. State AIR 1981 SC 651***

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38. PREVENTION OF FOOD ADULTERATION RULES, 1955
RULE 18
(1997) 9 SCC 101
N. SUKUMARAN NAIR VS. FOOD INSPECTOR

The Food Inspector as PW 1 was categoric that he had sent the specimen impression of the seal separately to the Public Analyst under sealed cover. It is true that he did not adduce in evidence the postal receipt vide which the specimen impression of the seal was sent separately. The Food Inspector could be dubbed wrong if his statement had been challenged in cross-examination. As it obvious the Food Inspector deposed to the observance of the requirement of R. 18, but at best, can be said not to have introduced corroborative evidence to his word. But, if the word of Food Inspector is not challenged in cross-examination and is otherwise found corroborated from the report of the Public Analyst, wherein the necessary recitals, even though in printed form are available, compliance of Rule 18 becomes obvious. Such report of the Public Analyst is ex facie evidence. There are methods to challenge the same which was not resorted to. Thus the High Court was justified in upsetting the order of acquittal on the aforesaid ground.

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39. MOTOR VEHICLES - FATAL ACCIDENT - SECTION 168 M.V. ACT READ WITH SECTION 114 ILL, (G)
(1997) 9 SCC 103
MOHAN BENEFIT PVT. LTD. VS. KACHRAJI RAYMALJI & OTHERS

Claims petition. Award of damages. Appointment of liability. Truck colliding

with scooter killing three persons. Three claim petitions filed against truck-driver, truck-owner and appellant. Company which had entered into a hire-purchase agreement with the truck-owner as security for an alleged loan granted by the appellant to the truck-owner. Claims Tribunal awarding damages and holding that the appellant was jointly and severally liable to pay the damages along with the truck driver and truck-owner. High Court in appeal upholding the order. Held, the courts below were right in holding that the true relationship between the truck-owner and the appellant had been suppressed by withholding from court the real documents executed between them. Hence the courts below were justified in drawing an adverse inference against the appellant and fastening joint liability on it. Claimants given liberty to withdraw deposit made by the appellant as security pending appeal, in partial satisfaction of the award and to execute the award for the unsatisfied amount. Appellant directed to pay to each set of claimants Rs. 10,000 as costs. Motor Vehicles Act, 1939, S. 110 - Motor Vehicles Act, 1988, S. 168 Civil Procedure Code, 1908, S. 35. Evidence Act, 1872, S. 114 I II. (G).

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40. PENAL CODE, 1860 - SS. 149, 34, 148, 302/149 AND 141
(1997) 9 SCC 119
JIVAN LAL VS. STATE

According to the positive case of the prosecution all the 13 arraigned accused were the miscreants. With the acquittal of 10 of them (two by the trial court and eight by the High Court), the conviction of the remaining three under Section 148 and 302/149 IPC is not permissible as the assembly of three only would not be an unlawful assembly within the meaning of Section 141 IPC. The opinion of the High Court that these three appellants formed an unlawful assembly with some "other unknown persons" , is based on no evidence as it is not the prosecution case that besides the 13 named persons, there was any other "unknown" person also who had shared the common object with the appellants for committing the murder of the deceased. The High Court was, therefore, not legally justified in convicting the appellants under Sections 148 and 302/149 IPC. However, the manner in which the incident took place clearly indicates that the appellants had shared the common intention of committing the murder of the deceased. They would therefore be liable for the said murder with the aid of Section 34 IPC.

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41. LAND ACQUISITION ACT, 1894 - SS.17 (1), (2) & (4), 4 (1) & 6
(1997) 9 SCC 132
MOHAN SINGH VS. INTERNATIONAL AIRPORT AUTHORITY

Invocation of the urgency provisions Preconditions for. Held, in such situation publication of notification under S. 4 (1) in the Gazette and thereafter at least within a gap of one day publication of declaration under S. 6 is mandatory. Publication of notification in the newspapers and giving a notice of substance thereof is also mandatory for exercising power of eminent domain un-

der S. 4 (1) But when urgency provision is invoked publication of S. 4 (1) notification in the newspaper and in the locality cannot be insisted upon as preliminary to exercise of power under S. 17 (4). Date of notification and declaration as mentioned in Gazette is conclusive and not the actual date of printing in the Gazette. Declaration under S. 6 must be published after publication of notification under S. 4(1) though signed earlier. Expression "last of the dates of such publication" in S. 4 (1) is for the purpose of computation of limitation under S. 6 and not for exercising power under S. 17 (4). Equally purpose of S. 6 (2) is to compute the period of limitation provided in S. 11-A.

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42. SPECIFIC RELIEF ACT. 1963 - SS. 28 (1) AND 20
(1997) 9 SCC 217
SARDAR MOHAR SINGH VS. MANGILAL

It is clear from Section 28 (1) that the court does not lose its jurisdiction after the grant of the decree for specific performance nor it becomes functus officio. The very fact that Section 28 itself gives power to grant order of rescission of the decree would indicate that till the sale deed is executed in execution of the decree, the trial court retains its power and jurisdiction to deal with the decree of specific performance. The court has power to enlarge the time in favour of the judgment debtor to pay the amount or to perform the conditions mentioned in the decree for specific performance, inspite of on application for rescission of the decree having been filed by the judgment-debtor and rejected. The court has the discretion to extend time for compliance of the conditional decree as mentioned in the decree for specific performance. Although the respondent has not given satisfactory explanation of everyday's delay, but it is not, unlike Section 5 of the Limitation Act, an application for condonation of delay. It is one for extension of time. Under these circumstances, the executing court as well as the High Court had exercised discretion and extended the time to comply with the conditional decree. Accordingly, there is no valid and justifiable reason to interfere with the order passed by the High Court Confirming the order of the executing court when in particular, the High Court has further enhanced a sum of Rs. 16,000 to compensate the petitioner tor loss of enjoyment of the money. The said amount is given to the respondent in a sum of Rs. 16,000 rightly for the reason that parties contracted for non-performance of the contract. They quantified the damages at Rs. 2000 for 8 years. The Court has given Rs. 16,000 obviously in terms of the contract.

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43. EVIDENCE ACT, 1872- SS. 60, 8 & 106
(1997) 9 SCC 338
BALARAM PRASAD VS. STATE

Evidence Act, 1877-S. 60. Hersay. When admissible.

Testimony of a witness based on the information of another person is admissible in evidence if the informant also is examined in the case. Whether the

information conveyed by the informant who turned hostile remained hearsay evidence. Held, even if such information is ruled out as hearsay still it remains admissible as conduct of the witness who approached the police and lodged the FIR on the basis of that information. Hearsay evidence. Admissibility.

Evidence Act, 1872-S. 8. Conduct. Hearsay evidence is admissible if it explains any conduct of the witness. Even if the nature of information alleged to be conveyed to the father of the deceased by the neighbours about what was actually heard by them on the night of occurrence may be ruled out as hearsay, the fact that some information was conveyed to him by the neighbours which prompted him to rush to the police as he entertained grave doubt on the basis of what was conveyed to him by neighbours about the conduct of the accused on that night and which made him apprehend about their culpability in connection with the unnatural death of his daughter, would remain admissible in evidence as the conduct of this witness propelled by the fact of such information by neighbours about what the witness did on that day and not earlier by approaching the police. This part of the evidence of the witness would not be hit by the rule of exclusion of hearsay evidence.

Evidence Act, 1872, S. 106. Burden of proving fact especially within the knowledge of the accused. Initial burden on prosecution to substantiate the charge. But once that burden is discharged it is for the accused to prove the fact especially within his knowledge. Death of housewife by drowning in a well in the courtyard of the house of her in- laws. At the time of the incident only victim and the accused were in the house. Accused's wilful conduct of cruelty against the deceased spreading over years established. Held, burden lies on the accused to prove what happened on that night which resulted in her death. On facts, burden not discharged by the accused.

The evidence of the father of the deceased shows that his daughter's married life in the household of the accused had undergone rought weather all throughout. She was ill-treated both for not bringing dowry amount to the satisfaction of the accused and also for not giving birth to children. Her husband was also contemplating to remarry. The deceased had earlier tried to commit suicide but was saved by neighbours. Even after birth of two sons ill-treatment of his deceased daughter and quarrels with her in-laws continued till the fateful night. It can, therefore, safely be presumed under Section 114 of the Evidence Act that the cruel treatment meted out to the deceased by the accused earlier had continued unabated till the very last when she was forced to commit suicide on that fateful night. Such a presumption of continuance of cruel treatment which is established on record necessarily points an accusing finger to the accused. Such presumption under Section 114 of the Evidence Act has remained unrebutted on record.

It is easy to visualize the unbearable state of affairs on that night when a young housewife having two minor children, the younger one only four and a half years of age, had to jump in the well to end her miserable existence in the house of the accused. Unless the torture to her had become unbearable in the

common course of human conduct such a young housewife having commitments to life could not have taken the drastic step to end her life, leaving her infant sons in the lurch and at the mercy of the accused especially when her husband was contemplating a remarriage.

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44. S. 11 CPC; RESJUDICATA
(1997) 9 SCC 543
RAM PRAKASH VS. CHARAN KAUR

Civil Procedure Code, 1908-S. 11. Resjudicata. Applicability. Two connected suits filed by petitioner and respondent claiming damages against each other tried together. Petitioner's suit dismissed and dismissal order becoming final in absence of appeal. Respondent's suit also dismissed but in appeal suit decreed. Second appeal preferred by petitioner against the decree for damages granted against him. Held, barred by resjudicata

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45. S. 23 LAND ACQUISITION ACT
(1997) 9 SCC 628
LAND ACQUISITION OFFICER VS. SREELATHA BHOOPAL

Land Acquisition Act, 1894 - S. 23- Market Value. Determination of. Acquisition of large extent of land. Reliance on sale deed relating to small piece of land is improper. Burden is on the claimant to prove by acceptable evidence for higher compensation. Award of the Land Acquisition officer is not evidence stricto sensu but with a view to do substantial justice the court can look into it and consider the material collected therein. In the circumstances of the case Rs. 20,000 per acre would be just and reasonable compensation with usual solatium and interest.

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46. SS. 302/34 PENAL CODE
(1997) 9 SCC 679
STATE VS. LAKHAN & OTHERS

Penal Code, 1860 - Ss. 302/34. Intention or motive. Inference of. Deceased and the witnesses being unarmed returning from Holi festival and reaching the house of the accused. Suddenly accused persons in concert armed with lathis attacking the deceased and the witnesses causing injuries on the head and other vital parts of the body. Held, in the circumstances. High Court erred in converting the offence from murder to culpable homicide not amounting to murder punishable under S. 304 pt. II. Mere fact that extensive damage has not been caused to the deceased does not establish that the offence is not one of murder punishable under S. 302. Conviction under Ss. 302/34 recorded by the trial court restored. Criminal Trial. Motive.

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47. CIVIL PRACTICE
(1997)9 SCC 736
TAMIL NADU ELECTRICITY BOARD VS. N. RAJU REDDIAR

Practice and Procedure. Review. Practice of filing repeated review petition and clarification petition by changing of advocates deprecated. Review petition filed by a different advocate-on record who was not before the Supreme Court when the appeal was disposed of by it on merits. Consent of the earlier advocate not obtained. After dismissal of the review, application for "clarification" filed by yet another advocate on the specious plea that the order was not clear and was ambiguous. Held, application liable to be dismissed with exemplary costs as it amounted to abuse of process of the Court. Constitution of India, Arts. Arts. 137, 136/ Abuse of process of court.

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48. SS. 34,148,149,323 & 302 IPC
S. 45 EVIDENCE ACT
(1997) 9 SCC 766
ANWAR VS. STATE

Penal Code, 1860 -Ss. 34, 148,149.323 and 302: Appreciation of evidence. Murder. Held on facts that both the eyewitnesses, son and son-in-law of one of the two deceased, were searchingly cross-examined and there was no reason to discard their evidence. Their evidence found corroboration form the medical evidence. Their presence at the time of the incident appeared to be natural as they were going along with the deceased persons to attend a criminal case in which both the deceased figured as accused. Thus the courts below committed no error in accepting their evidence as credible. The finding as regards the sharing of the common object by all the appellants also suffered form no infirmity. Hence conviction and sentence imposed on the appellants under Ss. 302/ 149, 323/149 and 148, IPC upheld.

Evidence Act, 1872 S. 45. Medical evidence vis-a-vis ocular evidence. Minor inconsistency between medical evidence and ocular evidence. Ocular evidence cannot be rejected.

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49. PRIVATE COMPLAINT; PROCEDURE
(1997) 8 SCC 476
MADHU BALA VS. SURESH KUMAR

Criminal Procedure Code, 1973-Ss. 156 (3), 173 (2), 154 and 190(1) (a) & (b) and Ss. 154 and 156, 157 read with Police Act, 1861, S. 12, Punjab Police Rules, 1934:

When a written complaint disclosing a cognizable offence is made before a Magistrate, he may take cognizance upon the same under Section 190 (1) (a) of the Code and proceed with the same in accordance with the provisions

of Chapter XV. The other option available to the Magistrate in such a case is to send the complaint to the appropriate police station under Section 156 (3) for investigation. Once such a direction is given under sub-section (3) of Section 156 the police is required to investigate into that complaint under sub-section (1) thereof and on completion of investigation to submit a "police report" in accordance with Section 173 (2) on which a Magistrate may take cognizance under Section 190 (1) (b) - but not under Section 190 (1) (a). Since a complaint filed before a Magistrate cannot be a "police report" in view of the definition of "complaint" referred to earlier and since the investigation of a "cognizable case" by the police under Section 156(1) has to culminate in a "police report" the "complaint" as soon as an order under Section 156 (3) is passed thereon transforms itself to a report given in writing within the meaning of Section 154 of the Code, which is known as the first information report (FIR). As under Section 156 (1), the police can only investigate a cognizable "case", it has to formally register a case on that report.

Whenever a Magistrate directs an investigation on a "complaint" the police has to register a cognizable case on that complaint treating the same as the FIR and comply with the requirements of the above Rules. Therefore, it cannot be said that the direction of a Magistrate asking the police to "register a case" makes an order of investigation under Section 156(3) legally unsustainable. Indeed, even if a Magistrate does not pass a direction to register a case, still in view of the provisions of Section 156 (1) of the Code which empowers the police to investigate into a cognizable "case" and the Rules framed under the Indian Police Act, 1861 it (the police) is duty-bound to formally register a case and then investigate the same. The provisions of the Code, therefore, do not in any way stand in the way of a Magistrate to direct the police to register a case at the police station and then investigate into the same, when an order for investigation under Section 156 (3) of the Code is to be made the proper direction to the police would be "to register a case at the police station treating the complaint as the first information report and investigate into the same". **Gopal Das Sindhi Vs. State of Assam, AIR 1961 SC 986 and Tula Ram Vs. Kishore Singh AIR 1977 SC 2401** distinguished.

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50. NOTICE BY REGISTERED POST UNDER 125 CR. P.C.
1997 (2) MPLJ SHORT NOTE 39
SANDHYA SHRIVASTAVA VS. GAURISHANKAR

Grievance of applicant that notice thereof is not being served on non-applicant No. 1 Gaurishankar despite process fee having been paid by them more than once and that the applicants are suffering inconvenience and hardship on account of delay in service of notice. The applicant prayed for service by Registered post. The application was allowed by the High Court and directed that the notice be served by Registered post.

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51. SECTION 151 C.P.C.
1997 (2) M.P.L.J. 646
CENTRAL BANK VS. M/S NEMICHAND & OTHERS

The trial court passed an order staying the suit under Section 151 of CPC- The trial court has under the same provison jurisdiction to recall or modify its order though said order was not challenged in revision or otherwise.

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52. O 1 RR 3 & 9 CPC
JOINDER OF PARTIES
(1997) 10 SCC 276
JOY NATH VS. BHAVANI PRASAD

Non-joinder of necessary parties was alleged. Co - tenant was not joined as party in eviction suit filed against respondent tenant Bhavani Prasad. Person who was a cotenant at one point of time prior to filing of eviction suit, not residing in the premises nor claiming any interest as a licensee and remaining only a proforma defendant to the suit in which a compromise decree passed. It was held that omission to implead him in that co - tenant in the suit was of no consequence and the suit was not bad on ground of non-joinder of necessary party.

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53. O 7 RR 11 & 13 CPC
(1997) 10 SCC 192
DELHI WAKF BOARD VS. JAGDISH KUMAR NARANG

The plaintiff/appellant had filed a suit earlier which was rejected under O 7 R 11. It was rejected in the year 1984. In the year 1986 he filed a fresh suit on the same cause of action. The second suit was dismissed by the trial court as barred by the order rejecting the plaint in the earlier suit. The Supreme Court held that in view of the Rule 13 of O 7 it was held that the present suit is not barred by the earlier order rejecting the plaint in the earlier suit.

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54. O 21 R. 72-A (2) CPC
(1997) 10 SCC 65
D.S. CHOHAN VS. STATE BANK OF PATIALA

In view of the specific requirement contained in sub-rule (2) of Rule 72-A of Order 21 CPC that in cases where leave to bid is granted to the mortgagee, the unless the Court otherwise directs the said reserve price has to be in consonance with requirement of clauses (a) and (d), it was incumbent for the Court to fix the reserve price. In the order dated 2-1-1981 the Court, while permitting the respondent mortgagee to make the bid, did not give any direction regarding fixing the reserve price. The sale in favour of the respondent having been made in violation of the mandatory provisions of Order 21, Rule 72-A (2) CPC cannot be upheld and has to be set aside.

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55. SECTION 154 CR.P.C.
DELAY IN FILING F.I.R.
(1997) 10 SCC 40
SANJEEV KUMAR VS. STATE

Criminal Procedure Code, 1973 Section 154, Delay in filing F.I.R. : Delay of 12 hours in filing the FIR at police station which was at a distance of two furlongs from the spot. Deceased taken to the hospital in a very critical condition. Eye witnesses remaining busy in attending the deceased and arranging for blood and medicines. Accused closely related with the complainant and there was no previous enimity between the two families. In the facts and circumstance of the case conclusion of the High Court that the delay was properly explained is unexceptionable.

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56. SECTION 154 & 157 CR. P.C.
DELAY IN FILING F.I.R.
(1997) 10 SCC 587
STATE OF HARYANA VS. MEWA SINGH

Delay in filing F.I.R. : Occurrence took place at 6.30 P.M. F.I.R. was lodged at 9.45 p.m. at Police Station which was 13 Km. away from the place of occurrence. Special report reaching to the Magistrate at midnight at a distance of 25 km. Held that F.I.R. was not late.

Criminal Trial; Injuries on the person of accused : Only two simple injuries were found on the person of the accused. Medical information reveals that the said injuries could have been self inflicted. The nature of injuries reveals that they may be self suffered also. There is a positive case of prosecution that those injuries were never caused by the complainant party though slaps and fist-blows had been exchanged by the parties. It was held that in the circumstance of the case the prosecution was not obliged to explain such injuries on the person of the accused. Even otherwise those injuries would not give any right of private defence to the accused under Section 96 of the IPC. For further studies please refer to ***AIR 1972 SC 2593 Ram Lagan Singh Vs. State, AIR 1974 SC 21 Bhagwan Vs. State, AIR 1974 SC 1545 Jakta Vs. State, AIR 1974 SC 1699 Bhagwan Das Vs. State, AIR 1975 SC 1703 Gajendra Vs. State, AIR 1974 SC 1550 Onkar singh Vs. State, AIR 1976 SC 2263 Laxmi Singh Vs. State, AIR 1976 SC 2423 Ishwar Singh Vs. State, AIR 1979 SC 1010 Jagdish Vs. State, AIR 1981 SC 1122 Suresh Vs. State, AIR 1981 SC 1230 Sevi Vs. State, AIR 1981 SC 617 State Vs. Krishna Mohan.***

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57. CRIMINAL TRIAL : APPRECIATION OF EVIDENCE
(1997) 10 SCC 197
PANDAPPA VS. STATE

Minor contradictions between evidence before court and statement recorded under S. 161 Cr.P.C. Not sufficient to discard the evidence. Eyewitness stating that deceased fell on a gunny bag after being attacked. The fact that

blood stains were found also on the ground, not a reason to discredit the witness. Considering the weapons used and the number and nature of injuries inflicted it could legitimately inferred that blood spurted out to an area beyond the gunny bag on which the deceased fell. Criminal Procedure Code, 1973, S. 161.

It cannot be contended that no conviction can be recorded on the basis of the evidence of a solitary witness. One of the tests to judge the credibility of a witness is the intrinsic quality and worthy of his evidence, independent of other evidence and if such evidence measures up to the court's satisfaction it can itself form the basis of conviction. It is only when such evidence does not pass muster that the court seeks corroboration to draw its conclusion therefrom.

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58. CRIMINAL TRIAL;
INQUEST REPORT AND APPRECIATION OF EVIDENCE
(1997) 10 SCC 605
MAHENDRA RAI VS. MITHILESH RAI & OTHERS

Criminal Trial. Motive. A triffling matter (dispute over price of milk supplied) may trigger of a murder for there are persons who take a very serious view of a trifling matter. Penal Code, 1860, S. 302.

Criminal Procedure Code, 1973 - S. 174 - Inquest Report:- Evidence of eyewitnesses, who were also witnesses to inquest report, cannot be rejected merely on the ground of discrepancy in their evidence regarding the time of preparation of inquest report and the absence of the names of the assailants in the same. S. 174 (1) does not require mention of the names of the assailants in the inquest report. Criminal Trial. Appreciation of evidence. Inquest report.

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59. CRIMINAL TRIAL
INQUEST REPORT AND APPRECIATION OF EVIDENCE
(1997) 10 SCC 135
STATE VS. ABDUL

Criminal Procedure Code, 1973 - S. 174 - Inquest report :Not necessary to record details of the incident. FIR mentioning that the deceased was also assaulted by bank but the inquest report not making any reference to banks. High Court disbelieving the FIR and the evidence of the eyewitness on ground that they were inconsistent with the recitals in inquest report. Held, the approach of the High Court is erroneous and not sustainable.

Penal Code, 1860 - Ss. 302/34 - Appreciation of evidence : FIR mentioning all necessary details about the assault including the role and weapon used by each accused. Evidence of the brother of the deceased found reliable and no material brought out during cross-examination to discredit him. His evidence corroborated by his uncle who narrated the entire story in the same sequence without any omission or mistake. Held, in the circumstance of the case, the High Court was not justified in reversing conviction of all the four

accused persons. Judgment and order passed by the trial court restored. However, in view of passage of time death sentence awarded to one of the accused commuted to imprisonment for life. Criminal Trial. Sentence.

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60. CRIMINAL TRIAL
(1997) 10 SCC 578
MOHMEDRAFIQ VS. STATE OF GUJARAT

Trial of a large number of persons was held. There were two persons bearing the same names which caused confusion in their identity. The trial court should while recording evidence in such cases to indicate the rank of the accused stressed. The High Courts were urged to issue circulars to lower courts to implement suggestions. (Therefore it is requested that please go through the judgment thoroughly).

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61. CRIMINAL TRIAL
NON-EXAMINATION OF INDEPENDENT WITNESS
(1997) 10 SCC 102
SUKHDEO VS. STATE OF MAHARASHTRA

Criminal Trial - Prosecution - Non-examination of independent witness: Wanjari community attacking the members of Budha community. Occurrence taking place near the locality where Budha community resided. Wanjari community having caused attack nobody from that community was expected to support the cause of Budha community. Held, in the circumstances, non-examination of independent witnesses is of no consequence. Evidence of close relations of the deceased can be acted upon. However, their evidence must be scrutinized with great caution. Witnesses. Related witness.

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62. CRIMINAL TRIAL
SENTENCE - MITIGATING CIRCUMSTANCES
(1997) 10 SCC 382
TAPAS KUMAR VS. STATE

The appellant had during the pendency of the appeal in the Supreme Court, continued with his education and has made his educational qualifications and had submitted his thesis for the award of the degree of Ph.D. The Supreme Court held that it appears appropriate to us that with a view to reform the appellant and reclaim him as a member of society, while maintaining the conviction order to reduce the sentence to the period already undergone by him.

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63. CRIMINAL TRIAL; RECORDING OF DYING DECLARATION
(1997) 10 SCC 675
STATE VS. BHUP SINGH

Criminal Procedure Code, 1973 - S. 164 - Recording of dying declara-

tion - Mode of : Deceased answering questions in Bagri language while Magistrate recording it in Hindi. Answers recorded not in the form of question and answers but in a narrative form. Held, dying declaration was not vitiated and conviction could be based on it. High Court erred in not relying on the dying declaration and setting aside the conviction recorded by the trial court. Evidence Act, 1872, S. 32.

Assuming that the deceased gave her statement in her own language, the dying declaration would not vitiate merely because it was recorded in a different language. It is not unusual that courts record evidence in the language of the court even when witnesses depose in their own language. Judicial Officers are used to the practice of translating the statements from the language of the parties to the language of the court. Such translation process would not upset either the admissibility of the statement or its reliability, unless there are other reasons to doubt the truth of it.

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64. PREVENTION OF CORRUPTION ACT 1988 & 1947
EFFECT OF (1997) 10 SCC 567
CENTRAL BUREAU OF INVESTIGATION VS. SUBODH KUMAR

The 1947 Act came to be repealed by the Prevention of Corruption Act, 1988, after cognizance had been validly taken by the Special Court under the 1947 Act. A bare look at the provisions of Section 30 (2) of the 1988 Act shows that anything done or any action taken under or in pursuance of the 1947 Act shall be deemed to have been taken under or in pursuance of the corresponding provision of the 1988 Act. In view of this specific provision, the cognizance taken by the Special Judge constituted under the West Bengal Act stood saved. The High Court has only referred to Section 26 of the 1988 Act and under that section the cognizance taken by the Special Judge was not saved. Section 26 has no application to this case. The order of the High Court, in view of the clear provisions of Section 30, cannot be sustained and hence the same should be set aside.

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65. JUVENILE JUSTICE ACT 1986; AGE DETERMINATION TO
(1997) 10 SCC 527
DEOKI NANDAN VS. STATE OF U.P.

The short and simple question that requires an answer in this appeal is whether the High Court was justified in setting aside the finding of the Sessions Judge, Sonbhadra, that the accused Respondent 2 was not a "Juvenile" under the Juvenile Justice Act. The record reveals that in arriving at its above finding the Sessions Judge detailed and discussed the evidence, both oral and documentary, adduced in the enquiry he held pursuant to an earlier direction of the High Court to ascertain the age of respondent 2 at the material time. The High Court set aside the above finding in exercise of its revisional jurisdiction with the following observation:

"It is undisputed that the date of birth mentioned in the student register is

admissible in evidence (see Harpal Singh V. State of H.P. (1981) 1 SCC 560: 1981 SCC (Cri) 208: 1981 Cri LJ 1). Further in the judgment passed by the Hon'ble Supreme Court in the case of **Bhoop Ram Vs. State of U.P., (1989) 3 SCC 1: 1989 SCC (Cri) 486: AIR 1989 SC 1329** it has been stressed upon that where there is a difference in date of birth between school certificate and medical certificate, school certificate should be preferred as the certificate of MO is based on guess".

From the order of the Sessions Judge we find that Respondent 2 examined, amongst others, his father to prove his age but the learned Judge did not find his evidence acceptable. Curiously enough the High Court did not at all advert to this aspect of the matter. Coming now to the above quoted reason of the High Court for setting aside the impugned order, there cannot be any dispute with its observation that an entry in the school register as to the date of birth of a student is "admissible in evidence" but the High Court was required to decide, keeping in view the judgment of this Court in **Dayachand Vs. Sahib Singh (1991) 2 SCC 379: 1991 SCC (Cri) 438: AIR 1991 SC 930** (on which reliance was placed by the Sessions Judge), whether the assessment of the Sessions Judge regarding its probative value in the instant case was proper or not.

In view of the above infirmities in the impugned order we set aside the same and direct the High Court to re-hear and dispose of the revision petition.

66. SECTIONS 392, 394, 395 READ WITH SECTION 397 I.P.C.
1997 (2) JLJ 60
ASHOK KUMAR VS. STATE OF M.P.

On a plain reading of section 397, it becomes apparent that this section does not create any substantive offence, but merely regulate the punishment already provided for robbery and dacoity under sections 392, 394 and 395, of the IPC. It makes it incumbent to award a minimum sentence of 7 years RI, when the commission of robbery and dacoity has been attended with certain aggravating circumstances enumerated in the section. It is, therefore, apparent that neither the charge can be framed against the accused nor can he be convicted under section 397, of the IPC, simpliciter. The trial Court, therefore, should always frame charge under sections 392 or 394 or 395 (as the case may be) read with section 397, of the IPC.

However, as in the present case the essential facts, constituting the offence of robbery, were distinctly mentioned in the charge itself, in our opinion, no prejudice was caused to the appellants.

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67. PAYING GUEST
(1997) 8 SCC 759
SURENDRA KUMAR VS. ROYCE PEREIRA

Rent Control and Eviction - Bombay Rents, Hotel and Lodging House

Rates (Control) Act 1947. Ss. 5 (6-A), 5 (4-A), 5 (8), 5(11) and 15-A. "Paying Guest". Distinguished from "licensee". Expression "who is given a part of the premises, in which the licensor resides, on licence" in the definition of 'paying guest' in S. 5(6-A). Meaning. 'Premises'. Meaning. Licensor must also reside in the same premises, part of which in occupation of paying guest. But licensor need not also actually reside in the very room in occupation of the paying guest. Licensor's dejure control/possession would be sufficient. Where in a two-storeyed building, licensor giving a portion of the ground floor on licence while retaining dejure control over the same as well as over the remaining portion of the ground floor and keeping defacto possession of the first floor for his own residence, held, the person inducted in the portion of the ground floor was a paying guest and not a licensee. Hence he is not entitled to be treated as tenant on the ground of his being in possession as licensee.

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68. ANTICIPATORY BAIL: 438 CR.P.C.
AIR 1998 SC 144
STATE OF ASSAM VS. R.K. KRISHNA KUMAR AND OTHERS

The High Court of Bombay granted anticipatory bail to the accused without even affording an opportunity to the appellants for a hearing directing the respondents to be released. The accused persons were alleged to have indulged in nefarious activities. (In Assam) Question of granting bail must for all practical purposes be considered by the High Court within whose territorial jurisdiction said activities were prepared - Grant of anticipatory bail without affording opportunity of hearing to state Authorities. Order granting anticipatory bail is liable to be set aside.

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69. APPRECIATION OF EVIDENCE
SECTION 3 EVIDENCE ACT
AIR 1998 SC 198
STATE OF M.P. VS. UDAI SINGH

Accused caused gun shots causing death of some women and injuries to one person. Accused remained absconding, eye witnesses presented clear picture of occurrence. Evidence of injured witness was very clear. They were not interested in falsely implicating accused. There was no undue delay in filing FIR. Formulation of theory of defection of fire by High Court with aid of unsustainable presumption was not proper. Evidence on record was sufficient to prove beyond doubt the guilt of the accused convicted.

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70. SS 58-59 T.P. ACT AND
SECTION 12 M.P. ACCOMMODATION CONTROL ACT
1998 (1) JLJ PAGE 1 SC
GULAB CHAND VS. BABULAL

The Supreme Court in para 6 of the judgment held that it appears to us on considering the said documents executed on August 10, 1962 that the transaction was in substance and essence a mortgage. Relationship of landlord and tenant not established. Suit for eviction not maintainable.

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71. DOCUMENT

The real intention and purpose should be seen by the Court in the facts of the each case in the context of the intent of the parties and language in which it is couched.

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72. SECTIONS 55 AND 58 OF T.P. ACT

3 documents, i.e. sale deed, rent note and agreement to repurchase were executed on the same day. It is a transaction of mortgage. No relationship of landlord and tenant created. It may form a single transaction.

Note :- Please refer to several notes form M.P. Accommodation Control Act 1961 by R.C. Khare, Sixth Edition 1995 page no. 43 Note no. xi, page no. 45 xii and xiii, page no. 49 Note no. ix page no. 85 Note no. vi and page no. 201 Note no. 64 (I & II).

Pleased also refer M.P. Accommodation Control Act 1961 by S.D. Sanghi and M.L. Jindal 1992 Edition Page no. 68 Note no. 8, Page no. 162 Note no. 12,

Page no. 173 Note no. 32. Please also see ***Lake Raj Vs. Sardar Sawan Singh, 1977 JLJ 545, Triveni Das Vs. Vijay Mohan 1976 M.P.L.J. 163, Kalyan Vs. Afiz Abdul Aziz, 1979 Pt I MPWN 54.***

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73. DIVORCE ACT SECTIONS 17 AND 22
AIR 1998 ALLAHABAD 12 SPECIAL BENCH
DENNIS LALL VS. SMT. AMITA LALL

Chapter III (Section 10 to Section 17-A) of the Indian Divorce Act deals with dissolution of marriage and Chapter V (Section 22 to Section 26) deals with judicial separation. Section 10 of the Act enumerates the grounds on which a husband or a wife may file a petition for dissolution of marriage. Section 17 lays down that every decree for dissolution of marriage made by a District Judge, shall be subject to confirmation by the High Court. Section 22 enumerates the grounds on which a husband or a wife may obtain a decree of judicial separation. The Act does not lay down that a decree for judicial separation passed by a District Judge shall be subject to confirmation by the High Court. There are only two sections in the Act which lay down that a decree passed by a District Judge shall be subject to confirmation by the High Court. One is a decree for dissolution of marriage which requires confirmation under Section 17 and the other is a decree of nullity of marriage which requires confirmation under

Section 20. It is, therefore, clear that a decree for judicial separation passed by a District Judge under Section 22 of the Act does not require confirmation by the High Court and is effective by itself. The same view has been taken by Special Benches of three different High Courts in ***R.S. Mannulal Vs. Mary Sura, AIR 1982 Kant 235, Arun Kumar Sinha Vs. Manjulal Sinha, AIR 1981 Cal 252 and Sahaya Barathy Vs. A.S. Rajiputhiran, AIR 1981 Mad. 78.*** Therefore the reference made by the Judge, Family Court, Jhansi in Suit No. 270 of 1994 for confirmation of the decree for judicial separation passed by him on 21-5-96 is incompetent.

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74. SECTION 166-166 (3) MOTOR VEHICLE ACT
1998 (1) JLJ 12
MANIKLAL VS. MOHD. ISMAIL

Application for compensation. Apart form negligence of driver of motor vehicle negligence of third party like driver of train or Railway Administration also alleged. Claim petition against such third party is also maintainable if such third party is found to be contributory or composite negligent.

Where the claim was based on composite negligence of driver, owner of the passenger bus and the outside agency the Railways, the applications for compensation could not have been dismissed at the threshold.

However, after enquiry, if the Tribunal comes to a conclusion that a case of contributory negligence or composite negligence on the part of the Railway Administration is not made out, claim application will fail against the Railway Administration. The claim application will also fail if composite or contributory negligence or negligence is found not proved against the owner and driver of the passenger bus and Railway Administration is found responsible for the accident. In that case claims Tribunal will have no jurisdiction to fix the liability and to pass an award. ***1987 ACJ 734 (Guj.), 1990 ACJ 1 (FB) (All.) 1988 ACJ 597 (Kerala) and 1993 ACJ 366 (Raj.)*** relied on. ***1993 ACJ 232*** dissented from.

Third party other than driver, owner and insurer of offending motor vehicle sought to be impleaded in claim petition. No question of limitation arises due to deletion of S. 166 (3), ***(1996) 4 SCC 652*** followed.

(Please also see above mentioned citation (1997) 8 SCC 683)

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75. O 47 R 1 CPC AND SECTION 141
(1997) 8 SCC 715
PARSION DEVI VS. SUMITRI DEVI

Under Order 47, Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. ***An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of***

the record justifying the court to exercise its power of review under Order 47, Rule 1 CPC. In exercise of the jurisdiction under Order 47, Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".

Thungabhadra Industries Ltd. Vs. Government of A.P., AIR 1964 SC 1372 : (1964) 5 SCR 174 ; Meera Bhanja Vs. Nirmala Kumari Choudhury, (1995) 1 SCC 170; Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma, (1979) 4 SCC 389, relied on.

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76. MOTOR VEHICLE ACT READ WITH KERAL MOTOR VEHICLE RULES SS. 95 & 110-A MOTOR VEHICLE ACT 1939 AND SS. 146 - 166 M.V. ACT 1988 (1997) 8 SCC 682

UNION OF INDIA VS. UNITED INDIA INSURANCE COMPANY

Rule 100 (f) of the Rules framed under the Motor Vehicles Act postulates the existence of a signboard as mentioned therein, requiring the vehicle to "stop" and the conductor to "get down" and in absence of such a board there was only an ordinary common law duty as applicable to prudent persons. This was a duty to "stop", "see and hear" and find out if any train was coming. If that was not done, there would clearly be negligence on the part of the driver. In the present case the writing on the signboard at the level-crossing was motheaten and no writing was visible. Hence no special obligations created by the rule, which were in addition to the common law requirements, can be said to apply. There was no notice as contemplated by the rule which laid down an extra obligation on the conductor to get down from the vehicle as stated in clause (f) of Rule 100. In as much as in this case, the driver did not stop the vehicle at the unmanned crossing and see and hear if any train was coming, it must be held that he was guilty of negligence even though there was no curve or obstruction at the point.

There is a well-known principle in the law of torts called the "doctrine of identification" or "imputation". It is to the effect that the defendant can plead the contributory negligence of the plaintiff or of an employee of the plaintiff where the employee is acting in the course of employment. However, the principle of contributory negligence is confined to the actual negligence of the plaintiff or of his agents. There is no rule that the driver of an omnibus or a coach or a cab or the engine driver of a train, or the captain of a ship on the one hand and the passengers on the other hand are to be "identified" so as to fasten the latter with any liability for the former's contributory negligence. There cannot be a fiction of the passen-

ger sharing a "right of control " of the operation of the vehicle nor is there a fiction that the driver is an agent of the passenger. A passenger is not treated as a back-seat driver. Even if the driver of the passenger vehicle was negligent, the Railways, if its negligence was otherwise proved- could not plead contributory negligence on the part of the passengers of the vehicle. What is clear is that qua the passengers of the bus who were innocent, the driver and owner of the bus and, if proved, the Railways can all be joint tortfeasors.

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77. SECTION 154 CR. P. C.
1998 (1) JLJ 28
SHASHIDGAR SINGH VS. STATE OF M.P.

Deceased taken for medical aid to bigger place where he died. Lodging of F.I.R. there was not fatal. FIR need not contain details of incident or acts of accused person. Broad feature and manner of incident with names of the accused persons, eye witnesses are sufficient.

Section 3 and 27 Evidence Act :- After arrest of the accused persons, if the weapons of the offence were not recovered that does not belie the prosecution version nor can be said to be an adverse circumstance to the prosecution case. The stated fire arms were unlicensed and the accused persons were not obliged to get those weapons recovered.

Section 32 Evidence Act :- witnesses to whom dying declaration made not chance witnesses. Other witnesses also present. Only names of the accused persons responsible to cause injuries narrated dying declaration is reliable. Short oral dying declaration without lose of time. Not impossible even if several injuries have been suffered by the deceased.

Section 162 Cr. P.C. :- Witness stating his position on spot to police officer. It is hit by Section 162. Hence not admissible as it would be his statement to the police during investigation.

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78. SECTION 24 EVIDENCE ACT
AIR 1998 SC 107
PAKKIRI SAMY VS. STATE

Extra-judicial confession alleged to have been made before Village Administrative Officer. Same confession corroborated by several other circumstances like recovery of jewellery and other valuables of the deceased at the instance of the accused. Accused was found absconding immediately after occurrence.

Mere statement of accused before trial court that he was innocent would not amount to retraction of extra-judicial confession.

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THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) ACT, 1988

NO. 32 OF 1988

(First published in the Gazette of India (Extraordinary), part II, Section 1, dated the 30th May, 1988)

An Act further to amend the Code of Criminal Procedure, 1973. Be it enacted by Parliament in the Thirty-ninth Year of Republic of India as follows :-

1. Short title - This Act may be called the Code of Criminal Procedure (Amendment) Act, 1988.

2. Amendment of Section 105 - In Section 105 of the code of Criminal Procedure, 1973 (2 of 1974),

(a) in sub-section (1), for the portion beginning with the words "issued by it" and ending with the words "in the said territories", the following shall be substituted namely :-

"issued by it shall be served or executed at any place,"

(i) Within the local jurisdiction of a Court in any State or area in India outside the said territories, it may send such summons or warrant in duplicate by post or otherwise, to the presiding officer of that Court to be served or executed; and where any summons referred to in clause (a) or clause (c) has been so served, the provisions of section 68 shall apply in relation to such summons as if the presiding officer of the Court to whom it is sent were a Magistrate in the said territories;

(ii) "in any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country or place for service or execution of summons or warrant in relation to criminal matter (hereafter in this section referred to as the contracting state), it may send such summons or warrant in duplicate in such form, directed to such Court, Judge or Magistrate, and sent to such authority for transmission, as the Central Government may, by notification, specify in this behalf ";

(b) in sub-section (2)

(i) for the words "issued by a Court in any State or area in India outside the said territories it shall cause the same to be served or executed", the following shall be substituted, namely :-

"issue by

(I) a Court in any State or area in India outside the said territories;

(II) a Court, Judge or Magistrate in a contracting State,

it shall cause the same to be served or executed"

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

"Provided that in a case where a summons or search warrant received from a contracting state has been executed, the documents or things produced or things found in the search shall be forwarded to the Court issuing the summons or search warrant through such authority as the Central Government may, by notification, specify i this behalf."

CODE OF CRIMINAL PROCEDURE (AMENDMENT) ORDINANCE, 1990

NO. 1 OF 1990

Promulgated by the President in the Forty-first Year of the Republic of India.

An Ordinance further to amend the Code fo Criminal Procedure, 1973.

Whereas Parliament is not in session and the President is satisfied that circumstance exist which render it necessary for him to take immediate action.

Now, therefore, in exercise of the powers conferred by clause (I) of Article 123 of the Constitution, the President is pleased to promulgate the following Ordinance.

1. Short title and commencement. - (1) This Ordinance may be called the code of Criminal Procedure (Amendment) Ordinance, 1990.

(2) It shall come into force at once.

2. Insertion of new section 166 A and 166B. - In the Code of Criminal procedure , 1973 (2 of 1974) in Chapter XII, after Section 166, the following sections shall be inserted, namely :

"166 A. Letter of request to competent authority for investigation in a country or place outside India. (I) If, in the course of an investigation into an offence, the investigating officer or an officer superior in rank to the investigating officer, has reason to believe that evidence may be available in the country or place outside India, he may issue a letter of request :

(i) to the authority competent, to investigate such offence in that country or place, to examine orally any person supposed to be acquainted with the facts and circumstances of the case and to reduce into writing any statement made in the course of such examination and also to require such person or any other person to produce any document or thing which may be in his possession pertaining to the case; or

(ii) to the authority competent, to direct such an investigation in that country or place, to cause it to be made in like manner, and to forward all the evidence so taken or collected or the authenticated copies therefore or the thing so collected to the officer issuing such letter of request.

(2) Notwithstanding anything contained in sub-Section (1), if, in the course, of an investigation into an offence, an application is made by the investigating officer or any officer superior in rank to the investigating officer that evidence may be available in a country or place outside India, any Criminal Court may issue a letter of request to a Court or an authority in that country or place competent to examine orally any person supposed to be acquainted with the facts and circumstances of the case and also to require such person or any other person to produce any document or thing which may be in his possession pertaining to the case and to forward all the evidence so taken or collected or the authenticated copies thereof or the thing so collected to the court issuing such letter.

(3) The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.

(4) Every statement recorded or document or thing received under sub-section (1) or sub-section 92) shall be deemed to be the evidence collected during the course of investigation under this chapter.

166B Letter of request form a country or place outside India to a Court or authority for investigation in India - (1) Upon receipt of a letter of request from a Court or authority in a country or place outside India competent to issue such letter in that country or place for the examination of any person or production of any document of thing in relation to an offence under investigation in that country or place, the Central Government may, if it thinks fit

(i) forward the same to the Chief Metropolitan Magistrate or Chief Judicial Magistrate or such Metropolitan Magistrate or Judicial Magistrate as he may appoint in this behalf, who shall thereupon summon the person before him and record his statement or cause the document or thing to be produced or

(ii) send the letter to any police officer for investigation, who shall thereupon investigate into the offence in the same manner as if the offence had been committed within India.

(2) All the evidence taken or collected under sub-section (1) or authenticate copies thereof or the thing so collected, shall be forwarded by the Magistrate or police officer, as the case may be the Central Government for transmission to the Court or the authority issuing the letter of request, in such manner as the Central Government may deem fit."