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संपादकीय

विद्यामृत

पिछले लगभग 12 माहों में व्यवहार न्यायाधीश वर्ग–2 एवं वर्ग–1 के न्यायिक अधिकारियों के प्रशिक्षण वर्ग में संपन्न हुआ तथा 1996 एवं 1997 में पदोन्नत अतिरिक्त जिला न्यायाधीशगणों का प्रशिक्षण पूर्ण किया गया। विद्वान वक्ताओं के माध्यम से प्रशिक्षण सत्र संचालित किए गए। प्रशिक्षण की महत्ता क्या है यह दोहराने की आवश्यकता नहीं है। संस्था की इसी पत्रिका के इसी अंक में माननीय न्यायाधिपति श्रीमान आर.सी. लाहोटी के लेख के अंश प्रकाशित किये जा रहे हैं। समीचीन अवसर पर यह लेख प्रकाशित हो रहा है। इसी माह से चयनित व्यवहार न्यायाधीश गणों की नियुक्ति होकर पदस्थापना का कार्य प्रारंभ हो चुका है अतः यह एक सुयोग ही है कि उन्हें भी उक्त लेख के माध्यम से प्रशिक्षण की महत्ता का ज्ञान होगा।

चाणक्य सूत्र में उत्तम कोटि का एक सूत्र है यथा – ***गुरूवशानुवर्ती शिष्यः***

शिष्य से यह अपेक्षा की गई है कि वह गुरू की सदिच्छता, सद्गुणों का अनुवर्तन करे। यदि ऐसा है तो स्वयं गुरू का भी चरित्र अनुरूप होना नितांत आवश्यक है। कर्त्तव्यनिष्ठा, कार्य के प्रति लगन, निर्भयता, दृढ़ता, संकल्प एवं न्याय के प्रति समर्पण की अपेक्षा है। यही बातें विद्वान गुरूओं के गुरूपद को शोभित करती है। जिस प्रकार जलार्थी पानी के लिए भूमि को खोदते–खोदते पानी प्राप्त कर लेता है तथा गोवत्स अपने बाल सुलभ समर्पण से वत्समाता से दूध प्राशन करता है उसी प्रकार शिष्य ने भी अपनी योग्यता से, कौतुहल से, जिज्ञासा से अपने गुरू से प्रेरणा के रूप में ज्ञानार्जन करना है। इसके लिये गुरू को प्रभावित करना आवश्यक है। साथ ही गुरू को शिष्य के प्रति अपनत्व एवं दायित्व बोध की अनुभूति होना चाहिये। इसलिये स्वयं गुरू को भी ज्ञानी होना पड़ेगा।

नये आने वाले प्रशिक्षार्थियों को मार्गदर्शित करने का हमारा न केवल कर्त्तव्य है अपितु अधिकार भी है। अधिकार इसलिए भी कि हम न्यायपालिका के वरिष्ठ अधिकारी हैं व आने वाले प्रशिक्षु व्यवहार न्यायाधीश उक्त परिवार में सम्मिलत होंगे। अतः परिवार के सदस्यों के रूप में भ्रातृभाव अपनत्व होना अत्यन्त स्वाभाविक है। शिष्यजनों के रूप में उच्चादर्श से गुरू को प्रभावित कर उसे विद्यामृत प्राशन कराने के लिए विवश करें तभी पारंगत विद्वता प्राप्त होगी।

आने वाले नये न्यायिक अधिकारियों का स्वागत है। आशा करें कि वे भी न्यायदान की उच्च परंपराओं के निर्वाह में शुद्ध अंतःकरण से सक्रिय रूप से निष्ठापूर्वक भाग लेंगे।

पुरुषोत्तम विष्णु नामजोशी

संस्थानिक प्रतिवेदन :

न्यायिक आचरण

अतिरिक्त जिला न्यायाधीश जो कि 1997 के मई माह में पदोन्नत हुए थे, के लिये दो प्रशिक्षण सत्र इस माह में सम्पन्न हुये। दोनों ही सत्रों में माननीय मुख्य न्यायाधिपति महोदय श्रीमान ए. के. माथुर एवं माननीय न्यायाधिपति महोदय श्रीमान एस. के. दुबे. मार्गदर्शन के लिये पधारे थे। माननीय मुख्य न्यायाधिपति महोदय ने दोनो ही सत्रों में न्यायिक अधिकारीगणों को न्यायिक व्यवहार के प्रति पुनः जागृत किया और सचेत किया कि न्यायिक अधिकारियो का व्यवहार न्यायालय में और न्यायालय के बाहर शिष्ट होना चाहिये। न्यायिक अधिकारियों ने पद की प्रतिष्ठा को ध्यान में रखते हुए न्यायालयीन कार्य को करना है न्यायिक अधिकारी जो जिस जिले से आते हैं वे अपने अपने जिलों का प्रतिनिधित्व करते हैं। तथा न्याय की पताका धारण किये हुए होते हैं इसलिये प्रत्येक जिले में न्यायिक अधिकारियों का कार्य निष्ठापूर्ण, प्रतिष्ठापूर्ण और गौरवपूर्ण होना चाहिये। यह उक्ति बहुत समीचीन है कि न्याय केवल किया ही नहीं जाना है अपितु इस बात की अनुभूति भी होना चाहिये कि वास्तविक रूप से सद्भावनापूर्वक न्याय किया गया है। ऐसा उन्होंने व्यक्त किया।

माननीय मुख्य न्यायाधिपति महोदय ने पश्चिम बंगाल के तत्कालीन राज्यपाल श्री धर्मवीर द्वारा उल्लेखित उस उक्ति को दोहराते हुये यह अपेक्षा की न्यायाधीश का कर्त्तव्य है कि वह अपनी आंखें एवं कान खुले रखे एवं अपने अधरपट बंद रखे जिससे आप दूसरों की अभिव्यक्ति को सुन सकें तथा जब अवसर आवे तब ही अपने विचारों की अभिव्यक्ति सक्षमतापूर्वक उचित माध्यम से की जा सके। किसी द्वारा कोई बात अभिव्यक्त किये जाने पर त्वरित प्रतिक्रिया अपने ही विचारों को अनावश्यक रूप से अनाश्रित कर देती है तथा विविध उद्गमित करती है। सार्वजनिक रूप से सक्रियता से ऐसी किसी भी सामाजिक गतिविधि में सम्पर्क में नहीं आना चाहिये जिससे अनावश्यक रूप से टीका टिप्पणी का अवसर उत्पन्न हो इसलिये यह जरूरी है कि ऐसी गतिविधियों से सतत् रूप से विरत रहना चाहिये। किन व्यक्तियों के साथ हम उठते बैठते हैं इसका ध्यान रखना चाहिये अन्यथा ऐसी भेंट अनावश्यक रूप से विसंगतियां निर्मित करेगी और न्यायिक अधिकारी विवाद का विषय बन जावेंगे। माननीय मुख्य न्यायाधिपति महोदय ने इस बात की ओर भी ध्यान आकृष्ट किया कि गोपनीय चरित्रावली लिखने की पद्धति इस प्रकार से होना चाहिये कि वह वस्तुनिष्ठ प्रतीत हो तथा वह उद्देश्यपूर्ण हो सके। वह वास्तविक हो एवं कारणों सहित उल्लेखित होना चाहिये जिससे न्यायिक अधिकारी का मूल्यांकन यथार्थपूर्ण रूप से करने के लिये सुविधा हो। न्यायिक अधिकारों की न्यायिक विचारों की अभिव्यक्ति परिणामवादी होना चाहिये और हठधर्मी युक्त नहीं। उन्होंने यह भी कहा कि नये व्यवहार न्यायाधीशों की जो नियुक्ति और

पदस्थापनायें हो रही हैं उन अधिकारियों को आपसे मार्गदर्शन की अपेक्षा रहेगी। उनके साथ आपका व्यवहार अभिभावक की तरह होना चाहिये। अधिवक्ता और न्यायिक अधिकारी के बीच अंतर करते हुये यह भी अभिव्यक्त किया कि यद्यपि अधिवक्ता का लक्ष्य अपने पक्षकारों के हितों की रक्षा करना होता है लेकिन न्यायाधीशों का लक्ष्य दोनो पक्षों को सुनकर न्यायदान करना होता है इसी कारण से न्यायाधीश को सक्रिय रूप से न्यायालयीन कार्यवाही ठीक से अध्ययन करके निर्णय देना है। न्यायिक अधिकारी न्यायालयों में न्यायदान करने के लिये आते हैं तथा किसी भी व्यक्ति को चाहे वह किसी भी क्षेत्र से न्यायालय में उपस्थित हुआ हो उसके साथ रौब जमाने का कार्य नहीं होना है और ना ही ऐसा व्यवहार होना है जिससे न्यायिक अधिकारी की गरिमा में कमी आये।

माननीय प्रशासनिक न्यायाधिपति महोदय श्रीमान एस.के. दुबे ने अपने विचारों की गरिमामयी अभिव्यक्ति करते हुये कहा कि सर्वसाधारण के बीच आज भी न्याय के प्रति न केवल निष्ठा है अपितु विश्वास भी है और उस विश्वास को अक्षुण्ण बनाकर रखने का दायित्व न्यायिक अधिकारियों का है। न्यायिक अधिकारियों का कार्य एक सामान्य अधिकारी के रूप में नहीं है अपितु सेवा अभिमुख है अतः उनका व्यवहार, उनका चिंतन, उनका आशय तथा उनका लक्ष्य इसी ओर सतत् रूप से अग्रसर होना चाहिए। माननीय न्यायाधिपति श्री दुबे ने इस ओर भी ध्यान आकृष्ट किया था कि न्यायिक अधिकारियों का पक्षकारों के साथ व्यवहार अधिवक्ताओं के साथ व्यवहार एवं साक्षियों के साथ व्यवहार विनम्रता पूर्वक होना चाहिये। निर्णय देने के पूर्व विधि प्रावधानों का चिंतन उचित रूप से किया जावे तथा जो निर्णय किया जाना है वह एक न्यायिक निर्णय हो। जो इस बात की ओर अभिव्यक्त हो कि व्यक्ति यह अनुभव करे कि निर्णय किया गया। न्यायिक अधिकारी ने किसी भी प्रकार से बाह्य प्रभाओं से मुक्त रहना चाहिये। वे सतत् रूप से इस बात की अनुभूति करते रहें कि वे न्यासी की भूमिका में कार्य कर रहे हैं। पुराने प्रकरणों को शीघ्रता से निराकृत करने की अपेक्षा करते हुए यह कहा कि प्रक्रिया संबंधी विधियों के अंतर्गत न्यायिक प्रबंधन किया जा सकता है और प्रकरणों की संख्या को घटाया जा सकता है। एक बार यह सुप्त प्रक्रिया पुनः प्रारंभ हो जाती है तो कुछ कालावधि पश्चात उस प्रक्रिया का पालन करना किसी को अटपटा नहीं लगेगा और एक सामान्य क्रम के रूप में इस क्रम का पालन आसानी से हो सकेगा।

"To be a better Judge one must know the general principles of law, but to be a great Judge one must also know the exceptions there of.

C.K. PRASAD, J.

TRAINING PROGRAMME : NEED

JUSTICE R.C. LAHOTI
DELHI HIGH COURT

One who ceases to grow begins to perish. These words of wisdom apply with added force to the field of knowledge. Law is an unfathomable sea. Ever expanding horizons of law are beyond imagination. Nobody can claim to be well versed in law. One has to make tireless striving to keep himself abreast of the latest developments in the fied of law. Search for truth is an ideal in life and a noble profession. That nobility is reflected at its height in legal profession of which we are a part in its wider connotation.

The subordinate judiciary occupies a key place in our judicial system. It is planted on the ground while the higher judiciary soars in the skies. It is the subordinate judiciary that directly hears the parties to a dispute, listens to their tells of woes and makes the first hand attempt at resolution of the conflicting claims. The horoscope of a case is drawn in the trial Court. For an overwhelming majority of the litigants what is real and existing is the subordinate judiciary only. Without a healthy subordinate judiciary, there cannot be a healthy judicial system. If the subordinate judiciary is the eyes and limbs of judiciary, care has to be taken to see that its vision is not dimmed and its limbs are not crippled. It is essential for the successful functioning of the judiciary as, a whole that the subordinate judiciary is encouraged to think independently and to act justly and decide fairly between the parties. Only a well trained and well informed subordinate judiciary can be expected to give a befitting response to the call for justice. (An Advise to the subordinate judiciary, by Justice P.A.Chaudhary, High Court of Andhra Pradesh,AIR 1990 Journal 22, 23).

I am one who firmly believes that in the process of litigation none is so close to the truth behind the contending stories set up by the adversary litigants than a trial Judge. Before the judicial fora at the hierarchy (that is, the appellate and revisional fora) the emphasis is shifted from finding the facts more to the philosophy of law. That is why a near finality is attached with the findings of the fact recorded by the trial judge and a court of appeal may not, and a court of revision shall not, interfere with the findings of fact recorded by a trial Judge. With the 1976 Amendment in the Code the Civil Procedure, the jurisdiction of Second Appellate Court is confined to hearing on substantial questions of law merely, meaning thereby, even on questions of law the findings recorded by a Court below attain a finality. An enlightened subordinate judiciary can only constitute the foundation for real and accelerated administration of justice and secure enforcement of rule of law.

The social service which the judge renders to the community is the removal of a sense of injustice. The judge who gives the right judgment while appearing not to do so may be thrice blessed in heaven, but on earth he is of no use at all (The Judge-Patrick Devlin, p. 3) . This statement of wisdom has all the more significance in the context of judge facted with a prayer for interim relief such as an injunction.

Even the well versed and the learned need to be trained. The training has the advantage of relieving the learner of any undesirable ideas that he might have picked up in the course of his practice. Training supposes that there is a right and a wrong way of doing a thing and its purpose is to instruct the trainee in the right way. (ibid, pp. 43-44).

In India the administration of justice is based on adversary system which lessen the rigour of the task to be performed by a judge. It is said that a well informed judge is so made, by a well informed bar and the quality of a judgment is the reflection of the quality of submissions made at the bar. If the two theories are well presented by the counsel engaged by the two opponents, each presenting his line of thinking to the best of his ability, the law, and the precedents in support, the task of the judge, well accomplished by findings out and accepting the view which appeals best to his dispassionate reason and objective sense of justice.

Why a Workship.

He knoweth not the law who knoweth not the reason thereof. Not everyone of us attains high forensic skill but the time given to a scientific study of law is never wholly thrown away. The monotony of administering justice by resorting to the precedents without an insight into the fundamentals tends to deaden the heart throb of justice according to law. Every case disposed of is not necessarily the law enforced and the justice dispensed. One having a lust for finer sentiments of life in law must be prepared to keep himself well posted of developments in the field of law, to feel the pulse of the first principle and to enjoy their savour. Let the dust not collect in our life in law and smear its shine. A workshop provides a befitting opportunity for brushing the items in our store of knowledge and sharpening our tools of wit. A symposium is one way traffic. There are speakers and there are listeners. There is no participation, as such. A workshop provides an opportunity for participation, for exchange of thoughts, for churning the fluid of problems and finding out the cream of solutions. A participant at the workshop enters prepared and returns better equipped, more confident and enriched with not only the solutions but also the tricks of trade.

In the workshop do not hesitate to participate actively. Do not feign your ignorance. Learn if you need to be instructed. Let others learn if you can impart instructions. Give and take. That alone would bring the work and the shop together. Else it would be a pretence of work and a senile of shop.

COURTESY :

1. Hon'ble Justice Shri R.C. Lahoti, Delhi High Court
2. Shri Mahendra Dwivedi, Dwivedi Law House, Gwalior

DEBATE

PENALTIES IN CASE OF DISHONOUR OF A CHEQUE

P.V. Namjoshi

Though curiously but frequently a question is posed in class room or in group discussion regarding the powers of a Magistrate to impose fine in a case of dishonour of a cheque.

This in fact is a deliberative subject, new points have been brought forth for solution. The recent amendments in the Negotiable Instruments Act have far reaching effects. It will take sufficient time to settle the law and to reach to its finality. Therefore, it is proposed that through this article the subject may be put forth among judicial officers for cogitation. Section 138 of the Negotiable Instruments Act (in brief, Act) states as under:

138".....be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque or with both."

The problem of the Judicial Officers is that whether a Magistrate trying a case under this Section can exceed the limits of fine provided under Section 29 of the Cr.P.C. A Magistrate of the First Class under Section 29 of the Cr.P.C. is empowered to impose fine not exceeding Rs. 5,000. What the Judicial Officers say is by virtue of Section 138 the Judicial Officers are automatically empowered to impose fine which may extend to twice the amount of the cheque. Thus if the amount of the cheque is Rs. 2,500 the Magistrate of the First Class may impose a fine of Rs. 5,000 and if the value of the cheque is Rs. 5,000 the Magistrate can impose a fine of Rs. 10,000. But it is humbly said that this view in present line of thinking does not appeal to reason. There are some reasons to say so. This article is just to open debate on this subject.

Section 142 of this Act states likewise:

142 Cognizance of offences: Not with standing anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

(a) No court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) Such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138,

(c) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First class shall try any offence punishable under Section 138.

There is a Non Obstante Clause meaning thereby "not withstanding" that is an overriding clause. Such a clause is used in the provision to indicate that provision should prevail despite anything to the contrary in any other provision. ***Vasanta Rao vs. Election Commission. A.I.R. 1953 Nagpur 235.*** We can also

make a reference to **A.I.R. 1951 SC 115** in this respect. Such words are appended to a Section in the beginning with a view to give the enacting part of the Section in case of conflict and overriding effect over the provision or Act mentioned in the non obstante clause. This non obstante clause is to be distinguished from the words "subject to" or the phrase "without prejudice". This non obstante clause under Section 142 does not lead to an interpretation for Magistrate as power to exceed the limits drawn under Section 29 of the Cr.P.C. The non obstante clause is meant only for 3 special clauses of Section 142 of the Act which refers to taking cognizance by the Magistrate only on a complaint filed by a party specified there in; sub clause (b) provides for limitation and the Magistrate who can try a case U/S 138 of the Act. Let us see how this non obstante clause operates. Under Cr.P.C. in normal cases police can take cognizance barring few sections like 195 and onwards. But by Non Obstante Clause under Section 142 of the Act police is debarred from taking cognizance. Secondly under Cr.P.C. there is a provision for limitation and the provisions run from Section 467 to 473 (chapter No. 36 regarding limitation for taking cognizance of certain offences). The third impediment is that Magistrate of Second Class cannot take cognizance. It is only the Metropolitan Magistrate or a Judicial Magistrate of First Class is empowered to take cognizance.

It is apt and germane to note that Section 138 of the Act does not provide a non obstante clause. To compare this argument attention is drawn to the provisions of 16 A of the Prevention of Food Adulteration Act. Section 260 of the Cr.P.C. empowers certain class of Magistrates to try cases summarily. But by using non obstante clause under Section 16 A of the P.F.A. Act the Judicial Magistrate, specially empowered by the State Government can only try such cases summarily. Again under Cr.P.C. a Magistrate trying a case summarily cannot impose a sentence more than 3 months. But under Section 16 A of the P.F.A. Act a Magistrate, trying a case summarily may impose a sentence not exceeding one year. Again under Cr.P.C. the summary powers are to be conferred by High Court But under P.F.A. Act such powers are being conferred by the State Government. This is all because of the Non Obstante Clause mentioned in Section 16 A of the P.F.A. Act. Now if this is clear the simple interpretation is this that a Magistrate trying a case under Section 138 read with Section 142 of the Act cannot impose fine more than that which is provided by Section 29 of the Cr.P.C. Again he has a limit also. If a cheque which is dishonoured is for Rs. 100 only; he cannot impose fine more than Rs. 200 though under Section 29 of the Cr.P.C. his power to impose fine is up to Rs. 5,000 Again we can have some other examples also like Sections 326 I.P.C.467 I.P.C. in which life imprisonment is also provided and no limit is fixed for fine. There are so many other Sections like Sections 394, 409 offences under which can be tried by the Magistrate of First Class but the sentence of imprisonment cannot exceed the limits of Section 29 of the Cr.P.C. Therefore there is no reason for a Magistrate to think otherwise against the settled link of reasoning. Several other provisions from other special Acts may also be cited. It is also to be remembered that there is no requrement to impose fine at all.

However, to convince the Judicial Officer few citations are given under :

The first is ***Plywood House v. Wood craft Products (1994) Cri. L.J. 543 (Ker.)*** in which it was held that "only a Metropolitan Magistrate or a Judicial Magistrate of the first class can take cognizance of an offence which can be punished under Section 138. Taking cognizance of an offence includes the intention of initiating judicial proceedings against the offender or taking steps to see if there is any basis for initiating judicial proceedings. The non obstante clause in the section makes it clear that the three matters specified there in have overriding effect on Criminal Procedure Code but the provisions of the Code are applicable to the trial or inquiry into the offence under Section 138 for all other purposes . It was held in ***Plywood House v. Wood Craft Products*** that Clause (c) is the sine qua non irrespective of the provisions of the Code.

Thus Section 138 Clause (c) is the sine qua non (necessary element or indispensable condition). Sub Clause (c) of Section 138 provides that a drawer of such cheque fails to make the payment of money to the payee or, as the case may be to the holder in due course of the cheque within 15 days of the receipt of the said notice. Unless this is done Section 138 does not apply. This is a special provision made under Section 138 of the Act.

The second case is that of ***Jaya Baby vs. Vijayan (1994) 81 Comp. Cases, 572 (Ker.).*** Hon'ble Justice Shri K.T. Thomas held as under: " A cheque for Rs. 2,50,000 was dishonoured and a complaint was filed in the Court of Chief Judicial Magistrate under Section 138 Negotiable Instruments Act. After taking cognizance of the offence on the complaint the case was transferred to the Court of Judicial Magistrate of first class situated in the same district to be tried with a connected case pending in that Court. The petitioner challenged the transfer of the case in the High Court contending that an offence under Section 138 can be tried only by a Chief Judicial Magistrate or a Chief Metropolitan Magistrate when the cheque amount exceeds Rs. 2,500/-, because fine imposed for the offence can go upto twice the cheque amount. The High Court observed that if the contention were to be accepted, all Chief Magistrates Courts would be inundated with complaints since most of the cheques would be for amounts in excess of half the figure up to which a Judicial Magistrate of First Class can impose as fine, The court added that Parliament would not have intended to create such a situation when it provided in Section 142 of the Act that no court inferior to that of a Judicial Magistrate of First Class (or Metropolitan Magistrate) shall try such offence. If such Magistrate is of the opinion that a more severe sentence is warranted, he can resort to the steps envisaged in Section 325 of the Criminal Procedure Code, 1973 Even without resorting to such steps a Magistrate can alleviate a complainant grievance by resort to Section 357 (i) of the Criminal Procedure Code."

That judgment deals with Cosmetics Act also. At page 575 in sub head 'F' the judgment says that a case of Allahabad High Court was cited in ***Ravindra Prakash vs. Union of India (1984) Cr. L.J. 1321.*** That was a case in which the offence involved was under Section 27 (1) of the Drugs and Cosmetics Act 1940. The prosecution made a request to the trying Magistrate that the case been committed to the Sessions Court on the ground that the sentence

prescribed for the offence was imprisonment for life. But the request was turned down by the Magistrate, The Single Bench relied on the decision of ***State vs. Binoy Kumar Chatterjee (1977) Cr. L. J. 1503.*** Distinguishing these rulings the Kerala High Court held that no particular court is mentioned in the Drugs and Cosmetics Act for trial of offences under that Act. There are some offences under that Act for which the punishment prescribed is imprisonment which may extend to 6 years. Under the second division of the first schedule to the Cr. P.C. such offences can be tried by a Magistrate of first class But such a Magistrate could not award a sentence of imprisonment beyond 3 years in view of the provisions contained in Section 29 of the Code. To circumvent the said limitation a provision is incorporated in the Drugs and Cosmetics Act (Section 36) that not withstanding anything contained in the Code a Magistrate can impose any sentence authorised by the Act. On these lines the case of ***Jaya Baby Vs. Vijayan*** should be viewed with reference to these contentions.

A reference can be made to ***Bhashyam on Negotiable Instruments Act 1997 Edition at page 743*** of the book under Section 142 Note 2, he says as under:

" This phrase gives overriding power over the provisions of Cr.P.C. This is laid down that the payee or the holder in due course can lodge complaint which should be in writing and no Court inferior to that of a Metropolitan Magistrate (or J.M.F.C.) shall try the offence."

It provides limitation period as well as the jurisdiction. Except the three limitation, the provisions of Cr.P.C. Will be applicable.

Another case of ***Stalion Shox Co. (p) Limited vs. Autho. 1994 (79) Com. Cases Page 808*** (relevant portion page No. 802 sub head G and) The principle has been laid down as in ***Jaya Baby vs. Vijayan.***

There is also a contrary view which can be reproduced here. ***B. Mohan Krishan v. Union of India, (1996) Cri. L.J. 636 (A.P.)*** See also ***K.P. Sahadevan v. T.K. Sreedharan, (1996) Cri. L.J. 1223 (ker.); A.Y. Prabhaker v. Naresh Kumar N. Shah, (1995) 83 Comp, Cas. 191 (Mad.).*** When Section 142 was enacted, the Union Parliament was aware of the fact that the jurisdiction of the Metropolitan Magistrate or a Judicial Magistrate of First Class was limited to imposing a sentence of imprisonment for a term not exceeding three years and a fine not exceeding Rs. 5,000/-. That is why the section begins with a non obstante clause. Further under Section 4 (2) of the Code of Criminal Procedure, offences under any law other than the Penal Code although to be tried in accordance with the provisions of the Code, the same shall be "subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealing with such offences." Therefore, a Judicial First Class Magistrate or a Metropolitan Magistrate trying an offence under Section 138 has power to impose fine in excess of Rs. 5,000/- if the fact of the situation so warrants. None of these above cases make a reference of ***Jaya Baby vs. Vijayan (1994) 81 Com. Cases 572*** and ***Case of Stalion shox Co.*** But the humble submission is this that though Section

142 of the Act has a non obstante clause but so far as punishment is concerned that is mentioned under Section 138 of the Act. There is a proviso to S. 138 of the Act and the proviso is meant to fulfil certain conditions before a complaint is filed in the Court. But the punishment is very well described and there is no ambiguity and for that there is no non obstante clause. By using non obstante clause u/s 142 of the Act the provisions of S. 29 of the Cr. P.C. are not made ineffective.

For ready reference we shall reproduce subclause (c) of Section 142 of the Act with the opening sentences which run like this:

142 Cognizance of Offences: Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) xxxxxxxxx

(b) xxxxxxxxxx

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First class shall try any offence punishable under Section 138.

Thus if we read the Section the meaning will be , whatever may be provided in the Code of Criminal Procedure meaning thereby notwithstanding anything contained in Cr.P.C. the offence under Section 138 can only be tried by Court not inferior to the Court of a Metropolitan Magistrate or a Judicial Magistrate of the first class. Thus the overriding effect is not in relation to the quantum of punishment under Section 29 of Cr.P.C. but it relates to the competency of the Magistrate who can try the offence and thus a Magistrate of the second class or an Executive Magistrate if at all empowered under Cr.P.C. to try an offence is barred from trying a case. Therefore the Non Obstante Clause has nothing to do with S. 29 of the Cr.P.C and S. 138 of the Act.

To conclude with my esteem submission is that a Judicial Magistrate First Class has no jurisdiction to exceed the limits of fine imposed by Section 29 Cr.P.C. The amount of cheque is not a material factor. It may be of a limited or it may be of an unlimited sum. The Magistrate cannot exceed the limit of fine twice the amount of cheque or Rs. 5,000 which ever is less. If the Magistrate finds that the nature of offence is such that, Magistrate cannot pass a suitable heavier sentence he may make a reference to the Chief Judicial Magistrate concerned. As a Magistrate of First Class in normal course no Magistrate refers cases under Section 326 or 394 or 409 or 467 I.P.C. to the Chief Judicial Magistrate Attention may be drawn to the provisions of Section 240 Cr.P.C. relating to the warrant trial in which it is specifically mentioned that, " ..... if Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such Magistrate is competent to try and which **"IN HIS OPINION, COULD BE ADEQUATELY PUNISHED BY HIM....."**. These words refer to the Section 325 of the Cr.P.C. Thus at the beginning of the trial the Magistrate is cautioned by Section 240, again Section 248 (2) of the Cr.P.C. cautions the Magistrate relating to Section 325 of the Cr.P.C.

To make the article more useful one point relating to jurisdiction may also be discussed. Two citations are given under relating to jurisdiction. The Judicial Officers are requested not to go by citations alone but also see the substantive law first and then consider the citations with relation to the provisions of the Cr.P.C. and with reference to the facts of the case. These two citations are as under:

Tarsem Lal Hans Vs. Preme Nath Palta, (1995) Cri. L.J. 2408 (P&H). The offence under Section 138 of the Negotiable Instruments Act consists of several acts done in different local areas and if the cheques were issued at a certain place and were presented to the bank at that place for collection then it can be said that part of the offence was committed at that place. The court of that, place has jurisdiction to entertain the complaint under Section 138.

Canbank Financial Services Ltd, Vs. Gitanjali Motors Ltd.(1995) Cri. L.J. 1222 (Delhi). Discussing the question of jurisdiction of a court for taking cognizance for offence under Section 138 the court observed that as per Section 179, Criminal Procedure Code the place where the cheque was given or handed over will have jurisdiction and the courts of that place will have jurisdiction to try the offence. Likewise for purposes of Section 178 (b). Criminal Procedure Code payment of a cheque may be one part of an offence and dishonour of the cheque may be another part, and , therefore both places, i.e. place where the cheque was handed over and the place where it was dishonoured will have jurisdiction.

It is submitted that the simple principle of jurisprudence should be observed. If you come across the ruling of M.P. High Court or Supreme Court it should be followed.

For details kindly refer to law relating to the Negotiable Instruments Act by S.K. Aiyar, 1997 Edition and Bhashyam on Negotiable Instruments Act 1997 Edition.

"Law is a means to an end and justice is that end. But in actuality, Law and Justice are distant neighbours; some times even stage hostile. If law shoots down justice, the people shoot down law."

Krishna Iyer, J.

"Nothing rankles more in the human heart than a brooding sense of injustice. Illness we can put up with. But injustice makes us want to pull things down."

Brennan, J.

Excerpts from the Judgment of ***Sitaram Vs. Ram Gopal 1997 (2) JLJ 54*** delivered by A.R. Tiwari, J.

"निर्णय लेखनः आरोपों का सुगम विवरण"

पुरूषोत्तम विष्णु नामजोशी

निर्णय लेखन के सम्बन्ध में कुछ सामग्री प्रकाशित करने का विचार है। कुछ महत्वपूर्ण तथ्यों की ओर ध्यान आकृष्ट किया जा रहा है जिससे निर्णय सुगम एवं बोधगम्य हो। निर्णय स्वान्तः सुखाय मात्र नहीं लिखा जाता अपितु आपके विचारों की वह अभिव्यक्ति है। यह निर्णय पक्षकारों के लिए तो है ही लेकिन वरिष्ठ न्यायालय के लिए भी है तथा ऐसा निर्णय यदि अपील न्यायालय द्वारा है तो वह विचारण न्यायालय के अवलोकन व मार्गदर्शन हेतु भी है। अतः हम आपका न्यायिक अधिकारी के रूप में मूल्यांकन विशाल पैमाने पर होता है व अपनी योग्यता क्षमता को जांचा–परखा जाता है। हमारी गुणवत्ता का प्रतिनिधित्व हमारे द्वारा लिखा निर्णय करता है। हम सब इन निर्णयों के माध्यम से परिचित होते हैं। निर्णय लेखन के कई मुद्दों में से कुछ पर नीचे अनुसार विचार किया जा रहा है। नियम एवं आदेश (आपराधि एवं सांपत्तिक) मार्गदर्शक हैं ही। उन्हीं को आधार बनाते हुए कुछ तत्वों को तालिका के रूप में प्रस्तुत किया जा रहा हैं। मुख्य उद्देश्य यह है कि एक ही प्रकरण में जब कई अभियुक्त हों व कई आरोप आरोपी गणों के विरुद्ध लगाए गए हैं तब न्यायिक अधिकारी निर्णय के प्रथम चरण व प्रवर्तनीय आदेश (आपरेटिव आर्डर) को इतना जटिल बना देते हैं कि यह ज्ञात ही नहीं होता कि किस अभियुक्त के विरुद्ध क्या आरोप है तथा किस अभियुक्त को क्या दंड दिया गया है।

संपत्ति वापस करने के सम्बन्ध में आदेश अस्पष्ट होता है। जैसे विवादित संपत्ति अथवा जप्त संपत्ति परिवादी रमाबाई को लौटाई जावे। यदि आपने केवल यह लिखा है कि उक्त संपत्ति रमाबाई को लौटाई जावे तो रीडर भी मालखाने से सम्बन्धित मालखाना पर्ची पर ऐसा ही लिखकर देगा जब वास्तव में संपत्ति प्राप्त करने रमाबाई को सूचना–पत्र भेजना हो तो मूल प्रकरण रेकार्ड रूम से बुलाना,उसमें लिखा पता नोट करना व पश्चात प्रकरण को वापस लौटाना आदि में समय अनावश्यक रूप से व्यतीत होगा। यह समय बचाया जा सकता है। तिल–तिल पहाड़ बनता है। समय बचने से दक्षता बढ़ेगी। हम मुद्देमाल लौटाने के सम्बन्ध में आदेश देते समय बिना किसी परिश्रम के रमा बाई का पूर्ण पता लिखते हुए आदेश दे सकते हैं। बस! आवश्यकता है निर्धार की।

आप अपने निर्णय लेखन में इसका प्रयोग आधिकारिक रूप से करने के पूर्व आप जिस प्रकार से उल्लेखित चरण लिखते हैं वैसे लिखें व तत्पश्चात इस लेख के माध्यम से बताएं अनुसार लिखकर देखें। जैसा उचित समझें आप करने हेतु स्वतंत्र हैं ही। नए चिंतन को परखने हेतु वैचारिक द्वंद करें मूल्यांकन करें, तुलना करें। आप स्वयं ही नए विचारों के जन्मदाता होंगे। **"वादेवादे जायते तत्व बोधे"।**

आरोप विरचित करने के पूर्व ही एक संक्षिप्त टिप्पणी (नोट) बना लेना चाहिए जो प्रकरण के आवरण पृष्ठ के ठीक पीछे आलपिन से टांक देना चाहिये। निर्णय लेखन के समय वह अत्यन्त उपयोगी होगी। प्रकरण में निर्णय लिखने हेतु त्वरित तैयारी करने में सुविधा होगी। निर्णय लिखते समय छोटी–छोटी बातों के लिए बार–बार प्रकरण के पृष्ठों को आगे–पीछे पलटने की आवश्यकता नहीं पड़ेगी।

प्रथमतः प्रकरण के तथ्य दिये जा रहें हैं वे इस प्रकार हैं:

महिला रमाबाई ने आरक्षी केंद्र कोतवाली इन्दौर में प्रथम सूचना प्रतिवेदन पंजीकृत कराया। घटना के एक घंटे बाद प्रकरण पंजीकृत हुआ है। डॉक्टर का जांच प्रतिवेदन व साक्षियों के धारा 161 द. प्र. स. के कथन चार्ज की सीमा तक संपुष्टियुक्त है।

घटना आरक्षी केंद्र कोतवाली इन्दौर से दो किलोमीटर दूर सार्वजनिक स्थान पर की है। नेहरू पार्क (बगीचे) में रमाबाई अपने बालक सुरेश के साथ शाम 6 बजे बैठी थी। गर्मी के दिन थे। 10 मई 1997 का दिन था। आरोपी रामलाल, श्यामलाल, हीरालाल, पन्नालाल व धन्नालाल उसके पास आए तथा कहा कि ए साहूकारन बड़ी ही तेज हो। हमारे से कर्जा वसूल कर लेती हो लेकिन पावती नहीं देती हो। दोनों पक्षों मे मुंहवाद हुआ। रामलाल ने लाठी से रमाबाई के पीठ में मारा। श्यामलाल ने चाकू से पेट में वार किया जिससे उसकी आंतड़ी फट गई। हीरालाल ने भी पीठ में लकड़ी मारी। शेष अभियुक्त पन्नालाल धन्नालाल जो खाली हाथ थे ने चिल्ला–चिल्ला कर कहा कि रमाबाई बच न पावे, जान से मार दो। उन्होंने रमाबाई को लातं, घूंसो से मारा। रमाबाई की कान की सोने की बालियां वहीं गिर गईं जो पुलिस ने जप्त की थीं।

डाक्टरी प्रतिवेदन यह है कि रमाबाई की पीठ पर अस्थिभंग था। पेट की आंतड़ियां फटी थीं जो शल्य चिकित्सा करके ठीक कर दी गईं। उपहति प्राणघातक होना भी डाक्टर का कहना है।

बालक सुरेश विवाद को देखकर भागने लगा जिसने घटना देखी थी। सुरेश के पीछे–पीछे आरोपी गण भी भाग गए।

उपरोक्त तथ्यों के आधार से चार्ज हेतु तैयारी करके जो संक्षेपिका (नोट) बनाना है वह इस प्रकार होगी:

(1) प्रकरण क्रमांक 1/97 सत्र प्रकरण। शासन विरुद्ध रामलाल।

(2) आरक्षी केंद्र – कोतवाली इन्दौर।

(3) घटनास्थल – आरक्षी केंद्र से दो किलोमीर दूर नेहरू पार्क।

(4) घटना दिनांक – 10 मई 1997।

(5) घटना समय – संध्या 6 बजे।

(6) रिपोर्ट समय – संध्या 7 बजे लगभग

(7) आहत – रमाबाई।

(8) अभियुक्त – रामलाल, 2. श्यामलाल, 3. हीरालाल, 4. पन्नालाल एवं 5 धन्नालाल।

(9) आरोप :

आरोपी	आहत	उपहति	आयुध
1.	रामलाल	रमाबाई	लाठी पीठ में
2.	श्यामलाल	रमाबाई	चाकू से पेट में आंतड़ी फटी
3.	हीरालाल	रमाबाई	पीठ में लकड़ी
4.	पन्नालाल	रमाबाई	लात घूंसों से मारना
5.	धन्नालाल		

(10) आरोपों की रचना:

1. रामलाल
2. श्यामलाल } 148,307 वैकल्पिक रूप से 307/149 भा. द. वि.
3. हीरालाल

4. पन्नालाल
5. धन्नालाल } 147,307 वैकल्पिक रूप से 307/149 भा. द. वि.

इन धाराओं में यह चार्ज (आरोप) क्यों व कैसे लगाया गया इस सम्बन्ध में यहां चर्चा असमीचीन है। यथा समय इस विषय पर चर्चा होगी। यहां केवल एक उदाहरण के रूप में इसे देखें। अन्य तुच्छ अपराध जो उक्त रिपोर्ट पर से बन सकते हैं का यहां स्थानाभाव के कारण चिंतन नहीं किया जा रहा है।

अब निर्णय में क्या व किस प्रकार से लिखना है यह देखें:

आरक्षी केंद्र से घटना स्थल की दूरी का उल्लेख इसलिए आवश्यक है कि हमें यह ध्यान रहे कि घटना के समय व रिपोर्ट के समय के मध्य कितना अंतराल रहा है जिससे साक्ष्य के मूल्यांकन में सुविधा हो।

निर्णय चरण – 1 :

अभियुक्तगणों के विरूद्ध यह आरोप है कि दिनांक 10 मई 1997 को आरक्षी केंद्र कोतवाली इन्दौर क्षेत्र के अंतर्गत दो किलोमीटर दूर सार्वजनिक स्थान नेहरू पार्क में रमाबाई को प्राणांतिक गंभीर उपहति कारित की व उनके विरूद्ध नीचे लिखे अनुरूप आरोप आरोपित किए गए :

आरोपी		आरोप
1.	रामलाल	धारा 148 भा. द. वि.
2.	श्यामलाल	
3.	हीरालाल	
4.	पन्नालाल	धारा 147 भा. द. वि.
5.	धन्नालाल	
सभी आरोपी		धारा 307 वैकल्पिक रूप से धारा 307/149 भ. द. वि.

नोट : चरण 1 में घटना का विस्तार से उल्लेख करने की आवश्यकता नहीं होती है।

दोषसिद्धि वाला भाग :

उपरोक्त विवरण के आधार से अभियुक्तगण (प्रत्येक का नाम व पिता का नाम) को नीचे अनुसार अपराधी (गिल्टी) पाते हुए दोषसिद्ध (कनविक्ट) किया जाता है।

अनु.	आरोपी	आरोप सिद्ध	आरोप सिद्ध नहीं
1	2	3	4
1.	रामलाल	148,307	307/149
2.	श्यामलाल	भा. द. वि.	
3.	हीरालाल		
4.	पन्नालाल	147,307	307/149
5.	धन्नालाल	भा. द. वि.	

नोटः उपरोक्त विवरण देने के पश्चात अब प्रकरण अभियुक्तगणों को दंडादेश के संबंध में सुनने के लिये स्थगित करेंगे। यह बात सही है कि धारा 248 (2) अथवा धारा 235 (2) द. प्र. स. के अंतर्गत दंडादेश के संबंध में अभियुक्तगणों को सुना जाना है लेकिन स्पष्टतः अभियुक्तगण एवं दोनो पक्षों के अधिवक्ताओं को उचित रूप से श्रवण का अवसर दिया जाना है। यह बात विधि सिद्धांत की है। उभयपक्षों को सुनने के पश्चात प्रवर्तनशील भाग (आपरेटिव पोर्शन) लिखा जाना है। आपरेटिव पोर्शन में आप यह बात अवश्य लिखें कि अभियुक्तगणों को, उसके अधिवक्ता को एवं अभियोजन को दंडादेश के संबंध में सुना गया था और ऐसा धारा 235 भाग (दो) अथवाधारा 248 (दो) द. प्र. स. के अंतर्गत सुना गया था। तत्पश्चात उन परिस्थितियों का खुलासा करें कि आप धारा 361 के प्रावधानों के अनुरूप धारा 360 द. प्र. स. अथवा परिविक्षाधिन अपराधी अधिनियम के अंतर्गत लाभ क्यों नहीं देना चाहते हैं। यदि लाभ देना चाहते हैं तो ऐसा लिखें। निवेदन यह

है कि आपने धारा 3, 4, 5, 6,11 परीवीक्षाधीन अपराधी अधिनियम तथा संबंधित धाराएं एवं धारा 360 द. प्र. स. का अध्ययन कर लेना चाहिये अंदाज से इन प्रावधानों का लाभ न दें क्योंकि लाभ देने के साथ कुछ बंधन एवं शर्तें भी हैं जिसके अंतर्गत ऐसे लाभ को नियोजित किया गया है तथा मार्गदर्शित किया गया हैं।

प्रवर्तनशील भाग :

अब प्रवर्तनशील भाग इस प्रकार से लिखेंगे : उपरोक्त विवरण के आधार से अभियुक्तगणों को नीचे अनुसार दंडित किया जाता हैं:

अनु.	आरोपी	धारा	कारावास सजा	अर्थदंड	व्यतिक्रम में सजा
1	2	3	4	5	6
1.	रामलाल	148	चार-माह का सश्रम कारावास	1,000/– (एकहजार)	एक माह का सश्रम कारावास
		307	पांच वर्ष का सश्रम कारावास	कुछ नहीं	कुछ नहीं
2.	श्यामलाल	148	चार माह का सश्रम कारावास	1,000/– (एक हजार)	एक माह का सश्रम कारावास
		307	पांच वर्ष का सश्रम कारावास	कुछ नहीं	कुछ नहीं
3.	हीरालाल	148	चारमाह का सश्रम कारावास	1,000/– (एक हजार)	एक मांह का सश्रम कारावास
		307	पांच वर्ष का सश्रम कारावास	कुछ नहीं	कुछ नहीं
4.	पन्नालाल	147	चार माह का सश्रम कारावास	200/– (दो सौ)	एक माह का सश्रम कारावास
		307	पांच वर्ष का सश्रम कारावास	कुछ नहीं	कुछ नहीं
5.	धन्नालाल	147	चार माह का सश्रम कारावास	200/– (दो सौ)	एक माह का सश्रम कारावास
		307	पांच वर्ष का सश्रम कारावास	कुछ नहीं	कुछ नहीं

उपरोक्तानुसार कारावास की सजा आरोपीगणों से भुगताई जावे तथा अर्थदंड अविलंब अधिग्रहित करने हेतु कार्यवाही हो। प्रत्येक अभियुक्त की सजा एक साथ चलेगी। लेकिन अर्थदंड के व्यतिक्रम में पृथक से सजा भुगताई जावे।

आरोपीगण प्रतिभूति पर हैं। अतः उनके प्रतिभूति पत्र एवं बंध पत्र उन्मोचित किए जाते हैं। अभियुक्तगण जिस अवधि के लिए निरोध में रहे हैं उस सम्बन्ध में पृथक से एक विवरण धारा 428 द. प्र. स. के प्रावधानों के लिए बनाया जावे जो निर्णय का अंग रहेगा। अभियुक्तगणों की निरोध की अवधि सजा में समयोजित होगी। (निरोध की अवधि निश्चित मालूम हो तो वैसा लिखा जावे।)

जप्त संपत्ति में से सोने की बालियां जो परिवादी की हैं जो परिवादी रमाबाई पत्नि रामजी निवासी 501 महात्मा गांधी मार्ग, रीगल टाकीज के पास इन्दौर को लौटाई जावें। उक्त संपत्ति अपील अवधि तक कायम रहेंगी। अपील न होने की स्थिति अपील अवधि पश्चात आदेश का पालन हो। अपील होने की स्थिति में अपील के निर्णयाधीन संपत्ति का निराकरण हो। शेष सामग्री जो मूल्यहीन है उपरोक्त निर्देशनुसार नष्ट हो।

नोट : आपका ध्यान धारा 354 द. प्र. स. के प्रावधानों की ओर आकृष्ट किया जाता है और विशेषकर धारा 354 भाग–चार द. प्र. स. के अन्तर्गत भी जिसके अंतर्गत कुछ प्रावधानों के लिए, जिसमें एक वर्ष से अधिक के कारावास की सजा हो तथा न्यायालय 3 माह से कम कारावास के आरोपी को दंडित करना चाहती है तो विशिष्ट शब्दों में कारणों का दर्शाना होगा।

निरोध अवधि विवरण तालिका

(धारा 428 दं. प्र. स. के अंतर्गत)

नाम न्यायालय एवं पीठासीन अधिकारी

1 अपराधिक प्रकरण/ अपील/रिवीजन/सत्रप्रकरण क्रमांक :.....

2 पक्षकारों के नाम : राज्य शासन वि. .....

3 अभियुक्त का नाम : ..... पिता का नाम..... आयु .....निवास.....

4 सिद्ध दोष धाराएं : .....

उपरोक्त उल्लेखित अभियुक्त को उपर उल्लेखित धाराओं में सिद्ध दोष पाया गया होकर दंडित किया है। निरोध अवधि एवं समायोजन कालावधि इस प्रकार है :

(1) अभियुक्त को बंदी बनाने का दिनांक :

(2) पुलिस अभिरक्षा में निरोध अवधि :

(3) न्यायिक अभिरक्षा की अवधि :

(4) अभियुक्त को यदि प्रतिभूति पर मुक्त किया गया था तो उक्त अवधि का विवरण :

(5) निरोध में व्यतीत कुल अवधि जो सजा में समायोजित की जाना है :

स्थान : नाम

दिनांक : पीठासीन अधिकारी पदनाम

PERMANENT DISABILITY: HOW TO ASSESS

Dr. Jitendra Jamdar , Orthopaedist has contributed few slides for Additional District Judges who came for training. A copy of those slides is being published here for the guidance of the Judicial Officers. The purpose is while deciding question of permanent disability, the Claims Tribunals have to give a particular conclusion as to whether the particular injury can be said to be of the nature of permanent disability. For ready reference the judgment of the M.P. High Court in ***M.A. No. 186/95 Saurabh kumar Vs. Hukum Chand*** published in **'JOTI JOURNAL'** Vol. III part IV, August 1997, page 37 under the heading Star-Firmament may be referred.

Definition of Disability:

The expression 'disability is defined by webster's New International Dictionary. English Language, Part 1, of 1890 and 1900 Edition, at page 632 thus:

> "Disability" 1 State of being disabled deprivation or want of ability; absence of competent physical intellectual or moral power. means, fitness, or the like, an instance of such want of deprivation"

The Randum House Dictionary of the English Language, the Unabridged Edition, deals with disability at page 408 thus:

> "Disabitity" 1 Lack of competent. power strength or physical or mental ability; incapacity .2 a permanent physical flaw weakness.or handicap, which prevents one from living a full. normal life or from performing any specific job 3. the state of condition of being disabled"

SLIDE NO. 1

ASSESMENT OF PERMANENT DISABILITY.

SLIDE NO. 2

DEFINITION OF DISABILITY

STATE OF BEING DISABLED, ABSENCE OF COMPETENT PHYSICAL INTELLECTUAL OR MORAL POWER, FITNESS OR THE LIKE, ALSO, AN INSTANCE OR SUCH LACK.

SLIDE NO. 3

MEDICALLY PHYSICAL IMPAIRMENT & INABILITY TO PERFORM PHYSICAL FUNCTIONS NORMALLY.

SLIDE NO. 4

TYPES OF DISABILITY

1. TEMPORARY TOTAL DISABILITY.
2. TEMPORARY PARTIAL DISABILITY.
3. PERMANENT DISABILITY.

SLIDE NO. 5

PERMANENT DISABILITY

WHEN A PERSON'S ABILITY TO ENGAGE IN GAINFUL ACTIVITY IS

REDUCED OR ABSENT BECAUSE OF IMPAIRMENT OF FUNCTION & NO MARKED CHANGE CAN BE EXPECTED IN FUTURE.

PERMANENT DAMAGE OF OR LOSS OF USE OF SOME PART OF THE BODY AFTER THE STAGE OF MAXIMUM IMPROVEMENT FROM MEDICAL TREATMENT HAS BEEN REACHED & THE CONDITION IS STATIONARY.

SLIDE NO. 6

ASSESMENT OF PERMANENT DISABILITY

A. EXAMINATION OF THE WITNESS.
B. HISTORY.
C. CLINICAL FINDINGS.
D. INVESTIGATIONS SUCH AS X-RAYS.
E. PSYCHOLOGICAL ASSESMENT.

SLIDE NO. 7

CAUSES OF DISABILITY

1.TRAUMATIC.
2.NON TRAUMATIC

SLIDE NO.8

DISABILITY

- PHYSICAL
- SOCIAL
- PSYCHOLOGICAL
- VOCATIONAL

SLIDE NO. 9

PHYSICAL DISABILITY

- RANGE OF MOTION - % OF NORMAL
- STRENGTH OF MUSCLES- GRADE I TO V
- SENSATIONS.
- CO-ORDINATED ACTIVITY.

SLIDE NO. 10

ADDITIONAL WEIGHTAGE

- INFECTION
- DEFORMITY
- MALALIGNMENT
- CONTRACTURES
- COSMETIC APPEARANCE
- ABNORMAL MOBILITY
- DOMINANT EXTREMITY

SLIDE NO. 11

- ✱ NEUROLOGICAL DISABILITY
- ✱ BURNS
- ✱ FACIAL INJURIES
- ✱ CARDIO PULMONARY DISEASES
- ✱ POLIMYELITIS
- ✱ LEPROSY
- ✱ ARTHRITIS

SLIDE NO. 12

PAIN

IMPORTANT LEGAL TERMS : EVIDENCE

There are few words being used in routine manner. But the significance of the words, its depth, abyss, profoundity and clear cut upshot is not made to understand-But in routine the words are used either in Hindi or in English. If the word is used in English and the meaning is asked the Judicial Officers may say its Hindi version and vice versa. But the soul, the vital spark, complexion, spirit and character behind the word, the actual interpretation of the word should also come to the knowledge of the Judicial Officers. Therefore some important words are explained here to enable the Judicial Officers to follow them in their routine judicial work, to improve the standard, quality, texture and fabric of judgments and orders.

APPRECIATE

To estimate justly; to set a price or value on when used with reference to the nature and effect of an act, "appreciate" may be synonymous with "know" or understand" or "realise"

(Black's Law Dict.)

Appreciable: capable of being estimated, weighed, judged of, recognised by the mind, capable of being perceived or recognised by the senses, perceptible but not a synonym of substantial. (Black's Law Dict.)

The Law Lexican by P. Ramantha Aiyar; Pg. 130

1. Be appreciative, be grateful for, be indebted, be obliged, be thankful for, give thanks for (2) acknowledge, be alive to, know, perceive, realise, recognise, take account of , understand (3) esteem, like prize, rate highly, regard, relish, respect, savour, treasure, value (4) gain, grow, improve, increase, inflate, rise.

Collins Pocket Thesaurus, pg. 24

Appreciate: (Verb) acknowledge, apprehend, be aware of, be cognizant of, be conscious of, conceive, discern, know, notive, perceive, realise, take into consideration, take notice, understand.

Legal Thesaurus, Pg. 28

MARSHALLING

Marshal (Verb) in general usage, to arrange or rank in order; and in the sense in which it is used in Courts of equity so to arrange different funds under administration that all parties having equities therein may receive their due proportions.

The Law Lexicon by P. Ramanath Aiyar, Pg. 1199

align, arrange, array, assemble, collect, deploy, dispose, gather, group muster, order, rank.

Collins Pocket Thesaurus, pg. 278

allocate, allot, apportion, arrange, array, assign, bring to order, collocate,

compose, coordinate, deal out, disponere, distribute, fix, form into ranks, group guide, index instruere; introduce order, lead, line up; manage, muster, organize, parcel out, place, place in order, position, put in order, rank, regiment regulate, set in order, set up, systematize.

Legal Thesaurus, Pg. 326

PRUDENT

acute, careful, circumspect, deliberate, discreet, economical, frugal, guarded, judicial, judicious, juridical, noncommittal, politic, provident (Frugal), provident (showing foresight) responsive, safe, sensible, solid (sound), vigilant.

Prudens : circumspect, deliberate, discreet, judicious, knowing, politic, prudent, reasonable (rational), sensible, tactical.

Legal Thesaurus, pg. 905

careful, cautious, discerning, discreet, judicious, politic, sensible, shrewd, vigilant, wary, wise, 2) canny, careful economical, far-sighted, provident, sparing, thrifty

Prudence: Care, caution, commonsense, discretion, judgment, vigilance, wariness, wisdom, 2) foresight, planning, precaution, preparedness, providence, saving thrift.

Collins Pocket Thesaurus, Pg. 352

Having sound judgment in practical affairs circumspect, (s. 125 (3), Indian Contract Act); (S. 3 Indian Evidence Act); discreet, worldly wise (Sch. 1, table A, Interpretation 87 (2), Companies Act)

Law Lexicon by P. Ramanath Aiyar,Pg. 1553.

REASONABEL MAN

The expression signifies an ordinary man cabable of reasoning, who is responsible and accountable for his actions. ***Director of public prosecutions Vs. Smith (1960) 3 All. ER. 161: 1961 AC 290.*** The standard of due care is the standard pf a reasonable and prudent man, that is, the standard of reasonable foreseeability. ***Donoghue Vs. Stevenson, (1932) AC 562.*** The reasonable man is presumed to be free from both over-apprehension and over-confidence. He is the man in the street.

Mitra's Legal Dictionary.

Reasonable men are those who think and reason intellignetly.

The Law Lexicon by P. Ramanath Aiyar

REASONABLE

"An attempt ot give a specific meaning to the word 'reasonable' is trying to count what is not number and measure what is not space." (Ame. Words and Phrases)

By the term "reasonable" is not meant expedient, nor that the conditions must be such as the court would impose if it were called on to prescribe what

should be the conditions. They are to be deemed reasonable where, although perhaps not the wisest and best that might be adopted, they are fit and appropriate to the end in view, and are manifestly adopted in good faith for that purpose.

"REASONABLE" is relative term, and the facts of the particular controversy must be considered before the question as to what constitutes a reasonable delay can be determined.

The reasonable and ordinary care, skill and diligence which the law requires of physicians and surgeons are such as those in the same general line of practice in the same general locality ordinarily have and exercise in like cases, Surgeons should, however, keep up with the latest advance in medical science and use the latest and most improved methods and appliances, having regard to the general pratice of the profession in the locality where they practice.

Reasonable deligence. This phrase has only a relative signification: "It means reasonable attention to business; such deligence as prudent man would exercise or employ as to his own affairs; such diligence as an ordinarily purdent and diligent person would exercise under similar circumstances."

The Law Lexicon by Ramnath Aiyar

Aequus, conscionable, equitable, fit fitting, judicious, just, modicus, not excessive, not extreme, proper, rationi consentaneus, restrained, suitable, temperate, tempered, tolerable, unextravagant, unextreme.

Legal Thesaurus by William C. Burton

reasonable; rational. Generally reasonable= according to reason; rational = having reason. Yet reasonable is often used in reference to persons in the sense "having the faculty of reason" (reasonable man). When applied to things, the two words are perhaps more clearly differentiated: "In application to things reasonable and rational both signify according to reason; but the former is used in reference to the business of life, as a reasonable proposal, wish, etc.; rational to abstract matters, as rational motives, grounds, questions, etc." G.Crabb, Crabb's English Synonymes 589 (2d Ed. rev. J.H. Finely 1917).

Dictionary of Modern Legal Usage
by Bryan A.Garner.

REASONABLE OPPORTUNITY OF BEING HEARD

'Reasonable opportunity of being heard' involves two elements namely, an opportunity to be heard must be given and that much opportunity must be reasonable. Both the elements are justiceable and the court is to decide whether an opportunity was given and whether such opportunity was reasonable. Fedco (P) Ltd. Vs. S.N. Bilgrami, AIR 1960 SC 415: (1960) 2 SCR 408. (Please see 101 I.C. 595= 1927 Bom., 361)

Mitra's Legal Dictionary.

RATIONAL

Endowed with reason. Webster gives "rational" as a synonym for "sane".

The Law Lexicon by P. Ramnath Aiyar
Reprint Edition 1987

_nlightened, intelligent, logical lucid, realistic, reasonable, sane, sensible, sound, wise.

Collins Pocket Thesaurus

SANE

Whole; sound; in healthful state. It is applicable equally ot the mind and to the body. (Den. V. Vanceive, 5 N.J.L. 661)

The Law Lexicon by P. Ramanath Aiyar

SANE

1. Lucid, mentally sound, normal, rational 2. balanced, judicious, level-headed, moderate, reasonable, sensible, sober sound.

Collins Pocket Thesaurus

SANE MAN

A "sane man" is defined by Chief Justice Shaw, in 43 Am. Dec. 373, to be a "voluntary agent acting on motives and must be presumed to contemplate and intend the necessary natural and probable consequences of his own acts."

The Law Lexicon by P. Ramanath Aiyar
Reprint 1987.

AMENDMENT

1. alteration, amelioration, change, correction, improvement, modification, reform, remedy, repair, revision, 2. addendum, addition, adjunct, alteration, attachment, clarification.

Collins Pocket Thesaurus pg. 19

The correction of an error: In practice the correction of any error in any process, pleading, or proceeding at law, either by consent of the parties, or upon motion to the court in which the proceeding is pending (Burrill; 3 Bl. Comm. 407, 448; 1 Tidd. Pr. 696); any writing made or proposed as an improvement of some principal writing (Black)

Amend : A word derived from the French word signifying 'to make better'; to change for the better'.

Amend; Emend; Correct; Rectify; Reform. All these words convey the idea of making a thing better or bringing things into a more perfect state. We correct when we conform things to some standard or rule; as to correct proof sheets. We amend by removing faults or errors a to amend a decree or a law. Emend is another form of amend and is mostly applied to editions of books. To reform is to put into a new and better form as, to reform one's life. Rectify is to make right, as, to rectify a mistake, to rectify an abuse.

The Law Lexicon by P.Ramanath Aiyar
Reprint 1987 Pg. 62

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परिचयात्म विवरण

राज्य फोरेंसिक साइंस प्रयोगशाला, सागर

वैज्ञानिक युग में अपराध अनुसंधान हेतु पुरातन सिद्धांतों तथा मान्यताओं को आधार नहीं माना जा सकता है। पूर्व में अपराधियों को पहचानने की प्रक्रिया पूर्णतया अवैज्ञानिक मापदण्डों पर आधारित थी परंतु वर्तमान समय में अपराध अनुसंधान में विज्ञान ने रचनात्मक एवं महत्वपूर्ण भूमिका निभाई है। 20वीं सदी में वैज्ञानिक विधियों को अपराध अुनसंधान में प्रयोग में लाया जाने लगा है और जिससे अपराध अनुसंधान में महत्वपूर्ण प्रगति देखी गई है। पुलिस अधिकारियों ने भी अपनी कार्यविधि में इन विधियों का समावेश किया है और जटिल अपराधों को सुलझाने में उन्हें सफलताएं प्राप्त हुई हैं। अपराध घटना स्थल पर प्राप्त होने वाले भौतिक साक्ष्यों की पहचान एवं उनका विश्लेषण ही फोरेंसिक साइंस का मूल आधार है। इस हेतु मध्यप्रदेश में फोरेंसिक साइंस प्रयोगशाला सागर में वर्ष 1964 में स्थापित हुई थी। इस प्रयोगशाला में बायोलॉजी, फिजिक्स, बैलिस्टिक्स, केमिस्ट्री, टॉक्सीकोलॉजी एवं ट्रेनिंग डिवीजन कार्यरत हैं। केमिस्ट्री डिवजीन के अंतर्गत नारकोटिक्स तथा आबकारी सेक्शन एवं बैलिस्टिक्स डिवीजन के अंगर्तत एक्सप्लोज़िव सेक्शन कार्यरत हैं। प्रयोगशाला में बायोलॉजी डिवीजन के अंतर्गत सीरोलॉजी का कार्य भी आरंभ किया गया है। इन सभी डिवीजनों से संबंधित फोटाग्राफी कार्य के लिये एक सुसज्जित फोटोग्राफ़ी सेक्शन भी है। ट्रेनिंग डिवीजन में पुलिस अधिकारियों को अपराध अनुसंधान में वैज्ञानिक विधि के उपयोग के बारे में प्रशिक्षण दिया जाता है।

अपराध अनुसंधान में फोरेंसिक साइंस के अधिकाधिक उपयोग की दृष्टि से ग्वालियर, रायपुर और इंदौर में क्षेत्रीय प्रयोगशालाएं वर्ष 1992 से आरंभ की गई हैं। क्षेत्रीय प्रयोगशालाओं की आवश्यकता प्रदेश के विशाल विस्तार को देखते हुए अत्यंत आवश्यक थी। इन क्षेत्रीय प्रयोगशालाओं में अभी मुख्यतः बायोलॉजी एवं केमिस्ट्री से संबंधित प्रकरणों के परीक्षण का कार्य होता है। मध्यप्रदेश ही देश का एकमात्र राज्य है, जिसके सभी जिलों में सीन ऑफ क्राइम यूनिट्स स्वीकृत हैं। इन जिला यूनिट्स में फोरेंसिक साइंस प्रयोगशाला के वैज्ञानिक अधिकारी कार्यरत हैं, जो कि घटनास्थल पर भौतिक साक्ष्यों का एकत्रीकरण, घटनास्थल के स्केचिंग, फोटोग्राफी एवं आवश्यकतानुसार अपराध स्थल के पुनर्निमाण का कार्य संपादित करते हैं। सागर स्थित राज्य फोरेंसिक साइंस प्रयोगशाला के विभिन्न डिवीजन्स में जो परीक्षण कार्य किया जाता है, उनका संक्षिप्त विवरण निम्नानुसार है :

बायोलॉजी डिवीजन :

इस शाखा में खून, वीर्य, लार एवं अन्य जैविक धब्बों की जाँच की जाती है। हत्या,

बलात्कार, प्रहार और इसी तरह के अन्य हिंसात्मक मामलों और यहां तक कि लूटपाट, चोरी और डकैती के मामलों में भी खून अपराध स्थल, अपराधी एवं उसके कपड़ों तथा हथियार पर पाया जा सकता है। संबंधित प्रदर्शों पर प्रयोगशाला में खून की जाँच कर यह पता लगाना संभव है कि खून मानव का है अथवा किसी जानवर का। प्रयोगशाला में खून के ग्रुप का भी परीक्षण कार्य आरंभ किया गया है। इस प्रयोगशाला में बालों का परीक्षण होता है, जिनका विभेद और मिलान भी किया जाता है।

फिजिक्स डिवीजनः

प्रयोगशाला की भौतिकी शाखा में नकली लेबिलों की पहचान, दस्तावेजों अथवा लॉटरी टिकटों में हेराफेरी, वाहनों के नंबर बदलने तथा विभिन्न चिन्हों जैसे टूल मार्क्स, टायर इत्यादि प्रकरणों का परीक्षण होता है। वाहन दुर्घटना में टूटे काँच के टुकडों तथा वाहन के पेंट या रंग के टुकडों का भी परीक्षण किया जाता है। यहाँ पर मिट्टी के साक्ष्यों का परीक्षण एवं मिलान किया जाता है। संदिग्ध व्यक्ति के कपड़ों या जूतों से चिपकी हुई मिट्टी का मिलान अपराध स्थल की मिट्टी से किये जाने पर यह निश्चित रूप से बताया जा सकता है कि वस्तु या संदिग्ध व्यक्ति अपराध स्थल से संबंधित थे अथवा नहीं। बैंक, कोषागारों की अलमारियाँ, तिजोरी अथवा संदूकों को तोड़ने में प्रयोग किये गये औजारों अथवा उपकरणों पर पेंट या रंग की अल्प मात्रा स्थानांतरित होती है। पकड़े जाने पर इन रंगों का मिलान कर इनका आपसी संबंध स्थापित किया जा सकता है। इस प्रकार का परीक्षण कार्य इस डिवीजन में संपन्न होता है।

बैलिस्टिक्स डिवीजन :

इस डिवीजन में हत्या, आत्महत्या, डकैती, तोड़फोड़, दंगा इत्यादि के अपराधों में प्रयुक्त किये गये आग्नेय शस्त्रों की जांच का कार्य होता है। गोली कितनी दूर से चली तथा किस शस्त्र में से चली, उसका ज्ञान इसी शाखा से प्राप्त होता है। हथियार चालू हालत में है भी या नहीं, इत्यादि बातों का संबंध इसी शाखा के परीक्षण कार्य के अंतर्गत आता है। इस डिवीजन की एक्सप्लोजिव शाखा में सभी प्रकार के विस्फोटक पदार्थ जैसे आर.डी.एक्स, पी.ई.टी.एन., नाइट्रोग्लीसरीन, डायनामाइट, टी.एन.टी., हेंड ग्रेनेट तथा देशी बम इत्यादि अथवा उनके अवशेषों का परीक्षण होता है।

केमिस्ट्री डिवीजीन :

फोरेंसिक साइंस प्रयोगशाला के इस डिवीजन में सभी प्रकार के नशीले पदार्थों जैसे गांजा, भाँग, चरस, हशीश, मरीजुआना, एल.एस.डी., अफीम, हेरोइन, स्मैक, ब्राउन

शुगर, मेन्ड्रेक्स, कोकीन इत्यादि का परीक्षण किया जाता है साथ ही सभी प्रकार की देशी एवं विदेशी शराबों का परीक्षण भी इस शाखा में होता है। आगजनी एवं नव–वधुओं के जलने संबंधी प्रकरण, डीजल, पेट्रोल एवं खाद्य तेलों में मिलावट, तेजाब से जलाने संबंधी अपराध, सोने चांदी के गहनों में धोखाधड़ी, मिलावटी सीमेन्ट, नकली डिटरजेंट साबुन, सौंदर्य प्रसाधनों की पहचान तथा इनमें मिलावट इत्यादि का परीक्षण रसायन शाखा में होता है।

टॉक्सीकोलॉजी डिवीजन :

प्रयोगशाला की टॉक्सीकोलॉजी डिवीजन में मुख्यतः शव परीक्षण के पश्चात डॉक्टर द्वारा एकत्रित विसरा का परीक्षण होता है, जिसके परीक्षण से यह पता लगाया जाता है कि इसमें किस प्रकार का विष उपस्थित है अथवा नहीं है।

यह प्रयोगशाला प्रशिक्षित वैज्ञानिकों एवं आधुनिकतम उपकरणों से सुसज्जित है तथा किसी भी प्रकार के जटिल से जटिल आपराधिक प्रकरणों को यह निपटाने में यह प्रयोगशाला अपना योगदान देने में सदैव तत्पर रहती है। न केवल अपराध अनुसंधान में वरन् इस क्षेत्र से जुड़े शोध कार्य भी यहां संपन्न होते हैं। यहां के वैज्ञानिकों के शोध पत्र विभिन्न ख्याति प्राप्त पत्र–पत्रकिओं में प्रकाशित हेाते रहते हैं। यह मध्यप्रदेश पुलिस की एक प्रमुख एवं महत्वपूर्ण शाखा है। इसकी सफलताएं इसी में है कि अपराधी अपने अपराध से बच न सके और निर्दोष को सजा न मिल सके और यह जिम्मेदारी प्रयोगशाला बखूबी निभा रही है।

अपराध अनुसंधान विभाग
मध्यप्रदेश पुलिस

साभार निदेशक, विधि विज्ञान प्रयोगशाला, सागर (म.प्र.)

"प्रजातंत्र में जन–जन की अपेक्षा है कि उन्हें सामाजिक, आर्थिक एवं राजनैतिक न्याय प्राप्त हो। इसलिए न्यायदाता (न्यायाधीश) का स्वयं का कृत्य व व्यक्तित्व अर्जित करने वाला होना चाहिए। लोग उन्हें देखें तथा उन्हें पूरा विश्वास हो जाये कि न्याय से कम कुछ नहीं मिलेगा। न्यायदाता निर्भीक, निःशर्त एवं न्याय की अमूर्त सत्ता का मूर्त सारथी बने।"

राज्यपाल मोहम्मद शफी कुरैशी

MISTAKE OF THE COUNSEL : TO WHAT EXTENT SUFFICIENT GROUND

M.C.C. NO. 69 OF 1996

SMT. SULOCHANA PANDEY VS. LOKMANYA SAHKARI GRIHA NIRMAN SANSTHA

Order delivered on 11.9.1997 by Hon'ble Shri Justice C.K. Prasad, M.P. High Court, Jabalpur. (Yet unreported)

One Misc. Appeal No. 402 of 1992 was pending before the High Court in which the party did not paid process fee for services on summons for the opposite party. Therefore, that case was dismissed by the High Court by peremptory order M.C.C.No. 69/96 (present case) was filed to restore appeal No. 402/92 which was also dismissed for default for appearance. Then another M.C.C. No. 42/97 was filed for restoration of M.C.C. No. 69/1996. That application was allowed and M.C.C. No. 69/96 was restored.

In the present case the argument for the applicant was this that for the mistake of the counsel the party should not suffer. Two cases were referred. One was ***Rafiq Vs. Munshilal, A.I.R. 1981, SC 1400*** and the second case was ***Smt. Lachi Tiwari Vs. Director of land records, A.I.R. 1984 SC 41.*** Considering those rulings the High Court held as under :

Now I advert consider the submission of Advocate (for applicant) that notwithstanding default on part of the appellant or sufficient cause being shown, the petitioner cannot be permitted to suffer on account of "mistake of the counsel" . Mistake of counsel, if bonafide, is definitely a ground for restoration of appeal but whether repeated mistakes on part of the counsel stand on the same pedestal, is the question, which falls for determination in the present case. In my opinion mistake, irrespective of its number, if has occurred bonafide, may be construed as sufficient cause for restoration. **However, mistakes out of carelessness repeatedly, on part of the counsel, cannot be construed as sufficient cause.** The authorities relied on by the learned counsel has to be understood in the context it was laid. In the cases relied on by the Advocate (for applicant) there were sufficient explanation for non-appearance of the counsel, which is not the position here. The authorities relied on, cannot be read to mean that in no circumstance, the party can be permitted to suffer on account of mistake of the counsel. In my considered opinion, acceptance of this wide proposition, will throw the entire system out of gear, beyond repair. Order 41 Rule 17 bars dismissal of appeal on merits, in the absence of the counsel. Repeated dismissal of appeal on account of non-appearance of the counsel has to be followed by its repeated re-admission, shall I accept this wide proposition.This is not the intention of law, and I am sure is not the legal position. I am of considered opinion that sufficient cause has to exist for restoration of the appeal. This being lacking in the present case, application has no merits.

NOTIFICATONS

Ministry of Health and Family Welfare (Department of Health) Notification No. G.S.R. 41 (E) dated the 29th January, 1997 Published in Gazette of India (Extraordinary) Part II Section 3(i) dated 29-1-97 Pages 7-9.

In exercise of the powers conferred by sub-section(1) of section 23 of **Prevention of Food AdulterationAct, 1954 (37 of 1954)** the Central Government, after consultation with the Central Committee for Food Standards hereby makes the following rules further **to amend the Prevention of Food Adulteration Rules , 1955, namely:-**

Rules

1. (i) These Rules may be called the **Prevention of Food Adulteration (1st Amendment) Rules, 1997.**

(ii) They shall come into force on the date of their publication in the Official Gazette except rule 2,4, clause (a) and (d) of rule 5 which shall come into force after a period of one year from the date of publication.

2. In the Prevention of Food Adulteration Rules, 1955, (hereinafter referred to as the said rules), in rule 32, in clause (b), after the proviso, the following provisio shall be inserted, namely:-

"Provided also that whenever Gelatine is used as an ingredient, a declaration to this effect shall be made on the label by inserting the word "Gelatine-Animal Origin."

In case of packages of confectionery weighting 20 gm. or less, which are also exempted from the declaration of ingredients, will be exempted from the declaration of " Animal Origin" even if it contains Gelatine provided that such declaration shall be given on the multi piece package in such a manner that the same is readable even without opening the package.

3. In rule 39 of the said rules after the words "approved by medical practitioners", the words, " or approved for medical purpose", shall be added at the end.

4. In the said rules, in rule 49, in sub-rule (16) for the words "Milk Powder and condensed milk" the following words shall be substituted, namely:-,

"Condensed milk sweetened, condensed skimmed milk sweetened skimmed milk podwder and partly skimmed milk powder."

5. In Appendix 'B' to the said rules,-

(a) for item A. 11.02.02 and the entries relating thereto, the following item and entries shall be substituted, namely:-

" **A.11.02.02-** Cream including sterilized cream means the product of cow or buffalo milk or a combination thereof . It shall be free from starch and other ingredients foreign to milk . It may be of following three categories, namely:-

1. Low fat cream- containing milk fat not less than 25.0 percent by weight.

2. Medium fat cream - containing milk fat not less than 40.0 percent by weight.

3. High fat cream - containing milk fat not less than 60.0 percent by weight.

Note.- Cream sold without any indication about milk fat content shall be treated as high fat cream"..,

(b) after item A.11.02.08 and the entries relating thereto, the following item and entries shall be inserted, namely:-

' A. 11.02.08.01.- " Dried Ice Cream Mix " shall be the material prepared by spray or roller drying of ice-cream mix. It shall contain milk solids, sucrose or corn syrup or refined sugar. It may contain permitted colours and flavours. It may contain stabilisers and emusifiers not exceeding 1.25 percent by weight . The product shall contain not less than 27.0 percent milk fat and 9.5 percent protein and moisture shall not be more than 40 percent by weight. The sucrose content shall not be more than 40 percent by weight.

The process of drying shall be mentioned on the lable . It shall be packed in hermetically sealed clean sound containers.;

(c) in item A.11.02.14, after the proviso, the following proviso shall be added, namely:-

' Provided further that if the spray dried milk powder meant for reconstitution into liquid milk and not for direct consumption and packed in above manner, cannot be stored at or below 20 degree centigrade, such product shall not contain moisture more than 3.5 percent by weight and shall be clearly labelled as " To be used within five months from the date of packing " and "Not for direct consumption',

(d) after item A.11.02.22.01,the following item shall be instered, namely:-

"A.11.02.23.- Yoghurt means a coagulated product obtained from toned milk, pasteurised or boiled milk by lactic acid fermentation through Lactobacillus bulgaricus delblruckii var. bulgaricus and Streptococcus thermophilus. It may also contain cultures of Bifidobacterium bifidus and Lactobacillus acidophilus and if added, the declaration to this effect shall be made on the label. The Product shall have smooth body and custard like consistency with no whey separation.It may also contain:-

(i) milk powder, skimmed milk powder, whey powder, whey proteins, water soluble milk proteins, caseinates manufactured from pasteurised product and lactase enzyme preparation;

(ii) Sugar, corn-syrup or glucose syrup in case of sweetened, flavoured and fruit yoghurt only;

(iii) Fruits, fruit pulp, jam, fruit syrup, fruit juice etc, in flavoured and fruit yoghurt only;

(iv) Permitted colours and flavours in flavoured and fruit yoghurt only.

It may contain permitted stabilisers upto a maximum limit of 0.5 per cent, by weight. It shall also conform to the following standard, namely :-

		Yoghurt plain	Yoghurt Skimmed	Yoghurt Sweetened and/or flavoured	Fruit Yoghurt
(i)	Total milk fat, solids percent by weight, not less than	13.5	11.0	13.5	10.0
(ii)	Milk fat, percent by weight	Not less than 3.0	Not more that 0.5	Not less than3.0	Not less than 1.5
(iii)	Sugar, percent by weight not less than	-	-	6.0	6.0
(iv)	Protein, percent by weight, not less than	3.2	3.2	3.2	2.6

Titrable acidity of the product shall be from 0.8 to 1.2 percent by weight (as lactic acid). The specific Lactic acid bacterial count per gram of the product shall not less than 10,00,000 and Escherichia Coli shall be absent in the product.

The type of yoghurt shall be clearly indicated on the lable ; otherwise standard of Plain Yoghurt shall apply.

Note.- The yoghurt subjected to heat treatment after fermentation at temperature not less than 65°C shall be labelled as. " Thermised or Heat Treated Yoghurt" and shall conform to the above parameters except the minimum requirement of specific lactic acid bacterial count per gm;

(e) in item A. 18.01, for words, figure and letters , " Rodent hair and excreta shall not exceed 2 pieces per Kg." , the words" It shall be free from Rodent hair and excreta" shall be substituted;

(f) in both item A. 18.02 and A.18.03, for the words, figures and letters "Rodent hair and excreta shall not exceed 5 pieces per kg." the words "It shall be free from Rodent hair and excreta" shall be substituted;

(g) in item A.18.01.01, for the portion beginning with the words "The calcium carbonate powder" and ending with the words "parts by weight of calcium carbonate", the following shall be substituted., namely:-

"The calcium carbonate, if added for fortification shall be in such amount that 100 parts by weight of fortified atta shall contain not less than 0.30 and not more than 0.35 parts by weight of calcium carbonate. It shall be free from Rodent hair and excreta.",

(h) in item A.18.01.02, for the portion

" Alcoholic acidity (with 90 percent Not more than 0.12 percent" alcohol)- expressed as H_2SO_4

"Alcoholic acidity (with - 90 percent Not more than 0.12 per cent. alcohol) expressed as H_2SO_4

It shall be free from Rodent hair and excreta."

(i) in item A.18.02.01, for the portion beginning with the words " The calcium compound powder, if added for fortification" and ending with the words " weight of calcium carbonate", the following shall be substituted, namely:-

" The calcium carbonate powder, if added for fortification, shall be in such amount that 100 parts by weight of fortified media shall contain not less than 0.30 and not more than 0.35 parts by weight of calcium carbonate. It shall be free from Rodent hair and excreta."

(j) in item A. 18.02.02, for the portion.

"Gluten - Not less than 7.0 percent on dry basis" the following shall substituted namely:-

"Gluten - Not less than 7.0 percent on dry basis.

It shall also be free from Rodent hair and excreta

Ministry of Health and Family Welfare (Department of Health) Notification No. G.S.R. 147 (E) dated the 14th March, 1997 Published in Gazette of india (Exrtaordinary) Part II Section 3(i) dated 14-3-97 Pages 6-9.

In exercise of the powers conferred by sub-section (1) of section 23 of the **Prevention of Food Adulteration Act, 1954 (37 of 1954),** the Central Government after consultation with the Central Committee for Food Standards, hereby makes the following rules further to **amend the Prevention of Food Adulteration Rules, 1955,** namely :-

1. (1) These rules may be called the **Prevention of Food Adulteration (IInd Amendment) Rules , 1997.**

(2) They shall come into force after a period of six months from the date fo the publication in the Official Gazette.

2. In rule 2 of the Prevention of the Food Adulteration Rules, 1955 (hereinafter referred to as the said rules). after clause (d) the following clauses shall be inserted namely:-

(da) " infant" means a child not more than twelve months of age ;

(db) "infant food" means any food (by whatever name called) being marketed of otherwise represented as a complement to mother's milk to meet the growing nutritional needs of infant after the age of four months :

(dc) " infant milk substitute" means any food being marketed or otherwise represented as partial or total replacement for mother's milk, whether or not it is suitable for such replacement";

3. In rule 22 of the said rules, for item 28 relating to baby food and entry relating thereto, the following shall be substituted, namely:-

(1)	(2)
" 28 Infant Food	500 grams
28A Infant Milk Substitute	500 grams

4. In rule 37 A of the said rules - (i) in sub-rule (1), for the words "infant food" , the words " infant milk substitutes/ infant foods " shall be substiituted.

(ii) in the explanation, clauses (a) and (aa) shall be omitted.

5. For rule 37 B of the said rules .. following rule shall be substituted namely:-

" 37 B. Labelling of infant milk substitute and infant food-

(1) without prejudice to any other provisions relating to labelling requirements contained in these rules., every container of infant milk substitute or infant food or any label affixed thereto shall indicate in a clear, conspicuous and in an easily readable manner, the words " IMPORTANT NOTICE" in capital letters and indicating thereunder the following particulars, namely:-

(a) A statement "MOTHER'S MILK IS BEST FOR YOUR BABY" in capital letters. The types of letters used shall not be less than five millimetres and the text of such statement shall be in the Central Panel of every container of infant milk substitute or infant food or any label affixed thereto. The colour of the text printed or used shall be different from that of the background of the label, container of the advertisement, as the case may be.In case of infant food ,a statement including "infant food shall be introduced only after four months of age shall be given.

(b) a statement that infant milk substitute or infant food should be used only on the advice of a health worker as to the need for its use and the proper method of its use.

(c) a warning that infant milk substitute or infant food is not the sole source of nourishment of an infant;

(d) a statement indicating the process of manufacture (spray or roller dried) except in case of infant foods, instruction for appropriate and hygienic preparation including cleaning of utensils, bottles and teats and warning against health hazards of in-appropriate preparations, as under:

" Warning/caution-Careful and hygienic preparation of infant foods/ infant milk substitute is most essential for health. Do not use fewer scoops than directed since diluted feeding will not provide adequate nutrients needed by your infant. Do not use more scoopes than directed since concentrated feed will not provide the water needed by your infant"

(e) the approximate composition of nutrients per 100 gms. of the product including its energy value in Kilo Calories/Joules;

(f) the storage condition specifically stating"store in a cool and dry place in an air tight container" or the like;

(g) the feeding chart and directions for use and instruction for discarding left over feed;

(h) instruction for use of measuring scoop (level or heaped) and the quantity per scoop (scoop to be given with pack);

(i) indicating the Batch No. Month and Year of its manufacture and month and year before which it is to be consumed.

(j) the protein efficiency ration (PER) which shall be minimum 2.5, if the product other than infant milk substitute is claimed to have higher quality protein.

(2) No container or label referred to in sub-rule (1) relating to infant milk substitute and any advertisement relating thereto shall have a picture of infant or woman or both It shall not have picture or other graphic materials or phrases designed to increase the saleability of the infant milk substifute. The terms "Humanised" or " Maternalised" or any other similar words shall not be used. The package and/or the label and/or the advertisement of infant foods/infant milk substitute shall not exhibit the words " Full Protein Food" energy food" " complete food " or " Health food", or any other similar expression.

(3) The containers of infant milk substitute meant for low birth weight infant (less than 2500 gm.) or labels affixed thereto shall indicate the following additional information, namely:-

(a) the words " LOW BIRTH WEIGHT (LESS THAN 2.5 KG)" in capital letters alongwith the product name in central panel;

(b) a statement " the low birth weight infant milk substitute shall be withdrawn under medical advise as soon as the mother's milk is sufficiently available";and

(c) a statement " TO BE TAKEN UNDER MEDICAL ADVICE" in capital letters.

(4) The product which contains neither milk nor any milk derivatives shall be labelled "contains no milk or milk product" in conspicuous manner.

(5) The container of infant milk substitute for lactose intolerant infants or label affixed thereto shall indicate conspicuously " LACTOSE FREE" in capital letters and statement "TO BE TAKEN UNDER MEDICAL ADVICE"

(6) In rule 49 of the said rules, in sub-rule (19) for the words "and milk cereal based weaning food" the words "milk cereal based weaning food and processed cereal based weaning food" shall be substituted.

(7) To rule 59 of the said rule, the following proviso shall be added at the end, namely:-

"Provided also that in ready to drink infant milk substitute, lecithin and ascrobyl palmitate may be used upto maximum limit of 0.5 gm./100 ml.1mg./100ml. respectively".

(8) In appendix 'B' to the said rules ,-

(1) in item A. 11.02.18.01

(a) the words "added antioxidant" shall be omitted

(b) for item 2 and entry relating thereto, the following shall be substituted, namely :-

"Total milk protein, percent by weight not less than 10.00 not more than 16.0".

(c) after item 32 and the entry relating thereto, the following proviso shall be inserted, namely:-

Provided that the low birth weight infant milk substitutes shall also meet the following requirement in addition to the above requirements:

(i) protein shall be in range of 2.25-2.27 gram per 100 K.Cal/Joules;

(ii) mineral contents shall not be less than 0.5 gram per 100 K. Cal. The Calcium Phosphorous ratio shall be 2 : 1. The Sodium, Potassium and Chloride combined together shall not be less than 40 milli equivalent per Litre.

(iii) whey: Casein ration shall be 60: 40 Essential amino acids should include cystine, tyrosine and histidine."

(2) in item A.11.02.18.02.

for item 2 and 3 relating to Riboflavin and Nicotinic acid respectively in the last para and entries relating thereto, the following items and entries shall be substituted, namely:-

"2. Riboflavin, mg. per 100 gram (not less than)0.3

3. Nicotinic acid, mg. per 100 gram (not less than) 3.0";

(3) after item 11.02.18.02, the following item shall be inserted, namely:-

"**A. 11.02.18.03- Processed cereal based weaning food-** Processed cereal based weaning food commonly called as weaning food or supplementary food are obtained from a variety of food grains. They may contain vegetable oils, soya isolates proteins, milk solids, various carbohydrates (such as sucrose, dextrose, dextrines, maltose, lactose, honey, corn syrup), fruits, vegetables, eggs. iron and calcium salts, phosphates and citrates and other nutritionally significant minerals and vitamins. It shall be in the form of powder, small granules or flakes free from lumps and shall be uniform in appearance. It shall be free from dirt and extraneous matter and free from preservatives, added colour, flavour and antioxidants,. It shall be free from any material which is harmful to human health.

It shall conform to the following standards. namely:-

1. Moisture, percent by weight (not more than) 4.0
2. Total Protein, percent by weight (not less than)6.0
3. Total ash, percent by weight (not more than) 5.0 .
4. Total carbohydrates, percent by weight(not less than)55.0
5. Acid insoluble ash, percent by weight (not more than)0.1
6. Crude fiber (on dry basis (percent by weight (not more than) 1.0
7. Iron, mg/100 gram (not less than)5.0
8. Vitamin A (as retinol) mcg. per 100 gram (not less than) 350.0
9. Vitamin C, mg/100 gram (not less than)25.0
10. Added vitamin D, mcg. per 100 gram (expressed as cholecaliferol) 5.0
11. Thiamine (as hydrochloride) (mg/100 gram , not less than) 0.5.

12. Riboflavin, mg/100 gram (not less than)0.3
13. Nicotinic acid, mg/100 gram (not less than) 3.0
14. Bacterial count per gram (not more thab) 40.000.0
15. Coliform count absent in 0.1 gram.

The source of iron shall be selected from the ferrous sulphate, ferrous citrate, ferrous fumarate, ferrous succinate, ferric ammonium citrate and ferric pyrophosphate.

It shall be packed in harmatically sealed clean and sound containers or in flexible pack made from film or combination of any of the substrate made of board paper, polyethylene, polyester, metallised film or aluminiun foil in such a way to protect from deterioration.

Ministry of Health and Family Welfare (Department of Health) Notification No. G.S.R. 149 (E) dated 14th March , 1997 Published in Gazette of India (Extraordinary) Part II Section 3 (i) dated 14-3-97 Pages 4-5,

In exercise of the powers conferred by sub-section (1) of section 23 of the **Prevention of Food Adulteration Act, 1954 (37 of 1954)** the Central Government, after consultation with the Central Committee for Food Standards, hereby makes the following rules further to **amend the Prevention of Food Adulteration Rules , 1955,** namely:-

1. (I) These rules may be called the Prevention of Food Adulteration (III Amendment) Rules, 1997.

   (2) They shall come into force on the date of their publication in the Official Gazette.

2. In appendix 'B' to the Prevention of Food Adulteration Rules, 1955-

   (a). in item A.11.02.22, against clause (iii) relating to Milk Protein (on dry basis) percent by. weight. for the word and figure, "Min. 37"; the words and figures, "Min. 30" shall be substituted.

   (b) in item A.11.02.22.01, against clause (iii) relating to Milk Protein (on dry basis) percent by weight, for the words and figures,"Not less than 10.5", the words and figure "Not less than 9" shall be substituted.

NOTIFICATION

Gazette of India part II Sub Section 3 (II) page No. 3349 dated 16.12.1978 Notification under Section 7 of the Explosive substances act 1908 (6 of 1908).

MINISTRY OF HOME AFFAIRS

NEW DELHI, THE 2ND DECEMBER, 1978

S.O. 3538-In exercise of the powers conferred by cause (1) of article 258 of the constitution and in supersession of all previous notifications issued in this behalf, the President, with the consent of the Government of the States of Andhra Pradesh, Assam, Bihar, Madhya Pradesh and Tamil Nadu, hereby entrusts to all District Magistrates in the said States, the functions of the Central Government under Section 7 of the Explosive Substances Act, 1908 (6 of 1908).

(No. 23/9/76-GPA. V)
Under Secy.

M.P. CIVIL COURT ACT (19TH OF 1958)

CADRE: Section 2 defines two types of cadres, Higher Judicial Services which includes District Judges and Additional District Judges. The second cadre is that of Lower Judicial Services which includes Civil Judges Class I and Civil Judges Class II. (C) There was supernumerary cadre of Additional District judges who were not absorbed in the cader of Higher Judicial Services.

CLASSES OF CIVIL COURTS: There are 4 classes of Civil Courts. (1) The Court of District Judge (2) The Court of Additional District Judge, (3) Court of Civil Judge Class I, (4) The Court of Civil Judge Class II.

The appointments are made under Section 3 of the Civil Courts Act.

POWERS OF THE CIVIL COURTS: The original jurisdiction of Civil Courts has been defined in Section 6.

(a) The Civil Judge Class II shall have jurisdiction to hear and determine any suit or original proceeding of a value not exceeding Rs. 25,000.

(b) Civil Judge Class I up to Rs. 50,000 and 3) the Additional District Judges and District Judges shall have jurisdiction to hear and determine any suit or original proceedings without restriction as regards value.

SMALL CAUSES COURTS: The High Court has under Section 9 of the Civil Courts Act invested Civil Judges Class II with the powers under provincial small causes Courts Act to try the cases of small cause nature, The value of which shall not exceed Rs. 200, in case of Civil Judge Class I the value shall not exceed Rs. 500/- and in case of Additional District Judges and District Judges the value shall not exceed Rs. 1,000. Note that the Additional District Judges have no independent original jurisdiction in respect of any case or proceedings like that of Civil Judge Class I, Civil Judge Class II or District Judge. Therefore the District Judge may either make over the cases to the Additional District Judges or may by distribution of work under Secti. .5 of the Act distribute the work to the Additional District Judges.

EXERCISE OF JURISDICTION OF DISTRICT COURT BY CIVIL JUDGES IN CERTAIN PROCEEDINGS: Section 10 of the Act authorises the High Court to authorise Civil Judge Class I to take cognizance of and any district judge to transfer to a Civil Judge Class I under his control any proceeding or any class of proceedings specified in Section 10 of the Act relating to Indian Succession Act. The Guardians and wards Act, The Provincial Insolvency Act, The M.P. Government and the High Court have issued necessary Notifications in this behalf. For further reference please see Vol. No. III Part IV August, 1997 of 'JOTI' Journal.

JURISDICTION UNDER INDIAN DIVORCE ACT : Section 11 of the Act empowers the District Judge and the Additional District Judge to hear and determine any original proceedings under Indian Divorce Act 1869.

PLACE OR SITTING : The place of sitting of Judicial Officers is described in Section 12 of the Act.

THE APPELATE JURISDICTION : The appeals from the orders and decrees of the Court of Civil Judges Class I and Civil Judges Class II shall be heard by the District judge. The appeals from the orders and decrees of the Court of Additional District Judge and District Judge shall be heard by the High Court.

SUPERINTENDENCE AND CONTROL : Subject to the general superintendence and control of the High Court the District Judge shall superintend and control all other civil courts including the Court of Additional District Judges appointed to such Courts. The functions of the District Judge are mentioned in sub clauses (a) (b) (c) of Section 14, that is to inspect the proceedings of the Courts, Judges and Officers working under him, to give administrative directions and to call for reports and returns of the Subordinate courts and judges in the respective District.

DISTRIBUTION OF WORK : Under Section 15 of the Act the District Judge has jurisdiction to distribute work among judicial officers working under him.

JUDGES NOT TO TRY CASES IN WHICH THEY ARE INTERESTED : Section 16 prescribes and states that Judges who are personally interested in cases or proceedings shall refrain themselves from trying the cases.

TEMPORARY VACANCY OF THE DISTRICT JUDGE: Sections 18 and 19 prescribes the mode about the provisions relating to delegation of powers of the District Judge and exercise of powers of the District Judge by subordinate officers.

CONTINUANCE OF POWERS OF THE JUDICIAL OFFICERS: Any Judicial officer holding the post under the Act shall exercise the powers through out any local area where ever he is transferred or posted to an equal or higher office.(S20)

WORK IN VACATIONS : The holidays are to be prescribed by the High Court for subordinate courts subject to approval by the State Government. The District Judge may make such arrangements as he may, deem fit, for disposal of urgent civil matters during such vacation. For ready reference please go through the ruling ***1981 (II) M.P.W.N. 187, Nagarpalika Vs. Dwarakadhar (A.I.R. 1981 M.P. 166).***

SEAL : Every civil court shall use a seal of such form and dimension as the state Government may prescribe, on all processes and orders issued and on all decrees passed by it. (Please see Rules and Orders also)

RULE MAKING POWER : High Court may from time to time make rules for carrying out all or any of the purposes of the Act on different subjects mentioned under Section 23 of the Act.

AMENDMENT OF LAW RELATING TO COURT OF SMALL CAUSES : The words "State Government" occuring in Provincial Small Causes Act, the Madhya Bharat Small Causes Act and the Rajasthan Small Causes Ordinance shall be read as "High Court". The Judicial Officers are requested to go through the Act for further details so that they may be able to know the provisions of M.P. Civil Courts Act under which they exercise their powers.

COMBINED EFFECT OF SECTIONS 6,7,& 8 OF LIMITATION ACT

The effect of Section 6 is that a person under disability may sue after the cessation to the disability within the same period as he would otherwise have been allowed under the Schedule; and the present section adds a proviso that in no case can the period be extended to anything beyond three years from the cessation of the disability ***Vasudeva vs. Maguni, 24 Mad 387 (395) (PC).*** If a proceeding under sec. 145 of Cr.P.C. against a minor terminate in June,1952 and the minor attains majority in 1954, suit by the minor for declaration and possession filed in April 1958 is barred ***Alarakshi Bibi Vs. Ujala Bibi, AIR 1966 Or. 49.***

The combined effect of sections 6 and 8 may be stated as follows:

(1) If the period of limitation prescribed for the suit or application is three years or less and it expires before the minor attains majority, the minor will get the same period from the date of attaining majority. In such a case there is no occasion for section 8 to apply.

(2) If the period of limitation is more than three years (e.g., if the suit is one for possession, for which the prescribed period is 12 years and it expires before the minor attains majority, the minor will get only three years from the date of attaining majority under sec. 8.

(3) If the period of limitation is three years or less, and it expires at some date after the minor attains majority (e.g. if the suit is one the period prescribed for which is two years, and the minor attains majority 1½ years after the accrual of the cause of action) the minor will get the full period prescribed for the suit (i.e. 2 years) from the date or attaining majority.

(4) If the period of limitation prescribed for the suit is more than 3 years, and it ordinarily expires within three years (or less) after the minor attains majority, he will get 3 years from the date of majority see illustration (a) to Sec. 8 1908.(Limitation Act)

(5) If the period of limitation prescribed for the suit is more than three years (e.g. 12 years), and the period ordinarily expires on a date which is more than three years from the date of attainment of majority (e.g. if the right to sue accrues in 1900, and the minor attains majority in 1907, so that ordinarily the period will expire 5 years after the attainment of majority by the minor), the minor will get the remaining period (i.e. 5 years) from the date to majority, but no further extension of time (viz., 12 years from the date of majority) will be allowed under Sec. 6, because in ordinary course he is getting more than three years. See illustration (b) to Sec. 8 of the Act of 1908.

Under the section the period can be extended up to an extent of three years if under the ordinary law out or the period of limitation prescribed, there remains a period of less than three years for bringing the suit. But if the period remaining is more than three years no extension can be granted ***Lok Nath Vs. Rohlu AIR 1951 J and K 25.*** Please go through AIR 1995 S.C. 75 for further studies

Meaning of the words "Disability" and "Inability" explained :

Disability connotes legal disability. It is a want of legal qualification to act.

Inability connotes want of physical power to act. ***Purno Vs. Sasoon 25Cal. 496, 504(F.B.).***

THE MADHYA PRADESH COMMISSIONS FOR LOCAL INVESTIGATIONS RULES, 1962

(Notfn.No. 29566-4315-XXI-B. Published in M.P. Rajpatra, Pt. 4(ga), dated 14-9-1962, p. 611). In exercise of the powers conferred by the proviso to Rule 9 of Order XXVI of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908). and in supersession of all previous rules made on the subject, the State Government hereby makes the following rules as to the persons to whom commissions for local investigation shall issue, namely:

I - Preliminary

1. (1) These rules may be called the Madhya Pradesh Commissions for Local Investigations Rules. 1962.

   (2) They shall extend to the whole of Madhya Pradesh

2. In these rules unless the context otherwise requires.

   (a) 'Code' means the Code of Civil Procedure, 1908 (V of 1908);

   (b) 'Commission' means a commission issued (Under) rule 9 of Order XXVI of the First Schedule to the Code;

   (c) "Revenue Officer" means a Tahsildar and Naib Tahsildar and includes Revenue inspector, Measurer and Patwarl.

II- Revenue Officer to whom Commission may be issued

3. In any suit or proceeding in which the Court deems a local investigation to be requisite or proper for any of the purposes specified in rule 9 of Order XXVI of the First Schedule to the Code, it may issue a commission to any revenue officer to make such investigations within his territorial jurisdiction:

   Provided that, for special reasons to be recorded in writing, such commission may be issued to any revenue officer to make local investigation outside his territorial jurisdiction.

4. A commission to a revenue officer shall be issued through the Collector of the District, to whom he is subordinate and the Collector shall endorse the commission to the revenue officer named to make the necessary local investigation.

5. If the Collector is of opinion that the Revenue Officer cannot, with due regard to Government interest, be called upon to make such local investigation, he shall endorse his opinion to that effect on the commission and return it to the court which issued it; and his opinion shall be accepted as conclusively determining that the services of the Revenue Officer in question are not available.

6. (1) A Revenue Officer to whom a commission is issued under these rules shall be entitled to travelling and daily allowance at the rate admissible to him under the Madhya Pradesh Travelling Allowance Rules.

   (2) He shall also be paid half of the amount fixed by the court as fee for the work of local investigation. The other half shall be credited to Government.

   (3) Such fee shall be fixed with due regard to the nature of work, the

number of days likely to be taken in the local investigation and the out of pocket expenses over and above the daily allowance likely to be incurred by the Revenue Officer while engaged in the local investigation.

(4) Before issuing the commission the court shall cause the amount of travelling allowance and fee to be deposited by such party or parties and in such proportions as it may consider fit.

(5) When the commission has been duly executed, It will be returned by the Revenue Officer with his report in writing along with a statement of the distances travelled by him. The court then shall, after such verification as it considers necessary, pay to him the amount of his travelling and daily allowance together with his share of the fee, calculated and determined in accordance with this rule.

(6) The Revenue Officer shall not be entitled to any further travelling allowance or daily allowance from the Government.

III- Officers other than Revenue Officer to whom commission may be issued.

7. When in any suit a local investigation for any of the purposes specified in rule 9 of Order XXVI of the First Schedule to the Code is deemed requisite or proper and the court considers it necessary to issue a commission for the purpose to an officer other than a Revenue Officer, it shall ascertain from the Head of the Office where such officer is working or, where such officer is himself the Head of an office from the officer to whom he is subordinate, whether his services are available.

8. (1) If it is decided that the officer can be spared, the Head of the Office or the officer consulted shall decide the amount of the cost of local investigation to be deposited in court before the issue of the commission.

(2) The Head of the office or the officer consulted shall include in such cost:

(i) the likely amount of travelling expenses, with due regard to the status of the officer, and

(ii) the fee for the work of local investigation.

(3) The fee shall be fixed with due regard to the nature of the work, the number of days likely to be taken in local investigation and the out of pocket expenses likely to incurred by the officer while engaged in the local investigation.

(4) The officer executing the commission shall be entitled to the entire amount of travelling expenses and half of the fee, the other half of which shall be credited to Government. He shall not be entitled to any other travelling allowance or daily allowance from Government.

(5) The Court shall, before issuing the commission cause the amount of travelling expenses and the fee of the officer concerned to be deposited by such party or parties and in such proportions as it may consider fit.

9. The commission shall be issued to such officer through the Head of the office under whom he is working of, if he himself is the head of the office, then through the officer to whom he is subordinate.

TIT BITS

1. ISSUE OF COMMISSION CIVIL REVISION NO. 308/68
M.P. HIGH COURT INDORE BENCH, *DIVANCHAND VS. SMT. KUSUMBAI*
BY HON'BLE JUSTICE SHRI H.R. KRISHNAN DATED 20-7-1968

ORDER

The applicant who is the defendant in an ejectment suit cited as a witness on his side a resident of Calcutta and asked that commission might issue. Actually there is no document signed by the Calcutta witness bearing on the controversy nor is he in any manner connected with the transactions. The suggestion seems to be that he was at Indore Several years ago and happened to hear something between the parties.

2. This is far-fetched and has all the appearance of a dilatory tactic. In fact this kind of commission prayer was a favourite time saving stunt practised by a number of resident-tenants in accommodation control cases. Orders have been passed by courts in this regards; but strangely enough this kind of fact is still coming up. The application is summarily dismissed. But if the defendant-applicant wants the Court to send a local commissioner for examination of the Calcutta witness, the trial court may give due consideration to the request .

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2. SECTION 197 CR. P. C.: PUBLIC SERVANT
SHAMBHOO NATH MISHRA VS. STATE OF U.P.
1997 (5) SCC 326

The essential requirement postulated for the sanction to prosecute the public servant is that the offence alleged against the public servant must have been done while acting or purporting to act in the discharge of his official duties. The purpose in the public servant is entitle to protection under Section 197 (1) of Cr.P.C. The protection of sanction is an assurance to an honest and sincere officer to perform his public duty honestly and to the best of his ability.

When the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund etc. it cannot be said that he acted in discharge of his official duties because it is not the official duty of the public servant to fabricate the false records and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of the same transaction.

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3. CHARGE FOR MURDER AND CHARGE FOR ABETMENT TO COMMIT SUICIDE,
(1997) 5 SCC 348 *SANGARABOINA SREENU VS. STATE OF A.P.*

Refer to Section 222 of Cr.P.C.

The appellant was charged and tried for offence under Section 302 but was convicted under Section 306 of the I.P.C. The Supreme Court held that 'this' appeal must suceed for the simple reason that having acquitted the appellant of the charge under Section 302 IPC-which was the only charge framed against

him - the High Court could not have convicted him of the offence under Section 306 IPC. It is true that Section 222 Cr. P.C. entitles a court to convict a person of an offence which is minor in comparison to the one for which he is tried but Section 306 IPC cannot be said to be a minor offence in relation to offence under Section 302 IPC within the meaning of Section 222 Cr. P.C. for the two offences are of distinct and different categories. While the basic constitutent of and offence under Section 302 IPC is homicidal death, those of Section 306 IPC suicidal death and abetment thereof.

NOTE: It is always better to frame charge under Section 302 and in alternative Section 304 (B) and in alternative Section 306 because sometimes the statements under Section 161 of the Cr.P.C. does not disclose a specific offence to charge with; therefore in such situation it is always safer to frame alternative charges so that at the conclusion of the trial the Court may convict the according to the charge proved.

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4. SECTION 145 CR.P.C. : POSSESSION
R.C. PATUCK VS. FATIMA A. KINDASA
(1997) 5 SCC 334

The petitioner was not found to be in possession of disputed property. The dispossession of the petitioner found to be for a period in excess of 2 months next before the date of preliminary order under Section 145 (1). It was held that the provisions of Section 145 (4) does not apply to such case and therefore no order for restoration of possession could be passed in favour of the petitioner, because conditions mentioned in the said proviso were not satisfied on the ground that the possession of the petitioner amounted to a continuing wrong. In such cases the only remedy was to file a civil action for the recovery of possession.

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5. FATAL ACCIDENT CASE AND CLAIM CASE UNDER MOTOR VEHICLES ACT AND FRAMING OF ISSUES
(Unreported judgment of M.P. High Court, Indore Bench)
***M.A. NO. 198 OF 94, M.P.E.B. VS. NANDRAM* (7-8-1997)**

The case under Section 1 (a) of Fatal Accident Act 1855 was instituted at district headquarters Dhar and subsequently it was transferred to the Court of Additional District Judge, Kukshi. There the case was inadvertantly registered as a claim case under Motor Vehicle Act and the case was being disposed of The Defendant M.P.E.B. preferred Misc. Appeal which was decided by the Hon'ble High Court. Judgment is by Hon'ble Shri Justice J.G. Chitre, dated 7-8-1997

The facts of the case were there was a One Batti connection in the house of the plaintiff. In between the nights of 17th and 18th January, 1992, on account of uninsulated wiring there was a fire which resulted in the death of his wife Gujju Bai.

Two important points come out of the judgment. First relating to framing of issues and second relating registration or claim case and fatal accident claim case. The Hon'ble High Court in its judgment paragraph 12 states as under:

Setting the issues is a judicial process and that needs judicial application of mind . Issues are not to be settled as a matter of routine. The Judge settling the issues has to read the plaint as well as the written statement. After careful reading of the averments in the plaint and the written statement he has to find out the issues in controversy which need adjudication from the Court. The Judge has to keep it in mind that issues arise when a material proposition of fact or law is affirmed by one party and denied by the other. When each material preposition affirmed by one party and denied by other, forms the subject of a distinct issue, the Judge is expected to make it as " issue" for adjudication. Had that been done in the present matter, it would have been noticed by the learned Judge that the matter which was before him for trial and adjudication was a suit in view of provisions of the Fatal Accident Act and not a claim petition presented in view of the provisions of M.V. Act. Even at that time, while framing issues the learned trial Judge has noticed the correct nature of proceedings and allowed himself to hold that it was a claim petition to be tried and decided in view of provisions of M.V. Act. He recorded the evidence and wrote the judgment but even at that time also, did not notice that it was not a matter which was to be decided by him as a Member of Motor Accident Claim Tribunal. The top line of the front page of the judgment shows that the learned Judge who was deciding the present matter was deciding it as Member of Motor Accident Claims Tribunal.

In the present matter the judgment shows no involvement of the use of motor vehicle at all. It speaks of the averments of the plaintiff in respect of the negligence alleged on the part of the officers of the appellant. When that was so, it was totally improper for the learned trial Judge to decide the matter as if it was a claim in view of provisions of M.V. Act.

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6. STAY OF SUIT : 1994 CR.L.J. 887, BOMBAY HIGH COURT AT NAGPUR *SATISH KUMAR VS. MOHAN LAL*

Civil suit is for enforcing the civil liability while the prosecution is for punishment as the applicant is guilty of criminal offence. The conviction of the applicant in the present proceeding cannot enable the non applicant to recover his amount, He can do this by filing the whole suit. Filing of civil suit and criminal proceedings are not alternate remedies available to the non applicant. They create different types of rights in the non applicant complaint and he can legally proceed with both.

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7. DIFFERENCE BETWEEN S. 473 CR.P.C. AND SECTION 5 LIMITATION ACT: *VANKA RADHAMANOHARI VS. VANKA VENKATA REDDY,* (1993) 3 SCC 4.7.8 1993 SCC (CRI) 571.

In view of S. 473 a court can take cognizance of an offence not only when it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained, but even in absence of proper explanation it the court is satisfied that it is necessary so to do in the interests of justice. The said S. 473 has a non-obstante clause which means that said section has an overriding effect on S. 468, if the court is satisfied on the facts and in the circumstance of

a particular case, that either the delay has been properly explained or that it is necessary to do so in the interests of justice.

At times it has come to notice that many courts are treating the provisions of S. 468 and S. 473 of the Code as provisions parallel to the periods of limitation provided in the Limitation Act and the requirement of satisfying the court that there was sufficient cause for condonation of delay under S. 5 of the Act. There is a basic difference between S. 5 of the Limitation Act and S. 473 of the Code. For exercise of power under S. 5 of the Limitation Act, the onus is on the appellant or the applicant to satisfy the court that there was sufficient cause for condonation of the delay, whereas S. 473 enjoins a duty on the court to examine not only whether such delay has been explained but as to whether it is the requirement of the justice to condone or ignore such delay. As such, whenever it is necessary to condone such delay in the interest of justice. While examining the question as to whether it is necessary to condone to delay in the interest of justice, the Court has to take note of the nature of offence, the class to which the victim belongs, including the background of the victim.

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8. REFUNDING OF FINE

(1) On reversal of conviction any fine levied must, as a matter of course, be refunded even though the appellate judgment be silent on the point.

(M.H.C. Cr. Misc. Pet. No. 45 of 1904)

Please refer Sohoni's Cr.P.C. 1984, edition, page 180 Note no. 22 "Refunding of fine when conviction reversed". and page No. 3953, note No. 130 clause(e) of S. 386.

(2) ***A.I.R. 1937, Madras 191(D.B.) Hiralal Jindani Vs. Official Assignee, Madras.*** This judgment is based on criminal trial relating to refund of fine. The accused was sentenced and was fined by the trial court but subsequently he was acquitted in appeal. The fine was deposited by some other person than the accused because the accused was insolvent. A person who deposited the fine claimed the refund. The High Court held that the person who paid the fine is not entitled to refund. His remedy would be only against the insolvent's estate. The High Court further held that there is no provision in the Criminal Procedure Code that on reversal of the sentence the Crown must return the amount to anybody other than the accused, even if the amount had been paid by such person.

Section 386 of the Cr. P.C. speaks about incidental or consequential orders. This has been referred to under Section 386 Sub Clause (e). It means an incidental order which is liable or likely to follow as a result of main order.

The only consequential or incidental orders which fall within the purview of this clause are orders which follow as a matter of course being necessary complements to the main orders passed, without which the latter would be incomplete and ineffective (such as directions as to the refund of fines realised from acquitted appellants, or , on the reversal of acquittals, any direction as to the restoration of compensation paid under Sec. 250) for which no separate authority is needed. (Please refer D.B. Mitra's Code of Criminal Procedure, 16th edition (1987) page No. 875 Note 'B' and 877 Note "C' Vol. 2).

Few Judicial Officers have, while disposing of the Criminal Appeals and acquitting the accused have ordered for refund of fine but such refund is to take effect after the lapse or expiry of period for filing of an appeal by the aggrieved party against the judgment of acquittal in appeal. This is not correct because the moment the accused is acquitted he is entitled to get his amount of fine returned without any delay because fine is not a property to be disposed of according to the provisions of Chapter 34 of the Cr.P.C. regarding disposal of property. That amount is not subject matter relating to a criminal case. The amount was deposited because the Trial court found the accused guilty of offence and sentenced him to pay a fine. Therefore the accused paid the fine and after reversal of the judgment in appeal the accused is either acquitted or his fine may be reduced. But the fine amount of the difference of that amount should be ordered to be returned to the accused with immediate effect. Because the order in the judgment takes effect immediately. Therefore the accused is entitled to get the amount back without waiting for the period of appeal or revision as the case may be.

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9. (1997) 5 S.C.C. 476 LIS PENDENS : RIGHT OF EVIDENCE
DHANNA SINGH VS. BALJINDER KAUR

The undisputed facts are that the respondents filed a suit for permanent injunction with the following prayer :

"It is, therefore, prayed that a decree for permanent injunction restraining the defendants from raising any construction over any specific portion of the property detailed in the heading of the plaint, and also restraining the defendants from filling any part of the property by sand and also restraining the defendants from alienating any specific protion of the property and also restraining the defendants from transferring the possession of the property without the same being partitioned between the parties to the suit; may kindly be passed in favour of the plaintiffs against the defendants with costs and any other relief which the Hon'ble Court may deem fit be also granted."

Pending the suit, though several opportunities were given, no evidence was adduced by the defendant. The Court passed an order on 22-9-1995 foreclosing the evidence of the defendant on the statement of the counsel that the first defendant was not willing to lead any evidence. An application for impleadment was filed earlier by the appellant who is a subsequent purchaser from the first defendant. After impleadment, he filed application for adduction of evidence which was rejected. Thus this appeal.

The undisputed fact is that in the plaint the plaintiff respondent has already sought for a relief of injunciton of alienation, yet the alienation came to be made. Apart from the doctrine of lis pendens under Section 52 of the T.P. Act, the subsequent purchaser does not get any right to lead to any evidence, as he stepped into the shoes of the first defendant, who has given up the right to lead evidence. In view of these circumstances, he does not get any right to lead any evidence.

The appeal was accordingly, dismissed.

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PILOT PROJECT A REVIEW

K.P. Tiwari
Ad. Reg (D.E.)
High court M.P. Jabalpur
(Now Secretary Vidhan Sabha)

1. Introduction-

Hon'ble the Chief Justice of India, in 1993, at the Judicial Officers' conference had mooted the idea of 'LITIGATION FREE DISTRICT' meaning thereby the disposal of all cases pending in Courts for more than two years in a given district under a scheme as a special drive. The scheme as conceived was to be implemented in a phased manner, initially for two years. Thus, the idea was to make all the states 'LITIGATION FREE' in that sense. This scheme was given the name or 'PILOT PROJECT'.

2. Implementation of the Project in the state of M.P.

The State of Madhya Pradesh is one or a few States who have taken lead in giving shape to the above idea of Hon'ble the Chief Justice of India. The High Court or M.P. under the leadership of the then Chief Justice, Hon'bleShri Justice U.L. Bhat was pleased to decide to implement the scheme in first phase in four districts : namely Seoni, Rajnandgaon, Guna and Ratlam.

3. Status of the Project-

In order to assess the success or otherwise of the scheme, it would be appropriate to present the figures of institution and disposal of cases as also pendency at the start of the scheme and at its end. These figuies may be put as under-

Name of District	Pendency at the beginning of the scheme i.e. 1-11-94	Institution	Disposal	Pendency at the end of the scheme i.e.1-7-96
(1)	(2)	(3)	(4)	(5)
Rajnadgon	18291	25352	34429	9214
Seoni	21460	24344	32764	13040
Guna	39343	31456	34690	36109
Ratlam	33659	23051	34313	22397

It would appear from the above statement of figures that the efforts made under the guidance of Hon'ble the Ex-Chief Justice Shri Bhat and Hon' ble the present Chief Justice Shri Justice A.K. Mathur have produced a tangible result. A large number of cases have been brought to their end within the span of two

years, the period during which the scheme remained in force. Though we realise that the districts brought under the scheme could not be made 'Litigation Free Districts', it is not for the lack of our efforts but for our limitation. We worked the scheme with the same number or Jdges as were working prior to beginning of the scheme and with working conditions not so satisfactory.

4. Whether the project has to be extended to some other districts-

Since the result of the scheme has been encouraging, Hon'ble the High Court under the able leadership of the present Chief Justice Hon'ble Shri Justice Mathur, has decided to extend the project to four more districts namely Shahdol. Sagar, Dhar and Bilaspur with effect from 1-7-1997. Besides this, the scheme has been decided to be continued in Guna district as the number of old pending cases in that district were still on the higher side.

5. Impact of the scheme in new Pilot Project Districts -

We can say with satisfaction that the scheme in the new pilot project districts is also going in the new Pilot Project districts is also going in the right direction. The figures of pendency of cases at the start of the scheme, institution and disposal during the currency of the scheme, i.e. 9 months, and pendency after the said period will speak for itself, which may be put as under -

Name of District	Pendency at the beginning of the scheme i.e. 1-7-96	Institution during the scheme	Disposal during the scheme	Pendency as on 1-4-97 (after 9 months)
(1)	(2)	(3)	(4)	(5)
Shahdol	33754	8955	19574	23135
Sagar	36269	15217	18941	32545
Dhar	37088	11741	27242	21587
Bilaspur	56594	25085	31986	49693
Guna	39343	40912	47803	32452

The above statement would show that the disposal of cases in all the districts under the project during the curency of the scheme has been for more than the institution and this trend, it maintained, is certainly to give very encouraging results. Hon'ble the Chief Justice Shri A.K. Mathur has taken very keen interest in the success of the scheme and we have no doubt that it will prove to be a success story.

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