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संपादकीय

उपकृत हूँ

बंधुओं 34½ वर्षों की न्यायिक सेवा पश्चात एवं 'ज्योति' का 37वां अंक आप सबको समर्पित करके मैं आपसे विदा ले रहा हूं। इस कालावधि को पीछे मुड़ कर देखूं तो कोई भी क्षण मुझे पश्चाताप के लिए आग्रह नहीं कर सका है। 28½ वर्ष न्यायालयीन क्षेत्र में तो शेष छह वर्ष न्यायिक प्रशिक्षण क्षेत्र में व्यतीत किए हैं।

व्यतीत करने का अर्थ निरर्थक खर्च करने से नहीं है अपितु योजनाबद्ध रूप से नियोजित करने से है।

जब हम नियोजन करते हैं तो सकारात्मक मानसिकता एवं विचारों की अभिव्यक्ति होती है।

अभिव्यक्ति सुस्पष्ट हो तो लेकिन, किन्तु, परन्तुक जैसे शब्दों की सीमा से वह बाहर हो जाती है एवं जब ऐसी बात इन सीमाओं से बाहर चली जाती है तो मर्यादित हो जाती है। मर्यादित इसलिए कि अब उसमें विचारों की सुस्पष्टता है, चिंतन का आधार है। जब चिंतन चैतन्य के साथ हो तो निश्चित ही हमारे विचारों को गति मिलती है व हम गतिमान होते हैं, सक्रिय होते हैं। सक्रियता ही मनुष्य की पहचान है। न्यायिक सक्रियता न्यायाधीश की जान है।

'ज्योति' पत्रिका इसी का एक परिचयात्मक शब्द है। उसे अभी अपने पैर जमाना है लेकिन विश्वास अटूट है कि 'ज्योति' अपने पैरों पर खड़ी होगी। खड़ा होना कोई बड़ी बात नहीं है। चौपाया जन्म लेते ही खड़ा हो जाता है। पक्षी उड़ने लग जाते हैं। लेकिन मनुष्य का विकास क्रम धीमे धीमे होता है। ये 'ज्योति' संस्था मेरे लिए मातृवत है, माता जैसी है। और 'ज्योति पत्रिका' के तो क्या कहने हैं। जिन्होंने इसका संग्रह किया है वे धनवान होंगे क्योंकि संग्रह व्यक्ति को धनवान बनाता है लेकिन जिसने इसको ग्राह्य किया वह बौधिक दृष्टि से संपन्न बन जाएंगे यह भी सुनिश्चित समझना। हेयता कभी भी मानसिक स्वस्थ्यता प्रदान नहीं करती है। वह मूल्यांकन करने का सबसे निकृष्ट माध्यम है। यह ऐसी स्थिति है जब व्यक्ति सोचता है कि सब कुछ तो आसान है, धरा क्या है? अज्ञानता में आनंद परमानंदी तल्लीनता है। लेकिन जब जब किसी विचार को सोचने समझने की क्रिया प्रारंभ करते है तो Thesis, antithesis तथा Sinthesis के सृजनशीलता का सिद्धान्त लागू हो जाता है अर्थात विचार प्रति विचार एवं नवविचार का सृजन होता है।

सृजनात्मकता ही जीवन है। जब तक मनुष्य सृजन करता रहेगा विकास की प्रक्रिया जारी रहेगी, पूर्णविराम नहीं लगेगा। मनुष्य जन्म की यही सार्थकता है इसीलिए मनुष्य श्रेष्ठतम है।

हम सृजनशील क्यों नहीं बन पाते हैं यह यक्षप्रश्न है। मुझे सतत् रूप से निराशा व अवसाद रहा है कि हमने वाचन, पठन–पाठन–मनन का गुण विकसित नहीं किया न होने दिया। न्यायाधीश होकर भी अंदाज से कार्य करने के अवगुण से स्वयं को विमुक्त नहीं कर पाए। अंदाज व आलस्य संभवतः निकटवर्ती संबंधी रहे है जो एक दूसरे को पूरक सिद्ध करते है। Read your self and feed

(Knowledge) your self की उक्ति का पालन किसी सीमा तक हमारी योग्यता को बलशाली कर सकेगा। विधि की पाठ्य पुस्तकें, न्याय दृष्टांत व अन्य सहायक पुस्तकों के प्रति रूझान विकसित करना नितान्त आवश्यक होगा। न्यायदृष्टांत का अर्थ उसमें दर्शाया हेडनोट नहीं होता है व न्याय दृष्टांत अपने आप में पूर्ण विधि नहीं है। अधिनियमों में क्या प्रावधान है ये भी देखना समझना होता है व उससे संबंधित विभिन्न तत्वों की कहां किस प्रकार उपलब्धि संभव है ये भी देखना है। तब जाकर न्याय दृष्टांत आधार बन सकता है। विधि का यह समग्र दृष्टिकोण होना आवश्यक है। वाचन एवं श्रवण परंपरा का जतन हो। समग्र चिंतन का होना आवश्यक है। समग्र शब्द पर भूपेन हजारिका की 'गंगा' नाम के गीत की पंक्तियां याद आ गई। कवि कहता है –

व्यक्ती रहे व्यक्ती केंद्रित सकल समाज,
व्यक्तित्व रहित निष्प्राण समाज को तोड़ती न क्यूं,
ओ गंगा की धार .....
सबल संग्रामी समग्रो गामी
बनाती नहीं हो क्यूँ।

हमें सबल संग्रामी समग्रो गामी बनना होगा।

मित्रों ! मैं किसी को अपनी आवाज़ का भागीदार नहीं बना पाया। चाहता था समवेत स्वरों में ध्वनि प्रतिध्वनि गूंजे, कलरव हो, लौ से लौ जलाई जा सके। लेकिन इस नीरव सूने कानन–वन में मेरी आवाज प्रतिध्वनि न होकर वापस मेरे पास लौट आती है। कोई फ़रक नहीं पड़ता है। अंधेरी रात पर दिया जलाना कब मना है? कबीर कहते हैं सिंहों के लंहड़े नहीं/ साधु न चले जमात। एकला चलो रे! पात्र की रिक्तता महापाप है एवं कोई भी उस महापाप का भागीदार नहीं होना चाहता। ठीक ही कहा है बसंत भीड़ नहीं बटोरता, वह स्वयं भीड़ बन जाता है और प्रत्येक व्यक्ति के मानसिक चेतना में प्रवेश करता है। कोई पथ अनंत तक नहीं जाता है। पथ अनंत हो सकते हैं परन्तु अनन्त पथ एक ही है। हर कोई 'अनंत पथ' की यात्रा पर ही निकला है जैसे ही वह जन्म को प्राप्त होता है। अनंत पथों में से एक ही अनंत पथ उसे चुनना होता है, कोई विकल्प नहीं है। इसे ही Hobson's choice कहते हैं। समय के साथ मेरा मार्ग भी तय है।

बंधुओ, मेरूदण्ड दूषित होने से बचा लेना। जब बैठो, तब तनकर बैठो। गर्दन, रीढ़ तनाये बैठो। कभी न कमर नवाये बैठो। सीधा मेरूदण्ड आत्म सम्मान का लक्षण है। आत्म सम्मान एवं पहचान तभी तक है जब तक भौतिक सुख एवं भोगवादी संस्कृति से दूर है। यहां हर चीज देने का प्रयत्न किया है लेकिन जमीर और वजूद (आत्म सम्मान एवं पहचान) जो साथ लाए थे ब्याज सहित ले जा रहे हैं। ये दोनों कोई भी स्वामी नहीं दे सकता वे तो हमारे भीतर केन्द्रित हैं उसे उज़ागर करना होता है। वे नश्वर नहीं है अजर अमर है। साख चरित्र की होती है। अभय बनने हेतु, क्रियाशील बनना होगा। ऐसा तभी होगा जब हम आस्था को जन्म देंगे व विश्वास को सबल बनाएंगे। ऐसा होने पर संस्कार व संकल्प विजयी होंगे।

भोगवादी संस्कृति एवं भौतिक सुखों की बेड़ियां तोड़ना होंगी तब ही परिवर्तन आएगा, क्योंकि,

ऐसी संस्कृति समाज को तोड़ती है। 'ज्योति' पत्रिका की यह विशेषता रही है कि विधि साहित्य का चिंतन, आध्यात्म, दर्शन शास्त्र एवं साहित्य के माध्यम से प्रस्फुटित होता रहा है। नैतिकता विधि शास्त्र का मूलाधार है।

मेरा विश्वास मेरी मुट्ठियों में है इसीलिए अपनी चेतना दूसरों के हवाले नहीं कर सकता। जुगनू के रूप में भी अन्धकार को चुनौती देने की क्षमता विकसित होना चाहिए। 'ज्योति' मेरे लिए मातृ तुल्य है व जीवन गीता है। अतः किए कार्य कभी भी प्रतिरोधी नहीं होंगे, ऐसा विश्वास है।

दोस्तो ये 'ज्योति' फूलों के रूप में है। फूलों का अस्तित्व कहीं पर भी हो। चाहे ईश्वर को समर्पित हो या मानव को या शव पर या प्रेम की यादगार में पुस्तक में हो। वे आस्था, प्रेम एवं स्नेह का ही स्मरण कराते हैं। सुरभि एवं सुगंध चारों ओर होती है व वातावरण सुखद लगता है। निर्माल्य होने पर भी उन्हें पैरों तले कुचला नहीं जाता है। वे विसर्जित होते हैं। सिरहाए जाते हैं। इसी प्रकार जीवन मूल्यों को (values of life) को संजोये रखें। वे अमूल्य है निर्मूल्य, मूल्यहीन नहीं।

हे सुदामा के कृष्णरूपी मित्रों ! प्रशस्त हो पथ आपका। मेरे शुभ कार्य, यदि कोई हो, तो आपके खाते में जमा हो आपका काम, आपके जीवन का गीत बने संगीत बने। सार्थक एवं सफल होने के लिए आयु सीमा रेखा नहीं है। बुद्धि विवेक और कार्य कौशल्य को कोई क्या चुनौती हो सकती है वो तो हर एक की पसंद है। यश और कीर्ति में यही अंतर है कि यश पाया जाता है यशगान गाया भी जाता है। लेकिन कीर्ति फैलती है सुरभि की तरह। यश कुछ प्राप्त होने का श्रेय है कीर्ति में मात्र प्राप्य का श्रेय नहीं है वह एक जीवन की अतार्किक सच्चाई है। (साभार राजेन्द्र अवस्थी) हमारा जीवन सार्थक होगा यदि हम समय की शक्ति और कसौटी पर खरे उतरें। ऐसा करने के लिए संघर्ष करना होगा जो विकास का सबसे छोटा मार्ग होगा। हम न्यायाधीश हैं और इसी करण यह निश्चित समझें कि हमारा मार्ग निष्कंटक नहीं है। हम पारस बने। जब सोना परखा जाता है तो पारस की भी साथ ही साथ परख होती रहती है। इसीलिए जब हम न्याय पथ पर पथ संचालन कर आगे बढ़ रहे हैं तो किसी भी बात का कोई भय नहीं हो। कहा है,

वज्रस्य पतनं नैव,
नैव मेधस्य गर्जनम।
नैव लोभः न मोहः च,
अस्मान् रोद्धुं कदाप्यलम्।
चरैवेती चरैवेति,
पचलामः निरन्तरम्।

(रोद्धुं कदाप्यलम् = रोकने का सामर्थ नहीं, पचलामः = आगे चलते हैं)

हमारे में धीरज हो। विश्वास, धैर्य, लक्ष्य, निरन्तर सोच, चैतन्य चिंतन विकसित होता रहे। हमारा मन, चिन्तन विचार और सम्बोधन का केन्द्र है। व्यक्ति की पहचान उसके अन्तर की अभ्यर्थना और अथाह चिन्तन मनन की प्रक्रिया से होगी।

मैं साहित्य क्षेत्र में एकदम नया हूं। प्रथम पग रखने के लिए ही प्रयत्न चलता रहा है। फिर भी मेरे विचारों पर, चिंतन पर गीता और रामायण, संस्कृत सुभाषितम्, रहीम, सूरदास, कबीर, तुलसी, मुनि क्षमासागर जी, आचार्य रजनीश, राजेन्द्र अवस्थी एवं नर्मदा प्रसाद जी उपाध्याय का प्रभाव भी रहा है अतः उनके विचारों की स्फुट प्रस्तुति भी समय समय पर होती रही है व इस लेख में भी हुई है अतः उनका ऋणि हूं।

शिवमंगल सिंहजी 'सुमन' की कुछ पंक्तियां अभिव्यक्ति के लिए उपयुक्त है।

आभारी हूं मैं उन सबका
दे गए व्यथा का जो प्रसाद
जिस-जिस से पथ पर स्नेह मिला
उस-उस राही को धन्यवाद।

कबीर के शब्दों को साकार न भी कर सकूं लेकिन इतने वर्षों से उन शब्दों को आकार देने का निष्ठापूर्वक प्रयत्न किया है।.ऐसे प्रयत्नों के माध्यम से की गई अभ्यर्थना कभी व्यर्थ नहीं जाती है।

झीनी झीनी बीनी रेऽऽऽचदरिया
ओढि के मैली कीनी चदरिया
ज्यों की त्यों धरि दीनी चदरिया
झीनी रेऽऽऽ झीनी चदरिया
झीनी रेऽऽऽ झीनी।

विनयावनत्
पुरूषोत्तम विष्णु नामजोशी
संपादक

धरती हो या महासागर दोनों
विनय के अजस्त्र स्त्रोत है।
संस्कार और संकल्प अन्ततः विजयी होते हैं

अन्याय का अभिषेक करने वाले न्याय के भागीदार नहीं हो सकते।

सत्य पारदर्शी होता है। धूल चढ़ी हो तो हटाने की हिम्मत नहीं होती है क्योंकि हटाने वाले का चेहरा उजागर हो जाएगा।

न्यायिक कार्य–स्वस्थ वातावरण

प्रातःकाल का शांत समय है कहीं से शहनाई की मधुर आवाज सुनाई दे रही है बहुत अच्छा लगा और मैंने अपना रेडियो चलाया वहीं से शहनाई की आवाज आ रही थी मन प्रफुल्लित हो गया। सच संगीत में वह जादू है जो हमारी मनोदशा को बदल सकता है। आपने कभी यह महसूस किया है कि एक अच्छा गाना यदि हम एक बार सुन लें तो बार–बार उसी को जुबां गुनगुनाती है, एक धुन लग जाती है उस गाने की। मुझे रेडियो या टेप पर गाने सुनने का शौक बचपन से है। पढ़ाई लिखाई के समय साथ में मधुर संगीत भी चल रहा हो तो काम का मजा दुगना हो जाता है।

संगीत का आनंद लेने के लिए जरूरी नहीं है कि आपको शास्त्रीय संगीत की समझ हो या आपने विधिवत संगीत की शिक्षा ली हो। बस जो मन को, दिल को खुशी दे, अच्छा लगे वही संगीत मधुर है। संगीत की संगति मन में एक नया उत्साह नई उमंग जगा देती है। आप अकेले हैं, खुश हैं, उदास हैं बस मनपसंद गीत सुनें आपको पता ही नहीं चलेगा कब आप गुनगुनाने लगे।

संगीत कोई भी भाषा, जाति, स्वर का हो वह किसी एक का गुलाम नहीं है वह सब जाति धर्मों से उपर है क्योंकि उसे सुनने से उसकी मधुरता से उसके अर्थ में ही सारा आनंद छुपा है। संगीत की संगति में साधना व ध्यान आसानी से किया जा सकता है। संगीत एक विज्ञान है, एक कला है, एक सुंदर तितली है, एक जादू है जिसको कि केवल सुनकर ही उसका आनंद लिया जा सकता है। यदि आप संगीत के ज्ञाता भी हैं तो क्या कहने, आप तो संगीत सुनकर गाने ही नहीं लगेगें नाचने भी लगेगें। एक बार संगीत का आनंद तो लीजिये उसे सुनकर तो देखिये।

एक समारोह था, बहुत बड़े–बड़े विद्वानों का आगमन हो रहा था लेकिन कुछ सूना–सूना सा लग रहा था, सादा सा लग रहा था, तभी मेरे मन में आया कि यहां यदि कोई वाद्य संगीत यथा शहनाई, वायलिन या सितार की धुनें बजाई जावे तो माहोल में एक उत्साह आयेगा। मैने तत्काल घर से टेप बुलवाकर हलके स्वर में शहनाई का कैसेट लगा दिया। शहनाई की मधुर धुन से सारा माहौल उत्साहमय हो गया। समारोह की गरिमा बढ़ गई उसे एक विशेष आयोजन माना गया। देखा आपने दस मिनिट की शहनाई ने सबको खुश कर दिया समारोह सफलता से पूर्ण हुआ।

गीत संगीत के असर से हमारा मूड बन जाता है। दुखी हो, खुश हो, उदास हो एक अच्छा गाना एक अच्छी धुन आपका मूड बदल देगी। आजकल तो कई बीमारियों का इलाज भी संगीत विधा म्युजिक थेरेपी से किया जा रहा है। संगीत भरे वातावरण से सबकुछ न सही बहुत कुछ बदल सकता है खासकर हमारा मन हमारा मूड।

हमारा मन हमारा मूड ये सचमुच कभी दोस्त बनते हैं कभी दुश्मन और हम इनके प्रभाव में फंस जाते हैं। जैसे प्राकृतिक वातावरण से हमें आनंद की अनुभूति होती है वैसे ही संगीत का असर हमारे मन, मस्तिष्क, दिल पर असर करता है चाहे वह सुबह दोपहर शाम या रात का कोई भी समय, कोई भी मौसम क्यों न हो। संगीत तो समय, मौसम, ऋतु, के अनुसार अलग–अलग राग में होता है और

उसके अनुसार यदि बजाया जावे तो संगीत का असर एकदम दवा, दुआ, स्नेह जैसा होता है। संगीत से तनाव कम होता है यदि एक बार संगीत का आनंद लेने की आदत पड़ जाये, संगीत की मिठास का पता चल जाये तो देखिये आप दिन भर कितने खुश तरोताजा रहते हैं।

हमारे यहां सुबह से रेडियो बजना शुरू हो जाता है। रेडियो व टेप में एक सबसे बड़ा अंतर ये है कि रेडियो के कार्यक्रमों में विविधता होती है। संगीत से लेकर समाचार तक आपको सुनने को मिलते हैं जबकि सिर्फ टेप रेकार्डर हो तो वह केवल केसेट में टेप गाने या संगीत सुनावेगा। वैसे दोनों एक ही टेप में टू इन वन हो तो क्या कहने आपका संगीत का आनंद दुगना होगा। हमारा रेडियो हम दोनों के पास अलग–अलग है यह हमारे साथ सुबह से रात तक रहता हैं कहीं चौके में खाना बनाना हो या बाहर घूमने जाना हो यह साथ रहता है बिलकुल एक अच्छे मित्र दोस्त की तरह। बस कोर्ट टाईम 10 से शाम 5 तक इसे छुट्टी देते हैं बाकी हमारी सेवा में हमेशा तैनात रहता है। यह हर काम को सहज करने में हमारी मदद करता है फिर चाहे वह काम खाना बनाने से लेकर न्यायालय की फाईल पढ़ने का ही क्यों न हो।

मुझे लगता है कि आप में से बहुत से न्यायाधीश बंधु–भगिनी संगीत में रूचि रखते होंगे उन्हें संगीत विषय का अच्छा ज्ञान भी होगा। संगीत हमारा एक सच्चा सखा है। उसके साथ कठिन से कठिन काम करने में भी परेशानी नहीं होती है। आखिर संगीत ही क्यों जीवन की हर प्राकृतिक वस्तु हमें वरदान स्वरूप बिना मूल्य के मिली है वह है हवा, पानी, पेड़–पौधे, जमीन आसमान नदी, सागर, पर्वत, फूल, पौधे सब में प्रकृति की सुंदरता है। इन सबके साथ सुन्दर खुशबू, संगीत का साथ हो तो क्या स्वर्ग कहीं और है? यहीं है इसी धरा पर। जरा एक बार गुलमोहर, अमलतास, पलाश, मोगरा, चंपा चमेली, गुलदाउदी या फिर रंग बिरंगा बोगनबेलिया याद करिये, देखिये या अपने यहां जगह हो तो इन्हें लगाईये आपका जीवन रंगों से खुशबू से महक उठेगा।

खुशबू से मुझे याद आया संगीत व रंग जैसा ही खुशबू का असर होता है। जैसे चंदन, खस, केवड़ा, केशर, कस्तूरी, कपूर, धूप, लोभान की खुशबू एक अलग ही अहसास देती है। किसी पूजा अर्चना यज्ञ आदि स्थान पर आपने महसूस किया होगा वहाँ के वातावरण में जो यज्ञ सामग्री व धूप, चंदन, लोभान की खुशबू फैली होती है उससे एक अलग ही पवित्रता का वातावरण होता है। फिर इस खुशबू के साथ यदि मंत्रोच्चार, सुंदर भजन या बांसुरी, शहनाई, तबले, ढोलक की ध्वनियां भी गूंज रही हों तो आपका मन वहां से जाने का, नहीं होगा।

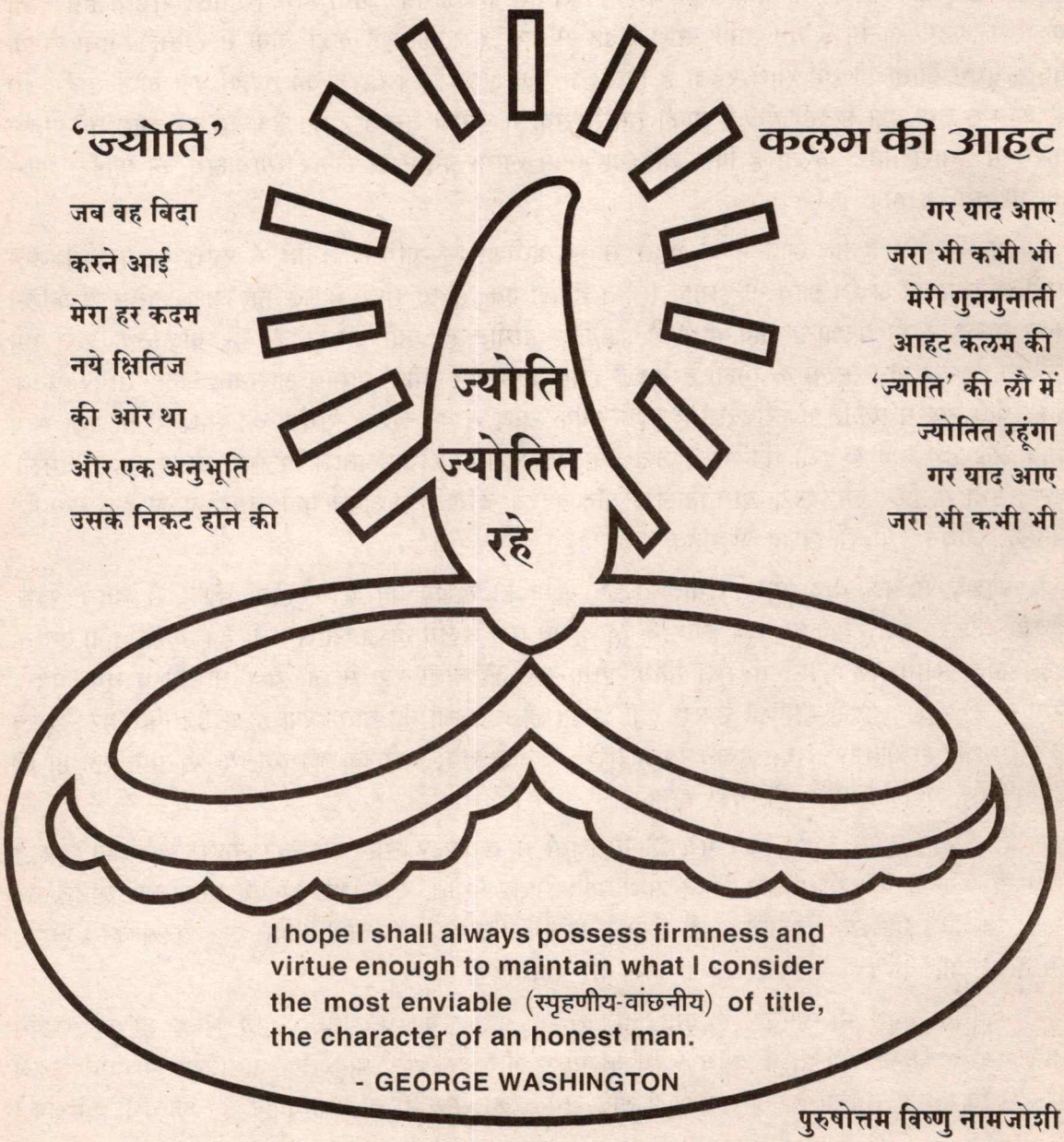
तो देखा आपने हमारे दिन भर की दिनचर्या में खासकर न्यायालय की नीरस रामलाल विरूद्ध श्यामलाल वाली जिंदगी में हम अपने साथ यदि गीत–संगीत, खुशबुओं का एवं प्राकृतिक सौंदर्य को साथ रखें। पेड़ पौधे या गृहवाटिका ही लगालें तो हमारा काम नीरस नहीं अपितु एक सरस कार्य होगा। हम अच्छे वातावरण के कारण अच्छा काम कर सकेंगे।

न्यायिक कार्य भी आखिर है क्या? प्रकृति के आधार पर प्राकृतिक न्याय सिद्धान्तों का पालन विधि अनुसार करके पीड़ित के साथ न्याय करना है और यह कार्य प्राकृतिक वातावरण में बहुत अच्छी तरह से किया जा सकता है। और साथ में यदि संगीत का साथ हो तो क्या कहने है। जिन्दगी का सफर

यूँ ही पूरा हो जायेगा हँसते हँसते। रेडियो में एक गाना आ रहा है आप भी सुनिये– सजन रे झूठ मत बोलो खुदा के पास जाना है/ न हाथी है न घोड़ा है वहां पैदल ही जाना है।

अच्छा तो साथियो हमारा आपका साथ इस ज्योति के साथ इतना ही था। यद्यपि ये ज्योति आपको हमेशा राह दिखायेगी, आपको बस उसको जलाये रखना है। कभी मिले तो यही कहेंगें छोटी सी ये दुनिया पहचाने रास्ते कहीं तो मिलोगे कभी तो मिलोगे तो पूछेंगें हाल।

मंजु नामजोशी



पुरुषोत्तम विष्णु नामजोशी

"LEGAL EDUCATION AND LEGAL PROFESSION- AN INTROSPECTION"

Shri B.R. Nahata Memorial Lecture delivered by JUSTICE R.C. LAHOTI, Judge, Supreme Court of India on 17.2.2002 at Jawaharlal Nehru Vidhi Mahavidyalaya, Mandsaur.

I feel honoured to have been asked to present the first 'Shri B.R. Nahata Memorial Lecture' in the campus of Jawahar Lal Nehru Vidhi Mahavidyalaya. Mandsaur.

LATE SHRI B.R. NAHATA

Though, Shri B.R. Nahata is physically no more with us, his fond memories as an eminent lawyer of the State, a politician, a legislator and an educationist with dedication to social service continue to survive and add fragrance to the earth and environment of this great township of Mandsaur, the place of abode of Lord Pashupatinath. Late Shri B.R. Nahata has been a monument of learning in law with ethics imbibed in professional practice. He specialized in criminal and election matters. He had several historical cases to his credit such as defending late Smt. Indira Gandhi before the Apex Court of the country and defending Shri P.C. Sethi, the former Chief Minister of the State, in an election battle. He was a member of Bar Council of Madhya Pradesh. As a Member of Parliament and as a Member of Legislative Assembly of the State, he contributed to giving shape to the destiny of the nation and of the State by framing the laws. He held eminent positions in the organization of Congress and, in that capacity too, contributed to the development of the State by shouldering the responsibility of preparing a project for development of Madhya Pradesh. Though, the cruel hands of destiny have deprived us of late Shri B. R. Nahata, it is satisfying to learn that his worthy son is following the footsteps of his late father, carrying his message ahead and who, as I learn, though thick in politics, yet keeps himself aloof of the evils of present day politics. This day I offer my homage' to late Shri B.R. Nahata and thank the organizers of this memorial lecture- the Mandsaur Bar Association. Jawahar Lal Nehru Vidhi Mahavidyalaya and B.R. Nahata Smriti Sansthan, for commencing the series of lectures and giving me this opportunity of delivering the first lecture. I have chosen the subject of 'Legal Education and Legal Profession- An Introspection, as I think this theme would be a befitting tribute to the memory and mission of late Shri B.R. Nahata to whom both these subjects were dear to heart.

SIGNIFICANCE OF LEGAL EDUCATION

Spiritually, it is believed that the life on the earth is regulated by the laws of the Lord or the Divinity. However, in a modern, civilized, democratic and political State. as the India is, it is the law of the laws- the Constitution of India, which has conferred

freedom on us, the right to live with human dignity and conscience. Widespread and deeply pervasive network of the laws leaves hardly any human activity outside its net which is not governed by some law or the other. Birth, death and marriage have to be registered. There are laws on how to move or drive on the road, how to travel, where to smoke or not to smoke, what to eat and what not to eat, where to go and where to refrain from going and so on. The air which we breathe, the water which we drink and the food which we eat, the house in which we live in, whether rented or owned, are all governed by some or the other law. From a little child purchasing a rubber or pencil to a matured man travelling by air within or outside country-all are subject to some law. Law determines the boundaries of human behaviour which determines the limits of transgression as well as compliance. Everyone is supposed to know the law and the ignorance of law does not excuse anyone. So pervasive, complex and fast changing are the laws that somebody felt persuaded to place a sticker on his car bumper which read "Do it today", tomorrow it may be illegal".

A definition of law is- "Law is nothing but rules of morality, ethics and common sense codified". In a democratic society, it is said that laws are collective will of the people expressed through legislature. The Supreme Court has ruled that 'rule of law' is a basic feature of the Constitution. In short, if we have to live, we can live only by law. Education in law enables the citizens learning their rights and duties. A citizenry enlightened by law can be most effective organ capable of putting a check on abuses and misuses of laws. It can lay foundation of a nation whose citizens love justice, are law abiding and believe in just and lawful co-existence for all the members of the society. Howsoever just be the laws enacted, they cannot be effective in delivering effective societal justice unless they are put into action by a citizenry, well versed and well instructed in law. Hence, the justification for legal education not only for those who wish to take law as profession but also for those who wish to be responsible and enlightened citizens of a free nation. To learn the law everyone need not be required to go to a law school. Elementary knowledge of the basic laws and constitution should be imparted to all students at secondary level of education. Mahatma Gandhi and several martyrs laid down their lives to earn the freedom. We have to preserve it. Thomas Jefferson, former U.S. President, once remarked : "If a nation expects to be ignorant and free, it expects what never was and never will be. "Education alone can erode ignorance. The UNESCO charter contains a very potent statement : Since wars begin in the minds of men. It is in the minds of men that the defences of peace must be constructed".

J.S. Rajput, Director, NCERT has stated in one of his articles that the entire world is talking today of fighting against the terrorism of various kinds- social, racial, economic, colonial, military etc. "The only right weapons and approaches would be information, knowledge and wisdom. All other weapons have outlived their utility. These are the days of mind power. Right education is the key to peace and prosperity".

The legal education has two purposes to achieve : (i) it shapes enlightened and responsible citizens of a democratic nation : (ii) it equips an aspirant to enter a profession which is one of the highly respected and lucrative in the world.

STUDYING LAW FOR A CAREER :

To the students of law I would like to emphasise a few issues.

Law as profession in the 21st century and with a march in the field of globalization has ceased to be a traditional profession. The days are gone when taking instructions in law could be an evening pastime. There were part-time teachers. Attendance could be by proxy and learning by heart a few question and answers from guides or solved papers, for a month or two before taking examination, could suffice for passing. Mostly practice in law was considered to be hereditary where son having got a degree in law would inherit his father's lucrative practice and continue the same for good or bad. Now, with the introduction of National Law Schools and five-years full time law courses, law is a specialized field of education. All good law schools and colleges have introduced entrance examinations where students are admitted by competitive test and on merit. Clinical education having been imbibed into course of study a degree in law dispenses with need for practical training afterwards. A degree-holder in law is almost equipped to embark into practice just as his counterparts in medical profession, engineering or chartered accountancy. With the indulgence shown by the Bar Council of India, armed with statutory power given to it by the Advocates Act, 1961, course of study in law is so designed as to meet the requirement of those who wish to take profession seriously by aiming at becoming lawyers and not by chance. Education in law is no more an option of last resort. It is now a coveted course of professional education.

A conventional lawyer used to develop more or less personal relationship with the client. He would be engaged by client to draft a plaint or a written statement and to act or plead for him only in Court of law, There were trial and appellate lawyers. In any case, their activities were confined to Court room preceded or followed by consultation and study in chambers or residential office. Now the role which a lawyer assumes is of a policy planner, a business advisor, a negotiator between groups having common interests, an expert in articulation and communication of ideas, a mediator, a lobbyist, a law reformer. With the widening horizons in the field of litigation and hitherto unknown fields entered into by lawyers and Courts of law such as sustainable development, environment sciences, cyber space law, genetic engineering, professional negligence, international legal disputes and intellectual property matters, one cannot think of becoming a successuful lawyer solely by learning the law. He has to learn allied sciences and sources of knowledge. To defend a doctor in the case of professional negligence the lawyer ought to know something about medical science. To settle environmental disputes knowledge of bio-diversity and biotechnology is a must. To draft documents and treaties with international remifications the lawyer ought to have a command over language and learn the art of articulation. All this requires a wide range of learning, continuing education and choosing the field of practice wherein one would like to specialize.

I would like to give a few tips to my young friends, the law students.

(i) **Work hard :** The saying, as old as the legal profession itself, is that there is no royal road to success in profession. In law, to earn success, one has to live like a hermit and work like a horse. If you propose to choose law as a career be prepared for incessant hard work for all times to come. Remember nobody has felt tired or worn out by work. Rather, more you do the more it adds to your capacity to work.

(ii) **Be physically fit :** Vivekanand said a healthy mind lives in a healthy body. To copy with ever mounting pressure of work which the success in profession would tell upon you, prepare for that tomorrow from today only. You must have a sound physique and healthy body to bear the burden of higher responsibilities and facing the challenges of the strenuous profession.

(iii) **Value the time :** The most precious thing of the world is time. It is said : time and tide wait for none. Advancements in the field of science and technology have converted time into a commodity. You pay your telephone charges by time, You can purchase hours on Internet. In the big cities the lawyers charge their fees at a certain amount per hour or even per minute. In legal profession time, talent and wisdom are marketable commodities. They are displayed in the showcase and puchased by one who can afford to pay the price. Just as raw-material has to be preserved and can be available for producing the finished product so in legal profession time has to be saved for utilization in delivering the finished product.

(iv) **Knowledge of English language :** My mother tongue is Hindi and I advocate speaking the knowledge and recognition of Hindi. But the fact cannot be denied that English has become the chief global language. The world-over it has been accepted as the link language. The only language known to computers, in the world around, is English. Lucrative job opportunities in foreign countries or the multi-nationals arriving in India are open to young boys and girls. The Indians are preferred for their characteristic qualities and capacity to work hard. However, such opportunities cannot be availed by those who do not have a good command of spoken and written English. While the students should enrich themselves in their mother tongue they should not lag behind in learning English and should rather acquire good command over it which holds so much of promise for them.

(v) **Read literature :** Reading literature gives width to vision. There is so much to read in law that one life may not be enough to complete reading the available literature in law. The books available in law consist of fundamentals of law, jurisprudential thoughts, legal research and biographies and auto-biographies of eminent judges and lawyers. It is inspiring to read them.

(vi) **Knowledge of Computers :** Computers are indispensable and even on the day they have assumed such a significance that a student not conversant with computers is as bad as an illiterate person. We are heading towards paperless offices and bookless libraries. You must learn computers.

(vii) **Develop a hobby :** Every professional must have a hobby to divert and entertain himself and get rid of monotony. The best hobby for any one engaged in mental

activity is music. It entertains, revigourates mental faculties and trains your mind to concentrate. In Delhi. I have seen the busiest of the professionals, specially senior advocates and judges, with their briefs in their study room, while engrossed in study they listen to good music.

(viii) **Look smart :** I have read (In Ascent. TOI, 13-2-2002) "Appearances count and first impressions can have a lasting effect on your career. According to a survey by UK based Roneo Systems Furniture, it takes just 30 seconds after meeting to form key impressions about an individual's education level, career competence, success levels, personality, trustworthiness, social background and sense of humour "Your dress may not be costly but it should be sober, neat and clean. Your trousers, coat and shirt which you put on must be well-stiched, well washed and well-creased. Always bear a smile on your face and try to look as attractive as you can. An astute client would assess your worth in the first meeting and decide upon retaining you as his lawyer feeling impressed initially by your appearance and the impact of your personality.

(ix) **Aim High :** Those who wish to enter the law as profession are often afraid of the crowd which they see in profession. There is no need to be nervous. The top is always vacant. The crowd is always at the bottom. One who aims high should not feel diffident by the crowd in profession.

A WORD WITH BROTHER IN PROFESSION

I hold in very high esteem the lawyers who are already in profession specially the seniors. My late father was a lawyer. I have been a lawyer. At one point of time in my larger family including cousins there were 7 lawyers at a point of time. That is why I collect courage to have a free and open dialogue with the legal fraternity.

Historically the legal profession is a great profession and service to the nation. Lawyers have always led the society. Mahatma Gandhi, Motilal Nehru, Jawaharlal Nehru, Sardar Patel, Sir Tej Bahadur Sapru, Dadabhai Naurauji, Dr. Ambedkar, Alladi Krishnaswami Iyer, K.M. Munshi and a galaxy of others who fought for freedom and shaped the Constitution were all lawyers, We own our freedom and the Republic of India to them. However, denigration and degradation in the professional standards cannot be denied. The moral values in the society are falling down day by day. Lawyers are part of the society and they cannot be aloof or away from the trend. I wish to place a few thoughts for your kind consideration:

(i) **Restrore the lost glory of profession :** There is an essential difference between business and profession. Business aims at personal gain though incidentally it may serve the society. The principal goal of any profession is public service though incidentally it may earn, gain and living to the profession. Of all the professions the legal profession has the largest social dimensions. The men of law have a predominant role to play in constructing and restructuring the society. Nurture the old traditions and lay down still higher traditions for future.

(ii) **Self-discipline :** Ever since the enactment of Advocates Act, 1961 the disciplinary jurisdiction of the High Court over the legal profession has come to an end. The Bar Councils are empowered to take disciplinary proceedings and correct the erring professional for themselves. The experience has not been very happy Most of the State Bar Councils fail to conclude disciplinary proceedings within the appointed time and the proceedings are statutorily transferred to over burdened Bar Council of India which takes its own time. If we do not internally correct ourselves then outer agencies would intervene to correct us. To 'correct ourselves' is consistent with principles of democracy. It will be a sad day if outside agencies would intervence to correct us for our failure to correct ourselves. Strikes in law Courts at the drop of a hat. abstaining from work and seeking adjournments on slightest pretext are contributing to mounting arrears. No lawyer has justification to abstain from appearance once he has accepted the fees ; otherwise he must return the fees and brief giving the client a reasonable previous notice. Without devlving much on this aspect I request you to have some introspection and give a serious thought to these issues in your silent moments.

(iii) **Memorise, modernize and march ahead :** While we continue to remember and practice what we have learnt in theory and practice, to keep pace with modernisation we have to have refresher and capsule courses. Human rights, intellectual property disputes, cyber crimes, GATT and TRIPS are opening new vistas in the profession and one must equip himself in the new branches of litigation so as to march ahead keeping pace with the trend of the times.

(iv) **Develop second line/next generation :** We all owe our duty to the next generation by training the juniors. Young entrants in the profession demand and deserve your attention, encouragement and generosity.

(v) **Social service and charity :** Actively involve yourself in the field of social and political activities of the society in which you live. Lawyers as a class are influential and resourceful lot- intellectually and economically. Their participation in social activities and politics would act as a deterrent to undesirable elements and keep the stream of the society clean and ever flowing. Also you must set apart a certain precentage of your earning every month for the purpose of charity.

CONCLUDING REMARKS :

It is said that success in professional career is 50% luck and 50% struggle. How this combination works?

Mahatma Gandhi, the Father of the Nation, used to say in his morning prayer 'O God! Enable me in taking first step in right direction, the rest will follow'. Shri Nani Palkhivala, the great lawyer and eminent jurist and versatile thinker, has written -

"On the subject of destiny, let me state what I believe as briefly as possible.

First, I believe that the basic pattern of an individual's or a nation's life is predetermined.

Secondly, very few individuals have the gift of clairvoyance to foresee what is predetermined.

Thirdly, guidance is sometimes vouchsafed to receptive human beings by means for which there is no scientific explantation.

Fourthly, I do believe in the existence of free will but that again is within preordained parameters. To my mind, the simplest analogy to the case we are talking about is that of a dog on a long leash-the dog has the freedom to move about as far as the leash permits, but not beyond.

Pandit Jawaharlal Nahru expressed the same idea in more felicitous language. He was interviewed by Norman Cousins, the doyen of American editors, and a writer of high repute. After dealing with the political questions, Cousins put the last question somewhat as follows :

"You have a modern mind as a result of your upbringing in England, while your roots are in this ancient land. How do you reconcile free will and destiny?"

After pausing and pondering over the question, Pandit Nehru replied as follows :

'Both have a place in our life. The best analogy one can think of is to compare life with a game of bridge. The cards dealt to you are out of your control, but the way you play your hand is your free will. Given a good hand, you can still mess up the game, and vice versa."

There have been examples of other men who have been humble enough to admit that they had reached certain positions in life not because they deserved them but because they were destined to attain them."

Gandhi was a lawyer. We cannot all be Gandhi. But we can listen to and follow what Gandhi said. In whichever walk of life we go, our knowledge and wisdom shall be our guides. We shall have to fight against the ills and evils in society to make it a better place to live in. Gandhi had analysed the sins, their causes and cure, and then beautifully summed up, what has to be guarded against, in a timeless and universal quote. He said :

"Politics without principle : pleasure without conscience : commerce without eithics (Morality); knowledge without character, science without humanity; wealth without work, and worship without sacrifice".

Remember Gandhi and be on your guard wherever you may be.

Thank you,

REFERENCES :

1. The Law and the Lawyers by M.K. Gandhi (Edited by S.B. Kher)
2. Nani Palkhivala, Selected Writings
3. Ascent, T.O.I., 13-2-2002
4. Education in Values- J.S. Rajput (The Hindu, 16-10-2001)

Courtesy : Hon'ble Justice Shri R.C. Lahoti
A.I.R. Publications Nagpur, A.I.R. April 2002, Journal Section Page 83.

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लेखा - जोखा

चाहते बहुत हैं, मन से प्रयत्न भी करते हैं फिर भी काफी मर्यादाएँ होती हैं जो कि सभी इच्छित बातों को करने से वंचित रखती हैं। काफी इच्छा थी कि पिछले 7 वर्षों में 'ज्योति' में प्रकाशित विभिन्न महत्वपूर्ण लेख, परिपत्र आदि का प्रकीर्णक ग्रन्थ (Miscellanea) अथवा (Free measonry) प्रकाशित किया जावे लेकिन कम्प्यूटर, प्रिन्टर, स्कॅनर आदि के अभाव के कारण संभव नहीं हुआ। यद्यपि पत्रिका की पृष्ठ संख्या व आकार में वृद्धि हुई है तब भी संबंधित सामग्री को उसमें आद्यतन रूप से सम्मिलित नहीं किया जा सका है। आज भी इस संस्था के पास संपादित सामग्री इतनी अधिक मात्रा में प्रकाशित होना शेष है कि आने वाले दिसम्बर माह तक और अधिक सम्पादन की आवश्यकता न हो। लेकिन विधि पत्रिकाएँ जो नियमित रूप से आती हैं उनका संपादन तो अविलंब करके रखना आवश्यक होता है इसीलिए वह कार्य नियमित रूप से चल रहा है। अधिकांश अप्रकाशित लेखों की सामग्री प्रिंटर ने तैयार कर रखी है एवं उसकी प्रूफ रीडिंग भी हमने कर ली है। पत्रिका में यथा समय प्रकाशन होता रहेगा।

माह फरवरी एवं अप्रेल 2002 का इंडेक्सिंग पूर्ण हो चुका है। भविष्य के लिए यह प्रयत्न होना है कि प्रत्येक द्विमासिक पत्रिका के साथ उस पत्रिका में ही विषय सूची भी प्रकाशित हो। यह कार्य तब सुगमता से होगा जब उत्तम कोटि के कम्प्यूटर की व्यवस्था होगी। इसके लिए प्रयत्न चल रहे हैं।

संस्था के माध्यम से अनुसंधान एवं विश्लेषण कार्य किया जा सके इसके लिए प्रयत्न चल रहे हैं। मूर्तरूप प्राप्त होने की संभावना निकट भविष्य में है। संशोधित, परिवर्तित, परिवर्धित अधिनियमों के आधार से संक्षेपिकाएं लिखी जावें यह भी एक विचार है। निकट भविष्य में पादचाप ध्वनि सुनने को मिलेगी।

संस्था की ओर से पदोन्नत अतिरिक्त जिला न्यायाधीशगण को प्रशिक्षण हेतु आहूत भी करना है। आशा है ये पदोन्नत न्यायाधीश अब तक व्यवस्थित रूप से स्थापित हो चुके होंगे।

ये समस्त कार्य सतत् रूप से चलते रहेंगे। यद्यपि मेरा समय पूर्ण हो ही रहा है फिर भी आप सबको अधिकाधिक उपयोगी सामग्री समय पर मिलती रहे यह प्रयास तो सभी का रहेगा। यह अन्तहीन क्रिया है इसलिए अपनी सीमा पहचानकर पूर्ण विराम देना पर्याप्त है। लेकिन इस कारण मात्र से पत्रिका की पहचान कम नहीं होना है। आने वाला कल अपनी पहचान कभी नहीं खोता है। कल आज और कल अविरत स्थिति है व्यक्ति आएंगे जाएंगे लेकिन संस्था कायम रहेगी। अतः आने वाला कल सुनहरी सुबह लेकर आएगा। आने वाले कल पर विश्वास रखे। मैं उच्च न्यायालय एवं न्यायिक अधिकारी प्रशिक्षण संस्थान की कमेटी का आभारी हूँ जिन्होंने सतत् मार्गदर्शन दिया एवं विश्वास प्रगट किया। सौ. मंजू नामजोशी, अति. निदेशक ज्योति का जिसका अथक सहयोग रहा। आभारी हूँ सौ. पी. पद्मा, स्टेनोग्राफर का जिसके सिवाय पत्रिका का कार्य पूर्ण हो ही नहीं सकता था वह संस्था के लिए आधार रही हैं। समस्त स्टाफ को सहयोग हेतु आभार।

संपादक

अवधानी बनना है

मित्रो! जागते रहो यह शीर्षक ही चुभने लायक बन गया है ऐसा कभी–कभी अनुभव होता है। देर रात में पहरूआ आवाज देता है कि "जागतेऽऽ रहोऽऽ" तब उस पर गुस्सा करते है कि यूं ही सीटीं बजाता है और नींद–खराब करता है। यदि पहरूआ ऐसी चौकीदारी नहीं करे तथा चोरी हो जावे तो उसकी पिटाई हो जाएगी। मुझे इस बात का दुख नहीं है कि मैं पिट जाऊँ। प्रश्न ये है कि आपके यहां चोरी क्यों हो। इसलिए आप निश्चित रूप से जागते रहे व मैं स्वयं जाग रहा हूं व जागता–जगाता रहूंगा। इस शीर्षक के अंतर्गत प्रकाशित बातें हमारे लिए निश्चित रूप से ज्ञानवर्धक है। कई प्रकार की भूलें हम ज्ञान अज्ञानवश से करते हैं। सबसे बड़ी बात है हम कल्पना पर भरोसा करते है अपनी स्मरण शक्ति पर बहुत ज्यादा विश्वास करते हैं लेकिन दुश्मन से भी ज्यादा दगा वहीं देती है यह भी निश्चित है। यह बात अक्सर हम अनुभव करते हैं जब हम अभियुक्त को सजा देते है। जितनी सजा पुस्तक में नहीं बताई उससे ज्यादा सजा हम निर्णय में देते हैं। इसी प्रकार की एक और घटना फौजदारी में नहीं अपितु दीवानी में घटी उसी के साथ हम आगे बढ़ते हैं। देखें किस प्रकार से होता है।

अभी कुछ दिन पूर्व ही उच्च न्यायालय का एक निर्णय जो फिलहाल अप्रकाशित है देखने को मिला। विनिर्दिष्ट सहायता अधिनियम की धारा 6 के अंतर्गत विचारण न्यायालय ने निर्णय पारित किया। निर्णय एवं डिक्री से व्यथित पक्षकार ने जिला न्यायालय में अपील की एवं अपील न्यायालय ने अपील में भी अपनी योग्यता, क्षमता, दक्षता से निर्णय पारित कर दिया। उससे व्यथित पक्षकार उच्च न्यायालय में आया। उच्च न्यायालय ने कहा कि धारा 6 के अंतर्गत पारित निर्णय एवं डिक्री की कोई अपील नहीं होती है अपितु रिवीजन मात्र होती है।

अभी कुछ ही दिन पूर्व पुनः रात को टेलीफोन की गर्जना मुझे सुनाई दी। सो रहा था। गर्जना के कारण नींद में व्यतिक्रम हो गया व नींद खुल गई। बिना पूर्व पीठिका के प्रश्न पूछना शुरू हुआ। सर! धारा 6 के तहत अपील प्रस्तुत की है जो प्रारंभिक सुनवाई में ग्राह्य हो चुकी है एवं अंतिम सुनवाई हेतु प्रकरण निर्धारित हुआ है क्या किया जावे क्योंकि उत्तरवादी का कहना है अपील चल नहीं सकती जबकि अपीलार्थी का कहना है कि यह अपील धारा 5 एवं 6 विनिर्दिष्ट सहायता अधिनियम के अंतर्गत है अतः अपील ही होगी। यदि अपील पोषणीय नहीं है तो क्या आदेश लिखा जावे।

एक ही सांस में प्रश्नों की झड़ी लगी तो दूसरे ही सांस में मुझसे उत्तर देने की भी अपेक्षा थी क्योंकि दूसरे ही दिन उन महाशय को निर्णय भी देना था।

'माड़ साब' होने के नाते मैंने यह मान लिया कि उत्तर देना जरूरी है और वह भी तत्काल। यह भ्रम में कई सालों से पाल रहा हूं कि किसी ने कुछ पूछा है तो तुरंत हल बताना ही चाहिए। उत्तर दिया। समझाया कि धारा 5 क्या है, धारा 6 क्या है व उनका विस्तार क्या है व आदेशिका क्या लिखना है।

इस विषय पर दुबारा कुछ और लिखे जाने की आवश्यकता प्रतीत नहीं होती है। धारा 5 एवं 6 स्वयं में बहुत स्पष्ट है। क्या जिन महानुभावों ने अपील का निराकरण तक कर दिया अथवा प्रारंभिक सुनवाई में प्रकरण ग्राह्यय किया उनके संबंध में यह मान लिया जावे या कि उपधारित कर लिया जावे कि ऐसा करने के पूर्व पुस्तक खोलकर प्रावधान पढ़ने की आवश्यकता तक अनुभव नहीं की। इसीलिए बार–बार लिखा जा रहा है कि हमने अंदाज से काम करने की स्थापित परंपरा को स्वीकार कर लिया है। कभी–कभार गंभीर क्षति हमारी ही नौकरी को (जी हां नौकरी शब्द ही प्रयोग कर रहा हूं क्योंकि अब हम न्यायाधीश के रूप में न्यायदान करने से बेहतर नौकरी करना मान बैठे हैं) हो सकती है।

कृपया विनम्रता पूर्वक मेरा निवेदन सुनें। इस संबंध में मैंने विस्तृत लेख **ज्योति 1997 भाग 3 (जून) पृष्ठ 11 पर "विनिर्दिष्ट सहायता अधिनियम धारा 5 एवं धारा 6" लिखा है** उसे अवश्य पढ़ें। संभव है उपयोगी प्रतीत हो अन्यथा अच्छी सी टीप युक्त पुस्तक पढ़ें। कुछ भी पढ़ें लेकिन पढ़ें जरूर। आँखों के माध्यम से या कान के माध्यम से मस्तिष्क में प्रवेश की गई बात कभी न कभी काम आएगी ही।

एक और घटना। कुछ दिन पूर्व इन्दौर, ग्वालियर गया था। सुना समझा सोचा व अभिव्यक्त कर रहा हूं। धारा 125 दं.प्र.स. के अंतर्गत कार्यवाही प्रारंभ हुई। निराकृत हो गई। वसूली कार्यवाही प्रारंभ हो गई। उसमें पिता की ओर से आपत्ति आई कि धारा 125 का आवेदन पत्र पोषणीय नहीं है। विचारण न्यायालय ने कहा यह बात वसूली कार्यवाही में नहीं सुनी जाएगी क्योंकि जिस प्रकरण में आदेश दिया गया है वो कार्यवाही भिन्न है एवं वसूली कार्यवाही भी भिन्न है। रिवीजन में न्यायालय ने कहा इस आपत्ति का निराकरण किया जावे। पुनः फाईल वापस प्रवर्तन न्यायालय में आई। प्रवर्तन न्यायालय ने आपत्ति पर तर्क सुने एवं आपत्ति यह कहकर खारिज कर दी कि वसूली कार्यवाही मे ऐसी आपत्ति पोषणीय नहीं है। व्यथित पक्षकार पुनः वरिष्ठ न्यायालय में गया जहां कहा गया कि पूर्व में वरिष्ठ न्यायालय ने निर्देश देने पर भी आपत्ति का निराकरण नहीं किया। अब किया जावे। देखें कि प्रवर्तन न्यायालय ने आपत्ति का निराकरण किया या नहीं। वसूली कार्यवाही में धारा 125 दं.प्र.सं. की कार्यवाही पोषणीय नहीं है ऐसा निराकरण करने के पश्चात और कैसे निराकरण करना है यह प्रवर्तन न्यायालय के गले नहीं उतर रहा था। ऐसा तो नहीं है कि रिवीजन कोर्ट के आदेश को यह मान लिया जावे कि आपत्ति स्वीकार कर वसूली कार्यवाही समाप्त करना है।

फिर रिवीजन कोर्ट कितनी बार ऐसे प्रकरण रिमांड करती रहेंगी। प्रवर्तन न्यायालय विचारण न्यायालय दो पृथक अस्तित्वधारी न्यायालय होते हैं। जिस प्रकार की आपत्ति होगी उस हिसाब से निराकरण होगा। फिर आपत्ति स्वीकार भी हो सकती है, खारिज भी हो सकती है या यह कहा जा सकता है कि अमुक कार्यवाही में ऐसी आपत्ति ग्राह्य नहीं हो सकती है। फिर रिवीजन न्यायालय के भी तो अपने अधिकार है। वो अपने स्तर पर निराकरण कर सकता था।

ऐसा तो नहीं है कि रिवीजन न्यायालय विषय को (प्रकरण को) अंतिम रूप देते निर्धारण न करके फाईल को इधर से उधर करता रहेगा। दूसरी बात ये भी कि वरिष्ठ न्यायालय विचारण/प्रवर्तन

न्यायालय से क्या अपेक्षा करता है यह स्पष्ट शब्दों में क्यों नहीं लिखा जाता। वरिष्ठ न्यायालय क्या अपेक्षा करता है यह विचारण/प्रवर्तन न्यायालय केवल वरिष्ठ न्यायालय के आदेश से ही तो समझ सकेगा। एक दृष्टांत यहां पुनः बताया जा रहा है जिससे ज्ञात होगा कि प्रवर्तन कार्यवाही एवं मूल कार्यवाही के न्यायालयों की क्या सीमाएं हैं। ***फूड कार्पोरेशन ऑफ इंडिया विरूद्ध एस. एन. नगरकर (2000) 2 एस.सी.सी. 775*** जिसमें कहा गया है कि : The Court cannot examine the correctness of the order sought to be executed after attaining finality.

दोस्तों भूलें होंगी, अवश्यंभावी है। परन्तु वे कार्य–कर्म की उपेक्षा के कारण न हो। भूलवश भूल होना अनावधानता कहलाती है। उपेक्षा के कारण हुई भूल गलती कहलाती है। अवधानता का अर्थ है एकचित्त होना हमें अवधानी बनना है।

न्यायदृष्टांतों को लागू करना भी कला है। अभी **(2001) 6 ज्योति पृष्ठ 447** पर Principle (Ratio) of a case प्रकाशित किया था। न्यायदृष्टांत क्या सिद्धान्त प्रतिपादित करता है एवं उसे कैसे लागू किया जा सकता है इसका बिंदु वार विवरण है। एक प्रकरण में एक दृष्टांत प्रस्तुत हुआ। न्यायालय ने उसे देखा। समझा भी होगा। धारा 360–361 दंड प्रक्रिया संहिता पर आधारित था। दृष्टांत दृष्टांत ही है। जिस विषय से संबंधित प्रकरण है उस संबंधित तथ्यों पर ही तो आधारित होगा। यह बात भी सही है कि मध्यप्रदेश में धारा 360 दं.प्र. के सिद्धान्त लागू नहीं होते है। वह इसलिए कि यहां प्रोबेशन ऑफ ऑफेन्डर्स ॲक्ट लागू होता है जैसा कि उस अधिनियम की धारा 19 में बताया है। यहां तक तो व्यवहार की बात हो गई। लेकिन यदि यह कहा जावे कि धारा 360–361 दं.प्र.स. पर आधारित दृष्टांत म.प्र. राज्य लागू ही नहीं हो सकता है तो यह बात चिंतन की कम चिंतनीय ज्यादा है। दृष्टांत किसी भी अधिनियम पर आधारित हो यदि सिद्धान्त के आधार से हम उसका उपयोग कर सकते हैं तो हमने अवश्य करना चाहिए। यदि धारा 360 दृ.प्र.स. एवं धारा 03 एवं 04 प्रोबेशन ऑफ ऑफेन्डर्स ॲक्ट के सिद्धान्त में प्रभेद करने योग्य बात नहीं है तो उस दृष्टांत को उस सीमा तक विचार में लेना अपेक्षित होता है इसी को analogical application सादृश्य, साधर्म्य, अनुरूपता, तुल्य रूपता का के सिद्धान्त का पालन करना कहते हैं।

और यह साक्षी भाव का उदाहरण/एक क्लेम केस में अंतिम तर्क सुने जाना थे। मृत्यु स्वाभाविक हुई या दुर्घटना से हुई या हत्या से हुई या आत्महत्या से हुई जैसे प्रकार सामने आ सकते हैं। दुर्घटना के आधार से मोटरयान अधिनियम के अंतर्गत प्रकरण संस्थित हुआ। अस्पताल में आहत का उपचार हुआ लेकिन उपचार के दौरान उसकी मृत्यु हुई या बाद में हुई यह मुद्दा अस्पष्ट रहा ऐसा कहा है। प्रतिपरीक्षण में एक स्थान पर यह कहा जाना बताया जाता है कि मृतक की मृत्यु स्वाभाविक रूप से हुई। साक्षी इसका अर्थ समझता है या नहीं यह भी सोचने योग्य बात है। दूसरी बात यह कि यह एक आकस्मिक (casual) कथन है जो सम्पूर्ण प्रकरण की साक्ष्य से मेल खाता है या नहीं इसका भी मूल्यांकन होना चाहिए। किसी एक वाक्य को पकड़कर निर्णय नहीं होता है। इस संबंध में कुछ दृष्टांत देखें। ***1989 M.P.R.C.J., Noc 14 चित्तुखान वि. कलावती*** में कहा है कि साक्ष्य का नियम यह है कि उसकी संविक्षा सम्पूर्ण रूप से की जानी चाहिये– प्रतिपरीक्षण में आकस्मिक (casual) रूप से कहे गये कुछ वाक्यों पर निर्णय आधारित

नहीं किया जा सकता है। ***1991 (1) W.N. 42 भगतराम वि. बापुलाल*** में कहा है कि Statement of witness to be read as a whole.

ये भी कहा गया कि जिस अस्पताल में इलाज हुआ वहां का सम्पूर्ण रेकार्ड प्रस्तुत नहीं हुआ। इस प्रकार के विभिन्न लोप (omitions) सामने आ रहे हैं पक्षकारगण न्यायालयीन प्रक्रिया से अनभिज्ञ होते हैं व अधिवक्तागण का विधिक सहयोग न्यायालयों को कितनी सीमा तक मिलता है यह भी जग जाहिर है लेकिन क्या पीठासीन अधिकारी भी साक्षी भाव से साक्ष्य लिपिबद्ध करता रहेगा? न्यायालय के सामने साक्ष्य लिपिबद्ध करने के सिद्धान्त का क्या यही आधार है? क्या न्यायालय केवल अंपायर का ही काम करेगा? नहीं। रूल्स ॲण्ड ऑर्डर्स से यह बात पत्रिका के माध्यम से पूर्व में विस्तार से बताई है। जागृत व चैतन्य अवस्था में साक्ष्य लिपिबद्ध कराई जाने का कर्तव्य न्यायालय का है। इसी कारण उच्च न्यायालय ने एवं माननीय महोदय बार–बार कहते रहे हैं कि साक्ष्य लिपिबद्ध करने हेतु काउन्टर्स नहीं खोले जाना है। यह इसीलिए कि वाद प्रश्न, विचारणीय बिन्दु क्या है, प्रकरण क्या है, साक्ष्य किस प्रकार से लिपिबद्ध हो रही है, क्या अस्पष्टता है, कौन कौन से बिन्दु अस्पष्ट है यह निर्धारित करते हुए न्यायालय को साक्ष्य लिपिबद्ध करना होती हैं इसीलिए साक्ष्य अधिनियम में धारा 165–167 के अंतर्गत व्यापक अधिकार दिए हैं। हम आप मूकदर्शक के रूप में या साक्षीभाव से कार्य नहीं करेंगे यह न्याय की विधि विधान की अपेक्षा है। अपराधिक नियम क्र. 118 भी देखा जा सकते हैं।

निर्णय के द्वारा यह पाया गया कि साक्षी ने असत्य कथन किए हैं। अतः न्यायाधीश महोदय ने उचित (ही) समझा कि साक्षी के विरूद्ध अपराधिक प्रकरण चलाया जावे। इस संबंध में प्रक्रिया दं.प्र.सं. की धारा 195 सपठीत धारा 340 के अंतर्गत दी है। उस अनुसार विधिवत रूप से एक परिवाद मजिस्ट्रेट के न्यायालय में प्रस्तुत करना होता है। वह न करते हुए यदि हम कहें कि हमारा निर्णय ही परिवाद है ऐसा मान लिया जावे तो कैसा चलेगा? क्या यह 'परिवाद' धारा 2 दं.प्र.सं. में दर्शित 'परिवाद' परिभाषा के अंतर्गत आएगा। धारा 340 दं.प्र.सं. में भी परिवाद प्रस्तुत करने हेतु ही कहा है। अतः परिवाद प्रस्तुत करना ही व्यवहारिक है, समझदारीपूर्ण है। न्यायाधीश बंधुओं से यह भी निवेदन है कि परिवाद कब प्रस्तुत करना चाहिए अथवा पुलिस स्टेशन कब रिपोर्ट करना चाहिए इस विषय में दृष्टांत व विस्तृत नोट **'ज्योति' जर्नल एप्रिल 2002 टिट बिट क्र. 47 पृष्ठ 151** अवश्य देखे।

और एक चार्ज भी देख लें। रात्रि के समय किसी ने किसी दुकान का ताला तोड़कर चोरी की अपराध कौन सा बनेगा। लूट, डकैती या चोरी या उद्दीपन? या रात्रो गृह भेदन एवं चोरी? क्या हमने इन अपराधों के तत्व देखे हैं, अंतर समझा है? लूट किस प्रकार होगी? प्रावधानों को कृपया देखें। चार्ज लगाने के पूर्व भी अपराध के तत्वों का मिलान दंड संहिता के विभिन्न प्रावधानों के साथ कर लें। ये काम भी पेथॉलॉजिकल टेस्ट जैसा ही है। सजा देते समय प्रावधान को पुनः देखना जरूरी हैं। ऐसा न हो कि हेमोग्लोबिन प्रतिशत की रिपोर्ट के बजाय ब्लड शुगर का प्रतिशत निकालकर बता दिया जावे।

SAVE "SAVING" FROM "REPEALING"

(S. 6A GENERAL CLAUSES ACT)

P.V. NAMJOSHI

Faced with a problem one District & Sessions Judge firstly telephoned me and then sent a copy of the order passed in a case and requested that a detailed note may be prepared and should be published in 'Joti Journal' so that the state of confusion (if any) may not remain in anyone's mind.

The problem posed is very simple, In All India Reporter (Act Section) November and December, 2001 from pages 222 to 235 an Act has been published and along with the Act there are different Schedules by which several Acts not less than 500 in number have been repealed. He cited one example of Motor Vehicles Act (at page 233).

The reference is in this manner :

Year of the Act	-	1994
Act No.	-	54
Name of the Act	-	The Motor Vehicles (Amendment) Act, 1994
Extension of Repeal	-	The whole

Making this reference he put a question as to whether by the Repealing and Amending Act, 2001 Act No. 30 of 2001 the effect of the amendments incorporated by the Motor Vehicles (amendment) Act, 1994 has come to an end? The simple answer should be 'No'. The Repealing and Amending Act, 2001 appearing on page No. 222 (Acts section) of the AIR 2001 Vol. 11 does not extinguish the force of the Acts which are being repealed by the said Act, i.e. the Repealing and the Amending Act, 2001. The reason is simple. Section 4 of the Act saves the rights liabilities already acquired, accrued or incurred, etc., etc. This is a routine procedure of the Parliament to remove from the Statute books several Amending Acts by which effect is being given in Parent Acts. This is the simple interpretation. Such Acts are alike empty cartoons and should not remain in Drawing Room (Statute Book).

Section 6 and 6-A of the General Clauses Act (10th of 1897) (Central Act) and with mutatis mutandis The M.P. General Clauses Act also provides for such amendments. Section 6 and Section 6-A of the General Clauses Act are reproduced for ready reference.

S.6. Effect of repeal.- Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, or continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

6-A. Repeal of Act making textual amendment in Act or Regulation.- Where any Central Act or Regulation made after commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

NOTES. The object of Repealing and Amending Acts is not to bring in any change in law but to remove enactments which have become unnecessary. "Mostly, they expurgate amending Acts, because having imparted the amendment to the main Acts, those Acts have served their purpose and have no further reason for their existence. (***Khudabux v. Manager, Caledonian Press,*** **AIR 1954 Cal 484, P. 486;** approved in ***Jethanand v. State of Delhi,*** **AIR 1960 SC 89, p. 91;** ***India Tobacco Co. Ltd. v. The Commercial Tax Officer, Bhavanipore,*** **AIR 1975 SC 156, p. 158: (1975) 3 SCC 512).** The repeal of an amending Act, therefore, has no repercussion on the parent Act which together with the amendments remains unaffected. It was, therefore, held that section 6 (1-A) introduced in the Wireless Telegraphy Act, 1933, by the amending Act of 1949 was not affected when the amending Act was repealed by the Repealing and amending Act of 1952. (***Jethanand v. State of Delhi,*** supra.)

Section 6-A is in it self a speaking section and in itself describes everything which may clear the confusion if any croped in the mind of a Judge. For ready reference the whole 'Act' except the Ist and IInd Schedule is reproduced;

THE REPEALING AND AMENDING ACT, 2001
(ACT NO. 30 OF 2001)

(3rd September, 2001)

An Act to repeal certain enactments and to amend certain other enactments.

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

1. **Short title-** This Act may be called the Repealing and Amending Act, 2001.
2. **Repeal of certain enactments-** The enactments specified in the First Schedule are hereby repealed to the extent mentioned in the fourth column thereof.
3. **Amendment of certain enactments.-** The enactments specified in the Second Schedule are hereby amended to the extent and in the manner mentioned in the fourth column thereof.

4. **Savings-** The repeal by this Act of any enactment shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to; and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;

nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in or from any enactment hereby repealed;

nor shall the repeal by this Act of any enactment revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not existing or in force.

Now let us have comments on the proposition. With courtesy, in the beginning, I will reproduce some extracts from **Legislation and Interpretation' by Jagdish Swaroop,** 1989 Edition at page 643 Item No. 21.10

4. EFFECT OF REPEAL OF ACTS INCORPORATED IN ANOTHER ACT

It is a rule of law that the repeal of a former Act does not of itself repeal provisions which have been incorporated into a subsequent Act. ***Clarke v. Bradlaugh (1881) 8.G.B.D. 63; 51 LJ. G.B.I., Jethanand v. State of Delhi 1960 Sc.c.89, Ramswarup vs. Munshi 1963 SC. 553.*** **This doctrine finds expression in a common form which regularly appears in the amending and repealing Acts which are passed from time to time and which provide that "the repeal by this Act of any enactment shall not affect any Act in which such enactment has been applied, incorporated or referred to."** This principle is embodied in section 6A, General Clauses Act which provides that "where any Central Act or regulation made after 11th March 1897 repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, then unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal." **An independant existence of the two Acts is recognised. Despite the death of the parent Act, its offspring survives in the incorporating Act.**

Secretary of State Vs. H.C.I. Society, 1931 P.C. 149 (152); Mohd. Safi Vs. State of W.B., 1951 C. 97 may be perused.

Hope this itself will make it clear that the Acts repealed by this 'Act' shall not affect any Act to which such enactment has application, incorporated or referred to. **Jagdish Swaroop** has also made reference to Section 6-A of General Clauses Act.

Again I will drawn attention to the book **"Cases and Material on Legislation" 2nd Edition by Frank E Horck Jr. Callhan & Co. Chicago at page 700** entitling **"saving Clause".** It also reproduces the same principle.

Again at page 572 the expressions "Exceptions, Provisos and Saving Clause" have been explained. Saving Clause preserves from destruction certain rights, remedies or privileges find their way into almost every statute. In **Craie's 'On Statute Law', 7th Edition, 1980 First Indian Reprint 1999** published by Universal Law Publishing Company (P) Ltd, there are citations of ***(1881) Q.B.D. Page No. 63, 69 and of Morisse Vs. Royal British Bank (1856) C.B. (N.S.) 6-7 86 Williams J: R.V. Minister of Health Ex.P. Villiers (1936) 2 K.B. 29*** which reveals that there is a rule of construction that where a statute is incorporated by reference into a 2nd Statute the repeal of the first statute by third statute does not affect the second by the incorporated provisions. They become part of the second statute. The writer has again referred to ***Willingdale Vs. Norris (1909) 1 K.B. 57. 86.*** In the same book reference is also made regarding effect of such savings and repeal at pages 417 and 418 also. **"The principles of Statutory Interpretation" by Hon'ble Justice G.P. Singh, 1999 Edition at page 780,** there is a note on Section 6-A of the General Clauses Act which is reproduced here for ready reference with the citations referred to there under.

In the said book at page 168 a distinction has been shown between proviso, explanation and saving clause in which ***Arnold Vs. Mayor and Corporation of Gravesend, 2 KNJ 574*** has been referred to. Other citations referred to are ***Bhojraj Khubarji vs. Subhash Chandra, AIR 1961 SC 1596 (1600)*** and ***Agricultural and Processed Food Products vs. Union of India, 1996 SC 1947 (1952).*** It is further reguested to go through Chapter No. 7 Item No. 6 relating to "consequences of Repeal" in the same book.

Again please refer to **Jagdish Swaroop on 'Legislation and Interpretation' Chapter No. 10 Item No. 6 on page 369** where in he has given a detailed commentary on Saving Clause. The Extract is reproduced for ready reference:

10.6. SAVING CLAUSES

Repealing clauses are used to terminate a statute in whole or in part. On the other hand, a saving clause is used to establish an exemption from the general language of a statute, that is, to restrict a repealing Act. Saving clauses are introduced into Acts, which repeal others, to safeguard rights, which but for the saving, would be lost. When one says that a particular Act, "saves right", it does not mean that any rights are given to him. The saving does not give any further rights than those the party already had. "Saving" in its terms means, that it saves all the rights one had; not giving him any new rights. New rights can not be derived from a saving clause which must have the limited effect of protecting existing rights as against the provision in the main enactment.

Saving clauses are generally put in where one Act is repealed and reenacted by another, the scope and purpose of both remaining the same. Their effect is that the portion of the Act remains in force as if the second Act has not been passed.

When a shaving clause provides that something which is done or issued under a repealed provision must be treated as having been treated or issued under the newly enacted provision an earlier order can be saved only if such a direction or order can be effectively and validly make under the new provisions of law cases. Cases refered :-

1. **Crawford; Statutory Construction, p. 143 S. 93;** ***Lucknow Municipal Board v. Ram Autar, 1960 A. 119.***

2. ***Shah Bhojraj Oil Mills v. Subhash Chandra, (1962) 2 S.C.R. 159 (166): 1961 S.C. 1596 (1600.)***

3. ***Arnold v. Gravesend Corporation, (1856) 2 K. & J. 574 : 25 L.J. Ch. 530 (537) : Gulab Chand v. Kudilal, 1951 M.B. 1 (7).***

4. ***Milkha Singh v. Mt. Shankari, 1947 L.1 (11).***

5. **Halsbury's Laws of England Hailsham Edn. Vol. 5,S. 608;** ***State of Madhya Pradesh v. A.K. Jain, 1958 M.P. 162 (164) ; Bhagat Ram v. Smt. Lilawati, 1972 H.P. 125 (31).***

6. ***Alphone v. Distt. Supply Officer, 1986 Mad. 20 (23).***

Horcks in his commentary on **'Cases and Materials on Legislation' at page 572** says that saving clause is used to preserve from destruction certain rights, remedies or previleges already existed. In **Osborn Law Dictionary. 1993 Edition,** there is a reference of Statute Law Revision Act and the Dictionary defines the word repeal also which is as under :

REPEAL : ABROGATION OF STATUTE : This occurs when a statute is no longer to have effect, either because a later statute expressly so declares or as a necessary result of a later statute which is inconsistent. If the later statute is repealed, the earlier statute is not revived. Interpretation Act, 1978 Ss. 15-17.

STATUTE LAW REVISION: S.L.R. Acts were passed every few years in the period from 1861 to remove Acts, or parts of Acts, which had become absolete.

Osborn Law Dictionary, 1993 Edn.

Bare perusal of Sections 2 and 4 of the Repealing and Amending Act, 2001 will speak about saving and make it very clear about the purpose and effect of enacting such Act and incorporating few Amending Acts.

Reference can also be made to **Maxwell on "Interpretation of Statutes", 12th Edition** at pages 16,17 to 20 regarding repeal and Saving Clause.

Few Tit-bits from AIR Manual Civil and Criminal, 5th Edition, (1989) 26th part at page 82 regarding Section 6-A, General Clauses Act, 1897 are reproduced to know about the principle stated :-

Repealing and Amending Acts are enacted by the Legislature from time to time in order to repeal enactments which have ceased to be in force or have become absolete or the retention whereof as separate Acts is unnecessary. The principal object of such Acts is to "exercise dead matter, prune off superfluities and reject clearly inconsistent enactments." **AIR 1975 SC 155 (158).**

Repealing and Amending Act may thus be regarded as a "legislative scavenger". **AIR 1957 Punj 141 (142). (Overruled on another point in AIR 1960 SC 90).**

When a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or

absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all. **AIR 1952 SC 324 (326)**

In the class of cases contemplated by S. 6A, the function of the incorporating legislation is taken almost wholly as the function of effecting the incorporation and when that function is accomplished, the legislation dies as it were, a natural death which is formally effected by its repeal. **AIR 1962 SC 316 (334)**

Textual amendments become a part of the amended Act, and the repeal of the amending Act does not effect the textual amendments which are so incorporated in the principal Act. **AIR 1959 MP 195 (200): 1959 MPLJ 679 (DB).**

The repeal of a statute does not repeal such portions of the statute as have been already incorporated into another statute. The Act directing incorporation may be repealed, but the incorporated section or sections still operate in the former Act. **AIR 1951 Cal 97 (99).**

A short commentary and comments on the subject is sufficient as it is not practicable to write a detailed note in view of the fact that the 'Joti Journal' has a very limited scope to publish Articles in detail.

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न्यायिक संस्कार

क्या हम यह कर सकेंगे?

पुरुषोत्तम विष्णु नामजोशी

1. क्या हम निर्मोही, निस्पृह एवं असम्पृक्त बने रह सकेंगे?
2. जिज्ञासु बने रहेंगे?
3. समय से पूर्व हम प्रशासनिक जानकारी प्राप्त करने के स्वभाव से स्वयं को संयमित रख सकेंगे?
4. क्या वाचन क्रिया में समय का नियोजन हो सकेगा?
5. किसी निष्कर्ष पर पहुंचने के पूर्व हम पठन–पाठन एवं मनन कर पाएँगे?
6. न्याय दृष्टांतों को लागू करने के पूर्व विषय वस्तु से संबंधित विधिक प्रावधान क्या है यह जानने की कोशिश होगी?
7. क्या समय के साथ, सात्विक प्रतियोगिता, जीतने के लिए भले ही नहीं, बराबर चलने के लिए हो सकेगी?
8. मनुज है मनुज से रह पाएँगे?
9. सूर्य प्रबलतम बलवान है लेकिन अहंकार हीन है। इस आधार से स्वयं का मूल्यांकन हो सकेगा?
10. उधारी की प्रतिष्ठा एवं प्रतिष्ठा के प्रतीक चिन्हों से संकोच किया जा सकेगा?

एक न्यायाधीश से और क्या अपेक्षा हो सकती है बस इतना ही बहुत है।

सृजनात्मकता

पुरूषोत्तम विष्णु नामजोशी

प्राक्कथन : हम क्या करे या हम क्या कर सकते हैं यह चिंतन का आधार नहीं हो सकता। हम क्या कर रहे हैं यही एक मात्र विचार सार है जिस पर हमारी प्रगति निर्भर है। व्यवहार न्यायाधीशों के लिए होने वाली प्रतियोगी परीक्षाओं के लिए मैं लगभग 22 वर्षों से निःशुल्क मार्ग दर्शन देता रहा हूं व पिछले छह वर्षों में संस्था के माध्यम से प्रशिक्षण वर्गों का संचालन कर रहा हूं। बाकी तो बहुत दूर की हो जाएगी लेकिन मैं मेरी लड़की–दामाद, न्यायाधीश द्वय एवं मेरी न्यायाधीश पत्नी का एवं मैं मेरे स्वयं को भी देख रहा हूं। इस प्रकार एक से एक बेहतर दर्पण है जिसके माध्यम से दूसरों के एवं स्वयं के असली चेहरे देखे जाते रहे हैं।

हमारे में आधारभूत रूप से कहीं न कहीं कमी है। हम यद्यपि अक्षम न भी हो लेकिन हम हमारी क्षमताओं का पूर्ण रूप से उपयोग नहीं करते हैं या उपयोग नहीं करना चाहते है। क्षमता की मात्रा कम अधिक हो सकती है इस बाबत भी राय भिन्न नहीं हो सकती। पढ़ने–पढ़ाने के दौरान यह अनुभव हुआ कि विधि परीक्षा अर्थात विधि में स्नातक उपाधि सहज मिल गई, परिश्रम का अभाव रहा होगा। यह इसलिए लगता है कि प्रतियोगी परीक्षा में बैठने वाले उम्मीदवारों के जो अब अधिवक्ता ही होते हैं को विधि संबंधी मूलभूत बातें अर्थात मौलिक बातें नहीं मालूम होती है। पिछले समय अति. जिला न्यायाधीश की परीक्षा हेतु 400 उम्मीदवारों में से एक उम्मीदवार मात्र साक्षात्कार एवं नियुक्ति हेतु योग्य पाया गया। जबकि 5 पद थे अबकी बार 10 पद है एवं लगभग 800 उम्मीदवार परीक्षा में बैठे हैं।

इस पृष्ठभूमि को ध्यान में रखकर एक व्यवहारिक उपाय की सोची है जो पत्रिका के माध्यम से हम न्यायिक बंधुओं के बीच चर्चा होती रहना चाहिए। कुछ धारणाएं मेरे मन में भी है उन्हें प्रस्तुत किया जा रहा है वे भी इस व्यवहारिक उपाय के लिए फर्स्ट एड के रूप में काम आ सकती है। इस विषय पर समय–समय पर प्रशिक्षण कक्षाओं में भी विस्तार से बताया गया है।

वाचन : वाचन न करना हम सबकी कमजोरी है ऐसा मेरा अपना अनुभव है। कोई भी व्यक्ति सफलता प्राप्त करना चाहता है तो वाचन एक न्यूनतम तत्व है। जैसे–जैसे वाचन करते जाएंगे नई–नई बातें एवं कल्पनाएं हमारे मन में प्रस्तुत होती जाएंगी। लेखक का दृष्टिकोण उसके विचार का आधार उसके द्वारा संदर्भित ग्रंथ–पुस्तकों की कल्पना आएगी एवं हमारे विचार भी परिपक्व होंगे। वाचन के कारण स्मरण शक्ति में भी वृद्धि हो सकती है। जो जिस क्षेत्र में है उस क्षेत्र से संबंधित विषयों पर तो पठन–पाठन–वाचन तो करता ही होगा, करना भी चाहिए लेकिन अन्य क्षेत्रों से संबंधित विषयों पर भी पठन–पाठन वाचन किया जा सकता है।

अन्य भाषाओं की सामग्री पढ़ते समय जिन शब्दों का अर्थ नहीं आ रहा हो उन्हें भी समझने का प्रयत्न किया जा सकता है। शब्दकोश सहायक हो सकता है। भावार्थ क्या है इस सीमा तक तो पढ़ा ही जा सकता है। वाचन का एक लाभ यह भी होता है कि भाषा की शुद्धता की ओर भी ध्यान जाता

है व नए–नए शब्द एवं उनके अर्थ ज्ञात होते हैं इस वस्तु स्थिति से इन्कार नहीं किया जा सकता कि पुलिस विभाग एवं न्यायपालिका में जिन शब्दों व भाषा शैली का प्रयोग हो रहा है वह अनादिकाल से प्रयोग हो रहा है उसमें कोई भी परिवर्तन करने का सक्रिय रूप से प्रयत्न नहीं हुआ है। अपवाद अवश्य है लेकिन वे इसलिए कि वे लोग परिवर्तन चाहते हैं एवं मौन साधक हैं।

वाचन का एक प्रभाव यह भी होता है कि बोलचाल की भाषा में शुद्धता आती है, गांव ठान की बोली में परिवर्तन आता है एवं गवांरूपन से मुक्ति मिलती है। जब हम सामूहिक रूप से एक पढ़े–लिखे समाज में विचरण करते रहते हैं तो व्यक्ति की बोलचाल की शैली, प्रयुक्त भाषा, विचारों का स्तर एवं चिंतन की क्षमता भी, स्पष्ट रूप से झलकती है। यदि ऐसा होगा तो हमें राधा का 'शाम' एवं संध्या का 'श्याम' में अन्तर करते आएगा। हमें फलोद्यान की 'बाहर' एवं शहर से 'बहार' की समस्या नहीं होगी। पैसा जमा करने हेतु 'शेविंग की दुकान पर नहीं जाना पड़ेगा तो कटिंग करने हेतु 'सेविंग' करने नहीं जाना पड़ेगा। अतः आपकी भाषा समृद्धि एवं वैचारिक ज्ञान का आधार वाचन हो सकता है।

लेखन : वाचन का अभिन्न अंग है लेखन। आपने खूब वाचन किया ठीक है। लेकिन उसकी अभिव्यक्ति नहीं हो पाती है। आपके वाचन से आपके बोलने की शैली परिष्कृत होगी लेकिन लेखन भी परिष्कृत होना चाहिए। आप यदि कुछ भी लिखना प्रारंभ करें तो देखें आप स्वयं को असहाय पाएंगे। निर्णय लेखन या आदेश/आदेशपत्र लेखन उस लेखन के आशय में सम्मिलित नहीं है जिस विषय में बताया जा रहा है यद्यपि निर्णय आदेश/आदेश पत्र लेखन भी एक प्रकार का लेखन ही है व उसे भी करने में भारी कठिनाई आती है लेकिन फिर भी ऐसे लेखन हेतु हमारे पास तैयार सामग्री होती है।

मैं उस लेखन की बात कर रहा हूं जो अपने ही विचारों को सूत्रबद्ध रूप से प्रस्तुत किया जा सकता है। प्रयत्न करना एक छोटा सा, संपादक के नाम पत्र या किसी विषय पर टिप्पणी या संक्षेपिका लिखने का। आपको सबसे प्रथम आवश्यकता होगी शब्दकोश की एक नहीं विभिन्न प्रकार के। मेरे पास कम से कम विभिन्न प्रकार के 50 शब्द कोश हैं। फिर भी मुझे अभाव अनुभव होता है। फिर आवश्यकता होगी संदर्भ पुस्तकों की। जब आप लिखना प्रारंभ करेंगे तो आपके मस्तिष्क पटल पर वाचन के कारण जो बातें अंकित हो गई है वे चूंकि ज्यों कि त्यों पुनः प्रस्तुत नहीं की जा सकती इसलिए उन पुस्तकों की आवश्यकता होगी जिसमें वे बातें हैं। इस प्रकार लेखन में कितनी कठिनाईयां आ सकती हैं ज्ञात होगा। प्रयत्न करे। लेखन कार्य विचारों को पुष्ट करेगा व परिष्कृत भी करेगा।

अध्ययन : वाचन लेखन अध्ययन एक ही धुरी से जुड़े चक्र में गतिमान हैं। ये दूषित चक्र (vicious Circle) नहीं है। अपितु यह सुखद स्वस्थ गुणी (happy healthy and virtuous circle) है। एक दूसरे के ये पूरक हैं व अनवरत् रूप से जीवन की दिनचर्या है। अध्ययन करना प्रारंभ करे तो कैसी परेशानी होगी उसका उदाहरण देखें। किसी भी अधिनियम की एक धारा (सेक्शन) निकाल कर देखें। उसमे अपवाद होंगे, स्पष्टिकरण होंगे परन्तुक भी होंगे एवं मुख्य धारा भी होगी। इतना ही पर्याप्त नहीं है। उसके सिवाय उस प्रावधान में अध्यारोही ही वाक्य खंड (non obstante clause) (notwith the standing clause riding clause) भी होगा। फिर उसी धारा में किसी अन्य धारा का भी खुलासा होगा। अतः उस धारा को भी पढ़ो। उस धारा को पढ़ो तो पुनः यही बातें उसमें भी हो सकती हैं। इस

प्रकार अध्ययन करने के लिए पढ़ना आवश्यक (मजबूरी ही सही) हो सकता है। जब अध्ययन करोगे तो उसके लिए पढ़ोगे और जब अच्छी तरह से पढ़ोगे तो नई कल्पना सृजित होगी और उसकी प्रस्तुत स्वाभाविक रूप से लेखन के माध्यम से ही होगी।

अतः इस सुखद स्वस्थ गुणी चक्र के चक्कर में आ ही जाना। प्रसन्नता होगी सुखद–स्वस्थ होने का अनुभव आप स्वयं करेंगे एवं आपके प्रति गुणी होने का भावानुभव दूसरे करेंगे। जहां इस चक्कर में फसेंगे पुस्तकों की तलाश प्रारंभ होगी और तब आप शान शौकत की चीजों की दुकानों पर नहीं जाएंगे अपितु पुस्तकों की दुकान पर आपके दर्शन होंगे। कहा जाता है कि शहर के भले आदमी–पुस्तकों की दुकान पर अवश्य मिल जाएंगे।

न्याय क्षेत्र में वाचन-लेखन एवं अध्ययन

न्यायिक बंधुओं से एक निवेदन। मैं आपको कुछ छोटी–मोटी टिप्स् सूचनाएं युक्तियां बताना चाहूंगा। अचानक धनवान कोई नहीं बनता न ज्ञाता बनता है न समझदार बनता है। ये सब बातें क्रमागत रूप से विकसित होती हैं। क्योंकि विकास केवल मनुष्य का ही होता है। पशु पक्षियों में समझ हो सकती है, सूंघने की शक्ति का लाभ भी उन्हें इस समझ में मिलता है व प्रतिरोध शक्ति भी हो सकती है लेकिन बौधिक क्षमता मानव जाति को ही है। मुझे इस संबंध में केवल एक बात समझ में नहीं आ रही है कि इन सब बातों के होते हुए भी पशु–पक्षियों में मात्र मानवता क्यों होती है। कोई बात नहीं/ इस विषय पर आप ही वाचन लेखन अध्ययन कर सकते है मैं नहीं कर पाया।

हां तो मुख्य बात ये है जैसा कि सभी जानते हैं न्यायाधीश के पास विधि से संबंधित विषयवार पुस्तकें होना चाहिए, सहायक पुस्तकें होना चाहिए। उन पुस्तकों में कौन सा विषय कहां–कहां मिलेगा यह पता लगाने की क्षमता होना चाहिये। उससे संबंधित न्याय दृष्टांत होना चाहिए। ये हो गई आदर्श की बात। लेकिन एक बात जो मैं बताने जा रहा हूं वह आदर्श का विलोम नहीं बता रहा हूं अपितु पूरक बात बता रहा हूं वह है व्यवहारिकता।

हमने जब वास्तव में ये तय कर ही लिया हो कि अब तो हम (और अधिक) सुधरेंगे ही तो हमें कुछ बातें अवश्य करना है। आपके पास विभिन्न प्रकार के टिप्पणी रहित अधिनियम (बेअर एक्ट्स) हो तो भी चलेगा। विभिन्न प्रकार के डायजेस्ट हो। उन डायजेस्टों में आप को विभिन्न शीर्षकों के अंतर्गत विषय मिलेंगे। जैसे Accounts, Deeds, Practice Civil, Criminal, Criminal Trial, Precedents, Procedure, Presumptions, Legal Maxims, Words and Phrases, Ownership, Will Title, आदि, उपयोगी शीर्षक होंगे। उस डायजेस्ट के प्रारंभ में ही ये शीर्षक दिए होते हैं। उन शीर्षकों के आधार से उल्लेखित दृष्टांत फुर्सत के समय में देखते रहिए बहुत सी ज्ञानवर्द्धक बातें ज्ञात होंगी। फुर्सत के क्षण हर जीवधारी के जीवन में रोजाना आते हैं विशेषकर जहां परिवार हो। बर्तनों का भी एक संसार परिवार होता है व ऐसा कहीं नहीं हुआ है कि बर्तन से बर्तन नहीं टकराएं। जैसे ही टकराते हैं मधुर ध्वनि आती ही है वैसे ही सुखद, मधुर एवं फुर्सत के क्षण हरेक को मिल ही जाएंगे। आपके यहां ऐसा नहीं है तो प्रयत्न करें ऐसे सुखद क्षण प्राप्त करने का। तथास्तुभव !

हां तो जीवन की इस वास्तविकता से निकलकर मूल मुद्दे पर आ जाएं। आपके पास विधि शब्दावली हो। इसके सिवाय विधि की पारिभाषिक शब्दावली (Law Lexicon) हो जिसमें शब्द के अर्थ, उस शब्द का विस्तृत विवेचन, संदर्भ, दृष्टांत आदि सब होते हैं। इन्हें Words and Phrases के रूप में भी कहा जाता है। यहां उच्च न्यायालय में Corpus Juris Secundum, Words and Phrases, West Publication की उच्च कोटि की पुस्तकें हैं। उन्हें भी उपयोग में लिया जा सकता है। प्रारंभिक स्तर पर विधिक लैटिन शब्दावली, आदि है। जिसमें लैटिन शब्द एवं विधिक मुहावरे उनका हिन्दी अंग्रेजी अनुवाद आता है, सस्ते में उपलब्ध है। उसी प्रकार Legal Abbreviations, Literal Legal Words, Words and phrases (Judicial Interpretatans) Foreign Words, Phrases and Maxims Legal Doctorines, Principles, Rules and Theories की भी एक ही पुस्तक आती है वो भी हो। आपके पास इंटर प्रिंटेशन की कम से कम एक पुस्तक हो, ब्रूम ऑन लीगल मॅक्सिनस् की पुस्तक तो अवश्य हो, सोचने का चिंतन ही बदल जाएगा। जनरल क्लासेस एक्ट हो। Quotable Quotes हो विधि संबंधी Quote it, legal anecdotes हो। देखिए एक वर्ष तक हम आप इस सामग्री के पन्ने पलटते रहेंगे (Browsing) तो भी हमारे में परिवर्तन का एक सुखद हवा का झोंका आएगा। सुखद क्षण किसको अच्छे नहीं लगते। बस! तो मस्तिष्क पटल के गवाक्ष खोल दें और आने दे परिवर्तन की लहर। धीरे–धीरे हम आप रम जाएंगे तो फिर क्या कहने है। नये आयाम खुल जाएंगे, अष्ट पहलू व्यक्तिमत्व बनने लगेगा।

जैसे जैसे आर्थिक स्थिति ठीक होने लग जाए तो उच्च कोटि की कम्प्यूटर सिस्टम अवश्य खरीद लें। विधि साहित्य हेतु उसका प्रयोग करने लग जाएंगे तो हम आप वो हो जाएंगे जो हमें बहुत पहले ही होना था। देर तो अभी भी नहीं है जब जागो तब सबेरा।

अंग्रेजी का अध्ययन : विधि क्षेत्र में अंग्रेजी का अध्ययन होना सोने पे सुहागा है। हमें अंग्रेजी नहीं आती है तो आना चाहिए। बिना अंग्रेजी के नौकरी तो कर लेंगे लेकिन आत्मीय संतोष नहीं मिलेगा। आलस्य से मनुष्य को संतोष मिलेगा लेकिन उसका प्रतिफल नहीं मिलेगा। अंग्रेजी नहीं आती हो तो अध्ययन करे। अपने परिवार में यदि बाल बच्चे अंग्रेजी स्कूल में जाते हैं तो प्रारंभिक स्तर की पुस्तकें उनके पास होती हैं उससे अध्ययन करना उत्तम है क्योंकि वे पुस्तकें आप को छोटी अवस्था से बड़ी अवस्था की ओर ले जाएंगी। अंग्रेजी हिन्दी का व्याकरण भी करें। ऐसा होना कितना अपमानजनक होगा कि घर का कर्ता जो न्यायाधीश है उसे अंग्रेजी नहीं आती, हिन्दी में ठीक लिख बोल नहीं सकता एवं पत्नी तथा बाल बच्चे अंग्रेजी में योग्यता रखते हैं। हमारा खोखलापन हम कितने दिन छुपाकर रख सकेंगे। हमें अंग्रेजी नहीं आती इसका एक कारण संभवतः हमारा आलस्य है। उसे त्यागना होगा। हमारे परिवारजन अंग्रेजी सीखें तो हम क्यों नहीं सीखेंगे? वर्क यूनिट्स (कार्य मात्रा) किसी की दुश्मन नहीं है अपितु कर्मठता का एक तत्व है चारित्रिक गुण है। अतः यह बहाना भी हमारी गुणवत्ता को खोखला कर देगा।

श्रवण : एक क्रिया और है वह है श्रवण क्रिया। न्यायाधीश होने के नाते श्रवण करना तो आवश्यक ही नहीं अनिवार्य है। इसका कोई विकल्प नहीं है। तर्क–कुतर्क, वितर्क सभी सुनने होंगे क्योंकि हर कोई अपना पक्ष प्रस्तुत करेगा। आप इसे मार्गदर्शित कर सकते है नियंत्रित भी कर सकते हैं। एक बुरी बात

हम में है। वो ये कि सामने वाला जब कुछ कह रहा है तो उसे सलंग रूप से कहने नहीं दिया जाता हैं उसे बीच–बीच में टोका–टोकी की जाती है एवं हम जो चाहते हैं उतनी ही जानकारी की अपेक्षा करते हैं। यहां तक तो बात समझ में आती है लेकिन हम उसकी बात को यूं ही काट देना चाहते हैं व उसे सुने बिना ही उसके तर्कों की अकाल मौत का कारण बनते हैं। सामने वाला क्या कह रहा है हमें सुनना ही नहीं है यह कितनी बुरी बात है। कभी–कभी तो ऐसा लगता है कि भरे न्यायालय में हम अपनी विद्वता का प्रदर्शन करना चाहते हैं। विद्वान न्यायाधीश तो हम है हीं, हमारी विद्वता निर्णयों से झलकना चाहिए। इसलिए धीर गंभीर बनकर सुनें। अच्छे श्रोता बनना भी एक कला है। सभी को यह संभव भी नहीं है। कला को सृजित करें। दूसरे को हेय या न्यून मत मानिए। हम हमारी विश्वसनीयता खो देंगे यदि अच्छे से नहीं सुनेंगे। सुनने योग्य बहुत सी बातें हैं। सुनाने वाले के अपने तर्क होते है उसका अपना ज्ञान है अपना चिंतन है। अच्छे से सुनने से ये लाभ होता है कि हम हमारे तर्क, चिंतन व कारणों को सामने वाले क साथ मिलाकर परख सकते हैं। ज्ञानी होने का अधिकार किसी एक का नहीं होता है। एक समय ऐसा आ जाता है कि हम अपने छोटों से भी परास्त हो जाते हैं तथा कम बुद्धिवालों से भी मात खा जाते है।

तर्क सुनते समय हमारा मन विशाल होना चाहिए। अन्य बातों के संबंध में जो विषय से संबंधित नहीं है के विषय में चिंतन नहीं होना चाहिए। सहज संभव है कि सामने वाले व्यक्ति के चिंतन का प्रभाव हमारे पर ऐसा हो कि हमें सही मार्ग प्रशस्त हो जाए। पुस्तक पढ़ते वक्त या लेखी तर्क पढ़ते वक्त तो हम पुस्तक से या नोट्स से तू–तू, मैं–मैं नहीं करते हैं तो तर्क सुनते वक्त भी थोड़ा संयम अपेक्षित होता है। बोझिलता न आए इसलिए विषयांतर करके कुछ क्षण तर्कों को विराम दिया जा सकता है, मार्गदर्शित किया जा सकता है, नियंत्रित भी किया जा सकता है। अतः अच्छे श्रोता बनें।

समापन : मेरा लक्ष्य उपदेश देने का नहीं है। मैं ये बात इसलिए कह रहा हूं कि एक पीढ़ी ने दूसरी पीढ़ी को कोई अच्छी चीज देते रहना चाहिए। अच्छी चीज मेरे पास नहीं है। मेरे पास वेदना है। वेदना यह कि जो कुछ मुझे अपने सेवाकाल में करना था वह नहीं कर पाया। यह ऐसी वेदना है जो सहज रूप से इस बात को प्रवृत्त करती है कि जो काम हम नहीं कर पाए वे हमारे उत्तराधिकारी करें तथा इसके लिए यथा संभव हम सहयोग करें। मेरा यह आर्तनाद है। पर–हित–निहित भावना से प्रेरित यह भाव है। यह नाद, नादब्रह्म तब होगा जब लय–सुर ध्वनि एवं भावों का संयोग–संगम होगा। पैर थिरकेंगे शरीर थिरकेगा। उत्साह उमंग पैदा होगी। न्यायपालिका का गौरव बढ़ेगा जिस पर राष्ट्र की आशा है विश्वास है। हम तो न्याय के न्यासी है अतः किसी न्यास का विश्वास भंग करना सबसे बड़ा पातक होगा– पाप होगा। हम कुछ करें, कुछ भी करें लेकिन सकारात्मक रूप से करें। मैं यद्यपि वरिष्ठ नागरिक नहीं हूं लेकिन वरिष्ठ (तम) न्यायाधीश हूं अतः इतना तो कह सकता ही हूं।

A father is a man who expects his children to be as good as he meant to be.

No one has a corner of Success. It is his who pays the price.

Success- Sacrifices go along.

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HUMBLE VIEW

EFFECT OF AMENDMENT MADE BY THE CENTRAL GOVERNMENT IN SECTION 125 OF THE CR.P.C ON AMENDMENT MADE BY M.P. STATE GOVERNMENT

P.V. NAMJOSHI

The M.P. State Government amended Section 125 Cr.P.C. to a certain extent by the Act No. 10 of 1998 by the Code of Criminal Procedure (M.P. Amendment) Act, 1977. The assent of President was received on 20th May, 1998 and was published in the Gazette of M.P. Government (Extraordinary), dated 30th May, 1998 and it came into existence in M.P. It is an amendment in the Central Act of 1973 and it was decided to amend section 125 of the Code in its application to the State of Madhya Pradesh, suitably, Thereafter, the Central Government amended the provisions of Sections 125 too 128 by the Code of Criminal Procedure Amendment (Act No. 50) of 2001 and the assent of the President was received on 24th September, 2001 and the Act was published in the Gazette of India (Extraordiinary) Pt. II Section 1 on 24th September, 2001.

The question posed is whether the State Amendment is to be made applicable or the amendment made by the Central Government is to be applied in M.P.? The answer is very simple. It is the Central Amendment which is to be taken into account and the State amendment is to be ignored. M.P. Amendment has fixed the amount of maintenance to the tune of Rs. 3,000/- where as by Amendment in Cr.P.C. by the Central Government, the amount of maintenance is not restricted, in fact it is unlimited. Further other more beneficial amendments are also incorportated by the cerntral amendment Act. I have already written an Article regarding the anamoly of the state amendment entitled as **"enhanacement of maintenance from Rs. 3,000/- to Rs. 500/- only"**, in **Joti Journal August 2001 issue at page 245.** The relevant provisions of **Constitution of India** regarding Art. 245 and 254 are reproduced for ready reference which speak for themselves :

ART. 245 : EXTENT OF LAWS MADE BY PARLIAMENT AND BY THE LEGISLATURES OF STATES :-

(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

ART. 254. INCONSISTENCY BETWEEN LAWS MADE BY PARLIAMENT AND LAWS MADE BY THE LEGISLATURES OF STATES :-

(1) If any provision of a law made by the legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of any existing law with respect to one of the matters enumerated in the Concurrent List, then, subject of the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by

the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the legislature of the State shall, to the extent of the repugnancy be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State :

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, verying or repealing the law so made by the Legislature of the State."

Under Sch. 7 of the Constitution of India, there are 3 Lists. Union List, State List and Concurrent List. When we look to Entry No. 2 of List No. 3, Concurrent List, it includes the Criminal Procedure including all matters in the code of criminal procedure at the commencement of the Constitution. There is also Entry No. 4 of the second List (the State List) also. Presently, we are concerned with List 3 only.

SCOPE OF THE THESE ENTRIES :

The various entries in the 3rd List are not 'powers' of Legislation, but 'fields' of legislation as stated in ***Calcutta Gas Co. Vs. State of W.B., AIR 1962 SC 1044 (1049)*** and ***Harakchand Vs. Union of India, (1970) 1 S.C.R. 479*** and ***Union of India Vs. Dhillon, (1971) 2 SCC 779.*** The power to legislate is given by Art. 246, and other Articles of the Constitution.

The Central Government by its amendment removed the slab of Rs. 500/- and there is no outer limit for granting maintenance under Section 125 or enhancing maintenance under Section 127 Cr.P.C. Previously, by M.P. Amendment, it was raised to Rs. 3000/-.

REASON TO ADOPT CENTRAL AMENDMENTS :

Art. 254 Clause (1) lays down the general rule. Clause (2) is an exception to clause (1) and proviso qualifies that exception as laid in ***Deep Chand Vs. State of U.P., AIR 1959 SC 648*** which has reference to Art. 13 (1) and (2) of the Constitution of India also. ***Premnath Vs. State of J & K, AIR 1959 SC 749, Barti Vs. Henry, AIR 1983 SC 150, Hoechst Vs. State of Bihar, AIR 1983 SC 1020, Ukha Vs. State of Maharashtra, AIR 1963 SC 1531 and Zaverbahi Vs. State of Bombay, AIR 1954 SC 752*** say that the question of repugnancy arises only in connection with the subjects enumerated in the Concurrent List (List III of the 7th Sch) as regards this list both the Union and the State Legislature have concurrent powers, so that the question of conflict between laws made by both legislatures relating to the same subject necessarily arises. Clause (1) says that if a State law relating to a Concurrent subject is repugnant to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be viod.

REPUGNANCY :

The meaning of the word 'repugnancy'. A state law may be 'repugnant' in any of the following ways:

(i) When there is direct conflict between the two provisions. This may happen.

(a) Where one cannot be obeyed without disobeying the other.

(b) Two enactments may also be inconsistent although obedience to each of them may be possible without disobeying the other.

So far as question of repugnancy is concerned the State Amendment provides an amount of Rs. 3,000/- for maintenance only where as in the Central Amendment there is no outer limit for granting maintenance. The purpose of the state amendment was to raise the amount of maintainance from Rs. 500/- to Rs. 3000/-. But by the Central amendment the amount of maintainance has been enlarged without any outer limit and other benifits are also enlarged and extended for the class of persons.

The simple meaning of repugnancy is when it is said that one Law is repugnant to another law when two laws are inconsistent with each other. There is no repugnancy unless the two Acts are wholly incompatible with each other or the two together would lead to absurd results with this proposition we can say that the State amendment is repugnant of the central amendment.

REPEAL

There may be expressed or implied repeal. In ***Rasal Singh Vs. State of M.P., 1978 JLJ 216 (FB),*** it was said that a provision in an Act of said list hearing this case, the subject matter was Krishi Upaj Mandi, 1972 M.P. Act amended by M.P. Ordinance No. 9 of 1977 is not invalid by virtue of Art. 254 of the Constitution unless and until it is shown that it is inconsistent with the provisions of the Parliament. In this case reference was made to ***M.P. State Road Transport Corporation Vs. Ramesh Chandra 1977 JLJ 292 (FB.)***

REPEAL OF THE ACT :

There is express repeal and implied repeal also. Since the Central Act does not mention about the repeal of the M.P. Amendment, there is no repeal as express repeal but there is an implied repeal. The principle on which the rule of implied repeal rests is in **AIR 1954 SC 752 and AIR 1953 Nag58.** We can also make a reference to ***Bisahulal Vs. State of M.P. 1969 MPLJ 649*** which relates to Opium Act (Central Act) and M.P. Opium Rules. It was Said that in reference to repugnancy between Union Law and State Law in the matter of Concurrent List repeal is not to be implied where different fields are occupied that of a cogent and allied character.

CONCLUSION

Presently the matter refers to List 3, Concurrent List. Therefore, the Amendment incorporated by Central Act shall prevail over the State amendment because rights of beneficiaries are limited under State amendment as against amendment by the Central Government which gives different enlarged rights to the beneficiaries.

In the present case the benefits extended by the Union Law have wider effect and in favour of beneficiaries than that of the State Law. Therefore, it can be said that the Amendment incorporated by M.P. Amendment Act is impliedly repealed.

This is my simple view on the subject and I have tried to express my views briefly as I could do so in the present circumstances of the scope of the magazine to bear the length of the article.

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बेहतर है जान लो

धारा 12 मर्यादा अधिनियम

(आ. 9 नियम 9 एवं 13 के संदर्भ में)

पुरूषोत्तम विष्णु नामजोशी

प्रस्तावना : सोचा था इस विषय पर 'जागते रहो' के माध्यम से नाश्ते के रूप में परोसा जावे लेकिन विषय का आयोजन ऐसा था कि स्वागत समारोह (विस्तृत लेख) के माध्यम से दावत के रूप में परोसा जावे।

हमारी अपनी धारणा (अभिमत उपधारणा–विचार) होती है। होना भी चाहिए क्योंकि मनुष्य जाति को चिंतन की भी शक्ति दी है। ऐसी धारणा सही हो सकती है, गलत हो सकती है या किसी भी छोर पर अतिवादिता तक हो सकती है। कोई फरक नहीं पड़ता। लेकिन जब हम व्यवहारिक धरातल पर उक्त धारणा दूसरों पर लादना चाहते हैं या थोपना चाहते हैं तो उस धारणा का औचित्य, उपादेयता (Proprity) को उचित ठहराकर (Justify) बताना भी पड़ेगा। और जब हम ऐसा नहीं कर पाते है तो सामने वाला व्यक्ति क्या कह रहा है इस और गंभीरता से ध्यान करके अपनी धारणा के प्रति चिंतन करना आवश्यक है। ऐसा नहीं होता है तो उसे हम हठधर्मिता मनमानापन (obstinate dogged-arbitariness) कहेंगे।

विषय प्रवेश : आ. 9 नि. 9 एवं आ. 9 नि. 13 व्य.प्र. स. के विषय पर लिखे लेखों के माध्यम से, विभिन्न अवसरों पर प्रशिक्षण वर्ग में भी यह बताया है कि उक्त प्रावधानों कें अंतर्गत प्रस्तुत होने वाले आवेदन पत्रों के लिए उस आदेश की प्रमाणित प्रतिलिपि, (जिसके द्वारा आ. 9 नि. 8 व्य.प्र.स. के अंतर्गत दावा खारिज किया है या आ. 9 नि. 13 के अंतर्गत दावा एक पक्षीय रूप से डिक्री किया है कि प्रमाणित प्रतिलिपि प्राप्त कर प्रकरण पुनः फाईल पर लेने हेतु अथवा एक पक्षीय निर्णय को अपास्त करने हेतु) प्राप्त करके संलग्न करने की आवश्यकता नहीं है। लेकिन क्या करे हमारी यह धारणा है, विश्वास है (hold to/hold out) की ऐसा ही आवश्यक है। कभी–कभी आम व्यक्ति की यह धारणा होती है कि सत्ता मे बैठे हुए समझदार (?) व्यक्ति को समझाना कठिन होता है। हम उस आम व्यक्ति के धारणा के विषय में टिप्पणी नहीं कर सकते लेकिन क्षमता हो तो आत्म परीक्षण अवश्य कर सकते हैं।

तो चले आत्म परीक्षण कर ले इतनी क्षमता तो हमारे में है ऐसी मेरी धारणा विश्वास है।

हमें पढ़ना जरूर है। वाचन पठन–पाठन के सिवाय हमारे चिंतन में परिवर्तन नहीं आएगा और जब पढ़कर परिवर्तन आएगा तो हमारे आत्म परीक्षण की क्रिया को चालना प्राप्त होगी।

धारा 12 एवं धारा 29 (2) मर्यादा अधिनियम

मित्रों धारा 12 को गंभीरता से समझकर पढ़ें। पढ़ने के पूर्व आवेदन अपील रिवीजन, रिव्हयू, अपील करने की अनुमति, अवार्ड को अपास्त करना ऐसे शब्द आए है उन्हें संदर्भ के साथ पढ़ना। चिंतन एकदम स्फटिक जैसा स्पष्ट होगा। स्पष्ट होना जरूरी भी है ताकि हम स्वयं के विचार दूसरों पर लादे इसके पूर्व उनके विचार भी समझ लेना उचित हो सकेगा।

धारा 12 मर्यादा अधिनियम के प्रावधान पढ़ने के बाद एक बात अत्यंत स्पष्ट रूप से मस्तिष्क पटल पर अंकित होगी कि उक्त प्रावधान केवल (1) अपील (2) अपील करने हेतु अनुमति आवेदन पत्र (3) निर्णय के पुनरीक्षण (4) अवार्ड को अपास्त करने हेतु, के लिए प्रस्तुत होने वाले मेमो, या आवेदन पत्र के लिए मात्र उस आदेश की प्रमाणित प्रतिलिपि प्राप्त कर प्रस्तुत करना आवश्यक है जिसके विरूद्ध उपरोक्त कार्यवाही करना आवश्यक है।

धारा 29 (2) को भी अच्छे से देखना आवश्यक है। उससे ज्ञात होगा कि धारा 12 के प्रावधान उस समय भी लागू होंगे जब कोई अपील या आवेदन पत्र किसी स्थानीय विधि के अनुसार प्रस्तुत होना हो जिसकी विषय वस्तु भी धारा 12 के अनुरूप हो जिसका वर्णन उपर किया है।

इस संबंध में निम्न दृष्टांतों का विस्तार से अवलोकन विचार मंथन में सहायक हो सकेगा।

(1) **ए.आई.आर. 1950 नागपुर (दृष्टांत 2) पृष्ठ 201** जो वर्कमेन काम्पेन्सेशन एक्ट से संबंधित है।

(2) **ए.आई.आर. 1956 मध्य-भारत पृष्ठ 54 (56-56)** जो म.भा. स्थान नियंत्रण अधिनियम से संबंधित है।

(3) **ए.आई.आर. 1963 म.प्र. पृष्ठ 306 (309)** जो जन प्रतिनिधित्व विधान से संबंधित है।

(4) **ए.आई.आर. 1969 सु.को. 953 (955)** जो की मध्यभारत ॲबॉलिशन ऑफ जागिरी विधान पर आधारित है।

उक्त दृष्टांतों द्वारा धारा 12 एवं धारा 29 (2) मर्यादा अधिनियम का परस्पर संबंध दर्शाया गया है।

ऐसी भूल क्यों होती है : एक वाक्य पढ़ा था 'our trouble is not ignorance, but inaction अर्थात समस्या अज्ञानता की नहीं निष्क्रियता की है। अंधेरे में बैठकर उजाले का चिंतन भर किया जा सकता है। उजाला उत्पन्न नहीं किया जा सकता है। हमसे भूल इसलिए होती है कि हम एक रट पर एक लीक पर चलते हैं। एक ढर्रे पर चलते है। बार–बार वहीं रट लगाते रहते हैं। रट शब्द से अंग्रेजी का रॅट (RUT) शब्द याद आता है। उसका हिन्दी अनुवाद देखना। मस्ती अनुभव करोगे। चूंकि हम भ्रामक कल्पनाओं के आधार से कार्य करते हैं अतः हमारी अवधारणा भी वैसी ही बनती जाती है। आ. 9 नि. 9 एवं आ. 9 नि. 13 के आवेदन पत्रों को विविध साम्पत्तिक प्रकरण के रूप में पंजीकृत नहीं किया जाता है। न ही किया जाना होता है। ये बात भिन्न है कि अनादिकाल से हम ऐसा करते रहे हैं, मैं भी यही करता रहा हूं। वास्तव में ऐसे आवेदन पत्र मूल प्रकरण के साथ ही सम्मिलित होकर उसी प्रकरण में कार्यवाही के रूप में चलते रहना चाहिए। लेकिन हम इन प्रकरणों को विविध साम्पतिक प्रकरण के रूप में पंजीकृत करते हैं। जब ऐसा करते है तो सोचते हैं कि आ. 9 नियम– 9/13 की कार्यवाही हेतु आवेदन पत्र के साथ प्रमाणित प्रतिलिपि प्रस्तुत हो। इसके लिए कोई कानूनी आधार नहीं है। धारा 12 मर्यादा अधिनियम की मर्यादाएं उपर बता दी है। जब कानूनी आधार नहीं है तो न्यायालयों को पक्षकारों से ऐसी अपेक्षा पूर्ण करवाना अवैधानिक है। इसका गलत परिणाम इस प्रकार होगा। आ 9 नि. 9/13 के आवेदन पत्र प्रस्तुत करने के पूर्व पक्षकार प्रमाणित प्रतिलिपि प्राप्त करने हेतु आवेदन पत्र देगा।

नकल मिलते मिलते 30 दिन से ज्यादा समय लग गया तो वह समय धारा 12 मर्यादा अधिनियम के अंतर्गत समायोजित नहीं होगा। विपक्षी पक्षकार इस मुद्दे पर आपत्ती करेगा तो न्यायालय किस आधार पर ये मान लेगी कि आवेदन पत्र प्रस्तुत होने में देरी नहीं हुई है। याने होगा यह कि न्यायालय के आदेश के कारण प्रार्थी कथित रूप से देरी के लिए हाथ पैर जोड़ते न्यायालय के न्यायिक 'विवेक' की याचना करता फिरेगा। यह महत्वपूर्ण नहीं है कि आप ऐसे प्रकरण पृथक से पंजीकृत करते हो या नहीं, महत्वपूर्ण यह कि प्रमाणित प्रतिलिपि की अनिवार्यता नहीं है। इसके बावजूद भी हमारी हंठवादिता के कारण लिखित में भी आदेश देते हैं कि प्रमाणित प्रतिलिपि प्रस्तुत की जावे तो पक्षकार प्रस्तुत तो कर देगा लेकिन यदि कोई पक्षकार प्रस्तुत न करने की हठधर्मिता कर बैठे तो न्यायालय क्या कर लेगा? कुछ भी नहीं। यदि एम.जी.सी. इसी आधार पर खारिज की जाती है कि न्यायालय के आदेश का पालन नहीं किया है तो संभवतः ऐसा आदेश न तो न्यायोचित होगा न व्यवहारिक। होता यह है कि हमारे न्यायिक कार्य एवं न्यायिक व सामान्य व्यवहार का ग़लत मूल्यांकन करने हेतु दूसरों को अवसर देते है व हमारा मूल्यांकन अज्ञानता के आधार से होता है। ऐसा अवसर हम क्यों दे।

ध्यान रहे ये एम.जे.सी. के प्रकरण यदि पृथक से चालू किए गए हो तो मूल प्रकरण के साथ ही संलग्न किए जाना चाहिए तथा संबंधित पंजी में इस बात का खुलासा भी होना चाहिए।

प्रकरणों का प्रस्तुतीकरण

उपर वर्णित बातें घटित होने का एक कारण और है, वह है दावों अथवा अन्य ओरिजिनल प्रोसिडिग्ज का प्रस्तुतीकरण कैसा होता है इसकी ठीक से जानकारी का अभाव।

म.प्र. सिव्हिल कोर्ट रूल्स ॲण्ड आर्डस के कुछ नियम एवं व्यवहार प्रक्रिया संहिता के कुछ प्रावधान यदि पढ़ ले तो बात और अधिक स्पष्ट होगी। सिव्हिल कोर्ट एक्ट की धारा 6 की शब्दावली में से Suit or original Proceeding (दावा एवं मूल कार्यवाही) शब्द पर भी ध्यान केंद्रित कर ले।

रूल्स एण्ड ऑर्डर्स का नियम 37 कहता है कि दावे न्यायालय के सामने अथवा न्यायालय के पीठासीन अधिकारी द्वारा लिखित रूप से प्राधिकृत कर्मचारी/ लिपिक वर्गीय अधिकारी के सामने प्रस्तुत किए जा सकते हैं। इस नियम की टिप्पणी क्र. 2 कहती है कि आ. 41, नि 1 (1) के अन्तर्गत अपील एवं आ. 21, नि. 10 के प्रवर्तन आवेदन पत्र भी उपरोक्त अनुसार प्रस्तुत किए जा सकते हैं।

हम में से कितने हैं जिन्होंने लिखित में ऐसे आदेश दिए हैं। प्रशिक्षण कक्षाओं में, पिछले कुछ वर्षों से, इस बात पर अधिक से अधिक बल देकर बताया जा रहा है। कुछ परिवर्तन आया हो तो मुझे नहीं मालूम। ध्यान करना कि धारा 26 सपठित आ. 4 नि 1–2, आ. 41 नि 1 (1) एवं आ. 21 नि. 10 व्य. प्र.स. में भी स्पष्ट शब्दों में इस बात का खुलासा है कि न्यायालय द्वारा प्राधिकृत अधिकारी के सामने दावे या कार्यवाहियां/अपील संस्थित हो सकती है।

हिन्दू विवाह अधिनियम सक्सेशन प्रकरण या क्लेम केसेस को या धारा 20 आर्बिट्रेशन अधिनियम जैसी कार्यवाही को दावे के रूप में मान लेते है अतः वे प्राधिकृत अधिकारी के यहां संस्थित हो सकते हैं।

नियम 37 की टिप्पणी क्र. 2 में आ. 41 के बजाय आदेश 14 लिखा गया है वह ठीक कर लेना चाहिए, गलत छपा है। नागपुर हायकोर्ट के अंतर्गत सिविल कोर्ट रूल्स एण्ड आर्डर्स में सही रूप से छपा है।

इस प्रकार यह ध्यान रखा जावे कि कौन से प्रकरण किसके सामने संस्थित होंगे यह स्पष्टतः बताया गया है। इसके होते हुए भी आप अनियमित कार्यवाही के रूप में भी अन्य प्रकरण प्राधिकृत अधिकारी के सामने संस्थित करने की अपेक्षा करते हो तो ऐसा लिखित में आदेश देकर तो करे।

समापन : व्यवहारिक धरातल पर चिंतन हेतु यह बात बताई है। सहमत होना, असहमत होना हरेक की अपनी मर्जी है लेकिन न्यायिक विवेक के साथ। अपने आधार को विधिक दृष्टि से औचित्य पूर्णरूप से सिद्ध करना होगा। हम कहे/करे सो कायदा वाली प्रवृत्ति से बचना होगा।

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बेहतर है जान लो

दावों आदि का निवास स्थान पर प्रस्तुत किया जाना

पुरूषोत्तम विष्णु नामजोशी

आ. 4 नि. 1–2, धारा 26 व्य.प्र.स., आ. 41 नि. 1 (1) एवं आ. 21, नि. 10 व्य.प्र.स. सपठीत व्यवहार न्यायालय आदेश एवं नियम 37 के अनुसार दावा (मूल कार्यवाही सहित), अपील अथवा प्रवर्तन हेतु आवेदन पत्र पीठासीन अधिकारी के सामने अथवा प्राधिकृत अधिकारी के सामने प्रस्तुत किए जा सकते हैं।

धारा 5 मर्यादा अधिनियम के अन्तर्गत अपील अथवा आवेदन पत्र निर्धारित अवधि में प्रस्तुत होने में देरी हुई है तो देरी माफ करने के लिए आवेदन पत्र प्रस्तुत किया जा सकता है। देरी यदि उचित कारणों से हुई है तो न्यायालय ऐसी देरी माफ कर सकता है। लेकिन धारा 5 के प्रावधान दावों के लिए लागू नहीं होते हैं एवं आ. 21 व्य.प्र.स. के अंतर्गत प्रस्तुत किए जाने वाले आवेदन पत्रों पर भी लागू नहीं होते हैं।

दावा प्रस्तुत करने या आ. 21 नियम 1–2 अथवा आ. 21 नि. 85 व्य.प्र.स. या कि अन्य प्रकार के आवेदन पत्र जिनके लिए मर्यादाकाल आ. 21 व्य.प्र.स. के अंतर्गत निर्धारित है कतिपय कारणों से न्यायालयीन समय में प्रस्तुत नहीं हो पाते हैं तब क्या किया जाए यह प्रश्न प्रशिक्षण सत्र में पूछा जाता रहा है व उसके उत्तर भी दिए जाते रहे हैं। अभी कुछ समय पूर्व **2002 (1) 'ज्योति' पृष्ठ 2 (फरवरी)** के माध्यम से यह भी बताया था कि जहां पर व्य.प्र.स. के द्वारा समय निर्धारित किया गया है व न्यायालय को समय बढ़ाने हेतु विकल्प नहीं दिया है वहां न्यायालय समय नहीं बढ़ा सकता। अतः कभी कभी ऐसे अवसर आते हैं कि दावे एवं प्रवर्तन संबंधी विविध आवेदन पत्र जो कतिपय कारणों से मर्यादा काल के अंतिम दिन न्यायालय में प्रस्तुत होना थे वे नहीं हो पाने के कारण पक्षकार को पीठासीन अधिकारी के निवास स्थान पर प्रस्तुत करना होते हैं। अतः यदि ऐसा प्रसंग आपके साथ आए तो निवास स्थान पर उन्हें विधिवत प्राप्त करें। ऐसे दावे–आवेदन पत्र निवास स्थान पर प्रस्तुत होने पर उन पर पीठासीन

अधिकारी ने यह टिप्पणी–लिखना चाहिए कि मेरे निवास स्थान पर अमुक पक्षकार/वकील ने यह दावा/आवेदन पर अमुक तारीख को अमुक बजे प्रस्तुत किया जिसे अगले कार्य दिवस पर न्यायालय के सामने प्रस्तुत किया जावे। आपने आदेश पत्रिका (आर्डर शीट) भी निवास स्थान पर रखना चाहिए। उक्त दावे/आवेदन पत्र के संबंध में आदेशिका को भी लिख देना चाहिए। एवं पक्षकार/अधिवक्ता के हस्ताक्षर करवाना चाहिए। उन्हें टरकाना मत। दावे/आवेदन पत्र निवास स्थान पर आप लेने से इन्कार करते हैं तो उस पर टीप लिखें। ऐसा करने से भी उचित प्रस्तुतीकरण की औपचारिकता पूर्ण होती है लेकिन लेने से मना मत करे। कुछ दृष्टांत इस प्रकार हैं।

1. **ए.आई.आर. 1925 मद्रास 201**
2. **ए.आई.आर. 1937 बाम्बे 25**
3. **1938 एन.एल.जे. 44**

ऐसे अनेक दृष्टांत आ. 4 नि. 1–2 व्य.प्र.स. पर विस्तृत टिप्पणी युक्त पुस्तक में उपलब्ध हो जाएंगे।

●

बेहतर है जान लो

अर्जेन्ट चार्ज (अत्यावश्यक (त्वरित) कार्यभार)

पुरूषोत्तम विष्णु नामजोशी

प्राक्कथन : यह कहा गया कि अर्जेन्ट चार्ज के विषय में स्थिति स्पष्ट की जावे। वास्तव में इस संबंध में स्थिति स्पष्ट करने के पूर्व हमारी मानसिकता को स्पष्ट करना औचित्यपूर्ण होगा। दूसरे पीठासीन अधिकारी के न्यायालय का अर्जेन्ट चार्ज आने पर मानसिक रूप से कष्ट होता है यह बात वस्तुस्थिति युक्त है व इस बात का अपवाद कोई हो यह रेअरेस्ट ऑफ दी रेअरेस्ट केस होगी। हमारी भावना यह होती है कि हम ही हमारा काम पूर्ण नहीं कर पा रहे हैं दूसरों का कहां से करें। दूसरी बात यह कि झंझट से बचने की भी एक मानसिकता रहती है। दूसरे के कोर्ट का काम झंझट लगता है क्योंकि उसके कोर्ट की फाईल की पृष्ठभूमि ज्ञात नहीं होती है। तीसरी बात यह कि अर्जेन्ट चार्ज की फाईल लेकर दूसरे न्यायालय के पीठासीन अधिकारी के पास जाने वाला लिपिक अपनी सुविधा से या पक्षकारों के प्रेशर (दबाव) के कारण चाहे जब आता है यह भी हमारा सोच होता है। ये सभी विचार लगभग हरेक न्यायाधीश के मन में आते हैं एवं उसमें लगभग सत्यता है ही। लेकिन न्यायाधीश के पद पर आसीन है तो ये कार्य करना होगा विकल्प नहीं है।

प्रवृत्ति : कभी–कभी कोई न्यायाधीश इस विषय में स्पष्ट नहीं होता कि अमुक प्रकरण में क्या आदेश देना है। इसलिए व आए काम को टाल मटोल कर के आदेश पारित करता है एवं दूसरे दिन प्रकरण विचार के लिए लगाता है व दूसरे दिन स्वयं छुट्टी पर चला जाता है। यह प्रवृत्ति सहज रूप से देखी जाती है। एक केस में किशोर (ज्यूविनाइल) को प्रस्तुत किया गया। किशोर न्यायालय के मजिस्ट्रेट उपलब्ध नहीं थे। क्या किया जावे यह प्रश्न उपस्थित हुआ। उसने आदेश दिया कि इस

किशोर को कल तक पुलिस सुरक्षित रखे एवं कल प्रस्तुत हो। दूसरे दिन ये महाशय अवकाश पर चले गए। आगे ऐसा ही सिलसिला चल रहा होगा। एक अन्य प्रकरण में हल्ला हुआ कि एक अतिविशिष्ठ अधिकारी के नातेदार को पुलिस दोपहर को प्रस्तुत करेगी तो वे साहब आधे दिन पश्चात अवकाश पर चले गए। कभी–कभी यह भी होता है कि मौखिक रूप से ही हम आवेदन पत्र, फाईल आदि 'टरका' देते हैं कि बाद में देखेंगे।

ये सब प्रवृत्ति संभवतः इस कारण है कि हमें औसत बातें जो हमें सेवाकाल के प्रथम वर्ष में ज्ञात होना चाहिए नहीं मालूम हो पाती है क्योंकि उसके प्रति रूझान का अभाव होता है। फिर ऐन वक्त पर हम पुस्तक नहीं देखना चाहते या नहीं देख पाते या अन्य किसी से नहीं जानना चाहते न अधिवक्ता गणों से कोई जानकारी मिल पाती है। कुल मिलाकर प्रयत्न यह होता है कि इस त्वरित कार्य को 'टल्ला' मारा जावे व बखूबी मारने का सफल प्रयत्न भी होता है।

अतः हमें मानसिक रूप से इस प्रवृत्ति से मुक्त होने की नितांत आवश्यकता होगी।

व्यवहार (सिविल) कार्य : सिविल कार्य का अर्जेन्ट वर्क लगभग न्यूनतम होता है। कभी कभार अस्थायी निषेदाज्ञा अथवा निर्णय पूर्व जप्ति या गिरफ्तारी (आ.39-38 व्य.प्र.स.) का कार्य अवश्य आता है। यदि वह आता है तो उस कार्य को बखूबी करना भी चाहिए। ऐसा भी तो होता है कि हमारा कार्य भी दूसरे न्यायाधीश करते हैं।

म.प्र. सिविल कोर्ट अधिनियम के पाठ चार एवं पाठ पांच प्रशासनिक नियंत्रण एवं प्रकीर्ण प्रावधानों के विषय में है उन्हें एक बार पढ़ लेना उचित होगा, आधारभूत कल्पना आएगी। जिला न्यायाधीश को कार्यविभाजन का अधिकार व कर्तव्य है व वह कार्य न्यायिक समदृष्य भी है। कार्य विभाजन की सूचना उच्च न्यायालय को भी भेजी जाती है क्योंकि उच्च न्यायालय का प्रशासनिक नियंत्रण भी होता है। अतः कार्य विभाजन पत्रक के अनुसार कार्य करना कर्तव्य है। ये बात सही है कि कार्य विभाजन पत्रक तैयार करने वाले जिला न्यायाधीश ने स्वयं अपनी ओर से स्पष्ट कर देना चाहिए कि किस प्रकार का कार्य त्वरित अत्यावश्यक प्रकार का होगा। जिला न्यायाधीश ने स्वयं इस विषय में स्पष्ट रहना चाहिए।

ग्रीष्मावकाश में भी त्वरित प्रकृति के दावे कार्यवाहियां प्रस्तुत होती हैं उससे भी घबराने की या टालने की प्रवृत्ति नहीं होना चाहिए। यदि कोई अर्जेन्ट कार्य है तो उसकी प्रकृति को देखते हुए उचित आदेश पारित हो सकता है। ***नगरपालिका वि द्वारकादास 1981 वि. नो (भाग-2) क्र. 187*** को पुनः एक बार अवश्य पढ़ लें। उक्त दृष्टांत बिलकुल मार्के का है व धारा 21 एम.पी. सिविल कोर्ट एक्ट पर आधारित है। उक्त दृष्टांत कई बार पत्रिका में विभिन्न अवसरों पर प्रकाशित हुआ है व प्रशिक्षण कक्षाओं में भी बताया जाता रहा है।

इस प्रकार निष्कर्ष रूप में यह कहा जा सकता है कि कार्य विभाजन पत्रक में स्पष्ट हो कि कौन सा कार्य त्वरित हो सकता है व किसके अनुपस्थिति में कौन कार्य देखेगा।

सिविल कोर्ट रूल्स ॲण्ड ऑर्डस के नियम 37 को देखें तथा आ. 4 नि. 1–2 व्य.प्र.स. की टिप्पणी देखें। इसके अतिरिक्त **ए.आई.आर. 1925 मद्रास 201 1938 एन.एल.जे. 44 एवं ए.आई.आर. 1937**

बम्बई 25 देखें दावे एवं कार्यवाहियां जिसमें मर्यादा से संबंधित प्रश्न हो घर पर प्रस्तुत होते हैं तो विधिवत प्राप्त करें।

अपराधिक (क्रिमिनल) त्वरित कार्य

सबसे पहले यह बता दे कि अवकाश के दिन त्वरित कार्य हेतु जब ड्यूटी लगाई जाती है तो वही कष्टप्रद लगती है, स्वाभाविक भी है लेकिन क्या करें लगाना होती है। लेकिन यह ड्यूटी रोटेशन से क्रमिक रूप से लगती रहे तो किसी को कोई शिकायत शिकवा नहीं होता है। क्रमिक ड्यूटी लगाते वक्त मुख्य न्यायिक दंडाधिकारी ने यह भी नहीं भूलना चाहिए कि उसने भी अपनी ड्यूटी लगाना चाहिये इससे अच्छा प्रभाव पड़ता है। वैसे मु.न्या.दं. स्वयं की ड्यूटी न लगावे यह औचित्यपूर्ण भी नहीं लगता न ऐसा करना उचित माना जाता है। साथियों में कटुता, रागद्वेष की भावना उपजती है।

महिला मजिस्ट्रेट की ड्यूटी उन तीज त्यौहारों पर निश्चित नहीं लगाना चाहिए जिसमें उन्हें व्यक्तिगत रूप से ध्यान देना होता है। जैसे दीपावली, महाष्टमी आदि आदि।

अर्जेन्ट चार्ज क्या है यह भी कार्य विभाजन पत्रक में स्पष्ट होना चाहिए। यथा संभव उसे उसी में परिभाषित करना चाहिए। किसी भी स्थिति में जमानत/प्रतिभूति आवेदन पत्र निश्चित ही त्वरित कोटि के कार्य की परिभाषा में आएगा। तत्पश्चात वाहन का सुपुदर्गी में देय होना। अन्य न्यायालयों के वारण्ट के पालन में प्रस्तुत अभियुक्तों के विषय में रिमांड/प्रतिभूति/ जमानत आदेश करना आदि। कौन सा काम किस सीमा तक करना है, किस प्रकार करना है यह चार्ज मजिस्ट्रेट के विवेक की बात है व उस विवेक के आधार से कार्य करना चाहिए। दूसरों के न्यायालय के वारण्ट में या रिमांड प्रकरण में यदि जमानत लेना हो या संपत्ति सुपुर्द करना त्वरित कार्य के रूप में मान लिया जाता है तो मजिस्ट्रेट प्रावधिक (प्रोव्हिजनल) रूप से दो–चार दिन की सीमा तक ऐसा आदेश पारित कर सकते हैं।

न्यायालयीन कार्य के पश्चात निवास स्थान पर यदि आरोपी को प्रस्तुत किया जाता है तो नाराज मत होना। चाहे चार्ज हो या न हो आप अगले दिन तक के लिए तो पुलिस या न्यायिक रिमांड दे ही सकते हो।

अपने घर पर रिमांड फार्म, आदेशिका, सील सिक्के आदि व्यवस्थित रूप से रखे जाना चाहिए। न्यायालय जो वारण्ट निर्गमित करता है उसमें भी अपराधों की धाराएं आदि सुस्पष्ट हो ताकि अर्जेन्ट चार्ज वाले ड्यूटी मजिस्ट्रेट को अपना न्यायिक विवेक का प्रयोग करने में सुविधा हो।

क्रिमिनल रूल्स ॲण्ड ऑर्डस का नियम 5 अवश्य पढ़ लें ताकि उक्त नियम का उद्देश्य व आशय ज्ञात हो सकेगा।

नोट : कृपया धारा 35 दंड प्रक्रिया संहिता अध्ययन अवश्य कर लें तथा ज्यूविनाईल जस्टिस एक्ट के अन्तर्गत इस बात की व्यवस्था मुख्य न्यायिक दंडाधिकारी से करें कि पीठ का कोई भी सदस्य उपलब्ध न हो तो उसका अर्जेन्ट चार्ज किसके पास रहेगा।

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AMENDMENT OF PLEADINGS THE IMPORTANCE- MODE AND FAILURE TO AMEND.

15. **MODE OF MAKING AMENDMENT-** In England it often happens that before the case comes into court and while still the Master is exercising the powers conferred by a Summons for Directions counsel seek leave to amend not once but several times. The practice is to amend first in red and make later amendments in different coloured inks. A practice which we think might, with advantage, be followed would be to place before the court, as one places before a Master in England, the proposed amendments. These may or may not be allowed as proposed, or may be altered before leave is given. Leave having been given, a new plaint or written statement showing the old pleading and with the amendments written statement showing the old pleading and with the amendments written or typed in might then be prepared and taken on the file of the court. In cases where the addition is substantial it may be necessary to deliver a copy of the pleading as amended. (Order 20, Rule 10, R.S.C. 1965 Rules Supreme Court) If old matter is scored out, it must be done in such a manner as to show the original pleading and the alteration. Under O. VI, r. 17, C.P.C., a party has apparently to amend his pleading while it is in Court. Under the old Code it was returned to him for amendment. The Court may even now have power to return it if it is necessary to do so. (***Venkatachalam Chetti v. Narayana Iyer,* (1913, 19 I.C. 672 (Mad).** Where leave to amend is asked for, the actual amendment must be formulated before leave is given.(***Derrick v. Williams, (1939) 2 A.E.R. 559.***) If it is proposed to apply for amendment, it is desirable to inform the other side so that there can be no question of surprise and no adjournment may be necessary, on allowing the amendment. Pursuant to the leave granted the proceedings should be amended before the judgment is pronounced. (***Luby v. New Castle-*** under Lyme Corporation. (1965) 1 Q.B. 214 (1964) 3 All. E.R. 169 C.A.).

16. **FAILURE TO AMEND.-** O.VI. r. 18 provides that if a party who obtains an order for leave to amend fails to amend within the time fixed by the order or if no time is fixed, within fourteen days of the date of the order, he shall not be permitted to amend afterwards unless the time is extended by the Court. The Court has no power to strike out the suit or defence, but should deal with the case on the unamended pleadings.(***Rahman v. Ahmad Din, A.I.R. 1926 Lah. 571 Narayanaswami v. Krishna murthi, A.I.R. 1915 Mad. 984.***) If the suit cannot proceed without amendment, it is liable to be dismissed. (***Rejagar Mal v. Ramditta Mal, (1928) 111 I.C. 787 at p. 789 (Lah.***). In this respect the failure to amend involves consequences somewhat different from the failure to comply with an order for particulars under O. VI, r.4. The Court has power under Sec. 148 to extend the time fixed by its order.

17. **IMPORTANCE OF AMENDMENT.** Finally it has to be observed that a court should always insist on any alteration in the case made out in a pleading being embodied in a pleading and should prevent variance from it in the course of the trial. (***Nagardas v. Velmahorned, A.I.R. 1930 Bom. 249; Eusoofkarwa v. Mr. Niemeyer, A.I.R. 1941***

Rang. 37; Mir Haji v. Khanchand, A.I.R. 1939 Sind. 137. See also Hyams v. Stuart Kind (1908) 2 K. 3 696. The importance of amendment is that the new case is definitely formulated and the opposite party is thereby enabled to plead again in answer to it and prepare his evidence to meet it. Any departure from this practice is likely to result not merely in injustice in the particular case by confusion and surprise to the opposite party but also in laxity in pleadings generally. It also frequently results in great difficulty in determining in other litigation, to what extent the parties are subject to res judicata.

Courtesy: 1 Stone and Iyer on pleadings 1979 Edition.

2. N.M. Tripathi P.Ltd. Bombay

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WELCOME AND FELICITATIONS TO LEGAL LUMINARIES

Hon'ble Shri Justice Shantilal Kochar, Hon'ble Shri Justice Krishna Kumar Lahoti, Hon'ble Shri Justice Uma Nath Singh, Hon'ble Shri Justice Narain Singh 'Azad', Hon'ble Shri Justice Prabhat Chandra Agrawal and Hon'ble Shri Justice Chandresh Bhushan who were Additional Judges of the High Court of M.P., took oath as Judges of the High Court on 1st April, 2002.

AND THE OTHER

Legal Luminaries who took oath as Additional Judges of the High Court of M.P. on 1st April, 2002 are :

Hon'ble Shri Justice Subhash Samvatsar, Hon'ble Shri Justice Ajit Singh, Hon'ble Shri Justice Rajendra Menon and Hob'ble Shri Justice Sugandhilal Jain.

आभार

हम आभारी हैं प्रकाशक श्री चांदुरकर महोदय, म.प्र. लॉ, जर्नल नागपुर के जिन्होंने विशेष रूप से नागपुर से संस्था के कार्यालय में टेलीफोन करके 'ज्योति जर्नल' के विषय में पूछताछ की एवं अपने बहुमूल्य सुझाव दिए। म.प्र. लॉ जर्नल में प्रकाशित न्याय दृष्टांत भी सतत् रूप से ज्योति में प्रकाशित होते रहे हैं लेकिन यह संयोग मात्र है कि अप्रैल 2002 के अंक में एक भी दृष्टांत प्रकाशित नहीं हुआ।

संपादक

अनुपमेय सम्पदा की खोज

मेरे विचार मेरे मन में ही थे। मैं अभिव्यक्त नहीं कर पा रहा था। विचारों को शब्दो में पिरोना कठिन लग रहा था तथा उन शब्दों को वाणी देना तो और भी असम्भव हुआ। कुछ दिन पूर्व कुछ पढ रहा था तो एकदम अनुभव हुआ कि उक्त लेखक ने मेरे विचारों के साथ कब साक्षात्कार कर लिया तथा उन्हें शब्द एवं वाणी से कब साकार कर दिया पता ही नहीं लगा। वर्तमान में उक्त लेखक का नाम याद नहीं आ रहा है। उस लेखक को आभार। उस लेखक द्वारा अभिव्यक्त बातें प्रस्तुत कर रहा हूं। उसकी भावना निःस्वार्थ, निष्पक्ष, निरपेक्ष है, आत्म विश्वास को सबल बनाने वाले विचार हैं। विचार तो सभी के मन में आते हैं लेकिन प्रभावोत्कर्षक शब्दों में प्रस्तुती अधिक अच्छा प्रभाव छोड़ जाती है। उन विचारों को यहां प्रस्तुत कर रहा हूं, समीचीन हैं। मृदुता के साथ निःसृत स्वर आत्मसात होंगे तो वे सत्य के निकट होंगे। वे इस प्रकार हैं :–

अध्यापन – शिक्षण कार्य मेरे लिए निरन्तर ईश्वर की उपासना के समान रहा है एवं विधि के संबंध में यह तुच्छ शोध–अध्ययन भी मेरे लिए एक विनम्र सारस्वत अनुष्ठान है – यह यज्ञ है। सेवाकाल की यह अन्तिम आहूति।

विधिक–बौद्धिक–धार्मिक–आध्यात्मिक ज्ञान, नैतिक मूल्य, तर्कशास्त्र, तत्व ज्ञान, दर्शनशास्त्र दृष्टिकोणों में सामंजस्य स्थापित करने का यथोक्त प्रयास किया है – समन्वय परक दर्शन।

विधि से सम्बन्धित अपेक्षित जानकारी इस रूप में दी गई है कि यदि कोई व्यक्ति इस पत्रिका में उल्लेखित विषयों के सम्बन्ध में विस्तृत या सम्पूर्ण रूप से अध्ययन न भी कर सके तो भी इसमें वर्णित विषयों का संक्षेप में, किन्तु प्रामाणिक रूप से परिचय मिल सकेगा।

प्रयत्न यह रहा है कि पत्रिका के माध्यम से विधि क्षेत्र के सम्बन्ध में जिज्ञासा तथा रूचि जागृत हो सके एवं पाठकों को गरिमामयी स्थिति का आभास हो सके। विधि विषयक अनुपमेय सम्पदा की खोज हो सके।

श्रद्धा अतिरेक या निषेधात्मक खण्डन के आश्रय, से मुक्त होकर, उदात्त भावना से पाठक यदि इन्हें पढ़कर आत्मोत्थान की ओर अग्रसर होता है तो उसके चिन्तन को एक नई और सही दिशा मिलेगी।

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सत्यार्थ !

अधिवक्ता : न्यायाधीश एवं वकील में क्या समानता है?

न्यायाधीश : ना तुम जानो ना हम !

NUT SHELL

AFFIDAVIT : It can be basis for disposing maintenance application. **AIR 2002 ORI 22.**

AGREEMENT TO SELL :- Property owned by mother and minor children. Agreement to sell entered into in respect of share of mother. Specific performance whether can be decreed. **AIR 2002 P & H 54.**

ARBITRATION :- Award setting aside of. Ground, non-consideration of counterclaim. Tenability. **AIR 2002 SC 258.**

Second reference, tenability. **AIR 2002 SC 258.**

COMPENSATION FOR DEATH, Grant of land. Arbitrator overlooked allotment as recognised by statutory entitlement. Granted 4 acres of land by way of comparison not proper. **AIR 2002 SC 397**

AUTOBIOGRAPHY : Passages in autobiography alleged to be derogatory and defamatory. Injunction to restrain its publication- Grant of. **AIR 2002 Delhi 58 A.**

BANKER AND CUSTOMER :
C.P.C., O. 37 R. 2. O. 7 Rr. 14, 18 & O. 34 R. 11 :
EVIDENCE ACT, SECTION 34
3) BANKING REGULATION ACT, SECTION 21
4) BANKERS BOOK EVIDENCE ACT, SECTION 4 :
AIR 2002 AP 91
M/S RADHA AGENCIES Vs. VIJAYA BANK

Suit for recovery of bank loan. Proof of loan transaction. Mere entries in books of account not sufficient proof. Some independent evidence to show that sum has been advanced must be given by bank. Original loan transaction however, was admitted in instant case. Statement of account could therefore be relied upon. **NOTE :** See A.I.R. 1967 SC 1058.

Production of documents with plaint. Suit for recovery of bank loan by sale of mortgaged property. Mortgage deed not produced along with plaint. But produced during trial without any objection by leave of court under 0. 7 R. 18. Presumption : permission must have been granted.

Suit for recovery of bank loan. Decreed Interest chargeable. Levy of 12% interest on decretal amount from the date of suit to date of realisation. Reduced to 6%.

Suit by Bank for recovery of loan. Charging of interest on principal sum adjudged. Permissibility. **AIR 2002 Ker 44.**

BIGAMY : Husband obtaining ex parte decree of divorce against first wife. Conducted second marriage. Ex parte decree subsequently set aside. Marriage with first wife not subsisting in view of exparte decree. No offence of bigamy made out. **AIR 2002 SC 389.**

BAIL : Accused involved in murder cases only making oral exhortation. Continuing in jail for past one year. Conditional bail granted. **AIR 2002 SC 395.**

BOFORS CASE- only 2 Hinduja brothers permitted to go abroad. **AIR 2002 SC 401.**

CANCELLATION OF BAIL :
Cr. P.C., SECTIONS 439, 437 :
AIR 2002 SC 281
HARJEET SINGH ALIAS SEETA Vs. STATE OF PUNJAB

Cancellation of bail on the ground that accused obtained bail order by misrepresentation or suprression of facts. Bail application should be placed before same Judge who granted bail. Cancellation of bail by other Judge of High Court. not proper.

CARRIER : Claim for loss of goods and damages. Liability of carrier- when can be fastened. **AIR 2002 Karn 65.**

Loss of goods- Valuation- Determining factor. **AIR 2002 Karn 65.**

CINEMA : Employees coming to theatre for regulating parking and for selling refreshments. Whether entitled to claim injunction in respect of their possession. No. **A.I.R. 2002 MAD 64.**

COMPETENT AUTHORITY : Under Bombay Government Premises (Eviction) Act, 1956, holds quasi legal/Judicial authority. **AIR 2002 SC 456.**

CONFESSION : Confession made under TADA. Sending of, to- Designated Court- Voluntary nature of confession, need not be satisfied ;

Under TADA - Rejection of- Not recorded on date mentioned in record. Not proper. **AIR 2002 SC 409.**

CONTRACT :-

Breach of- Suit for damages. **AIR 2002 Mad 36.**

Claim for refund- When can be decreed. **AIR 2002 AP 71.**

Concluded contract- What constitutes. **AIR 2002 HP 1.**

COPYRIGHT : Musical works- First owner of copyright- who is. Violation of- can be compensated in terms of money. **AIR 2002 Cal 33.**

COUNTER CLAIM : Not restricted to money suits alone.

Suit for partition- Claim of defendant- taken in written statement regarding his share in property by paying necessary court fees is not a counter claim. **AIR 2002 Karnt 76.**

DIVORCE : Deed of divorce executed by parties themselves. Whether admissible. **AIR 2002 HP 16.**

Grounds of cruelty by husband and in laws. Grant of. **AIR 2002 Delhi 54.**

DOCTRINE OF NECESSITY : Applicability- See. **AIR 2002 All 48.**

DOCTRINES : DOCTRINE OF CYPRESS : When applicable. **AIR 2002 Mad 42.**

DOCTRINE OF LIS PENDENS ; Does not apply where suit at its inception is collusive or decree therein is obtained in collusion. **AIR 2002 Kant 96.**

STAMP ACT, SECTIONS 33, 47-A : IMPOUNDING OF SALE DEED : PROCEEDINGS FOR :
AIR 2002 JHARKHAND 12
RAM PRASAD SINGH Vs. STATE OF JHARKHAND

Parties to sale deed not intending to register it. Initiation of proceedings for impounding is uncalled for.

Paragraphs 3 and 4 of the judgment are reproduced here :

When the case was taken up on 14-6-2001 the counsel for the petitioners pointed out

that the documents have not yet been registered. The parties do not intend to register the ducuments. Respondents were asked to file counter affidavit in this regard. A counter affidavit has been filed by the respondent No. 3 wherein it is stated that the value of the land involving the document is much higher and on the direction of the Deputy Commissioner. (Sic) Palamau a report was submitted. There being no provision of hearing before passing an order u/s 33 read with section 47-A of the Indian Stamp Act, 1899, the notice was issued.

So far as stand of the petitioners that they do not intend to register the documents have not been dealt with. It is also not in dispute that the documents have not yet been registered. In the aforesaid background as respondents cannot force any person to register a document and can refuse to register a deed, the initiation or continuance of Impound Case is uncalled for.

DROPPING OF PROCEEDINGS :
BOMBAY GOVT. PREMISES (EVICTION) ACT, Ss. 7, 4 AND 3 : APPEALABLE ORDER. AIR 2002 SC 456.
STATE OF MAHARASHTRA Vs. MARWANJEE P. DESAI

Appealable Order. Eviction proceedings initiated for dispossession from Govt. premises by issuance of show notice under sub section (2) or Section 4 by competent authority under Act. On adjudication, competent authority, however, passed order of 'droping of proceedings'. Appeal against under S.7 by State Government is maintainable. Reason being use of word **every** before the word **order** under S.7 offers opportunity of appeal when there is an 'Order against Govt.' View taken by High Court that since competent authority being arm or wing of Govt. and as such Govt. cannot be permitted to lodge a protest against its own order, negates language used in S. 7.

Office of Competent Authority- not administrative but a quasi-legal/Judicial authority.

EDUCATION : Admission once granted cannot be cancelled by University on basis of infirmities in admission forms of petitioner or by force of University Ordinance. **AIR 2002 Raj 70.**

EVICTION : Deposit of rent in Bank account. Notice asking for particulars of Bank Account. Service of proof.

Deposit of rent in Court-Valid deposit- Pre-conditions for **AIR 2002 SC 433.**

C.P.C., O. 21 R. 7 : EXECUTION OF DECREE :

Resistance or obstruction to possession. Issues arising in matter to be decided by Executing Court. **AIR 2002 SC 251.**

FORESTS : Timber- It is forest produce even after it is cut and sawn in saw mill. **AIR 2002 AP 58.**

GIFT : Acceptance- Donee taking positive steps towards exercising his right of ownership. Indicates acceptance.

Condition that donee will not alienate property during lifetime of niece of donor since she was given right of possession of property till her death- When can be imposed. **AIR 2002 Cal 26.**

Transfer of immoyable property by way of pasapu Kumkuma. Amounts to gift. **AIR 2002 AP 75.**

H.U.F. : Partnership firm constituted by members of joint family. Nucleus provided was out of income and assets of joint family. It is joint family business. **AIR 2002 kant 83.**

HIGH COURT : DOCTRINE OF NECESSITY :

Regulation of sittings of Court. Powers of Chief Justice. **AIR 2002 All 48.**

INCOME-TAX : Amount becoming refundable by appellate order- Interest on refund. **AIR 2002 SC 264.**

C.P.C. O. 39 RR. 1, 2 : INJUNCTION TO RESTRAIN PUBLICATION OF AUTOBIOGRAPHY :
AIR 2002 DELHI 58
KHUSHWANT SINGH Vs. MANEKA GANDHI

Passages in autobiography alleged to be derogatory and defamatory. Said passages already commented upon and published in previous magazines and books. Nature of controversy was more or less same as is now sought to be published by author in his autobiography. Almost six years have passed since publication of previews of proposed autobiography stated to be an authorised version in magazine. Balance of convenience found to be in non-grant of injunction. Sufficient damage has already been caused as author was prevented from writing and publishing his thoughts, views, personal interactions and his perspective of life in his proposed autobiography for almost six years, at late stage of his life. Injunction liable to be vacated forthwith. Moreso, when there would be no question of any irreparable loss or injury since plaintiff herself has also claimed damages which will be remedy in case she is able to establish defamation.

MAINTENANCE : Maternal uncle or aunt has no moral or legal obligation to maintain their niece. **AIR 2002 Cal 26.**

Pendente lite- application for, can be disposed of on affidavit. **AIR 2002 Ori 22.**

NEGLIGENCE : TORT :

Railways : Delivery of consignment to wrong person. Consignor and Insurance Company can claim loss with interest and costs. **AIR 2001 Mad 48.**

Pension : Fixation-Dispute regarding limitatioin. **AIR 2002 Sc 398.**

Probate : Probate proceedings. Court cannot decide dispute relating to **AIR 2002 Pat. 24** title.

PROSECUTION EVIDENCE : Cr.P.C., SECTIONS 311, 276 :
AIR 2002 SC 270
SHAILENDRA KUMAR Vs. STATE OF BIHAR

Without informing investigating officer and merely on the ground that public prosecutor has not sought time to examine further witnesses closed prosecution evidence. It is not proper. Manner adopted to dispose of prosecution sordid and repulsive. Application filed by State under S. 311 for examining witnesses is tenable.

RAILWAY ACCIDENT : Claim for compensation. Claimant suffering injuries due to non-observance of duties of railways. **AIR 2002 MP 22.**

RAILWAY CLAIMS TRIBUNAL : Transfer of cases of untoward accidence. **AIR 2002 MP 22.**

REFERENCE : Reference under Land Acquisition Act. Provisions of O. 1 R. 10 of C.P.C. are applicable. **AIR 2002 AP 77.**

REGISTRATION : Document effecting transfer of property- Has to be registered otherwise does not confer title. **AIR 2002 Raj 66.**

C.P.C., O. 9 R. 9 & 13: RESTORATION OF SUIT :

Belated application. Condonation of delay. **AIR 2002 SC 451.**

REVISION : Taking of additional evidence. Not barred. **AIR 2002 AP 52**

SALE : Bona fide purchasers- who is. **AIR 2002 P & H 47.**

SEARCH AND SEIZURE : Under NDPS Act- Discrepancies in evidence in respect of recovery and seizure- Sole testimony of police witness cannot be basis of conviction. **AIR 2002 SC 289.**

SPECIFIC PERFORMANCE : Contract involving payment of money. Direction to plaintiff to deposit balance consideration-cannot be given at inception of plaint before its registration. **AIR 2002 AP 68.**

"Ready and willing to perform his part of contract" - Plea as to- Whether available to subsequent purchaser. **AIR 2002 P & H 47.**

STAY : Application under Old Arbitration Act- Dismissed as not passed. Application under new Act of 1996 can be filed. **AIR 2002 SC 404.**

TORTS : Compensation on ground of negligence- Proof- See **AIR 2002 Delhi 40.**

Medical negligence- Death of patient due to delay in sanction of grant for renal transplantation. Claim for compensation. **AIR 2002 Delhi 40.**

TOWN PLANNING : Allotment of lease sites. Delay in deposit of ground rent by allottee. Imposition of maximum penalty. Permissibility. **AIR 2002 P & H 38.**

UNLAWFUL ASSEMBLY : Common object was to commit criminal tresspass and not murder. Vicarious liability of members to commit murder When can be fastened. **AIR 2002 SC 319.**

WAKF PROPERTY : Suit for declaration as to- Tenability. **AIR 2002 SC 402.**

WILL : Execution of Uneven shares given to children. Will not invalid. **AIR 2002 SC 327.**

ZAMINDARI ABOLITION : Declaration of parca tenant. Suit for cancellation. **AIR 2002 SC 315.**

1. **TRADE AND MERCHANDIST MARKS ACT, SECTION 106 :**
2. **C.P.C., O. 39 R. 1 : PASSING OFF ACTION : ESSENTIAL ELEMENTS :**
   AIR 2002 SC 275
   LAXMIKANT Vs. CHETANBHAT SHAH

Fraud is not a necessary element. Absence of intention to deceive not a defence.

Plaintiff running colour lab and studio under a name in one part of city. Expending his business to other parts of city through his wife and brother-in-law. Defendant hitherto doing similar business under different name. Adopting plaintiff's name. Intention of defendant to divert plaintiff's business apparent. Refusal of injunction to plaintiff on ground that defendants business is 3-4 kilometer away from plaintiff's Lab or that defendant has already strated business not proper.

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TIT-BITS

1. **1) ADVERSE POSSESSION :-**
2) LIMITATION ACT, SECTION 27 ANA ARTS. 64-65
2002 (1) MPLJ 86
MOTIRAM Vs. PANNALAL

Possession under colour of invalid grant continuing without legal title. Possession adverse from the moment of taking possession under invalid grant. Entitlement of plaintiff for decree of declaration of title and injunction. No inference under section 100 with the decrees as passed warranted.

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2. **APPRECIATION OF EVIDENCE :-**
2001(3) M.P.H.T. 49(CG)
LALDAS Vs. STATE OF M.P.

Witnesses are village Kotwars. Simply because they are Kotwars, should not be disbelieved.

EVIDENCE ACT, SECTIONS 9, 27 AND 45 :- RECOVERY OF ARTICLES OR PROOF: THERE OF :

Recovered articles were stained with blood. Duly identified F.S.L. Report also supports the prosecution version.

Particular articles which were alleged to be stained with blood were sent for their chemical analysis. Ex. P-23 is the report of the Forensic Science Laboratory. They had examined as many as 11 articles. Article C the shirt belonging to the accused Kamal was found stained with blood. Similarly, the full pant article D-2 belonging to the accused Kamal was also found stained with blood. Article A-2, the trousers recovered at the instance of the accused Ladles was also found stained with blood. Similarly, knife recovered from accused Sukhdeo was also found stained with blood. According to the report, the underwear and the vest of the deceased were also stained with blood. A full pant recovered from the spot was also stained with blood. The shirt discovered at the instance of the accused Kamal was also stained with blood. The report of FSL would make it clear that the clothes recovered from two of The report of FSL would make it clear that the clothes recovered from two of the accused and knife recovered from the third accused were stained with blood. The accused persons have simply challenged the recoveries, but have not stated before the Court as to how their clothes were stained with blood. The discovery of incriminating articles and identification of the items belonging to the deceased from possession of the accused would clinch the accused.

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3. **ARBITRATION ACT, SECTION 30 :-**
CONTRACT ACT, SECTION 73, S. 30 ARB. ACT - CO-RELATION
(2001) 8 SCC 482
MAHARASHTRA STATE ELECTRICITY BOARD Vs. STERLITE INDUSTRIES

Unless the error of law is patent on the face of the record neither the High Court nor the Supreme Court can interfere with the award. In the present case the exercise to be done by examining clause 14 (ii) of the contract entered into between the parties, provid-

ing for payment of liquidated damages by respondent contractor for non-supply of certain equipment, construing the same properly and thereafter applying the law to it to come to a conclusion one way or the other, is too involved a process and it cannot be stated that such an error is apparent or patent on the face of the award. Whether under the context of the terms and conditions of a contract, a stipulation in the form and nature of clause 14 (ii) operates as a special provision to the exclusion of Section 73 of the Indian Contract Act is a matter of appreciation of facts in a case, and when the decision thereon is not patently absurd or wholly unreasonable, there is no scope for interference by courts dealing with a challenge to the award.

If as construed by the arbitrators clause 14 (ii) excludes applicability of Section 73 of the Indian Contract Act and the proposition of law stated by the arbitrators is correct, then Section 73 is not attracted to the case.

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4. ARBITRATION AND CONCILIATION ACT, SECTION 34 (1) AND (4) :- APPLICATION FOR SETTING ASIDE AWARD : POWER OF THE COURT :- 2001 (2) M.P.L.J. 391

MIDEX OVERSEAS LTD. Vs. M/S. DEWAS SOYA LIMITED

Power of the court to give opportunity to arbitral tribunal to resume arbitral proceedings.

Paragraphs 5 and 6 of the judgment are reproduced :

I have considered the rival submissions of the learned counsel for the parties and persued the record as also the provisions of section 34 of the Act of 1996. On perusal it emerged that when an application for setting aside an award is received by the Court on behalf of any of the parties to the arbitration under section 34(1) of the Act of 1996 and if on the request of any party, the Court considers it appropriate to adjourn the proceedings for a period to be fixed by the Court in order to give arbitral tribunal an opportunity to resume arbitral proceedings or to take such actions as in its opinion will eliminate the grounds for setting aside the award, the Court is competent to pass an order under section 34(1) of the Act of 1996. In the instant case, in the application filed on behalf of the non-applicant No. 1, an opportunity to resume the arbitral proceedings was prayed on the following objections raised on behalf of the applicant in his application filed under section 34(1) of the Act of 1996 :

(a) The arbitrators failed to examine the broker and sort out his evidence thus depriving the objector of the valuable evidence during the arbitral proceedings.

(b) The arbitrators did not examine the broker Mr. Atul Mundhra or permit him to be cross-examined in respect of terms of the contracts and signature of the parties.

(c) That the award is not duly stamped.

6. In my considered opinion the grounds mentioned in the application of the non-applicant for resuming the arbitral proceedings, does not appear to be connected with the misconduct of the arbitrators or with regard to the jurisdiction of the arbitrators raised on behalf of the application for setting aside the arbitral award in dispute, as such I do not find any illegality or any jurisdictional error committed by the trial Court in passing the impugned order on the application filed on behalf of the non-applicant

No. 1 under section 34(4) of the Act of 1996. I do not find any scope of interference in the order impugned of the trial Court exercising jurisdiction under section 115 of the Civil Procedure Code. However, I consider it necessary to make it clear that the order impugned giving opportunity to the arbitral tribunal to resume arbitral proceedings under section 34(4) of the Act of 1996, is only restricted for the grounds as mentioned by the non-applicant No. 1 in its application filed under section 34(4) of the Act of 1996.

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5. ARBITRATION ACT, SECTION 30 : MISCONDUCT : MEANING OF :-
2001 (3) M.P.H.T. 214 (DB)
M/s PAL & COMPANY Vs. STATE OF M.P.

The word has not a connotation of moral lapse. Giving inconsistent conclusions or ignoring material documents is misconduct.

Paragraph 18 of the judgment is reproduced :-

Learned counsel has also relied on the decision of the Apex Court in case of ***K.P. Poulose Vs. State of Kerala and another (AIR 1975 SC 1259)*** to contend that misconduct under section 30 (a) has not a connotation of moral lapse. It comprises legal misconduct which is complete if the arbitrator on the face of the award, arrives at an inconsistent conclusion even on his own finding or arrives at a decision by ignoring very material documents which throw abdundantight on the controversy to help a just and fair decision. In the instant case, we do not find any inconsistent conclusion arrived at by the arbitrator. It is not a case of ignoring material documents to decide the controversy.

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6. BOARD OF SECONDARY EDUCATION MADHYA PRADESH REGULATIONS, 1965, REGULATION 117 : INTERNET RESULT : MISTAKE CAN BE RECTIFIED :-
2) EDUCATION : MASS COPYING : NATVRAL JUSTICE :
2001 (3) M.P.H.T. 247
VINOD KUMAR PATHAK Vs. STATE OF M.P.

Board has authority to rectify results. Result of the candidate published in booklet and mark-sheet reflected in the 'internet'. Board is not stopped to rectify the result.

Candidates were involved in mass copying. Principles of natural justice are not applicable to case of mass copying. Sacrosanctity of an examination should be maintained. Authorities and student should endeavour to ostracize mass-copying.

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7. CONSTITUTION OF INDIA, ART. 226 : QUESTION OF DAMAGES :- INTERFERENCE IN CONTRACTUAL MATTERS
(2001) 8 SCC 344
VERIGAMTO NAVEEN Vs. GOVT. OF A.P. AND OTHER ALLIED CASES

So far as question of damages is concerned it is to be decided in a civil suit. Interference in contractual matters is permissible where breach of contract involves breach of a statutory obligation and order complained of has been made in exercise of statutory power by a statutory authority. In such a situation though cause of action arises out of or is related to contract, the dispute is brought within the sphere of public law.

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8. **COURT :- DUTY OF THE COURT TO DECIDE A CASE, NATURE OF :-**
2) LEGAL MAXIMS AND STATUTE :
3) PRINCIPLES OF INTERPRITATION
2001 (1) VIDHI BHASVAR 263 (FB)
CHANDRABHAN SINGH Vs. STATE OF M.P.

Decision of the Court should be confined to the narrow points directly raised before it. There should not be any exposition of law at large and outside range of facts of the case. There should not be even biter observations in regard to questions not directly involved in the case. **(1988) 3 SCC 609** followed.

LEGAL MAXIMS AND STATUTE :- Actlis legitimt non Reciplim Modlim domt - joint of anything in a particular a manner sanctioned by law. The thing cannot be done in a different way. Conferring power upon Court. Mode of exercising it also pointed out. It means no other mode is to be adopted. **(1876) 1 Ch D 426** and **AIR 1964 SC 358** relied on. Limiting a thing to be done in particular mode, it has to be done in that way. **1 NC (Jame), 444 US II, 62 Law Ed. 2nd 146, 100 SC 242** relied on. Power required to be exercised by a certain authority in certain way, it should be exercised in that way or not at all. **AIR 1976 SC 789** followed.

Paragraph 3 of the judgment is reproduced :-

Before adverting to the submission advanced by learned counsel for parties, we hasten to quote the question of law recommended for reference :

> "Whether an election dispute can be raised before the Election Tribunal on the basis of the certificate granted under rule 17 of the 1995 Rules or one is required to file the dispute before the Tribunal after the notification has been published under rule 22 of the 1995 Rules?"

In ***Kehar Singh Vs. State*** **(Delhi Administration) (1988) 2 SCC 609** Shetty, J. said in paragraph 203 that :

> ".....This Court has frequently emphasized that the decision of the Court should be confined to the narrow points directly raised before it. There should not be any exposition of the law at large and outside the range of facts of the case. There should not be even obiter observation in regard to questions not directly involved in the case.....".

The Court though have no power to amend the law by process of interpretation, but do have power to mend it so as to be in conformity with the intendment of the legislature. Where the language of statute is precise, explicit, clear and unambiguous, there should not be any attempt to emasculate the same except for compelling reasons to avoid the uncertainty and repugnancy. Further, Latin, maxim 'ACTLIS LEGITIMATE NON RECIPLIM MODLIM' connotes that when doing of anything in a particular manner is sanctioned by law, then the thing cannot be done in a different way. ***Taylor Vs. Taylor, (1876) 1 Ch D 426*** decides that where a statutory power is conferred for the first time upon a Court and mode of exercising it is pointed out, it means no other mode is to be adopted. This principle has been approved by the Apex Court in ***State of U.P. Vs. Singhore Singh, AIR 1964 SC 358*** when the Court said that :

> "The rule adopted in **(1971) 1 Ch D 426** is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid

down method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not as, the statutory provision might as well as not been enacted."

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9. COURT FEES ACT (M.P.), AMENDED SCHEDULE I AND ART. 1-A : COURT FEES ON APPEAL MEMO
2002 (1) M.P.L.J. 168
CHAIRMAN, GRAMIN VIDYUT SAHAKARI SAMITI MARYADIT, REWA Vs. RAJESH

The Court fees prescribed for the suit shall be the court fees for the purposes of appeal if there is no retrospective amendment in the section or the Schedule.

NOTE :- Judges are requested to go through S. 1 (b) of the Court Fees Act, M.P. Amendment with reference to the above judgment.

●

10. COMPANIES ACT, SECTIONS 630, 630(2) : VACATION OF ACCOMMODATION BY EMPLOYEES
2) CR.P.C., SECTIONS 397/401 :-
2001 (II) MPWN NOTE 52
DEEPAK PANCHAL Vs. GAJRAJ GEARS

Employees of company ceasing to be so, must vacate accommodation of company given during their employment. Time to vacate was enhanced, by the Court but conviction recorded was maintained.

In revision no detailed reappraisal of evidence and coming to own conclusion is permissible.

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11. CIVIL SERVICES : SERVICE LAWS :-
2001 (II) MPWN NOTE 33
SHASHI PRABHA Vs. STATE OF M.P.

Anganbadi workers are covered by article 243 to 243 (o) and Art. 311 (2) of Constitution of India. The employees of Panchayats are entitled to benefit under Article 311(2). Anganbadi workers services terminated without affording any hearing opportunity, order is against principles of natural justice.

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12. 1) C.P.C., SECTION 80 :-
2) M.P. MUNICIPAL CORPORATION ACT, SECTION 401 (2) : LIMITATION STATUTORY NOTICE
3) LIMITATION ACT, SECTION 29 :
2002 (1) M.P.L.J. 172
MANOJ KUMAR Vs. ARVIND KUMAR

Notice by father of an aggrieved person is no valid notice. Suit for damages. Limitation prescribed under S. 401 (2) prevails.

Demolition of Hotel of plaintiff/respondent No. 1 by Administrator of Municipal Corporation during anti-encroachment drive-Suit for damages- Notice under section 80, Civil

Procedure Code served by father of plaintiff on defendants did not fulfil requirement of statutory notice by plaintiff under section 80. **AIR 1984 SC 1004,** Dist.

Suit for damages against Administrator of Municipal Corporation for demolition of plaintiffs Hotel without authority and without serving proper notice to plaintiff-Appellant/ Administrator cannot be said to have acted in his personal capacity shorn of his status as Administrator-Statutory notice under section 401 (2) should have been mandatorily given to appellant/. Administrator by respondent/plaintiff- Suit filed without notice was not maintainable and was liable to be dismissed.

Demolition of plaintiff's Hotel by Administrator of Municipal Corporation Suit claiming damages brought in November 1994 and not within six months of demolition of Hotel-Suit was barred by limitation not having been filed within 6 months as provided under section 401 (2).

NOTE : Judges are requested to go through ***1973 JLJ SN. 13, Nagpur Palika Vs. Sarva Daman.***

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13. **1) C.P.C., O. 39 Rr. 1, 2 :- DISCRETIONARY POWER OF COURT TO GRANT**
2) ADMINISTRATIVE LAW : ADMINISTRATIVE ACTION :- INJUNCTION : EXERCISE OF : WHEN OPERATIVE GOVT. CONTRACT :
(2001) 8 SCC 443
STATE OF W.B. Vs. M.R. MONDAL

Government Order/Memorandum not communicated to the person concerned has no legal force, effect or authority.

Enabling a contractor to continue to operate, even after expiry of contractual period, on the basis of an invalid govt. order extending the period of contract, held not justified.

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14. **C.P.C., O. 21 Rr, 2 (2), (2-A) AND (2-C) : ADJUSTMENT OF DECREE ON APPLICATION OF JUDGMENT-DEBTOR:-**
2002 (1) M.P.L.J. 106
MOHINI DEVI Vs. KUNDANLAL

It can be done by executing court if it is proved by documentary evidence.

NOTE :- Judges are requested to go through ***1973 JLJ page 292, A. Pedanna Chettiar Vs. Moolchand and others*** for the purposes of commencement of limitation for certification by the Court.

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15. **C.P.C., O. 39 Rr. 1 & 2 AND S. 94 : GRANTING OF TEMPORARY INJUNCTION : SCOPE FOR CONSIDERATION OF POINTS :-**
(2001) 5 SCC 568
ANAND PRASAD AGARWALLA Vs. TARKESHWAR PRASAD

Court should not hold a mini-trial at that stage. Sale of land pursuant to a decree passed in favour of Bihar State Finance Corporation in a suit under S. 31 of the State Finance Corporation Act, the sale certificate showing that appellant had purchased the land in auction sale. But the respondents claimed to be purchaser. Record of rights showing respondents were in possession. The High Court noticing that there were two docu-

ments indicating that there was a prima facie case for investigation, the High Court granted injunction. The High Court was right in granting injunction.

Paragraph 6 of the judgment is reproduced :-

6. It may not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction. As noticed by the Division Bench that there are two documents which indicated that there was prima facie case to be investigated. Unless the sale certificate is set aside or declared to be a nullity, the same has legal validity and force. It cannot be said that no right could be derived from such certificate. Secondly, when the contesting respondents were in possession as evidenced by the record of rights, it cannot be said that such possession is by a trespasser. The claim of the contesting respondents is in their own right. The decisions referred to by the learned counsel for the appellant are in the context of there being no dispute as to ownership of the land and the possession was admittedly with a stranger and hence temporary injunction is not permissible. Therefore, we are of the view that the Division Bench has very correctly appreciated the matter and come to the conclusion in favour of the respondents. In these circumstances, we dismiss these appeals. We may notice that the time-bound directions issued by the Division Bench will have to be adhered to strictly by the parties concerned and the suits should be disposed of at an early date but not later than six months from the date of the communication of this order.

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16. C.P.C., O. 21, R. 102 AND SECTION 11 :-
2) TRANSFER OF PROPERTY ACT, SECTIONS 52 AND 55 :- TRANSFER PENDENT LITE
2001 (30 M.P.H.T. 32 (CG)
GOKUL PRASAD Vs. CHUNNILAL

It puts bar against defendant in transferring property while the suit is pending. It is known as transfer pendent lite. Purchaser from a judgment debtor (during pendency of the proceedings) cannot set up a better title than what his vendor had. Vendor was held to be tenant cannot convey perfect title or absolute title in favour of purchaser.

Rule 102 of O. 21 clearly provides that nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person. The transfer referred to in R. 102 includes a transfer by operation of law.

If a wrong protection is given to a transferee pendants lite than a decree-holder would never be able to get the fruits of his decree because every time he seeks a direction from the Court that the decree is executable against the transferee, then another transferee would come and resist the execution of the decree by causing obstructions.

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17. C.P.C., O. 30 R. 4 AND O. 1 R. 10 : NOTICE TO LEGAR REPRESEN TIVES OF PARTNER
2001 (3) M.P.H.T. 242
SMT. KASTURI BAI VS. AMOLAK CHAND

One of the partners of the firm defendant died. Whether the L.Rs. of the defendant

are necessary parties on record ? Where the premises were let to a firm, and if one of the partner dies during pendency of the case, where remaining partner is already on record, it is not necessary to bring remaining legal representatives of the deceased partner on record. Tenancy is not a right or claim of the legal representatives of the deceased partner. **AIR 1963 SC 468** followed.

Paragraph 3 of the judgment is reproduced :-

The Hon'ble Apex Court in the case ***Kanji Manji Vs. Trustees of the Court of Bombay,*** reported in **AIR 1963 SC 468**, where the similar question was involved it was held that the **notice of eviction to legal representatives of other partner, is not necessary.** It means that where the premises were let to a firm, and if one of the partner dies during pendency of the case, where remaining partner is already on record, it is not necessary to bring remaining legal representatives of the deceased partner on record. In other words, tenancy is not a right or claim of the legal representatives of the deceased partner.

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18. C.P.C., O. 26, R. 9 : SUIT FOR INJUNCTION COMPLAINING OF ENCROACHMENT:-
2001(2) M.P.L.J., S.N. 12
RAJARAM POORANCHAND RAI Vs. NOOR MOHAMMED

Suit for injunction complaining of encroachment. Appointment of commissioner to inspect the spot and after measurement to submit his report. (The basic principle is) controversy cannot be adjudicated unless there was spot inspection by commissioner and measurement made by him. The trial Court was directed to appoint commissioner as per rule and rules for inspecting the spot and his submitting report after measurement to be carried out in accordance with the direction given by the trial Court in that regard.

SPOT INSPECTION IN PLACE OF ENCROACHMENT NECESSITY :-

NOTE :- Judges are requested to go through the civil Court Rules and Orders from Rule No. 243 to 268 under Chapter 11.

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19. C.P.C., O. 6 R. 17. O. 9 R. 13 AND SECTION 151 : AMENDMENT APPLICATION MERITS NOT TO BE SEEN AT THE TIME OF CONSIDERATION OF THE APPLICATION :-
2001(II) MPWN NOTE 30
RAJENDRA KUMAR Vs. BANK OF INDIA

Additional ground sought to be added in application under O. 9 R. 13 of the CPC. Application for amendment was filed. Merits or demerits of the ground not to be seen at this stage. Such ground should be allowed to be added.

NOTE :- Judges are requested to go through ***Virendra Kumar Vs. Kusum***, **1997(2) SCC 457** published in **Joti Journal Part 3 June, 1998 at page 49 Tit bit 113** for further studies relating to time barred relief claimed to be added by way of amendment.

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20. C.P.C., O. 16, 17 AND 18 R. 1 : PRODUCING WITNESSES BY PARTY DUTY OF COURT TO EXAMINE :
2) PRACTICE (CIVIL) :-
2001 (II) MPWN NOTE 49
BADRILAL Vs. CHHAGANLAL

No adjournment sought. There was a prayer for examination of present witness in the Court. Such prayer should be allowed in the interest of justice.

On perusal, it emerged that after closure of the evidence on 3.12.99, an application on 8.12.99 was filed on behalf of the petitioner praying that the order closing evidence be recalled and the statements of his witnesses present in the Court be recorded. When the witnesses were present in the Court and the petitioner was not asking for any further adjournment for recording his evidence the Court should have granted opportunity to the petitioner in the interest of the justice. In my opinion, the trial Court has committed an error in rejecting the prayer of the applicant for recording his statement and the statements of the present witnesses on the date of filing of application.

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21. C.P.C., O. 22 R. 4(1) :-
2) C.P.C. O. 5 : GENERALLY : SERVICE ON ONE OF THE JOINT TENANT VALID
2001 (II) MPWN NOTE 51
SUNITA Vs. BALRAM LALWANI

Service of summons on one of the joint tenants/legal representatives is due service on other joint tenants. Knowledge of date fixed for hearing will be imputed to all.

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22. C.P.C., O. 26 R. 9 AND O. 39 Rr. 1 AND 2 : ISSUANCE OF COMMISSION AND SUBJECT MATTER OF SUIT RELATING TO INJUNCTION :-
2001 (II) MPWN NOTE 71
MUNICIPAL COUNCIL, BHIND Vs. SMT. KALAWATI

Relief which is the subject matter of application under O. 39 Rr. 1 and 2 cannot be granted in the nature of per-emptory order.

On a plain reading of the impugned order, it is noticed that the parties had consented to the extent that the Commissioner be appointed and consented as to on what point the report should be obtained. It, therefore, appears that learned trial Court passed the orders showing that the order is passed with the consent, and after clarifying the terms etc. of the Commission directed that the report of Commissioner should be filed in the Court by 1.7.2000. To me, it appears that the order passed with the consent was embodied above the sentence 'Commissioner's report should be filed by 1.7.2000'. Therefore, the contents of the order written thereafter in the nature of per-emptory order, referred to in the beginning, appears to have been passed by the Court on its own accord. Even otherwise, the order of this nature could not have been passed on an application for appointment of Commissioner, who was to report the Court about the actual and exact position at the spot. As we know, objections are invited from the parties after report of the Commissioner is received, and the report is not automatically admissible. In this view of the matter, a relief of nature, that has been granted by the Court in the nature of per-emptory order, could not have been given at this stage, which relief might have been granted while disposing plaintiffs' application under O. 39 Rr. 1 and 2 CPC and at the time of final disposal of the case. The order under challenge is obviously without jurisdiction and patently ille-

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23. C.P.C., O. 6 R. 17 AND O. 8 R. 9:-
2002 (1) M.P.L.J. 122
HANSA DEVI SAHU Vs. BACHCHALAL JAISINGHANI

Amendent of written statement seeking to introduce entirely new case and seeking withdrawal of admissions not permissible.

It was held that though it is true that Order 6, Rule 17 and Order 8, Rule 9 of the Civil Procedure Code confer wide discretion in the court to permit the amendment and to require a written statement or additional written statement of any of the parties, such powers are to be exercised ex debito justitiae. The Court shall exercise discretionary powers vested in it only to advance the cause of justice. It cannot be exercised in a case so as to enable the defendant to change the whole nature of his case and to withdraw all admissions based on specific grounds. The defendant, without special and adequate reasons, cannot be permitted to raise the contention, which is totally inconsistent with his earlier stand. The circumstances of the case did not justifiy the prayer of the defendant No, 2 to file additional pleadings. The prayer, if allowed, would cause serious prejudice to the case of the applicant/purchaser. The said prayer also did not appear to be based on justifiable grounds and did not appear to be bonafide- In the circumstances, the discretion exercised by the trial Court permitting the defendant No. 2 to file additional written statement and raise pleas which were totally inconsistent with the earlier stand taken by him and withdrawal of the pleas raised earlier appeared to be grossly erroneous and cannot be permitted to stand. Order set aside. ***AIR 1977 SC 680, AIR 1978 SC 798, AIR 1998 SC 618*** referred to.

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24. C.P.C., O. 41 R. 1 :-
2001(2) M.P.L.J. 481
PRAKASH Vs. STATE OF M.P.

Memo of appeal not accompanied by copy of decree when appeal filed. Appellate Court permitted appellant/defendant to file copy of decree during Pendency of appeal. Delay in filing copy of decree stands condoned.

NOTE :- Judges are requested to verify that while condoning the delay whether appellant had filed an application for certified copy of the judgment and decree within the period of limitation as envisaged under u/s 12 Explanation of the Limitation Act. Otherwise it will be a misused of the proviso regarding filing of certified copy of the judgment and decree at the time of filing the appeal.

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25. C.P.C. SECTION 152 : AMENDMENT OF DECREE :-
2002 (1) M.P.L.J. 7 (SC)
PLASTO PACK, MUMBAI Vs. RATNAKAR BANK LTD.

Power to amend a decree under S. 152 CPC cannot be exercised to add or subtract from any relief granted earlier. ***K. Rajmouli Vs. A.V.K.N. swamy, (2001) 5 SCC 37*** referred to.

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26. C.P.C., SS. 35-B AND 115 :- DISMISSAL OF SUIT FOR NON PAYMENT OF COSTS REVISIONLIES :
2002 (1) MPLJ 28
NARAYANRAO RAJA RAGHUNATH RAO KHER Vs. STATE OF M.P.

Dismissal of suit for non-payment of costs exercising powers under Section 35 (b). The remedy is by way of revision and not by appeal.

Dismissal of suit by Court in exercise of powers under Section 35-B for non-payment of costs. Not a Decree nor an appealable order. Such order may be revisable.

It was held that section 35-B of the Code does not specifically provide for dismissal of suit for non payment of costs. The costs under that section are not costs in the suit. Therefore, there is no provision for dismissal in default or setting aside the dismissal in default. Therefore, if the court dismisses a suit for non-payment of costs which have to be paid as condition precedent to further progress of suit, the dismissal would not be for default but for non-prosecution of the suit. The costs are otherwise made recoverable. Such a dismissal could not be a decree as the cause of action survives. The order for dismissal is not on merits. It does not determine the rights of parties conclusively. It does not destroy the cause of action. It is not res judicata. Therefore, such an order cannot be treated as decree. It is not an appealable order. Therefore, no appeal lies. It may be revisable. Appeal directed to be converted into revision.

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27. CRIMINAL TRIAL : INFIRMITIES IN PROSECUTION EVIDENCE : APPRECIATION OF :-
(2001) 8 SCC 387
STATE OF KARNATAKA Vs. RAMANJANAPPA

In view of the well-settled proposition that graver the offence greater should be the care taken to see that neither an innocent person is convicted nor a guilty allowed to escape. Infirmities in evidence of prosecution unnatural evidence made with deliberate attempt to implicate innocent persons along with some of the guilty ones. The Division Bench of the High Court acquitted all the convicts except the five accused persons. The Judgment of the High Court upheld.

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28. CRIMINAL TRIAL:MOTIVE AND COMMITTING OF CRIME : CO-RELATION (S. 8):-
2001(2) M.P.L.J., S.N. 13
SANTAN SINGH Vs. STATE OF M.P.

Only presence of motive to commit a crime, shall not lead to the conclusion that in fact the crime was committed.

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29. CRIMINAL TRIAL : WHETHER EXCISE OFFICER A POLICE OFFICER? YES
2) N.D.P.S. ACT, SECTION 8:-
3) EVIDENCE ACT, SECTION 25:-
AIR 2001 SC 2422
ABDUL RASHID Vs. STATE OF BIHAR

Confessional statement made by accused to Superintendent of Excise under provisions of Bihar and Orissa Excise Act inadmissible in evidence. Since excise officer is

police officer under S. 25 of the Evidence Act conviction based only on the fact that accused was found together with co-accused from whom offending article was recovered and on basis of confession of co-accused liable to be set aside.

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30. CRIMINAL TRIAL : CIRCUMSTANTIAL EVIDENCE : APPRECIATION OF :-
2) EVIDENCE ACT, SECTION 24 : EXTRA JUDICIAL CONFESSION:-
3) Cr.P.C., SECTIONS 161 AND 164 : DELAY IN RECORDING STATEMENT OF WITNESSES : EFFECT OF
AIR 2001 SC 2427
STATE OF A.P. Vs. SHAIK MAZHAR

There was a murder of victim of 10 years old girl. The accused and the girl were last seen together, on the date of occurrence proceeding to graveyard, place of incident. The evidence of witnesses to effect that accused had lured deceased child by offering custard apple. Accused seen returning from graveyard all alone in a perplexed state. Child found murdered at graveyard. The prosecution witnesses were interrogated by police on next day of occurrence and they stated the version of the accused. The accused made an extra judicial confession to this prosecution witness.

The fact that the statement of witnesses were recorded under Section 164 Cr.P.C. only after interval of one month from the date of occurrence, can not be rejected as belated version.

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31. CRIMINAL TRIAL : WARRING GROUPS OF CRIMINALS : APPRECIATION OF EVIDENCE : CRIMINAL TRIAL : NOT EXAMINING SPOT WITNESSES : DEFECTIVE SITE MAP : I.P.C., SECTION 34 :
AIR 2001 SC 2493
GOPINATH ALIAS JHALLAR Vs. STATE OF U.P.

Accused involved in criminal actions and formed a warring group of criminals. Assaulted deceased with Farsa (axe) and lathi Accused persons on enimity with deceased. One of the accused exhibited lathi and exorting that anybody who try to rescue victim would also done away with, sufficiently establishes the concepted move and common intention to cau 200 death of thed deceased. The overtacts by accused in furtherance of common intention sufficient to put an end to victim.

Non-examination of shopowner before whom the accused was assaulted with Farsa and lathi. Reasons for non-examination not erroneous. Lapse in not specifically marking in site plan of occurrence about actual place of recovery of soiled earth, not considered to be a grave infirmity in view of specific mention about the same in case dairy and specific evidence of prosecution witness. Evidence of prosecution witness was reliable though they belonged to group of deceased. Injuries inflicted by accused were sufficient to cause death.

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32. CRIMINAL TRIAL : REMARKS OF POLICE AND SUBORDINATE JUDICIARY CR.P.C., SECTION 378.
AIR 2001 SC 2503
MAHABIR SINGH Vs. STATE OF HARYANA AND OTHER ALLIED CASES.

Making of strong remarks by High Court castigating police and subordinate judiciary not proper, when situation did not warrant such castigation. Judicial restrains should have dissuaded the High Court from making such unnecessary castigation that apart legal proposition propounded by the High Court regarding the use of S. 172 of the Code is also erroneous.

CR.P.C., SECTION 172 : USE OF ENTRIES FROM THE CASE DIARY :-

The discretion given to the Court under sub-sections of S. 172 to use case diaries is only for aiding the Court to decide on a point. It is made abundantly clear in sub-section (2) Itself that the Court is forbidden from using the entries of such diaries as evidence. What cannot be used as evidence against the accused cannot be used in any other manner against him. If the Court uses the entries in a Case Diary for contradicting a police officer it should be done only in the manner provided in S. 145 of the Evidence Act i.e. by giving the author of the statement an opportunity to explain the contradiction, after his attention is called to that part of the statement which is intended to be so used for contradiction. In other words, the power conferred on the Court for perusal of the diary under S. 172 of the Code is not intended for explaining a contradiction which the defence has winched to the fore through the channel permitted by law. The interdict contained in S. 162 of the Code, debars the Court from using the power under S. 172 of the Code for the purpose of explaining the contradiction.

CR.P.C., SECTION 164 : CONFESSION : SUO MOTU APPEARANCE OF THE ACCUSED FOR RECORDING CONFESSION : EFFECT OF :-

Accused himself can appear before the Magistrate. He need not be produced by police for recording confession. However appearance of accused must be "in the course of an investigation" under Chapter XII of the Code.

An accused person can appear before a Magistrate for recording his confession. It is not necessary that such accused should be produced by the police for recording the confession. But it is necessary that such appearance must be "in the course of an investigation" under Chapter XII of the Code. If the Magistrate does not know that he is concerned in a case for which investigation has been commenced under the provisions of Chapter XII it is not permissible for him to record the confession. If any person simply barges into the Court and demands the Magistrate to record his confession as he has committed a cognizable offence, the course open to the Magistrate is to inform the police about it. The police in turn has to take the steps envisaged in Chapter XII of the Code. It may be possible for the Magistrate to record a confession if he has reason to believe that investigation has commenced and that the person who appeared before him demanding recording of his confession in such case. Otherwise the Court of a Magistrate is not a place into which all the sundry can gatecrash and demand the Magistrate to record whatever he says as selfincriminatory.

NOTE :- Judges are requested to go through **1999 (6) Joti Jounral (December Part) Tit Bit No. 97 at page 589** and reference made there in relation to the same subject mamer in **1999 December page 29.**

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33. 1) Cr.P.C., SECTION 296 : EVIDENCE OF FORMAL CHARACTER : GRANTING AND PURPOSE EXPLAINED :
(2001) 8 SCC 578
STATE OF PUNJAB Vs. NAIB DIN

Evidence of formal character may be given by affidavit. Failure of prosecution to examine the dependent police official. Rejection of said evidence by Court propriety of. High Court erred in using such a premise for setting aside the conviction and sentence of the accused respondent. Apart from relieving the witness of his troubles, it is to help the court to gain the time and cost. The duty of the court is when application is made for examining the dependent, it is to call such person to the court for the purpose of being examined.

2) Cr.P.C., SECTIONS 313 r/w/s 296 Cr.P.C. :- Omission to put question to accused under S. 313 concerning evidence of formal nature given by affidavit. If the remaining evidence is sufficient to bring home the guilt of the accused, the said lapse could be sidelined justifiably. More so, such an omission does not ipso facto vitiate the proceedings unless any prejudice caused to the accused is established by him. If accused succeeds in showing prejudice caused to him, the appellate court can call for the explanation from his counsel. In the present case, the High Court erred in not affording an opportunity to the prosecution to make up the lapse, resulting in miscarriage of justice.

3) Cr.P.C., SECTIONS 397 & 401, 386 AND 313 : POWERS OF REVISIONAL OR APPELLATE COURT :- Interference with conviction and sentence. Mere omission by trial court to put any question to an accused, even if it is of a vital nature, held, cannot be a ground for appellate or revisional court to set aside the conviction and sentence as an inevitable consequence. Omission to put question to accused of vital nature. Where objection not raised at the appellate stage, the revisional court should normally not bother about it.

With the courtesy of SCC publishers paragraphs 7,8,9 and 10 of the judgment are reproduced :

7. The normal mode of giving evidence is by examining the witness in court. But that course involves, quite often, spending of time of the witness, the trouble to reach the court and wait till he is called by the court, besides all the strain in answering questions and cross-questions in open court. It also involves costs which on many occasions are not small. Should a person be troubled by compelling him to go to the court and dipose if the evidence which he is to give is purely of a formal nature? The enabling provision of Section 296 is thus a departure from the usual mode of giving evidence. The object of providing such an exception is to help the court to gain the time and cost, besides relieving the witness of his troubles, when all that the said witness has to say in court relates only to some formal points.

8. What is meant by an evidence of a formal character? It depends upon the facts of the case. Quite often different steps adopted by police officers during the investigation might relate to formalities prescribed by law, Evidence, if necessary on those formalities, should normaly be tendered by affidavits and not by examining all such policemen in court. If any party to a lis wishes to examine the deponent of the affidavit it is open to him to make an application before the court that he requires the

deponent to be examined or cross-examined in court. This is provided in sub-section (2) of Section 296 of the Code. When any such application is made it is the duty of the court to call such person to the court for the purpose of being examined.

9. In ***Shankaria v. State of Rajasthan (1978) 4 SCC 453*** this Court accepted the evidence tendered on affidavit filed by a policeman who had taken specimen fingerprints of the accused in the case. The contention advanced in this Court that the said affidavit should not be relied on was repelled by the three-Judge Bench in the aforecited decision.

10. In the present case, the facts stated in the affidavit were purely of a formal character. At any rate, even the defence could not dispute that aspect because no request or motion was made on behalf of the accused to summon the deponents of those affidavits to be examined in court. In such a situation, it was quite improper that the High Court used such a premise for setting aside the conviction and sentence passed on the respondent, that too in revisional proceedings.

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34. Cr.P.C., SECTIONS 161, 173, 437 AND 439 :-
2001 (II) MPWN NOTE 46
BESHAMLAL Vs. STATE OF M.P.

Prosecution filing charge-sheet should file entire material of the case. Prosecution cannot withhold statement in favour of the accused.

DUTY OF THE JUDGE :- Courts hearing bail application should see the whole case diary cannot reject bail application being frightful etc. Man coming in court reposes absolute confidence in Judge and the system. Same should be preserved.

In support of the allegations made in the FIR the prosecutors and some other persons were examined on 20.4.2000. The unfairness of the prosecution came into play. The statements recorded on 20.4.2000 for the reasons best known to the police, investigating officer or public prosecutor, were not filed along with the challan papers. In the statement recorded on 20.4.2000 the prosecutrix clearly stated that the accused did not commit rape upon her. On 23.4.2000 the statements of the prosecutrix were again recorded. In the said statements she stated that accused Reshamlal had committed rape upon her and the true facts were not narrated by her to anybody because of the fear of her father. True it is that the girl was entitled to explain her conduct but it would also to be true that while considering the application for grant of bail, the Judge was required to see the entire case diary. If somebody had seen the case diary at right time in its true perspective he could certainly find the statement dated 20-4-2000 wherein prosecutrix did not level any allegations of rape against anybody. From the order passed by the learned Court below it does not appear that it infact read the case diary and had seen the statements recorded on 20.4.2000. **When a man comes to the Court of law he reposes absolute confidence in the Judge and the system. If the system becomes bad or useless or the Judge does not act in accordance with law, the confidence is shattered and the image of the judiciary is tarnished. It is not expected of the Judges of the Lower Courts that being frightful or for reasons akin to it they would reject the bail applications even in deserving cases.**

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35. Cr.P.C., SECTION 200 : RIGHT OF FOREST OFFICER TO FILE CHALIAN-NOT ENTITLE
2001(3) M.P.H.T. 252
ANAND KUMAR GOENKA Vs. STATE OF M.P.

Forest Officer cannot file a challan or charge-sheet directly. He has to file a complaint under Section 200 Cr.P.C.

Forest Officer investigated the offences and filed a charge-sheet against the petitioner and the other accused persons in the Court. It was held investigation made by the Forest Officer of an offence under sections 3 and 4 of the Act of 1984 is null and void. Since, the Forest Officer has no right to investigate an offence unless he is authorised by a Magistrate for this purpose. Forest Officer cannot file a charge-sheet directly in a Court of law saying that an offence has been committed under the provisions of the Act of 1984. The only remedy remains available to him is to file an application under section 200 Cr.P.C.

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36. Cr.P.C., SECTIONS 190 AND 193 AND 319 : COGNIZANCE WHAT IS ? :-
2001 (2) M.P.L.J. 519
D.R. MAHESHWAR Vs. STATE OF M.P.

Cognizance means taking judicial notice of offence. Cognizance is taken of an offence and not that of offender. Process of taking cognizance continues till changes are framed.

Sessions Court can on examining the record and material before it finds that a guilty person has been omitted to be chargesheeted by the proseoution it can summon him.

The word "cognizance" means taking judicial notice of an offence and it may not necessarily mean the commencement of a proceeding against anyone. The process of taking cognizance cannot be cabined or confined to date of filing of charge-sheet or to subsequent orders passed thereafter in connection with the accused persons who are chargesheeted. Even if the Court takes cognizance of an offence against the persons named in the charge-sheet, the process of taking cognizance against other persons is not exhausted. It continues till the charges are framed. The powers under section 193 of the code of Criminal Procedure have to be exercised for the limited purpose and this process of taking cognizance may include summoning of a person or persons whose complicity in commission of crime can **prima facie** be gathered from the material available on record. Therefore, when the Court examines record and finds from the material before it that a guilty person who has been omitted to be chargesheeted by the prosecution, it can summon him and this process shall also be included in the process of taking cognizance. The Court of Session can take cognizance of an offence under section 193 of the Code of Criminal Procedure prior to framing of charges. (1993) 2 SCC 16, Rel. (Para 7)

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37. Cr.P.C., SECTION 482 : QUASHING OF PROCEEDING : STAY OF CIVIL/ CRIMINAL
(2001) 8 SCC 645
M. KRISHNAN Vs. VIJAY SINGH

The High Court appears to have been impressed by the fact that as the nature of the dispute was primarily of a civil nature, the appellant was not justified in resorting to the

criminal proceedings. Accepting such a general proposition would be against the provisions of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. The proceedings could not be quashed only because the respondents had filed a civil suit. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law.

In a criminal court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil court. Had the complainant failed to prove the allegations made by him in the complaint, the respondents were entitled to discharge or acquital but not otherwise.

Where factual foundations for the offence have been laid down in the complaint, the High Court should not hasten to quash criminal proceedings merely on the premise that one or two ingredients have not been stated with the details or that the facts narrated reveal the existence of commercial or money transaction between the parties. The revisional or inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report do not prima facie disclose the commission of an offence or the allegations are so absurd and inherently improper that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceeding against the accused or where there is an express legal bar engrafted in any provisions of the Code or any other statute to the institution and continuance of the criminal proceedings or where a criminal proceedings is manifestly actuated with mala fide and has been initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge. The impugned judgment being contrary to the settled position of law is thus not sustainable.

C.P.C., PREAMBLE : STAY OF PROCEEDINGS : NATURE OF OFFENCE IN CIVIL PROCEEDINGS :

Mode of adjudication of in comparison to criminal proceedings- Civil proceedings, held, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks- Onus of proving the allegations beyond reasonable doubt, as in criminal case, is not applicable in the civil proceedings which can be decided merely on the probabilities with respect to the acts complained of.

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38. Cr.P.C., SECTION 482 : POWER OF THE HIGH COURT :
(2001) 8 SCC 570
DINESH DUTT JOSHI Vs. STATE OF RAJASTHAN

Section 482 CrPC confers upon the High Court inherent powers to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. Every court has inherent power to act **ex debito justitiae**- to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the court. The principle

embodied in the section is based upon the maxim: **quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non postest** i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. The section has been embodied to cover the lacunae which are sometimes found in the procedural law. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases.

The admitted position is that before exercising the powers under Section 482, the High Court did not think it proper to serve a notice upon the appellant asking him to show cause against the proposed order for setting aside the order of discharge passed in his favour by the trial court. Under such circumstances, without commenting upon the mertis of the case, it is held that the ends of justice would be served if the case is remanded back to the High Court for passing fresh orders after affording the appellant an opportunity of being heard.

NOTE : Judges are requested to go through the Article published in **JOTI JOURNAL 2001 December at page 403** regarding "Inherent Powers of the Subordinate Civil Courts in profile."

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39. Cr.P.C., SECTIONS 177 TO 187 : JURISDICTION :-
(2001) 8 SCC 630
SUKHJINDER SINGH Vs. STATE (NCT OF DELHI)

Criminal proceedings relating to same offence cannot be continued parallerly in more than one court.

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40. 1) Cr.P.C., SECTIONS 307 AND 321 : GRANT OF PARDON TO AN ACCUSED BY COURT : OBJECT :-
2) N.D.P.S. ACT, SECTION 64 :
(2001) 8 SCC 289
JASBIR SINGH Vs. VIPIN KUMAR JAGGI

It is for the prosecution to decide necessity of. If it decides, court has to agree to tendering of pardon. On facts it was held that Court was not justified in refusing to tender pardon. Grant of pardon and withdrawal from prosecution compared. Role of prosecutor under each section different.

Power to tender immunity from prosecution can be exercised at any time during the course of trial before judgment Exercise of the power cannot be restricted to the period prior to commencement of trial. Inspiration drawn from Ss. 307 and 321 Cr.P.C. on exercise of the powers there under at any time during the trial. Prosecution under S. 64 means the entire proceedings till judgment. Exercise of power to tender immunity under not arbitrary. Reasons required to be recorded for exercise of the power under S. 64 should be germane to the object sought to be achieved by such exercise of such power. Object of section 64 is the same as that of S. 307 Cr.P.C. There is no conflict between the power of Central Govt. under S. 64 of the Act and power of court under S. 307 Cr.P.C. But even

assuming there is any conflict, S. 64 would prevail. Hence after rejection of S. 307 Cr.P.C. application for grant of pardon, immunity could be granted under S. 64 NDPS Act.

STATUTE LAW : SPECIAL ACTS :- Special Act overrides general Act. Late enactment prevails over the earlier one.

WORDS AND PHRASES : "PROSECUTION". "PUNISHMENT" :- These words have no fixed connotation and are **susceptible** to both a wider and a narrower meaning.

However, according to the appellant the word "Prosecution" is limited to the initiation of proceedings and, therefore, the grant of immunity cannot be made subsequently. We are of the opinion that no principle of interpretation requires a statutory provision to be broken down to the words which constitute it and then after defining each word individually, weld them together to arrive at the meaning of a phrase. Words take their colour from the context in which they are used. Given the nature and object of the power, the word "Prosecution" must in the context of Section 64 mean the entire proceeding till the judgment of the court is delivered. It may be pointed out that the words "prosecution" and "punishment" have been held to have no fixed connotation and they are susceptible of both a wider and narrower meaning. ***S.A. Venkateraman Vs. Union of India, AIR 1954 SC 375.***

EVIDENCE ACT, SECTIONS 133 AND 114 ILL (b): Testimony of Accomplice. Approver is looked upon with great suspicion. But if found trustworthy and acceptable, then it can be decisive in securing a conviction.

N.D.P.S., ACT, SECTION 64 (1) : POWER TO TENDER IMMUNITY FROM PROSECUTION :-

This power can be exercised at any time during the course of trial before judgment. Exercise of power cannot be restricted to the period prior to commencement of trial. Inspiration drawn from Ss. 307 and 321 Cr.P.C. on exercise of the powers there under at any time during the trial. Prosecution under S. 64 means the entire proceedings till judgment.

Grant of pardon and withdrawal from prosecution are two different things. Role of prosecution under each section is quite different.

Paragraphs 20 and 21 are reproduced :-

20. The role of the prosecutor under Section 307 is distinct and different from the part he is called on to play under the provisions of Section 321 CrPC. Under Section 321. the Public Prosecutor or the Assistant Public Prosecutor in charge of a case may, with the consent of the court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried. The most noticeable difference between this section and Section 307 of the Act is that unlike the grant of pardon under Section 307, withdrawal from prosecution under Section 321 CrPC is unconditional although it does provide for the express permission of the Central Government in specified cases. Section 321 also does not spell out the circumstances under which the power may be exercised, either by the prosecution or by the court in granting consent. However, it has been judicially recognised that

> "implicit in the grant of the power is that it should be in the interest of administration of justice which may be either that it will not be able to produce sufficient

evidence to sustain the charge or that subsequent information before prosecuting agency would falsify the prosecution evidence or any other similar circumstance ***M.N. Sankarayara yancon Nair Vs. P.V. Bala Krishnan (1972) SCC 318.***

Or it may be that.

> "broader considerations of public peace, larger considerations of public justice and even deeper considerations of promotion of long-lasting security in a locality, or order in a disorderly situation or harmony in a faction milieu, or halting a false and vexatious prosecution in a court, (may persuade) the executive, pro bono publico, to sacrifice a pending case for a wider benefit". ***Subash Chander Vs. State, (1980) 2 SCC 155.***

21. In contrast, the power of tendering pardon under Section 307 is restricted to one consideration alone, namely, the obtaining of evidence from the person to whom pardon is granted relating to the offences being tried, But it needs to be noted at this stage that the power under Section 321 not only emphasises the role of the executive in the trial of offences but also that the executive can exercise the power at any time during the trial but before the judgment is delivered. This will be relevant in construing the language of Section 64 of the Act.

The object under Section 307 Cr.P.C. and under Section 64 NDPS Act is the same. There is no conflict between the power of Central Government under S. 64 of the Act and power of the court under S. 307 Cr.P.C. But even assuming there is any conflict, S. 64 would prevail, on the principle a special law overrides the general law.

Grant of pardon to an accused by the Court is for the prosecution to decide the necessity of the same. If the prosecution so decides, court has to agree to tendering of pardon. On facts it was held that Court was not justified in refusing to tender pardon.

While immunity from prosecution was granted to an accused by Narcotics Control Bureau under S. 64 of NDPS Act, application under Section 311 filed by prosecution before Sessions Judge for leave to examine that accused as a witness in the pending case. The application was rejected by Sessions Court under Section 311 which resulted in withdrawal of immunity granted under S. 64 NDPS Act. It was held that the act was not justified as Sessions Judge cannot sit in appeal over decision of Narcotics Control Bureau under S. 64. The testimony of Accomplice/approver is looked upon with great suspicion. But if found trustworthy and acceptable, then it can be decisive in securing a conviction.

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41. Cr.P.C., SECTION 125 : SECTION 125 IS A 'SPECIAL LAW'
2) LIMITATION ACT, SECTIONS 6 AND 29(2) :-
2001(2) M.P.L.J., S.N. 23
MAYA DEVI Vs. SHANKARLAL

Section 125 Cr.P.C. is a 'Special law' within the meaning of Section 29(2) of the Limitation Act and Section 6 confers a legal disability to minor to make application for execution of order as per section 125 (3). Cr.P.C.

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42. Cr.P.C., SECTION 167 (2) PROVISO :- COMPULSIVE BAIL :-
2001 (2) M.P.L.J., S.N. 24
GANESH PRASAD Vs. STATE OF M.P.

The prescribed period of 60 days for filing the challan as per proviso to section 167 (2) of the Code had expired. The application for bail was submitted on 1-3-2001 and it came before the trial court for consideration at 1.15 p.m. The charge-sheet was filed at 1.25 p.m. Thus the bail application was submitted before filing of the charge-sheet. Therefore, it must be held that the accused has 'availed of' his indefeasible right even though the Court has not considered the said application. **2001 AIR SCW 1500** relied on.

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43. Cr.P.C., SECTION 190 (1), 209, 216, 223, 397 AND 482 :- INHERENT POWER INVOKATION OF BY HIGH COURT AFTER DISMISSAL OF REVISION PETITION SHOULD BE SPARINGLY AND CONSCIOUSLY EXERCISED :-
(2001) 8 SCC 522
RAJINDER PRASAD Vs. BASHIR

When revision petition filed by accused persons under Sections 397 and earlier been dismissed by the High Court, it erred in entertaining petition filed by them under S. 482 seeking the same relief, in absence of any special circumstances. On merits also the High Court erred in passing the order it did.

Cognizance can be taken by Magistrate of an offence (under S. 395 IPC) not included in the charge-sheet submitted by police and thereafter, on being prima facie satisfied on the basis of evidence collected by police, about commission of that offence also by some persons other than those arrested by police, it is the duty of the Magistrate to proceed against those persons also.

NOTE:- Judges are requested to go through the whole judgment for knowing principles regarding registration of a case, taking cognizance of an offence etc.

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44. Cr.P.C., SECTION 182 (2)(AS AMENDED BY THE AMENDING ACT OF 1978) R/W/ SS. 494, 494/109 AND 495 :- JURISDICTION OF THE TRIAL COURT REGARDING THE OFFENCE OF BIGAMY :-
2001(3) M.P.H.T. 197
SMT. USHA GURU BAXANI Vs. LALIT GURU BAXANI

Deserted wife can prosecute offending spouse at a place where she has taken up permanent residence.

Paragraph 5 of the judgment is reproduced :

It may be noticed that the section as it originally stood conferred jurisdiction only to the Court within whose local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage. The clause "or the wife by the first marriage has taken up permanent residence after the commission of the offence" was incorporated by the Amending Act 1978. Eventually this was done to facilitate the first wife to file a complaint at a place where she had taken up residence after the husband married again. The intention of the Parliament clearly is to make it convenient for the deserted wife to prosecute the offending spouse. A hypertechnical view is likely to defeat the very spirit

of the Act. If there is sufficient material from which permanent residence on the first wife can be inferred at a place within the jurisdiction in favour of wife notwithstanding he fact that her written complaint does not specifically made such averments. We are fortified in our view by the decision cited by the applicant. It may be mentioned here that Sushil Chandra Khare's case on which reliance was placed by the non-applicants is distinguishable on facts because the note does not show that the father of the complainant wife was himself a permanent resident of Jabalpur.

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45. Cr.P.C., SECTION 457 : FOREST ACT, SECTIONS : 52-A, 52-B AND 57-C :- DISPOSAL OF PROPERTY WHEN CANNOT BE TAKEN BY FOREST OFFICER : RESTRAINT BY CRIMINAL COURTS :-
2002 (1) M.P.L.J. 66
MANOJ KUMAR JAIN Vs. STATE OF M.P.

Disposal of vehicle seized by police used for committing offence under Forest Act. Magistrate intimated by Forest Authorities that proceedings under section 52-A and 52-B are being taken up for confiscation of property. Magistrate was right in stopping proceedings under section 457, Cr.P.C. and dismissing application of owner of vehicle for its possession. ***State of M.P. Vs. Rakesh Ku. 1994 JLJ 581*** referred to.

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46. Cr.P.C., SECTION 202 (2) PROVISO : CHOICE OF COMPLAINANT TO DECIDE WITNESSES TO BE EXAMINED :-
2002 (1) MPLJ 22
KISHOR SINGH VS. SUDAMA PRASAD

In case of complaint by private person it is the discretion of complainant to produce witnesses of his choice.

Part of paragraph 5 and paragraph 6 are reproduced with the courtesy of MPLJ publishers :-

5. Apart from the above, I wish to further add that the contention putforth on behalf of the petitioners is not sustainable in the light of scheme and object underlying in sections 207, 208 and 209 of the Code. The proviso to sub-section (2) of section 202 of the Code could not be interpreted so as to exclude the discretion of complainant in the matter of selection of witnesses. It could not be interpreted and construed to mean that learned Magistrate could compel the complainant to examine all the witnesses of the list submitted by him. The proviso on its proper interpretation simply enjoins a duty on the Magistrate to call upon the complainant to produce all witnesses. His legal obligation is limited to calling upon the complainant and no further. Therefore, it is the discretion of the complainant to produce witnesses of his choice. He is the person to decide the number of witnesses to be produced for examination taking into consideration the aspect of its sufficiency to prove the allegations against the accused. As far as the Magistrate, a duty is cast upon him to examine all the witnesses that are produced by complainant or also those witnesses whom he wants to produce with the assistance of the Magistrate, In my view, a reference to the provisions of sections 207, 208, and 209 of the Code along with section 202 would be useful to elaborate the aforesaid view.

6. A Sessions Court takes cognizance of the case only after the case is committed to it under section 209 of the Code. The Magistrate is required to commit the case to the Court of Sessions under section 209 of the Code whether it is instituted on a police report or otherwise. When the police files a charge-sheet under section 173 of the Code, it produces all the evidence on which it rests its case for proving allegations against the accused. All such evidence produced with the charge sheet has to be made known to accused under section 207 of the Code wherein the Magistrate has a duty to furnish the copies of the documents referred to therein. The sole object behind section 207 of the Code is to apprise the accused of the total evidence likely to be used against him in proving allegations against him. However, during the course of trial, the prosecutor for various reasons has discretion not to produce certain witnesses for examination although those may be listed in the charge-sheet. The various reasons for nor-examination of witness may be (i) that those might have been won over by the opposite (ii) their examination may not be necessary to avoid multiplicity etc. The discretion is left to the prosecutor as regards the production of evidence. He is the judge to decide the sufficiency of evidence to prove the allegations and it is in this background that he may not examine some witnesses out of the list of witnesses included in the charge-sheet. In a case of complaint by a private person, prosecutor's role is discharged by the complainant himself and it is he who has a choice to decide as to what evidence is to be produced whether documentary or oral and therefore he has to decide the number of witnesses as well. As in the case instituted on a police report, the evidence contained in charge-sheet under section 173 Criminal Procedure Code is the total evidence on the basis of which, the Magistrate is required to commit the case, so in the case instituted on a private complaint, the evidence produced by the complainant in any inquiry before the Magistrate under sections 200 and 202 before the Magistrate under sections 200 and 202 of the Code would be the total evidence which would form the basis for the commitment of the case and in both the cases, the Sessions Court cannot go beyond the evidence so produced by the police in the charge-sheet and the complainant in inquiry under section 200 and section 202 of the Code. Therefore, what is required under proviso to sub-section (2) of section 202 of the Code is that the Magistrate has, in fact, to call upon the complainant to produce all the evidence he wishes to produce and it is for the complainant to decide as to what evidence he would produce. The requirement under the proviso is that Magistrate has to examine the witnesses produced by the complainant or those whom he wants to produce with the assistance of the Court in procuring their attendance.

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47. DIVORCE ACT, SECTION 10 : DIVORCE ON THE GROUND OF ADULTERY : PROOF OF ADULTERY :-
2) APPRECIATION OF EVIDENCE CIVIL AND CRIMINAL
2001 (2) M.P.L.J. 401 (FB)
SUNIL MASIH Vs. ELIZABETH DAISY

Petitioner on basis of circumstantial and presumptive evidence must convince court that adultery is committed by spouse in question. Divorce in civil proceedings therefore, cannot be compared with criminal proceedings. In former the petitioner is required to prove

his case by preponderance of probabilities, decree of it depends on the nature and gravity of the allegation while requirement in the criminal proceedings is to prove the case beyond reasonable doubt. Direct proof of adultery is not available. Therefore cannot be given since direct proof is normally not available, circumstantial and presumptive evidence requires important which should convince the court.

The mode of proof by filing affidavits is neither legally permissible nor can be considered in absence of proper justification. It is well settled that unless statute permits evidence by affidavits, they cannot be accepted nor reliance placed on facts stated therein. By this method, the other side seriously prejudiced. They could move the court for production of additional evidence with justification permitted by law.

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48. 1) EASEMENTS ACT, SECTION 19 :
2) TRANSFER OF PROPERTY ACT, SECTION 8 : EASEMENT TRANSFER OF :
2002 (1) MPLJ 149
DHANANJAN BISEN (Dr.) Vs. SMT. DEVI BAI

Easement annexed to dominant heritage passes with it to person in whose favour transfer takes place.

An easement annexed to the dominant heritage passes with it to the person in whose favour the transfer takes place. That is also the effect of section 8 of the Transfer of Property Act. An easement passes with the property for the beneficial employment of which it exists, as a thing appurtenant thereto. As the benefit of an easement passes with the dominant tenement into the hands of subsequent owner of that tenement, similarly the burden of it passes with the servient tenement to every person into whose occupation the servient tenement comes. Second Appeal dismissed in limine. **AIR 1955 AP 199** relied on.

NOTE :- Judges are requested to go through Sections 8, 35, 50, 55 and 108 of the T.P. Act to know the complete law regarding incidents of transfer.

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49. EDUCATION : NATURAL JUSTICE :- MASS COPYING :-
2002 (1) M.P.L.J. 138
RAMGOPAL BHADORIYA Vs. SECRETARY, BOARD OF SECONDARY EDUCATION

Decision of Board of Secondary Education cancelling results in case of mass copying. Principles of natural justice are not attracted.

Where unfair means of mass copying was adopted by the examinees the question of holding detailed enquiry in respect of each individual is a Herculean task. In a case of mass copying the Board has to take a drastic action. True, it is, when there is mass scale copying and examination in respect of centres pertaining to some papers had been cancelled, there may be some innocent students who suffer but that will not be of paramount consideration or a governing factor to attract the concept of audi alteram partem. When there are so many students it is not expected of the Board to conduct a quasi judicial enquiry to arrive at the truth or falsity of allegation against each examinee. May be in a given case when at the principal centre a single candidate is involved in malpractice the

Board while taking drastic decision against him may be required to follow the principles of natural justice but in a case of mass copying the principles of natural justice are not attracted. Requiring the Board to do so would usher total chaos and anarchy. **1970 SC 1269** and **AIR 1993 Orissa 27** referred to

In this judgment ***Miss Reeta Vs. Berhampur University and another, AIR 1993 Orissa 27*** referred to above. The judgment reproduced part of paragraph 19 which is as under:-

> "19. Further, the cancellation of her result was due to mass copying. In cases of mass copying, natural justice is not required to be complied with and as such it is apparent that the candidate in question does not get an opportunity to have his say in the matter.....".

Paragraph 18 of the judgment is reproduced:-

Before parting with the case I may observe that students are the future of the Nation and they are the real backbone. If they get themselves involved in adopting summary methods to achieve success the said success shall not only be short lived but would not be beneficial for them in the long run. An examination should not be perceived as a battle and the professors and invigilators as enemies. The students, while appearing in an examination, must create an atmosphere where the professors and invigilators may realise that their presence in the examination hall is a formality, a redundent one. But presently the situation is just the reverse. The students take recourse to various tactics to instil a sense of fear in those who invigilate and supervise as a result of which sometimes the police force is requisitioned. Every student must remember by indulging in copying he does not acquire knowledge but becomes a liability to himself. A student who does not perform the duties of a student cannot claim the rights and cannot claim the privileges of a new generation. Every student must remember that he has to follow the rule of law. He must recall that Greek Philosopher Socrates refused to run away from the jail in spite of request by his desciples as he felt that it would amount to violation of law. A student should not forget that his primary duty is to study and appear in an examination in the most fair and scrupulous manner. Threatening the invigilators or superintendents is not an act of heroism but is one of cowardice. A student must keep in his mind that a hero is the 'living light fountain' and has 'heroic nobleness' and a 'natural luminary shining by the gift of heaven' and involvement in copying not only destroys his basic native heroic nobility but sends him to the depths of abysmal hell. In my view no student would like to exhibit cowardice. He must sanguinely believe in the concept of upheaval as preached by Swami Vivekananda. Let conscience prevail and let the truth reign. Let copying be buried in its coffin failing which the Board shall be compelled to seek appropriate assistance from the State Government to control the situation at the examination centres. It is hoped that examinations shall be conducted in peaceful, fair, scrupulous and dignified manner.

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50. EVIDENCE ACT, SECTION 113-A : PRESUMPTION UNDER :-
2) I.P.C., SECTION 306 :-
2001 (2) M.P.L.J., S.N. 15
RAMESH Vs. STATE OF M.P.

Sine-qua-non for raising presumption is proof of cruelty by husband or relatives of

husband towards deceased wife. In absence of such proof by prosecution that deceased woman was ever subjected to cruelty presumption of abatement to suicide cannot be raised.

NOTE :- Judges are requested to go through **1971 JLJ S.N. 80** ***Pancharam Vs. State of M.P.*** The important sentence is, "the behaviour of the husband may be a cause for suicide of his wife, but that cannot be equated with abatement which requires a positive step to be taken by a person to induce the commission of the offence. This may be the basic law to differentiate the principle regarding suicide and abatement to commit suicide.

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51. EVIDENCE ACT, SECTION 112 : PRESUMPTION OF LEGITIMACY UNDER THE SECTION
2001(2) M.P.L.J. 455
MANJEET SINGH Vs. MEENA

Child born during wedlock. Unless absence of access is established presumption of legitimacy cannot be displaced.

The law presumes strongly in favour of legitimacy of the off-spring. A child born during the continuance of a valid marriage is legitimate unless no access is proved by the husband. The proof of non-access must be strong, distinct, clear, satisfactory and conclusive. Unless absence of access is established presumption of legitimacy cannot be displaced. "Access" and "non-access" mean the existence or non-existence of opportunities for sexual intercourse; it does not mean actual cohabitation. It is a reputable presumption of law under Section 112 that a child born during the lawful wedlock is legitimate, and that access occurred between the parents. This presumption can only be displaced by a strong preponderance of evidence and not by a mere balance of probabilities. ***AIR 1954 SC 176, AIR 1987 SC 1049*** and ***AIR 1993 SC 2295.***

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52. EVIDENCE ACT, SECTIONS 112 AND 4 : CONCLUSIVE PRESUMPTION UNDER S. 112 :
MODE OF REBUTTAL OF AND STANDARD OF PROOF THEREFORE :-
(2001) 5 SCC 311
KAMTI DEVI Vs. POSHI RAM

The party seeking to rebut the presumption must show that neither he had the opportunity to approach his wife nor had his wife the opportunity to approach him during the relevant period. The standard of proof in such case is higher than the standard of preponderance of probabilities but not necessarily amounting to standard of proof beyond any reasonable doubt. Finding reached by the first appellate court on the basis of evidence adduced by both the parties that the husband had no opportunity to have liaison with the wife, held not subject to interference in second appeal.

NOTE :- For ready reference, the words "Conclusive Proof" referred to under Section 4 of the Evidence Act are reproduced :-

"When **one fact** is declared by the Act to be conclusive proof of **another**, the Court shall on the **proof of one fact** record the other as proved and shall not allow evidence to be given for the purposes of disproving it."

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53. EVIDENCE ACT, SECTION 113-A
2) I.P.C., SECTION 306
2001 (2) M.P.L.J., S.N. 16
RAMESH CHANDRA Vs. STATE

Applicant/accused alleged to have made demand for refund of money which he though deceased owed to him in gambling. Such demand would not come within category of offence under Section 306 read with section 107 IPC. No charge under section 306 made out. Revision application challenging framing of charge under Section 306, IPC allowed. The accused was discharged. Reference was made to ***Ved Prakash Vs. State of M.P., 1995 M.P.L.J. 458.***

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54. EVIDENCE ACT, SECTION 113-A
2) I.P.C., SECTION 498-A
2001(2) M.P.L.J. 383
AHSHAN KHAN Vs. STATE OF M.P.

Suicide of wife was in consequence of harassment of appellant husband. The accused was acquitted under the said charge. Conviction under Section 498 can be sustained even without 113-A of Evidence Act.

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55. 1) EVIDENCE ACT, SECTION 106 : ABDUCTION AND MURDER :-
2) EVIDENCE ACT, SECTION 134 : NON-EXAMINATION OF INVESTIGATING OFFICER :
3) CRIMINAL TRIA : IDENTIFICATION OF ACCUSED AT NIGHT :-
(2001) 8 SCC 311
RAM GULAM CHAUDHARY Vs. STATE OF BIHAR

Prosecution case was that after assaulting the victim accused persons carried away the body. The victim was not seen alive since then. No explanation given by the accused as to what they did with the victim thereafter. Accused abductors, who had special knowledge in this regard, having withheld the information. It was held that an inference can be drawn that they had murdered the victim. Adverse inference from is a piece of circumstantial evidence.

Non-examination of investigating officer, where there were several witnesses who had given credible and believable evidence regarding place of occurrence. the evidence cannot be discarded merely because the investigating officer had not been examined when in the circumstances of the case the investigating officer could not have given any evidence as to the actual place of occurrence, Non-examination of the investigating officer had not caused any prejudice to the accused-appellats. Prosecution's failure to examine I.O. is not fatal, when He could not have contributed the expected evidence.

With the courtesy of SCC publishers paragraphs 25 to 30 of the judgment are reproduced :-

25. Mr. Mishra next submitted that the investigating officer was not examined in this case. He submitted that this has caused serious prejudice to the accused persons inasmuch as if the investigating officer had been examined then the appellanats could have established that the assault had taken place not in the courtyard but had actu-

ally taken place on the road. He submitted that the non-examination of the investigating officer has deprived the appellant from showing that there was no water in the pit as claimed by PW 3.

26. In the case of ***Ram Dev v. State of U.P. 1995 Supp (1) SCC 547*** this Court has held that it is always desirable for the prosecution to examine the investigating officer. However, non-examination of the investigating officer does not in any way create any dent in the prosecution case much less affect the credibility of the otherwise trustworthy testimony of the eyewitnesses.

27. In the case of ***Behari Prasad v. State of Bihar (1996) 2 SCC 317*** this Court has held that for non-examination of the investigating officer the prosecution case need not fail. This Court has held that it would not be correct to contend that if the investigating officer is not examined the entire case would fall to the ground as the accused were deprived of the opportunity to effectively cross-examine the witnesses and bring out contradictions. It was held that the case of prejudice likely to be suffered must depend upon the facts of each case and no universal straitjacket formula should be laid down that non-examination of investigating officer per se vitiates the criminal trial.

28. In the case of ***Ambika Prasad v. State (Delhi Admn.) (2000) 2 SCC 646*** it was held that the criminal trial is meant for doing justice not just to the accused but also to the victim and the society so that law and order is maintained. It was held that a Judge does not preside over the criminal trial merely to see that no innocent man is punished. It was held that a Judge presides over criminal trial also to see that a guilty man does not escape. It was held that both are public duties which the Judge has to perform. It was held that it was unfortunate that the investigating officer had not stepped into the witness box without any justifiable ground. It was held that this conduct of the investigating officer and other hostile witnesses could not be a ground for discarding evidence of PWs 5 and 7 whose presence on the spot was established beyond any reasonable doubt. It was held that non-examination of the investigating officer could not be a ground for disbelieving eyewitnesses.

29. In the case of ***Bahadur Naik v. State of Bihar (2000) 9 SCC 153*** it was held that non-examination of an investigating officer was of no consequence when it could not be shown as to what prejudice had been caused to the appellant by such non-examination.

30. In our view, in this case also non-examination of the investigating officer has caused no prejudice at all. All that Mr Mishra could submit was that the examination of the investigating officer would have shown that the occurrence had taken place not in the courtyard but outside on the road. The investigating officer was not an eyewitness. The body had already been removed by the appellants. The investigating officer, therefore, could not have given any evidence as to the actual place of occurrence. There were witnesses who have given credible and believable evidence as to the place of occurrence. Their evidence cannot be discarded merely because the investigating officer was not examined. The non-examination of the investigating officer has not led to any prejudice to the appellants. We, therefore, see no substance in this submission.

Succifiency of light to identify the accused at night. Prosecution evidence exclusively establishing that deceased and his father were having meals in the verandah of their house at night and that mother and sister of the deceased were serving the meals. According to prosecution-accused-appellants armed with lethal weapons appearing there and assaulting the deceased. It was held that when deceased was having meals in the verandah at night, it can be inferred that a source of light had been put at that place. Hence there is no substance in the contention that as the lanterns were not seized from the place of occurrence, prosecution failed to establish that there was any source of light. Visual capacity of villagers even if lanterns were placed on the floor, it was held that it was possible for the witnesses, who were villagers, to identify the accused persons, more so when the accused were known to them. There is no substance in this submission. The visual capacity of urban people who are acclimatised to fluorescent lights or incadescent lamps is not the standard to be applied to villagers, whose optical potency is attuned to country-made lamps. The visibility of villagers is conditioned to such lights and hence it would be quite possible for them to identify men and matters in such light. Also the appellants were from the same village and were known to the witnesses. ***Kalika Tiwari Vs. State of Bihar, (1997) 4 SCC 445*** relied on. (**Note :** Please refer to ***AIR 2001 SC 116 Abdul Karim Vs. State,* JOIT 2001 Page 368**).

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56. EVIDENCE ACT, SECTION 112 : PRESUMPTION OF MARRIAGE :- CONCLUSIVE PROOF (SECTION 4 EVIDENCE ACT)
2001 (2) M.P.L.J. 504
BHAGWAT PRASAD Vs. PRANBAI SAMARU

Where there is cogent evidence led by the defendant that she was duly married as per caste custom and that thereafter they lived together as husband and wife and were recognised as such by the society and she gave birth to children during the period while living as his wife, she and children were entitled for the dues payable on the death of deceased who was an employee of the State Government serving in the Education Department.

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57. 1) S. 76 EVIDENCE ACT - REQUIRMENTS :
2) AFFIDAVIT :-
(2001) 8 SCC 358
T. PHUNGZATHANG Vs. HANGKHANLIAN

Administering oath and making an endoresement in proof thereof are acts of the officer administering the oath and are not integral part of the affidavit. If affidavit is in prescribed form, mistake in the verification portion thereof cannot be a ground for summary dismissal of the election petition.

WORDS AND PHRASES : MEANING OF WORDS "TRUE COPY":- SEE S. 76 EVIDENCE ACT

The law laid down by the Constitution Bench of the Supreme Court in **T.M. Jacob case (1999) 4 SCC 274** may be summed up as under :-

"i) The object of serving a "true copy" of an election petition and the affidavit filed in support of the allegations of corrupt practice of the respondent in the election peti-

tion is to enable the respondent to understand the charge against him so that he can effectively meet the same in the written statement and prepare his defence. **The requirement is of substance and not of form.**

ii) The test to determine whether a copy was a true one or not was to find out whether any variation from the original was calculated to mislead a reasonable person.

iii) The word "copy" does not mean an absolutely exact copy. It means a copy so true that nobody can by any possibility misunderstand it.

iv) Substantial compliance with S. 81 (3) was sufficient and the petition could not be dismissed, in limine, under S. 86 (1) where there had been substantial compliance with the requirements of S. 81 (3) of the Act."

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58. 1) HINDU MARRIAGE ACT, SECTION 21
2) C.P.C., SECTION 151 : GRANT OF INJUNCTION : JURISDICTION OF THE COURT INHERENT POWERS OBJECT OF :
2002 (1) M.P.L.J. 68
PRATIKSHA Vs. PRAVIN DINKAR TAPASWI

Restraining the wife from forceable entering the house of the husband. The powers can be exercised by the Court in Matrimonial disputes.

The facts of the case are reproduced :-

2. The facts giving rise to this appeal are that the respondent/husband filed a divorce petition under section 13 (1) (a) of the Hindu Marriage Act against the appellant/wife on the ground of cruelty. Along with this petition, respondent/husband has also filed an application under Order XXXIX, Rules 1 and 2 read with section 151 of the Code praying therein that appellant/wife be restrained not to forcibly enter into the house of the respondent/husband because the appellant/wife has threatened to the respondent/husband to commit suicide and the submission of the husband in the application was that on 28th March, 1998 she has finally left the house of the respondent/husband along with all her silver and gold ornaments in the absence of the respondent without his knowledge and since then she is residing along with her brother and the respondent is apprehending that the wife may come again in the house of the husband and may create some problem and also commit suicide and may involve the husband in some criminal case, therefore, she be restrained not to forcibly enter into the house of the husband. This application was heard by the trial Court and by impugned order dated 27-7-1998 allowed the same and granted an injunction against the appellant/wife. This application was objected by the wife before the trial Court and it was submitted that no such injunction can be granted as there is no provision under the Hindu Marriage Act for grant of such injunction but the trial Court after considering the submissions of the learned counsel for the parties granted an injunction exercising inherent powers under section 151 of the Code, against which appellant/wife has filed this Misc. Appeal.

Paragraphs 9 and 13 of the judgment are reproduced :-

Section 151 of the Code is not a substantive provision conferring any right to get any relief of any kind. The object of the Legislature in enacting the various provisions of laws of procedure is also to serve the ends of justice. This section provides recognition of an

age-old well established principle that every Court has inherent powers to act ex debito justitiae to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court. It has been held by the Supreme Court in the case of ***M/s Jaipur Mineral Development Syndicate, Jaipur Vs. The Commr. of L-T, New Delhi,*** reported in **AIR 1977 SC 1348** that, **"Every Court is constituted for the purposes of doing justice according to law and must be deemed to possess, as a necessary corollary; and as inherent in its very constitution, all such powers as may be necessary to do the right and to undo a wrong in the course of the administration of justice."**

From the aforesaid discussion, it is clear that under inherent powers the Courts hearing petitions regarding conjugal rights and matrimonial obligations can issue injunctions and preventive order, and in a case the element of property under dispute, the Court can also exercise powers under O. XXXIX, Rr. 1 and 2 of the Code to prevent misuse and waste of the property.

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59. HINDU MARRIAGE ACT, SECTION 13(1)(i-a) AND (i-b) :- DESERTION : ESSENTIAL INGREDIENTS FOR DIVORCE :-
2001 (2) M.P.L.J. 433
GAJENDRA Vs. SMT. MADHUMATI

Desertion on the ground of cruelty is desertion itself.

The expression 'desertion' is not defined in the Hindu Marriage Act. 'Desertion' in the context of matrimonial law represents a legal conception which is very difficult to define. Essential ingredients of 'desertion' so as to furnish a ground for relief of divorce under the Act are : (a) Factum of separation; (b) Intention to bring cohabitation permanently to an end animus deserendi; and (c) the element of permanence i.e. elements (a) and (b) as above should continue during the entire statutory period of two years.

Paragraph 12 of the judgment is reproduced :-

12. Under section 13(1)(i-b) of the 'Act' one of the grounds of granting divorce is desertion. A decree for divorce can be granted on the ground that the other spouse has deserted the petitioner for a continuous period of not less than-two years immediately preceding the presentation of the petition. The expression 'desertion' is not defined in the 'Act'. 'Desertion' in the context of matrimonial law represents a legal conception which is very difficult to define. Essential ingredients of 'desertion', so as to furnish a ground for the relief of divorce are :

    (a) Factum of separation;

    (b) Intention to bring cohabitation permanently to an end - **animus deserendi;** and

    (c) The element of permanence i.e. elements (a) and (b) as above should continue during the entire statutory period.

The explanation clause of section 13(1)(i-b) of the 'Act' provides that the expression 'desertion' means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly. Thus, the above ex-

planation has widened definition of desertion to include wilful neglect of the respondent and so as to amount to matrimonial offence, desertion must without reasonable cause and without the consent or against the wish of the petitioner. The offence of desertion thus commences when the fact of separation and the **animus** deserendi co-exist.

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60. 1) HINDU WOMEN'S RIGHT TO PROPERTY ACT, 1937, SS. 3 (2) AND (3) :-
2) BOMBAY AGRICULTURAL DEBTORS RELIEF ACT, 1947, S. 37 :-
(2001) 8 SCC 487
NARAYAN GOVIND HEGDE Vs. KAMALAKARA SHIVARAMA

Section 37 of the Bombay Agricultural Debtors Relief Act, 1947 not invocable against Hindu widow exercising her right to incur debt and alienate property for reasons of family necessity. Sale of property for satisfaction of award against her is binding on her son, who cannot challenge award on ground that he as reversioner is the sole owner of the property.

A Hindu widow succeeds as an heir to her husband. The ownership of properties vests in her. She fully represents the estate, the interest of the reversioners therein being only spes successionis. In the case in hand after the death of her husband, the widow succeeded to the property of her husband and she was entitled to full enjoyment of the estate subject to limited interest known as Hindu women's estate. The right includes right to alienate the property for legal necessity of family. Therefore, the allegation of the applicant, her son that he was the sole owner of the disputed land is not sustainable in law.

In the case in hand the disputed land was sold for legal necessity. In the present application there is no averment or evidence to show that there was legal necessity, therefore, it is held that the sale in question is binding on the applicant, who is reversioner.

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61. I.P.C., SS. 498-A EXPLN. (a) AND 511 : ATTEMPT TO COMMIT AN OFFENCE AND ATTEMPT ITSELF CONSTITUTES AN OFFENCE : EXPLAINED :-
(2001) 8 SCC 633
SATVIR SINGH Vs. STATE OF PUNJAB AND OTHER ALLIED CASE

"Attempt" to commit an offence is an essential condition. When the attempt itself constitutes an offence under IPC, S. 511 is not attracted. Cruelty driving the woman to commit suicide. Accused (husband, mother-in-law and father-in-law) asking the victim to end her life by throwing herself in front of running train. Victim attempting to commit suicide accordingly. But that attempt instead of resulting in her death maimed her. On facts, accused persons' conviction under S. 498-A upheld. S. 511 not attracted. But while reducing the sentence of imprisonment to the period already undergone, fine enhanced to Rs. 1 lakh each for all the three accused payable by way of compensation to the victim.

I.P.C., SECTIONS 306 OR 304-B :
EVIDENCE ACT, SECTION 113-A : SCOPE OF OFFENCE U/s 306 r/w/s 113-A EVIDENCE ACT COMPARED :-

To constitute offence under S. 304-B r/w/s. 113-A Evidence Act, it is necessary that cruelty or harassment must have caused "soon before her death" or earlier but under S. 306 r/w S. 112-A Evidence Act there is no such requirement.

With the courtesy of SCC publishers following portion is reproduced :

The essential components of Section 304-B are : (i) Death of a woman occurring otherwise than under normal circumstances, within 7 years of marriage. (ii) Soon before her death she should have been subjected to cruelty and harassment in connection with any demand for dowry. When the above ingredients are fulfilled, the husband or his relative, who subjected her to such cruelty or harassment, can be presumed to be guilty of offence under Section 304-B. To be within the province of the first ingredient the provision stipulates that "where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances". It may appear that the former limb which is described by the words "death caused by burns or bodily injuriy" is a redundancy because such death caused by burns or bodily injury" is a redundancy because such death would also fall within the wider province of "death caused otherwise than under normal circumstances". The former limb was inserted for highlighting that by no means death caused by burns or bodily injury should be treated as falling outside the ambit of the offence.

Section 306 IPC when read with Section 113-A of the Evidence Act has only enabled the court to punish a husband or his relative who subjected a woman to cruelty (as envisaged in Section 498-A IPC) if such woman committed suicide within 7 years of her marriage. It is immaterial for Section 306 IPC whether the cruelty or harassment was caused "soon before her death" or earlier. If it was caused "soon before her death" the special provision in Section 304-B IPC would be invocable, otherwise resort can be made to Section 306 IPC.

No doubt, Section 306 IPC read with Section 113-A of the Evidence Act is wide enough to take care of an offence under Section 304-B also. But the latter is made a more serious offence by providing a much higher sentence and also by imposing a minimum period of imprisonment as the sentence. In other words, if "death caused otherwise than under normal circumstances within 7 years of the marriage as a sequel to the cruelty or harassment inflicted on a woman with demand of dowry, soon before her death. Parliament intended such a case to be treated as a very serious offence punishable even up to imprisonment for life in appropriate cases. It is for the said purpose that even up to imprisonment for life in appropriate cases. It is for the said purpose that such cases are separated from the general category provided under Section 306 IPC (read with Section 113-A of the Evidence Act) and made a separate offence.

It is, therefore, not possible to accept the contention that if the dowry-related death is a case of suicide it would not fall within the purview of Section 304-B IPC at all. Suicide is one of the modes of death falling within the ambit of Section 304-B IPC

I.P.C. : S. 304-B : DOWRY, MEANING OF : The word "dowry" in section 304-B has to be understood as it is defined in section 2 of the Dowry prohibition Act, 1961. Thus, there are three occations related to dowry. One is before the marriage, second is at the time of marriage and the third is "at any time" after the marriage. The third occasion may appear to be an unending period. But the crucial words are "in connection with the marriage of the said parties". This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of

a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of "dowry".

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62. I.P.C., SECTION 302 :- MURDER TRIAL :-
2001 (2) M.P.L.J., S.N. 18
MEHTU Vs. STATE OF M.P.

Articles of deceased recovered on basis of memorandum of appellants/accused. In absence of any material to suggest that deceased was wearing those articles before commission of crime its recovery will not lead to only conclusion that appellants have committed murder.

●

63. I.P.C., SECTION 406
2) HINDU MARRIAGE ACT, SECTION 27 : DISPOSAL OF PROPERTY WITH REFERENCE TO CRIMINAL BREACH OF TRUST :-
2001 (2) M.P.L.J. 510
VIKAS KUMAR JAIN Vs. RITA JAIN

Complainant complained in respect of the offence of criminal breach of trust under section 406, IPC. According to the complainant articles including bank drafts which were her stridhan were given by her parents to accused, her husband and in-laws. Accused was residing at Gaziabad in U.P. while complainant was residing in Bhopal. One of the bank drafts was entrusted to accused No. 3 mother-in-law at Bhopal. The Court at Bhopal had territorial jurisdiction in the circumstances to entertain the complaint in view of section 181 (4) r/w/s 184 Cr.P.C.

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64. I.P.C., SECTIONS 306 AND 498-A : HARRASSMENT NEED NOT ACCOMPANY DEMAND : THE WORD 'CRUELTY' EXPLAINED :-
2001 (2) M.P.L.J. 513
KANHAI KUDAU CHAMAR Vs. STATE OF M.P.

Suicide within 5 years of marriage. Accused is the husband of the deceased. There was evidence on record to show that immediately before the death subjected to cruelty. She was under constant threat. There was evidence that when her brother had come to take her back she was not sent by accused and her brother was ill treated and accused ran behind him to beat. Finding no way out she appeared to have jumped into the well along with her infant daughter. The circumstances clearly made out that deceased was subjected to utmost cruelty.

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65. I.P.C., SECTIONS 405, 406 AND 448 :- CRIMINAL BREACH OF TRUST :-
2) I.P.C., SECTIONS 441, 442 AND 448 :- TRESPASS :-
2001 (3) M.P.H.T. 37 (CG)
ROHIT VERMA Vs. SHEIKH SULTAN

Possession of property was given to applicants/purchasers under the agreement signed by complainant/owners. It was not alleged that property was kept in trust and applicants/purchasers cannot be prosecuted for committing offence under section 406 or for trespass.

For application of Section 441, IPC the prosecution must prove that the accused entered into or upon the property which was in possession of the complainant or in the alternative it must be proved that the complainant was in symbolical possession of the property, but the accused with an intention to commit some offence entered into the property. In the alternative, the prosecution may prove that the entry of the accused was lawful, but after he was required to leave, he refused to leave and thereafter remained on the property unlawfully.

The service of the notice would simply say that the complainants were demanding back the possession, but that would not mean that either the entry of the accused was illegal or their continuous possession would become criminal trespass under Section 441, IPC or would amount to house-trespass under Section 442, IPC. *Prima facie* there is no evidence on the record to show or suggest that the accused persons/purchasers entered into or upon the property which was in possession of the third party with an intention to commit an offence. Issuance of summons to the present applicants\purchasers cannot be justified either on the facts or on law. The proceedings registered against them deserve to be and are accordingly quashed.

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66. I.P.C., SECTION 406 : TERRITORINL JURISDICTION
2) CR.P.C., SECTIONS 181(4), 184 AND 177 :-
2001 (II) MPWN NOTE 55
VIKAS KUMAR Vs. SMT. RITA JAIN

One of the bank drafts given to accused at Bhopal Branch. Evidence under Section 406 IPC. Court at Bhopal has territorial jurisdiction.

NOTE :- Judges are requested to consider this judgment for the cases under Section 138 N.I. Act also.

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67. JUVENILE JUSTICE ACT, 1986, Ss. 7(3), 32
2) N.D.P.S. ACT, S. 36 (3) :-
3) CR.P.C. : GENERALLY :- POWERS OF THE SPECIAL JUDGE :-
2001 (2) M.P.L.J., S.N. 21
RAJU Vs. STATE OF M.P.

The Special Judge under the Act of 1986 has full power to act as Juvenile Court for deciding correct age of applicant.

MEDICAL JURISPRUDENCE : OSSIFICATION TEST :-

It is not a conclusive matter of age determination. It could lend corroboration to school certificate in respect of age of person concerned.

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68. LAND ACQUISITION ACT, SECTIONS 23 AND 54: DETERMINATION OF COMPENSATION EXPLAINED:
AIR 2001 SC 2414
O.A.K. NACHIMUTHU Vs. REVENUE DIVISIONAL OFFICER, ERODE, TAMILNADU

Compensation cannot be determined with mechanical precision. Certain degree of guess work is bound to be involved. High Court on assessment of evidence and for cogent

reasons awarded compensation at certain rate. Approach of High Court is fair and reasonable.

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69. LANDLORD AND TENANT KARNATAKA RENT CONTROL ACT, SECTIONS 21 AND 45 : HOUSES AND RENTS :
2) C.P.C., SECTION 11 : RES JUDICATA
AIR 2001 SC 2469
N.R. NARAYAN SWAMY Vs. B. FRANCIS JAGAN

Successive suits can be filed by landlord on ground of bona fide requirement or non-payment of rent. First suit withdrawn as not passed. Second suit not barred either by O. 23 R. 1 (4) of C.P.C. or by section 45 of Karnataka Act.

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70. LIMITATION ACT, SECTION 27 AND Art. 65 :-
2001(II) MPWN NOTE 39
HARI RAM Vs. MUNICIPAL COUNCIL, GANJ BASODA

Possession under proposal of sale is permissible. No question of adverse possession arises.

NOTE :- Judges are requested to go through leading case ***Roop Singh Vs. Ram Singh, 2000 (3) M.P.H.T. 18 (SC)*** reported in **2000 Joti Journal August part at page 509.**

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71. M.P. ACCOMMODATION CONTROL ACT, SECTIONS 23-A AND 23-E : SCOPE OF REVISIONAL POWERS UNDER SECTIONS 23-E AND BONAFIDE REQUIREMENT EXPLAINED :-
2002 (1) MPLJ 40
M.P. DONGRE Vs. KUSUMLATA

The revisional power conferred by section 23-E of the M.P. Accommodation Control Act is larger than the revisional jurisdiction under section 115, Civil Procedure Code. The finding of fact arrived at by Rent Controlling Authority regarding **bona fide** requirement of the landlord can be disturbed in revision if it is perverse and not simply on the ground that another view is possible. **(1998) 8 SCC 119, (1999) 1 SCC 133 and AIR 2000 SC 2080,** Rel.

Even with aid of statutory provisions for eviction of tenant on ground of **bona fide** requirement of certain specified categories of landlords in Chapter III-A of the M.P. Accommodation Control Act, it is seen, that it takes years and years to establish **'bona fide need'** and if in such a situation the landlord out of disgust entertains a concurrent idea to sell the accommodation and arrange an alternative shelter speedily that does not necessarily negate his **bona fide** requirement. Revision application by tenant dismissed.

●

72. 1) M.P. MUNICIPAL CORPORATION ACT, SECTIONS 308-A, 403, 307 AND 402 :-
2) PREVENTION OF CORRUPTION ACT, 1988, SECTIONS 13 (1) (d), 13 (2) :-
3) I.P.C., SECTION 120-B :-
2002 (1) MPLJ 154
GOWARDHAN DAS Vs. STATE OF M.P.

Composition of alleged illegal construction on payment of composition fee/penalty. Mere illegal exercise of jurisdiction by a judicial or quasi judicial authority is not sufficient to warrant inference of corruption. In absence of any further evidence, it cannot be a ground for prosecuting the concerned authority on any criminal charge of corruption in view of the protection given by section 402 of 1956 Act. Accused and co-accused charged for offences of corruption with the aid of section 120-B Indian Penal Code.

●

73. M.P. ACCOMMODATION CONTROL ACT, GENERALLY : ALTERNATIVE ACCOMMODATION IN SECOND APPEAL SOUGHT EFFECT OF :-
C.P.C., O. 41 AND 42, GENERALLY :-
MANGATRAM Vs. JAIKUMAR 2001(II) MPWN NOTE 33

Interim application in second appeal for allotment of alternative accommodation not pleaded in written statement of suit. Matter not adjudicated between parties. Another accommodation cannot be let to tenant at this stage against wishes of landlord.

●

74. M.P. ACCOMMODATION CONTROL ACT, SECTIONS 23-A(a), (b) AND 23-D(3) : SUIT FOR EVICTION :-
2001(2) M.P.L.J. 361
JAGDISH CHANDRA Vs. SMT. KULVEER KAUR

Bonafide need of landlord under clause (a) or (b) of section 23-A. Presumption of bonafide requirement. Tenant must rebut the presumption.

●

75. M.P. ACCOMMODATION CONTROL ACT, SECTION 12(1)(B) :- SUB-LETTING : SPECIAL KNOWLEDGE, BURDEN OF PROOF ON TENANT
2) EVIDENCE ACT, SECTION 106 :-
2001 (2) M.P.L.J. 497
DHANYA KUMAR JAIN Vs. MATA PRASAD GUPTA

Sub-letting by its very nature is a transaction between the tenant and sub-tenant and therefore the landlord would not be in a position to produce direct evidence of the transaction in proceedings under section 12(1)(b) of the M.P. Accommodation Control Act. Section 106 of the Evidence Act would be attracted because the question of subletting is best known to the tenant and the sub-tenant and not to the landlord. Section 106 of the Evidence Act says when any fact is especially within the knowledge of any person, the burden of proving the fact is upon him. The negative burden is cast upon the tenant to prove that the tenanted premises were not sub-let, but this could not be otherwise. Therefore under section 12(1)(b) of the Act, the burden should be placed on the tenant. Under these facts and circumstances, since it is negative burden, the tenant may not be required to prove his case to the hilt but he could place material on record to disprove the assertion of the plaintiff that the suit house was sub-let. **1998(II) MPWN Note 1** relied on.

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76. M.P. ACCOMMODATION CONTROL ACT, SECTION 18(3) : ORDER UNDER IS DECREE :
2) C.P.C., SECTIONS 2(2), 96 AND 115 :-
2001 (II) MPWN NOTE 62
AKBARALI Vs. M/s. NEW LAXMI TRANSPORT SERVICE

Order of restoration of possession to the tenant under section 18(3) of the Act amount to a decree and is an appealable order.

●

77. M.P. GENERAL PROVIDENT FUND RULES, 1955, RULES 8 AND 2(1)(C) AND PROVIDENT FUNDS ACT, SECTION 5 : NOMINEE : RIGHTS OF TO RECEIVE FUNDS ETC. OF THE GOVERNMENT SERVANT :-
2001(3) M.P.H.T. 239
HEMANT KULSHRESTHA Vs. SMT. PUSHPA KULSHRESTHA

The question before the High Court was whether petitioner being a nominee has a right of succession certificate to receive the money? It was held that he has no such right. If nominee is not a member of family, he will not be entitled for succession certificate of deceased's property. Only members of family are entitled to be mentioned. Any nomination other than members of family is invalid. Granting of succession certificate in favour of widow and children of children of the deceased was upheld.

Paragraph 6 of the judgment is reproduced :

Even under the Hindu Succession Act, widow, children and mother are class one heir. Brother is not class 1 heir. In the facts and circumstances of the case, if nominee is not a member of family, he will not be entitled for the succession certificate of deceased's property. On plain reading of Rule 8 Madhya Pradesh General Provident Fund Rules and Section 5 of Provident Funds Act, only members of family are entitled to be nominated. Any nomination other than members of family is invalid and, as such, nominee who is not a member of family as defined will not acquire any right in the funds of deceased employee.

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78. M.P. HIGH COURT RULES AND ORDERS, CHAPTER II, S. 3 R. 11(a) : HEARING MEANING OF
2001 (2) M.P.L.J. 444
BITTAN BAI Vs. STATE OF M.P.

Requirement of the Rules includes service of counter affidavit or other documents or petitions filed by a respondent on the counsel for other co-respondent.

HEARING GENERALLY :- The concept of hearing both sides clearly means to give a hearing to all the parties appearing before a court of law or any adjudicating authority. A hearing conveys the idea of giving opportunity of hearing to the parties before the court so that they can putforth their cases. A litigant who has engaged a counsel harbours a hope that his counsel would putforth his case from all angles. A counsel can only argue with confidence when he has all the pleadings with him. It is to be born in mind that the idea of fair hearing in its connotative conceptuality embraces grant of proper opportunity to the parties and exchange of pleadings is a step towards the same. Rule 11(a) in Chapter II, section 3 of the M.P. High Court Rules and Orders includes service of counter affidavit or other documents or petitions filed by a respondent on the counsel for other co-respondent also. **(1995) 5 SCC 711** relied on.

NOTE :- In paragraph 5 of the judgment two quotations were referred :-

"He who decides a case without hearing the other side, though he decides justly, cannot be considered just."

"There is no virtue so truly great and Godlike as justice."

●

79. M.P. LAND REVENUE CODE, SECTION 185 (1) (ii) (a) to (d) : 2002 (1) M.P.L.J. 200
GOWARDHAN Vs. GHASIRAM

Persons holding land in the Madhya Bharat region as tenant or sub-tenant who on commencement of Code 2-10-1959 continuously remained in possession of land entitled to rights of occupancy tenant.

As per clear provisions of section 185 of M.P. Land Revenue Code, 1959 every person in the Madhya Bharat region who at the coming into force of the Code holds any land as a sub-tenant or tenant, who continuously posses any such land on the commencement of the Code on 2-10-1959 are entitled under section 185 (1) sub-clause (ii) (a) to (d) to claim the status of occupancy tenant and thereafter by virtue thereof acquire rights of Bhumiswami in accordance with provisions of section 190 of the Code. Obviously the intention of section 185 (1) (ii) of the Code is to give occupancy rights to those who were holding lands when the Code came into force. The appellant/defendant was not protected by section 185 of the Code on the ground that even if it is taken into consideration that a patta was granted for a period of one year in Samvat 2004 and in Samvat 2005 the suit was filed for taking possession back from the lessee pattedar and when the applicant was not in possession of the land in dispute right from 30-6-1948 to 1967, he cannot claim any right on the basis of the aforesaid patta for period of one year. **AIR 1970 SC 483,** Ref.

Section 52 of the Transfer of Property Act creates only a right to be enforced to avoid a transfer made pendente lite, because such transfers are not void but voidable and that too at the option of the affected party to the proceedings. The only effect of the doctrine of lis pendens on the sale transaction is to make is subject to the decree or order to be passed in the suit. The rights obtained by way of transfer during the pendency of suit are subservient to the rights of the transferor and bind the transferee in the same manner in which the transferor is.

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80. M.P. LAND REVENUE CODE, SECTIONS 57(2), 57(3) AND 111 AND SECTION 2(1)(k) : WORDS "RIGHT" AND "RIGHT OF OWNERSHIP" EXPLAINED :-
2) M.P.L.R.C., SECTION 257 :-
3) LIMITATION ACT, SECTIONS 27 AND 29 AND ARTICLES 64 AND 65 :-
4) WORDS AND PHRASES : WORD "MAY" :-

NOTE :- Edited from **2001(3) M.P.H.T. 255(FB)** and **2001 (1) MPJR 546, State of M.P. Vs. Balveer Singh.**

The dispute in relation to right other than cultivatory right in respect of the land defined in the Code. The right vested in the state prior to the coming into force of the Code are to be decided by the S.D.O. A dispute contemplated under section 57(1) of the Code is also to be decided by S.D.O. The right contemplated in section 57(2) is a right other than the cultivatory right in respect of land as defined under section 2(1)(k).

The "right" contemplated under Section 57(2) of the Madhya Pradesh Revenue Code, 1959 is a right other than the cultivatory right in respect of the land as defined under section 2(1)(k) which stands secured in favour of a Bhumiswami, occupancy tenants or a Government lessee as defined under the said Code and this right has to be taken to be confined to the proprietary rights including those rights which vested in the State by operation of law under the enactments in force prior to the coming into effect of the aforesaid Code.

The determination of question of Bhoomiswami lies within civil Courts except the cases filling within the ambit of those which are specified under Section 257. Extinguishment of rights under section 27 of the Limitation Action will not automatically result in accrual of Bhumiswami rights without ground. A person may acquire Bhumiswami right against the state only in accordance with the provisions of the Code.

The provisions of the Indian Limitation Act will have application only to the extent permissible under section 29 of the said Act and where special period of limitation is prescribed under the provisions of the Land Revenue Code, the same shall prevail over the limitation prescribed under the Indian Limitation Act, 1963 and further the extinguishment of the right under Section 27 of the Limitation Act will not automatically result in the accrual of Bhumiswami rights or any superior right on the ground of adverse possession.

A civil suit is directly maintainable in respect of the disputes with the State other than the disputes comtemplated under Section 57(1) of the Code.

There cannot be a distinction as to the forum with respect to the rights of Bhumiswami acquired after coming into force the Code and Bhumiswami rights acquired on the basis of pre-existing rights.

The word "may" is an enabling provision leaving a choice of action which is not to be understood as a command.

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81. MUNICIPAL CORPORATION ACT, 1956, SECTION 80(5) PROVISO (ii) :-
2001(1) VIDHI BHASVAR 292
MUNICIPAL CORPORATION SATNA Vs. BADRI PRASAD

Provisions under the section does not apply to lease. It does only apply when property is sold or otherwise permanently conveyed which is a transfer of permanent nature. Lease is a partial transfer only.

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82. M.V. ACT, 1988, SECTIONS 140, 168 :-
C.P.C., O. 47 R. 1 : REVIEW :-
2001 (II) MPWN NOTE 47
DEVA Vs. MUDRIKA PRASAD

Fatal accident case decided after amendment enhancing amount of Rs. 50,000/-. No final award can be passed of lesser amount.

Binding decision not brought to the notice of the Court. Remedy may be provided in review.

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83. 1) M.V. ACT, 1939, S. 95 (1) (b) PROVISO (ii) :-
2) MOTOR VEHICLES ACT, 1988 AS AMENDED IN 1994, S. 147 (1) (b) (i) :- LIABILITY OF INSURANCE COM. TO PAY COMPENSATION TO GRATUITOUS PASSENGER
2002 (1) M.P.L.J. 12
RAMESHWAR KUMAR Vs. NATIONAL INSURANCE CO. LTD.

Liability of Insurance Company to pay compensation on account of death or bodily injury of the gratuitous passenger including the owner of goods or his representative travelling in the goods vehicle under the Motor Vehicles Act 59 of 1988 after its amendment by Act 54 of 1994. **(2000) 1 SCC 241** relied on.

Insurance Company not liable to pay compensation in case of gratuitous passengers travelling in goods vehicle.

The Insurance Company is not liable for any damage in cases of the gratuitous passengers including owner of the goods or his representative who travelled in a goods vehicle. Liability to pay compensation to the claimants is on the owner of the goods vehicle. **(1999) 1 SCC 403** relied on.

Paragraph 7 of the judgment is reproduced :

7. This takes us to the third category of cases where a similar question is raised regarding liability of the Insurance Company under the new Act after its 1994 amendment. The submission for the claimant is, the Insurance Company is liable to pay the compensation both in view of the decision of this Court in ***New India Assurance Co. vs. Satpal Singh, (2000) 1 SCC 237*** and also in view of its 1994 amendment. This Court in this case, while interpreting sections 147 (1) (i) and (ii) of the new Act holds the Insurance Company liable to pay the compensation both for the owner and his representative and also for the gratuitous passengers travelling in goods vehicle. In this third category, inspite of the said declaration the claimants have confined their claim only for the owner or his representative who were travelling in a goods vehicle and not for the gratuitous passengers. Since **Satpal Singh** (supra) confers right over gratuitous passengers also, which is not claimed by any of the claimants under this category, thus declaration of law in **Satpal Singh** (supra) is not required to be considered for this category, as claim for the owner and his representative is not disputed even by the learned counsel for the Insurance Company, after its aforesaid 1994 amendment, that the Insurance company is liable to pay compensation for such person even when they were travelling in a goods vehicle. This is in view of the 1994 amendment in sub-clause (i) of section 147 (1) (b) of the new Act in which the following words were brought in :

".....Injury to any person, including owner of the goods or his authorised representative carried in the vehicle."

●

84. M.V. ACT, 1988, SS. 166 AND 174 :- NATURE OF LIABILITY OF INSURER :-
2002 (1) M.P.L.J. 74
NATIONAL INSURANCE CO. LTD. Vs. SMT. KANTIBAI

Award in petition under Section 166. Insurer made liable to pay Rs. 1,00,000/- to

claimants, heirs of deceased tractor driver despite finding on question of negligence returned against insured owner. Insurer cannot escape statutory liability for security of third party. Appellant insurance company is liable to pay entire award and can recover excess amount from insured by executing award against insured as per section 174. Award modified to that extent. **AIR 2001 SCW 1340, AIR 1964 SC 1736 and AIR 1998 SC 1433** referred to.

●

85. M.V. ACT, 1988, SECTIONS, 163-A, 166 AND 173 :- QUANTUM OF COMPENSATION : DETERMINING FACTOR :-
2002 (1) M.P.L.J. 110
DALJEET SINGH Vs. HARDEEP SINGH

Where both the husband and wife were earning members of the family, in normal course both must have been contributing towards the house-hold expenditure. In the facts and circumstances of the case, the husband who was earning Rs. 5,000/- per month cannot be said in any way dependent on the wife who had died in the accident on 9-9-1998 involving the Jeep in question, the offending vehicle, who was earning Rs. 3,000/- per month. The husband, therefore, cannot claim any compensation on the basis of dependency.

MODE EXPLAINED :

The method of multiplying the amount of annual loss to the dependents with the number of years by which the life has been cut-short without anything else cannot be sustained. It would be safe to proceed to assess the compensation by adopting the method of multiplier making a judicious use of the appropriate number of the years of purchase. The multiplier is to be chosen having regard to the peculiar facts of each case. If it is found that the deceased prematurely died at a very young age and if it is further revealed that the longevity in his/her family was more, then it would be safe to take a higher multiplier with a view to arrive at a figure of total compensation. The choice of multiplier has, however, to be made by the Court using its own experience and having due regard to the peculiar facts of each case because the ultimate goal is not to adhere to any rigid formula but to award a compensation which is just.

Determination of the question of compensation depends on several imponderables and there is always a likelihood of there being a margin of error, if the assessment made by the Tribunal is not considered to be unreasonable it will not be proper to interfere in the same in the appeal as filed.

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86. MOTOR VEHICLES ACT, SECTIONS 140 AND 142 :-
2001(1) VIDHI BHASVAR 302
NEW INDIA ASSURANCE CO. LTD. Vs. MUNNIBAI

Whether every fracture is permanent disability - 'No'. Every fracture does not result as permanent disablement, permanent physical impairment is an anatomical or functional abnormality or loss which is stable. **1998 ACJ 523** relied on.

Paragraphs from 4 to 8 are reproduced :-

4. Learned counsel for the appellant Insurance Company has urged that the document

(Annexure A) as above filed by each of the claimants does not show that permanent disablement, as defined in section 142 of the Act was caused to any of the claimants respondent No. 1 and, therefore, the impugned award could not have been passed.

5. It would appear that the medical certificates as per Annexure A issued in favour of the claimants-respondent No. 1 do not indicate that the claimants-respondent No. 1 suffered from permanent disability. All the certificates filed by the claimants-respondent No. 1 of each of the above cases, appear to have been issued on 10.9.1996. It does not appear therefore that permanent disablement was caused to the claimants-respondent No. 1 on account of the injuries sustained by them during the accident. It may be noted that every fracture cannot be said to result in permanent disablement. As has been laid down by the Division Bench of this Court in ***Saurabh Kumar Shukla v. Hukam Chandra and others [1998 ACJ 523],*** permanent physical impairment is an anatomical or functional abnormality or loss the physician considers stable or non-progressive at the time the evaluation is made. It has therein further been observed that permanent disability applies to permanent damage or to loss of use of some part of the body after the stage of maximum improvement from orthopaedic or other medical treatment has been reached and the condition is stationary.

6. When a Court considers a prayer for grant of relief under section 140 of the Act of an injury which resulted in fracture of bones, it has certainly to record a **prima facie** finding whether such fractures or privation or a member or joint has resulted in permanent disablement or not. Only after satisfying itself that permanent disablement has been caused to the claimant, an award under section 140 of the Act can be granted. Thus 'permanent disablement' is the **sine qua non** for the award of compensation under section 140 of the Act and a person merely sustaining simple fracture without anything more would not be entitled to receive compensation u/s 140 of the Act.

7. In view of what has been stated above, it appears that the document (Annexure A) is inadequate to indicate that the claimants-respondent No. 1 suffered permanent disablement as a result of injury caused in the accident.

8. In the circumstances, the impugned-order is set-aside and the case is remanded back to the Tribunal with the direction that the Tribunal shall grant the claimants-respondent No. 1 as well as the appellant and other respondents opportunity of hearing afresh with reference to the application u/s 140 of the Act for grant of interim compensation. After holding summary enquiry in the matter, the Tribunal shall decide the application u/s 140 of the Act afresh. Learned counsel for the appellant submits that the claimants-respondent No. 1 may be directed to appear before the Medical Board, who may be asked to submit its report regarding their permanent disablement. It has further been submitted that the appellant is prepared to bear the expenses of examination of the claimants-respondent No. 1 by the Medical Board. The appellant shall be at liberty to make such a prayer to the Tribunal, who shall decide the same, on its merits.

NOTE :- Please refer to **1997 Joti Journal October part at page 19** and **1997 Joti Journal 1997 Aug., page 37.**

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87. **NAGARIYA KSHETRON KE.....ADHINIYAM, 1984 (M.P.), S. 3 :- LEASE HOLD RIGHT SETTLED UNDER :-**
2001 (II) MPWN NOTE 60
SABRA BEGUM Vs. CHIEF MUNICIPAL OFFICER, GUNA

Lessee cannot be evicted by municipality even if lease has not yet been got renewed.

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88. **N.D.P.S. ACT, SECTION 8(b) r/w/s 20**
2) WORDS AND PHRASES : WORD 'CULTIVATION' :-
2001 (II) MPWN NOTE 42
BABU KHAN Vs. STATE OF M.P.

Cannabis plants grown in furrow. Timely irrigated. Growth is with human efforts.

The word 'cultivation' signifies ploughing and preparing land for crops. In the present case 16 plants of cannabis found duly grown in the field of accused. It was held offence committed.

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89. **N.D.P.S. ACT, SECTION 50, 52, 55 AND 57 :- APPLICABILITY OF SECTION :-**
2001 (II) MPWN NOTE 54
GURBAX SINGH Vs. STATE OF HARYANA

Search of gunny bag held by the accused, provision not applicable.

Though the provisions under Sections 52, 55 and 57 are discretionary and non compliance would not vitiate the trial or conviction yet IO cannot totally ignore these provisions. Failure will have a bearing on appreciation of evidence regarding arrest and seizure.

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90. **N.D.P.S. ACT, SECTION, 20, 50, 52, 55 AND 57 :-**
2001(30 M.P.H.T. 43(CG)
SAVITRI Vs. STATE OF CHHATTISGARH

Joint notice to the applicants was given and informed them about their statutory rights to be searched in presence of Magistrate First Class or Gazetted Officer. Each of the appellants gave their consent to be searched by lady police. There was an absolute compliance. Identity of recovered articles and that identity of the same was maintained till it reached the F.S.L. should be proved. **1999(1) MPLJ 67** relied on. The provisions of sections 52 and 57 are directory. Violation thereof would not ipso facto violate the trial or conviction. But, investigating officer cannot totally ignore these provisions.

●

91. **1) N.I. ACT, SECTIONS 118 (a), 138 & 139 PRESUMPTION OF CHEQUE ISSUED:**
2) EVIDENCE ACT, SECTIONS 114 I11. (C), 101-103, 3 AND 4:-
3) CRIMINAL TRIAL : PRESUMPTION OF INNOCENCE :-
(2001) 8 SCC 458
K.N. BEENA Vs. MUNIYAPPAN

Cheque issued. The burden to prove that the dishonoured cheque was issued to discharge a debt or liability. It was held that in view of the provisions contained in Ss. 118, and 139, the Court has to presume that the cheque had been issued for discharging a

debt or liability. However, the said presumption could be rebutted by the accused by proving the contrary. Mere denial or rebuttal by accused in the reply to the legal notice sent by the complainant not enough. Accused had to prove by cogent evidence that there was no debt or liability.

●

92. N.I. ACT, SECTIONS 138, 142 (a) : POWER TO MAKE COMPLAINT 2) POWERS OF ATTORNEY ACT, SECTION 2 :-
2001 (2) M.P.L.J. 488
ANIL KUMAR Vs. SANT PRAKASH

Power of attorney holder is competent to make complaint in writing for taking cognizance of an offence under section 138.

NOTE :- Judges are requested to go through **2001 Joti Journal April part from pages 168 to 174** and in particular last portion of the article.

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93. PRACTICE : SUPPLEMENTARY PROCEEDING : PURPOSE OF INTERLOCUTORY ORDERS :-
2001 (II) MPWN NOTE 59 (SC)
EITONA CONSULTANCY PVT. LTD. Vs. LOHIA JUTE PRESS

Interlocutory orders are made by way of aid to the proper adjudication of claims and disputes arising. Never made beyond the scope of the suit or against the parties who are not before the Court.

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94. PRECEDENTS :-
(2001) 8 SCC 509
SHRISANT SADGURU JANARDAN SWAMI (MOINGIRI MAHARAJ) SAHAKARI DUGDHA UTPADAK SANSTHA Vs. STATE OF MAHARASHTRA

Long standing precedents should not be disturbed unless shown to be palpably wrong or to have ceased to be good law as a result of amendment of statute concerned or a subsequent declaration of law.

●

95. PREVENTION OF CORRUPTION ACT, SECTION 19 (3) (c) : GRANT OF STAY OF PROCEEDINGS : TRIAL ALREADY DELAYED BY 7 YEARS-TO BE EXPEDITED : MARGINAL NOTE/SECTION HEADING OF SECTION : INTERPRETATION OF :-
(2001) 8 SCC 607
SATYA NARAYAN SHARMA Vs. STATE OF RAJASTHAN

Marginal note/section heading, where found misleading or inappropriate, the legislative intent contained in the provision should not be bypassed. The trial Court took cognizance against the appellant for offences under Sections 420, 467, 468 and 471 IPC and Section 5 (2) of the Prevention of Corruption Act, 1988 on 8-7-1984. The appellant then filed a criminal miscellaneous petition under S. 482 Cr.P.C. before the High Court for quashing the trial court's order add got a stay of the trial. Thereafter the miscellaneous petition was got adjourned from time to time. By this method the appellant successfully delayed the trial for 7 years. Ultimately, the High Court by its order dated 25-4-2001 dismissed the miscellaneous petition. The question before the Supreme Court was confined only to the

question of law as to whether or not trials under the Prevention of Corruption Act could be stayed.

Under S. 19 (3) (b) no error, omission or irregularity in the sanction shall be a ground for staying the proceedings under this Act "unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice". In determining whether there was any such failure of justice it is mandated in sub-section (4) that the court shall have regard to the fact whether objection regarding that aspect could on should have been raised at any earlier stage in the proceeding.

●

96. RENT CONTROL AND EVICTION : LANDLORD AND TENANT : U.P. URBAN BUILDINGS REGULATION OF LETTING, RENT AND EVICTION) ACT, 1972, S. 21 (1) (a) PROVISO :-
(2001) 8 SCC 540
ANWAR HASAN KHAN Vs. MOHD. SHAFI

Tenant in occupation of building since before its purchase by landlord : application for eviction not to be entertained till 3 years after purchase and 6 months' notice to tenant. Held, six months' notice not required to be given if proceedings are initiated more than three years after purchase because the purpose of the notice is to inform tenant of requirements of new landlord, not to put a permanent clog on the rights of the purchaser landlord. Where respondent landlord had filed application for eviction about sixteen years after purchasing tenanted premises and had established his bona fide requirement before trial and appellate courts, held on facts, High Court rightly dismissed appellant tenant's writ petition.

INTERPRETATION OF STATUTES : BASIC RULES : HARMONIOUS CONSTRUCTION:

Principles laid down is that effect should be given to all the provisions. Therefore an interpretation which reduces a particular provision is a "dead letter" would not be a harmonious construction. It was further held that provisions should be construed with reference to each other to ensure their consistency with the object sought to be achieved.

●

97. 1) RENT CONTROL AND EVICTION :-
2) GENERAL CLAUSES ACT, SECTION 6
(2001) 8 SCC 397
AMBALAL SARABHAI Vs. AMRITLAL AND OTHER ALLIED CASE

Amendment making the Act inapplicable to tenancies, monthly rent of which exceeds Rs. 3500/-. Amendment which effects repeal of the Act in respect of a class of tenancies, being not retrospective in operation would not affect the pending eviction proceedings concerning such tenancies which would continue as if the Act had not been so amended by virtues of S. 6 (c) of General Clauses Act and a privilege would accrue to landlord to approach the Rent Controller in the manner provided under the Act for eviction of tenant.

GENERAL CLAUSES ACT, SECTION 6 : SCOPE AND EFFECT WHERE APPLICABLE:-

Contemplates continuance of pending proceedings or investigations as if statute had not been repealed as rights and obligations of the parties get crystallised on the date of commencement of the lis. "Any right, privilege, obligation... acquired, accrued".

●

98. RENT CONTROL AND EVICTION :-
CONSTITUTIOIN OF INDIA, ART. 227 : INFERENCE THROUGH WRIT PETITION:-
(2001) 8 SCC 477
SUGARBAI Vs. RAMESH S. HANKARE

The tenant/respondent did not even file receipt regarding dispatch of money order to prove that M.O. had been sent within one month of notice of demand as required under Bombay Rents Act, and no other material showed compliance with statutory provisions, held on facts, High Court exercising powers under Art. 227 misread the evidence and erred in allowing writ petition of respondent tenants and setting aside decree of eviction against them. The jurisdiction under Art. 227 is with its decision making process and not concerned with decision. In the application under Art. 227 of the Constitution, the High Court has to see whether Lower Court/Tribunal has jurisdiction of deal with the matter and if so whether the impugned order is vitiated by **PROCEDURAL IRREGULARITY.** In other words the Court is concerned not with the decision but with the decision making process. On this ground alone the order of the High Court is liable to be set aside.

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99. REGISTRATION ACT, SECTION 49 (PROVISO) : ADVERSE - POSSESSION :
2001 (2) M.P.L.J. 502
BHANWARLAL Vs. HIRALAL

Unregistered document admissible as evidence for collateral purpose of proving nature or character of a person's possession. Possession for more than 12 years in one's own right. Title perfected by adverse possession.

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100. SECTION 203 Cr.P.C., EXERCISE OF POWERS UNDER THE SECTION BEFORE ISSUANCE OF WARRANT : NECESSITY OF :-
2001 (II) MPWN NOTE NO. 35
AMAR SINGH Vs. TRIVENI BAI

This is a petition under section 482 of the Cr.P.C. It is submitted on behalf of the applicant that Criminal Case No. 1452/2000 has been registered by CJM Katni and warrants have been issued against the accused without recording the statement of the complainant under section 200 Cr.P.C. Therefore, the order dated 27-6-2000 passed by CJM Katni is quashed. He is directed to examine the complainant under section 200, CrPC and hold an enquiry as required by section 202 CrPC and then proceed further. The issuance of warrants against the accused persons is also cancelled. The Magistrate concerned should take a note that such an error does not occur in future.

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101. SERVICE LAW : TRANSFER OF EMPLOYEE : NATURE AND SCOPE OF JUDICIAL REVIEW OF SUCH TRANSFER :
(2001) 8 SCC 574
NATIONAL HYDROELECTRIC POWER CORPORATION LTD. Vs. SHRI BHAGWAN AND SHIV PRAKASH

Transfer of employee is not only an incident but a condition of service. Unless shown to be an outcome of mala fide exercise of power or violative of any statutory provision held not subject to judicial interference as a matter of routine. Courts or Tribunals cannot sub-

stitute their own decision in the matter of transfer for that of the management. Hence, transfer of employee from corporate office of the employer Corporation to its project with protection of his seniority held quite valid. More so when the project was a new one not involving any risk at all of an adverse effect on the transferees seniority.

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102. SERVICE LAW : GRATUITOUS APPOINTMENT :-
2001 (II) MPWN NOTE 45
SATYABHAN SINGH Vs. STATE OF M.P.

Appointment on compassionate ground is to meet immediate relief. It is not an alternative appointment.

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103. SERVICE LAW : DEPARTMENTAL PROCEEDINGS :- LAW FOR DEPARTMENTAL ENQUIRY APPLICABLE
2) EVIDENCE ACT, GENERALLY :-
2001 (2) M.P.L.J. 428
MAHESH PAL Vs. SUPERINTENDING ENGINEER

Strict laws of evidence are not applicable to departmental proceedings. Proof should stand test of reasonableness and probability.

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104. SERVICE LAW : COMPULSORY RETIREMENT : & PRINCIPLES OF NATURAL JUSTICE :-
2002 (1) M.P.L.J. 146 2002 (1) M.P.W.N NOTE 48
S.S. SHRIVASTAVA Vs. STATE OF M.P.

Principles of natural justice have no place when case of an employee is examined for compulsory retirement, nor non-communication of adverse remarks affects it.

The order of compulsory retirement of the petitioner was passed in public interest since he was not found useful for public service. The order was not punitive in nature. Entire service record of the petitioner was examined in the context of the criteria laid down by the screeing committee for compulsory retirement. His case was found fit for compulsory retirement. Principles of natural justice have no place when the case of an employee is examined for compulsory retirement nor will non-communicate of adverse remarks affect it. **(1992) 2. SCC 299, 1994 SCC (L & S) 1077, (1997) 6 SCC 228, 2001 AIR SCW 262** relied on.

Petitioner retired compulsorily. He was examined on the basis of criterial of honesty, physical fitness, evaluation and working capacity. Matter quite seriously examined before rejecting case of petitioner. Petitioner could not qualify. He was found fit for compulsory retirement. Order was not arbitrary.

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105. SPECIFIC RELIEF ACT, SECTION 22 : SUIT FOR RETURN OF EARNEST MONEY AND CRIMINAL PROCEEDING SIMULTANEOUS PROCEEDINGS
2) I.P.C., SECTIONS 406, 420, 467 AND 471 :-
2001 (II) MPWN NOTE 56
NARPAT SINGH Vs. SAMPOORAN SINGH

Suit for return of earnest money does not bar criminal proceeding if dishonest intention of transaction is prima facie made out.

Seller receiving earnest money from purchaser but selling the property to third person may be prosecuted in criminal court. Civil suit is no bar for prosecution.

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106. SUCCESSION ACT, SECTION 62 :- WILL :-
2002 (1) M.P.L.J. 94
MAHADEO Vs. SHAKUN BAI GHAGRE

Transfer intervivos by owner has precedence and nullifies his earlier request.

Where the Bhumiswami of certain lands executed the will in respect of the certain land in favour of her daughter on 25-11-1966 and could be operative on her death could not confer any title on the daughter because before her death she had transferred the land in dispute to her granddaughter by registered sale-deed dated 20-1-1981.

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107. TENDER AND ALTERATION OF CONDITIONS :-
2001(2) M.P.L.J. 451
SANTOSHI TIWARI Vs. STATE OF M.P.

Alteration of conditions of tender while awarding contract not permissible.

A notice inviting tenders for cleaning arrangement in a ward of Jabalpur Municipal Corporation, for a period of one year was published and on refusal of the lowest bidder to accept the work the Mayor-in-Council took a decision to award contract to the petitioner the second lowest bidder for a period of one month on trial basis and when he sought clarification for alteration in conditions of tender notice, his earnest money was forfeited. In writ Petition challenging the forfeiture, it was held that the Mayor-in-Council was not right in attempting to alter conditions of tender notice and forfeiting the earnest money of the petitioner. A citizen has a right of information and once he had come to know from the news paper that the Mayor-in-Council has taken a decision to reduce the period of contract to give it to second lowest bidder for a month on a trial basis he had justifiable reason to ask for clarification. The order of forfeiture of earnest money quashed. Corporation directed to refund the earnest money.

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108. TENANCY AND LAND LAWS : BOMBAY TENANCY AND AGRICULTURAL LANDS ACT, 1948, SS. 43-1B, 43-1A (as inserted by Act 39 of 1964), 2 (6-C), 2 (8), 2 (9) 2 (18), 5, 6, AND 7:- "Land", "landholder", "tenant", and "to hold land" under the above sections :-
(2001) 8 SCC 501
TATOBA BHAU SAVAGAVE Vs. VASANTRAO DHINDIRAJ
CONSTITUTION OF INDIA, ARTS. 38 AND 39 (b) and (c) : DIRECTIVE PRINCIPLES :-

Directive Principles held should be uppermost in mind of Judge, when interpreting beneficial legislation like land reform statutes. However, clarified that court must not consequently read into statutory provisions that which legislature has not provided, either expressly or by necessary implication.

Beneficent construction that which is not provided in statute should not be read into it only because it is a beneficial legislation.

DOCTRINE OF TERRITORIAL NEXUS, EXPLAINED :-

Paragraph 12 of the judgment is reproduced :

Relying on the judgment of this Court in ***Shrikant Bhalchandra Karulkar Vs. State of Gujarat, (1994) 5 SCC 459,*** it was urged by Mr Lalit that as there was territorial nexus in this case hence the land of the first respondent in Karnataka State had to be taken into computation. We are unable to agree with this submission. In that case the validity of Section 6 (3-A) of the Gujarat Agricultural Lands Ceiling Act, 1960 was under challenge. The High Court upheld the validity of the said provision. On appeal, this Court confirmed the judgment of the High Court. It was held :

> "This Court- over a period of three decades- has evolved a principle called 'doctrine of territorial nexus' to find out whether the provisions of a particular State law have extraterritorial operation. The doctrine is well established and there is no dispute as to its principles. If there is a territorial nexus between the persons/property subject-matter of the Act and the State seeking to comply with the provisions of the Act then the statute cannot be considered as having extraterritorial operation. Sufficiency of the territorial connection involves consideration of two elements, the connection must be real and not illusory and the liability sought to be imposed under the Act must be relevant to that connection. The Act has to satisfy the principles of territorial nexus which are essentially discernible from the factual application of the provisions of the Act."

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109. TENANCY LAWS : CEILING ON LAND : GENERALLY :-
(2001) 8 SCC 599
JAMIL AHMAD Vs. Vth ADDL. DISTT. JUDGE, MORADABAD

Rule that by making a will the declarant cannot reduce his ceiling area. It was held that applies when ceiling area of testator is being considered and not where determination relates to his successors/heirs either by intestate or testamentary succession.

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110. 1) T.P. ACT, SECTION 59 : EFFECT OF NON-REGISTRATION
2) REGISTRATION ACT, SECTION 49 :
2002 (1) MPLJ 16
NARENDRA PRASAD Vs. MANJULATA

Unregistered Mortgage deed is admissible to establish nature and character of possession of mortgagee.

Where the principal money secured is one hundred rupees or upwards, a mortgage, other than a mortgage by deposit of title deeds, can be effected only by a registered instrument. An unregistered mortgage deed is inadmissible to prove the terms of the mortgage, but it is definitely admissible to establish the nature and character of possession of the mortgagee. Where a person obtained possession under an unregistered mortgage, his possession is permissive. Once a mortgage must always remain a mortgage. The owner of the house cannot lose his title to the house because the document by which he

created the mortgage is unregistered. ***AIR 1919 PC 44, 1975 MPLJ 633 (FB)= AIR 1975 MP 230*** relied on.

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111. UNIVERSITIES :- APPOINTMENT : QUALIFICATIONS :-
(2001) 8 SCC 532
Dr. BHANU PRASAD PANDA Vs. CHANCELLOR, SAMBALPUR UNIVERSITY

Department name combined but recruitment of each discipline taught therein would be considered as separate and distinct.

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112. VINIRDISHTA BHRASHTA ACHARAN NIVARAN ADHINIYAM, 1982 (M.P.) SECTIONS 5 AND 39 :-
2001 (II) MPWN NOTE 50
S.P. KORI Vs. STATE OF M.P.

Mandatory provisions under S. 39 not followed. No investigation can be made nor cognizance of offence under S. 5 can be taken.

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दोष निवारण

माह **एप्रिल 2002** की 'ज्योति' में अक्षर संयोजन एवं विन्यास में जो त्रुटियां त्वरित दृष्टिगोचर हो सकी है वे इस प्रकार हैं कृपया संशोधित कर लें।

1. पृष्ठ 103 पर अन्तिम से उपर के चरण में द्वितीय पंक्ति में **'ययह'** में प्रथम **'य'** कम करना।
2. पृष्ठ 117 पर पांचवीं पंक्ति में **'ट्रापिकल'** के स्थान पर **'टॉपिकल'** पढ़ना।
3. पृष्ठ 118 पर कॉमपेन्सेशन शीर्षक में **1998** के स्थान पर **1988** पढ़ना।
4. टिट बिट क्र. 26 में पृष्ठ 140 पर शीर्षक की तीसरी पंक्ति में Compulsorid के स्थान पर Compulsorily लिखा जावे।
5. टिट बिट क्र. 30 में पृष्ठ 141 पर शीर्षक में **12** के स्थान पर **1-2** लिखा जावे।
6. पृष्ठ क्र. 148 पर टिट बिट् क्र. 39 में उपशीर्षक **CHEATING** के बाद **:** चिन्ह अंकित हो।
7. पृष्ठ क्र. 172 पर टिट बिट क्र. 90 में शीर्षक में तीसरी पंक्ति के अंत में **Standing** के स्थान पर **Sending** पढ़ा जावे।
8. **माह फरवरी 2002** की पत्रिका में पृष्ठ 46 पर चरण 3 एवं 7 में **Preposory** शब्द के स्थान पर **Preparatory** पढ़ा जाना है।

संपादक