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JUDICIAL OFFICERS' TRAINING & RESEARCH INSTITUTE
HIGH COURT OF MADHYA PRADESH, JABALPUR - 482 007

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FROM THE PEN OF THE EDITOR

A.K. SAXENA
Director

"A Happy New Year" to all of you. In my last Editorials I had focussed on various aspects of divine duty of Judges of District Judiciary. Now in this Editorial, I would like to emphasize on moral obligation of Judicial Officers, i.e. the duty towards his/her family.

Although another 'New Year' has arrived before us, we should try to learn from our past also. It is a matter of continuous thinking that how we have performed in the last year; to what extent we have done justice towards our divine duty and our family. Maintaining equilibrium between official duty and obligation towards family, is the acid test for the Juges. These are improtant features of life of a Judge and both cannot be neglected at any cost. I know some of the Judicial Officers who either tried to neglect official duties or some of them were not sincere towards their families, as a consequence thereof, either they suffered during the service life or the family faces distress. The Judge of District Judiciary should know how to strike the balance on a balancing beam of life. During watching gymnastic competition on television you must have observed how the gymnasts maintain balance on balancing beam. Same is the case with Judicial Officers. Our life is also just like competition and we have to maintain the balance between our official duty and family. And one must try to do it successfully.

A Judge of District Judiciary can perform his official duty effectively if his/her family members are happy. The happiness is the creation of ourselves. Being head or important member of the family it is obligatory for us to create an atmosphere of happiness in our family. It cannot be created with irascible or harsh behaviour but the firmness in behaviour based on sound principles. Since we are earning members of the family, it is our duty to fulfil just and reasonable demands of every family member and while dealing with such demands sometimes we find that due to lack of means we are unable to fulfil our own basic necessities. In such a situation we have to forget our necessities for the sake of happiness of the family members. It is imperative to develop sacrificing nature in ourself. This would help us in emerging as an ideal person not only in our family but in society also. It should always be borne in mind that happiness can be consumed without paying the value thereof. What is needed is a balanced state of mind. Equanimity should be the motto.

Mankind is creation of God and creation of bright future of children depends upon the parents. They can create a good, secured and prosperous future for their children. They can fulfil the dreams of their children. No doubt a child tries to learn a lot from the society (school, teacher and friends) but he/she learns first lesson of life from the parents only and hence, it is the first and foremost duty of parents to create concecration in the child. Before making any efforts of creation of concecration, one has to look into himself. If you are humble to others and take duties sincerely then the child will certainly follow you in that direction. You are the first teacher of your child.

Next in order is the education of the children. I am sorry to say that I have come across so many judges of District Judiciary who lack sincerity in their duties and liabilities and with the result they feel sorry for the whole life. One must be very sincere in providing good education to the child. It is immaterial where you are posted. If you are sincere, ambitious and courageous, then you will find hundreds of ways to impart

good education to your children. We remain at home for most of the time and we have sufficient time to look after our children. But it is a matter of surprise that some of us do not take it seriously and try to blame others as if someone else comes in the way of all round development of the child. One should have introspection and then think of blaming others. There are several examples where the children grow well without sufficient food, good schooling and other facilities only because of sincerity of their parents. So one should not pave the path of pretext in this respect . Sometimes we also see that despite the best efforts of parents, some of their children could not be placed high but exceptions cannot be made examples for the whole society. I may quote two circumstances here and one should decide which circumstance suits to you. Firstly, when your grown up child is known through you and people say, look here, he/she is son/ daughter of a particular judge; secondly, when you are known because of your child and people say that this judge is the father/mother of that young person. In my humble view the second one is a matter of happiness and pride for the parents and it would indubitably mean that the child is better placed because of your sacrifies and sincere efforts. These are the fruits of a tree of happiness.

Apart from the above, we should be humble and respectful to our parents, relatives and elderly persons. It is our inviolable duty to look after old parents sincerely so that they may lead a happy life. We will not remain in service forever. If we are humble to our parents, relatives and elderly persons, then certainly, our children will also follow our path. After all the children learn from the behaviour of their parents. This would certainly enhance the happiness not only among the family members but in society also. Happiness is the key to peace of mind and peace of mind is the backbone in performance of our duties. It is the foundation of morals. Therefore, Jereny Benthem said :

> *"The greatest happiness of the greatest number is the foundation of morals and legislation."*

We should also try to learn from nature and younger generation. We should not feel shy in learning even from animals. They can also guide us. The following thought of Smt. Suprama Mishra (the author of 'Thus I Speak') is very much relevant here :

> *"One enslaved to nature*
> *has sorrow as his companion,*
> *but who has nature*
> *as his guiding companion,*
> *lives in happiness."*

Happiness of the Judges of District Judiciary will be meaningless if their behaviour and conduct are not up to the mark. The society can be benefitted by their happiness. I may quote Herbert Spencer who described happiness as follows:

> *"No one can be perfectly free till all are free;*
> *no one can be perfectly moral till all are moral;*
> *no one can be perfectly happy till all are happy."*

So always remain happy. Happiness of our family and society lies in ourselves. I would like to extend my greetings in this way that your every next day may come with full of happiness but, it is up to you how sincerely and seriously you take my greetings.

Rest in the next issue.

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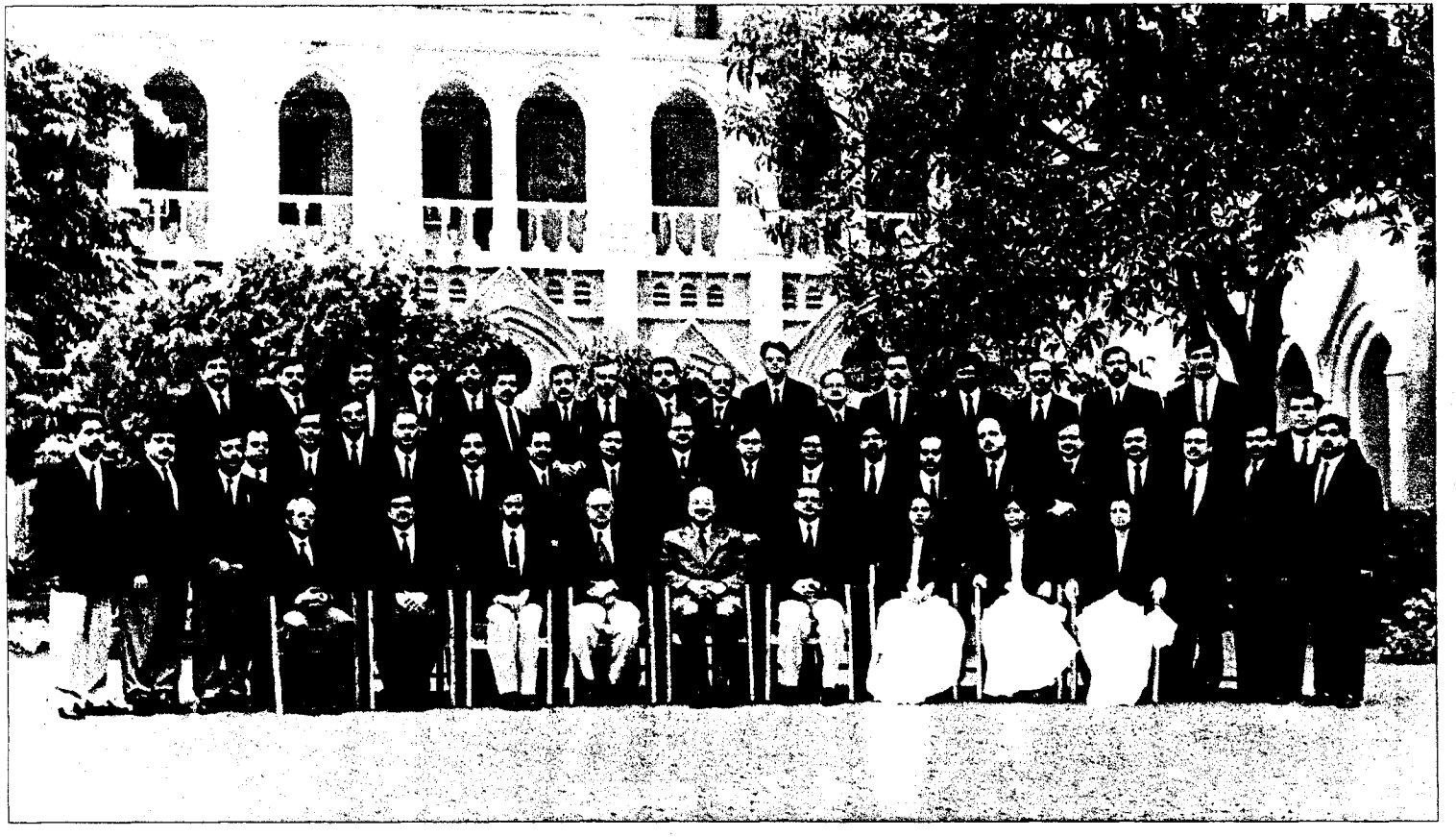
JUDICIAL OFFICERS TRAINING & RESEARCH INSTITUTE, HIGH COURT OF M.P., JABALPUR

TRAINING OF ADDITIONAL DISTRICT JUDGES - 5-8-2002 TO 14-8-2002



FAREWELL OVATION
TO
HON'BLE SHRI JUSTICE S.B. SAKRIKAR

Hon'ble Shri Justice S.B. Sakrikar on reaching the age of superannuation demitted his office on 28th December, 2002. Born on 29th December 1940 at Barwani in a family of lawyers. He, after getting Bachelor's Degree in law, joined the bar at Barwani. On 3rd April, 1978, joined State Judicial Services as Additional District Judge. He was posted as District & Sessions Judge in several districts which office he held till his elevation on 19-6-1995 as Judge of the High Court of Madhya Pradesh. His Lordship was accorded farewell ovation on 19-12-02 in the High Court of M.P., Bench Indore.

We, on behalf of JOTI Journal wish His Lordship a healthy, happy and prosperous life.

FAREWELL OVATION
TO
HON'BLE SHRI JUSTICE V.K. AGRAWAL

Hon'ble Shri Justice V.K. Agrawal demitted his office on 6th November, 2002 after attaining the age of superannuation. His Lordship joined Madhya Pradesh State Judicial Services in September 1964 as Civil Judge. He was promoted to the post of Additional District Judge in the year 1979. Was posted as Additional District Judge (Vigilance), High Court of M.P., Jabalpur in August, 1984 and thereafter worked as Additional Registrar, High Court of M.P., Indore Bench between 1986 to 1989. In June 1989, he was appointed as District & Sessions Judge, Ujjain. Was appointed as Registrar General of High Court of M.P. in October, 1993 which office he held till his elevation on 6-9-1995 as Judge of the High Court of Madhya Pradesh. His Lordship was accorded farewell ovation on 1-11-2002 in the South Block Conference Hall of the High Court of M.P., Jabalpur.

We, on behalf of JOTI Journal wish His Lordship a healthy, happy and prosperous life.

PART - I

VELEDICTARY ADDRESS DELIVERED BY JUSTICE R.C. LAHOTI, JUDGE, SUPREME COURT OF INDIA AT THE FIRST FOUNDATION TRAINING PROGRAMME (2002) FOR THE TRAINEE OFFICERS OF D.J.S. CONDUCTED BY DELHI JUDICIAL ACADEMY ON 25.8.2002.

THE CULTURE OF A JUDGE

JUSTICE R.C. LAHOTI
Judge, Supreme Court of India

There are more reasons than one why I should congratulate you. Firstly, you have chosen the law as your profession. It is the most coveted of all the professions in a civilized society. There is no other profession which puts the intellectual wits of a person to test more than the legal profession. Out of the professionals rolling in money and wealth, those who are at the top are the men of law. Secondly, having chosen the judicial service as your career ahead, it is writ large that you do not aspire for materialistic pleasures so much as for spiritual attainments and serving the society. Thirdly, you are the batch having successfully undergone the First Foundation Training Programme conducted by Delhi Judicial Academy. You will be the example for others who will follow. You are the first.

Dispensation of justice is an attribute of God. Blessed are those on whom that Godly assignment has befallen. Still blessed are those, who acquit themselves of such assignment with pride, dignity and honour. You are going to be the officers adorning the exalted office of judgeship and occupying the seat of justice. Even God, who has created the human being, does not sit in judgment over his deeds until the human's death whence only he determines whether he deserves to be sent to hell or heaven. You have been given the authority to sit in judgment over the deeds of a main in his lifetime. Your pen has the power to grant the freedom of living or the sentence of death to an accused. You can take away his liberty for a number of days, months or years (subject to the limitations of law). Your mighty pen can turn riches into rags and a pauper into a millionaire. The more power you have, the more humility, rationality and balance must be among your possessions.

Every businessman begins his trade with such little capital as he has within his means. As his business prospers and as he rises the ladder of success his captial multiplies. Your capital is your knowledge and wisdom. With every next day and with every next step on the ladder of success your knowledge and wisdom would multiply. I leave it to you to learn and earn for yourself and to multiply your capital to enrich your treasure. What I propose to share with you today is neither knowledge nor wisdom but a few tips on what is the culture of a Judge. It is collection of a few gems, consisting of words of wisdom which I have either

read, or listened to from my elders, or picked up as pebbles of experience on the shores of this unfathomable sea of law and justice.

VIRTUES AND POTENTIALS IN A JUDGE

The first quality of a judge is to be a gentleman. A Judge has no personal life. He cannot be permitted to say nor be tolerated to listen that from 10 AM to 5 PM he is a Judge and from 5 PM to 10 AM he is a master of his own. The thorny crown which decorates the personality of a Judge is not taken off even while he sleeps. A Judge, whether in his seat or on his own, whether moving around in the city or travelling across the country, is known and seen by people as a Judge. The holder of a judicial office is not permitted to deviate from virtue even in his dreams. So remember, if you are a Judge you are bound by the moral code of a Judge for 24 hours of the day. Your every action must be transparent. You are watched by the society. Your personal actions, your family life and your behaviour with every living creature with whom you deal must all be judicious, upright, above board and an example to the society. Recently, His Excellency Shri A.P.J. Abdul Kalam, the President of India visited the Supreme Court of India and spent an hour interacting with the Judges. While parting, he gave his message in somewhat these words- "You are 26 Judges of the Supreme Court. You are 26 role models of judiciary for this nation of more than one billion people. People look up at you for vindicating their grievances and for removal of injustice. You must come up to their expectations. You must have a vision and do your best to give shape to your vision". Every judge is a role model to the society to which he belongs.

It was in the 4th Century B.C. when the wise Greek philosopher Socrates said that there are four qualities required in a Judge- "to hear courteously, to answer wisely, to consider soberly and to decide impartially". The task of living upto these norms, so simple as said, is not difficult if you have a vision, if you aim high, if you rise above trifles and if you have a determination to reach your goal. The very nature of duty discharged by a Judge is onerous and he is invariably under pressures- pressure of deciding which side the truth lies, pressure on time and pressure on energy requisite for hearing and deciding.

Every next case before a Judge is the story of human frailty, misfortune, sin or fall from virtue. He is faced with two warring litigants each assisted by a mighty counsel canvassing vigorously the case of his client, whether deserved or undeserved, and the Judge has to choose between the two. An eminent trial Judge once observed sarcastically- "Who says I decide in favour of truth against falsehood. Every day on the table before me there is a bundle of lies poured by each one of the two sides and I choose in favour of the one who has spoken lesser lies". Yet the Judge has to do his duty which he cannot unless he is courteous. To answer wisely, a Judge must be master of the facts and a student of law. He must have an analytical mind- quick to grasp, assimilate, and reach an articulated conclusion. He must have an open mind involved till the end in pursuit of search for relevant answers. Then alone can be answer wisely. It is humane to have

sympathy for the weaker of the parties but at times such sympathy can persuade a Judge to bestow his benevolence on an underserving cause. Sympathies may be misplaced at times. A persuasive lawyer may carry the Judge with him while a rookie or disorganized lawyer may displease a Judge. He may be inclined to decide going by his mood, whim or fancy but that will be unjust, and therefore, he must consider soberly in the right frame of mind before he pronounces his judgment. And then, to decide impartially. Bacon said- Above all things, integrity is the Judge's portion and proper virtue. It is the capacity to decide impartially which is the most important criterion of judging the performance of the Judges on the Bench." It is said, judging is lonely job and Judges, more often than not, are islands.

Remember, a Judge has to be not only impartial but seen to be impartial. Patrick Devlin says "I put impartiality before the appearance of it simply because without the reality the appearance would not endure. In truth, within the context of service to the community the appearance is the more important of the two. The Judge who gives the right judgment while appearing not to do so may be thrice blessed in heaven but on earth he is no use at all."

The social service which the Judge renders to the community is the removal of a sense of injustice. He listens. The doors of the Court are open to everyone who knocks it. The most onerous task, the Judge performs is, he decides. The Judges repeatedly do what rest of people seek to avoid : make the decisions. While everyone avoids taking decisions, the Judge listens with patience and decides boldly. While pronouncing his judgment he is least bothered who has won and who has lost; who is pleased and who is disappointed.

A Judge can transform the society. One of the functions discharged by the Judge is of a law maker. Through the process of interpretation he unconsciously percolates his own philosophy and beliefs in the judge-made-law, which, with the lapse of time, becomes the trend setter in the society, as law abiding citizens start shaping their actions, and working out their rights and obligations, based on the decisions rendered by the Judges. A Judge is not a revolutionary but an evolutionary. He interprets the law and abides by the rule of law.

The disinterested application of the law calls for many virtues, such as balance, patience, courtesy, and detachment, which leave little room for the ardour of the creative reformer. If a Judge leaves the law and makes his own decisions, even if in substance they are just, he loses the protection of the law and sacrifices the appearance of impartiality which is given by adherence to the law.

EXCELLENCE - YOUR PURSUIT

Life is a practical school. You enter to learn and serve. While leaving you must have a feeling of satisfaction and fulfillment without any need of looking back. You have to aim high. Your aiming high implies an obligation to achieve excellence in all your activities without which you cannot reach your goal. The distinction between a human being and other living creatures is while all living

creatures can aspire and achieve perfection it is only human being who can achieve excellence. Excellence is perfection imbibed with human qualities, devoid of selfishness. How beautifully the Constitution of India puts it in Article 51-A. Clause (i) says- 'It shall be the duty of every citizen of India to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.' You, as member of judiciary, are the custodian of the Constitution and constitutional values. It is your fundamental duty to enforce fundamental duties. Do it, not by preaching alone but by precept. It is human nature to crave for excellence. If destiny has made you the Judge you will naturally strive for being a good Judge. It will be your urge to earn recognition from the members of the Bar, from litigants, from your colleagues and the society that here is a Judge whom we love and admire as a good Judge.

This one sentence is a reward for all the labour and sacrifices you have done. You feel happy when somebody tells you these words and you are disappointed when you feel nobody spoke these words about you. How can you earn this reward? How to achieve excellence? How to reach high? What will make you a good judge? Let me share these with you. You can call them dos and don'ts of a Judge, handed down to you by an elderly friend and well- wisher of yours.

Lesson 1 : MAINTAIN A GOOD PHYSIQUE AND SOUND HEALTH: As a Judge you will have to hold long sittings in the Court followed by lonely sittings in the evenings at your residential office or study room constructing your judgments, deeply concentrating on the issues arising for decision. In the morning again there are sittings in solitude when you study either the briefs of the day or the developments in the field of law.

A healthy mind lives in a healthy body. Good physical health is a valuable gift of nature. Awareness of good health will keep you away from consuming anything which might hurt your system. The realization, that good health is the precious gift of God, will help you in treating the body as a temple and motivate you to keep it clean and pure. A healthy mind in a healthy body generates good, sound, clean and noble thoughts. It makes you feel good and spread happiness around you. A noble way of expressing our gratitude for good health is to serve the humankind and the ailing litigious society which is before us everyday. The more you rise up and the more you advance in age, higher responsibilities would besiege you. One day you will rise so high that you will have an opportunity of usefully and effectively implementing your ideas and thoughts, earned by your rich experience, for the benefit of the society and that day the only handicap would be your fading health. Take care of it from now. You must set apart a minimum of 30 minutes time in your everyday schedule for physical exercises, particularly of stretching, which will insulate you against spondylitis and pain of joints which are the common ailments found in the elderly Judges handed down to them by long sittings and wrong postures.

Lesson 2: VALUE THE TIME : The time of a Judge is public time of which he is a trustee. You cannot afford to waste a single minute out of it. Punctuality should be a part of your personality. You must sit in the Court at the appointed time and leave the Court at the appointed time. The people present in the Court should be able to mend their watches by your sitting and rising time. Late Justice Hidayatullah once said- one who does not believe in punctuality of time does not have faith in the rule of law. If your sitting time in the Court is 11 AM you must be in your seat at 59 minutes and 59 seconds past 10 AM. Remember, if you cross the limit of 11 dot then it does not matter whether you sit late by 5 minutes or by 10 minutes. Your day's schedule should be planned on the principle- 'A time for everything; and everything at its time.' Time and tide wait for none. The time missed or the time wasted is the time lost for ever.

Lesson 3 : SIMPLE LIVING : From whatever background you may have come, having chosen to be a Judge, you and your family members, especially your spouse, must be prepared to make both the ends meet within the limited salary. You must have an yearly and a monthly budget. Therein, try to make a provision for a minimum of 1% of your income being set apart for charity and a provision for purchasing one book, every month or in two months, which should be a classic-either of law or a subject of your choice, so as to develop your own personal library.

Lesson 4: CHOOSE YOUR COMPANY CAUTIOUSLY : Though a man is called a social animal and has to live in society the delicate nature of a Judge's duties requires certain degree of aloofness to be maintained by Judges. You having been seated on a seat of power, you would suddenly find many selfish persons and psychophants clustering around you. Be cautious and choosy in selecting your company. Keep a distance from those who praise you on your face and also from those who criticize you behind your back. An honest critic, with courage to tell your shortcomings on your face and in solitude may be welcome for he is your well-wisher. People will invite you to functions to inculcate a false feeling of elation in you and utilize the platform for coming closer to you, in the eyes of others. A sensible line of distinction has to be drawn while accepting invitations for participation in functions, and in my humble opinion, it is advisable to confine yourself to such activities as are related to law, justice and education or are strictly cultural. In social functions, honour such invitation which is either intimately personal to you or where all your colleagues are invited and collectively go. Take care to inquire in advance who are going to be seated on dais with you.

Lesson 5 : READ LITERATURE : You must develop a temperament of deriving pleasure out of reading. Every case before a Judge is a fascinating tale of human behaviour : sometimes gratifying, and at times disturbing. Learn to gain experience therefrom without being emotionally involved. Readings in law fascinate you by the feel of the heights which the human mind can think and achieve. Hon'ble Justice M.N. Venkatachaliah, the former Chief Justice of India

told me during one of my personal conversations with him that next to the study of religion and philosophy if there is anything worth studying then it is the legal literature. By studying the law you can attain spiritual heights. The time which you set apart for reading law ought to be divided into three parts. There are three types of literature in law which I would strongly advise you to inculcate the habit of reading : (1) the jurisprudential literature consisting of basics, fundamentals and development of theories in the field of law, such as - Legal Theory by Friedmann, Nature of Judicial Process by Benjamin Cordozo, Law in the Making by C.R. Allen or Essays in Jurisprudence such as the Commemorative Volumes brought out on Golden Jubilee of Supreme Court of India, New Dimensions of Justice- by Hon. Justice J.S. Verma, former CJI and so on. (2) Law Reports, especially the decisions delivered by the Supreme Court of India and your own High Court, and (3) lives of Lord Chancellors and biographies and autobiographies of eminent Judges, Jurists and lawyers such as Roses in December by M.C. Chagla, My Own Bosewell by Hidayatullah, My Life, Law and Other Things by M.C. Setalvad and so on. You will find plenty of them in law libraries. These biographies and autobiographies will inspire and generate confidence in you that you can also be Hidayatullah, Chagla and Setalvad. At some point of time each one of them stood at the same place where you are today.

Lesson 6: CONTINUING EDUCATION : The days of your schooling are gone but regretfully I have to tell you that as a judicial officer you shall have to remain a student throughout your life. The just preceding and the present centuries have witnessed an explosion in the fields of science, industrialization, technology and globalisation. You cannot afford to be a traditional Judge dispensing only civil, criminal and labour law justice. Just look at the sample of disputes which you will be called upon to decide: (1) disputes relating to environment and biotechnology, (2) renting a mother's womb and consequential legal puzzles as to paternity, custody and privacy, (3) the right of a child born or yet to be born to mother's milk, (4) theft and other offences referable to time, technology and intellect, and so on. The methodology of justice administration is also undergoing changes. Computers have already partially taken over and sharing your mental work and intellectual exercises. Settlement of disputes no more means just recording of evidence and deciding a dispute; you are called upon to mediate and conciliate, may be to arbitrate. All this would need your continuing education in sociology, psychology, human behaviour, information technology and several other sciences and scientific methods posing extra demands on your time and energy. You can plan your weekends or vacations to be invested into learning these. If you lag behind, shining and success would not be yours.

Lesson 7 : DEVELOP A HOBBY : Every Judge must have a hobby preferably of reading poetry and/ or listening to good music and/or a sport. Poetry titillates your nerves and inspires. Listening to good music is soothing, enables concentration and avoids monotony. A good sport is a good relaxaion and also a source of rejuvenation.

Lesson 8 : BE PROMPT : An eminent Judge told me once that Indian judiciary, though highly respected by the masses, is loosing its credibility for three reasons. The Judges have started compromising on (i) punctuality, (ii) promptness, and (iii) probity. Punctuality and probity I have already referred to earlier. Promptness is expected in pronouncing your decisions. Never delay your judgments. Every judgment need not necessarily be a piece of literature though I would not for a moment agree to compromise on quality. The judgment should be brief and to the point. [To learn and pick up the art of brevity and precision and style of articulating judgments, search the law reports and see those written by Privy Council, Nagpur High Court and in recent times by Chief justice G.P. Singh of the High Court of M.P.]

Verbosity and use of high sounding words should be avoided. Judgment should be written in simple, chaste language and must be intelligible to the reader. Your judgment is meant for the litigant whose cause you are deciding and a litigant is not necessarily a learned man. Try to develop a habit of pronouncing the judgment generally by the next day of closing of hearing. Howsoever complicated a case may be and whatever be the length of judgment, it should never cross the coming weekend. For a Judge, a holiday is not an antithesis of work. Holidays and weekends are to be devoted for constructing such judgments as demand a longer sitting than available on the working days. Most of the landmark judgments delivered by the Judges of the Supreme Court and High Courts were written in weekends or on holidays.

Remember, your every judgment need not necessarily be an outstanding one. So for as the litigant is concerned, he is interested only in the operative part of the order, i.e. whether he has won or lost the case; whether the suit has been decreed or dismissed. You should master the art of brevity and precision i.e. a capacity to express the maximum thoughts in minimum chosen words. A judgment is not an occasion for delivering sermons or placing your individual philosophical thoughts on record and certainly not for offering scathing criticism. The judgment must be scrupulously confined to dealing with only the points actually arising for decision. If you are faced with a dilemma between choosing a delayed well written judgment and a prompt working judgment, I will prefer to choose the latter. I had occasions to see the careers of some very good, eminent and well deserving judicial officers being spoiled and they demitting the office with a hanging head because they were used to delaying the delivery of judgments.

At this juncture let me share a very personal secret with you. Once your judgment is ready and before you pronounce it, place it on the altar of God or the place where you perform worship. Pray that you have constructed the judgment to the best of your ability, knowledge and learning bestowed upon you by God and guided by the sole consideration of doing justice. If your creation reflected in the judgment is something superb it is the reflection of divine blessings and if it has not come up to the expectations let God take care of it. This small exercise would generate a feeling of detachment in you. You will never be a proud person

with a swollen head nor a sense of guilt would ever haunt you. You may sometimes suddenly discover that the judgment requires some important change. A small time-gap may, then be useful. But treat this as an exception.

Lesson 9 : RESPECT AND REGARD YOUR COURT ROOM AS A TEMPLE OF JUSTICE : Remember, those great Judges who have earlier adorned the seat which you have been destined to occupy today. While entering your court room have a feeling as if you are entering a temple to perform worship. This will fill your mind with devotion for duty. While leaving the court room think that you are leaving the temple having offered your prayers. This will give you a sense of satisfaction, relaxation and detachment. I am told of a Judge who used to have his daily bath and put on clean, washed clothes just before leaving for the Court. Before moving to take his seat on the dais, he would remove his shoes, for he believed that he was entering a temple. People with their suffering, ailings and sins go to take a dip in the Ganges for getting rid of them and if one commits a sin while sitting in the Ganges he would never be forgiven. Take a vow: temptations, allurements or pressures shall never make you compromise with your principles.

Lesson 10: A TRIPLE MANTRA : I tell you a formula given to me by Hon'ble Justice K.K. Verma, a Judge of M.P. High Court, who served Judiciary for 32 years; who commenced his career, first, as a teacher and then as a sub-Judge and rose to the height of a senior Judge of the High Court. To him I had gone to seek blessings on being appointed a District and Sessions Judge. I asked him to reveal the secrets of his success so that I may also succeed like him. He gave me three advices : (1) never say anything about anybody in his absence which if asked to repeat in his presence you will not do; (2) never condemn anyone by words spoken and by words written- both at the same time, and (3) discharging administrative or judicial functions, let the justice be never divorced from mercy. These three principles would earn you love and respect of all concerned and you will never be brought in ridicule.

EPILOGUE

Despite its frustrations and difficulties, judicial work is, according to Lord Hailsham, 'a privilege, a pleasure and a duty'. You are a Judge. In the performance of your judicial functions and exercise of judicial discretion you are not answerable to anyone except to your own conscience. The Constitution gives you that protection. But at the same time you are a public servant subject to certain rules of discipline. There will be testing times in your career. Your conscience would prompt you to do something for the public good but the limitations attaching with your office may prevent you from giving full vent to your feelings and you will feel suffocated. There will be good moments in your career when you will be filled with a sense of tremendous satisfaction that the might of your pen has proved stronger and sharper than the edge of any sword. In all such moments, learn to maintain your calm and cool, the peace and tranquility of mind and emotions.

Let me tell you a small prayer which I call the prayer of a Judge. Though, you are sitting on the seat of judgment, you cannot change the world. Even God has not been able to fully redeem His own creation- the Universe, from all its evils. You have to serve the society and dispense justice by putting in the best of your ability, knowledge and wisdom. Always feel happy with what you have done and having exerted yourself to your best, have a sense of satisfaction. You have a great potential and the society has high expectations from you. Between what you think yourself capable of doing and what you can actually do, strike a balance. Begin your every day with this prayer:

'Oh God, give me courage,
To change the things I can change;
Grant me serenity,
To accept the things I cannot change;
And the wisdom,
To know the difference'.

With these words I wish you a very bright judicial career ahead. May God be always by your side and enable you earning several laurels in life.

Thank You.

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Be strong and of a good courage; be not afraid, neither be thou dismayed; for the Lord thy God is with thee, whithersoever thou goest.

- JOSHUA

Let justice be done though the heavens fall.

- WILLIAM WATSON

Whatever you do, do cautiously, and look to the end.

- LATIN

OFFENCE OF RIOTING AND THE CHARGES UNDER SECTIONS 147 AND 148 OF THE INDIAN PENAL CODE

A.K. SAXENA
Director

An assembly of five or more persons is designated an "unlawful assembly" having one of the five objects specified under Section 141 of the Indian Penal Code as their common object. The definition of an unlawful assembly is the basis of the law of rioting. The offence of rioting is defined under Section 146 of the Indian Penal Code as follows :

> "Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting."

For the offence of rioting, following two ingredients are necessary:

Firstly, use of force or violence by an unlawful assembly or by any member thereof;

Secondly, such force or violence should have been used in prosecution of common object of such assembly.

The offence of rioting is punishable under Section 147 of the Indian Penal Code but, if a person commits the offence of rioting, being armed with deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, his offence would be punishable under Section 148 of the Indian Penal Code. The offence under Section 148 is an aggravated form of offence under Section 147 and, therefore, enhanced punishment is provided under Section 148. It is not necessary that the force or violence should be directed against any particular person or object. The use of any force, even though it be of the slightest possible character, by any one of an assembly once established as unlawful, constitutes rioting. All the ingredients which are necessary to prove the offence of rioting under Section 147 are also necessary to prove the offence under Section 148 but one more important ingredient is further necessary to prove the offence under Section 148 is that the accused was armed with a deadly weapon or with something which was likely to cause death when used as a weapon of offence at the time of occurrence.

Sometimes a question arises as to when a person who is a member of an unlawful assembly commits the offence of rioting without having a deadly weapon in his hand or with empty hands and other members of that assembly being armed with deadly weapon, commit the offence of rioting, then that person who has no weapon of any kind or has a weapon which does not come under the perview of deadly weapon, can be charged under Section 148 ? I am raising this question because I have seen several cases in which such person has been charged under Section 148 or under Sections 147 and 148 both and also con-

victed under Section 148. It appears that some of the Magistrates or the Judges are of the view that where in furtherance of common object of an unlawful assembly, some accused person are armed with deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, commit the offence of rioting, then other accused who does not have such type of weapon, can be charged under Section 148 because their object was common. I have also seen some of the charges where an accused having no weapon in his possession at the time of occurrence, was charged under Section 148 after narrating all details of deadly weapons of other accused persons. In my view, this is not the correct legal position.

The words "being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death" provided under Section 148, are important for arriving at a correct conclusion. From a perusal of this section, it is clear that there is no scope of reading this section along with Section 149. The provision of Section 149 of the Indian Penal Code is intended to lay upon all the members of an unlawful assembly responsibility for any offence other than the offence of rioting, committed by any member of the unlawful assembly in prosecution of common object. If one or some of the members of an unlawful assembly were armed with deadly weapon, the other member or members cannot on that account be charged under Section 148. It is only the actual person or persons so armed who can be charged under Section 148. Therefore, if a member of an unlawful assembly does not have any deadly weapon, then he cannot be charged under Section 148 and if an accused commits the offence of rioting being armed with such deadly weapon, then he should not be charged under Section 147. The proper framing of charges would be under Section 147 and 148, respectively, against above mentioned persons. The citations *Sohanlal and others Vs. State of M.P., 1983 MPLJ 411* and *Hira Vs. State of M.P., 1979 (I) MPWN 314* may be referred for the guidance.

I would like to cite one example of wrong charge being made by some of the Magistrates/Judges and thereafter, I shall demonstrate how to frame correct charges under Sections 147 and 148.

Suppose A, B, C, D and E five accused persons committed the offence of rioting and 'A' was present at the place of incident without having any weapon, whereas the accused B, C, D and E were being armed with deadly weapons like sword, knife, pistol and gun, respectively. In this case, the following is the *example of a charge not correctly framed against the accused 'A':*

"I (name and office of Magistrate, etc.) hereby charge you 'A' son of 'X' as follows :

That you, on or about the 5th day of January, 2003, at Songarh were a member of an unlawful assembly, and did, in prosecution of the common object of such assembly, namely to cause injury to 'P', commit the offence of rioting and at that time you and other accused persons B, C, D, E were armed with deadly weapon to wit sword, knife, pistol and gun, respectively and thereby committed

an offence punishable under Section 148 of the Indian Penal Code, and within my cognizance.

"And I hereby direct that you be tried on the said charge."

EXAMPLE OF CORRECT CHARGES

(1) "I (name and office of Magistrate, etc.) hereby charge you 'A' son of 'X' as follows:

That you, on or about the 5th day of January, 2003, were a member of an unlawful assembly, and in prosecution of the common object of such assembly, viz., in (*or namely*) to cause injury to 'P', committed the offence of rioting, and thereby committed an offence punishable under Section 147 of the Indian Penal Code and within my congizance.

"And I hereby direct that you be tried on the said charge."

(2) "I (name and office of Magistrate, etc.,) hereby charge you 'B' son of 'Y' as follows:

That you, on or about the 5th day or January, 2003, at Songarh, were a member of an unlawful assembly, and did, in prosecution of the common object of that (*such*) assembly, viz., in (*or namely*) to cause injury to 'P' commit the offence of rioting with a deadly weapon *(or and at that time were armed with a deadly weapon) [or with something which used as a weapon of offence was likely to cause death]* to wit sword and thereby committed an offence punishable under Section 148 of the Indian Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge."

Pro-forma charge No. 2 shall also be applicable to accused C, D and E but the weapon will be changed as per the story of the prosecution. It is my duty to clarify that I borrowed the language of charge from **Dr. Sir Hari Singh Gour's Penal Law of India** and from **Ratanlal & Dhirajlal's Law of Crimes** and one must always refer standard books of I.P.C. of any writer before framing of a charge.

Framing of charge under Section 148 against an accused who does not have deadly weapon or something which was likely to cause death at the time of occurrence though he was a member of an unlawful assembly and the object was common, is not according to law and when he cannot be charged under Section 148 then he cannot be punished under that Section also. A person cannot be found guilty for the offence under Section 148 without being armed with deadly weapon.

I may conclude with this observation that when some accused persons being armed with deadly weapon commit the offence of rioting, then proper charge against them would be under Section 148 and where other persons who were not having such type of weapons, commit the offence of rioting, they should be charged under Section 147 and not under Section 148 as the provisions of Section 149 of Indian Penal Code are not applicable to both these Sections.

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PENAL LIABILITY FOR DISHONOUR OF CHEQUE

VED PRAKASH
Addl. Director.

The Negotiable Instruments Act, 1881 (for short the Act), hitherto an enactment falling exclusively under civil law, was amended by Banking, Public Financial Instruments and Negotiable Instruments law (Amendment) Act, 1988. The Amendment, which came into force with effect from first of April 1989, inserted chapter 17, consisting of section 138 to 142, in the Act. These provisions, subject to the proof of certain conditions created penal liability in respect of dishonour of cheques. The main object of introducing these provisions in the Act appears to be to inculcate faith in the efficacy of banking operations and credibility in transacting business on the negotiable instruments. After the amendment the law in this particular branch has developed rapidly. This article attempts to explore and examine these developments with a view to put a complete picture of various legal aspects relating the issue.

AMBIT AND SCOPE-. Pursuant to the amendment, drawer of the cheque on its dishonour, subject to proof of certain specified conditions, shall be deemed to have committed an offence under section 138 of the Act, which is punishable with imprisonment upto one year or a fine twice the amount of the cheque or both. The Apex court in *Kusam Ingots & Alloys Ltd. Vs. Pennar Peterson Securities Ltd. AIR 2000 SC 954,* while examining the scope of the provisions contained in chapter 17 of the Act summed up the following ingredients which must be established to make out a case under section 138 of the Act,

(1) a person must have drawn a cheque on an account maintained by him in the bank for payment of a certain amount of money to another person from out of the account for the discharge of any debt or other liability;

(2) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(3) that cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from the account by an agreement made with the bank;

(4) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(5) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

If the aforementioned ingredients are satisfied than the person, who has drawn the cheque, shall be deemed to have committed the offence. Here it may also be mentioned that proof of mens rea is not required because section 140 of the Act further makes it clear that if would not be a defence for the drawer that at the time of issuing the cheque he did not reasonably believe that the cheque may be dishonoured.

"THE BANK" -

Clause (a) of proviso to section 138 requires the presentation of cheque before the bank. There was a divergence of opinion among various High Court as to whether words "the bank" include the collecting bank of the payee. The controversy was set at rest by the Apex Court in *Shri Ishar Alloys Steels Limited Vs. Jayaswals Neco Limited, A.I.R. 2001 SC 1161,* wherein it was laid down that "the bank" referred to in section 138 means the drawee Bank on which the cheque is drawn and not all banks where the cheque is presented for collection including the bank of the payee, in whose favour the cheque is issued.

LIMITATION-

From a plain reading of section 142 (b) of the Act, it is manifest that a competent court can take cognizance of a written complaint of an offence under section 138 if it is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138. The term "one month" would be the calendar month and as per section 3 (35) of the General Clauses Act, 1897, the number of days in a month be reckoned according to the British calendar, under which some months have 31 days and others have 30 days while one month has 28 or in a leap year 29 days. There was a controversy as to whether the period of one month should be reckoned from the day after the period of 15 days or excluding that day. Examining the matter in the light of section 12 (1) and (2) of Limitation Act, 1963 and section 9 of the General Clauses Act, 1897, the Apex Court laid down that ordinarily in computing the time, the rule observed is to exclude the first day and to include the last. Thus the period of one month as contemplated in section 142 (b) for filing complaint shall be reckoned from the day immediately following the day on which the period of 15 days from the date of the receipt of notice by the drawer expires but excluding that very day. In this case the period of 15 days expired on 14 October 1995, and cause of action arose on 15th October 1995. It was held that after excluding 15th October 1995 the period of one month will extend upto 15th November 1995 therefore, complaint filed on 15th November 1995 is within limitation; refer : *M/s Saketh India Ltd. & Others Vs. M/s India Securities Ltd. A.I.R. 1999 SC 1090.* Again question arises whether delay in filing a complaint within limitation prescribed under section 142 (b) can be condoned under section 5 of the Limitation Act. Though in this respect it has been held by the Orrisa High Court in *Janardhan Vs. Saroj, (1993) Cr. L.J. 175,* that such delay can be condoned under section 5 of the Limi-

tation Act, 1963, but in view of the law laid down by our own High court in *Janardan vs. Govt. Pleader Durg 1971 MPLJ 1046,* it is clear that a complaint is not a suit or appeal within the meaning of section 29 (2) of the limitation Act, 1963, therefore, section 5 of the Act can not be applicable as far as condonation of delay in filing a complaint is concerned.

Apart from the period of limitation prescribed in section 142 (b) of the Act, two other timeframes are also required to be noticed which a complainant is expected to observe so as to successfully prosecute in a case under section 138 of the Act. Firstly, the cheque must be presented to the drawee Bank within a period of six months from the date on which it is shown to have been issued or within the period of its validity, whichever is earlier. The non-presentation of the cheque to the drawee bank within the specified period would absolve the person issuing the cheque of his criminal liability under section 138 of the Act; refer : *Shri Ishar* (Supra). Secondly, after dishonour of the cheque the complainant should make a demand for the payment of money by giving a notice "to the drawer of the cheque within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid". So 15 days are to be counted from the receipt of information regarding the return of the cheque as unpaid. In *M/s Munoth Investments Ltd. Vs. Puttukola Proprietors Ltd., A.I.R. 2001 SC 752,* the cheque was returned by the bank on 13th and information was given to the complainant only on 17th because 14th, 15th and 16th were Pongal holidays, the Apex Court held that the period of 15 days is to be counted from 17th and not from 13th.

SUCCESSIVE PRESENTATION-ONE CAUSE OF ACTION-

No doubt a cheque can be successively presented before the bank but the question arises whether every presentation and consequent dishonour of the cheque gives rise to a fresh cause of action. Dealing with this issue the Apex Court in *Sadanandan Bhadran Vs. Madhavan Sunil Kumar, (1998) 6 SCC 514,* laid down that of course, in the course of business transactions it is not uncommon for the cheque being returned due to insufficiency of funds or such similar reasons and being presented again by the payee after sometime, on his own volition or at the request of the drawer in expectation that it would be encashed. The primary interest of the payee is to get his money and not prosecution of the drawer, recourse to which, normally, is taken out of compulsion and not choice. On each presentation of the cheque and its dishonour, a fresh right-and not cause of action accrues in his favour. He may, therefore, without taking pre-emptory action in exercise of his right under clause (b) of section 138, go on presenting the cheque so as to enable him to exercise his right at any point of time during the validity of the cheque. But once he gives a notice under clause (b) of section 138, he forfeits such right, for in case of failure of the drawer to pay the money within the stipulated time, he would be liable for the offence, and the cause of action for filing the complaint will arise.

DISHONOUR-REASONS FOR-

Section 138 of the Act provides for punishing the drawer of a cheque which is dishonoured only under two eventualities, firstly, insufficiency of the amount in the account of the drawer, secondly, the amount covered by the cheque exceeding the amount arranged to be paid from that account by an agreement made with the bank. In this background question arises whether dishonour of a cheque with remarks 'account closed', 'payment stopped by the drawer', or 'refer to the drawer' will be covered by section 138 of the Act? Bombay, Andhra Pradesh and Kerala High Courts in the cases of *Rakesh Nemkumar Porwal (1993 Cr.L.J. 680 Bombay), Syed Rasool and Sons (1992 Cr.L.J. 4048 A.P.)* and *Thomas Varghese (1992 Cr.L.J. 3080 kerala)* respectively have construed section 138 of the Act so as to cover all cases of dishonour of cheques within its ambit provided that ultimately the cause of dishonour of cheque is referable to inability of the drawer to provide for sufficient funds. The view is that the endorsement made by the bank while returning the cheque unpaid is not decisive and it is a matter of evidence to be collected in the trial to find out as to why the cheque was dishonoured. In *NEPC Micon Ltd. & Others Vs. Magma leasing Ltd., A.I.R. 1999 SC 1952,* the Apex Court has held that where cheque is returned by bank unpaid on ground that the account is closed, it would mean that cheque is returned unpaid on the ground that the amount of money standing to the credit of the account is insufficient to honour the cheque and, therefore, it would certainly be an offence under section 138 of the Act. *In Modi Cements Ltd. Vs. Kuchil Kumar Nandi, A.I.R. 1998, SC 1057,* it was further held by the Apex court that if a cheque is dishonoured because of 'stop payment' instruction to the bank, section 138 would get attracted. The position will not be different even if the drawer had instructed the bank to stop the payment prior to the presentation of the cheque for encashment. It was further held that the observations of the Supreme Count in *Electronics Trade and Technology Development Corporation Ltd., 1996 part 2 SCC 739,* in para 6 to the effect "suppose after the cheque is issued to the payee or to the holder in due course and before it is presented for encashment, notice is issued to him not to present the same for encashment and yet the payee or holder in due course presents the cheque to the bank for payment and when it is returned on instructions, section 138 does not get attracted" does not fit in with the object and purpose of the provision which is to promote the efficacy of banking operations and to ensure credibility in transacting business through cheques. Acceptance of this proposition will make section 138 a dead letter, for, by giving instructions to the bank to stop payment immediately after issuing a cheque against a debt or liability the drawer can easily get rid of the penal consequences notwithstanding the fact that a deemed offence was committed. Once the cheque is issued by the drawer the presumption under section 139 must follow and merely because the drawer issues a notice to the drawee or to the bank for stoppage of the payment that will not preclude an action under section 138 of the Act by the drawee or the holder of a cheque in due course.

BURDEN OF PROOF-

Under section 118 of the Act, unless the contrary is proved, it is to be presumed that the negotiable instruments including a cheque had been made or drawn for consideration. Under section 139 the Court has to presume, unless the contrary is proved, that the holder of the cheque received the cheque for discharge in whole or in part of a debt or liability. Thus in complaints under section 138, the Court has to presume that the cheque had been issued for a debt or liability. This presumption is rebuttable. However, the burden of proving that a cheque had not been issued for a debt or liability is on the accused. Refer : *Hiten P. Dalal Vs. Bratindranath Banerjee (2001) 6 SCC 16.* In *K.N. Veena Vs. Muniyappan & Another, A.I.R. 2001 SC 2895,* the accused led no evidence except some formal evidence, it was held that the accused had to prove in the trial, by leading cogent evidence, that there was no debt or liability. The accused not having led any evidence could not be said to have dischargd the burden cast on him.

SENTENCE :

In view of section 142 (c) of the Act the complaint for offence under section 138 can be filed before, Metropolitan Magistrate or a Judicial Magistrate of the first-class. Section 29 of the Code of Criminal Procedure contains a limit for a Magistrate of first-class in the matter of imposing a sentence. If the sentence is imprisonment it shall not exceed three years and if the sentence is fine it shall not exceed Rs. 5000. Considering the jurisdictional competence of Magistrate of first-class in respect of cases arising out under section 138 of the Act, the Apex Court in *Pankajbhai Nagibhai Patel Vs. State of Gujarat And Another A.I.R. 2001 SC 567* laid down that if a Magistrate of first-class thinks that the fact situation in a particular case warrants imposition of a sentence more severe than the limit fixed under section 29 of the Code, the Magistrate can resort to section 325 of the Code and send the matter to the Chief Judicial Magistrate. The Apex Court further held that even that apart, a Magistrate who thinks it fit that the complainant must be compensated for his loss, he can resort to the course indicated in section 357 of the Code. Therefore, whenever a Magistrate of the first-class feels that the complainant should be compensated, he can, after imposing a term of imprisonment, award compensation to the complainant for which no limits is prescribed in section 357 of the Code. As laid down in *Hari Singh Vs. Sukhbit Singh, 1984 (4) SCC 551,* the Court may enforce such an order by imposing sentence in default. As regards the suspension of sentence it was laid down by the Apex court That while suspending the sentence for offence under section 138 of the Act it is advisable that the Court imposes a condition that the fine part is remitted within a certain period. If the fine amount is heavy, the Court can direct at least a portion thereof to be remitted as the convicted person wants the sentence to be suspended during the pendency of the appeal; refer: *Stanny Felix Pinto Vs. M/s Jangid Builders Private Ltd., A.I.R. 2001 SC 659.*

'OFFENCE', WHETHER COMPOUNDABLE?

The issue whether offence under section 138 of the Act can be compounded or not was considered by our own High Court in *Ram Raghav Chaturvedi Vs. State of M.P. And Another, 2001 (2) MPLJ* page *457,* wherein, after considering various authorities on the point, it was laid down that sub-section (9) of section 320 of Code of Criminal Procedure makes it clear that no offence, that is not mentioned in section 320 shall be compoundable. Therefore, there is no power to the Court to compound an offence punishable under section 138 of the Act.

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ANTICIPATORY BAIL IN PENDING TRIALS

By- AWDHESH KUMAR SHRIVASTAVA
Spl. Judge (CBI), Jabalpur (M.P.)

Whether an anticipatory bail order in a pending trial can be passed u/s. 438 Cr.P.C by the High Court or the Court of Session is a question, which has been [illegible] differently by different High Courts. Hon'ble High Court of Punjab & Haryana in *Puran Singh Vs. Ajit Singh, 1985 Cr.L.J. 897* and the Hon'ble High Court of Andhra Pradesh in *Smt. Sheikh Khasim Bi Vs. The State* reported in *1986 Cr.L.J. 1303 (F.B.)* have held that prayer of anticipatory bail can be accepted even after taking of cognizance of offence and issuance of warrant of arrest. On the otherhand Hon'ble Orissa High Court in *Ashok Kumar Vs. State of Orissa, 2000 Cr.L.J. 1975, Hemant Kumar Nayak Vs. State of Orissa, 2000 Cr.L.J. 3267* and *Siddharth Patra Vs. Republic of India, 2002 Cr.L.J. 2354* has held that after filing of charge sheet the prayer for anticipatory bail is not entertainable. The same view was also accepted by Hon'ble Gauhati High Court in *Kundal Majumdar Vs. State of Tripura, 2002 Cr.L.J. 353.*

As regards to the above question there is no reported case from Hon'ble Supreme Court to my knowledge, however our own High Court has considered the question and expressed the view affirmatively.

Admittedly, prior to 1973 there was no enacted provision of anticipatory bail and the provision has been firstly made available with enactment of the Code of Criminal Procedure, 1973 after considering the 48th Report (1972) of Law Commission of India. Though the question whether the High Court has a power to pass anticipatory bail orders under its inherent powers, has been in debate for a long period and the Law Commission of India in its 41st Report had also recommended an amendment in Code of Criminal Procedure, 1898 for making provision of anticipatory bail in order to smooth away the situation. However it took time and as discussed above the provision was got enacted in the year 1973.

The objects and some facets of the provisions of anticipatory bail were probably first discussed at length in *Gurubaksh Singh Vs. State of Punjab* reported in *AIR 1980 SC 1632* and ultimately it was held that the Court's power to enjoying a

wide discretion of granting bails to offenders of severe crimes or in imposing conditions while granting anticipatory bail should not be restricted. However, it was made clear that the provisions of S. 438 Cr.P.C. can not be invoked after the arrest of the accused. It was also directed that the Court should not generally pass "Blanket Orders" of anticipatory bail.

The parameters of anticipatory bail were again considered and discussed by the Hon'ble Supreme Court in *Salauddin Vs. State of Maharashtra* reported in *(1996) 1 SCC 667=1996 SCC (Crl) 198= AIR 1996 SC 1042= 1996 Cr.L.J. 1368 = 1996 (1) M.P.W.N. 147 SC,* wherein it was held that the order of anticipatory bail is granted in anticipation of arrest in non-bailable cases so while passing anticipatory bail orders, the Courts are not to encroach upon the jurisdiction of regular Courts and the anticipatory bail orders should be of a limited duration leaving the matter to the regular courts to deal with, on an appreciation of evidence based before it. The view was later on confirmed in *K.L. Verma Vs. State and another, 1998 SCC (Crl) 1031.*

Though, in above noted cases the question whether the High Court or Court of Sessions has a power to grant anticipatory bail in pending trials or the cases where the Magistrate/Sessions Judge has taken cognizance, was not directly involved, however, the observation made by the Hon'ble Supreme Court in Salauddin's case (Supra) is significant. The relevant portion reads thus-

> "It must be realised that when the Court of Session or the High Court is granting anticipatory bail, it is granted at a stage when the investigation is incomplete and therefore, it is not informed about the nature of evidence against the alleged offender".

Whether the observation made by Hon'ble Supreme Court would be an indication to assure that the provisions of anticipatory bail are only applicable till filing of charge sheet or not is yet to undergo the process of judicial discussion/ pronuncement. However, it certainly reopened the moot question.

The matter of granting anticipatory bails in pending trials has not been untouched by our own High Court. Though the cases in which the matter was decided were related to some different aspects. Initially in *Kanhaiyalal Rathi Vs. State of M.P.* reported in *1978 M.P.L.J. Note 30* it was held that the benefit of anticipatory bail can be availed of till the challan. According to this ruling no anticipatory bail would have been granted after challan is filed. However, another view emerged very soon. In *B.L. Verma Vs. state of M.P.* reported in *1979 J.L.J. 419= 1979 Cr.L.J. NOC, 190,* the accused who was previously on anticipatory bail filed an application at committal stage apprehending his arrest by committing Magistrate dealing u/s. 209 Cr.P.C. and his application was allowed by Hon'ble High Court holding that (1) The anticipatory bail granted u/s. 438 Cr.P.C. continues to be in operation until conclusion of trial unless cancelled by appropriate Court and (2) Accused can a granted anticipatory bail u/s. 438 (1) while

committal proceedings pending before a Magistrate. This view was later got approved by the Division Bench in *Ramsewak Vs. State of M.P. 1979 Cr.L.J. 1485 = 1979 J.L.J. 593 (D.B.).* The same view has also been reaffirmed in *Arun Kumar Vs. State of M.P., 2000 (1) M.P.J.R. 605.*

The matter was again agitated in another form as to whether an application anticipatory bail is maintainable in a case based upon complaint. The matter was referred to Full Bench and ultimately decided in *Nirbhay Singh Vs. State of M.P., 1995 J.L.J. 21 = 1995 (1) M.P.J.R. 234 = 1995 M.P.L.J. 296 (FB),* holding that in a complaint case, where the Magistrate issued a non-bailable warrant after taking cognizance u/s. 204 Cr.P.C., the application u/s. 438 Cr.P.C. is maintainable. The following sentence of the judgement is significant.

> "It is not as if circumstances justifying an application u/s. 438 would disappear once a Magistrate takes cognizance of the offence or even after he passes an order committing the case."

The pending trials may be mainly divided into three different types (1) Session Trial (2) Cases instituted on police report (3) Cases instituted upon private complaint out of those- In Session trials though the Magistrate deals with the case till committal proceedings. The case reaches in hands of tiral judge when the same is committed. In ohter types of cases though the Magistrate has jurisdiction to try the cases but in cases instituted upon police report the case comes after completing the investigation. In case based upon private complaint the cognizance is taken after a short enquiry. As it has now been made clear by Hon'ble High Court, virtually there remains no distinction and the anticipatory bail can be applied for whether the case is being investigated by police or the Magistrate has taken cognizance. But so far as the stage of applying for anticipatory bail is concerned the situation may not be the same. The words "has reason to believe" that he may be arrested on an accusation of having committed a non-bailable offence" used in S. 438 (1) of Cr.P.C. are significant and in view of these words it can be said that the application for anticipatory bail can only be entertained when the apprehension of arrest exists and not thereafter. In a case, in my view there shall be and can be only one arrest on account of accusation of an offence and so the provisions of anticipatory bail would attract till the reason to believe of such arrest, exists. Another or subsequent apprehension of arrest no doubt can exist but only in case of bail jump or any other similar ground and in that case it cannot be said that the person/accused has a reason to believe of his arrest on account of any possible accusation. Thus in later case the provision of anticipatory bail may not attract.

Another situation also arises when the charge sheet is filed in a bailable offence or an offence of lesser offence and the accused having released on bail at previous stage feels or made aware that he can be charged for a graver offence. Though, time and again, such situations have been arosen in Courts but to my knowledge, no ratio could be developed on the point so far. In *Noneju Vs.*

State of M.P., 1995 (1) M.P.W.N. 111, Charan Singh Vs. State of M.P., 1997 (2) M.P.W.N. 14 and *Radheshyam Vs. State of M.P., 1997 (2) M.P.W.N. 45* are the cases in which such situations arose in one way or other but the point of maintainability of application u/s. 438 Cr.P.C. was left unraised and undecided (as a moot) though, the relief was provided in other way.

Out of above cases in *Radheshyam Vs. State of M.P. & Charan Singh Vs. State of M.P. (Supra)* the accused persons, who were previously admitted to bail, had sought anticipatory bail on the grounds that, they are now apprehending a framing/accusation of a charge of grave offence and Hon'ble High Court holding that since the accused persons have not misused the bail and they are on bail, directed that they need not surrender and shall be admitted to bail. A contention may be advanced that the Hon'ble High Court has thus accepted the maintainability of bail application, but the view that has been taken in above cases may be taken as washed off by Hon'ble Supreme Court in *Prahlad Singh Bhati Vs. N.C.T. Delhi, AIR 2001 SC 1444.* In this case, it has been directed/ coutioned that a magistrate should not grant bail to the accused of aggravated crime merely on ground that he was initially granted bail for minor offence. Thus the question of maintainability of bail application remains as it is.

No doubt a person, accused of minor offence who has initially been admitted to bail, has no fault with him, when the act committed by him is at later stage found to be a graver offence, but whether his unacquaintance with the situation would be a ground to hold that he now has a "reason to believe that he may be arrested for an accusation of having been committed a non-bailable offence" needs consideration. The cases, in which the case was initially registered under a bailable offence, it may be considered that the accused has firstly had a reason to believe to be arrested on an accusation of a non-bailable offence. But the cases which were intially registered under a non-bailable offence and the accused was admitted to bail, may be considered as incommensurable with the above cases as the apprehension of arrest on accusation has already come to end. So as to what would be the right course of action, the only recourse that remains with us is to wait until the point is cleared through a judicial pronouncement.

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Liberty is precious - so precious that it must be rationed.

- LENIN

Liberty means responsibility. That is why most men dread it.

- GEORGE BERNARD SHAW

NEED OF INDIGENOUS LAWS & LEGAL SYSTEM

SANJEEV DUTTA
Additional District Judge
Sendhwa, W.N. Mandleshwar

We have inherited legal system from Britishers. Most of our laws like I.P.C. Cr.P.C., C.P.C., Evidence Act are copies of British Laws. The Law should reflect social needs and aspirations. Whether Indian society can be compared with British society on any count? How the laws which have developed in British soil according to their needs and their philosophy can be enforced successfully in India, where society is altogether different from England? In India, major problems are of poverty, unemployment, hunger, casteism, under-development, while none of these problems were existed in U.K., when the laws were developed there. U.K. was capitalist country with imperialistic design. India has choosen socialism as Constitutional goal. The word "Socialism" has been inserted in our Constitution by 42nd Amendment. Economic justice is signature tune of our Constitution.

Whether someone has pondered over the simple fact? Why a person who steals a purse having a tittle amount, is considered serious offender than those millionaires who evade taxes of crores of rupees? What is the difference between their motive and intention? Motive and intention of both the persons is same, i.e. to get unlawful gain by causing loss to others. Few persons who evade taxes in a planned manner, why they should not be prosecuted deterrently? Tax evaders impede national growth. The logic is simple. Our laws are not responding to our social needs and aspirations. This is the reason that crimes are increasing inspite of the fact that the Government is increasing strength of police. Piecemeal efforts are not sufficient to reform the legal system.

Time has come to analyse our laws and legal system at the touchstone of our socio-economic needs and philosophy. Law is instrument of social changes also. If we want to translate constitutional goals into flowering reality, then we would have to develop our own laws and legal system, which may suit our needs. It is right time to encourage research work in legal field. Seminars should be arranged at all levels to evolve new laws. All our efforts should be made to translate Constitutional goals into living reality. Equality is a wide term and it should not be on papers only. It includes social and economic equality along with political equality. Each citizen of this country is duty bound to follow our Constitution. No serious efforts have been made to develop new laws according to our socio-economic philosophy. Field is wide open and serious research work is crying need of hour. Law can play pivotal role in bringing socio-economic transformation of society. The ideal and realistic laws are needed to build ideal society. Social and economic justice is bedrock of ideal and healthy society. Our all laws should advance the cause of social and economic justice. By evolving new laws, we would be able to build our country which would be free from social and economic exploitation.

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REVERSION TO LOWER STAGE OR GRADE-FIXATION OF PAY

P.K. TIWARI
Accounts Officer (Retd.)
High Court of M.P.
JABALPUR

The fixation of pay on reduction of pay or on reduction to lower grade (in which the punished employee had served before the present grade) quite often presents a lot of confusion. Sometimes the appellate authority sets aside the more severe punishment imposed by the disciplinary authority and orders reduction to lower stage or lower grade. Quite often the disciplinary authority further augments the order of appellate authority by indicating further the number of stages of reduction. Such order of the disciplinary authority amounts to passing fresh order which therefore is unsustainable. His duty is simply to implement the order of the appellate authority.

Appellate order should be followed unreservedly by the subordinate authority. *Union of India V. Kamalakshi Finance Corporation Ltd. 1991 (55) ELT 433 (SC)*

Now we take concrete examples to illustrate the position:-

1) REDUCTION TO LOWER STAGE-WITHOUT CUMULATIVE EFFECT :-

A Government servant drawing pay Rs. 5100/- in the sale of 4000-100-6000 from 1-1-1998 is reduced by 2 stages from 1-3-1998. The reduction is without cumulative effect. How is his pay to be regulated? The regulation shall be as under :

Date	Pay Under normal condition	Date	Pay as a result of reduction
1.1.98	5100	1.1.98 to 28.2.98	5100
		1.3.98	4900
1.1.99	5200	1.1.99	4900
		1.3.99	4900
1.1.2000	5300	1.1.2000 to 29.2.2000	4900
		1.3.2000	5300 ..... Restored
1.1.2001	5400	1.1.2001	5400

II) IF ON THE OTHER HAND, REDUCTION TO LOWER STAGE IS CUMULATIVE PAY SHOULD BE REGULATED AS UNDER:-

1.1.98	5100	1.1.98	5100
		1.3.98	4900
1.1.99	5200	1.3.99	4900
1.1.2000	5300	1.3.2000 to	
		31.12.2000	5100
1.1.2001	5400	1.1.2001	5200
1.1.2002	5500	1.1.2002	5300
1.1.2003	5600	1.1.2003	5400

iii REDUCTION TO LOWER GRADE WITHOUT CUMULATIVE EFFECT :-

Now we take another example. Supposing a Govt. servant who was initially serving in the scale of 4000-100-6000 at Rs. 5000/- from 1.6.97 was promoted to the scale of 5000-150-8000 from 1.1.98. While his pay in lower scale was to be Rs. 5100/- from 1.6.98, he was reduced to lower grade for 2 years without cummulative effect from 1.3.2001. How is his pay to be regulated? On promotion his pay was fixed as below under FR 22-D:-

Date	Scale/Basic Pay	Date	Scale/Basic Pay
	4000-100-6000		5000-150-8000
1.6.97	5000		
1.1.98	Promoted (5000)	1.1.98	5150
1.6.98	(5100)		
1.1.99	(5100)	1.1.99	5300
1.6.99	(5200)		
1.1.2000	(5200)	1.1.2000	5450
1.6.2000	5300		
1.1.2001	(5300)	1.1.2001	5600
1.3.2001 Reverted	5300	1.3.2001	Reverted
1.6.2001	5400	1.1.2002	(5750)
1.3.2002	5400		
1.6.2002	5500		
1.1.2003 to 28.2.2003	5500	1.1.2003 to 28.2.2003	(5900)
1.3.2003(Restored)	(5500)	1.3.2003	5900 Restored
1.1.2004	(5500)	1.1.2004	6050
1.6.2005	(5600)	1.1.2005	6200

REDUCTION TO LOWER GRADE WITH CUMULATIVE EFFECT

(IV) If on the other hand the reduction is with cumulative effect this pay regulation shall be as above till 28.2.2003. On restoration from 1.3.2003, the regulation in restored scale shall be as under :-

Date	Scale/Basic Pay
	5000-150-8000
1-3-2003	5600
1-1-2004	5750
1-1-2005	5900 and so on

GENERAL :- Whenever such punishments are imposed, it is advisable that the punishment order must itself indicate the pay regulation so that where such order emantes from appellate authority, the disciplinary authority may not pass fresh order to regulate pay thereby committing the error of transgressing the power of the superior authority.

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A man is attached to his place of work
or country of birth,
if he is vitally linked with them;
for the non - attached
all the places are the same,
and might be the abode of peace.

When you feel that time is not passing,
be sure, you are mentally ill.

- Smt. Suprama Mishra
(The author of 'Thus I Speak')

NAME OF SOME JOURNALS & THEIR MODE OF CITATION

Short form of Journals	Full Form of Journals	Mode of Citation as Provided in Journals
AIR	All India Reporter	AIR 2002 SC...
SCC	Supreme Court Cases	(2002) 8 SCC ...
ANJ	Aparadh Nirnay Journal	2002 (2) ANJ (S.C.)...
Cr LJ	Criminal Law Journal	2002 Cr.L.J. ...
AIR SCW	All India Reporter Supreme Court Weekly	2002 AIR SCW ...
MPLJ	Madhya Pradesh Law Journal	2002 (4) M.P.L.J. ...
JLJ	Jabalpur Law Journal	2002 (2) JLJ ...
MPWN	Madhya Pradesh Weekly Notes	2002 (II) MPWN...
VIBHA	Vidhi Bhasvar	2002 (2) Vidhi Bhasvar...
RN	Revenue Nirnaya	2002 RN...
MPLT	Madhya Pradesh Law Times	2002 MPLT (SC) ...
MPHT	M.P. High Court Today	2002 (3) M.P.H.T. ...
MPJR	M.P. Judicial Repoter	2002 (II) MPJR ...
ACJ	Accidents Claims Journal	2002 ACJ ...
BLJ	Bilaspur Law Journal	2002 (2) BLJ ...
CWN	Chhattisgarh Weekly Notes	2002 (II) CWN ...
C.Cr. C.	Current Criminal Cases	2002 (2) C.Cr.C. ... (S.C.) or (M.P.) or (...)
CCLC	Current Civil Legal Cases	2002 (2) C.C.L.C. ...
TAC	Transport and Accidents Claims Cases	2002 (1) T.A.C. ...(M.P.) (...)
ILR	Indian Law Reports	I.L.R. (1999) M.P. .....

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PART - II

NOTES ON IMPORTANT JUDGMENTS

1. EASEMENTS ACT, 1882- Section 52
TRANSFER OF PROPERTY ACT, 1882- Section 105
Licence- Meaning of- Lease and Licence- Distinguished.
Corporation of Calicat Vs. K. Sreenivasan
Judgment dt. 3-5-02 by the Supreme Court in Civil Appeal No. 3283 of 2002, reported in (2002) 5 SCC 366

Held :

"Lease" has been defined under Section 105 of the Transfer of Property Act, 1882, the relevant portion whereof reads thus:

"*105. Lease defined.*- A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms."

"Licence" has been defined under Section 52 of the Indian Easements Act, 1882 to mean a grant by one person to another or to a definite number of other persons, a right to do, or continue to do, in or upon immovable property of the grantor, something which would, in the absence of such right, be unlawful and such right does not amount to an easement or an interest in the property. Section 53 specifies the persons who can grant a licence and Section 54 lays down that he grant may be express or implied whereas Section 55 defines accessory licences. According to Section 56, only certain types of licences enumerated thereunder are transferable and not all. Duties of the grantors are specified in Section 57 and 58 whereas Section 59 says that grantor's transferee is not bound by the licence. Section 60 provides grounds for revocation of licence and Section 62 the contingencies under which a licence is deemed to be revoked whereas Section 61 lays down that revocation of licence may be express or implied. Rights of a licensee, whose licence has been revoked in accordance with law, to remain in occupation of the property for a reasonable time after its revocation, have been enumerated in Section 63. Under Section 64, even if a licensee is evicted, though grounds for revocation of licence do not exist or forcefully evicted, his only remedy is to recover compensation from the grantor and not to resume occupation which undoubtedly would never mean that a licensee can be forcefully evicted by the grantor without taking recourse to the provisions of law. We may usefully refer to the provisions of Section 52 of the Indian Easements Act, 1882 which run thus:

"52. Licence defined.- Where one person grants to another, or to a definite number of other persons, **a right to do, or continue to do, in or upon the immovable property of the grantor,** something which would, in the absence of

such right, be unlawful, and such right does not amount to an easement or an interest in the property, **the right is called a licence.**"

This Court while dealing with the distinction between "licence" and "lease" has enumerated in various decisions as to what are the rights of a licensee. In the case of *Associated Hotels of India Ltd. v. R.N. Kapoor,* ***A.I.R. 1959 S.C. 1262*** *it was observed at p. 1269 thus: (AIR p. 1269, para 27)*

".... **if a document gives** only a **right to use the property** in a particular way or under certain terms while it remains in possession and control of the owner thereof, it will be a licence. The legal possession, therefore, continues to be with the owner of the property, but the licensee is permitted to **make use of the premises** for a particular purpose. But for the permission, **his occupation would be unlawful.**" (emphasis added)

In the case of *B.M. Lall v. Dunlop Rubber Co. (India) Ltd.,* **A.I.R. 1968 S.C. 175** there was an agreement between the employer and the employee under which occupation of the employee in the premises was to cease not only on the termination of his employment but also on his transfer from one station to another and on his death. The employer was at liberty to allot any other flat to the employee on his transfer to another station and assign the premises fallen vacant by virtue of transfer to any other employee. In these circumstances, the Court observed at p. 178 thus: (AIR p. 178, para 4)

"All the terms of the agreement are consistent with the expressed intention that **the officer is permitted to occupy the flat as a licensee** and nothing in the agreement shall be deemed to create the relationship of landlord and tenant. The **agreement** on its true construction read in the light of the surrounding circumstances **operates as a license** and not as a tenancy. It creates no interest in the land. It gives only a personal privilege or **license to the servant to occupy the premises** for the greater convenience of his work." (emphasis added)

In the case of *Qudrat Ullah v. Municipal Board, Bareilly, (1974)* ***1 SCC 202*** *it was observed at p. 398 thus:*

"... If an interest in immovable property, entitling the transferors to enjoyment is created, it is a lease: **if permission to use land** without right to exclusive possession is **alone granted, a license is the legal result.**" (emphasis added)

In the case of *Khalil Ahmed Bashir Ahmed v. Tufelhussein Samasbhai Sarangpurwala, (1988) 1 SCC 155* Sabyasachi Mukharji, J., as he then was, observed at p. 190 thus:

"To put it precisely... **if permission to use land** without exclusive possession **was alone granted, a licence was the legal result.** We are of the opinion that this was a licence."

It is true that a licensee does not acquire any interest in the property by virtue of grant of licence in his favour in relation to any immovable property, but once the authority to occupy and use the same is granted in his favour by way of licence, he continues to exercise that right so long the authority has not expired

or has not been determined for any reason whatsoever, meaning thereby so long the period of licence has not expired or the same has not been determined on the grounds permissible under the contract or law. Occupation of the licensee is permissive by virtue of the grant of licence in his favour, though he does not acquire any right in the property and the property remains in possession and control of the grantor, but by virtue of such a grant, he acquires a right to remain in occupation so long the licence is not revoked and/or he is not evicted from its occupation either in accordance with law or otherwise.

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2. CIVIL PROCEDURE CODE, 1908- 0.5, Rr. 17 and 18, 0.9, R.6
Service of summons- Refusal by defendant- Copy of the summons be affixed on the outer door or other conspicuous part of house of defendant- Obligation of the Court while proceeding ex parte against defendant.
Sushil Kumar Vs. Gurpreet Singh & Others
Judgment dt. 23.4.02 by the Supreme Court in Civil Appeal No. 5111 of 2000, reported in (2002) 5 SCC 377

Held :

We find several infirmities and lapses on the part of the process server. Firstly, on the alleged refusal by the defendant either he did not affix a copy of the summons and the plaint on the wall of the shop or if he claims to have done so, then the endorsement made by him on the back of the summons does not support him, rather contradicts him. Secondly, the tendering of the summons, its refusal and affixation of the summons and copy of the plaint on the wall should have been witnessed by persons who identified the defendant and his shop and witnessed such procedure. The endorsement shows that there were no witnesses available on the spot. The correctness of such endorsements is difficult to believe even prima facie. The tenant runs a shoe shop in the suit premises. Apparently, the shop will be situated in a locality where there are other shops and houses. One can undefstand refusal by unwilling persons requested by the process server to witness the proceedings and be a party to the procedure of the service of summons but to say that there were no witnesses available on the spot is a statement which can be accepted only with a pinch of salt. Incidentally, we may state that though the date of appearance was 23-2-1993 the summons is said to have been tendered on 22-2-1993 i.e. just a day before the date of hearing.

The provision contained in Order 9 Rule 6 CPC is pertinent. It contemplates three situations when on a date fixed for hearing the plaintiff appears and the defendant does not appear and three courses to be followed by the court depending on the given situation. The three situations are (i) when summons duly served, (ii) when summons not duly served, and (iii) when summons served but not in due time. In the first situation, which is relevant here, when it is proved that the summons was duly served, the court may make an order that the suit be heard ex parte. The provision casts an obligation on the court and simultane-

ously invokes a call to the conscience of the court to feel satisfied in the sense of being "proved" that the summons was duly served when and when alone, the court is conferred with a discretion to make an order that the suit be heard ex parte. The date appointed for hearing in the suit for which the defendant is summoned to appear is a significant date of hearing requiring a conscious application of mind on the parte of the court to satisfy itself on the service of summons. Any default or casual approach on the part of the court may result in depriving a person of his valuable right to participate in the hearing and may result in a defendant suffering an ex parte decree or proceedings in the suit wherein he was deprived of hearing for no fault of his. If only the trial court would have been conscious of its obligation cast on it by Order 9 Rule 6 CPC, the case would not have proceeded ex parte against the defendant- appellant and a wasteful period of over eight years would not have been added to the life of this litigation.

3. RENT AND EVICTION :

Rent Control legislation- Principles of interpretation- Expression "for his own use" [as used in Section 13 (3) (a) (ii) of East Punjab Urban Rent Restriction Act, 1949] - Connotation of.

Joginder Pal Vs. Naval Kishore Behal

Judgment dt. 10.5.02 by the Supreme Court in Civil Appeal No. 3994 of 2002, reported in (2002) 5 SCC 397

Held :

In *Arjun Khiamal Makjijani v. Jamnadas C. Tuliani, (1989) 4 SCC 612* this Court dealing with rent control legislation observed that provisions contained in such legislation are capable of being categorized into two: those beneficial to the tenants and those beneficial to the landlord. As to a legislative provision beneficial to the landlord, an assertion that even with regard to such provision an effort should be made to interpret it in favour of the tenant, is negation of the very principle of interpretation of a beneficial legislation.

The need for reasonable interpretation of rent control legislations was emphasized by this Court in *Bega Begam V. Abdul Ahad Khan, (1979) 1 SCC 273.* Speaking in the context of reasonable requirement of landlord as a ground for eviction, the Court guarded against any artificial extension entailing stretching or straining of language so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. The Court warned that such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. In *Kewal Singh v. Lajwanti, (1980) 1 SCC 290* this Court has observed, while the rent control legislation has given a number of facilities to the tenants, it should not be construed so as to destroy the limited relief which it seeks to give to the landlord also. For instance, one of the grounds for eviction which is contained in almost all the Rent Control Acts in the country is the question of landlord's bona fide personal necessity. The concept of bona fide necessity should be meaningfully construed so as to make the relief granted to the landlord real and practical. Recently in *Shiv Sarup*

Gupta v. Dr. Mahesh Chand Gupta, (1999) 6 SCC 222 the Court has held that the concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

The rent control legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The legislative intent has to be respected by the courts while interpreting the laws. But it is being uncharitable to legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants, go to the extent of being unfair to the landlords. The legislature is fair to the tenants and to the landlords- both. The courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the landlord the court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legalisation to take care of those situations where the landlords too are weak and feeble and feel humble.

We are of the opinion that the expression "for his own use" as occurring in Section 13 (3) (a) (ii) of the Act cannot be narrowly construed. The expression must be assigned a wider, liberal and practical meaning. The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfil the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use. In the several decided cases referred to hereinabove, we have found the pari materia provisions being interpreted so as to include the requirement of the wife, husband, sister, children including son, daughter, a widowed daughter and her son, nephew, coparceners, members of family and dependants and kith and kin in the requirement of landlord as "his" or "his own" requirement and user. Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be the obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the court shall with circumspection inquire: (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close interrelation or identity nexus between such person and the landlord so as to satisfy the requirement of the first query.

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4. INTERPRETATION OF STATUTES :

An statute can never be exhaustive- Ambiguity or anomaly in statute- How to interpret- Power of the Courts.

Rakesh Wadhawan and others Vs. Jagdamba Industrial Corporation and others

Judgment dt. 26.4.02 by the supreme Court in civil Appeal No. 2135 of 1999, reported in (2002) 5 SCC 440

Held :

It is well settled rule of construction that in case of ambiguity, the provision should be so read as would avoid hardship, inconvenience, injustice, absurdity and anomaly. Justice G.P. Singh in his **Statutory Interpretation** (2001 Edn.) states (at p. 113):

"In selecting out of different interpretations 'the court will adopt that which is just, reasonable and sensible rather than that which is none of those things'as it may be presumed "that the legislature should have used the word in that interpretation which least offends our sense of justice'. If the grammatical construction leads to some absurdity or some repugnance or inconsistency with the rest of the instrument, it may be departed from so as to avoid that absurdity, and inconsistency. Similarly, a construction giving rise to anomalies should be avoided".

A statute can never be exhaustive, and therefore, Raghubar Dayal, J. Speaking for himself and Wanchoo and Das Gupta, JJ. observed in *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal, AIR 1962 SC 527;* at p. 532, para 18, "that the legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them". Sometimes when a difficult situation arises it may demand such directions being made as would pragmatically meet the needs of the situation and resort can be had to the inherent powers of the court, if need be. Krishna Iyer, j. in *Newabganj Sugar Mills Co. Ltd. v. Union of India, (1976) 1 SCC 120 held (at SCC p. 123, para 6)* "the difficulty we face here cannot force us to abandon the inherent powers of the Court to do", and he quoted Jim R. Carrigan to say: "The inherent power has its roots in necessity and its breadth is coextensive with the necessity". H.R. Khanna. J. observed in *Jaipur Mineral Development Syndicate v. CIT, (1977) 1 SCC 508:* (SCC p. 511, para 5)

"The courts have power, in the absence of any express or implied prohibition, to pass an order as may be necessary for the ends of justice or to prevent the abuse of the process of the court. To hold otherwise would result in quite a number of cases in gross miscarriage of justice." Jurisdiction to pass procedural orders though not specifically contemplated by statute can be spelled out from what was said by Hidayatullah, J. (as he then was) in *Mahanth Ram Das v. Ganga Das, AIR 1961 SC 882* when orders are "in essence in terrorem so that dilatory litigants might put themselves in order and avoid delay" the courts are not powerless to meet a situation for "such orders are not like the law of the Medes and the Persians" (AIR p. 883, para 5).

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5. **SPECIFIC RELIEF ACT, 1963- Section 20**
CONTRACT ACT, 1872- Section 56
Specific performance of an agreement to sale- Vendor required to seek permission/ sanction or consent of competent authority- Unless such authority moved and application in this respect finally rejected resulting in frustration of contract, the relief of specific performance cannot be refused for such obstacle.
Nirmala Anand Vs. Advent Corporation (P) Ltd. and Others
Judgment dt. 10.5.2002 by the Supreme Court in Civil Appeal No. 574 of 1988, reported in (2002) 5 SCC 481

Held :

On a careful consideration of the decisions brought to our notice, it can safely be recorded that it is too late in the day to deny a claim for specific performance of an agreement to sell an immovable property in existence or to be brought into existence according to the specification agreed to merely because the vendor had to make applications or move the concerned and competent authorities to obtain permission/sanction or consent of such authorities to make the sale agreed to be made an effective and full-fledged one. The principles laid down in the above decisions clearly indicate that unless the competent authorities have been moved and the application for consent/permission/ sanction has been rejected once and for all and such rejection made finally became irresolutely binding and rendered impossible the performance of the contract resulting in frustration as envisaged under Section 56 of the Contract Act, the relief cannot be refused for the mere pointing out of some obstacles.

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6. **CRIMINAL TRIAL :**
Appreciation of evidence- Police personnel who were members of an escorting party got injured in an incident of cross- firing- They cannot be described as official witnesses- Independent corroboration of their testimony not necessary.
Ravindra Shantaram Sawant Vs. State of Maharashtra
Judgment dt. 8.5.2002 by the Supreme Court in Cr. Appeal No. 230 of 1997, reported in (2002) 5 SCC 604

Held :

One cannot lose sight of the fact that in the instant case three of the police witnesses, namely, PW3, PW4 and PW6 are also injured witnesses. The police party in the instant case was the victim of assault launched by Accused 1. They cannot, therefore, be described as official witnesses interested in the success of the investigation or prosecution. They are eyewitnesses who were injured in the course of the incident. In fact the testimony of such witnesses, does not require independent corroboration, if otherwise their evidence is found to be truthful and reliable. This is not a case where police witnesses have been introduced to bolster the case of the prosecution with a view to its success. The injured police witnesses as well as other police witnesses are eyewitnesses, being members

of the escorting party escorting Ashwin Naik to the police van. In our view, therefore, independent corroboration of their testimony was not necessary in the facts and circumstances of this case. Moreover one cannot lose sight of the realities of the situation. In a case of this nature, where two gangs are fighting for supremacy, it was hardly possible for the prosecution to secure independent witnesses, being members of the public who had witnessed the incident. In fact the evidence is to the effect that though many persons must have seen the occurrence, they were not willing to speak as they were totally terrorized.

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7. PREVENTION OF CORRUPTION ACT, 1988- Section 2 (c) (iii) and Section 2 (c) (ix)
Indian Penal Code, 1860- Section 21
"Public servant" as defined in Section 2 of the Act- Not restricted to "public servant" as defined in Section 21 of I.P.C. - An employee of a cooperative bank controlled and aided by the Government is a public servant within the meaning of Section 2 (c) of the Act.
Govt. of Andhra Pradesh and Others Vs. P. Venku Reddy
Judgment dt. 23.9.2002 passed by the Supreme Court in Cr. Appeal No. 997 of 2002, reported in (2002) 7 SCC 631

Held :

It cannot be lost sight of that the 1988 Act, as its predecessor, that is, the repealed Act of 1947 on the same subject, was brought into force with the avowed purpose of effective prevention of bribery and corruption. The Act of 1988 which repeals and replaces the Act of 1947 contains a very wide definition of "Public servant" in clause (c) of Section 2 of the 1988 Act. The Statement of Objects and Reasons contained in the Bill by which the Act was introduced in the legislature throws light on the intention of the legislature in providing a very comprehensive definition of the words "public servant".

Under the repealed Act of 1947 as provided in Section 2 of the 1988 Act, the definition of "public servant" was restricted to "public servants" as defined in Section 21 of the Indian Penal Code. In order to curb effectively bribery and corruption not only in government establishments and departments but also in other semi-governmental authorities and bodies and their departments where the employees are entrusted with public duty, a comprehensive definition of "public servant" has been given in clause (c) of Section 2 of the 1988 Act.

In construing the definition of "public servant" in clause (c) of Section 2 of the 1988 Act, the court is required to adopt a purposive approach as would give effect to the intention of the legislature. In the view the *Statement of Objects and Reasons* contained in the Bill leading to the passing of the Act can be taken assistance of. It gives the background in which the legislation was enacted. The present Act, with a much wider definition of "public servant", was brought in force to purify public administration. When the legislature has used such a comprehensive definition of "public servant" to achieve the purpose of punishing and curbing growing corruption in government and semi-government departments, it

would be appropriate not to limit the contents of the definition clause by construction which would be against the spirit of the statute. The definition of "Public servant", therefore, deserves a wide construction. *(See State of M.P. Vs. Shri Ram Singh, (2000) 5 SCC 88.)*

As a matter of fact, we find that the point arising before us on the definition of "public servant" that it does include an employee of a banking cooperative society which is "controlled or aided by the Government" is clearly covered against the respondent-accused by the judgment in the case of *State of Maharashtra Vs. prabhakarrao, (2002) 7 SCC 636.*

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8. EVIDENCE ACT, 1872- Section 24
Extra-judicial confession- Evidentiary value of- Cannot be discarded simply because made before a stranger though it is an unnatural conduct on the part of the accused.
State of Kerala Vs. M.N. Ramdas
Judgment dt. 5-9-2002 by the Supreme Court in Cr. Appeal No. 602 of 1993, reported in (2002) 7 SCC 639

Held :

Before we proceed to the consideration of the High Court's judgment, we deem it appropriate to refer to a recent decision of this Court in *Gura Singh v. State of Rajasthan (2001) 2 SCC 205* wherein the evidentiary value to be attached to an extra-judicial confession has been explained thus : (SCC p. 212, para 6)

> "6. It is settled position of law that extra-judicial confession, if true and voluntary, it can be relied upon by the court to convict the accused for the commission of the crime alleged. Despite inherent weakness of extra-judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement. Relying upon an earlier judgment in *Rao Shiv Bahadur Singh v. State of V.P., AIR 1954 SC 322* this Court again in *Maghar Singh v. State of Punjab, (1975) 4 SCC 234* held that the evidence in the form of extra-judicial confession made by the accused to witnesses cannot be always termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the court believes the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence alone. In *Narayan Singh v. State of M.P., (1985) 4 SCC 26,* this Court cautioned that it is not open to the court trying the criminal case to start with a presumption that extra-judicial confession is always a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession. The retraction of extra-judicial confession which is a usual phenomenon in criminal cases would

by itself not weaken the case of the prosecution based upon such a confession. In *Kishore Chand v. State of H.P., (1991) 1 SCC 286* this Court held that an unambiguous extra-judicial confession possesses high probative value force as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of any falsity. However, before relying on the alleged confession, the court has to be satisfied that it is voluntary and is not the result of inducement, threat or promise envisaged under Section 24 of the Evidence Act or was brought about in suspicious circumstances to circumvent Sections 25 and 26. The court is required to look into the surrounding circumstances to find out as to whether such confession is not inspired by any improper or collateral consideration or circumvention of law suggesting that it may not be true. All relevant circumstances such as the person to whom the confession is made, the time and place of making it, the circumstances in which it was made have to be scrutinized."

Examined in the light of the enunciation of law as above, we are of the view that the testimony of PW 2 as regards the confession made by the accused at the earliest point of time is such as to inspire confidence in the mind of the Court. PW2 may be a stranger to the accused but it should also be noted that there is absolutely no reason why he should unnecessarily implicate the accused. Without any loss of time he brought to the notice of PW3 and the police the factum of confession made by the accused soon after the crime. His version in this regard is supported by PW3 who, being the father of the proprietor of the lodge, came to the lodge immediately after receiving the phone call from PW2. The conduct of the accused in committing the murder and immediately revealing this fact to a stranger like PW2 may not be consistent with ordinary human conduct. It may be difficult to speculate as to what prompted the accused to confess the commission of the crime before PW2 and to remain in the lodge after the incident. But, on that account, there need not be astute reluctance on the part of the Court to accept the extra-judicial confession. The unnatural conduct on the part of the accused will not necessarily shake the veracity of PW 2's testimony but it will put the Court on guard to get the assurance of truth in the prosecution case by corroborative evidence including circumstantial factors. We have before us the evidence of PW3 who corroborates the version of PW2 and both these witnesses have no reason to falsely implicate the accused. That apart, the circumstances referred to by the trial court are almost clinching and lend assurance to the correctness of the version of PW2.

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9. NEGOTIABLE INSTRUMENTS ACT, 1881- Sections 138 and 141
Cheque issued on behalf of the partnership firm- Maintainability of complaint against a partner who was not in charge of and responsible to the firm for the conduct of business.
Katta Sujatha (Smt) Vs. Fertilizers & Chemicals Travancore Ltd. and Another

Judgment dt. 23-8-2002 by the Supreme Court in Cr. Appeal No. 855 of 2002, reported in (2002) 7 SCC 655

Held :

In short the partner of a firm is liable to be convicted for an offence committed by the firm if he was in charge of and was responsible to the firm for the conduct of the business of the firm or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of the partner concerned.

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10. INDIAN PENAL CODE, 1860 - Sections 299 & 300 and Sections 302 & 304 pt. I and Pt. II
"Culpable homicide" and "murder"- Distinction between.
Ruli Ram and Another Vs. State of Haryana
Judgment dt. 17-9-2002 by the Supreme Court in Cr. Appeals Nos. 887-88 of 2001, reported in (2002) 7 SCC 691

Held :

The academic distinction between "murder" and "culpable homicide not amounting to murder" has always vexed the courts. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the key words used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences:

SECTION 299	SECTION 300
A person commits culpablehomicide if the act by which the death is caused is done-	Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done-
INTENTION	
(a) with the intention of causing death; or (b) with the intention of causing such bodily injury as is likely to cause death; or	(1) with the intention of causing death; or (2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or (3) with the intention of causing bod ily injury to any person and the bod ily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

(c) with the knowledge that the act is likely to cause death.
must in all probability cause death

(4) with the knowledge that the act is so imminently dangerous that it or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death or such injury as is mentioned above.

Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the "intention to cause death" is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by Illustration (b) appended to Section 300.

Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist-blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300, instead of the words, "likely to cause death" occurring in the corresponding clause (b) of Section 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word "likely" in clause (b) of Section 299 conveys the sense of probable as distinguished from a mere possibility. The words "bodily injury... sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. *Rajwant v. State of Kerala, AIR 1966 SC 1874* is an apt illustration of this point.

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11. CRIMINAL PROCEDURE CODE, 1973- Sections 200 and 256
Dismissal of complaint case for singular default on the part of the complainant- Held, not proper.
Mohd. Azeem Vs. A. Venkatesh and Another
Judgment dt. 16.8.2002 arising out of SLP (Cri.) No. 1078 of 2002, reported in (2002) 7 SCC 726

Held :

From the contents of the impugned order of the High Court, we have noticed that there was one singular default in appearance on the part of the complainant. The learned Judge of the High Court observes that even on earlier dates in the course of trial, the complainant failed to examine the witnesses. But that could not be a ground to dismiss his complaint for his appearance (sic absence) on one single day. The cause shown by the complainant of his absence that he had wrongly noted the date, has not been disbelieved. It should have been held to be a valid ground for restoration of the complaint.

In our opinion, the learned Magistrate and the High Court have adopted a very strict and unjust attitude resulting in failure of justice. In our opinion, the learned Magistrate committed an error in acquitting the accused only for absence of the complainant on one day and refusing to restore the comp' int when sufficient cause for the absence was shown by the complainant.

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12. ARBITRATION AND CONCILIATION ACT, 1996 - Sections 11 (6) and 14

(i) Conjoint petition under Sections 11 (6) and 14- Not maintainable.

(ii) Appointment of third arbitrator by two appointed arbitrators- Need not be necessarily in writing- It is also not necessary that two arbitrators necessarily sit at one place, deliberate jointly and take decision for appointment of third arbitrator.

Grid Corpn. of Orissa Ltd. Vs. AES Corpn. and others
Judgment dt. 1-10-2002 by the Supreme Court in Arbitration Petition No. 2002 (D. No. 3059 of 2002), reported in (2002) 7 SCC 736

Held :

Let it be stated at the very outset that a conjoint petition under Section 11 (6) and Section 14 of the Act would not lie for the simple reason that the petition under Section 11 (6) is to be heard and decided by the Chief Justice or any person or institution designated by him while a petition under Section 14 of the Act lies to the court. With the decision of the Constitution Bench in *Konkan Rly. Corpn. Ltd. v. Rani Construction (P) Ltd. (2002) 2 SCC 388* it is settled that the Chief Justice or his designate does not discharge any judicial function under Section 11 (6). The Chief Justice or his designate, though a Judge, does not sit

as a court. The two fora, contemplated by Section 11 (6) and Section 14 (2) are different, and therefore, no single forum can grant such reliefs as are contemplated by the two provisions.

(ii) Whether the appointment of the third arbitrator should necessarily be done by the two appointed arbitrators by sitting together and in writing? Are they required to consult the parties too, while doing so, or at least, to put the parties on previous notice? Primarily it is for the parties to agree upon a procedure for appointing the arbitrator or arbitrators. Failing such agreement, sub-section (3) of Section 11 of the Act provides that in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator. The law nowhere contemplates such appointment being necessarily in writing. The requirement of the law is that there should be an appointment and the appointment should be by the two appointed arbitrators. It is not necessary within the meaning of Section 11 (3) that the presiding arbitrator must be appointed by the two appointed arbitrators in writing nor is it necessary that the two appointed arbitrators must necessarily sit at one place, deliberate jointly and take a decision in the presence of each other in regard to the appointment of the presiding arbitrator. It is enough if they have actually consulted or conferred with each other and if both or any of them communicates to the parties the appointment of the presiding arbitrator as having taken place by the joint deliberation of the two.

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13. LIMITATION ACT, 1963- Section 5
Delay in filing appeal- Period falling within limitation need not be explained.
Jadhavrao Anandrao Pawar (Shrimant) Vs. Dilip Balvantrao Pawar
Reported in 2002 (II) MPWN Note 115 (SC)

Held :

We have perused the order of the learned additional district judge dismissing the appeal on the ground of limitation as also the impugned order of the High Court. We are of the opinion that the approach of both the Courts in the matter of condonation of delay has been erroneous. The impugned order of the High Court shows that the Court was influenced by the fact that the period from 7.12.1998 to 1.1.1999 had not been explained by the appellants. The High Court is on record to say that even if the period from 1.1.1999 to 13.1.1999 is treated to have been properly explained, the first appellate Court committed no error in rejecting the appeal on the ground of delay because of the non-explanation of the delay between 7.12.1998 and 1.1.1999. The period between 7.12.1998 to 1.1.1999 fell well within the period of limitation prescribed for filing the appeal. The question of explaining that period did not arise. It is only the period of those 14 days before the filing of the appeal which was required to be explained and proper explanation for that period has been given, which was supported by medical certificate, which in the facts and circumstances of this case, we see no reason to disbelieve.

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14. CONSUMER PROTECTION ACT, 1986- Sections 11, 12 13 and 17 CIVIL PROCEDURE CODE, 1908- 0. 9 R. 4
Consumer protection case dismissed in default of appearance- May be restored under inherent jurisdiction.
Angad Electronics Methodist Centre Vs. Chandra Shekhar Singh Reported in 2002 (II) MPWN Note 118

Held :

The submission of the learned counsel is that the M.P. State Consumer Disputes Redressal Commission is not going to entertain the restoration application which may be filed.

The submission of the learned counsel for the petitioner is not acceptable. In *New India Assurance Co. Ltd. v. R. Shrinivasan, (2000) 3 SCC 342,* their Lordship of the Supreme Court, held that once a case is dismissed in default of appearance, restoration can be made in paragraphs No. 17 and 18, the apex Court held as under :

"17. But that is not the end of the matter. Mahmood, J. in his dissenting judgment in the Full Bench case of Narsingh Das v. Mangal Dubey observed:

"The courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is *expressly* provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle, prohibitions cannot be presumed, and in the present case, therefore, it rests upon the defendants to show that the suit in the form in which it has been brought is prohibited by the rules of procedure applicable to the Courts of justice in India".

18. We only intend to invoke the spirit of the principle behind the above dictum in support of our view that every Court or judicial body or authority, which has a duty to decide a lis between two parties, inherently possesses the power to dismiss a case in default. Where a case is called up for hearing and the party is not present, the Court or the judicial or quasi-judicial body is under no obligation to keep the matter pending before it or to pursue the matter on behalf of the complainant who had instituted the proceedings. That is not the function of the Court or, for that matter of a judicial or quasi-judicial body. In the absence of the complainant, therefore, the Court will be well within its jurisdiction to dismiss the complaint for non-prosecution. So also, it would have the inherent power and jurisdiction to restore the complaint on good cause being shown for the non - appearance of the complainant."

Same is the view taken in *Indian Oil Corporation v. Laxmi Shanker Narayan, (1999) 9 SCC 27.*

●

15. LAND REVENUE CODE, 1959 (M.P.)- Sections 168, 169 and 185
CIVIL PROCEDURE CODE, 1908- Section 9
Lease in contravention of Section 168- Acquisition of occupancy rights by lessee- Civil Court has jurisdiction to decide such title suit.
Ram Singh (Thakur) and others Vs. Narayan and another
Reported in 2002 RN 405 (HC)

Held :

Both the Courts below have held that when the land was given on lease the appellant/defendant was not disabled and he had no right to give the land on lease in contravention and beyond the proviso of Section 168 of M.P.L.R. Code and, thus the respondents/plaintiffs have acquired Bhumiswami rights and for that the matter stands concluded by the findings of fact recorded by the two Courts below. It was further held by the Courts below that in such cases the civil Court is having jurisdiction to decide such a suit for declaration and injunction and I also do not see any illegality therein. It has been clearly held by the Full Bench of this Court in the case of *Ramgopal Vs. Chetu,* reported in *1976 JLJ 279,* as under :-

> "Determination of the question of title is the province of civil court and unless there is any express provision to the contrary, exclusion of the jurisdiction of civil court cannot be assumed or implied.

A bhumiswami is not bound to avail of speedy remedy provided in section 250 of the Code. It is open to him to take recourse to the summary remedy under Section 250, or even without it straightway bring a suit in the civil Court for declaration of his title and possession. Even if there has been a decision under Section 250 by a revenue Court, the party aggrieved may institute a civil suit to establish his title to the disputed land."

●

16. CIVIL PROCEDURE CODE, 1908 - O. 26 R. 9
Identity of the property disputed- Proper course- Courts should get identity of property established by issuance of commission.
Neema Bai Vs. Saraswati Bai and others
Reported in 2002 RN 416 (HC)

Held :

It is well settled that where there is a dispute about identity of the property decree should not be passed only on basis of oral evidence. Court should get identity of property established by issuance of commission for survey *Shreepat Vs. Rajendra Prasad and others, 2000 (6) Supreme 389* which has affirmed the view taken in *Durga Prasad Vs. Parveen Foujdar [(1975 JLJ 440= 1975 MPLJ 801 (DB)]* in which case there was no agreed map hence dispute was held to be determined by appointing a commissioner for local survey.

Kirti Bai (Smt.) Vs. Amrit, 1996 (I) MPWN 7 also follows the said view. It is also well settled that in proper cases the Court may suo motu appoint a commissioner for local survey *(Haricharan Vs. Ghanshyamdas, 1988 (II) MPWN 23,*

Chunnilal Vs. Sunderlal, 1983 MPWN 218.) However, such a power has to be exercised only in proper cases.

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17. SPECIFIC RELIEF ACT, 1963- Sections 10 and 20
Price escalation- Effect of on the grant of relief of specific performance- General rule- Plaintiff is not to be denied the relief of specific performance- Relevant considerations.
Nirmala Anand Vs. Advent Corporation (P) Ltd. and others
Judgment dt. 30-9-2002 by the Supreme Court in Civil Appeal No. 574 of 1988, reported in (2002) 8 SCC 146

Held :

It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree of specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the considerations besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her alone, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the considerations to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen.

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18. CRIMINAL PROCEDURE CODE, 1973 - Sections 218 and 220
Applicability of Section 218 and 220 explained.
State of Punjab and another Vs. Rajesh Syal
Judgment dt. 4-10-2002 by the Supreme Court in Criminal Appeal No. 1037 of 2002, reported in (2002) 8 SCC 158

Held :

In our opinion, proviso to Section 218 would apply only in such a case where the distinct offences for which the accused is charged are being tried before the same Magistrate. In the instant case, offences were being tried before different Magistrates and proviso to Section 218 cannot give any single Magistrate the power to order transfer of cases to him from different Magistrates or courts. Even

Section 220 does not help the respondent as that applies where any one series of acts are so connected together as to form the same transaction and where more than one offence is committed, there can be a joint trial.

●

19. **Evidence Act, 1872- Section 11**
Plea of alibi- When to be considered- Nature of burden of proof on the accused.
Jayantibhai Bhenkarbhai Vs. State of Gujarat
Judgment dt. 11.9.2002 by the Supreme Court in Criminal Appeal No. 555 of 2001, reported in (2002) 8 SCC 165

Held :

The plea of alibi flows from Section 11 and is demonstrated by Illustration (a). Sarkar on Evidence (15th Edn., P. 258) states the word "alibi" is of Latin origin and means "elsewhere". It is a convenient term used for the defence taken by an accused that when the occurrence took place he was so far away from the place of occurrence that it is highly improbable that he would have participated in the crime. Alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognized in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. The burden of proving commission of offence by the accused so as to fasten the liability of guilt on him remains on the prosecution and would not be lessened by the mere fact that the accused had adopted the defence of alibi. The plea of alibi taken by the accused needs to be considered only when the burden which lies on the prosecution has been discharged satisfactorily. If the prosecution has failed in discharging its burden of proving the commission of crime by the accused beyond any reasonable doubt, it may not be necessary to go into the question whether the accused has succeeded in proving the defence of alibi. But once the prosecution succeeds in discharging its burden it becomes incumbent on the accused to exclude the possibility of his presence at the place and time of occurrence. An obligation is cast on the court to weigh in scales the evidence adduced by the prosecution in proving the guilt of the accused and the evidence adduced by the accused in proving his defence of alibi. If the evidence adduced by the accused is of such a quality and of such a standard that the court entertains reasonable doubt regarding his presence at the place and time of occurrence, the court would evaluate the prosecution evidence to see if the evidence adduced on behalf of the prosecution leaves any slot available to fit therein the defence of alibi. The burden of the accused is undoubtedly heavy. This flows from Section 103 of the Evidence Act which provides that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence. However, while weighing the prosecution case and the defence case, pitted against each other, if the balance tilts in favour of the accused, the prosecution would fail and the accused would be entitled to the benefit of that reasonable doubt which would emerge in the mind of the court.

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20. EVIDENCE ACT, 1872 - Sections 40 and 43
Relevancy of judgment- Whether finding recorded by the Criminal Court stands superseded by the finding recorded by the Civil Court?- Held, No- Contrary view made in V.M. Shah Vs. State of Maharashtra, (1955) 5 SCC 767 overruled.
K.G. Premshanker Vs. Inspector of Police and another
Judgment dt. 12-9-2002 by the Supreme Court in Cr. Appeal No. 935 of 2002, reported in (2002) 8 SCC 87

Held :

What emerges from the aforesaid discussion is- (1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, principle of *res judicata* may apply; (3) in a criminal case, Section 300 CrPC makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.

Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Section 40 and 42 or other provisions of the Evidence Act then in each case, the Court has to decide to what extent it is binding or conclusive with regard to the matter (s) decided therein. Take for illustration, in a case of alleged trespass by A on B's property, B filed a suit for declaration of its title and to recover possession from A and suit is decreed. Thereafter, in a criminal prosecution by B against A for trespass, judgment passed between the parties in civil proceedings would be relevant and the court may hold that it conclusively establishes the title as well as possession of B over the property. In such case, A may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, the first question which would require consideration is- Whether judgment, order or decree is relevant, if relevant- its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case.

In the present case, the decision rendered by the Constitution Bench in *M.S. Sheriff vs. State of Madras, AIR 1954 SC 397* would be binding, wherein it has been specifically held that no hard- and- fast rule can be laid down and that possibility of conflicting decision in civil and criminal courts is not a relevant consideration. The law envisages "such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for limited purpose such as sentence or damages."

Hence, the observation made by this Court in *V.M. Shah Vs. State of Maharashtra, (1955) 5 SCC 767* that the finding recorded by the criminal court stands superseded by the finding recorded by the civil court is not correct enun-

ciation of law. Further, the general observations made in *Karam Chand Ganga Prasad Vs. Union of India, (1970) 3 SCC 694* are in context of the facts of the case stated above. The Court was not required to consider the earlier decision of the Constitution Bench in **M.S. Sheriff** Case as well as Sections 40 to 43 of the Evidence Act.

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21. SERVICE LAW :

(i) Departmental enquiry- Representation of delinquent servant through lawyer- Not an absolute right.

(ii) Departmental Enquiry and criminal case- Departmental enquiry not to be stayed as a matter of course- Prejudice to the delinquent in his defence at trial in criminal case required to be seen.

M.P. Sharma Vs. District and Sessions Judge and another
Reported in 2002 (4) MPLJ 222

Held:

(i) The prayer of the petitioner to engage a counsel has been rightly rejected by the enquiry officer, to be represented by a lawyer in Departmental Enquiry is not absolute right, no such intricate question is involved which may require assistance of a lawyer. Petitioner was holding the responsible post of Nazir in Court. He cannot be said to be layman not able to understand charge nor he is such a person who cannot defend himself. Such a prayer appears to be as an outcome of petitioner's attempt to delay Departmental Enquiry till eternity.

(ii) The Apex Court itself has laid down in *Depot Manager A.P. State Road Transport Corporation Vs. Mohd. Yousuf Miya and others, (1997) 2 SCC 699* that disciplinary proceedings cannot be and should not be stayed as a matter of course. All the relevant factors for and against should be weighed and a decision taken keeping in view the various principles laid down.

Under the circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.

It goes without saying that scope of departmental inquiry is to maintain discipline in the offices and efficiency in the public services. Therefore, the proceedings should be conducted and proceeded as expeditiously as possible. The Supreme Court has thus thought it proper not to lay down the guidelines as "inflexible rules", as to when the departmental inquiry may or may not be stayed pending criminal trial against the delinquent officer.

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22. CRIMINAL PROCEDURE CODE, 1973- Section 439 (2)
Bail- Setting aside of- Unjustified, illegal or perverse order is different from cancellation of bail- Distinction spelt out.
State of M.P. Vs. Prempuri Goswami and another
Reported in 2002 (4) MPLJ 237

Held :

It is explained by their Lordships of the Supreme Court in the case of *Puran Vs. Rambilas and another, reported in AIR 2001 SC 2023,* that in case the material which was available for consideration is not taken into account while granting bail, the order is liable to be cancelled, being perverse. Relevant parts of aforesaid case runs as under:

> "The concept of setting aside the unjustified, illegal or perverse order is totally different from the concept of cancelling the bail on the ground that accused has misconducted himself or because of some new facts requiring such cancellation."

It is further found explained by their Lordships of the Supreme Court in *Puran Vs. Rambilas (Supra)* that

> "Generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. However, these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of the nature like bride burning and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the Society. Therefore, an arbitrary and wrong exercise of discretion by the trial Court has to be corrected."

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23. EVIDENCE ACT, 1872- Section 25
F.I.R. by accused- Scope of- Admissibility against him.
Naresh Vs. State of M.P.
Reported in 2002 (4) MPLJ 241

Held :

When the F.I.R. given by the accused to the police officer is in the nature of confession and inculpates him, it cannot be used against the accused in evidence. In *Agnoo Nagesia Vs. State, AIR 1966 SC 119* it has been held that confessional F.I.R. by the accused to the police cannot be used against him in view of section 25. (See also *Khatri Vs. State, AIR 1972 SC 922*). The first information report which has been written at the instance of a person who is accused of an offence is inadmissible in evidence unless some recovery in pursuance of the statement is made and that part only is admissible in evidence which leads to such recovery *(See Ram Bai Vs. State, 1996 Cr.L.J. 1512).*

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24. EVIDENCE ACT, 1872- Sections 8 and 157
Statement of the victim of rape after the incident of rape- Admissibility and value- Phrase 'at or about the time' as used in Section 157 must receive pragmatic and liberal construction.
Munshi Alias Munesh Vs. State of M.P.
Reported in 2002 (4) MPLJ 269

Held :

The evidence of the prosecutrix is corroborated by her statement to the two doctors on reaching the hospital next day. There was not much delay. The prosecutrix could not go to the hospital in the night. She was alone in her house and on the next day in the forenoon she narrated the incident to the doctors with whom she was working in the hospital. That statement is corroborative of her testimony in the court under section 157 of the Evidence Act as her former statement "at or about the time when the fact took place" and also under section 8 of this Act as her conduct. In *Nathuni Vs. State of Bihar, AIR 1997 SC 1808* it has been held that the words "at or about the time" must receive pragmatic and liberal construction. The principle is that the time interval between the incident and the utterance of the statement should not be such as to afford occasion for reflection or even contemplation. If the time interval was so short as between the two that the mind of the witness who made the statement was well connected with the incident without anything more seeping into, such statement has a credence, and hence can be used, though not as substantive evidence, as corroborating evidence, on the principle adumbrated in section 157 of the Evidence Act. The main test is whether the statement was made as early as can reasonably be expected in the circumstances of the case and before there was opportunity for tutoring or concoction. Again in *State of Tamil Nadu vs. Suresh (1998) 2 SCC 372* the time interval was of two days [illegible] that the fact that there was intervening period of "two days", in a [illegible] may not be sufficient to exclude the statement from the use envisaged in section 157 of the Act. The test to be adopted is this: Did the witnesses have the opportunity to concoct or to have been tutored?

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25. CRIMINAL PROCEDURE CODE, 1[illegible]tion 190 (1) (b)
Cognizance of offence by Magistrate- Extent of [illegible]n explained.
Phoolchand Mishra Vs. State of M.P.
Reported in 2002 (4) MPLJ 297

Held :

Further, it is dictated by their Lordships of the Supreme Court in *Raghubans Dubey vs. State of Bihar,* reported in *AIR 1967 SC 1167,* that:-

> "In our opinion, once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offend-

ers really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence."

Then in *Hareram Satpathy vs. Tikaram Agrawala and others*, reported in *AIR 1978 SC page 1568*, it is explained that :-

> "Where the Magistrate after taking cognizance of the offence and perusal of the record and having been satisfied that there were prima-facia grounds for issuing process against certain persons not mentioned in the police report, issued process against them, the Magistrate could not be said to have exceeded the power vested in him under law."

It is further found explained by their Lordships in paragraph 7 at page 1570, that

> "From the foregoing it is crystal clear that under Section 190 of the Code of Criminal Procedure the Magistrate takes cognizance of an offence made out in the police report or in the complaint and there is nothing like taking cognizance of the offenders at that stage. As to who actually the offenders involved in the case might have been has to be decided by the Magistrate after taking cognizance of the offence."

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26. PRECEDENTS:
Ratio decidendi alone has the precedential efficacy-Law explained.
Hanuman Datt and others Vs. State of M.P. and others
Reported in 2002 (4) MPLJ 354

Held :

It is axiomatic that a decision is an authority for the question of law which it decides. The ratio of a case is the principle which has been decided and not the actual decision. The *ratio decidendi* alone has the presidential efficacy. A decision is not a precedent on a proposition of law which it did not decide. It has been stated in *Orient Paper Industries Ltd. Vs. State of Orissa, AIR 1991 SC 672 :* "What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The doctrine of precedent, that is, being bound by a previous decision, is limited to the decision itself and not as to what is necessarily involved in it. In recent Constitution Bench decision in *Executive Engineer Vs. N.C. Budharaj, (2001) 2 SCC 72* it has been observed that the ratio or the basis of reasons and principles underlying a decision is distinct from the ultimate relief granted or manner of disposal adopted in a given case.

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27. SERVICE LAW :

M.P. Civil Service (Pension) Rules, 1996- Rr. 57 and 64 (a)
Payment of the pension- Rule 57 is mandatory and salutary- Duty of the Head of Office to ensure timely payment of pension after retirement stressed.
I.P. Malik Vs. State of M.P. and others
Reported in 2002 (4) MPLJ 367

Held :

Rule 57 of the Rules enjoins that every Head of Office shall undertake the work of preparing pension papers in form 6 two years before the date on which a Government servant is due to retire on superannuation, or on the date on which he proceeds on leave preparatory to retirement whichever is earlier. It is explicit in this respect that duty is cast on the Head of Office to prepare pension papers of the Government servant two years before the date of retirement. The rule is mandatory and salutary, purpose being that the Government servant should be in a position to receive pension immediately on retirement so that he is not left without any subsistence. Rules following this rule do not envisage any burden on the pensioner to undertake any exercise in this regard except where he wants to exercise in option with regard to place of payment of pension etc. otherwise the whole exercise, right from the verification of service to the final order of payment of pension is to be completed by the Head Office and the Audit Department.

Rule 64 (a) of the Rules casts the burden to deal with the matter on the Head of Office concerned. Further, it has to be dealt with as per rule 57. Assuming that the petitioner has to append his signatures to Form 7 under sub-rule (2) of Rule 59, that is part of the exercise to be undertaken by the Head Office in terms of rule 57 and rules following thereto.

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28. SERVICE LAW :

M.P. Civil Services (Classification, Control And Appeal) Rules, 1966- R.9 (1) (b)
Suspension of Government servant during pendency of investigation, inquiry or trial of offence- Cannot be continued during appeal after acquittal in criminal case.
Ram Ratan Tiwari Vs. State of M.P. and others
Reported in 2002 (4) MPLJ 401 (DB)

Held :

Rule (1) (b) of Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 provides that:

> "Where a case against him in respect of any criminal offence is under investigation, enquiry or trial."

Therefore, a person can be placed under suspention. One of the circumstances for placing the government servant under suspension is when a case against him respect of any criminal offence is under investigation, inquiry or trial.

Part IV of Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1996 deals with suspension. Rule 9 (1) provides for circumstances when a person can be placed under suspension by the Government. Petitioner was placed under suspension under the above quoted Rules which means he remains under suspension when criminal offence against him is under investigation, enquiry or trial. Investigation, enquiry or trial is over after announcement of judgment dated April, 30, 2001. Therefore, this provision stands exhausted and petitioner can revert back to service. To hold otherwise would mean reading something in the provision which it does not provide. Further it may cause immense hardship to person to wait for the final adjudication of the matter by the final Court.

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29. CRIMINAL TRAIL :

Circumstantial evidence - Appreciation of- Principles which should guide and weigh with the Courts.

Ashish Batham Vs. State of M.P.

Judgment dt. 9.9.2002 by the Supreme Court in Criminal Appeal No. 148 of 2002, reported in (2002) 7 SCC 317

The principles, which should guide and weigh with the courts administering criminal justice in dealing with a case based on circumstantial evidence, have been succinctly laid down as early as in 1952 and candidly reiterated time and again, but yet it has become necessary to advert to the same, once again in this case having regard to the turn of events and the manner of consideration undertaken, in this case by the courts below. In *Hanumant Govind Nargundkar v. State of M.P., AIR 1952 SC 343* it has been held as follows: (AIR pp. 345-46, para 10)

> "In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspicion may take the place of legal proof and therefore, it is right to recall the warning addressed by Baron Alderson to the jury in *R.V. Hodge, (1838) 2 Lewin 227* where he said:
>
> > 'The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.'
>
> It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evi-

dence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

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30. EVIDENCE ACT, 1872- Section 9
Test identification parade and identification of accused for the first time in Court- Nature and value of evidence relating to.
Dana Yadav alias Dahu and others vs. State of Bihar
Judgment dt. 13.9.2002 by the Supreme Court in Criminal Appeal Nos. 1156-57 of 2001, reported in (2002) 7 SCC 295

Section 9 of the Evidence Act deals with relevancy of facts necessary to explain or introduce relevant facts. It says, inter alia, facts which establish the identity of any thing or person whose identity is relevant, insofar as they are necessary for the purpose, are relevant. So the evidence of identification is a relevant piece of evidence under Section 9 of the Evidence Act where the evidence consists of identification of the accused at his trial.

In view of the law analysed above, we conclude thus:

(a) If an accused is well known to the prosecution witnesses from before, no test identification parade is called for and it would be meaningless and sheer waste of public time to hold the same.

(b) In cases where according to the prosecution the accused is known to the prosecution witnesses from before, but the said fact is denied by him and he challenges his identity by the prosecution witnesses by filing a petition for holding test identification parade, a court while dealing with such a prayer, should consider without holding a mini-inquiry as to whether the denial is bona fide or a mere pretence and/or made with an ulterior motive to delay the investigation. In case the court comes to the conclusion that the denial is bona fide, it may accede to the prayer, but if, however, it is of the view that the same is a mere pretence and/or made with an ulterior motive to delay the investigation, question for grant of such a prayer would not arise. Unjustified grant or refusal of such a prayer would not necessarily enure to the benefit of either party nor the same would be detrimental to their interest. In case prayer is granted and test identification parade is held in which a witness fails to identify the accused, his so-called claim that the accused was known to him from before and the evidence of identification in court should not be accepted. But in case either prayer is not granted or granted but no test identification parade held, the same *ipso facto* cannot be a ground for throwing out evidence of identification of an accused in court when evidence of the witness, on the question of identity of the accused from before, is found to be credible. The main thrust should be on answer to the question as to whether evidence of a witness in court to the identity of the accused from before is trustworthy or not. In case the answer is in the affirmative, the fact that prayer for holding test identification parade was rejected or although granted, but no such parade was held, would not in any manner

affect the evidence adduced in court in relation to identity of the accused. But if, however, such an evidence is not free from doubt, the same may be a relevant material while appreciating the evidence of identification adduced in court.

(c) Evidence of identification of an accused in court by a witness is substantive evidence whereas that of identification in test identification parade is, though a primary evidence but not substantive one, and the same can be used only to corroborate identification of the accused by a witness in court.

(d) Identification parades are held during the course of investigation ordinarily at the instance of investigating agencies and should be held with reasonable dispatch for the purpose of enabling the witnesses to identify either the properties which are the subject- matter of alleged offence or the accused persons involved in the offence so as to provide it with materials to assure itself if the investigation is proceeding on right lines and the persons whom it suspects to have committed the offence were the real culprits.

(e) Failure to hold test identification parade does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law, but ordinarily identification of an accused by a witness for the first time in court should not form the basis of conviction, the same being from its very nature inherently of a weak character unless it is corroborated by his previous identification in the test identification parade or any other evidence. The previous identification in the test identification parade is a check valve to the evidence of identification in court of an accused by a witness and the same is a rule of prudence and not law.

(f) In exceptional circumstances only, as discussed above, evidence of identification for the first time in court, without the same being corroborated by previous identification in the test identification parade or any other evidence, can form the basis of conviction.

(g) Ordinarily, if an accused is not named in the first information report, his identification by witnesses in court, should not be relied upon, especially when they did not disclose name of the accused before the police, but to this general rule there may be exceptions as enumerated above.

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31. PREVENTION OF FOOD ADULTERATION ACT, 1954- Section 16 (1)(a) (ii) Conviction u/s 16 (1) (a) (ii) of the Act- Necessary conditions to be established.
Narayan Vs. Nawab Khan and another
Reported in 2002 (4) MPLJ 505

The conviction of the applicant for the offence under section 16 (1) (a) (ii) is not sustainable in view of the Division Bench Judgment of this Court passed in *Vasudev Bhatt vs. Ganpat, 1975 MPLJ 216,* when the person is prosecuted for selling of adulterated milk, he can be convicted only under section 16 (1) (a) (i) of the Act, because, the adulterated milk is also an article of food. For convicting the person under section 16 (1) (a) (ii) of the Act, two conditions are required to

be satisfied, (i) that the person should be importing mainly for sale or storing, selling or distributing any article of food other than the article of food referred to in sub-clause (i) of section 16 (1) (a) and (ii) the Act should be in contravention of the provisions of the Act or the Rules made thereunder. Unless both these conditions are satisfied, a person cannot be held guilty under section 16 (1) (a) (ii) of the Act. In the instant case, the applicant is proved to have sold the adulterated milk, an article of food referred to in sub-clause (i) of section 16 (1) (a) of the Act. The fact that the adulterated milk is also considered to be an article of food, is clear from perusal of the provisions of section 7 of the Act.

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32. LAND ACQUISITION ACT, 1894- Section 4 (1)
Section 4 does not require that any land should be particularized- Only the 'locality' is required to be particularized.
Jagannath Dhaniram Jindal and another Vs. State of M.P. and others
Reported in 2002 (4) MPLJ 477

A plain reading of section 4 (1) of the Land Acquisition Act mentions that the land in any locality is needed or likely to be needed for a public purpose. Use of words "land in any locality" and "is needed or is likely to be needed" show that at the stage of notification under section 4 (1), it is not absolutely necessary that the Government should have made up its mind finally that any particular land or land in the locality is needed or is likely to be needed for the public purpose mentioned in the notification. Government may not in fact possessing all the necessary details on which it can decide which land in the locality would be suitable for the public purpose what is intended to be made clear by the notification. Investigation into necessary data is enjoined under section 4 (2) which empowers an entry to carry out various operations mentioned therein on any land is such locality. Sub-section (2) of section 4 contemplates to enter upon and survey and take levels of any land in such locality; to dig or bore into the sub-soil, to do all other acts necessary to ascertain whether the land is adapted for such purpose and then "to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon." Thereafter the Government may be in a better position to decide which particular land in locality is adopted or suitable for the public purpose. Section 4 does not require that any land should be particularized, only the 'locality' is required to be particularized.

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33. LAND ACQUISITION ACT, 1894- Sections 18 and 28-A
Rejection of application u/s 18 of the Act on the ground of delay- whether application u/s 28-A can be entertained - Held, yes- Further held, receipt of compensation without protest- Still application u/s 28-A maintainable.
Union of India and another vs. Hansoli Devi and others
Judgment dt. 12-9-2002 by the Supreme Court in Civil Appeal No. 9477 of 1994, reported in (2002) 7 SCC 273

When an application under Section 18 is not entertained on the ground of limitation, the same not fructifying into any reference, then that would not tantamount to an effective application and consequently the rights of such applicant emanating from some other reference being answered to move an application under Section 28-A cannot be denied. We, accordingly answer Question 1 (a) by holding that the dismissal of an application seeking reference under Section 18 on the ground of delay would tantamount to not filing an application within the meaning of Section 28-A of the Land Acquisition Act, 1894.

So far as Question 1 (b) is concerned, this is really the same question, as in Question 1 (a) and, therefore, we reiterate that when an application of a landowner under Section 18 is dismissed on the ground of delay, then the said landowner is entitled to make an application under Section 28-A, if other conditions prescribed therein are fulfilled.

Coming to the second question for reference the receipt of compensation with or without protest pursuant to the award of the Land Acquisition Collector is of no consequence for the purpose of making a fresh application under Section 28-A. If a person has not filed an application under Section 18 of the Act to make a reference, then irrespective of the fact whether he has received the compensation awarded by the Collector with or without protest, he would be a person aggrieved within the meaning of Section 28-A and would be entitled to make an application when some other landowner's application for reference is answered by the reference court. It is apparent on the plain language of the provisions of Section 28-A of the Act. Otherwise, it would amount to adding one more condition, not contemplated or stipulated by the legislature itself to deny the benefit of substantial right conferred upon the owner.

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34. EVIDENCE ACT, 1872- Sections 30 and 134

(i) Section 30- Use of confessional statement against co-accused - Scope.

(ii) Section 134- Examination of witnesses- Extent of choice of the prosecution.

Mohd. Khalid Vs State of W.B.
Judgment dt. 3-9-2002 by the Supreme Court in Criminal Appeal No. 1114 of 2001, reported in (2002) 7 SCC 334

The requirement of Section 30 of the Evidence Act is that before it is made to operate against the co-accused the confession should be strictly established. In other words, what must be before the court should be a confession proper and not a mere circumstance or an information which could be an incriminating one. Secondly, it being the confession of the maker, it is not to be treated as evidence within the meaning of Section 3 of the Evidence Act against the non-maker co-accused and lastly, its use depends on finding other evidence so as to connect the co-accused with the crime and that too as a corroborative piece. It is only when the other evidence tendered against the co-accused points to his guilt then

the confession duly proved could be used against such co-accused if it appears to effect (sic) him as lending support or assurance to such other evidence. To attract the provisions of Section 30, it should for all purposes be a confession, that is a statement containing an admission of guilt and not merely a statement raising the inference with regard to such a guilt. The evidence of the co-accused cannot be considered under Section 30 of the Evidence Act, where he was not tried jointly with the accused and where he did not make a statement incriminating himself along with the accused. As noted above, the confession of a co-accused does not come within the definition of evidence contained in Section 3 of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is only when a person admits guilt to the fullest extent, and exposes himself to the pains and penalties provided for his guilt, there is a guarantee for his truth. The legislature provides that his statement may be considered against his fellow accused charged with the same crime. The test is to see whether it is sufficient by itself to justify the conviction of the person making it of the offence for which he is being jointly tried with the other person or persons against whom it is tendered. The proper way to approach a case of this kind is, first to marshal the evidence against the accused excluding the confession altogether from consideration and see whether if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence.

Normally, the prosecution's duty is to examine all the eyewitnesses the selection of whom has to be made with due care, honestly and fairly. The witnesses have to be selected with a view not to suppress any honest opinion, and due care has to be taken that in selection of witnesses, no adverse inference is drawn against the prosecution. However, no general rule can be laid down that each and every witness has to be examined even though his testimony may or may not be material. The most important factor for the prosecution being that all those witnesses strengthening the case of the prosecution have to be examined, the prosecution can pick and choose the witnesses who are considered to be relevant and material for the purpose of unfolding the case of the prosecution. It is not the quantity but the quality of the evidence that is important. In the case at hand, if the prosecution felt that its case has been well established through the witnesses examined, it cannot be said that non-examination of some persons rendered its version vulnerable.

As was observed by this Court in *Habeeb Mohd. v. State of Hyderabad, AIR 1954 SC 51* the prosecution is not bound to call a witness about whom there is a reasonable ground for believing that he will not speak the truth.

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35. ARMS ACT, 1959- Sections 39 and 25 (1-B) (a)
Sanction to prosecute under Section 39- Sanction granted by the Additional District Magistrate is a valid sanction.
Vijay Bahadur @ Bahadur Vs. State of M.P.
Reported in 2002 (4) MPHT 167

Held :

Learned Counsel for the applicant has raised the solitary question before this Court about grant of sanction to prosecute the applicant as per requirement under sections 39 of the Arms Act, was not valid. The sanction Ex P-4 was not accorded by the District Magistrate but the Additional Magistrate has granted the sanction who was not duly empowered in this behalf. In support, learned Counsel relied on the judgment passed by the Gwalior Bench of this Court in the case of *Bhupendra singh Vs. State of M.P. [2001 (1) MPJR 294].* This judgment has been affirmed by the Supreme Court in the case of *State of M.P. Vs. Bhupendra Singh [2000 (1) M.P.H.T. 505= [2001 (1) MPJR 296].* The judgment rendered by this Court as well as affirmed by the Supreme Court in *Bhupendra Singh's* case (supra) has no relevancy in legal and factual position with the present case. In the case of *Bhupendra Singh* (supra) the question of grant of sanction was under Section 7 of the Explosive Substances Act, 1908 (for brevity 'the Explosive Act'), in which the Central Government is empowered to grant consent for the prosecution. The Central Government has delegated it to the District Magistrate. Therefore, the view has been taken that the State Government is not competent to further delegate this power to the Additional District Magistrate.

In the instant case under Section 39 of the Arms Act, power of consent lies with the District Magistrate. The definition of "District Magistrate", as per the Arms Rules, 1962 envisaged in Rule 2 (f) is reproduced as under :-

"2. Interpretation.- ....

(a) ....

(b) ....

(c) ....

(d) ....

(e) ....

(f) "District Magistrate", includes-

(ii) in relation to any district or part thereof, an Additional District Magistrate or any other officer specially empowered in this behalf by the Government of the State concerned".

These rules have been framed by the Central Government having power under Sections 5, 9, 10, 11, 12, 13, 16, 17, 18, 21, 41 and 44 of the Arms Act. Under Section 44 the Central Government is empowered to make rules for carrying out the purposes of Arms Act and under clause (x) of rules can be framed for any other matter is put or may be prescribed. Therefore, sanction granted by the

Additional District Magistrate is a valid sanction and does not suffer from any voice of illegality

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36. N.D.P.S. (AMENDMENT) ACT, 2001- Section 41
Effect of N.D.P.S. (Amendment) Act of 2001 on pending cases explained.
Mahesh Chandra Nagar Vs. State of M.P.
Reported in 2002 (4) MPHT 174

Held :

There is rationalisation of the quantum of sentence. There are now three categories of cases for determining the question of punishment depending upon the quantity of the narcotic drug or psychotropic substance which is involved. The severity of the punishment would depend upon that quantity. There is now graded punishment for offences under Sections 15, 17, 18, 20, 21, 22 and 23 as provided therein. The benefit of the rationalisation of the sentence structure, by virtue of Section 41 of the Amendment Act, has been extended not only to those cases wherein the offences have been committed from 2-10-2001 onwards, that is, the date on which this amendment came into force, but also to the cases wherein the offences were committed before 2-10-2001. According to the proviso to Section 41 the benefit cannot be extended in the those cases which were pending in appeal on the said date.

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37. CRIMINAL PROCEDURE CODE, 1973- Section 437 (6)
Whether Section 437 (6) is applicable to a case covered by Section 59-A of M.P. Excise Act, 1915- Held, yes.
Rajendra Vs. State of M.P.
Reported in 2002 (4) MPHT 186

Held :

Section 59-A sub-section (iii) of the Act is also showing that the Provision of bail as prescribed under the Code are applicable in addition to the limitation for grant of bail as specified in this Section.

Therefore, reasoning given by learned Trial Court that Provision of Section 437 of sub-section (6) Cr.P.C. will not apply for the offence punishable under the Excise Act because Special Provision of bail is enumerated under Section 59-A of the Act, is unjust and illegal.

Section 437 sub-section (6) is reproduced as under :-

437. When bail may be taken in case of non-bailable offence.-

(1) ....
(2) ....
(3) ....
(4) ....
(5) ....

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate,unless for reasons to be recorded in writing, the Magistrate otherwise directs."

This Provision is showing that if the trial is not completed within a period of 60 days from the date fixed for recording evidence then the accused, who is in custody, is entitled to be released on bail. If the Court is of the opinion that the accused is not entitled for bail then it is obligatory on the part of the Court to assign reason for refusing the bail. In view of mandatory Provision of Section 437 sub-section (6), Cr.P.C., the applicant is entitled to be released on bail. There is no special reason on the basis of which his prayer may be refused. Similar view has been taken in the case of *Saritadevi Vs. State of Himachal Pradesh [2000 (2) Crimes 543]* and in the case of *Mohd. Abdul Vs. State of West Bengal [1991 (2) Crimes 741].*

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38. CRIMINAL PROCEDURE CODE, 1973- Section 319
Trial Court acquitting the accused persons and directing prosecution to take cognizance and investigate the case against two witnesses of the case- Held, the Order is without jurisdiction.
Bihari and another Vs. State of M.P.
Reported in 2002 (4) MPHT 195

Held :

The learned Trial Court, after over-all evaluation of evidence, came to the conclusion that the prosecution has failed to prove the offences against the acquitted co-accused persons Ramchandra, Ramesh and Sagar beyond all reasonable doubt that because of their ill-treatment for demand of loan by the deceased, the deceased committed suicide. The deceased was not in any way related to them. At the same time in para 30, the learned Trial Court has directed the prosecution for taking cognizance in accordance with law against the applicants who appeared as prosecution witnesses before the Court and investigate the matter.

After thorough research on Sections 190, 193, 173 (8) and 482 of the Code of Criminal Procedure, this Court comes to the conclusion that the Trial Court has no jurisdiction to pass such directions. The Trial Court could have proceeded under Section 319 of the Cr.P.C. but has failed to do so. The Trial Court has no inherent powers to exercise as per Section 482 of the Code. Inherent powers could be exercised only by the High Court. This legal position is also well settled. This Court can profitably refer the decision of the Supreme Court in *Randhirsingh Rana Vs. State (Delhi Administration) [(1997) 1 SCC 361].*

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39. N.D.P.S. ACT, 1985- Sections 60 (1) and 63 (2)
Confiscation of vehicle under Section 60- Enquiry under Section 63 (2) must precede before such confiscation.
Prem Narayan Gupta Vs. State of M.P.
Reported in 2002 (4) MPHT 211

Held :

Section 60 (1) of the Act provides that whenever any offence punishable under Chapter IV [which includes Section 20 (b) (i)] has been committed, the narcotic drug, psychotropic substance etc. shall be liable to confiscation. Sub-section (3) of Section 60 further provides that any animal or "conveyance" used in carrying any narcotic drug or psychotropic substance shall be liable to confiscation, "unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person incharge of the animal or conveyance and each of them had taken all reasonable precautions against such use". Thus the burden of proof has been cast on the owner of the vehicle to establish that it was used for carrying the contraband without his knowledge or connivance and he had taken all reasonable precautions against such use. Section 35 of the Act incorporates the rule or presumption of "culpable mental state" which as per Explanation to this section includes "knowledge of a fact" or "reason to believe a fact". Sub-section (2) of Section 35 provides for the standard of proof laid on the accused as being "beyond reasonable doubt". (See : *Mohammad Akhtar Vs. State of M.P., 1999 Cr.L.J. 3779*). Section 63 provides the procedure to be followed before any order of confiscation is made. There can be confiscation as per Section 63 (1) whether the accused is "convicted or acquitted". The proviso to sub-section (2) of Section 63 lays down that no order of confiscation of an article or thing shall be made without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim.

In the present case no inquiry as per proviso to Section 63 (2) of the Act appears to have been made before ordering confiscation of the vehicle. The impugned order so far as it relates to confiscation of the vehicle is concerned is set aside.

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40. CRIMINAL TRIAL :
Acquittal based giving benefit of doubt- Whether different from "clean acquittal" or "honourable acquittal"- Held, no.
Smt. Panna Mehta Vs. State of M.P.
Reported in 2002 (4) MPHT 226

Held :

In the Code of Criminal Procedure, Indian Penal Code, Evidence Act or any other enactment, the word "acquittal" has not been defined. As per the Law Lexicon, the Encyclopaedic Law Dictionary (Edn. 1992) "Acquittal" defined, Act X of 1882, Section 403, "the word acquittal is *verbum equivocum*, and may in ordinary language be used to express either the verdict of a jury, or the formal judgment

of the Court, that the prisoner is not guilty". (Per Tindal, *C.J., Burgess Vs. Boetefeur, 13 LJMC 126 : 135 ER 193*). It is generally said that a party is acquitted by the jury, but in fact, the acquittal is by the judgment of the Court (ibid). According to the Oxford Dictionary, "acquittal" means that a person is not guilty of a crime, with which he has been charged. So in a Criminal Jurisprudence there is no difference between "clean acquittal", "honourable acquittal" or "acquittal based on giving benefit of doubt". When the accused is acquitted by giving benefit of doubt means the prosecution was not able to prove its case beyond reasonable doubt.

As ruled by the Supreme Court in case of *Manni Lal Vs. Parmai Lal* (AIR 1971 SC 330) and *Dilip Kumar Sharma and others Vs. State of Madhya Pradesh* (AIR 1976 SC 133), order of acquittal means a person concerned, has not committed the offence for which he was charged and tried. Criminal Courts are recording acquittal when the prosecution fails to prove its case beyond all reasonable doubt and benefit of doubt given to the accused does not mean that the accused was involved in the case but the same could not be proved by the prosecution. In Criminal Law, words "beyond reasonable doubt" cannot be termed as stigma or proof of any criminal charge against acquitted accused.

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41. CRIMINAL TRIAL :
Credibility of evidence- To be judged by applying test of truth informed by experience.
State of M.P. Vs. Ashish Batham
Reported in 2002 (4) MPHT 272 (DB)

Held :

The credibility of evidence is to be judged from its core and not from the dents on unimportant fringes, variances at fringes and discrepancies on minor particulars. It is to be tested by putting the testor of human experience and finding out whether there happens to be a cause for such witness to speak lie against the accused or not? Whether his evidence has been shattered to the core of it. Whether his evidence is not satisfying the human test of truth informed by the experience. If the evidence is passing the test of truth if tested on the anvil of the test of human experience, that evidence has to be accepted keeping in view the definition of word "Proved" indicated by Section 3 of Indian Evidence Act. It should be the adjudication of a reasonable and prudent person and not a timid mind in giving importance to variances and its insufficiencies on unimportant details.

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42. FAMILY COURTS ACT, 1984- Section 3, 7 and 8
HINDU MARRIAGE ACT, 1955- Section 19
Jurisdiction of Family Court in respect of cases arising under Hindu Marriage Act, 1955- Held, Words "District Court" in Section 19 of Hindu Marriage Act, 1955 shall be deemed to have been substituted by the words "Family Court" for area of its territorial jurisdiction.
Arjun Singhal Vs. Pushpa Karwal
Reported in 2002 (4) MPHT 321

Held :

After the establishment of the Family Courts the words "District Court" in Section 19 of the Hindu Marriage Act, 1955 shall be deemed to have been substituted by the words "Family Court" as per Section 7 of the Act in respect of the area over which it has territorial jurisdiction. The notification issued under Section 3 of the Act has to be read with the provision relating to conferral of the territorial jurisdiction under the Hindu Marriage Act, 1955 in respect of the cases arising under that Act. That would also be the position in respect of the cases arising under the other allied Acts which have to be taken cognizance of by the Family Courts. Section 19 of the Hindu Marriage Act, 1955 enables the petitioner to present the petition under this Act at his or her option at any of the places specified in clauses (i) to (iv) and, therefore, if the petition so presented falls within the territorial jurisdiction of the Family Court, then the Family Court of that area would have the exclusive jurisdiction to entertain and try that petition under Section 8 of the Act and such pending proceedings would also stand transferred to such Family Court.

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43. INDIAN PENAL CODE, 1860- Section 366
Expression "seduced" used in Section 366 I.P.C.- Meaning and connotation of.
Bhajanlal Kahar Vs. State of M.P.
Reported in 2002 (4) MPHT 324

Held :

The expression "seduced" used in Section 366, IPC means inducing a woman to submit to illicit intercourse. The words "illicit intercourse" mean merely sexual intercourse between a man and a woman who are not husband and wife. Where a girl, over sixteen and under eighteen years of age and in lawful custody consents to an act of illicit intercourse with a man and is persuaded to elope with him for that purpose, he is guilty of an offence under Section 366 and not only under Section 363, IPC. This is also the view taken in *Emperor Vs. Ayubkhan Mirsultan,* AIR 1944 Bom 159 and *State Vs. sulekhchand,* 1964 Cr.L.J. 220 (Pun.).

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44. PRECEDENTS :
Doctrine of precedent - Explained.
Hanuman Datt and others Vs. State of M.P. and others
Reported in 2002 (4) MPHT 343

Held :

The ratio of a case is the principle which has been decided and not the actual decision. The ratio decidendi alone has the precedential efficacy. A decision is not a precedent on a proposition of law which it did not decide. It has been stated in *Orient Paper Industries Ltd. Vs. State of Orissa,* AIR 1991 SC 672 : "What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The doctrine

of precedent, that is, being bound by a previous decision, is limited to the decision itself and not as to what is necessarily involved in it. In recent Constitution Bench decision in *Executive Engineer Vs. N.C. Budharaj,* (2001) 2 SCC 72, it has been observed that the ratio or the basis of reasons and principles underlying a decision is distinct from the ultimate relief granted or manner of disposal adopted in a given case.

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45. N.D.P.S. ACT, 1985- Section 50

Section 50- Applicability- Search of the body of the accused after his suspicious conduct of running on seeing police party- Police personnel having no knowledge or information that accused possessed contraband- Held, Section 50 not applicable.

Bharatbhai Bhagwanjibhai Vs. State of Gujarat

Judgment dt. 29-10-2002 by the Supreme Court in Criminal Appeal No. 312 of 2002, reported in (2002) 8 SCC 327

Held :

Section 50 categorically lays down that if the search is to be conducted by an officer duly authorised under Section 42 and the search is about to be conducted under the provisions of Sections 41, 42 or 43, the officer concerned does owe a duty to intimate the person to be searched that if the latter so requires, he would be taken to the nearest gazetted officer or to the nearest Magistrate for the purpose of having the search in their presence. But in the event of a situation otherwise, as in the contextual facts viz. the accused person on seeing the patrolling police party started running, which created a suspicion in the mind of the officer concerned, who thereafter intercepted him and then in the presence of panchas effected a search, question of compliance with the safeguards as prescribed under Section 50 of the Act would not arise. In *State of Punjab Vs. Balbir Singh,* (1994) 3 SCC 299 this Court in a similar vein answered the question in the negative in the manner following : (SCC p. 311. para 7)

"It thus emerges that when the police, while acting under the provisions of CrPC as empowered therein and while exercising surveillance or investigating into other offences, had to carry out the arrests or searches they would be acting under the provisions of CrPC. At this stage if there is any non-compliance of the provisions of Section 100 or Section 165 CrPC that by itself cannot be a ground to reject the prosecution case outright. The effect of such non-compliance will have a bearing on the appreciation of evidence of the official witness and other material depending upon the facts and circumstances of each case. In carrying out such searches if they come across any substance covered by the NDPS Act the question of complying with the provisions of the said Act including Section 50 at that stage would not arise. When the contraband seized during such arrests or searches attracts the provisions of the NDPS Act then from that stage the remaining relevant provisions of the NDPS Act would be attracted and the further steps have to be taken in accordance with the provisions of the said Act."

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46. CRIMINAL PROCEDURE CODE, 1973- Section 157 (1)
Delay in sending FIR to Magistrate- Effect.
Alla China Apparao and others Vs. State of A.P.
Judgment dt. 10.10.2002 by the Supreme Court in Criminal Appeal No. 698 of 2000, reported in (2002) 8 SCC 440

Held :

What is required under Section 157 (1) of the Code of Criminal Procedure is that if from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall, *forthwith* send a report of the same to a Magistrate empowered to take cognizance of such an offence upon a police report. The expression "forthwith" used in Section 157 (1) would undoubtedly mean within a reasonable time and without any unreasonable delay.

A question that now arises is that where first information report is shown to have actually been recorded without delay and investigation started on its basis, if any delay is caused in sending the same to the Magistrate which the prosecution fails to explain by furnishing reasonable explanation, what would be its effect upon the prosecution case. In our view, *ipso facto* the same cannot be taken to be a ground for throwing out the prosecution case if the same is otherwise trustworthy upon appreciation of evidence which is found to be credible. However, if it is otherwise, an adverse inference may be drawn against the prosecution and the same may affect the veracity of the prosecution case, more so when there are circumstances from which an inference can be drawn that there were chances of manipulation in the first information report by falsely roping in the accused persons after due deliberations.

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47. WORDS AND PHRASES :
Moral Turpitude - Meaning and connotation of- Held, offence under Section 294 I.P.C. involves element of moral turpitude.
Arun Dixit Vs. Chairman and Managing Director, Bhopal Petroleum Corporation and others
Reported in 2002 (2) JLJ 236

Held :

The word 'moral turpitude' is not defined under any law. However, this word is frequently used in English Phraseology. *Law Lexicon* has explained the meaning of this word in the following way :

> *"Moral turpitude-* Anything done contrary to justice, honesty, principle, or good morals; an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.
>
> *A term not clearly defined–* What constitutes moral turpitude, or what will be held such, is not entirely clear. A centract to promote public

wrong, short of crime, may or may not involve it. If parties intend such wrong, as where they conspire against the public interests by agreeing to violate the law or some rule of public policy, the act doubtless involves moral turpitude. When no wrong is contemplated, but is unintentionally committed, through error of judgment, it is otherwise. (*Pullman's Place Car Co. v. Central Transp. Co.,* 65 Fed. 158, 161). Everything done contrary to justice, honesty, modesty, or good morals is done with turpitude, so that embezzlement involves moral turpitude."

Similarly, this word also fell for consideration it being a word, frequently used in several Acts and Rules before their Lordships of Supreme Court in the case of *"In the matter of P"* reported in **AIR 1963 SC 1313.** Their Lordships explaining the true meaning of this word though interpreted in the context of facts involved in that case held that the word should not receive any narrow construction while giving effect to it. Dealing with the case of professional misconduct alleged against a lawyer their Lordships held :

"In dealing with this aspect of the matter, the expression 'moral turpitude or delinquency' is not to receive a narrow construction. Wherever conduct proved against an Advocate is contrary to honesty, or opposed to good morals, or is unethical, it may be safely held that it involves moral turpitude. A wilful and callous disregard for the interests of the client may, in a proper case, be characterised as conduct unbefitting an Advocate. Any conduct which makes a person unworthy to belong to the noble fraternity of lawyers or makes an advocate unfit to be entrusted with the responsible task of looking after the interest of the litigant, must be regarded as conduct involving moral turpitude. The Advocates-on-Record like the other Members of the Bar are Officers of the Court and the purity of the administration of justice depends as much on the integrity of the Judges as on the honesty of the Bar. That is why dealing with the question as to whether an Advocate has rendered himself unfit to belong to the brotherhood at the bar, the expression 'moral turpitude or delinquency' is not to be construed in an unduly narrow and restricted sense"

In my considered opinion, when one takes into account the aforementioned facts, then it clearly appears that utterance of obscene words by any person against other person in a public place with an intention to mean to be used only against that person does attract and involve moral turpitude. It is an act which is not only punishable under the Penal Code but is not acceptable in civilized society. It exhibits the uncivilized character of a person who utters it.

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48. CIVIL PROCEDURE CODE, 1908- O.9, R.13
'Sufficient cause'- The phrase should be interpreted liberally so as to advance substantial justice.
Sobhraj Sindhi and another Vs. Mohd. Jahoor and others
Reported in 2003 (1) MPHT 33

Held

It is well settled that the words "sufficient cause" used in Order 9 Rule 13, CPC should be interpreted liberally so as to advance substantial justice. The Courts should not be over-strict. [*Union of India Vs. Ram Charan,* AIR 1964 SC 215]

The words "sufficient cause" have also been used in Section 5 of the Limitation Act, 1963. The Supreme Court has held while interpreting these words that discretion in the section has to be exercised to advance "substantial approach. *M.K. Prasad Vs. P. Arumugam,* AIR 2001 SC 2497 and *Vedabai Vs. Shantaram,* AIR 2001 SC 2582. In the case of *M.K. Prasad* (supra), Supreme Court observed that :-

> "Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigating him as an irresponsible litigant. He should have been more vigilant but his failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation with respect to the property, concededly to be valuable. While deciding the application for setting aside the *ex parte* decree, the Court should have kept in mind the judgment impugned, the extent of the property involved and the stake of the parties".

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49. LAND REVENUE CODE, 1959 M.P. - Sections 129 and 257 (g)
CIVIL PROCEDURE CODE, 1908- Section 9
Measurement and demarcation of boundary marks- Express bar in Section 257 (g) regarding jurisdiction of Civil Courts- Hence, Civil Court has no jurisdiction in such matter.
Mohanlal Vs. Rampratap
Reported in 2003 (1) MPHT 66

Held :

On plain reading of Section 9 of the CPC, it is found that the Civil Courts shall have jurisdiction to try all the cases of civil nature excepting the suits of which cognizance is either expressly or impliedly barred in any law existing in this State. In the State of M.P. under the provisions of M.P. Land Revenue Code measurement and demarcation of boundary marks is exclusively within the competence of the revenue officers of the concerned area and Section 257 (g) of the Code expressly bars the jurisdiction of the Civil Courts with regard to the aforesaid disputes. As such, in my considered opinion, the suit as filed by the respondent/plaintiffs before the Trial Court was not within the competence of the Civil Courts and the Trial Court has committed an error in deciding the preliminary issue on the point of jurisdiction of the Civil Court in favour of the respondent/plaintiffs.

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50. SERVICE LAW :

M.P. Civil Services (Classification, Control And Appeal) Rules, 1966- Rule 19

Conviction of Government servant by trial Court- Competent Authority is empowered to terminate such Government servant after conviction- Filing of criminal appeal and suspension of execution of sentence under Section 389 (1) Cr.P.C. will not deter such Authority from doing so unless conviction also stayed.

Jamna Prasad Vs. State of M.P. and others

Reported in 2003 (1) MPHT 77 (FB)

Held :

What emerges out of the aforesaid discussion is that Appellate Court and Revisional Court can, in exercise of power under Sections 389 (1)/482, Code of Criminal Procedure, 1973, stay the execution of sentence or order capable of execution but stay of conviction can be passed in exceptional cases after Court carefully examines the conduct of accused, facts of the case and possible ramifications or avoiding irretrievable consequences. However, in both the cases, the conviction and sentence can not be effaced. It is the irretrievable consequence in the former case and execution of sentence in the latter case which can be stayed. With regard to Government servant, competent authority can terminate the services after conviction by Criminal Court. Stay of execution of sentence will not debar it from doing so unless conviction is also stayed in exercise of power in light of principles laid down by the Apex Court in *K.C. Sareen's case* (supra). Further, on termination order having been passed, master and servant relationship terminates and filing of appeal and stay of execution of sentence do not revive it. He can not be taken to be under suspension from the date of termination following conviction by Trial Court till the date of judgment by the Appellate Court. Therefore, he would not be entitled to claim subsistence allowance for this period.

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51. MOTOR VEHICLES ACT, 1988- Section 147 (as it stood prior to amendment to 1994)

Liability of insurer in respect of death or bodily injury of a person travelling in a goods vehicle involved in accident- Held, insurer is not liable- Satpal's case (AIR 2000 SC 235) expressly overruled.

New India Assurance Co. Ltd. Vs. Asha Rani and Others

Judgment dt. 3.12.2002 by the Supreme Court in Civil Appeal No. 5385/ 2001, reported in 2002 AIR SCW 5260

Held :

8. Under the Motor Vehicles Act of 1939 the requirements of policies and limits of liability had been provided in Section 95. Proviso to Section 95 (1) of the said Act unequivocally states that the policy shall not be required in case of a goods vehicle for passengers being carried in the said vehicle. In *Mallawwa (Smt.) and others v. Oriental Insurance Co. Ltd. and Others (supra),* while approving the earlier decision of the Court in *Pushpabai Purshottam Udeshi's case, (1977) 2*

SCC 749, the Court construed the provisions of Section 95 (1) (b) of the Motor Vehicles Act, 1939 and held that while the expression 'any person' and the expression 'every motor vehicle' are in wide terms but by proviso (ii) it restricts the generality of the main provision by confining the requirement to cases where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, therefore, the vehicle had to be vehicle in which passengers are carried. The Court further held that the goods vehicle cannot be held to be a passenger vehicle even if the vehicle was found to be used on some stray occasions for carrying passengers for hire or reward. Undoubtedly **Mallawwa's case (supra)** was dealing with a situation under the Motor Vehicle Act 1939.

9. In **Satpal's case (supra),** the Court assumed that the provisions of Section 95 (1) of Motor Vehicles Act, 1939 are identical with Section 147 (1) of the Motor Vehicles Act, 1988, as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was necessary for the insurer to insure against the owner of the goods or his authorised representative being carried in a goods vehicle. On an erroneous impression this Court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorised representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicles Amended Act of 1994 is examined, particularly Section 46 of Act 6 of 1991 by which expression 'injury to any person' in the original Act stood substituted by the expression 'injury to any person including owner of the goods or his authorised representative carried in the vehicle' the conclusion is irresistible that prior to the aforesaid Amendment Act of 1994, even if widest interpretation is given to the expression 'to any person' it will not cover either the owner of the goods or his authorised representative being carried in the vehicle. The objects and reasons of clause46 also states that it seeks to amend Section 147 to include owner of the goods or his authorised representative carried in the vehicle for the purposes of liability under the Insurance Policy. It is no doubt true that sometimes the legislature amends the law by way of amplification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression 'including owner of the goods or his authorised representative carried in the vehicle which was added to the pre-existed expression 'injury to any person' is either clarificatory or amplification of the pre-existing statute. On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or susffers bodily injury. The judgment of this Court in *Satpal's case,* therefore must be held to have not been correctly decided.

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PART - III

CIRCULARS / NOTIFICATIONS

मध्यप्रदेश शासन
वित्त विभाग

क्रमांक एफ 4/5/2002/नियम/चार, भोपाल, दिनांक 3/9/2002

प्रति,

शासन के समस्त विभाग,
अध्यक्ष, राजस्व मंडल,
समस्त कमिश्नर,
समस्त विभागाध्यक्ष,
समस्त कलेक्टर,
मध्यप्रदेश

विषय : शासकीय सेवकों के दैनिक भत्ते की दरों की पुनरीक्षण।

वित्त विभाग के ज्ञापन क्रमांक डी–98/592/ नि–1/चार/93, दिनांक 28 जून, 1993 को निरस्त करते हुए दिनांक 1.1.96 से स्वीकृत नवीन (पुनरीक्षित) वेतनमानों के संदर्भ में यात्रा भत्ते के लिए शासकीय सेवकों की श्रेणी और उनके दौरे के दौरान दैनिक भत्ते की दरें नीचे दिये अनुसार निर्धारित की जाती हैं :–

श्रेणी	वेतन	साधारण दर	विशेष दर (भोपाल, इंदौर, ग्वालियर, जबलपुर के लिये)
ए	रूपये 10,650/ और इससे अधिक और प्रथम श्रेणी अधिकारी	80=00	120=00
बी	रूपये 6,500/– से रू. 10,649/–	60=00	90=00
सी	रूपये 5,000/– से रू. 6,499/–	48=00	72=00
डी	रूपये 5,000/– से कम	32=00	48=00

2. प्रदेश के बाहर मुकाम में विशेष दर पर दैनिक भत्ता प्राप्त होगा ।

3. स्थाई यात्रा भत्ते की दरों में निम्नानुसार वृद्धि की जाती हैं :–

शासकीय सेवक का प्रवर्ग	मासिक दर
राजस्व निरीक्षक, सेल अमीन, सहायक ग्रामीण कृषि विस्तार अधिकारी (ग्राम सेवक), क्षेत्रीय पशु चिकित्सा सहायक	200=00
राजस्व विभाग के ग्रामीण क्षेत्र में कार्य करने वाले पटवारी, जिलों एवं तहसीलों में राजस्व भृत्य तथा जमादार, राजस्व, वाणिज्यिक कर और अन्य न्यायालयों के प्रोसेस सर्वर, वन विभाग के चैनमैन	150=00
जिला कार्यकारी बल के हेड कांस्टेबल	80=00
जिला कार्यकारी बल के कांस्टेबल	75=00

केवल ऐसे क्षेत्रीय पशु चिकित्सा सहायक को स्थायी यात्रा भत्ते की पात्रता होगी, जो ऐसे पदों/स्थानों पर पदस्थ हों, जहां गहन यात्रा करना आवश्यक हो ।

4. यह दरें दिनांक 1.9.2002 से लागू होंगी।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार
सही/–
(आर.एन. वर्मा)
अवर सचिव, मध्यप्रदेश शासन, वित्त विभाग

●

NO. I/16012/25/95-IS (D. III)
GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

New Delhi- 110 001.
dated, the 19th June, 1996

To,

Chief Secretaries,
All State Government, UTs.

Sub :Procedure regarding service of warrants summons and other legal processes on members of Parliament.

Sir,

I am directed to say that instances have been brought to the notice of this Ministry where copies of the summons issued by Magistrates requiring the attendence of the Members of Parliament in Courts in certain cases, have been forwarded to the Speaker of Lok Sabha or the Chairman of the Rajya Sabha Secretariate or to the Lok Sabha/Rajya Sabha Secretariat for effecting service on the Members concerned. In this regard, attention is invited to article

105 (3) of the Constitution of India which provides that in respect of matters other than those covered by clause 2 of article 105, the powers, privileges and immunities of each House of Parliament, and the members and committees of each House, shall be such as may from time to time be defined by Parliament by law, and until so defined shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978. One of the privileges is that no service of summons can be effected upon the Members when they are within the precincts of the Parliament. If necessary, the permission of Speaker, Lok Sabha is required to be obtained for the service of a summon or a legal process within the precincts of the House on any person whether a Member of Lok Sabha or a stranger vide Rule 233 of Rules for procedure & Conduct of Business in Lok Sabha-Seventh Edition, 1989 (hereinafter briefly referred to S LSR). Similarly, in the case of a Member of Rajya Sabha, permission of the Chairman of the Rajya Sabha will have to be obtained with simultaneous intimation to the speaker, Lok Sabha.

In view of the above position, the appropriate procedure would be for the warrants/summons/legal processes to be served direct on the Members concerned outside the precincts of the Parliament i.e. at their residence or at some other place. Precincts of the House means sand includes the Chamber, the Lobbies, the Gallories and such other places as the Speaker may from time to time specify vide the definition in LSR. In an exceptional case, if at all it become necessary to seek the Speaker/ Chairman's permissions to serve warrants summons and other legal processes, Civil or Criminal within the precincts of the House, the Speaker/Chairman should be addressed through the Ministry of Home Affairs and the authority issusing the legal process should send alongwith its a brief statement containing a well- reasoned request setting out the grounds why it has become necessary to serve the process within the precincts of the House.

3. It may be pointed out that the same procedure should be followed for effecting service of summons upon Members of the State Legislature, who enjoy the same privileged under article 194 (3) of the Constitution of India.

4. It is requested that the above procedure may be brought to the notice of all Courts, civil and criminal in the state in order to ensure that service of warrants/summons legal processes on Members of Parliament/ Members of State Legislature is effected in accordance with the above procedure.

Sd/-
(A.K. Paitandy)
Dy. Secretary to the Govt. of India.

मध्यप्रदेश शासन

वित्त विभाग

मंत्रालय वल्लभ भवन, भोपाल

क्रमांक एफ–4/4/2002 नियम/चार भोपाल, दिनांक 3/12 सितम्बर, 2002

प्रति,

शासन के समस्त विभाग,
अध्यक्ष, राजस्व मण्डल, ग्वालियर,
समस्त विभागाध्यक्ष,
समस्त संभागीय आयुक्त
समस्त जिलाध्यक्ष,
समस्त मुख्य कार्यपालन अधिकारी जिला पंचायत, मध्यप्रदेश।

विषय : शासकीय अधिकारियों/कर्मचारियों के दौरे के समय मध्यप्रदेश राज्य पर्यटन विकास निगम की होटल मोटल में ठहरने की व्यवस्था।

राज्य शासन द्वारा उपर्युक्त विषय के संबंध में वित्त विभाग के परिपत्र क्रमांक एफ.आर. 17/5/96/ ब–9/चार, दिनांक 13.10.99 के तारतम्य में प्रथम श्रेणी अधिकारियों को मध्यप्रदेश के भीतर जिन स्थानों पर मध्यप्रदेश राज्य पर्यटन विकास निगम के होटल संचालित हैं, उन स्थानों के अतिरिक्त अन्य स्थानों पर जहां उक्त निगम के होटल नहीं हैं, वहां निजी होटलों में ठहरने की दशा में निम्नानुसार अधिकतम सीमा तक किराए की प्रतिपूर्ति की पात्रता होगी :–

क्रमांक	श्रेणी	सिंगल रूम	डबल रूम	अतिरिक्त बिस्तर
1.	ए.सी.	390.00	490.00	125.00
2.	नॉन ए.सी.	300.00	350.00	100.00

उपरोक्त ए.सी. सुविधा केवल अप्रैल से जून के महीनों में प्राप्त होगी। वर्ष के शेष महीनों में नान ए.सी. की ही सुविधा प्राप्त होगी। वह निर्देश आदेश जारी होने की तिथि से लागू होंगे।

शेष शर्तें वित्त विभाग के ज्ञाप क्रमांक एफ.आर. 17/5/96/ ब–9/ चार, दिनांक 13.10.99 के अनुसार यथावत रहेगी।

मध्यप्रदेश के राज्यपाल के नाम से तथा
आदेशानुसार,
सही/–
(आर.एन. वर्मा)
अवर सचिव,
मध्यप्रदेश शासन वित्त विभाग

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

THE MADHYA PRADESH GRAM NYAYALAYA (SANSHODHAN) ADHINIYAM, 2002
NO. 7 OF 2002

[Received the assent of the Governor on the 26th April, 2002; assent first published in the "Madhya Pradesh Gazette (Extra- Ordinary)" dated the 1st May, 2002.]

An Act to amend the Madhya Pradesh Gram Nayayalaya Adhiniyam, 1996.

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

1. Short title.- This Act may be called the Madhya Pradesh Gram Nyayalaya, (Sanshodhan) Adhiniyam, 2002.

2. Amendment of Section 6.- In Section 6 of the Madhya Pradesh Gram Nyayalaya Adhiniyam, 1996 (No. 26 of 1997),-

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

"(c) has passed fifth standard in case of woman and members belonging to Scheduled Castes and Scheduled Tribes and Matriculation in case of others.";

(ii) in the first proviso, for the word "eighth" the word "fifth" shall be substituted;

(iii) for the second proviso, the following proviso shall be substituted, namely :-

"Provided further that in case a law knowing person or woman member of prescribed qualification is not available then the minimum age may be reduced to 25 years."

THE EXPLOSIVE SUBSTANCES (AMENDMENT) ACT, 2001.

The following Act of Parliament received the assent of the President on December 11, 2001, and was published in the Gazette of India, Extraordinary, Part II, Section 1, dated December 11, 2001.

INDIAN PARLIAMENT ACT NO. 54 OF 2001

An Act further to amend the Explosive Substances Act, 1908

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

1. Short title and commencement. (1) This Act may be called the Explosive Substances (Amendment) Act, 2001.

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

2. Substitution of new sections for Sections 2 to 5.- In the Explosive Substances Act, 1908 (6 of 1908) (hereinafter referred to as the principal Act), for Sections 2 to 5, the following sections shall be substituted, namely:-

'2. Definitions.- In this Act,-

(a). the expression "explosive substance" shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance, also any part of any such apparatus, machine or implement;

(b) the expression "specia category explosive substance" shall be deemed to include research development explosive (RDX), penta erythritol tetra nitrate (PETN), high melting explosive (HMX), tri nitro toluene (TNT), low temperature plastic explosive (LTPE), composition exploding (CE) (2, 4,6 phenyl methyl nitramine or tetryl), OCTOL (mixture of high melting explosive and tri nitro toluene), plastic explosive kirkee-I (PEK-I) and RDX/TNT compounds and other similar type of explosives and a combination thereof and remote control devices causing explosion and any other substance and a combination thereof which the Central Government may, by notification in the Official Gazette, specify for the purposes of this Act.

3. Punishment for causing explosion likely to endanger life or property.- Any person who unlawfully and maliciously causes by-

(a) any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with imprisonment for life, or with rigorous imprisonment of either description which shall not be less than ten years, and shall also be lable to fine;

(b) any special category explosive substance and explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be pubished with death, or rigorous imprisonment for life, and shall also be liable to fine.

4. Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property.- Any person who unlawfully and maliciously-

(a) does any act with intent to cause by an explosive substance or special category explosive substance, or conspires to cause by an explosive substances or special category explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property; or

(b) makes or has in his possession or under his control any explosive substance or special category explosive substance with intent by means thereof to endanger life, or cause serious injury to property, or to enable any other person by means thereof to endanger life or cause serious injury to property in India.

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished,-

(i) in the case of any explosive substance, with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

(ii) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extent to ten years, and shall also be liable to fine.

5. Punishment for making or possessing explosive under suspicious circumstances.- Any person who makes or knowingly has in his possession or under his control any explosive substance or special category explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punished.-

(a) in the case of any explosive substance, with imprisonment for a term which may extend to ten years, and shall also be liable to fine;

(b) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.'.

3. Amendment of Section 7.- In Section 7 of the principal Act, for the words "Central Government", the words "District Magistrate" shall be substituted.

Note - This act come into force w.e.f. 1.2.2002

अपनी पीड़ा सह लेना और दूसरे जीवों को पीड़ा न पहुँचाना,
यही तपस्या का एक स्वरुप है।

- संत तिरुवल्लूर

THE INFORMATION TECHNOLOGY ACT, 2000
No. 21 of 2000

[9th June, 2000]

CONTENTS

Sections :

CHAPTER I
Preliminary

1. Short title extent, commencement and application.
2. Definitions.

CHAPTER II
Digital Signature

3. Authentication of electronic records.

CHAPTER III
Electronic Governance

4. Legal recognition of electronic records.
5. Legal recognition of digital signatures.
6. Use of electronic records and digital signatures in Government and its agencies.
7. Retention of electronic records.
8. Publication of rule, regulation, etc., in Electronic Gazette.
9. Sections 6, 7 and 8 not to confer right to insist document should be accepted in electronic form.
10. Power to make rules by Central Government in respect of digital signature.

Sections :

CHAPTER IV
Attribution, Acknowledgment and despatch of electronic records

11. Attribution of electronic records.
12. Acknowledgment of receipt.
13. Time and place of despatch and receipt of electronic record.

CHAPTER V
Secure Electronic records and secure digital signatures

14. Secure Electronic record.
15. Secure digital signature,
16. Security procedure.

CHAPTER VI
Regulation of Certifying Authorities

17. Appointment of Controller and other officers.
18. Functions of Controller.
19. Recognition of foreign Certifying Authorities.
20. Controller to act as repository.
21. Licence to issue Digital Signature Certificates.
22. Application for licence.
23. Renewal of licence.
24. Procedure for grant or rejection of licence.

Received the assent of the President on the 9th June, 2000 and Act published in Gazette of India (Extraordinary) Part II Section 1 dated 9.6.2000 Pages 1-32 [S.No. 27]

Sections :

25. Suspension of licence.
26. Notice of suspension or revocation of licence.
27. Power to delegate.
28. Power to investigate contraventions.
29. Access to computers and data.
30. Certifying Authority to follow certain procedures.
31. Certifying Authority to ensure compliance of the Act, etc.
32. Display of licence.
33. Surrender of licence.
34. Disclosure.

CHAPTER VII
Digital Signature Certificates

35. Certifying Authority to issue Digital Signature Certificate.
36. Representations upon issuance of Digital Signature Certificate.
37. Suspension of Digital Signature Certificate.
38. Revocation of Digital Signature Certificate.
39. Notice of suspension or revocation.

CHAPTER VIII
Duties of Subscribers

40. Generating key pair.
41. Acceptance of Digital Signature Certificate.
42. Control of private key.

CHAPTER IX
Penalties & Adjudication

43. Penalty for damage to computer, computer system, etc.
44. Penalty for failure to furnish information, return, etc.
45. Residuary penalty.

Sections :

46. Power to adjudicate.
47. Factors to be taken into account by the adjudicating officer.

CHAPTER X
The Cyber Regulations Appellate Tribunal

48. Establishment of Cyber Appellate Tribunal.
49. Composition of Cyber Appellate Tribunal.
50. Qualifications for appointment as Presiding Officer of the Cyber Appellate Tribunal.
51. Term of office.
52. Salary allowances and other terms and conditions of service of Presiding Officer.
53. Filling up of vacancies.
54. Resignation and removal.
55. Orders constituting Appellate Tribunal to be final and not to invalidate its proceedings.
56. Staff of the Cyber Appellate Tribunal.
57. Appeal to Cyber Appellate Tribunal.
58. Procedure and powers of the Cyber Appellate Tribunal.
59. Right to legal representation.
60. Limitation.
61. Civil court not to have jurisdiction.
62. Appeal to High Court.
63. Compounding of contraventions.
64. Recovery of penalty.

CHAPTER XI
Offences

65. Tampering with computer source documents.
66. Hacking with computer system.

Sections :

67. Publishing of information which is obscence in electronic form.
68. Power of Controller to give directions.
69. Directions of Controller to a subscriber to extend facilities to decrypt information.
70. Protected system.
71. Penalty for misrepresentation.
72. Penalty for breach of confidentiality and privacy.
73. Penalty for publishing Digital Signature Certificate false in certain particulars.
74. Publication for fraudulent purpose.
75. Act to apply for offence or contravention committed outside India.
76. Confiscation.
77. Penalties or confiscation not to interfere with other punishments.
78. Power to investigate offences.

CHAPTER XII

Network service providers not to be liable in certain cases

79. Network service providers not to be liable in certain cases.

Sections :

CHAPTER XIII

Miscellaneous

80. Power of police officer and other officers to enter, search, etc.
81. Act to have overriding effect.
82. Controller, Deputy Controller and Assistant Controllers to be public servants.
83. Power to give directions.
84. Protection of action taken in good faith.
85. Offences by companies.
86. Removal of difficulties.
87. Power of Central Government to make rules.
88. Constitution of Advisory Committee.
89. Power of Controller to make regulations.
90. Power of State Government to make rules.
91. Amendment of Act 45 to 1860.
92. Amendment of Act 18 of 1891.
93. Amendment of Act 18 of 1891.
94. Amendment of Act 2 of 1934.

The First Schedule
The Second Schedule
The Third Schedule
The Fourth Schedule

CHAPTER I

Preliminary

S.1. Short title, extent, commencement and application

(1) This Act may be called the Information Technology Act, 2000.

(2) It shall extend to the whole of India and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.

(3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of the provision.

(4) Nothing in this Act shall apply to,-

(a) a *"negotiable instrument"* as defined in section 13 of the Negotiable Instruments Act, 1881 (26 of 1881);

(b) a *"power-of-attorney"* as defined in section 1A of the Powers-of-Attorney Act, 1882 (7 of 1982);

(c) a *"trust"* as defined in section 3 of the Indian Trusts Act, 1882 (2 of 1982);

(d) a *"will"* as defined in clause (h) of section 2 of the Indian Succession Act, 1925 (39 of 1925) including any other testamentary disposition by whatever name called;

(e) any contract for the sale or conveyance of *"immovable property"* or any interest in such property;

(f) any such class of documents or transactions as may be notified by the Central Government in the Official Gazette.

2. Definitions.- (1) In this Act, unless the context otherwise requires.-

(a) "access" with its grammatical variations and cognate expressions means gaining entry into, instructing or communicating with the logical, arithmetical, or memory function resources of a computer, computer system or computer network;

(b) "addressee" means a person who is intended by the originator to receive the electronic record but does not include any intermediary;

(c) "adjudicating officer" means an adjudicating officer appointed under subsection (1) of section 46;

(d) "affixing digital signature" with its grammatical variations and cognate expressions means adoption of any methodology or procedure by a person for the purpose of authenticating an electronic record by means of digital signature;

(e) "appropriate Government" means as respects any matter,-

(i) enumerated in List II of the Seventh Schedule to the Constitution;

(ii) relating to any State law enacted under List III of the Seventh Schedule to the Constitution,

the State Government and in any other case, the Central Government;

(f) "asymmetric crypto system" means a system of a secure key pair consisting of a private key for creating a digital signature and a public key to verify the digital signature;

(g) "Certifying Authority" means a person who has been granted a licence to issue a Digital Signature Certificate under section 24;

(h) "certification practice statement" means a statement issued by a Certifying Authority to specify the practices that the Certifying Authority employs in issuing Digital Signature Certificates;

(i) "computer" means any electronic magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network;

(j) "computer network" means the interconnection of one or more computers through-

(i) the use of satellite, microwave, terrestrial line or other communication media; and

(ii) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained;

(k) "computer resource" means computer, computer system, computer network, data, computer data base or software;

(l) "computer system" means a device or collection of devices, including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, which contain computer programmes, electronic instructions, input data and output data, that performs logic, arithmetic, data storage and retrieval, communication control and other functions;

(m) "Controller" means the Controller of Certifying Authorities appointed under sub-section (1) of section 17;

(n) "Cyber Appellate Tribunal" means the Cyber Regulations Appellate Tribunal established under sub-section (1) of section 48;

(o) "data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer;

(p) "digital signature" means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3;

(q) "Digital Signature Certificate" means a Digital Signature Certificate issued under sub-section (4) of section 35;

(r) "electronic form" with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device;

(s) "Electronic Gazette" means the Official Gazette published in the electronic form;

(t) "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;

(u) "function" in relation to a computer, includes logic, control, arithmetical process, deletion, storage and retrieval and communication or telecommunication from or within a computer;

(v) "information" includes data, text, images, sound, voice, codes, computer programmes, software and data bases or micro film or computer generated micro fiche;

(w) "intermediary" with respect to any particular electronic message means any person who on behalf of another person receives, stores or transmits that message or provides any service with respect to that message;

(x) "key pair", in an asymmetric crypto system, means a private key and its mathematically related public key, which are so related that the public key can verify a digital signature created by the private key;

(y) "law" include any Act of Parliament or of a State Legislature, Ordinances promulgated by the President or a Governor, as the case may be, Regulations made by the President under article 240, Bills enacted as President's Act under sub-clause (a) of clause (1) of article 357 of the Constitution and includes rules, regulations, bye-laws and orders issued or made thereunder;

(z) "licence" means a licence granted to a Certifying Authority under section 24;

(za) "originator" means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary;

(zb) "prescribed" means prescribed by rules made under this Act;

(zc) "private key" means the key of a key pair used to create a digital signature;

(zd) "public key" means the key of a key pair used to verify a digital signature and listed in the Digital Signature Certificate;

(ze) "secure system" means computer hardware, software, and procedure that-

(a) are reasonably secure from unauthorised access and misuse;

(b) provide a reasonable level of reliability and correct operation;

(c) are reasonably suited to performing the intended functions; and

(d) adhere to generally accepted security procedures;

(zf) "security procedure" means the security procedure prescribed under section 16 by the Central Government;

(zg) "subscriber" means a person in whose name the Digital Signature Certificate is issued;

(zh) "verify" in relation to a digital signature, electronic record or public key with its grammatical variations and cognate expressions means to determine whether-

(a) the initial electronic record was affixed with the digital signature by the use of private key corresponding to the public key of the subscriber;

(b) the initial electronic record is retained intact or has been altered since such electronic record was so affixed with the digital signature,

(2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

CHAPTER II

Digital Signature

3. Authentication of electronic records.- (1) Subject to the provisions of this section any subscriber may authenticate an electronic record by affixing his digital signature.

(2) The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

Explanation.- For the purposes of this sub-section, "hash function" means an algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible-

(a) to derive or reconstruct the original electronic record from the hash result produced by the algorithm;

(b) that two electronic records can produce the same hash result using the algorithm.

(3) Any person by the use of a public key of the subscriber can verify the electronic record.

(4) The private key and the public key are unique to the subscriber and constitute a functioning key pair.

CHAPTER III

Electronic Governance

4. Legal recognition of electronic records.- Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is-

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference.

S.5. Legal recognition of digital signatures

Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document should be signed or bear the signature of any person then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of digital signature affixed in such manner as may be prescribed by the Central Government.

Explanation.- For the purposes of this section, "signed", with its grammatical variations and cognate expressions, shall, with reference to a person, mean affixing of his hand written signature or any mark on any document and the expression "signature" shall be construed accordingly.

S. 6. Use of electronic records and digital signatures in Government and its agencies.

(1) Where any law provides for-

(a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;

(b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;

(c) the receipt or payment of money in a particular manner,

then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe-

(a) the manner and format in which such electronic records shall be filed, created or issued;

(b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a).

S. 7. Retention of electronic records

(1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if-

(a) the information contained therein remains accessible so as to be usable for a subsequent reference;

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated

to represent accurately the information originally generated, sent or received;

(c) the details which will facilitate the identification of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record :

Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

(2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

S. 8. Publication of rule, regulation, etc., in Electronic Gazette

Where any law provides that any rule, regulation, order, bye-law, notification or any other matter shall be published in the Official Gazette, then, such requirement shall be deemed to have been satisfied if such rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette :

Provided that where any rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette, the date of publication shall be deemed to be the date of that Official Gazette which was first published in any form.

S. 9. Sections, 6, 7 and 8 not to confer right to insist document should be accepted in electronic form

Nothing contained in sections 6, 7 and 8 shall confer a right upon any person to insist that any Ministry or Department of the Central Government or the State Government or any authority or body established by or under any law or controlled or funded by the Central or State Government should accept, issue, create, retain, preserve any document in the form of electronic records or effect any monetary transaction in the electronic form.

S.10. Power to make rules by Central Government in respect of digital signature

The Central Government may, for the purposes of this Act, by rules, prescribe-

(a) the type of digital signature;

(b) the manner and format in which the digital signature shall be affixed;

(c) the manner or procedure which facilitates identification of the person affixing the digital signature;

(d) control processes and procedures to ensure adequate integrity, security and confidentiality of electronic records or payments; and

(e) any other matter which is necessary to give legal effect to digital signatures.

CHAPTER IV

Attribution, Acknowledgment And Despatch of Electronic Records

S.11. Attribution of electronic records

An electronic record shall be attributed to the originator-

(a) if it was sent by the originator himself;

(b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or

(c) by an information system programmed by or on behalf of the originator to operate automatically.

S. 12. Acknowledgment of Receipt

(1) Where the originator has not agreed with the addressee that the acknowledgment of receipt of electronic record be given in a particular form or by a particular method, an acknowledgment may be given by-

(a) any communication by the addressee, automated or otherwise; or

(b) any conduct of the addressee, sufficient to indicate to the originator that the electronic record has been received.

(2) Where the originator has stipulated that the electronic record shall be binding only on receipt of an acknowledgment of such electronic record by him, then unless acknowledgment has been so received, the electronic record shall be deemed to have been never sent by the originator.

(3) Where the originator has not stipulated that the electronic record shall be binding only on receipt of such acknowledgment, and the acknowledgment has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed to within a reasonable time, then the originator may give notice to the addressee stating that no acknowledgment has been received by him and specifying a reasonable time by which the acknowledgment must be received by him and if no acknowledgment is received within the aforesaid time limit he may after giving notice to the addressee, treat the electronic record as though it has never been sent.

S. 13. Time and place of dispatch and receipt of electronic record

(1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:-

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,-

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,-

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "usual place of residence", in relation to a body corporate, means the place where it is registered.

CHAPTER V

Secure Electronic Records and Secure Digital Signatures

S. 14. Secure electronic record

Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall be deemed to be a secure electronic record from such point of time to the time of verification.

S. 15. Secure digital signature

If, by application of a security procedure agreed to by the parties concerned, it can be verified that a digital signature, at the time it was affixed, was-

(a) unique to the subscriber affixing it;

(b) capable of identifying such subscriber;

(c) created in a manner or using a means under the exclusive control of the subscriber and is linked to the electronic record to which it relates in such a manner that if the electronic record was altered the digital signature would be invalidated,

then such digital signature shall be deemed to be a secure digital signature.

S. 16. Security procedure

The Central Government shall for the purposes of this Act prescribe the security procedure having regard to commercial circumstances prevailing at the time when the procedure was used, including-

(a) the nature of the transaction;

(b) the level of sophistication of the parties with reference to their technological capacity;

(c) the volume of similar transactions engaged in by other parties;

(d) the availability of alternatives offered to but rejected by any party ;

(e) the cost of alternative procedures; and

(f) the procedures in general use for similar types of transactions or communications.

CHAPTER VI

Regulation of Certifying Authorities

S. 17. Appointment of Controller and other officers

(1) The Central Government may, by notification in the Official Gazette, appoint a Controller of Certifying Authorities for the purposes of this Act and may also by the same or subsequent notification appoint such number of Deputy Controllers and Assistant Controllers as it deems fit.

(2) The Controller shall discharge his functions under this Act subject to the general control and directions of the Central Government.

(3) The Deputy Controllers and Assistant Controllers shall perform the functions-assigned to them by the Controller under the general superintendent and control of the Controller.

(4) The qualifications, experience and terms and conditions of service of Controller, Deputy Controllers and Assistant Controllers shall be such as may be prescribed by the Central Government.

(5) The head office and Branch Office of the office of the Controller shall be at such places as the Central Government may specify, and these may be established at such places as the Central Government may think fit.

(6) There shall be a seal of the Office of the Controller.

S. 18. Functions of Controller

The Controller may perform all or any of the following functions, namely :-

(a) exercising supervision over the activities of the Certifying Authorities;

(b) Certifying public keys of the Certifying Authorities;

(c) laying down the standards to be maintained by the Certifying Authorities;

(d) specifying the qualifications and experience which employees of the Certifying Authorities should possess;

(e) specifying the conditions subject to which the Certifying Authorities shall conduct their business;

(f) specifying the contents of written, printed or visual material and advertisements that may be distributed or used in respect of a Digital Signature Certificate and the Public Key;

(g) specifying the form and content of a Digital Signature Certificate and the key;

(h) specifying the form and manner in which accounts shall be maintained by the Certifying Authorities;

(i) specifying the terms and conditions subject to which auditors may be appointed and the remuneration to be paid to them;

(j) facilitating the establishment of any electronic system by a Certifying Authority either solely or jointly with other Certifying Authorities and regulation of such systems;

(k) specifying the manner in which the Certifying Authorities shall conduct their dealings with the subscribers;

(l) resolving any conflict of interests between the Certifying Authorities and the subscribers;

(m) laying down the duties of the Certifying Authorities;

(n) maintaining a data- base containing of disclosure record of every Certifying Authority containing such particulars as may be specified by regulations, which shall be accessible to public.

S. 19. Recognition of foreign Certifying Authorities

(1) Subject to such conditions and restrictions as may be specified by regulations, the Controller may with the previous approval of the Central Government, and by notification in the Official Gazette, recognise any Foreign Certifying Authority as a Certifying Authority for the purposes of this Act.

(2) Where any Certifying Authority is recognised under sub-section (1), the Digital Signature Certificate issued by such Certifying Authority shall be valid for the purposes of this Act.

(3) The Controller may, if he is satisfied that any Certifying Authority has contravened any of the conditions and restrictions subject to which it was granted recognition under sub-section (1) he may, for reasons to be recorded in writing, by notification in the Official Gazette, revoke such recognition.

Controller to act as repository

(1) The Controller shall be the repository of all Digital Signature Certificates issued under this Act.

(2) The Controller shall-

(a) make use of hardware, software and procedures that are secure from instrusion and misuse;

(b) observe such other standards as may be prescribed by the Central Government, to ensure that the secrecy and security of the digital signatures are assured.

(3) The Controller shall maintain a computerised data-base of all public keys in such a manner that such data-base and the public keys are available to any member of the public.

S.21. Licence to issue Digital Signature Certificates

(1) Subject to the provisions of sub-section (2), any person may make an application, to the Controller, for a licence to issue Digital Signature Certificates.

(2) No licence shall be issued under sub-section (7), unless the applicant fulfills such requirements with respect to qualification, expertise, manpower, financial resources and other infrastructure facilities, which are necessary to issue Digital Signature Certificates as may be prescribed by the Central Government.

(3) A licence granted under this section shall -

(a) be valid for such period as may be prescribed by the Central Government;

(b) not be transferable or heritable;

(c) be subject to such terms and conditions as may be specified by the regulations.

S. 22. Application for Licence

(1) Every application for issue of a licence shall be in such form as may be prescribed by the Central Government.

(2) Every application for issue of a licence shall be accompanied by-

(a) a certification practice statement;

(b) a statement including the procedures with respect to identification of the applicant;

(c) payment of such fees, not exceeding twenty-five thousand rupees as may be prescribed by the Central Government;

(d) such other documents, as may be prescribed by the Central Government.

S. 23. Renewal Licence

An application for renewal of a licence shall be-

(a) in such form;

(b) accompanied by such fees, not exceeding five thousand rupees,

as may be prescribed by the Central Government and shall be made not less than forty-five days before the date of expiry of the period of validity of the licence;

Provided that an application for the renewal of the licence made after the expiry of the licence may be entertained on payment of such late fee, not exceeding five hundred rupees, as may be prescribed.

S. 24. Procedure for grant or rejection of Licence

The Controller may, on receipt of an application under sub-section (1) of section 21, after considering the documents accompanying the application and such other factors, as he deems fit, grant the licence or reject the application:

Provided that no application shall be rejected under this section unless the applicant has been given a reasonable opportunity of presenting his case.

S. 25. Suspension of Licence

(1) The Controller may, if he is satisfied after making such inquiry, as he may think fit, that a Certifying Authority has,-

(a) made a statement in, or in relation to, the application for the issue or renewal of the licence, which is incorrect or false in material particulars;

(b) failed to comply with the terms and conditions subject to which the licence was granted;

(c) failed to maintain the standards specified under clause (b) of sub-section (2) of section 20;

(d) has contravened any provisions of this Act, rule, regulation or order made thereunder, revoke the licence :

Provided that no licence shall be revoked unless the Certifying Authority has been given a reasonable opportunity of showing cause against the proposed revocation.

(2) The Controller may, if he has reasonable cause to believe that there is any ground for revoking a licence under sub-section (1), by order suspend such licence pending the completion of any inquiry ordered by him:

Provided that no licence shall be suspended for a period exceeding ten days unless the Certifying Authority has been given a reasonable opportunity of showing cause against the proposed suspension.

(3) No Certifying Authority whose licence has been suspended shall issue any Digital Signature Certificate during such suspension.

S. 26. Notice of suspension or revocation of licence

(1) Where the licence of the Certifying Authority is suspended or revoked, the Controller shall publish notice of such suspension or revocation, as the case may be, in the data-base maintained by him.

(2) Where one or more repositories are specified, the Controller shall publish notices of such suspension or revocation, as the case may be, in all such repositories.

Provided that the data-base containing the notice of such suspension or revocation, as the case may be, shall be made available through a web site which shall be accessible round the clock :

Provided further that the Controller may, if he considers necessary, publicise the contents of data-base in such electronic or other media, as he may consider appropriate.

S. 27. Power to delegate

The Controller may, in writing, authorise the Deputy Controller, Assistant Controller or any officer to exercise any of the powers of the Controller under this Chapter.

S. 28. Power to investigate contraventions

(1) The Controller or any officer authorised by him in this behalf shall take up for investigation any contravention of the provisions of this Act, rules or regulations made thereunder.

(2) The Controller or any officer authorised by him in this behalf shall exercise the like powers which are conferred on income-tax authorities under Chapter XIII of the Income-tax Act, 1961 (43 of 1961) and shall exercise such powers, subject to such limitations laid down under that Act.

S. 29. Access to computers and data

(1) Without prejudice to the provisions of sub-section (1) of section 69, the Controller or any person authorised by him shall, if he has reasonable cause to suspect that any contravention of the provisions of this Act, rules or regulations made thereunder has been committed, have access to any computer system, any apparatus, data or any other material connected with such system, for the purpose of searching or causing a search to be made for obtaining any information or data contained in or available to such computer system.

(2) For the purposes of sub-section (1), the Controller or any person authorised by him may, by order, direct any person incharge of, or otherwise concerned with the operation of, the computer system, data apparatus or material, to provide him with such reasonable technical and other assistance as he may consider necessary.

S. 30. Certifying Authority to follow certain procedures

Every Certifying Authority shall-

(a) make use of hardware, software, and procedures that are secure from intrusion and misuse;

(b) provide a reasonable level of reliability in its services which are reasonably suited to the performance of intended functions;

(c) adhere to security procedures to ensure that the secrecy and privacy of the digital signatures are assured; and

(d) observe such other standards as may be specified by regulations.

S. 31. Certifying Authority to ensure compliance of the Act, etc.

Every Certifying Authority shall ensure that every person employed or oth-

erwise engaged by it complies, in the course of his employment or engagement, with the provisions of this Act, rules, regulations and orders made thereunder.

S. 32. Display of licence

Every Certifying Authority shall display its licence at a conspicuous place of the premises in which it carries on its business.

S. 33 Surrender of licence

(1) Every Certifying Authority whose licence is suspended or revoked shall immediately after such suspension or revocation, surrender the licence to the Controller.

(2) Where any Certifying Authority facts to surrender a licence under sub-section (1), the person is whose favour a licence is issued, shall be guilty of an offence and shall be punished with imprisonment which may extend up to six months or a fine which may extend up to ten thousand rupees or with both.

S. 34. Disclosure

(1) Every Certifying Authority shall disclose in the manner specified by regulations-

(a) its Digital Signature Certificate which contains the public key corresponding to the private key used by that Certifying Authority to digitally sign another Digital Signature Certificate;

(b) any certification practice statement relevant thereto;

(c) notice of the revocation or suspension of its Certifying Authority certificate, if any; and

(d) any other fact that materially and adversely affects either the reliability of a Digital Signature Certificate, which that Authority has issued, or the Authority's ability to perform its services.

(2) Where in the opinion of the Certifying Authority any event has occurred or any situation has arisen which may materially and adversely affect the integrity of its computer system or the conditions subject to which a Digital Signature Certificate was granted, then, the Certifying Authority shall-

(a) use reasonable efforts to notify any person who is likely to be affected by that occurrence; or

(b) act in accordance with the procedure specified in its certification practice statement to deal with such event or situation.

CHAPTER VII

Digital Signature Certificates

S. 35. Certifying Authority to issue Digital Signature Certificate

(1) Any person may make an application to the Certifying Authority for the issue of a Digital Signature Certificate in such form as may be prescribed by the Central Government.

(2) Every such application shall be accompanied by such fee not exceeding twenty-five thousand rupees as may be prescribed by the Central Government, to be paid to the Certifying Authority:

Provided that while prescribing fees under sub-section (2) different fees may be prescribed for different classes of applicants.

(3) Every such application shall be accompanied by a certification practice statement or where there is no such statement, a statement containing such particulars, as may be specified by regulations.

(4) On receipt of an application under sub-section (1), the Certifying Authority may, after consideration of the certification practice statement or the other statement under sub-section (3) and after making such enquiries as it may deem fit, grant the Digital Signature Certificate or for reasons to be recorded in writing, reject the application:

Provided that no Digital Signature Certificate shall be granted unless the Certifying Authority is satisfied that-

(a) the applicant holds the private key corresponding to the public key to be listed in the Digital Signature Certificate;

(b) the applicant holds a private key, which is capable of creating a digital signature;

(c) the public key to be listed in the certificate can be used to verify a digital signature affixed by the private key held by the applicant.

Provided further that no application shall be rejected unless the applicant has been given a reasonable opportunity of showing cause against the proposed rejection.

S. 36. Representations upon issuance of Digital Signature Certificate

A Certifying Authority while issuing a Digital Signature Certificate shall certify that -

(a) it has complied with the provisions of this Act and the rules and regulations made thereunder;

(b) it has published the Digital Signature Certificate or otherwise made it available to such person relying on it and the subscriber has accepted it;

(c) the subscriber holds the private key corresponding to the public key, listed in the Digital Signature Certificate;

(d) the subscriber's public key and private key constitute a functioning key pair;

(e) the information contained in the Digital Signature Certificate is accurate; and

(f) it has no knowledge of any material fact, which if it had been

included in the Digital Signature Certificate would adversely affect the reliability of the representations made in clauses (a) to (d).

S. 37. Suspension of Digital Signature Certificate

(1) Subject to the provisions of sub-section (2), the Certifying Authority which has issued a Digital Signature Certificate may suspend such Digital Signature Certificate,-

(a) on receipt of a request to that effect from -

(i) the subscriber listed in the Digital Signature Certificate; or

(ii) any person duly authorised to act on behalf of that subscriber;

(b) if it is of opinion that the Digital Signature Certificate should be suspended in public interest.

(2) A Digital Signature Certificate shall not be suspended for a period exceeding fifteen days unless the subscriber has been given an opportunity of being heard in the matter.

(3) On suspension of a Digital Signature Certificate under this section, the Certifying Authority shall communicate the same to the subscriber.

S. 38. Revocation of Digital Signature Certificate

(1) A Certifying Authority may revoke a Digital Signature Certificate issued by it-

(a) where the subscriber or any other person authorised by him makes a request to that effect; or

(b) upon the death of the subscriber; or

(c) upon the dissolution of the firm or winding up of the company where the subscriber is a firm or a company.

(2) Subject to the provisions of sub-section (3) and without prejudice to the provisions of sub-section (1), a Certifying Authority may revoke a Digital Signature Certificate which has been issued by it at any time, if it is of opinion that-

(a) a material fact represented in the Digital Signature Certificate is false or has been concealed;

(b) a requirement for issuance of the Digital Signature Certificate was not satisfied;

(c) the Certifying Authority's private key or security system was compromised in a manner materially affecting the Digital Signature Certificate's reliability;

(d) the subscriber has been declared insolvent or dead or where a subscriber is a firm or a company, which has been dissolved, wound-up or otherwise ceased to exist.

(3) A Digital Signature Certificate shall not be revoked unless the subscriber has been given an opportunity of being heard in the matter.

(4) On revocation of a Digital Signature Certificate under this section, the Certifying Authority shall communicate the same to the subscriber.

S. 39. Notice of suspension or revocation

(1) Where a Digital Signature Certificate is suspended or revoked under section 37 or section 38, the Certifying Authority shall publish a notice of such suspension or revocation, as the case may be, in the repository specified in the Digital Signature Certificate for publication of such notice.

(2) Where one or more repositories are specified, the Certifying Authority shall publish notices of such suspension or revocation, as the case may be, in all such repositories.

CHAPTER VIII

Duties of Subscribers

S. 40. Generating key pair

Where any Digital Signature Certificate, the public key of which corresponds to the private key of that subscriber which is to be listed in the Digital Signature Certificate has been accepted by a subscriber, then, the subscriber shall generate the key pair by applying the security procedure.

S. 41. Acceptance of Digital Signature Certificate

(1) A subscriber shall be deemed to have accepted a Digital Signature Certificate if he publishes or authorises the publication of a Digital Signature Certificate-

(a) to one or more persons;

(b) in a repository, or

otherwise demonstrates his approval of the Digital Signature Certificate in any manner.

(2) By accepting a Digital Signature Certificate the subscriber certifies to all who reasonably rely on the information contained in the Digital Signature Certificate that -

(a) the subscriber holds the private key corresponding to the public key listed in the Digital Signature Certificate and is entitled to hold the same;

(b) all representations made by the subscriber to the Certifying Authority and all material relevant to the information contained in the Digital Signature Certificate are true;

(c) all information in the Digital Signature Certificate that is within the knowledge of the subscriber is true.

S. 42. Control of private key

(1) Every subscriber shall exercise reasonable care to retain control of the private key corresponding to the public key listed in his Digital Signature Certifi-

cate and take all steps to prevent its disclosure to a person not authorised to affix the digital signature of the subscriber.

(2) If the private key corresponding to the public key listed in the Digital Signature Certificate has been compromised, then, the subscriber shall communicate the same without any delay to the Certifying Authority in such manner as may be specified by the regulations.

Explanation.- For the removal of doubts, it is hereby declared that the subscriber shall be liable till he has informed the Certifying Authority that the private key has been compromised.

CHAPTER IX

Penalties And Adjudication

S. 43. Penalty for damage to computer, computer system, etc.

If any person without permission of the owner or any other person who is incharge of a computer, computer system or computer network,-

(a) accesses or secures access to such computer, computer system or computer network;

(b) downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium;

(c) introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;

(d) damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network;

(e) disrupts or causes disruption of any computer, computer system or computer network;

(f) denies or causes the denial of access to any person authorised to access any computer, computer system or computer network by any means;

(g) provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made thereunder ;

(h) charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system, or computer network,

he shall be liable to pay damages by way of compensation not exceeding one crore rupees to the person so affected.

Explanation.- For the purposes of this section,-

(i) "computer contaminant" means any set of computer instructions that are designed-

(a) to modify, destroy, record, transmit data or programme residing within a computer, computer system or computer network; or

(b) by any means to usurp the normal operation of the computer, computer system, or computer network;

(ii) "computer database" means a representation of information, knowledge, facts, concepts or instructions in text, image, audio, video that are being prepared or have been prepared in a formalised manner or have been produced by a computer, computer system or computer network and are intended for use in a computer, computer system or computer network;

(iii) "computer virus" means any computer instruction, information, data or programme that destroys, damages, degrades or adversely affects the performance of a computer resource or attaches itself to another computer resource and operates when a programme, data or instruction is executed or some other event takes place in that computer resource;

(iv) "damage" means to destroy, alter, delete, add, modify or rearrange any computer resource by any means.

S. 44. Penalty for failure to furnish information, return, etc.

If any person who is required under this Act or any rules or regulations made thereunder to-

(a) furnish any document, return or report to the Controller or the Certifying Authority fails to furnish the same, he shall be liable to a penalty not exceeding one lakh and fifty thousand rupees for each such failure;

(b) file any return or furnish any information, books or other documents within the time specified therefor in the regulations fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues;

(c) maintain books of account or records fails to maintain the same, he shall be liable to a penalty not exceeding ten thousand rupees for every day during which the failure continues.

S. 45. Residuary penalty

Whoever contravenes any rules or regulations made under this Act, for the contravention of which no penalty has been separately provided, shall be liable to pay a compensation not exceeding twenty-five thousand rupees to the person affected by such contravention or a penalty not exceeding twenty-five thousand rupees.

S. 46. Power to adjudicate

(1) For the purpose of adjudging under this Chapter whether any person has committed a contravention of any of the provisions of this Act or of any rule, regulation, direction or order made thereunder the Central Government shall, subject to the provisions of sub-section (3), appoint any officer not below the rank of a Director to the Government of India or an equivalent officer of a State Government to be an adjudicating officer for holding an inquiry in the manner prescribed by the Central Government.

(2) The adjudicating officer shall, after giving the person referred to in sub-section (1) a reasonable opportunity for making representation in the matter and if, on such inquiry, he is satisfied that the person has committed the contravention, he may impose such penalty or award such compensation as he thinks fit in accordance with the provisions of that section.

(3) No person shall be appointed as an adjudicating officer unless he possesses such experience in the field of Information Technology and legal or judicial experience as may be prescribed by the Central Government.

(4) Where more than one adjudicating officers are appointed, the Central Government shall specify by order the matters and places with respect to which such officers shall exercise their jurisdiction.

(5) Every adjudicating officer shall have the powers of a civil court which are conferred on the Cyber Appellate Tribunal under sub-section (2) of section 58, and-

(a) all proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 (45 of 1860) of the Indian Penal Code;

(b) shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

S. 47. Factors to be taken into account by the adjudicating officer

While adjudging the quantum of compensation under this Chapter, the adjudicating officer shall have due regard to the following factors, namely-

(a) the amount of gain of unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to any person as a result of the default;

(c) the repetitive nature of the default.

CHAPTER X

The Cyber Regulations Appellate Tribunal

S. 48. Establishment of Cyber Appellate Tribunal

(1) The Central Government shall, by notification, establish one or more appellate tribunals to be known as the Cyber Regulations Appellate Tribunal.

(2) The Central Government shall also specify, in the notification referred to in sub-section (1), the matters and places in relation to which the Cyber Appellate Tribunal may exercise jurisdiction.

S. 49. Composition of Cyber Appellate Tribunal

A Cyber Appellate Tribunal shall consist of one person only (hereinafter referred to as the Presiding Officer of the Cyber Appellate Tribunal) to be appointed, by notification, by the Central Government.

S. 50. Qualifications for appointment as Presiding Officer of the Cyber Appellate Tribunal

A person shall not be qualified for appointment as the Presiding Officer of a Cyber Appellate Tribunal unless he-

(a) is, or has been, or is qualified to be, a Judge of a High Court; or

(b) is, or has been a member of the Indian Legal Service and is holding or has held a post in Grade I of that Service for at least three years.

S.51. Term of office

The Presiding Officer of a Cyber Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years.

S.52. Salary, allowances and other terms and conditions of service of Presiding Officer

The salary and allowances payable to, and the other terms and conditions of service including pension, gratuity and other retirement benefits of, the Presiding Officer of a Cyber Appellate Tribunal shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Presiding Officer shall be varied to his disadvantage after appointment.

S. 53. Filling up of vacancies

If, for reason other than temporary absence, any vacancy occurs in the office of the Presiding Officer of a Cyber Appellate Tribunal, then the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Cyber Appellate Tribunal from the stage at which the vacancy is filled.

S. 54. Resignation and removal

(1) The Presiding Officer of Cyber Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the said Presiding Officer shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) The Presiding Officer of a Cyber Appellate Tribunal shall not be removed from his office except by an order by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which the Presiding Officer concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the aforesaid Presiding Officer.

S. 55. Orders constituting Appellate Tribunal to be final and not to invalidate its proceedings

No order of the Central Government appointing any person as the Presiding Officer of a Cyber Appellate Tribunal shall be called in question in any manner and no act or proceeding before a Cyber Appellate Tribunal shall be called in question in any manner on the ground merely of any defect in the constitution of a Cyber Appellate Tribunal.

S. 56. Staff of the Cyber Appellate Tribunal

(1) The Central Government shall provide the Cyber Appellate Tribunal with such officers and employees as that Government may think fit.

(2) The officers and employees of the Cyber Appellate Tribunal shall discharge their functions under general superintendence of the Presiding Officer.

(3) The salaries and allowances and other conditions of service of the officers and employees of the Cyber Appellate Tribunal shall be such as may be prescribed by the Central Government.

S. 57. Appeal to Cyber Appellate Tribunal

(1) Save as provided in sub-section (2), any person aggrieved by an order made by Controller or an adjudicating officer under this Act may prefer an appeal to a Cyber Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Cyber Appellate Tribunal from an order made by an adjudicating officer with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Controller or the adjudicating officer is received by the person aggrieved and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Cyber Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Cyber Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Cyber Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned controller or adjudicating officer.

(6) The appeal filed before the Cyber Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

S. 58. Procedure and powers of the Cyber Appellate Tribunal

(1) The Cyber Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Cyber Appellate Tribunal shall have powers to regulate its own procedure including the place at which it shall have its sittings.

(2) The Cyber Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely :-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents or other electronic records;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it ex parte;

(g) any other matter which may be prescribed.

(3) Every proceeding before the Cyber Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code and the Cyber Appellate Tribunal shall be deemed to be a civil Court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

S. 59. Right to legal representation

The appellant may either appear in person or authorise one or more legal practitioners or any of its officers to present his or its case before the Cyber Appellate Tribunal.

S. 60. Limitation

The provisions of the Limitation Act, 1963 (36 of 1963), shall, as far as may be, apply to an appeal made to the Cyber Appellate Tribunal.

S. 61. Civil court not to have jurisdiction

No court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or the Cyber Appellate Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

S. 62. Appeal to High court

Any person aggrieved by any decision or order of the Cyber Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Cyber Appellate Tribunal to him on any question of fact or law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

S. 63. Compounding of contraventions

(1) Any contravention under this Chapter may, either before or after the institution of adjudication proceedings, be compounded by the Controller or such other officer as may be specially authorised by him in this behalf or by the adjudicating officer, as the case may be, subject to such conditions as the Controller or such other officer or the adjudicating officer may specify:

Provided that such sum shall not, in any case, exceed the maximum amount of the penalty which may be imposed under this Act for the contravention so compounded.

(2) Nothing in sub-section (1) shall apply to a person who commits the same or similar contravention within a period of three years from the date on which the first contravention, committed by him, was compounded.

Explanation,- For the purposes of this sub-section, any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.

(3) Where any contravention has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the person guilty of such contravention in respect of the contravention so compounded.

S. 64. Recovery of penalty

A penalty imposed under this Act, if it is not paid, shall be recovered as an arrear of land revenue and the licence or the Digital Signature Certificate, as the case may be, shall be suspended till the penalty is paid.

CHAPTER XI
OFFENCES

S. 65. Tampering with computer source documents

Whoever Knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy or alter any computer source code used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.

Explanation.- For the purposes of this section, "computer source code" means the listing of programmes, computer Commands, design and layout and programme analysis of computer resource in any form.

S. 66. Hacking with computer system

(1) Whoever with the intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or any person destroys or deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means, commits hacking.

(2) Whoever commits hacking shall be punished with imprisonment up to three years, or with fine which may extend upto two lakh rupees, or with both.

S. 67. Publishing of information which is obscene in electronic form

Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to two lakhs rupees.

S. 68. Power of the Controller to give directions

(1) The Controller may, by order, direct a Certifying Authority or any employee of such Authority to take such measures or cease carrying on such activities as specified in the order if those are necessary to ensure compliance with the provisions of this Act, rules or any regulations made thereunder.

(2) Any person who fails to comply with any order under sub-section (1) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding two lakh rupees or to both.

S. 69. Directions of Controller to a subscriber to extend facilities to decrypt information

(1) If the Controller is satisfied that it is necessary or expedient so to do in the interest of the sovereignty or integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence, for reasons to be recorded in writing, by order, direct any agency of the Government to intercept any information transmitted through any computer resource.

(2) The subscriber or any person incharge of the computer resource shall, when called upon by any agency which has been directed under sub-section (1), extend all facilities and technical assistance to decrypt the information.

(3) The subscriber or any person who fails to assist the agency referred to in sub-section (2) shall be punished with an imprisonment for a term which may extend to seven years.

S. 70. Protected system

(1) The appropriate Government may, by notification in the Official Gazette, declare that any computer, computer system or computer network to be a protected system.

(2) The appropriate Government may, by order in writing, authorise the persons who are authorised to access protected systems notified under sub-section (1).

(3) Any person who secures access or attempts to secure access to a protected system in contravention of the provisions of this section shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

S. 71. Penalty for misrepresentation

Whoever makes any misrepresentation to, or suppresses any material fact from, the Controller or the Certifying Authority for obtaining any licence or Digital Signature Certificate, as the case may be, shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

S. 72. Penalty for breach of confidentiality and privacy

Save as otherwise provided in this Act or any other law for the time being in force, any person who, in pursuant of any of the powers conferred under this Act, rules or regulations made thereunder, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to any other person shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

S. 73. Penalty for publishing Digital Signature Certificate false in certain particulars

(1) No person shall publish a Digital Signature Certificate or otherwise make it available to any other person with the knowledge that -

(a) the Certifying Authority listed in the certificate has not issued it; or

(b) the subscriber listed in the certificate has not accepted it; or

(c) the certificate has been revoked or suspended.

unless such publication is for the purpose of verifying a digital signature created prior to such suspension or revocation.

(2) Any person who contravenes the provisions of sub-section (1) shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

S. 74. Publication for fraudulent purpose

Whoever knowingly creates, publishes or otherwise makes available a Digital Signature Certificate for any fraudulent or unlawful purpose shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

S. 75. Act to apply for offences or contravention committed outside India

(1) Subject to the provisions of sub-section (2), the provisions of this Act shall apply also to any offence or contravention committed outside India by any person irrespective of his nationality.

(2) For the purposes of sub-section (1), this Act shall apply to an offence or contravention committed outside India by any person if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India.

S. 76. Confiscation

Any computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto, in respect of which any provision of this Act, rules, orders or regulations made thereunder has been or is being contravened, shall be liable to confiscation.

Provided that where it is established to the satisfaction of the court adjudicating the confiscation that the person in whose possession, power or control of any such computer, computer system, floppies, compact disks, tape drives or any other accessories relating thereto is found is not responsible for the contravention of the provisions of this Act, rules, orders or regulations made thereunder, the court may, instead of making an order for confiscation of such computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto , make such other order authorised by this Act against the person contravening of the provisions of this Act, rules, orders or regulations made thereunder as it may think fit.

S. 77. Penalties or confiscation not to interfere with other punishments

No penalty imposed or confiscation made under this Act shall prevent the imposition of any other punishment to which the person affected thereby is liable under any other law for the time being in force.

S. 78. Power to investigate offences

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a police officer not below the rank of Deputy Superintendent of Police shall investigate any offence under this Act.

CHAPTER XII

Network Service Providers Not To Be Liable In Certain Cases

S. 79. Network service providers not to be liable in certain cases

For the removal of doubts, it is hereby declared that no person providing any service as a network service provider shall be liable under this Act, rules or regulations made thereunder for any third party information or data made available by him if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention.

Explanation.- For the purposes of this section,-

(a) "network service provider" means an intermediary;

(b) "third party information" means any information dealt with by a network service provider in his capacity as an intermediary.

CHAPTER XIII

MISCELLANEOUS

S. 80. Power of police officer and other officers to enter, search, etc.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any police officer, not below the rank of a Deputy Superintendent of Police, or any other offcer of the Central Government or a State Government authorised by the Central Government in this behalf may enter any public place and search and arrest without warrant any person found therein who is reasonably suspected or having committed or of committing or of being about to commit any offence under this Act.

Explanation.- For the purposes of this sub-section, the expression "public place" includes any public conveyance, any hotel, any shop or any other place intended for use by, or accessible to the public.

(2) Where any person is arrested under sub-section (1) by an officer other than a police officer, such officer shall, without unnecessary delay, take or send the person arrested before a magistrate having jurisdiction in the case or before the officer- in-charge of a police station.

(3) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall, subject to the, provisions of this section, apply, so far as may be, in relation to any entry, search or arrest, made under this section.

S. 81. Act to have overriding effect

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

S. 82. Controller, Deputy Controller and Assistant Controllers to be public servants

The Presiding Officer and other officers and employees of a Cyber Appellate Tribunal, the Controller, the Deputy Controller and the Assistant Controllers shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code 45 of 1860.

S. 83. Power to give directions

The Central Government may give directions to any State Government as to the carrying into execution in the State of any of the provisions of this Act or of any rule, regulation or order made thereunder.

S. 84. Protection of action taken in good faith

No suit, prosecution or other legal proceeding shall lie against the Central Government, the State Government, the Controller or any person acting on behalf of him, the Presiding Officer, adjudicating officers and the staff of the Cyber Appellate Tribunal for anything which is in good faith done or intended to be done in pursuance of this Act or any rule, regulation or order made thereunder.

S. 85. Offences by companies

(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of business of the company as well as the company, shall be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation,- For the purposes of this section,-

(i) "company" means any body corporate and includes a firm or other association of individuals; and

(ii) "director", in relation to a firm, means a partner in the firm.

S. 86. Removal of difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

S. 87. Power of Central Government to make rules

(1) The Central Government may, by notification in the Official Gazette and in the Electronic Gazette make rules to carry out the provisions of this Act.

In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-

(a) the manner in which any information or matter may be authenticated by means of digital signature under section 5;

(b) the electronic form in which filing, issue, grant or payment shall be effected under sub-section (1) of section 6;

(c) the manner and format in which electronic records shall be filed, or issued and the method of payment under sub-section (2) of section 6;

(d) the matters relating to the type of digital signature, manner and format in which it may be affixed under section 10;

(e) the security procedure for the purpose of creating secure electronic record and secure digital signature under section 16;

(f) the qualifications, experience and terms and conditions of service of Controller, Deputy Controllers and Assistant Controllers under section 17;

(g) other standards to be observed by the Controller under clause (b) of subsection (2) of section 20;

(h) the requirements which an applicant must fulfil under sub-section (2) of section 21;

(i) the period of validity of licence granted under clause (a) of sub-section (3) of section 21;

(j) the form in which an application for licence may be made under sub-section (1) of section 22;

(k) the amount of fees payable under clause (c) of sub-section (2) of section 22;

(l) such other documents which shall accompany an application for licence under clause (d) of sub-section (2) of section 22;

(m) the form and the fee for renewal of a licence and the fee payable thereof under section 23;

(n) the form in which application for issue of a Digital Signature Certificate may be made under sub-section (1) of section 35;

(o) the fee to be paid to the Certifying Authority for issue of a Digital Signature Certificate under sub-section (2) of section 35;

(p) the manner in which the adjudicating officer shall hold inquiry under sub-section (1) of section 46;

(q) the qualification and experience which the adjudicating officer shall possess under sub-section (3) of section 46;

(r) the salary, allowances and the other terms and conditions of service of the Presiding Officer under section 52;

(s) the procedure for investigation of misbehaviour or incapacity of the Presiding Officer under sub-section (3) of section 54;

(t) the salary and allowances and other conditions of service of other officers and employees under sub section (3) of section 56;

(u) the form in which appeal may be filed and the fee thereof under sub section (3) of section 57;

(v) any other power of a civil court required to be prescribed under clause(g) of sub-section (2) of section 58; and

(w) any other matter which is required to be, or may be, prescribed.

(3) Every notification made by the Central Government under clause (f) of sub-section (4) of section 1 and every rule made by it shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or the rule or both Houses agree that the notification or the rule should not be made, the notification or the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.

S. 88. Constitution of Advisory Committee

(1) The Central Government shall, as soon as may be after the commencement of this Act, constitute a Committee called the Cyber Regulations Advisory Committee.

(2) The Cyber Regulations Advisory Committee shall consist of a Chairperson and such number of other official and non-official members representing the interests principally affected or having special knowledge of the subject-matter as the Central Government may deem fit.

(3) The Cyber Regulations Advisory Committee shall advise-

(a) the Central Government either generally as regards any rules or for any other purpose connected with this Act;

(b) the Controller in framing the regulations under this Act.

(4) There shall be paid to the non-official members of such Committee such travelling and other allowances as the Central Government may fix.

S. 89. Power of Controller to make regulations

(1) The Controller may, after consultation with the Cyber Regulations Advisory Committee and with the previous approval of the Central Government, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) the particulars relating to maintenance of data-base containing the disclosure record of every Certifying Authority under clause (m) of section 18;

(b) the conditions and restrictions subject to which the Controller may recognise any foreign Certifying Authority under sub-section (1) of section 19;

(c) the terms and conditions subject to which a licence may be granted under clause (c) of sub-section (3) of section 21;

(d) other standards to be observed by a Certifying Authority under clause (d) of section 30;

(e) the manner in which the Certifying Authority shall disclose the matters specified in sub-section (1) of section 34;

(f) the particulars of statement which shall accompany an application under sub-section (3) of section 35;

(g) the manner in which the subscriber shall communicate the compromise of private key to the Certifying Authority under sub-section (2) of section 42.

(3) Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

S.90. Power of state Government to make rules

(1) The State Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-

(a) the electronic form in which filing, issue, grant receipt or payment shall be effected under sub-section (1) of section 6;

(b) for matters specified in sub-section (2) of section 6;

(c) any other matter which is required to be provided by rules by the State Government.

(3) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

S. 91. Amendment of Act 45 of 1860

The Indian Penal Code shall be amended in the manner specified in the First Schedule to this Act.

S. 92. Amendment of Act 1 of 1872

The Indian Evidence Act, 1872 shall be amended in the manner specified in the Second Schedule to this Act.

S. 93. Amendment of Act 18 of 1891

The Bankers' Books Evidence Act, 1891 shall be amended in the manner specified in the Third Schedule to this Act.

S. 94. Amendment of Act 2 of 1934

The Reserve Bank of India Act, 1934 shall be amended in the manner specified in the Fourth Schedule to this Act.

THE FIRST SCHEDULE

(see section 91)

AMENDMENTS TO THE INDIAN PENAL CODE

(45 of 1860)

Electronic record

1. After section 29, the following section shall be inserted, namely :-

"29A. The words "electronic record" shall have the meaning assigned to them in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000."

2. To section 167, for the words "such public servant, charged with the preparation or translation of any document, frames or translates that document", the words "such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record" shall be substituted.

3. In section 172, for the words "produce a document in a Court of Justice", the words "produce a document or an electronic record in a Court of Justice" shall be substituted.

4. In section 173, for the words "to produce a document in a Court of Justice", the words "to produce a document or electronic record in a Court of Justice" shall be substituted.

5. In section 175, for the word "document" at both the places where it occurs, the words "document or electronic record" shall be substituted.

6. In section 192, for the words "makes any false entry in any book or record, or any document containing a false statement", the words "makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement" shall be substituted.

7. In section 204, for the word "document" at both the places where it occurs, the words "document or electronic record" shall be substituted.

8. In section 463, for the words, "Whoever makes any false documents or part of a document with intent to cause damage or injury", the words "Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury" shall be substituted.

9. In section 464,-

(a) for the portion beginning with the words "A person is said to make a false document" and ending with the words "by reason of deception practised upon him, he does not know the contents of the document or the nature of the alteration", file following shall be substituted, namely:-

"A person is said to make a false document or false electronic record-
First- Who dishonestly or fraudulently-

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature,

with the intention of causing it to be believed that such document or a part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly- Who, without lawful authority, dishonesity of fraudulently, by cancelling or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other pserson, whether such person be living or dead at the time of such alteiration; or

Thirdly- Who dishonestly or fraudulently causes any person to sign, seal,