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अपनी बात अपनों से

निदेशक, न्यायिक अधिकारी प्रशिक्षण संस्थान का प्रभार दिनांक 13 मई 1996 को ग्रहण करने के पश्चात संस्था की पत्रिका का यह अंक आप के हाथों में देते हुए प्रसन्नता अनुभव हो रही है। इस प्रत्रिका के माध्यम से समय–समय पर आपसे विचारों का आदान प्रदान हो सकेगा। प्रसन्नता और भी होगी यदि आप भी अपने सारगर्भित विचार एवं चिंतन इस प्रकाशन के माध्यम से प्रस्तुत कर सकें।
'वादे–वादे जायते तत्वबोधे।'

कार्य–संस्कृति व चेतना का अवसर उच्च न्यायालय द्वारा हम सब को प्रदान किया है उसे सतत् गतिशील एवं अक्षुण्य बनाकर रखा जाना है। जहाँ तक सेवा शर्तों का प्रश्न है संभवतः यह ऐसा समय है जब हम गर्व से कह सकते हैं कि न्यायिक कार्य के निराकरण के लिए सारभूत रूप से सुधार हुआ है तथा नया वातावरण निर्मित हुआ है। दायित्व हमारे पर है कि हम एक चित्त से, लगन से, परिश्रम से समर्पण भाव से तथा निष्ठा से कार्य करें। यदि हम ऐसा करने में असफल होते हैं तो दोष देने के लिए हमारी उंगली केवल हमारी ओर ही उठनी चाहिये।

श्री मद् भगवद्गीता के अध्याय 5/14 में कहा है कि

न कर्तृत्वं न कर्माणि लोकस्य सृजति प्रभुः।
न कर्मफल संयोगं स्वभावस्तु प्रर्वतते।।

ईश्वर मनुष्य के लिए न तो कर्तापन रचता है, न कर्मों की रचना करता है, ना ही कर्मफल की रचना करता है। यह सब मनुष्य करता है और उसका फल भी वही भोगता है। 'जैसा बोओगे वैसा पाओगे' वाली स्थिति से हम मुक्त नहीं हैं।

विषय कामना (भौतिक सुख) में आसक्ति उत्पन्न होने पर मनुष्य को संतोष नहीं मिलता। ऐसी कामना से ज्ञान ढंक जाता है। अधिकाधिक अधिकारों की इच्छा, सुख सुविधाओं को जुटाने की व्यस्तता में मानव कर्त्तव्य की ओर ध्यान ही नहीं देता है लेकिन ऐसी कामनाओं की पूर्ति व तृप्ति कभी भी पूर्ण नहीं होती है। मनुष्य दूषित चक्र में फँस जाता है। अयोग्य व्यक्ति भी सुखद फलानुभूति चाहता है, लेकिन कर्म नहीं करना चाहता। इसलिये हमें सिर्फ कर्म–कर्त्तव्य का निर्वाह करना है।

भारतीय संस्कृति में कर्मयज्ञ, तप तथा दान का महत्व व्यक्ति, समाज व राष्ट्र के लिये बताया गया है। कर्मयज्ञ ऐसा यज्ञ है कि जैसे –जैसे हम कर्त्तव्य निर्वाह करते जायेंगे फल की ओर मनोवृत्ति का झुकाव समाप्त होता जायेगा। तप अर्थात तपस्या। कर्मयज्ञ तपस्या के बिना कभी नहीं होगा। सतत् रूप से हमें अपने कर्त्तव्य का निर्वाह करना है। कर्म के फलों का कारण नहीं बनना है। अर्थात सकाम कर्म नहीं करना है। कर्म करना तो अपने वश में है, अपने नियन्त्रण में है उसके लिये किसी की अनुमति लेने की आवश्यकता नहीं है। किस कर्म का फल कब, कितना मिलेगा, कैसा मिलेगा यह बात तो ईश्वर के अधीन है। वास्तव में हम जैसे–जैसे कर्म करते जायेंगे व उसकी ओर झुकाव होता जाएगा हमें संतोष मिलेगा तथा वही संतोष हमारे कर्म का त्वरित गति से अविलंब प्राप्त होने वाला फल है। एक अन्य पहलु है, त्याग का। क्या हम अपनी सेवा अवधि में केवल सुविधाएं जुटाने में समय को व्यतीत करते रहेंगे। सुबह से शाम केवल अधिकार प्राप्ति, पदीय सुख–सुविधाओं व पदीयेत्तर सुविधाओं की प्रप्ति हेतु उचित अनुचित जोड़तोड़ में समय को नष्ट करते रहेंगे। अर्थात हमारा चिंतन केवल शान–शौकत व अधिक अधिकारों से वेष्ठित होने तक सीमित है ? क्या यह आवश्यक है कि पड़ोसी के गले में सोने की चेन है तो हमारे गले में भी चेन होना चाहिये भले ही वह सुतली की ही क्यों न हो। हम यह कोशिश करें कि प्रतिसाल हम रूपये में एक पैसे की ही सीमा तक अपने स्वार्थों से मुक्त रहेंगे तब भी सुखमय जीवन व्यतित करने के लिए संतोष प्राप्त कर लेंगे।

ऐसा तब ही संभव है जब हमें जो कार्य करना है वह निर्धारित समय पर ही किया जाए, ऐसा व्रत–संकल्प धारण कर लें।

वाद प्रश्न, आरोप–विवरण, अभियुक्त कथन, आदेश तथा निर्णय समय पर क्यों तैयार नहीं हो सकते। वास्तव में इसमें हमारा ही दोष है। हमारे द्वारा संपन्न हाने वाले कार्य की फाईलें (प्रकरण) उसी दिन हमारे पास आ जानी चाहिये, जिस दिन हम तिथि का निर्धारण करते हैं। तिथि का निर्धारण, कार्य की मात्रा को ध्यान में रखकर करें। निर्णय व आदेशों को छोड़कर शेष कार्य के लिए हम कुछ लंबी दीर्घ तिथि का निर्धारण कर सकते हैं। समस्त संम्बन्धित प्रकरण हमारे बक्से में (पेटी में) आ जाने का लाभ ये होगा कि निर्धारित तिथि के पूर्व ही हमारा कार्य पूर्ण हो चुका होगा। समग्र रूप से अध्ययन करके हम काम करेंगे तो परिणाम यह होगा कि प्रकरणों पर हमारा नियन्त्रण होगा व परिणाम स्वरूप न्यायालयीन कार्य पर पूर्ण व प्रभावशाली नियन्त्रण बनेगा। घोड़े की लगाम जहाँ चालक के हाथों में हो चालक को लक्ष्य प्राप्ति में कोई व्यवधान नहीं होगा।

हम कल्पनाओं के आधार पर कोई निर्णय व निष्कर्ष न निकालें। स्मरण रहे कि आदेश, निर्णय, आरोपी कथन, आरोप–विवरण व वाद–प्रश्न न्यायाधीश को बनाना है व उसे ही बनाना चाहिये। बिल्ली को यह भ्रम होता है कि वह दूध पी रही हो तब कोई देख नहीं रहा है। ऐसा भ्रम उसे इस लिये होता है कि दूध पीते समय वह आंखें बंद कर लेती है। अतः यह ध्यान रहे कि ऐसा भ्रम किसी ओर से उत्पन्न होने नहीं देना है। जाग्रत् बने रहें। स्वामी विवेकानन्द की उक्ति समीचीन है कि 'Arise awake and stop not till the goal is reached' अर्थात उठो, जागो तथा तब तक आगे बढ़ते रहो जब तक कि लक्ष्य को प्राप्त न कर लें।

ईश्वर की असीम अनुकंपा से हमें न्यायिक अधिकारी के रूप में न्याय–दान करने का सौभाग्य प्राप्त हुआ है। पूर्व जन्म का पुण्य होगा अतः उसे हम बनाए रखें व वृद्धि करें। पराक्रम का अवसर है। जो, पराक्रम का अवसर उपस्थित होने पर विषाद ग्रस्त हो जाता है, तेज से रहित उस व्यक्ति से पुरूषार्थ नहीं होता है। अर्थात

'यो विषादं प्रसहते विक्रमे समुदस्थिते।
तेज सा तस्य हीनस्य पुरूषार्थी न सिद्यंति।।

हमें स्वयं में विश्वास जाग्रत् करना है व प्रकारान्तर से समाज एवं राष्ट्र के मन में हमारे न्यायदान के प्रति विश्वास जाग्रत् करना है। अतः हमारा एक ही लक्ष्य हो निष्काम कर्मयोग।

निकट भविष्य में जिला स्तरीय एक दिवसीय प्रशिक्षण शिविर लगाने हेतु योजना है। पूर्व में ऐसा शिविर जबलपुर में हो चुका है। वर्तमान में उन पायलेट (मार्गदर्शक) जिलों में शिविर लग सकते हैं जहाँ उक्त योजना नवम्बर 1994 से लागू है अर्थात् सिवनी, राजनांदगांव, गुना एवं रतलाम।

प्रशिक्षण संस्थान में भी साप्ताहिक शिविर लगना प्रारम्भ होंगे। निकट भविष्य में मूर्त रूप दिया जाना है। भविष्य में आप जिन प्रश्नों को पूछें उन प्रश्नों के साथ आपका सोच, चिंतन एवं आपकी जानकारी का खुलासा हो ताकि वैचारिक चिंतन व मंथन प्रभावी रूप से हो सके।

आप सब का सहयोग ही लक्ष्य प्राप्ति का आधार रहेगा।

समस्त शुभ कामनाओं सहित

आपका ही

पुरूषोत्तमविष्णु नामजोशी

Preparations for Inspections

R.B. Dixit
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Zone Jabalpur

1. Rule 565 to 573 Rules and Orders (Civil) and Rule 700 to 715 Rules and Orders (Criminal) provides annual inspection by District and Sessions Judges of his subordinate Courts. Subsequently the High Court also directed inspections of outlying stations by Additional District & Sessions Judge (by Senior in case of more than one) posted at that place and inspection of Judicial magistrate by Chief Judicial Magistrate of the District. After appointments of Hon'ble portfolio Judges of the High Court, annual inspections of all the courts by the High Court, also became a regular feature. However, it is realized that being over burdened with judicial work none of the above inspections are possible in minutest details and only selected work of a Judicial Officer could be seen. It is for this purpose that Four Inspecting District Judges have been appointed who will have no judicial work except making inspections all the time.

2. At present all previous directions of the High Court regarding inspections by District Judges, Additional District Judges and Chief Judicial Magistrate are in force and it has to be presumed that inspections of Inspecting Judges is in addition to it. It means that inspections of records, work and conduct of a Judicial Officer is a daily feature and they have to prepare themselves thoroughly in advance and should work hard and work sincerely. In case of detailed inspection those Judicial Officers who take easy methods to achieve their monthly target or adopt new tectics to short cut divices will be caught. Similarly malafide actions and proceedings can be cited as instances of laziness and even to the extent of corruption. Opinions about reputation will be collected and actions on such opinion will be initiated.

3. The detailed inspection will be a safe guard to honest hard and sincere workers and will certainly reward them in their future carrier in comparision of a lazy or dishonest man. New methods of inspections will also project the real image of judiciary in public eyes. The detailed inspection will immensely help Judicial Officer to sort out his defects and will receive direction in correct working. The detailed inspections

will also provide control over working of court staffs and various difficulties faced by them in common. High Court will be brought in direct and close touch with the working of each District Judicial administration and its problems and difficulties through Inspecting Judges who will be free to make frequent tours of courts lying within their Zones.

4. It is your whole working method which will be Judged and therefore, no carelessness of a particular case or class of cases can be avoided. A general habit of careful hard work, clean life and a good behaviour has to be adopted. Do not think yourself to be a paid servant alone and bear a moral responsibility of a great social and religious task entrusted to you by grace of God and try to fulfil it with all your might and legal resources at your command. Although you are heavily burdened with court's work but spare sometime for exercises of any kind which may suit you and keep yourself in good health. Safisfactory good performance also gives life blood to your soul and hard work is also in itself a great factor of good health and cheerful spirit.

5. Work before you is a God-sent and never try to disappoint 'Him' Whenever you feel a tedious job before you do not try to avoid it and go direct through it, you will finish it easily and successfuly. Reading habits of new rulings and latest developments in legal sphere is also necessary. Keeping a register of important notings categorywise is most essential which should be used at the time of writing judgements. Keeping a personal daily diary of your judicial work and important daily dak which needs your personal attention will help you in controlling your work and staff effectively.

6. You should keep all types of latest figures of pending cases every month in front of you on your working table, which will always remind you about their urgency. At least cases for evidence should be fixed by you and noted in your personal diary. Before starting work examine all files fixed for a day and fix-them in such an order that old and urgent matters should be taken first.

7. In no case the witnesses present on a particular day should go un-examined. In case of unavoidable circumstances those witness who were previously bound over should be examined first, then witnesses

in state cases and witnesses of old pending civil cases should be given preference. Have full control over your staff. Do not sign their order sheets or accounts blindly. Instruct them in advance as to how they should take up each work entrusted to them. Particularly when you are on leave clear cut instructions regarding adjournment dates in each type of cases should be given.

8. Do not forget to make monthly inspections of your staff in time and it should not be treated as a mere formality. This work should not be entrusted to staff members, Cases fixed for arguments and judgment should not be adjourned and judgements should not be reserved for more than 15 days from the date of close of evidence. When you deal with an old pending civil case first time please go through its previous proceedings and pleadings, issues (if framed) and see that no such lacuna left in the file which will subsequently cause delay in disposal. Interim applications are marked I.A. Nos. (if not already marked).

9. When you start proceedings in any previously pending criminal case first time, please see that charges were properly framed and material witnesses have been examined. It is seen that in most of the cases (and particularly those left on mercy of clerk concerned) order sheets are mechanically written such as process fee (talwana) not paid it should be paid within three days, and/or witnesses for prosecution not present, they be summoned or parties wants time to produce witnesses, in interest of justice time given etc. And unfortunately this process goes on for years together unless the case is put up before Presiding Officer or if parties insist to make some progress themselves. This is the fate of every old pending file. If a Presiding Officer is vigilent to see that such things will not happen in his court, he can very well control such working by giving suitable instruction to his staff and see that his instructions are followed correctly.

10. An order sheet should be legible and should give full impression of that day's progress and also as to what going to be done on the date fixed. Long dates in long pending cases should be avoided and in absence of Presiding Officer staff should also be clearly intructed not to give longer date than on the day when Presiding Officer is to resume his duty. Speak less and do not divulge your mind on merits of a case during hearing. Do not show anger on a point which is false or fabricated or does not suit you, and only express your opinion in a balanced language while writing final order on that point. Behave in

polite, gentle and dignified manner. Hate the sin but not the sinner.

11. Always write correct time of sitting and rising in the court in judicial diary. Always writing 11 AM and 5 PM means that you are not punctual in time. Give reasons of late sitting or early rising. Follow other instructions about Judicial Diary as given in Rule 10 (2) Rules & Orders (Criminal) and Rule 6(1) Rules & Orders (Civil). Cases over 2 ye should be entered in red-ink in judicial diary and should be marked so on the cover of each of such files. Try to follow Rule 133 Rules & Orders (Civil) in day to day examination of witnesses in attendance. Issues are to be framed by Judge himself and no proposed issued be invited from the parties. After framing issues attention of the parties should be invited for compliance of Rule 118 Rules and Order (Civil).

12. Mostly it is seen that in face of criminal cases, civil cases are not touched for days or months together. In the circumstances particular days may be fixed in a week exclusively for civil cases. In appellat courts the position of civil appeals or revisions is worse than the lower courts. In many appeals or revisions stay is granted without looking even that appeal or revision is not maintainable or not even arguable and it causes, great difficulties not only to parties but also to the Presiding Officers themselves.

13. In ihterlocutory matters or in urgent matters also unnecessary adjournments are granted and many of such cases are left at the mercy of the clerical staff. The proper way is that on every working day at least half an hour be fixed to hear urgent matters like stay, bail and injunction applications. In case of local inspection by Commissioner the points for investigation for Commisssioner should be drawn up by Judge himself. While granting injunctions guidelines given in Rules 270 to 273-A Rules & Orders (Civil) should be adhered to. Evidence should be recorded swiftly and properly and Presiding Officer should not allow irrelevant prolix and fishing cross examination. If documents are filed at late stage it may be allowed on application Under Order 13 Rule 2 C.P.C. after recording proper reasons. Admissions or denial of documents be recorded in Judge's hand.
14. Execution cases are also left at the mercy of the clerk concerned and no proper control is exercised by Presiding Officers in respect of their proper progress on every date.It is often seen that Presiding Officer never bother about compliance of their orders by subordinate staff or

other serving agency and they never take any action against such defaulting agencies or personnels. This amounts to lack of control and supervision over subordinate staff and will be seriously viewed. Officer-in-charge of a particular section never bother about their working, problems and inspections. This slur on their part will catch them in great difficulties and they should be vigilent enough as OIC of any office sections.

15. Signing account matters blindly is another blaim on judges in most of the cases. They should particularly understand thoroughly how fine and C.C.D account is maintained and then alone they will be able to apply proper checks. Malkhana is another hell in Court premises. It is because of remaining uninterested on the part of OIC Malkhana in disposing of properties as per Rules and also non co-operation of other staff and Magistrates that old properties in Malkhana piles up and at times becomes impossible to dispose it off. Court fees stamps are also not generally punched or cancelled nor their value is noted in Court Fees Register. Presiding Officer should see their compliance as per Rule 436 Rules & Orders (Civil) before record is consigned in record room. At many places disposed off records are not deposited in Record Room in time. The Presiding Officers should take written acknowledgements from clerk concerned at the begining of each month about deposit of last month's records.

16. And in the last, Judges have to face three main problems in smooth working of courts. First, non co-operation of members of Bar, non-service of processes and inefficient or mischievous staff. These difficulties can be over come if the judges are determined in their efforts. If after giving reasonable opportunities and justified adjousnments cases are closed, the members of Bar starts preparing cases accordingly. Regarding service of processes judges have to maintain their personal diary to note that when process fee is required to be paid, it is filed in time and processes are issued and sent to serving agency in time. Then serving agency can be pulled for its defaults and strict action is taken against them.
17. In dealing with the staff we have to understand their difficulties also and they are required to be helped and encouraged on good working. Inefficient staff requires to be taught like a student and co-ordinated. Mistakes of mischievous staff are to be collected and when there is enough evidence against them it should be sent to District Judge by D.O. and District Judges are to be appraised about their activities.

SUSPENSION OF SENTENCE : POWERS OF A TRIAL COURT

BY -P.V. NAMJOSHI.

Sec. 389 of the Cr. P.C. deals with the powers of the trial court to suspend the execution of sentence. Sec. 424 also deals with the powers of suspension of execution of sentence of imprisonment.

A question was put that if a Judicial Magistrate 1st class convicts an accused u/s 326 of the I.P.C. and is sentenced to imprisonment for less then 3 yers and if the accused was, at the trial, on bail, can the Magistrate suspend the sentence to enable the accused to prefer an appeal to the appellate court to bring stay from that court,

The main problem which was posed by the Magistrate was that according to him the Magistrate has no jurisdiction to accept bail in an offence u/s 326 of the I.P.C. and if the magistrate suspend the sentence the magistrate will have to order for the bail and that may go against the provisions of sec. 437 of the I.P.C.

If we go through the provisions of Sec. 389 Cr. P.C. then sub clasue 3 states as under:-

" Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,:-

(1) where such person, being on bail, is sentenced to imprisonment, for a term not exceeding three years,

OR

(2) where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted person be released on bail, for such period as will afford sufficient time to present the appeal and obtain the order of the Appellate Court under Sub-Sec. (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

The Trial Court has power to suspend the sentence awarded by it in two cases; Firstly if the accused being on bail is sentenced to imprisonment, for a term not exceeding 3 years Secondly if the offence of which such person has been convicted is a bailable one, and he is on bail.

It is immaterial whether the trial court (JMFC) had power to grant bail in an offence u/s 326 of the I.P.C. or not.

What is material is whether at the time of passing of the sentence the accused was on bail or not. If the accused was on bail irrespective of any offence under any penal law, the magistrate can order for suspension of sentence and may grant interim bail to bring a stay from the appellate court. Here it can be said that there is a distinction between bail and suspension of sentence. An order which suspends the sentence can not be said to be an order for bail. ***AIR 1960 Bombay 502 (512-513 para 40;41 State of Bombay Vs. K.M. Nanawati, (1977) Cr. L.J. 1746 (1747) SC Kashmira singh Vs. State, AIR 1945 P. C. 94 Lala Janardhan Vs. Emperor.***

There are offences in which a magistrate can not grant bail but can try the case such as offences under senction 326 of the I.P.C. 394,377, 409-467 of the I.P.C. But if at the conclusion of the trial and after a sentence is awarded if the accused is on bail the trial court can very well suspend sentence and release the accused on bail subject to the execution of bail-bonds to enable him to bring stay by prefering an appeal to the appellate court.

The second point which was put as a difficulty was if the accused who is sentenced as above does not apply on the very day that is on the pronouncement of the judgment and is sent to jail by warrant of the court and subsequently if he applies u/s 389 of the Cr. P.C. whether the trial court becomes ***Functus Officio ?***

The simple answer is that the trial court has yet jurisdiction to order for suspension of sentence irrespective of the fact that accused could not apply on the very day of the pronouncement of the judgment. It is no where stated in sec. 389 of the Cr. P.C. that an application for suspension of sentence should only be made on the very day of pronouncement of the judgment. The order of sentence and conviction takes effect immediately after the pronouncement of judgment and the sentence of imprisonment can not be postponed to be executed. However sub clause 3 of sec. 389 now empowers the trial court to suspend the execution of sentence on certain conditions. Therefore suspension of execution of sentence dos'nt by itself mean that a Magistrate has postponed the execution of a sentence of imprisonment for a particular period.

The expression " released on bail" used in sec. 389 Cr. P.C. has been used because the moment the accused is sentenced to imprisonment his bail bonds shall stand automatically cancelled and he will be taken in to custody forthwith. Therefore if he applies for suspension of sentence he may be released on bail. Therefore the word Bail used in this sec. has no Co-relation with the word Bail used in chapter 33 of the Cr. P.C. i.e. Sec. 436 and onwards.

If an application u/s 389 Cr. P.C. is rejected there is no bar to file an another application for suspension of execution of sentence and apply for bail, this provision has resemblance with the provisions of order 41 rule 5 of the C.P.C. relating to stay of execution. Therefore there is no prohibition against the entertaining of subsequent application for bail pending an appeal when earlier application has been rejected (In re Balasundara Pavalar, AIR 1951 Ajmer 7 at 9). An order on bail application is nothing more then an interlocutary order. Suspension of sentence, both of imprisonment and payment of fine, is within the discretion of the appelate court. As the provision for suspension is discretionary, the court may suspend the substantive sentence of imprisonment and may not suspend the sentence of fine and for that it may assign reasons. "(Budha Ram Vs. State of Rajasthan, (1980)5 Raj. Cr. C. 13)

The word "Sentence" in this section means not only substantive term of imprisonment but also sentence of fine. AIR 1953 Kutch 17(17,18) 1953 Cri. L.J. 714.

It cannot be said that the sentence has to be suspended either as a whole or not at all. Where sentence of imprisonment and fine is awarded the appellate court may for reasons to be recorded suspend the sentence of imprisonment and not the sentence of fine (1980 Raj. Cri. C. 13)

Sec. 426, 435 and 436 (Old) corresponding to sec. 389, 397 and 398 show that the legislature intentionally took away certain powers from subordinate criminal courts, for example the power to order suspension of the execution of an order under revision AIR 1959 Allahabad 556 Laxminarayan Vs. State, AIR 1956 Bhopal pg. 17 Panah Mohd. Vs. Hasham Khan. In this ruling it was held that when the legislature did not confer such powers on the subordinate Criminal Courts they cannot in exercise of the supposed inherent powers, exercise such powers.

It may further be added that the inherent powers could be exercised only if an order passed in exercise of such powers would not be repugnant to the provisions of the Act. In other words, if the subordinate Criminal Courts were to order the suspension of the execution of an order it would be direct conflict with the provisions of ss. 345 & 438 (Old) Criminal P.C. and consequently the subordinate Criminal Court cannot directly order the suspension of the execution of an order under revision.

The second point for consideration is suspension of execution of sentence of imprisonement in default of fine.

This remedy is discretionary and not a mandatory provisions. The section contemplates the payment of fine forthwith. It is open to the Court to proceed under this section, but it is not bound to do so. In the first instance the person sentenced to pay a fine must deposit the fine forthwith but may be permitted to deposit it after some time in the discretion of the Court. Even in that event he must deposit the amount before the period specifically fixed by the Court and if he does not do so, he immediately incurs liability of being sent to prison.

The important aspect of this section is a sentence of fine only not coupled with sentence of imprisonment where an accused was sentenced to detention till the rising of the court besides a fine it was held that this section had no application. (Emperor Vs. Mohd. AIR 1934 Rangoon Pg. 11, AIR 1957 Mysore 52 Siddappa Vs. State and AIR 1933 Calcutta 308 Ali Hussain Vs. Emperor).

Where the accused did not pay the fine imposed on him within the period allowed by court but deposited it subsequently and prayed for condonation of delay in depositing the same, the accused could not be taken in custody. Once the accused has paid the fine, the imprisonment which had been imposed upon him in default of payment of that fine, should have been taken to have terminated. Shambhu Dayal Vs. State 1979 All. Cr. R. 307.

It is to be remembered that if the trial Court or the appellate Court, if at all, grants time to deposit fine then it should be strictly according to the provisions of sec. 424 of the Cr. P.C.

Have a Second thought

Habitual Offender and Presumption of Innocence

Vijay Agarwal
Civil Judge and Judical Magistrate Jabalpur

When a number of accusations are attributed against a person then it can be said that he is a habitual offender. Due to lack of evidence because of fear over the witnesses the prosecuting agency fails to prove their guilt. Although they are involved in a number of cases but in most of them the courts passes the judgment of acquittal for want of evidence. So the habitual offender holds special status in the administration of criminal justice.

It is a golden rule in our criminal jurisprudence that an accused is presumed to be an innocent unless the prosecution proves his guilt. An habitual offender also enjoys this presumption. The prosecution is bound to prove the guilt of the accused in all cases beyond all reasonable doubts. Like a civil litigation a judge can not deliver his judgment only on the basis of preponderance of evidence between the two parties. The initial presumption is in favour of accused that he is innocent and the prosecution is bound to rebut this presumption.

The courts presume an accused as innocent because the agency which conducts the investigation of the crime is police and in our Evidence Act and Cr. P.C., at so many places, have no confidence about the conduct and working of the police machinery. Two other reasons of this presumption are that at the commencement of the trial there is no evidenciary value of the police investigation and in criminal trial the reputation, the future livelihood, the career and even the life of the accused are in question, so these all requires great precautions.

Concept of fair trial

The primary object of a criminal trial is to ensure fair trial. A fair trial has naturally two objects in view. It must be fair to the accused and must also be fair to the prosecution. The trial must be judged from this dual point of view. Their Lordships of the Supreme Court in State of U.P. Vs. Anil Singh[1] has cautioned the trial judges that it is necessary to remember that a judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man

(1) A.I.R. 1988 S.C. 1998

does not escape. One is as important as the other. Both are the public duties which the judges has to perform.

The duty to be discharged by criminal court in a trial is indeed difficult, especially when it has to see to the conflicting claims and has to strike a just balance, which will, on the one hand, take care that no innocent person is punished but at the same time would see that people do not lose faith in the rule of law due to blind adherence to the dictum that " Let hundred guilty men escape". To speak with Vicount Simon held miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent. Therefore, our rule of criminal justice remind the court of their solemn duty on the one hand to punish a crime and on the other hand to find and punish the real offender so that no innocent life is extinguished or impared [2].

The sole aim of law is approximation of justice and assurance of fair trial is the first imperative of the dispensation of justice. The concept of justice is supreme. It is prior to liberty (Justitia E.S.T. Liberate prior [3].)

"Law" & "Justice" although two distinct concepts are inter-twined so much so, that we can not conceive one without the other. Genesis as well as the end of law is justice. We can conceive administration of justice without law but we can not envision, 'Administration of Justice' dehors justice [4]. So a fair trial has naturally two objects in view: It must be fair to the accused and it must also be fair to the prosecution.

No evidenciary value of police investigation.

The Administration of criminal justice depends upon the oral testimony of the witnesses upto a great extent. It is therefore, of the utmost importance, that in criminal trial witnesses should be able to give evidence without any inducement or threat either from the prosecution or the defence. Justice to both the parties also require fair investigation and early disposal of case. In case of habitual offender it is difficult for the investigation agency to collect the evidence against them. They can easily gain over the witnesses so the prosecuting agency feel helpless to produce the evidence against them to prove their guilt before the court. The proceedings conducted by the investigating officer has no evidenciary value. The statements recorded U/S 161 Cr. P.C. can only be used for contradiction purposes, an article seized by a police officer, but the seizure

(2) M.T. Singh Vs. State of Manipur 1984 Cr. L.J. 536.
(3) Hiralal Pandey Vs State of U.P. 1987 (1) crimes 852
(4) Criminal Trial by S.P. Tyagi reprint Edn. 1993 P.I.

memo has no evidenciary value, the confession of an offence by the accused before a police officer cannot be proved, the identification of the accused also can not be proved without the oral testimony of the witnesses. So the function of the investigating agency is to collect and produce the incriminating material before the court which has no evidenciary value. But in most of the criminal trials the prosecution feels great difficulty to prove all these things which have done during the course of investigation, The witnesses of these things often turn hostile. In so many cases the witnesses deposes that they have seen nothing, police have not seized any article in his presence, he has not identified the accused in identification parade. So the courts are bound to pass the judgment of acquittal for want of evidence.

What is the reason of it ? The main cause is that there is a long gap between the investigation and trial. There is psychological change in the minds of the witnesses, when they come before the court for their statements, they become disinterested in the matter and turned hostile.

Another factor is that there is moral deterioration in the whole society. We see falsehood in our daily life, so if the falsehood is present everywhere, how could we presume that a man who speaks false at evey walk of life will speak truth before the Court. Although there is presumption in law that without any cause a witness will speak truth, but in modern time this presumption loses its efficacy.

Another important reason is that among common people there is lack of sense of duty to participate in the administration of justice. People are not willing to come forward to give evidence except where they are interested in the matter.

These are causes which makes difficult for the prosecution to procure evidence to prove the guilt of the accused. So the need of the hour is that we should develop the mechanism by which we can make the evidenciary value of the whole investigating process useful and trust worthy.

The question arises how it could be possible ? It can only be possible if the investigation is conducted under the perview, guidance and control of the judiciary.

In England the Royal Commission on Police was of opinion that the investigation is a part of judicial process.

Investigation starts from the information to the police about the commission of the offence. If it is open for a victim to inform to the concerned Magistrate about the commission of an offence, he can very well record his statement. If his statement has been recorded at this pretrial

stage at the instance of informant or complainant on oath before a Court who is legally competent to administer oath, it has evidenciary value by which a witness can be fixed-up. If he turns hostile at a later stage, the Court can appreciate his previous statement in the light of his statement at trial stage and can draw a conclusion about the truth. Court can also explore how the witness has changed his version and if he has changed his version without any cause he can be prosecuted for perjury for giving conflicting statement on oath. Although there is provision U/S 200 Cr. P.C. about complaint to the Magistrate in which the statement of the complainant can be recorded but it can be used only for the registration of the case against the accused and none else.

The same principle will apply if the Magistrate is authorised to record the statement of other witnesses i.e witnesses who have seen the occurence, witnesses of seizure memo, witnesses of identification parade memo and other important witnesses. Early recording of statements of these witnesses will debar them from fluctuating their previous statements. The evil of hostility of witnesses can be prevented by recording of their statements on oath soon after the incident upto a great extent. If the witness is of seizure memo the Magistrate is to be authorised to record his statement on oath immediately when the police has seized an article from the accused or anybody. If the witness is of identification parade his statement should be recorded on oath soon after the identification parade. Although there is provision under section 164 Cr. P.C. for recording of statements of witnesses at investigation stage but this provision invoked casually.

All these measures makes the evidenciary value of the investigation and inspires confidence upon the investigating machinery. Although the investigating agency produces a lot of material before the court at the time of filing of challan against the accused but even then the accused is presumed to be an innocent person, because all the proceedings done by the investigating agency during the course of investigation is not competent to record the evidence on oath, due to this incompetency an accused is presumed to be an innocent. So if the magistrate, an authority who in competent to record the statements of witnesses on oath, records all the proceedings done by the investigating agency, then there is no need to presume an accused as innocent, because the material presented before the trial court is duly recorded by another competent court. If a criminal trial starts without any presumption of innocence it can be decided on the basis of preponderance of evidence and in case of habitual offender it is possible to do justice with both the parties on the basis of material placed before the court by the prosecution and the defence.

1993 Cr. L.J. 102 (Karnataka H.C.)
Smt. Noor Jahan Vs. The State

It is true that as per clause (b) of sub-Sec. (2) of Section 167 of the Code (Cr. P.C.) normally for seeking an order of remand to continue the accused in judicial custody, the accused should be produced before the Magistrate, but in a case where it is not possible to bodily produced the accused as in the instant case where the accused is under going treatment in the hospital as an in-door patient and according to the doctor's advice he can not be taken out of the hospital and produced before the court, it is not necessary that the accused should be produced bodily. If the Magistrate is not satisfied, it is open to him to call for the report from the Doctor or he can personally visit the hospital and satisfy about the condition and safety of the accused but he can not refuse to pass an order continuing the accused in judicial custody on the ground that he has not been produced. The law is not unreasonable and it does not expect an impossible thing to be performed. Therefore, the Magistrate ought to have passed an order continuing accused in judicial custody.

1993 Supp (2) Supreme Court Cases 121, Rizwan Vs. Waqar Ahmed and ors. (1993) SCC (Cr.)455):-

The police filed a charge-sheet under Sec. 307 IPC against the respondents/accused. The Magistrate, however, having regard to the nature of the injuries instead of committing the case converted it into a warrant case and proceeded to try the respondents-accused under Sec. 323 and 324 IPC. Questioning the same, a revision was filed before the Sessions Judge who directed the Magistrate to commit the case to the Court of Sessions holding that the Magistrate had no option except to commit. As against that a revision was filed by the accused before the High Court The High Court allowed the revision and confirmed the order of the Magistrate. But it appears that certificate granting leave to appeal was granted by the High Court taking the view that a question of law namely regarding the scope of Sec. 209 Cr. P.C. was involved.

2. having gone through the judgments of both the courts below we are unable to persuade ourselves to hold that the High Court has committed any error in allowing the revision. Sec. 209 of the Cr. P.C. lays down that if it appears to the Magistrate that the offence is triable exclusively

by the Court of Session then it has to commit. No doubt in the instant case, there are number of injuries on the complainant but the Doctor found almost all of them to be simple. In that view of the matter the Magistrate thought that it was not a fit case to commit. Therefore, it cannot be said that the High Court has erred in allowing the revision, The appeal is dismissed accordingly.

(1996) 2 S.C.C. 317 Behari Prasad and others Vs. State of Bihar

In the facts of the case, it appears to us that the involvement of the accused in committing the murder has been clearly established by the evidences of the eye witnesses. Such evidences are in conformity with the case made out in FIR and also with the medical evidence. hence, ***for non-examination of Investigating Officer, the prosecution case should not fail.*** We may also indicate here that it will not be correct to contend that if an Investigating officer is not examined in a case, such case should fail on the ground that the accused were deprived of the opportunity to effectively cross-examine the witnesses for the prosecution and to bring out contradictions in their statements before the police. A case of prejudice likely to be suffered by an accused must depend on the facts of the case and no universal strait-jacket formula should be laid down that no examination of Investigation Officer per se vitiates a criminal trial.

In Lakhjit Singh Vs. State of Punjab 1994 suppl. (1) SCC 173 and 177 it was held by Supreme Court as under:

When the police has filed a final report u/s 173 CR. P.C. (Challan) u/s 302/and/or u/s 306 of the I.P. C. can a sessions court who has framed charged u/s 302 can convict an accused u/s 306 of the I.P.C.

Is it not better to frame a charge u/s 302 and in alternative u/s 306 of I.P.C.? It is always better!

In absence of prejudice to the accused, held, legal

The appellants contended that since the charge was for the offence punishable under S.302 IPC, the accused were not put to notice to meet a charge also under S. 306 IPC and were thereby prejudiced, presumption under S, 113-A of Indian Evidence Act could not be drawn and consequently a conviction under S.306 could not be awarded. Rejecting this contention it was held as under:-

The facts and circumstances of the case have been put forward against the accused under S.313 Cr. P.C. and when there was a demand for dowry it cannot be said that the accused are prejudiced because the cross-examination of the witnesses, as well as the answers given under S.313 of

the Cr. P.C. would show that they had enough of notice of the allegations which attract S.306 Indian Penal Code also. That apart, what all S. 113-A of Evidence Act says is that the Court, having regard to the circumstances of the case can presume. Therefore, the circumstances in this case would show that the accused have been demanding dowry even within a short period after the marriage and the deceased also had to live in her parent's house and it is the husband who went and brought her back. The deceased followed him and unfortunately, the incident has taken place.

1996 (1) M.P.W.N. 101 9 (S.C.) Munilal Vs. Oriental Fire and General Insurance Co. Ltd.

S. 34 specific Relief Act and 0.6 R. 17 C.P.C.:-

Suit for mere declaration without seeking consequential reilief to be dismissed. Amendment application seeking consequential relief also to be rejected as barred by limitations.

1996(1) M.P.W.N. 131 Jaganoo Vs. Chhote:-

149 (4) and 140 Motor Vehicles Act. 1988.

The Tribunal had discharged the Insurance Company of its liability and found that the Insurance company is not liable to indemnify the insured the amount deposited by the Insurance Company towards "no fault liability" has to be refunded by virtue of the provisions of S 149(4) of the M.V. Act.

Remand of a Civil Case

Order 41 Rules 23,23-A, 24,25,26 and 26-A refers to the remand of a case and procedure to be adopted by an appellate Court.

The appellate Court should, when a case is remanded, bear in mind as to total remand or a restricted remand.

The High Court has deprecated the practice of remanding a whole sale case on flimsy grounds. In some cases High Court has laid down the principles under which how and to what extent the case should be remanded.

1977 (pt.1) M.P.W.N. 63 Ramsingh Vs. Mohakam Singh.

In which it is held that:- "Trial Court decided the suit on merits on all issues, appellate Court remanded the case to the trial Court for finding out the market value of the suit land. Order palpably erroneous and contrary to law. Such remand order does not fall under the purview of Order 41, rule 23 CPC. The appellate Court itself should have determined the market value."

1977(Pt.-II) M.P. Weekly note 33 Makru Vs. Manglu & anothers):- "Civil P.C. 1908 - O.41, R.23 - first appellate Court allowed the amendment of the written statement and remanded the whole case to the

trial court for a fresh decision-order not legal-proper course was to retain the appeal on file, remit the issues to the trial Court and give findings thereon.

O.41, RR23-A, 25 and O.7 and R.7 - Appellate Court framing additional issue as per subsequent event pleaded before it Such issue only should be remitted for enquiry and not the whole case. ***Shivlal Vs. Sunderdas 1986 (1) M.P.W.N. 56.***

O.41, R25 - Wholesale remand not justified-Appeal Court fraiming additional issue-Should remand the case for trying such issues alone. No evidence on other issues should also be allowed. ***Suraj (Smt.) Vs. Balaram 1985 MPWN 143,*** O.41, R.23 - Remand of case-Relevant evidence for adjudication of issues is on record - Remand of case is not necessary. ***Sunder Singh Vs. Raja Ram. AIR 1991 M.P. 59.***

O.41, RR.23,23-A and 25 - Court to which case is remanded has to comply with order of remand-Acting contrary to order of remand. is contrary to law. No amendment can be allowed if not directed. ***Rejaram Vs. Vithabai, 1990 JLJ 71.***

O.1,R.3-B - Object of State amendment is to protect interest of the State - Power of Appellate Court to add State as party and to try the case after recording evidence if necessary - Not necessary to remand the case to trial Court for that purpose. ***Mahila Bashiranbai Vs. Fatimabai 1986 M.P.L.J. 539 - 1986 JLJ 666.***

1986 JLJ 612 Suresh Kumar Vs. State of M.P.:-

Civil P.C. 1908 - O.41, RR 23 & 23-A-distinction between the two rules:-

The distinction between the power of remand under R-23 and R-23-A is very clear. No order of remand can be made under R.23 unless the trial Court has disposed of the whole suit, and not a protion of it, on a preliminary point and the appellate Court reverses the decree in appeal. R.23-A will come in when the trial Court has disposed of the entire case otherwise than on a preliminary point and the decree is reversed in appeal and a re-trial is considered necessary. In that contingency the appellate Court will have all the powers mentioned in R.23 of the Code. In view of this clear distinction, it is very much apparent that the remand order made by the appellate Court is covered by R-23-A.AIR 1980 SC 591 relied on.

O.41 RR 27 & 25 C.P.C. Additional documentary evidence allowed in appeal. Case remitted to the trial court for fresh decision after considering such additional and other evidence. ***(National Insurance Co. Ltd. Vs. Shankar Singh 1996 (1) M.P.W.N. 177.***

Arms Act:-

When a Judicial Officer frames a charge under Arms Act particularly under 25 of the Arms Act he just mention the provisions of Sec. 25 Arms Act but it is not proper and also not correct. He should mention the Sub-clause under which the offence false. Thus Sec. 25 (1-B) (A), if the accused is in possession of fire arms and so on.

There is a notification issued by the M.P. State Govt. with reference to possession of a knife which constitute an offence. The notification is published in M.P. Law times 1975 Pt-II page No, 51 Sr. No. 47 which runs as under:-

"Notification No. 6312-6552-II-B (i) dated the 22nd November 1947:- Whereas the State Government is of the opinion that having regard to the prevailing conditions in the State of Madhya Pradesh, it is necessary and expendient in the public interest that the acquisition possession and carrying of sharp edged weapons with a blade more than 6 inches long 2 inches wide and spring actuated knives with a blade of any size in public places should also be regulated.

Now, therefore in exercise of the powers conferred by section 4 of the Arms Act, 1959 (no. 54 of 1959) read with the Government of India, Ministry of Home Affairs, Notification No. G.S. R. 1309, dated the 1st October 1962, the State Government hereby directs that the said section shall apply with effect from the date of publication of this Notification in the " Madhya Pradesh Gazette" to the whole of the State of Madhya Pradesh in respect of acquisition, possession of carrying of sharp edged weapons with a blade more than 6 inches long or 2 inches wide and spring actuated knives with a blade of any size in public places only."

The Government of Madhya Pradesh have declared few offences under Indian Penal Code to be cognizable and few offences to be non bailable? Some confusion yet prevails whether an offence under Sec. 186 of the I.P.C. is cognizable or non-cognizable. Hope this will help the Judicial Officers to know the reality. The Notification is published in pt-II of 1976 M.P. Law Times pg. 106 Sr. Nos. 105 and 106 which are as under:-

Notification No. 33205-F. No. 6-59-74-B-XXI dated the 19th November 1975.-" In exercise of the powers conferred by sub-section (1) of Section 10 of the Criminal Law Amendment Act, 1932(No. XXIII of 1932) and in supersession of all the notifications previously issued on the subject, the State Government hereby declares that any offence punishable under sec. 186, 189, 190,228, sub sec. (1) of the sec. 505,506 or 507 of the Indian

Penal Code (No.XLV of 1860) when committed in any area of the State of Madhya Pradesh, shall be cognizable."

Notification No. 33207-B.No. 659-74-B-XXI dated the 19th November 1975 - In exercise of the powers conferred by sub-Sec. 2 of Section 10 of the Criminal Law Amendment Act, 1932 (No. XXIII of 1932) and in supersession of all the notifications previously issued on the subject the State Government hereby declares that any offence punishable under Sec. 188 or 506 of Indian Penal Code (No. XLV of 1860), when committed in any part of State of Madhya Pradesh shall be non-bailable.)

Remember that in a charge u/s 25 of the Arms Act relating to knife it is always better, at the stage of framing a charge to state notification No. also, so that up-to-date particulars are on record, In the same way it is better to mention the fact about declaration of cognizable offences and non-bailable offences declared by the state government so that the fact remains on the record and as and when required it takes no time to search for the relevant notifications.

Pleadings

Generally in pleadings parties to the suit or proceedings commit mistake in the array of the pleadings with reference to the mentioning of the names of the parties. For example if a suit is to be instituted by or against Municipal Corp. or against Electricity Board or of like nature then it should be in the name of or against Municipal Corp. through the Commissioner if the counsel is in existence or through Administrator as the case may be and in the case of Electricity Board it should be the concerning Electricity Board through the Chairman or the competent authority as may be prescribed in the concerning Act, as the case may be. Don't go by surmises but on the contrary refer the provisions as and when you are required to remove the doubts. Here attention can be drawn to the provisions of sec. 79 of the C.P.C. in which it is shown how a suit against a Government or Railway is should be instituted. Here the attention is attracted to the provisions of order 1 rule 10 C.P.C. wherein it will be seen in the commentary that a suit by or against a wrong person is something else and giving wrong description of a party is something else. For example if a suit is instituted by or against Municipal Corp. and by mistake it is mentioned as "The Commissioner Municipal Corp. of Jabalpur" this doesn't mean that the suit is by or against a wrong person but it is mis-description of party only and it can be corrected by way of amendment as the intension of party was to file a suit by or against the Municipal Corp.. Some times it also happens that father's name of a party is not stated correctly but it can also be corrected as it is a mis description. The intention can be gathered from the pleadings in the plaint or written statement.

HIGH COURT OF MADHYA PRADESH : JABALPUR
MEMORANDUM

No. A/2110 Jabalpur, dated 4th April, 1996.
III-16-2/96

Sub: Taking necessary measures against theft, mischief etc. in Court premises - regarding.

Of late the reports of damage or distruction of Court records as well as property by fire have come in from more than one places within a period of less than a month. Primary investigations indicated towards the possibility of some mischeivous elements being behind the incidents aided by connivance of the Court officials themselves. This is matter of grave concern.

In order to prevent such mischiefs, as directed, I am to issue the following instructions for your guidance and strict compliance; namely:

(1) a manuscript book should be maintained in which the facts of taking over and making over of charge by Farrash and Watchman or any other person doing Farrash's or Watchman's duty with date and hour shall be recorded in part A there of on regular basis;

(ii) a bell should be hung at a conspicuous place within the Court premises both at the headquarters and outlying places; the personnel doing Watchmen's duty shall be required to strike the bell with the interval of every half an hour in the night; the District and Sessions Judges shall make necessary arrangements for purchase of the bells;

(iii) The District and Sessions Judges should prepare a scheme to check duties of Watchmen and Farrashes by himself and by Officer-in charge, Nazarat, District Nazir, Naib-Nazirs and Sale Amin at the head quarter and by Officer-in charge Nazarat, other Judges, Naib-Nazir and Sale Amin at the outlying stations and checking notes shall be recorded in Part B of the manuscript book; the Officer-inCharge, Nazarat shall examine the manuscript book on every Monday (the surprise visit should be at different odd hours in the night) and record

his inspection note in Part A in case of an irregularity or lapse on the part of an official doing Watchmen's or Farrash's duty being detected the report thereof shall be made to the District & Sessions Judge who shall take strict disciplinary action;

(iv) The District & Sessions Judges should issue necessary instruction as to who shall be doing the Watchmen, and Farrashes' duties and in what manner in day time on the days the Courts are closed;

(v) In no circumstance, whatsoever, the Watchmen should be instructed with any other work or duty exept in emergency.

(vi)The District & Sessions Judges should take immediate steps to get replaced glass panels in windows and doors by wooden or iron panels and to get fitted in the windows and doors ironfly net shutters also; for this purpose they may send the proposals and estimates to the Registry immediately:

(vii)The District & Sessions Judges should write to the Superintendents of Police requesting for issuing suitable instructions to the Police to step up patrolling of the Court premises in the night.

In order to bring about uniformity in Watchmen's and Farrashes' duties model duty lists are being sent herewith. The District & Sessions Judges may make necessary modification therein according to local needs.

A copy of the Rules regarding precautions to be taken against fire in Government buildings is also enclosed for your information and guidance.

I am to make it clear Watchmen, Farrashes, Sale Amins, Naib-Nazirs, District Nazir, Officer-in-Charge, Nazarat shall be held personally responsible for any loss of or damage to any Government property including official or Court records and any slackness or laxity shall be viewed very seriously.

Sd/-
(C.S. Gupta)
Registrar (General)

RULES REGARDING PRECAUTIONS TO BE TAKEN AGAINST FIRE IN GOVERNMENT BUILDINGS (OTHER THAN RESIDENCES)

. The head of an office should satisfy himself

i) That the lighting arrangements and any electric installation in his office are satisfactory from the point of view of safety.
NOTE:- If the building is provided with an electric supply, the head of the office should obtain a report from the Public Works Department periodically.

ii) that paper store rooms are safe from all possible causes of fire.

iii) that only greasy rags, waste paper etc, which are liable to spontaneous combustion should not be allowed to accumulate on the premises.

iv) that smoking and the use of naked lights in store rooms and record rooms is strictly prohibited. Chowkidars should have orders to see that no smouldering cigar or cigarette ends are left lying about when they are closing the building, and

v) that night watchmen are employed in building which warrant their employment.

2. All buildings whose value is more than one lakh, and any buildings of less value which are considered to required special protection should be provided with appliances for dealing with an outbreak of fire.

3. These appliances, as enumerated below, are intended for dealing with an out-break of fire in its initial stages and their effectiveness will depend on the promptness with which they are employed. The appliances should therefore be kept at depots in suitable parts of the buildings, such as passages and verandahs and not inside locked rooms.. Particular attention should be paid to record rooms.

4. Each depot should consist of 4 buckets containing water, 4 buckets or kerosine oil tins of sand, one hatchet and a chemical fire extinguisher with one spare refill. These numbers may be varied to suit particular buildings. As a rule, 1 bucket per room should suffice for the whole building. In addition to the above mentioned appliances, each office should possess a light iron ladder about (8 Feets) long. "The buckets should have round bottoms, be painted red, be marked FIRE in black letters and be placed on suitable brackets or low stands. The hatchets should be in glass-fronted cases, so that they can only be removed by breaking the glass.

The chowkidar of each building should be properly trained in the use of chemical fire extinguishers.

5. All water buckets should be emptied and refilled once a week and must not be used for any other purpose than fire. The head of the office will be held responsible that this rule is observed.
6. In large and important buildings where there is a piped water supply, hydrants and hoses should be provided.

   In buildings where there are roof tanks, the head of the office should see that they are kept filled and that all connections are in order. The hoses properly rolled will be kept locked in a glass-fronted case near the main entrance of the building.

   Patent fire extinguishers should be examined once a month to make sure that they are in a proper working order. In the case of large and important buildings provided with a number of extinguishers one or two extinguishers may be discharged each year for purpose of demonstration and when this is done, the extinguishers should be refilled immediately according to the instructions provided with the refills.
7. Canvas hose is of a perishable nature, It should therefore be examined and tested under pressure once every three months by the Sub-Divisional Officer. Public Works Department, In charge of the building and report sent to the Superintending Engineer.

   The hydrants, couplings, nozzles, tank connections, etc. should be examined at the same time, each one being turned on to see that nothing is wrong.
8. An outbreak of fire should be reported at once, by telephone, if available to the nearest fire station or Police post and to the authorities in charge of the water works. Meanwhile, efforts should be made to extinguish the fire by means of the appliances at hand.

   (N.B.- Should kerosine oil or petrol catch fire, water should not be poured on the flame, but sand only should be used.)

   Where there is a water supply and connections, the hoses should be coupled up and the hydrants opened at once, and with the object of increasing the pressure, service mains to neighbouring buildings should be closed as far as possible.
9. All doors and windows not to be used as entrances or exit should, as far as possible be kept closed to prevent drafts of air from fanning the flames.
10. The Commissioner of the Division in consultation with the

Superintending Engineer should decide for which buildings and to what extent fire extinguishing appliances should be provided.

The public works Department will supply buckets and other appliances as may be necessary to all such buildings in their charge. All renewals and repairs will be attended to, and the cost borne by the Department occupying the buildings, as also the cost of provision and maintenance of chemical extinguishers.

11. In buildings where there are electrical installations there should be one or more main switches easily accessible which should be turned off immediately a fire breaks out. They must also be turned off at night and at other times when the building is likely to be unoccupied, The Public Works Department are responsible for the periodical testing and maintenance of electrical installations and special rules have been issued in that regard
12. Special rules have been framed for application to buildings (Such as laboratories) in which inflammable material are stored or used.

NAGPUR
the 22nd April 1937

H.A. HYDE
Secy. to Govt., C.P. & Berar,
Public Works Department.

LIST OF DUTIES TO BE ASSIGNED TO THE FARRASH:

1. He should bring the keys of the Rooms from the Nazir when coming to office at 7.a.m. to relieve the Chowkidar and take over charge of the building from him.

2. He should before relieving choukidar should satisfy himself that all doors and windows are properly shut and Rooms are locked up.

3. He should specially see that white ants or rodants are not damaging almirah furniture etc. and if he notices that any such damage is likely to be done, he should report the matter immediately to the Naib-Nazir/ Nazir. He should keep every nook and corner of the buiiding spik and span.

4. He should report the breakage of glass panels to Nazir.

5. He should remain present till 12 noon.

6. He should again attend the office at 4 p.m. After the office hours he should shut the windows and doors and lock up the rooms properly besides other work ordered by the District Naib Nazir and remain in office till 6 p.m. when he is relieved by the Choukidar.

7. He should also go round the building with Choukidar while the Choukidar should satisfy himself that all doors and windows are shut and rooms are locked up properly and handed over charge of the building to the Choukidar.

8. He should hand over the keys to the Nazir/Naib Nazir at his residence.

9. He should carry out all orders given by the District Nazir/Naib Nazir.

LIST OF DUTIES TO BE ASSIGNED TO THE CHOUKIDAR

1. He should attend office daily at 6. P.M. and report his arrival to the Naib Nazir and take over charge of the building from the Farrash.

2. He should remain in the building from 6 P.M. to 7.30 A.M. but should not leave till he is relieved by Farrash to whom he shall hand over the charge of the building.

3. Choukidar should not keep his family with him in the Civil Court building in the night unless permitted by the District judge.

4. He should go round the building with Farrash before relieving him and should satisfy himself that all doors and windows are properly shut and rooms are locked up.

5. He should awake during night and should go round the building at irregular intervals.

6. He should be acquainted with the operations of Fire Extinguisher.

7. He should ring the bell every half an hour during his duty.

मध्यप्रदेश राजपत्र
भोपाल शुक्रवार दिनांक 19 अप्रैल 1996
भाग 4 (ग)
अंतिम नियम

No. A/1866-I -14-I-38-IV-A In exercise of the powers conferred by Article 227 of the Constitution of India read with Section 23 of Madhya Pradesh Civil Courts Act, 1958 (No. 19 of 1958), the High Court of Madhya Pradesh with the previous approval of the Governor of Madhya Pradesh, hereby makes the following further amendments in the Madhya Pradesh Civil Courts Rules 1961, namely:

AMENDMENT in the said rules:-

1. for rule 523, the following rule shall be substituted namely:-" 523, In suits and appeal decided on merits, the fees ordinarily payable shall be calculated according to the following scale:-

i) If the value of the claim does not exceed 5000/- 10% subject to minimum of Rs. 100/-

ii) If the value exceeds Rs. 5000/- but does not exceed Rs. 25,000/- on Rs. 5000/- as above and on the remainder 5 percent.

iii) If the value exceeds Rs. 25000/- but does not exceed Rs. 50,000/ - on Rs. 25000/- as above and on the remainder 3 percent.

iv) If the value exceeds Rs.50,000/- on Rs. 50,000/- as above and on the remainder 2 percent subject to a maximum of Rs. 7,500/-

Explanation:- For the purpose of this rule, the value of claim on any suit or appeal shall be taken to be the value stated in the plaint or memorandum of appeal except where the value has been in issue in the suit or appeal in which case the value determined by the Court shall be taken to be the value of the claim, In case in which the subject matter of the claim does not admit of valuation or the precuniary value of the right sought to be endorsed cannot be exactly defined, the fee may be calculated according to the

valuation under Section 7, Act. VII of 1870, for computation of the court fees payable or a reasonable fee may be allowed, regard being had to the time occupied by the proceedings in the case and the nature of the question raised."

2. In rule 526, for the words and figures "subjcet to minimum of Rs. 20 in the High Court, Rs. 15 in the Subordinate Courts and Rs. 10 in small Cause Cases" the words and figure" subject to the minimum of Rs. 50 in the High Court and Subordinate Courts and Rs. 25 in small Cause Cases" shall be substituted.
3. In rule 527, for the words and figures" subject to a minimum of Rs 20 in the High Court and Rs. 15 in the Subordinate Courts" the words and figures "Subject to a minimum of Rs 50" shall be substituted
4. In rule 530-

   a) In sub-rule(a) for the words and figures "subject to a minimum of Rs. 20 in the High Court and Rs. 15 in the Subordinate Courts" the Words and figure "Subjcet to a minimum of Rs. 50" shall be substituted.

   b) In sub-rule (2) for the words and figures "subject to a minimum of Rs. 15 and a maximum of Rs. 750/-" the words and figures "subject to a minimum of Rs. 50 and maximum of Rs. 2000" shall be substituted.

उच्च न्यायालय के आदेशानुसार
सी. एस. गुप्ता,
रजिस्ट्रार (जनरल)

HIGH COURT OF MADHYA PRADESH :JABALPUR

D.O. No. 489/II-15-45/59 Pt.I
Jabalpur Dated11th May 1996

It has come to the notice of Hon'ble the Chief Justice that invariably the judicial officers of Sub-ordinate Judiciary including the members of the Higher Judicial Service call on Hon'ble the Chief Justice and Hon'ble Judges of this High Court for their personal grievances without obtaining prior permission of the respective District Judges and the Registrar (General). This tendency is increasing day by day with the result their Lordships are forced to spare their valuable time in hearing them. This causes not only lot of inconvenience to their Lordship but creates an embarassing situation for them. This attitude of the judicial officers is highly objectionable and against the official decorum giving rise to insubordination. I would like to remind you that in 1985, 1991 and 1992 instructions were issued to all Judicial Officers to discontinue this practice, but in vein Hon'ble the Chief Justice considers this to be an act of insubordination and gross indiscipline.

I am, therefore, directed to address this communication to you for your informantion & amongst all the Judicial Officers working under you with the specific directions that in future if any judicial officer desires to seek audience with Hon'ble the Chief Justice or Hon'ble Judges he should seek prior permission in writing specifically mentioning the pupose from the Registrar (General) through their respective District Judges and if the District Judge himself wants to call on he should also seek permission from the Registrar (General) in writing or on telephone in exceptional circumstances intimating the purpose for which he wants audience.

I may also mention here that if any Judicial Officer desires to call on Hon'ble the Administrative Judges and Hon'ble Judges of the Bench Registries-Indore and Gwalior he or they should first seek permission for such prupose through the Bench Registrars.

I am further directed to inform you that the above instructions may strictly be adhered to and in case of their non-compliance disciplinary action shall be taken against the judicial officers concerned.

Sd/-
C. S. Gupta
Registrar (General)
11.5.96